

JERSEY / JUDGMENT

# Christmas -v- AG [2013]

## JCA 144 (26 July 2013)

[2013] JCA 144

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Court of Appeal 26 July 2013 Before : The Hon. Michael Beloff, Q. C., President; Christopher Nugee, Q. C.; and Robert Logan Martin, Q. C. Ian Michael Christmas -v- The Attorney General  
Appeal against the making of a compensation order. Leave to appeal was granted by Montgomery JA sitting as a single judge on 21 st May, 2013. Advocate I. C. Jones for the Appellant. M. T. Jowitt, Esq., Crown Advocate.

### JUDGMENT

logan martin ja: This is the judgment of the Court.

### INTRODUCTION

1. This is an appeal against a compensation order ("the Order") which was made against the appellant by the Superior Number of the Royal Court on 8 April 2013 pursuant to the Criminal Justice (Compensation Orders) (Jersey) Law 1994 ("the 1994 Law"). 2. The Order was made consequent upon the conviction of the appellant by the Royal Court on a charge of fraudulently inducing a person to invest. Following conviction, the appellant was sentenced by the Superior Number to 15 months' imprisonment. 3. The appellant has submitted this appeal pursuant to Article 6(1) of the 1994 Law. He seeks the quashing of the Order and in the alternative a variation and reduction of the Order so as to enable him to meet it. Leave to appeal the Order was granted by Montgomery JA on 21 May 2013. The appeal was argued excellently on both sides. 4. By virtue of Art 6(2), the powers of the Court of Appeal in the event of an appeal against a compensation order are the powers mutatis mutandis which are available in the case of an appeal against sentence as these are provided in Arts 26 to 30 of the Court of Appeal (Jersey) Law 1961 ("the 1961 Law"). Art 26(3) of the 1961 Law provides that the Court of Appeal "shall, if it thinks a different sentence should have been passed on the appellant in the proceedings from which the appeal is brought, quash the sentence and pass such other sentence warranted in law by the verdict" . We proceed upon the basis that if this appeal is successful, this Court has the same power in respect of the Order.

## PROCEDURAL HISTORY

5. In support of his appeal, the appellant relies upon the following sequence of procedural events. The appellant was convicted by the Royal Court on 26 July 2012 along with his co-defendant John Lewis on one Count of a breach of Art 2(c) of the Investors (Prevention of Fraud) (Jersey) Law 1967 . The Count alleged that:- "John LEWIS and Ian CHRISTMAS between 1st December 2004 and 1st January 2005 made to Marie Cotrel a statement or promise which was and misleading, false or deceptive, namely that a sum of £100,000 would be used as the initial purchase deposit for properties known as 104 and 203 Hawthorne, knowing the said statement or promise to be misleading, false or deceptive or being reckless as to the same, thereby inducing the said Marie Cotrel to invest a sum of £100,000 in an arrangement with respect to the said properties the purpose, or effect, or pretended purpose or effect of which was to enable the said Marie Cotrel to participate in or receive profits or income from the acquisition, holding, management or disposal of the said property." This Count was included in an Indictment containing a total of twenty seven counts against the appellant, Mr Lewis and two other defendants. Only four of those counts referred to the appellant. 6. The properties referred to in the Count upon which the appellant was convicted were situated in Florida and their purchase was to take place as part of a scheme set up by the appellant and his co-defendant to use monies provided by investors to acquire properties being developed principally in Florida which could later be sold at a profit. The appellant and Mr Lewis operated the scheme through a company entitled De Lec Limited and a joint venture agreement (or "JVA") was entered into with each investor. Such a JVA was signed by Mrs Cotrel, Mr Lewis and the appellant. 7. The appellant was convicted upon the basis that he had made a misleading statement recklessly and not because he had been intentionally dishonest or deceptive. 8. Following conviction, the appellant was sentenced by the Superior Number on 5 October 2012 to 15 months imprisonment. The appellant appealed against conviction and sentence to this Court (as did Mr Lewis) and that appeal was refused on 18 April 2013. 9. On 17 December 2012, Clyde-Smith, Commissioner granted a saisie judiciaire upon the application of the Attorney General pursuant to Article 15(1) of the Proceeds of Crime (Jersey) Law 1999 ("the 1999 Law") which authorised the Viscount to take possession of and manage the realisable property of the appellant. The application for the saisie judiciaire was made upon the basis that the Attorney General would be seeking a confiscation order. 10. On the same date, 17 December 2012, an endowment policy, of which the appellant was the sole beneficiary, matured. That endowment policy was one of two policies which had been taken out by the appellant in 1999 to repay the capital portion of mortgages which had been secured on his matrimonial home. The other of the policies was a life assurance policy which had been taken out for the same purpose. As a result of the saisie judiciaire , the proceeds of the endowment policy were paid to the Viscount and were not used in satisfaction of the mortgages. 11. On 18 February 2013, the Attorney General served upon the appellant a Confiscation Statement made in accordance with Art 7 of the 1999 Law in terms of which the Attorney General stated that he would not be seeking a confiscation order against the appellant but would seek a compensation order in the sum of

£128,429 which represented the sum of £100,000 together with a calculated amount for inflation since 2005. The Attorney General made no application for a compensation order in respect of the appellant's co-defendant Mr Lewis (although he did state that he would be seeking confiscation orders against Mr Lewis and the others who had also been defendants at the trial on other counts which did not concern the appellant). 12. On 13 March 2013, the appellant made an application to the Royal Court for the saisie judiciaire to be discharged upon the basis that as no confiscation order was being sought by the Attorney General against the appellant there was no statutory power for the saisie judiciaire to remain in place. The Attorney General did not confirm whether or not the application to discharge the saisie judiciaire was being opposed. 13. On 29 March 2013, the Attorney General filed an application before the Superior Number seeking a compensation order against the Appellant and the hearing was listed for 8 April 2013. 14. On 2 April 2013, the Attorney General wrote to Mrs Cotrel stating that the saisie judiciaire could no longer be maintained against the appellant and encouraged her to seek legal advice regarding any claims which he might have against the appellant's assets. 15. On 5 April 2013, the Attorney General wrote to Carey Olsen, the advocates who were acting for the appellant, indicating that he was unable to confirm whether or not the Attorney General would oppose the application to discharge the saisie judiciaire . 16. On the same date, 5 April 2013, Mr Lewis is said by the appellant to have passed a contract of sale of his matrimonial home before the Royal Court and the net proceeds of sale after satisfaction of all security are understood by the appellant to be in excess of £700,000. The details of the sale were entered on the Public Registry. The appellant understands that the proceeds of sale were frozen as a result of a "no consent" which has been confirmed by the States of Jersey police. 17. On 8 April 2013, the hearing on the application by the Attorney General for a compensation order took place. After hearing submissions, Pitchers, Commissioner made the Order. In his Judgment (

[2013] JRC 068 ) at para 1, the learned Commissioner stated that he and the Jurats were satisfied that the loss to Mrs Cotrel was £100,00 and at para 2 he stated that although the inclusion of an amount for inflation was correct that would not be included in the order to be made. Having then referred to Art 2(2) of the 1994 Law, the Commissioner concluded:- "4 In practical terms that means that once the loss has been established the court has to ask itself whether it is appropriate to order the whole of that sum to be paid by the offender or part of that sum and if so, over what period. In this case we have had regard, and the Jurats have had regard in concluding the appropriate sum, to the two amounts of capital that are now available. It is true that those are the proceeds of policies which it was intended by the defendant would go to meet his mortgage obligations but they were not policies which the bank was entitled to. They simply expected that the proceeds would be paid over. Similarly we have approached the case on the basis, as we were invited to, that Mr Christmas will receive his pension from the States, though that has not yet been finally determined. "5 Bearing those matters in mind, and having regard to the obligation not to make any order against [the appellant] that he cannot reasonably pay, the conclusion of the Court is this. There will be a compensation order in favour of Mrs Cotrel in the sum of

£100,000 that will be payable as follows: (i) £60,000 will be payable within 28 days; and (ii) The balance of £40,000 will be payable within 12 months. If there is a failure to make either of those payments the whole sum will be due and in the event of the whole sum not being paid, there will be a sentence of 12 months imprisonment in default." The saisie judiciaire was thereafter discharged on the same date without opposition from the Attorney General. 18. On the same date, 8 April 2013, Mrs Cotrel issued civil proceedings against the appellant and obtained interim Mareva injunctions including an injunction restraining the appellant from disposing, surrendering, assigning, alienating, pledging or charging the policies of endowment and life assurance held by the appellant. 19. On 25 April 2013, the appellant made an application to the Royal Court to discharge the injunctions. That application was adjourned until 10 May 2013 because Commissioner Clyde-Smith sitting with Jurats ruled that the Advocate who had sworn an affidavit for Mrs Cotrel could not properly also appear on her behalf. 20. On 10 May 2013, a different Advocate instructed on behalf of Mrs Cotrel applied to withdraw and discontinue her civil proceedings against the appellant in their entirety. The application was not opposed. 21. On the same date, 10 May 2013, the appellant applied to the Royal Court to order the Viscount to release the proceeds of the endowment policy which he had been holding pursuant to the saisie judiciaire . The Royal Court declined the application and the Viscount refused to release those proceeds without further order of the Court. 22. On 17 May 2013, the Viscount convened the appellant and invited Commissioner Clyde-Smith to consider the issue of the proceeds of the endowment policy. On 20 May 2013, the Royal Court ruled that there was no legal basis upon which the Viscount was entitled to continue to hold the proceeds of the endowment policy and ordered the Viscount to return those proceeds to the appellant forthwith. 23. On 24 May 2013, Commissioner Clyde-Smith ordered Mrs Cotrel to pay the appellant's costs of and incidental to the proceedings which she had commenced and then withdrawn against the appellant. THE LEGISLATION 24. The power to make compensation orders is contained in the 1994 Law. Para (1) of Art 2 permits a court following conviction to "make an order (in this Law referred to as a "compensation order") requiring the person to pay compensation for any personal injury, loss or damage resulting from that offence..." . Art 2 further states: "(2) ... a compensation order shall be of such amount as the court considers appropriate, having regard to any evidence and any representations that are made by or on behalf of the offender, any person who appears to the court to have suffered any personal injury, loss or damage resulting from the offence for which the offender has been convicted or the Attorney General..." 25. Art 3 refers to the powers of the court where it is making a compensation order. Para (1)(a), (b) and (c) permit the court respectively to allow time for payment, to direct that the amount may be paid by instalments, and " fix a term of imprisonment (in this Law referred to as a "default sentence") which the person liable to make the payment is to undergo if any sum which the person is liable to pay is not duly paid or recovered." By reference to para (2)(b), a default sentence in a case such as the present shall not exceed twelve months. 26. Art 3 further provides for present purposes: (5) In determining whether to make a compensation order against any person, and in determining the

amount to be paid under such an order, the court shall have regard to the person's means so far as they appear or are made known to the court." 27. The power to make confiscation orders is contained in the 1999 Law. Art 3(1), (3) and (4) have the effect that where a defendant appears before a court to be sentenced in respect of an offence specified in Schedule 1 to the 1999 Law, the court may make a confiscation order where the court has determined "that the defendant has benefited from any relevant criminal conduct". Schedule 1 refers to "Any offence in Jersey to which a person is liable on conviction to imprisonment for a term of one or more years...". The offence of which the appellant was convicted was such an offence. 28. Art 15 is entitled "Cases in which saisies judiciaires may be made". By reference to Art 15(1)(b), these include cases where proceedings have been instituted for an offence specified in Schedule 1 and where there is reasonable cause to believe that the defendant has benefited from the offence. In that situation, the powers conferred by Art 16 are exercisable subject to Art 15(5)(b). That has the effect that where the power under Art 15(1)(b) may be exercised to make a confiscation order, the power under Article 16 to make a saisie judiciaire shall not be exercised where the court is satisfied that "the Attorney General does not intend to proceed". 29. Art 16 is entitled "saisies judiciaires". Para (1) permits a court to make a saisie judiciaire on the application of the Attorney General which if made has the result pursuant to para (4)(a) that "all the realisable property held by the defendant in Jersey shall vest in the Viscount". Para (6) states: "(6) A saisie judiciaire - (a) ... (b) shall be discharged on satisfaction of the confiscation order.". 30. A consideration of the procedures provided by these statutory provisions demonstrates that the compensation order regime and the confiscation order regime are separate and discrete. Each sort of order is made and justified upon distinct considerations. In the case of a compensation order, the measure of the amount ordered is such amount as the court considers appropriate having regard to any evidence and any representations that are made, and having regard to the means of the person convicted in so far as they are known to the court. In contrast, the measure in the case of a confiscation order is where the Court determines that the defendant has benefited from the criminal conduct in question and the amount is fixed by reference to that. A compensation order is made by reference to the loss apparently suffered and the means of the person convicted, and a confiscation order is made by reference to the benefit obtained by the convicted person. 31. Where the Attorney General intends to seek a confiscation order, he may apply for the making of a saisie judiciaire where a person is charged with a relevant offence, and a court may grant the application where there is reasonable cause to believe that the defendant has benefited from the offence. A saisie judiciaire may not be made where the Attorney General does not intend to proceed. A saisie judiciaire which has been made is discharged upon satisfaction of the confiscation order. 32. There is no equivalent entitlement to seek a saisie judiciaire where the Attorney General intends to seek a compensation order under the 1994 Law. THE FINANCIAL POSITION OF THE APPELLANT 33. The financial circumstances of the appellant were the subject of a Report by Mr David Sowden of Grant Thornton dated 14 February 2013 ("the Sowden Report"). This was entitled "Confiscation Report" and was prepared for the purposes of the application for a

confiscation order which was intended at that time. In Chapter 6, Mr Sowden described the assets of the appellant and identified his capital position. 34. The appellant's principal asset is the matrimonial home which at that time was said to have a value of £630,000, and it was stated that that property was subject to hypothecs totalling £1,033,540 resulting in a deficit of £403,540. The value of other assets potentially available to the appellant, including the value of a flat in Reading owned by his wife, was £267,423. Taking account of these figures, and leaving aside further considerations identified by Mr Sowden, the capital position of the appellant was assessed to be a negative one of approximately £140,000. 35. In making his calculations, Mr Sowden took into account the fact that the appellant had a liability to his advocates, Carey Olsen, in respect of his defence at the trial. The extent of that liability was £534,564 which amount was derived from an Affidavit of Means which the appellant had sworn for the sentencing hearing. The Sowden Report was referred to at the compensation hearing on 8 April 2013. 36. The appellant has provided an affidavit on his current circumstances dated 17 June 2013 and sworn for the purposes of the appeal hearing. In terms of his capital position, the appellant identified a total of assets of £702,835, including the matrimonial home with a value of £600,000, and total liabilities of £936,257, resulting in a deficit of approximately £230,000. On this basis, the appellant claims to have been "balance sheet insolvent at the time of the making of the compensation order" because the matrimonial home was "hopelessly over-encumbered". 37. The appellant has included in his liabilities legal fees in the amount of £550,000. He has explained that following his being charged in November 2011 he reached an agreement with Carey Olsen that they would represent him upon the basis of a credit facility which was secured by a judicial hypothec against his matrimonial home. Carey Olsen are a secured creditor in respect of the matrimonial home. 38. The appellant referred in his affidavit to other circumstances which are relevant. The position regarding the two policies is that the endowment policy matured on 17 December 2012 and the proceeds of £94,261 were paid directly to the Viscount. The second life assurance policy matured on 12 February 2013 and the maturity amount was £94,835. Payment of this latter amount was delayed as a result of a dispute between the appellant and his first wife but the proceeds were paid after her agreement on 31 May 2013. Originally, each of these policies had been formally assigned to NatWest Bank in security for the mortgages which the Bank had obtained from the appellant. Following the ending of the appellant's first marriage, it appears that the appropriate arrangements were not put in place to maintain these formal assignments. The result is that for present purposes the Bank has no legal entitlement to enforce payment of the proceeds of either policy towards the satisfaction of the borrowings which they have extended to the appellant. 39. Following the making of the compensation order, the Bank wrote to the appellant demanding immediate repayment of all sums due under the mortgages over the matrimonial home. After the *saisie judiciaire* had been discharged, the Viscount made payment of the proceeds of the endowment policy to the appellant and the amount in question was then paid to the Bank. Despite this payment, the Bank wrote to the appellant on 21 May 2013 stating that they had transferred the appellant's accounts to their "Debt Recovery Department for recovery action" and that

the total outstanding was £289,895.19. With the agreement of his first wife, the appellant received the proceeds of the second policy which was the life assurance policy on 14 June 2013 and these proceeds were paid directly to the Bank and applied to the outstanding balance. 40. The appellant has placed the matrimonial home on the market and has stated that he felt that he was left with little choice following the making of the compensation order and in order to comply with the requirements of the Bank. It is his position that if the compensation order had not been made on 8 April 2013 "it is likely that the Bank would not have passed our accounts to their debt recovery department and / or taken the steps they have". 41. The appellant has explained that he expects to be in receipt of a pension from the States of Jersey of £44,435 per annum although that is yet to be confirmed. The appellant held the office of magistrate and he resigned from this post with immediate effect on 25 January 2013. He also receives a pension of £410 per month from Buckingham County Council. Upon the assumption that the States of Jersey pension will be paid, which was accepted before the Royal Court, he will be in receipt of an annual income of over £49,000 before tax. GROUNDS OF APPEAL Outline Contentions 42. In his Outline Contentions, the appellant sets out four grounds of appeal. The first ground is that the making of the Order was not justified as a matter of law. There are two reasons for this. 43. The first reason is that there was a procedural irregularity leading to manifest judicial error. The Order should not have been made unless the appellant had sufficient means to meet the liability imposed upon him and the situation was that he did not. The Royal Court considered that the proceeds of the endowment policy represented financial means from which he could discharge the Order but that was not the position because the *saisie judiciaire* should already have been discharged at the time that the Order was made. As a result, those proceeds would already have been expended for their intended purpose which was towards the satisfaction of the loan on the appellant's matrimonial home. The second reason is that this is not a straightforward case and that a compensation order under the 1994 Law cannot be made where there are disputed issues of causation and quantum. 44. The second ground of appeal is that the Order was made on the wrong factual basis. This arose because the Attorney General had created an artificial background by the obtaining of the *saisie judiciaire* upon the basis that an application for a confiscation order would be made and allowing the *saisie judiciaire* to remain in force and for the Viscount to hold the proceeds of the endowment policy until the compensation order was made. The assets of the appellant, in particular his matrimonial home, were exceeded by his liabilities, including bank loans secured against the property and outstanding legal fees. When the Order was made, the appellant did not have any funds which could be put towards satisfying the Order because the proceeds of these policies were already attributed to satisfaction of the loans over the matrimonial home. The appellant further relies upon the fact that his co-defendant, Mr Lewis, did at the date when the Order was made have a readily realisable sum believed to be in excess of £750,000 and this was not a fact of which the Royal Court was made aware. The Attorney General did not inform the Court of the proceeds of sale which had been received by Mr Lewis. 45. The third ground of appeal is that there were matters wrongly taken into

account and additional matters which ought to have been taken into account when the Order was made. The Royal Court took into account the proceeds of the endowment policy as if these were realisable assets of the appellant. The Court should have taken into account the fact that the appellant's co-defendant did appear to have means of which the Attorney General did not inform the Court. The effect of the Order was either to require the appellant to fail to discharge his secured liabilities with the inevitable result that they would be enforced against his matrimonial home, or to fail to discharge the Order with the result that he would serve an additional 12 months in custody. 46. The fourth ground of appeal is that the making of the Order was wrong in principle. The means of the appellant should have been calculated without applying the assumptions regarding his ability to pay which were assumptions which ought properly to be applied under the confiscation order regime provided by the 1999 Law and not under the compensation order regime provided by the 1994 Law. The Court should have had regard to the participation and circumstances of the co-defendant and to the fact that his only participation was that subsequent to its signature by Mr Lewis and Mrs Cotrel, the appellant signed a JVA which had been drafted by Mr Lewis. A compensation order should not be made in a situation where the offender is thereby obliged to dispose of his matrimonial home.

## Submissions

47. In his submissions behalf of the appellant, Advocate Jones sought the quashing of the Order, or alternatively, the substitution by this Court of a compensation order of a more appropriate sum. He submitted that the principles applicable were those relating to an appeal against sentence which were set out in the decision of this Court in *Bhojwani v Attorney General*

[2011] JLR 249 , per Beloff JA at paras 199 to 202. 48. Advocate Jones set out in four propositions the circumstances in which this Court should interfere in the decision of the Royal Court, namely:- (i) where this Court is satisfied that the Order was unjustified as a matter of law; (ii) where the Order was made on a wrong factual basis; (iii) where the Royal Court took into account improper considerations or failed to take account of proper considerations; or (iv) where the making of the Order was either wrong in principle or manifestly excessive. These were based upon the judgment in *Bhojwani* at para 202 where Beloff JA referred to the summary set out in Archbold, Criminal Pleading, Evidence and Practice (2003) at para 7-136. Advocate Jones accepted that it was not enough for this Court to decide that it would have reached a different decision on the application by the Attorney General for a compensation order. In order for the appeal to succeed, this Court had to find that there had been a material error. 49. Advocate Jones accepted that there was a degree of overlap within the grounds upon which he was relying and he advanced his submissions under five headings. First, the making of the Order was not justified because by Royal Court had focussed on the fact that the Viscount held funds as a result of the *saisie judiciaire* . Secondly, the Order was unjustified because at the date of the Order, the appellant was "balance sheet insolvent" which the Royal Court had not taken into account.

Thirdly, the Order should not have been made because there was not a straightforward identifiable loss. Fourthly, the Royal Court proceeded upon a material error of fact because the Crown had informed the Court that they were not seeking a compensation order against Mr Lewis because he had no assets when that was not the case. Finally, the Order should not have been made because it had the effect that the matrimonial home of the appellant and his wife had to be sold. 50. It is convenient to address in detail the contentions for the appellant, and the responses for the Crown, under these headings.

DISCUSSION The effect of the saisie judiciaire 51. Advocate Jones submitted that there is little authority in the courts of Jersey on the making of compensation orders pursuant to the 1994 Law and that the law of England tends to be applied. In *Attorney General v Howard*

[2006] JRC 008, Bailhache, Bailliff, sitting with Jurats, referred to what is provided in Art 2(1) and identified two general principles. The second of those principles is that:- "13. ... in England the courts have... taken the view that a compensation order should not be made unless the sentencer is satisfied that the offender has the financial resources to pay the compensation, either immediately or within a reasonable time. "14 We think that these principles are also to be applied in this jurisdiction." We respectfully adopt that principle and agree that it should be applied in the present case. In assessing the amount of any compensation order which might be made pursuant to Art 2(1) and (2), and Art 3(5), of the 1994 Law, the Royal Court had to be satisfied that the appellant had the financial resources to pay the amount of compensation which was ordered. 52. Advocate Jones submitted that the error of the Royal Court was that they had focussed on the fact that the Viscount held funds which were secured by the saisie judiciaire. The correct position was that when the Order was made on 8 April 2013, there was no justification for the saisie because it could only have been made in a situation where the Attorney General was intending to seek a confiscation order to be made under the 1999 Law. By reference to what was said in the Attorney General's Confiscation Statement made under Art 7 of the 1999 Law, in particular at paras 11 and 15, it was the position that by 18 February 2013 the Attorney General was no longer intending to seek a confiscation order against the appellant, and was by then seeking only a compensation order. Art 15(5) of the 1999 Law meant that where the Attorney General did not intend to seek a confiscation order, there was no power to make a saisie judiciaire under Art 16(2). 53. The effect of the saisie judiciaire as it remained in existence when the Order was made was that the Viscount held the proceeds of the endowment policy and this created an illusion of ready cash. The saisie judiciaire should have ceased to exist by that time and as a result the proceeds would have been released to the appellant and he would have used the funds to reduce his bank borrowings. The Royal Court should have proceeded upon the basis that the appellant had no ready cash and to do otherwise was an error of law. In that situation, the Royal Court should have had regard to the entitlement which the appellant had to a total pension income in the future of the order of £40,000 per annum gross and should have assessed an appropriate monthly amount to be paid by the appellant over a period of 36 months. 54. It is our opinion that

the Royal Court did not err when they took into account the existence of the proceeds of the endowment policy being held by the Viscount at the time when the Order was made. The proceeds in question were effectively part of the assets of the appellant and whether or not they were held by the Viscount or might have been released earlier did not affect their value. If they had been released and used by the appellant to reduce his borrowings, his overall capital position would have been the same. 55. The validity of the saisie judiciaire on 8 April 2013 was not affected by the decision of the Attorney General on 18 February not to continue not to seek a confiscation order. The saisie judiciaire had been made on 17 December 2013 at a time when the Attorney General was intending to seek a confiscation order and was therefore lawful by reference to Art 15(1)(b) of the 1999 Law. The decision thereafter no longer to seek a confiscation order did not affect that validity. It might have justified the making of an order discharging the saisie judiciaire after 18 February but the decision of the Attorney General no longer to seek a confiscation order did not by itself have that effect. 56. It was Advocate Jones' position that the appellant had attempted to obtain release of the proceeds but that had not been achieved in time before 8 April 2013 both because the Attorney General would not accept that it was justified and because the Viscount would not release the proceeds without an order of the court. Advocate Jones submitted that if the saisie judiciaire had been discharged first on 8 April 2013 and before the application for a compensation order was determined, he would then have sought an adjournment of the application for the compensation order which, if granted, would have allowed the appellant to obtain release of the proceeds and make payment towards satisfaction of his borrowings. 57. In the course of his submissions, Advocate Jones suggested that if the proceeds had become available by the time of the hearing on 8 April, and the appellant had been able to make a payment to the Bank at that time, then the subsequent decision of the bank to commence default proceedings against the appellant might have been avoided as explained in the appellant's affidavit dated 17 June 2013 and he would not as now be required to sell the matrimonial home. This Court cannot know if this might have been the case but in our opinion it cannot be relevant to an assessment of whether the Royal Court erred at the time that the compensation order was made. 58. In this context, reference may also be made to a letter sent by Carey Olsen to the Attorney General on 28 November 2012 which was referred to by Crown Advocate Jowitt. This letter was written in relation to the intention of the Attorney General to seek a confiscation order and the application which was proposed at that time for a saisie judiciaire. In the course of that letter it was stated on behalf of the appellant:- "To make an in restraint [sic] of all of Mr Christmas' assets is disproportionate and may have the effect of preventing Mrs Christmas, who is Mr Christmas's wife and dependent, from living in the marital home even though this asset, because of the hypothèques judiciaire which are already in place on the property, will not be deemed to be an available asset for the purpose of satisfaction of any confiscation order. "In the circumstances we would ask you reconsider the application for a Saisie on the understanding that the proceeds of Mr Christmas' endowment and life insurance policies which mature in the near future, be paid into a bank account managed by the Viscount. This means the merits of the

application, is proportionate and preserves assets to a value which exceeds any sum any order [sic] that could be made under Article 4 of the [1999 Law]. Any confiscation order made could be met directly from this account within a short time." 59. In his reply, Advocate Jones submitted that the Court should take account of the context in which the letter was written. At the time, the Attorney General was intending to seek a confiscation order applying the assumptions required by the 1999 Law. Whilst accepting that the letter was written in the context of the then intended application for a confiscation order, nevertheless in the view of the Court the apparent willingness of the appellant to make the proceeds of the policies available in a way that could satisfy an order of court does not suggest that, at that time at least, the appellant regarded the use of these funds as being essential for the reduction of his borrowings. 60. It is our opinion that whatever might have been the position if the saisie judiciaire had been discharged earlier, the saisie was in existence and the Viscount held the proceeds in question when the Order was made. It cannot be said that the Royal Court made any error either of law or fact when it took into account the existence of these proceeds. 61. We are therefore satisfied that the position regarding the existence of the saisie judiciaire when the compensation order was made does not demonstrate any error on the part of the Royal Court and the appeal cannot succeed upon this basis. The asset position of the appellant 62. The submission under this heading by Advocate Jones was that the Royal Court had failed to have regard to the fact that the appellant was balance sheet insolvent and that the making of the Order was unjustified because there had been a failure to take that material consideration into account. Advocate Jones fairly acknowledged that this point had not been the subject of detailed submission before the Royal Court but it may be seen in the context of his previous submission that the Royal Court focussed unduly on the fact that the appellant had apparent access to ready cash as a result of the saisie judiciaire . Whilst we have decided that point against the submissions of Advocate Jones, that does not in our opinion detract from the essentially separate submission which he makes that a compensation order should not be made against a person whose liabilities materially exceed the value of his capital. 63. The first matter to consider is whether as a matter of fact there was such a deficit of capital value in the case of the appellant. Advocate Jones invited the Court to rely upon what is said in the appellant's affidavit of 17 June 2013 rather than in the Sowden Report, in particular because the Sowden Report was prepared for the purposes of an application for a confiscation order. We consider that it is appropriate to have regard to both since it was not suggested that either was inaccurate in any material way. 64. It appears to us that there is no critical dispute about the fact that the appellant's liabilities substantially exceed his assets and did so on 8 April 2013 when the Order was made. This is the position whether one accepts the appellant's own calculation in his affidavit or what is stated in the Sowden Report. Although the amounts may differ the relevant result is the same. In considering the appellant's affidavit, the deficit is of the order of £230,000. In the Sowden Report, the deficit is approximately £140,000. If one discounts the inclusion by Mr Sowden of the value of the flat owned by Mrs Christmas and reduces the value of the matrimonial home to £550,000, as the Court was invited to do by Crown Advocate Jowitt,

the deficit derived from the Sowden Report is actually £340,000 upon the assumption that one includes the amount of the fees secured to Carey Olsen as a liability. . 65. Crown Advocate Jowitt in effect accepted this position but submitted that because it was the result of the agreement which the appellant had entered into with his advocates and the security which they had obtained over the matrimonial home, the amount of the appellant's debt to those representing him should be disregarded. On that basis, the total of the appellant's liabilities would be reduced in the case of the appellant's own calculation by £550,000 and in the case of Mr Sowden's calculation by the sum of £534,564. If one disregards the debt secured to Carey Olsen, the appellant had net assets of £210,000 upon Crown Advocate Jowitt's calculation together with the judicial pension due to him from the States of Jersey. In that event, the appellant would no longer be balance sheet insolvent but would have a surplus of assets over liabilities. 66. Crown Advocate Jowitt suggested that it would be unfortunate if the justification for the making of a compensation order in favour of the victim who had suffered loss as a result of the appellant's offence was regarded as less important than the ability of the appellant to pay the fees of his advocates for the conduct of his unsuccessful defence, and the entitlement of those advocates to enforce payment of their fees and to enter into security arrangements to ensure that that took place. He submitted that this was a matter of public policy and in calculating the resources available to the appellant by reference to Art 3(5) of the 1994 Law, the Court should disregard the value of the security which had been granted to his advocates. 67. He advanced the submission by reference to the case of *In the matter of the representation of O'Brien*

- [2003] JLR 1 which concerned an application by a convicted person for the variation of a *saisie judiciaire* in order to allow him to meet certain expenses including legal fees. In his judgment, Bailhache, Bailiff said:- "19 In our judgment, there should be no automatic expectation that either legal expenses or a living allowance will be made available to a defendant whose property is subject to a *saisie judiciaire*. When a *saisie judiciaire* has been ordered, a judge has been satisfied that there is reasonable cause to believe that a defendant has benefited from drug trafficking. Drug trafficking is a serious offence causing great damage to the fabric of society. It seems to us that the intention of the legislature was that the suspected proceeds of drug trafficking should not be available to the defendant. Instead, they should be held by the officer of the court pending a determination as to their origin. Property that is subject to a *saisie judiciaire* is no longer the property of the defendant; it has vested in the Viscount. In so stating, we do not intend to imply that they can never be made available, because the court has a discretion under art.9(6) which should not be fettered. That discretion is to be exercised on a case by case basis, having regard to the particular facts. "20 To allow legal expenses to be paid out of seized assets should, however, be rare. In this jurisdiction, there is a legal obligation on advocates, subject to the *tour de rôle*, to defend a person without the means to pay for his own representation. Counsel for the defendant in this case told us that one of his associates had been directed by the *Bâtonnier* to represent the defendant. He conceded,

candidly and very properly, that if the saisie judiciaire were not varied to allow for the costs of legal representation the defendant would not be prejudiced in any way. "21 It is true that the property subject to the saisie judiciaire has not yet been established to be the proceeds of drug trafficking. If, in due course, it is shown that the property, or part of it, was obtained by legitimate means, the saisie judiciaire will be varied or revoked to that extent and the defendant will be in a position to meet the costs of his legal representation. If, however, the property subject to the saisie judiciaire is shown ultimately to be wholly the proceeds of drug trafficking and liable to be confiscated, the defendant's legal advisers will be in no worse position than if the defendant had been, at all times, completely impecunious. "22 The proposition that property, which might in due course be found to be tainted as being the proceeds of drug trafficking, should be used to pay for a defendant's legal costs is one that we find unappealing. We appreciate that, in the English jurisdiction, it has been accepted that a defendant may draw on tainted money to pay legal costs. That, however, seems to us to run counter to the decision of the Superior Number in *Att. Gen v. Kenward* [2000 JLR N-59]. In its judgment, the court stated: "The money in question is, by common agreement, tainted in the sense that it represents a fee for an unlawful agreement to bring heroin into the Bailiwick. It is the proceeds of drug trafficking. The proposition that the court should lend itself to an arrangement whereby tainted money should be used to pay lawyers for defending drug traffickers is not one which the court finds attractive." "23 Furthermore, although it is not relevant to our decision, it seems that the position in England is about to change as the result of statutory intervention. The Proceeds of Crime Act 2002 will, we are told by counsel for the Attorney General, prevent the use of restrained funds for the payment of legal costs in relation to the offences with which a defendant is charged. Mr Tremoceiro placed some reliance upon the fact that the defendant's wife, Mrs O'Brien, had successfully applied for a variation of the saisie judiciaire so that her legal costs could be paid. In fact, those applications were made by the Attorney General, ex parte and without the benefit of legal argument. Whether they were rightly made may be a matter for another day." Crown Advocate Jowitt submitted that the present circumstances were analogous and this Court should adopt the same approach and leave out of account the appellant's financial obligation to his legal advisers. 68. Crown Advocate Jowitt submitted that it was reasonable that where a defendant has incurred liability for fees for the purpose of defending himself, that liability for fees should be disregarded in calculating his assets. That approach would extend to other expenses if incurred in order for a defendant to deal with the charges which he faced. This could extend, for example, to a publicist employed to protect the reputation of an accused person from the damage which might be caused by the allegations against him. Crown Advocate Jowitt was not suggesting that there should be any further discounting of the debts of an accused person or his other financial liabilities. For example normal debts incurred in the course of business or family life were proper deductions from the value of assets. The approach ought to be that legal representatives, or other professionals who are engaged for the purpose of assisting a defendant in connection with criminal proceedings against him, should be taken to be aware that their entitlement to be paid may be

discounted or lost in preference to the making of an order for compensation in favour of a victim, and accordingly they take the resulting risk. 69. In reply, Advocate Jones made three points. First, Advocate Jones provided copies of correspondence which demonstrated that the entering into of a fee agreement with Carey Olsen and the providing of security in their favour over the matrimonial home was the subject of advice to the appellant in June 2011. The security was taken in the form of a charge registered in the Registry against the appellant's matrimonial home on 4 November 2011. The charge was actually in favour of a nominee company associated with Carey Olsen for the sum of £600,000. Whilst the trigger for this step may have been a letter sent by the Crown on 28 October 2011 stating that the Attorney General intended to seek a *saisie judiciaire* against the appellant, we consider that Carey Olsen and their associate were entitled to secure the fees which would be incurred in the defence of the appellant. (Advocate Jones indicated that whilst he was willing to assist the Court as best he could he was not a partner or director in the associate company and he did not have authority to represent them before the Court.) 70. Secondly, Advocate Jones explained that if the Attorney General had proceeded to obtain a *saisie judiciaire* at that time, rather than waiting until the appellant had been convicted, the appellant would have become entitled to be supported by legal aid as were all his co-defendants. Otherwise, the appellant was not eligible for legal aid because the amount of his annual salary exceeded £40,000. It was therefore the action of the Attorney General which had required the appellant to seek legal representation on his own account and to become liable for the fees which would be incurred and so had brought about the situation where the matrimonial home is now encumbered by the security in favour of Carey Olsen. 71. Thirdly, if the approach urged upon the Court for the Attorney General were to be adopted, it might discourage advocates from agreeing to represent accused persons upon a commercial basis because they could never be sure that their fees and any arrangements which they had made would not be rendered valueless by a decision of the courts. 72. The submissions for the Attorney General were attractively advanced and we can see the force of the point that if one is weighing up the relative merits of the claim of the person defrauded to be compensated, and that of the lawyers who chose to represent a defendant in the knowledge that if found guilty he could be ordered to make such compensation, the former has a strong moral claim to be preferred. However in our opinion these contentions cannot succeed. The appellant undoubtedly is and was at the time of the compensation hearing balance sheet insolvent. He was entitled to be represented at the trial and to instruct advocates for that purpose, and he thereby became obliged to make payment of professional fees. His advocates were entitled to make arrangements to secure ultimate payment of those fees. For this Court to disregard those facts would be a substantial innovation. The Court has no power actually to discharge or otherwise prevent the enforcement of the security which has been obtained by Carey Olsen and this means that should they choose to do so they can take steps against the appellant's matrimonial home whatever the decision of this Court. Whether the taking of those steps would render it impossible in financial terms for the appellant to make payment of the sum of £100,000 as required by the Order is simply

unknown and the result is that by adopting the submissions for the Crown the Court might in effect condemn the appellant to a further period of imprisonment because it would be beyond his power in practical terms to fulfil the Order by making the required payment. 73. The adoption of the approach suggested by Crown Advocate Jowitt would raise substantial and potentially competing matters of public interest. To the extent that the decision of this Court might affect the ability of those accused of offences in the future to obtain legal representation because their potential advocates might be discouraged from agreeing to act because of the possibility that any fee arrangements which were otherwise properly entered into could be interfered with by the courts raises a matter of some public importance. The result is that even if the step urged upon this Court by Crown Advocate Jowitt is one which could in principle be justified, that is not a matter which it would be appropriate to resolve by a decision of this Court made in an individual case. In carrying out the assessment of a person's means which is required by Art 3(5) of the 1994 Law, it would be a significant step to deem that legitimately secured legal fees were not to be treated as liabilities for the purpose of assessing the financial position of a person against whom a compensation order might be made. We consider at any such step ought to be taken having regard to all of the competing aspects of public policy. For this reason, we consider that it would be more appropriate to be dealt with, if at all, in the form of legislation which may be passed after due deliberation by those better informed of all of the potentially competing issues of public interest. 74. For these reasons, and although we can understand why it was in the circumstances of this case that these submissions were made, nevertheless we do not feel able to accede to the approach advanced by Crown Advocate Jowitt. As a result, we conclude that the appellant was balance sheet insolvent when the Order was made. We therefore consider that the Order should not have been made without consideration of this fact and it is not apparent that it was taken into account from the judgment of the Commissioner. We are satisfied that the Order should be quashed because the Royal Court failed to have regard to a material consideration and the appeal should be allowed upon this basis by reference to the standard provided in *Bhojwani v Attorney General* and the third of the propositions advanced by Advocate Jones. 75. We reach this conclusion without substantial criticism of the Royal Court. The net asset position of the appellant was not referred to in any detail at the hearing before the Commissioner and Jurats. Although the fact that the liabilities of the appellant exceeded his assets was demonstrated by the Sowden Report, the submissions in respect of this heading were not advanced before the Royal Court with the clarity and force with which they were presented to this Court. 76. Our conclusion upon this aspect is sufficient to justify the quashing of the Order but in deference to the submissions for the appellant and for the Crown, we address the matters arising under the other headings which we have identified. Complexity of loss 77. Advocate Jones submitted that it was not appropriate to make the Order in this case because it did not involve a straightforward identifiable loss. Although on the face of it whether or not Mrs Cotrel had suffered a loss appeared to be very simple, it was complicated by the fact that on 9 August 2007 she had agreed to replace her entitlements under the JVA with an

allocation of shares in a company Benessia Global Limited. Advocate Jones referred to the Skeleton Argument prepared on behalf of the appellant in the injunction proceedings in which reference to this had also been made and he submitted that any loss to Mrs Cotrel had not been caused by any reckless statement made by the appellant but by what had happened to those shares. Advocate Jones submitted that although the Count upon which the appellant had been convicted referred to her depositing £100,000 as a result of a reckless statement by the appellant, that did not demonstrate that such sum or any other sum was a measure of her loss. This was because the crime was committed at the point where she made the investment upon the basis of the appellant's reckless statement. It was at least conceivable that the situation could have arisen in which as a result of subsequent events the investment actually paid off and the investor received a significantly greater sum than had been invested. Advocate Jones accepted that this was hypothetical and it had not occurred in the present situation. 78. Advocate Jones referred again to Attorney General v Howard and to the first of the two principles adopted from England. In respect of the first principle, the Bailiff said at para 11 of his judgment "it appears from English precedents that the courts in that jurisdiction have made compensation orders only in simple cases..." Advocate Jones also referred to the passage in Archbold, Criminal Pleading, Evidence and Practice (2003) at para 5-419 where it is stated that "Although it is open to the court to hear evidence in order to determine questions as to the fact or the amount of loss, the Court of Appeal [in England] has discouraged criminal courts from embarking on complicated investigations." . We are satisfied that these passages describe a principle which we ought to apply where the justification for the making of a compensation order is in issue. 79. Crown Advocate Jowitt submitted that the assessment of loss was straightforward. As a result of the reckless statement of the appellant, Mrs Cotrel had parted with £100,000 which she had never seen again. She had been induced into entering into the JVA by a representation which was not true. She may subsequently have accepted shares but these were valueless. 80. Whilst we accept that a compensation order may not be appropriate where there are potentially complicated issues of causation and quantum, it is our opinion that that is not the situation in the present case. The Count upon which the appellant was convicted by itself demonstrates that as a direct result of the reckless statement of the appellant Mrs Cotrel invested £100,000, a sum which was never subsequently recovered by her. Although there is authority which we have accepted for the proposition that a criminal court in considering a compensation order is not the appropriate forum in which to determine potentially complicated issues relating to loss: Attorney General v Howard and the authorities referred to in Archbold ; it appears to us that reliance upon the principle in the present case would be unjustified. In this case, we are satisfied that Mrs Cotrel's loss was caused by the conduct of the appellant for which he was convicted and that the amount of that loss is £100,000. That has been demonstrated as having occurred because of the reckless statement of the accused. We regard that as enough to justify the making of a compensation order in the sum of £100,000 (leaving aside any issue of an additional amount to allow for the effects of inflation which was sought by the Attorney General but

not awarded by the Royal Court). 81. We consider that what Advocate Jones sought to do was to introduce a complicating factor by reference to the later investment and thereby to suggest a justification for the refusal of a compensation order where in fact the situation of the link between the commission of the offence and the loss is straightforward. 82. We therefore agree with what is said in para 1 of the judgment of Commissioner Pitchers. Had it remained a live issue, we would have refused the appeal under this heading. The position of Mr Lewis 83. Advocate Jones next submitted that the Order should be quashed because the Royal Court took into account an incorrect material fact. The Attorney General had informed the Royal Court that it was not intended to seek a compensation order against Mr Lewis because he had no assets whereas it was the position of the appellant that such assets had been available as a result of the sale of Mr Lewis's house. 84. Crown Advocate Jowitt referred to the decision referred to the decision in *R v Beddow*

(1987) 9 Cr App R (S) 235. In that case, three defendants had been convicted in connection with the taking of a van which later crashed. Only one of the defendants was ordered to pay compensation. He submitted that even if the Royal Court had been made aware of the fact that Mr Lewis appeared to have some assets, it was not unreasonable to expect that those assets would be used to compensate other victims, and to recognise that such assets as were available to the appellant should be used to compensate the only victim in respect of whom he bore responsibility. 85. Whilst we accept that the Royal Court did take what is said to be an erroneous matter of fact into account, we would not have regarded this as a sufficient basis to quash the Order. Article 2(2) of the 1994 Law requires a compensation order to be assessed by reference to circumstances relating to the offender. That does not require a court to take into account the circumstances of any co-defendant who might potentially be equally liable to compensate the victim. The focus of the exercise to be carried out in the case of each individual defendant under Art 2(2) is to have regard to what sum would be appropriate to be paid by that defendant, and having regard to his ability to make payment as required by Art 3(5). 86. Although the circumstances in *Beddow* may be distinguished because in that case a compensation order was made against the one co-defendant who was in employment and no order was made against his two co-defendants who were unemployed, nevertheless we accept that *Beddow* demonstrates a principle which is derived in this jurisdiction from Art 3(5) of the 1994 Law, and which is that it is the circumstances of a defendant against whom the confiscation order is sought which require to be taken into account and which are material when the making of a compensation order is being considered. If a compensation order against the appellant in the sum of £100,000 was justified having regard to his circumstances and his ability to make payment, we do not consider that a compensation order to that effect would be rendered unlawful by reference to the circumstances of a co-defendant. 87. This is not to say that the circumstances of a co-defendant will always be irrelevant in the carrying out of the overall exercise which is required by Art 2(2) and 3(5). Suppose for example two defendants faced a single count of defrauding a victim of £100,000, and were each convicted of that count (with no difference in culpability between

them), and were each well able to afford compensation. As a matter of civil law, each would be liable jointly and severally for the whole loss but the compensation order regime does not appear to contemplate joint and several liability. One would expect the court in such circumstances to apportion the loss between the two defendants, and (in the absence of other considerations) *prima facie* equally so that each would be ordered to compensate the victim for half the loss. 88. We accept therefore that if Mr Lewis had had ample resources to compensate all of his victims, including Mrs Cotrel, this would have been a relevant consideration. But he did not. Crown Advocate Jowitt informed the Court that the actual sum available to Mr Lewis was assessed on 1 July 2013 as being £24,985. This sum was ordered to be divided by way of compensation amongst nine of the victims of Mr Lewis apart from Mrs Cotrel and who were the victims in respect of the counts on the indictment upon which Mr Lewis was convicted which did not involve the appellant. We cannot think that if the Royal Court had known this that it would have made any difference to the compensation ordered against Mr Christmas, nor in our view would it have been wrong to ignore this factor. 89. Accordingly, we would have refused the appeal upon this basis. The significance of the matrimonial home 90. It was submitted by Advocate Jones was that it would not be appropriate to make a compensation order if the result was that the appellant required to dispose of the matrimonial home shared by him and his wife. As a result of the making of Order, and because of the existence of the *saisie judiciaire* up to that point, the opportunity possibly to persuade the Bank not take steps to enforce repayment of the appellant's debts against the matrimonial home had potentially been lost as described in the appellant's affidavit. 91. In the Outline Contentions for the appellant, Advocate Jones referred to English authority in particular *R v Harrison* (

1980) 2 Cr App R (S) 313, and *R v Butt*

(1986) 8 Cr App R (S) 216. He also relied upon Art 12 of the Bankruptcy (Désastre)(Jersey) Law 1990 as supporting the proposition that special provision is made in the context of bankruptcy for the protection of a matrimonial home. The making of the Order had the practical effect of forcing the appellant and his wife potentially to leave the Island possibly to reside in her property in Reading. The making of a compensation order should not have that practical effect. It would also be wrong if the effect was to force Mrs Christmas herself to liquidate assets by selling her own property in Reading. 92. Crown Advocate Jowitt submitted that this submission should be rejected because it was likely that the matrimonial home would have had to be sold in any event whether or not the Order had been made. The proceeds of the two policies were not enough to honour the appellant's obligations to the Bank in full and as matters stood on 8 April 2013 there was no prospect of the Bank being satisfied. The Order did not require the appellant to make payment of the total amount of £100,000 immediately. He was required to make payment of £60,000 within 28 days and he could have honoured that aspect in full and had time to organise his affairs to pay the balance. The Order had been made by the Royal Court taking into account the particular circumstances of the appellant and tailored to deal with the potential difficulties. 93. We are satisfied that the appeal should not succeed on this

ground. Whilst we accept the principle that the making of a compensation order should not have the effect that a matrimonial home requires to be sold to the prejudice of a spouse, the situation in the present case is more complicated than that. In our opinion, the actual reason for the fact that the appellant's matrimonial home is now being sold is at least a combination of factors only one of which is the making of the Order and these also include the circumstance of the appellant's pre-existing indebtedness to the Bank. 94. Given that we are satisfied for the reasons already stated that the appeal may be allowed, it is not necessary to reach a definitive decision upon this point alone. Were it necessary to do so, we would regard it as desirable for the court which was determining the issue to be in a position to carry out a more detailed analysis which demonstrated that the potential sale of the appellant's matrimonial home was caused directly and solely by the effects of the Order. We do not regard this submission as establishing on the material before us that the Royal Court erred in any way and we would have refused the appeal on under this heading. DECISION 95. The Court is therefore satisfied that the appeal should be allowed and that the Order should be quashed upon the sole ground that the Royal Court failed to take into account the fact that the appellant was balance sheet insolvent because his liabilities substantially exceeded his assets. 96. Having quashed the Order, it is open to this Court to make a further compensation order by reference to Article 26(3) of the 1961 Law as adapted in accordance with Article 6(2) of the 1994 Law. 97. Advocate Jones submitted that the Court could make a compensation order by reference to the income of the appellant which as already noted is likely to amount to a total of pensions of over £49,000 per annum. The difficulty at present is that the pension payments to which the appellant is presumptively entitled from the States have not been made following the resignation of the appellant in January 2013, nor despite apparent requests has it been confirmed formally that those pension payments will commence and, if so, when. Advocate Jones provided a letter from those responsible for the States of Jersey Public Employees Retirement Scheme which was consistent with the entitlement of the appellant to receive a States pension but there remains some uncertainty about when that will actually take place. The appellant has been in prison and the officials of the Scheme will not communicate with Carey Olsen. The ability to obtain further information ought to improve once the appellant has been released from prison which will take place on or around 7 August of this year. 98. Advocate Jones conceded that he was unable to suggest what might be the amount of an appropriate compensation order because of other uncertainties such as whether or not the appellant might be able to obtain a replacement loan facility from the Bank following the outcome of this appeal and whether or not, and if so to what extent, Carey Olsen will insist upon enforcement of their security. (As he did not represent that firm, Advocate Jones was necessarily unable to inform the Court of what might be their position.) 99. In this situation, it is our opinion that having quashed the Order which was made on 8 April 2013, the Court should adjourn this appeal for the purposes of further consideration as to whether or not an alternative compensation order should be made against the appellant, and if so, upon what terms. It is therefore our opinion that the Court should order as follows:- (i) The appeal is allowed and the decision

of the Royal Court on 8 April 2013 to grant a compensation order against the appellant in the sum of £100,000 is quashed; (ii) The hearing of the appeal is adjourned for the purpose of consideration of what other compensation order might be made against the appellant; and (iii) A directions hearing will take place before a single judge of this Court on [date] at [time]. 100. The date of the resumed hearing of the appeal will be determined at the directions hearing as long as it appears that sufficient information will be available to allow the appeal to be concluded. It will be helpful if as much information as possible can be obtained in time for that directions hearing. In particular, it is to be hoped that the position regarding the States pension to which the appellant is entitled will be clarified. Authorities Criminal Justice (Compensation Orders) (Jersey) Law 1994. Court of Appeal (Jersey) Law 1961. Investors (Prevention of Fraud) (Jersey) Law 1967. Proceeds of Crime (Jersey) Law 1999. AG-v-Christmas

[2013] JRC 068 . Bhojwani v Attorney General

[2011] JLR 249 . Archbold, Criminal Pleading, Evidence and Practice (2003). Attorney General v Howard

[2006] JRC 008 . In the matter of the representation of O'Brien

[2003] JLR 1 . R v Beddow (1987) 9 Cr App R (S) 235. R v Harrison (1980) 2 Cr App R (S) 313. R v Butt (1986) 8 Cr App R (S) 216. Bankruptcy (Désastre)(Jersey) Law 1990. Page Last Updated: 16 Sep 2016 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

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