

AG --Michel

Jurisdiction: Jersey
Judge: Sir Geoffrey Nice, Jurats Le Brocq, Le Breton, Allo, Newcombe, Liddiard
Judgment Date: 19 October 2007
Neutral Citation: [2007] JRC 203
Reported In: [2007] JRC 203
Court: Royal Court
Date: 19 October 2007

vLex Document Id: VLEX-793957697

Link: <https://justis.vlex.com/vid/ag-michel-793957697>

Text

[2007] JRC 203

ROYAL COURT

(Samedi Division)

Before:

Sir Geoffrey Nice, **Esq., Q.C., Commissioner, and** Jurats Le Brocq, Le Breton, Allo, Newcombe **and** Liddiard.

The Attorney General
and
Peter Wilson Michel

C. E. Whelan, **Esq., Crown Advocate.**

Advocate D. F. Le Quesne for the Defendant.

Authorities

Proceeds of Crime (Jersey) Law 1999.

R v Glatt [\[2006\] EWCA Crim 605](#).

Johannes Case

1988 Criminal Justice Act.

JUDGMENT IN RESPECT OF A CONFISCATION ORDER

THE COMMISSIONER:

PROCEDURAL HISTORY:

- 1 Peter Michel was convicted in 2006 and 2007 at two trials before differently constituted Inferior Numbers of 10 counts of money laundering. The offences were committed by him in the course of his work as an accountant practising in Jersey. A detailed account of the facts of the case would make this judgment over-long. In any case the facts have been set out in various documents, including schedules used at trial and in these proceedings, that summarise the evidence on both sides. In short the Defendant established trusts, companies and bank accounts for clients who enjoyed the fruits of criminal conduct - tax evasion in the UK and elsewhere and other crimes - by hiding funds in these entities, thereafter taking the money out in cash (sometimes delivered by the Defendant personally, usually to London) or by bank transfer to other places and for various purposes where the use of the funds would not be traced back through the Defendant's labyrinth of companies, etc to the principal offender. This judgment must otherwise assume a familiarity with the facts in detail where required.

- 2 On Monday 18th June, 2007 the Superior Number sentenced Michel to 6 years' imprisonment concurrent on all counts and put back the question of confiscation under the relevant act for later determination.
- 3 Hearings on confiscation lasted from Monday 10th September 2007 (with gaps) until Thursday 20th September 2007. During the hearings the Court was provided with 2 volumes of Prosecution material in 18 tabs and 2 volumes of Defence Material in 15 tabs, 20 tabs and other unnumbered divided tabs. These volumes included statements served under the provisions of Article 7 of the Proceeds of Crime (Jersey) Law 1999.
- 4 Evidence was called by the Prosecution from Mr Sowden, the Prosecution's accountant. The Defendant called no evidence.
- 5 The Jurats were provided with material in written form during the hearings at the direction and request of the Commissioner including:
 - (i) 'Final Submissions' of the Crown in 15 paragraphs dated 18th September.
 - (ii) 'Peter Michel: Defence Final Submissions in 15 pages dated 19th September.
 - (iii) A Schedule of 34 A3 pages titled 'Prosecution table of Evidence Relevant to Benefit' on which 3 Defence column entries had been added (at the Commissioner's request). This document was intended to and did provide a starting point for discussion by the Jurats in retirement of the principal issues identified by the parties.
- 6 Oral closing arguments were delivered by both counsel.
- 7 A written note of directions in law was distributed to Jurats and to the parties on Thursday 20th after counsel had delivered their closing arguments.
- 8 Deliberations started on Thursday 20th September, 2007 and continued on Friday 21st September, 2007 with no conclusion announced or reached by close of business on that day. The case was adjourned to 17th October, 2007.
- 9 On Friday 21st September, before the court adjourned, counsel were asked for assistance with two topics - Statutory assumptions in respect of *payments* from client accounts and what discretion existed to reduce the ferocity of the law as urged on the Court by the Prosecution.
- 10 By a joint filing dated 24th September, 2007, Crown Advocate Whelan for the Prosecution and Advocate Le Quesne for the Defendant Michel concluded that they should proffer no further [legal] directions.
- 11 By a filing dated 25th September, Crown Advocate Whelan set out the Prosecution's position on the application of Assumptions under Article 5 of the 1999 Law to expenditure in the form of payments on accounts of clients as opposed to payments of the Defendant himself. Advocate Le Quesne did not respond specifically in writing on this issue. In the event no issue arose on application of the Assumptions to such expenditure.
- 12 By response in email form dated 28th September, 2007, to both advocates' failure/refusal to proffer further legal directions, the Commissioner repeated his request in terms (*inter alia*):

'The Commissioner can properly inform counsel - and possibly add to what he said in Court at the close of the last hearing - that there is concern about the Jurats being left - in reality - with little or no possibility to reduce confiscation orders that may be calculated once any decision to make such an order is reached by exercise of discretion.

Notwithstanding case-by-case decisions where reductions or eliminations of orders otherwise appropriate for particular factual situations may have been approved by some higher courts, principles in support of such decisions are hard to identify.

Would counsel please reconsider the Commissioner's request and have in mind - generally but particularly in respect of the problem identified in the previous paragraph - that questions might at any stage be asked by the Jurats (as they might be asked of a judge in open court by a jury in a jury matter) and that there would then be no scope for advocates to wash their hands of responsibility for any direction in law that they had been given a specific opportunity to amplify or correct.'

- 13 By a filing of 10th October, 2007, Crown Advocate Whelan responded to the Commissioner's repeated request. Advocate Le Quesne provided a response in a filing served a few days later.
- 14 The deliberations of the Superior Number re-commenced on Wednesday 17th October, 2007. The Defendant was late attending and a hearing in the absence of the Jurats between the Commissioner and counsel took place in the course of the morning where both counsel were invited to make observations about the directions in law already given and about their subsequent filings provided in response to the Commissioner's repeated request. Advocate Whelan identified certain directions he asserted were erroneous and points that he would prefer to see amplified/corrected. Advocate Le Quesne declined the opportunity for further oral argument preferring to rely on his recent filing, a filing that the Commissioner had found helpful but that did not, in itself, require further elaboration of the law beyond the directions already given.
- 15 The Jurats were reminded of certain of the matters referred to by Advocate Whelan, although they constituted no significant change from the Crown's position as already known to the Jurats, namely:
- Paragraph 12 of the directions in law: differences between the case of *Glatt* and Michel's case.
- Paragraph 14: That the Prosecution had presented arguments about discretion in its closing submissions.
- Paragraph 23: That the case of *Johannes* was concerned with a different issue, namely the application of an assumption.
- Paragraph 31: that being merely a signatory on a bank account was sufficient to give a person control of the account for confiscation purposes.
- Paragraph 32: That a third person can be a corporate person.
- Paragraph 33: That there is no double recovery where a tax authority happens to have recovered unpaid tax from a client of the Defendant if he then faces confiscation on the basis of having received funds that included the tax evaded.
- Two passages from the case of *Glatt* were provided to the Commissioner in the 'Prosecution's Further Submissions' of 5th September. These two passages were read in full to the Jurats although it should be observed that, in addition to the points relied on by the Prosecution, they also provide some ammunition for arguments that confiscation is to serve the purposes of compensating for loss or to avoid defendants retaining what should be paid to victims and that multiple recoveries should be dealt with by exercise of discretion, none of these being points that the Prosecution advanced or adopted.
- 16 Save as dealt with above no further directions in law were given to the Jurats in the course of their deliberations. Reference was made to the printed directions on law distributed to all parties.
- 17 Deliberations concluded on 19th October, 2007.
- 18 It should be remembered that the 10 counts with which the Superior Number were dealing, both in sentence and in these confiscation proceedings, had been heard as two separate trials. The first trial of one count, known as Count 4 for the purposes of these proceedings and concerning a company called Travco, was by Commissioner Sir Richard Tucker sitting with Jurats de Veulle and Allo. The second trial of the remaining 9 counts was tried by Commissioner Sir Geoffrey Nice sitting with Jurats Le Brocq and Le Breton. It should also be borne in mind that whereas counts 2 - 10 of the complete indictment each concerned transactions relating to a particular client or business, Count 1 was a composite count where the Prosecution relied on cash transactions involving 20 different clients, three of those clients (Mason Krejzl and Graham) appearing later in the indictment as the subject of individual counts but in respect of transactions not limited to receipt or provision of cash. There were factual similarities between some counts and between the cash transactions relied on for the 20 clients identified in Count 1. However each count and each of the allegations made for cash clients in Count 1 were to a degree factually unique.
- 19 The Jurats in retirement were guided in their deliberations by the A3 schedule, by the written arguments presented by both sides, by the report of Mr Sowden at tab 8 of the Prosecution's papers and by a chart headed 'Estimated Tax Evasion by Hansarded Client's produced by Advocates Whelan and Le Quesne at the Commissioner's request. The decisions of the Jurats were unanimous. The Commissioner took no part in the factual discussion save to the extent necessary to identify issues between the parties by reference to the schedule compiled by the parties and the parties' other printed documents.

20 In addition to the material identified above that was available to the Jurats the parties had been invited to and had provided filings as *follows to assist the Commissioner*:

- (i) Prosecution Further Submission of the Attorney General dated 5th September.
- (ii) Further Submissions of the Attorney General on sundry issues.
- (iii) 'The Meaning of Benefit' from Advocate Whelan dated 18th September.
- (iv) Filings from both counsel providing proposed draft directions on Obtaining Benefit and (Advocate le Quesne only) Discretion.

21 Authorities were assembled by the Prosecution for the use of the Commissioner only in a chronological bundle of 15 tabs and all authorities were considered. Additional authorities were included in the volumes of defence papers and were also considered.

22 The relevant law is the Proceeds of Crime (Jersey) Law 1999; it follows the United Kingdom 1988 Criminal Justice Act, although it is not identical with that statute. No significance was placed on any differences between the two statutes.

23 Relevant parts of the 1999 Law include:

"3 (3)Where the Court is proceeding under this Article, it may first determine whether the defendant has benefited from any relevant criminal conduct .

3 (4) If the Court determines that the defendant has so benefited it may, before sentencing or otherwise dealing with the defendant in respect of the offence or (as the case may be) any of the offences concerned -

(a) determine in accordance with Article 4 the amount to be received in the defendant's case by virtue of this Article; and

(b) make a confiscation order, to the effect that the defendant pay that amount .

4. Amount to be recovered under confiscation order

(1) the sum that a confiscation order requires a defendant to pay shall be equal to -

(a) the benefit in respect of which it is made; or

(b) the amount appearing to the Court to be the amount that might be realised at the time when the order is made, whichever is less .

"to benefit from relevant criminal conduct", "to benefit from an offence" and "to benefit from criminal conduct" mean to obtain property as a result of or in connection with that conduct or the commission of that offence, and the benefit is the amount of the property so obtained .

ASSUMPTIONS

5. Confiscation order relating to a course of relevant criminal conduct

(1) This Article applies for the purposes of Article 3 where a defendant appears before the Court to be sentenced in respect of one or more qualifying offences —

(a) if the Attorney General asks the Court to apply it for the purposes of that Article; or

(b) if the Court considers that, even though the Attorney General has not asked it to do so, it is appropriate for it to do so, and either the defendant is convicted in the proceedings of at least 2 qualifying offences (including the offence in question) or the defendant has been convicted of a qualifying offence on at least one previous occasion during the relevant period .

(2) An offence is a qualifying offence for the purposes of this Part if it is an offence in respect of which all of the following conditions are satisfied, namely -

(a) it is an offence specified in Schedule 1;

(b) it is an offence committed after this Article comes into force; and

(c) the Court is satisfied that it is an offence from which the defendant has benefited .

(3) the relevant period for the purposes of this Article, in relation to a defendant, is the period of 6 years ending when the proceedings in which this Article applies were instituted against the defendant .

(4) When this Article applies for the purposes of Article 3, the Court may if it thinks fit (but subject to paragraph (6)) make the assumptions in paragraph (5) for the purpose -

(a) of determining whether the defendant has benefited from relevant criminal conduct; and

(b) if the defendant has, of assessing the value of the defendant's benefit from such conduct .

(5) Those assumptions are -

(a) that any property appearing to the Court to be held by the defendant at any time since the date of the defendant's conviction, or appearing to the Court to have been transferred to the defendant at any time since the beginning of the relevant period -

(i) was received by the defendant at the earliest time when he or she appears to the Court to have held it, and

(ii) was received by the defendant as a result of or in connection with the commission of offences specified in Schedule 1;

(b) that any of the defendant's expenditure since the beginning of the relevant period was met out of payments received by the defendant as a result of or in connection with the commission of offences specified in Schedule 1; and

(c) for the purposes of valuing any property that the defendant had or is assumed to have had at any time, that the defendant received the property free of any interests in it .

(6) The Court shall not make an assumption in paragraph (5) in respect of any particular property or expenditure -

(a) if the assumption, so far as it relates to that property or expenditure, is shown to be incorrect;

(b)

(c) if the Court is satisfied that, for any other reason, there would be a serious risk of injustice if the assumption were made in respect of that property or expenditure .

24 The issues before the Jurats, count by count and client by client for Count 1 were:

(i) Whether the Defendant had benefited from any relevant criminal conduct (a judgement for the Jurats to make following the exercise of a discretion)

(ii) Whether the Court would make a confiscation against the Defendant (a discretion for the Jurats to exercise)

(iii) Whether the Defendant had obtained property as a result of or in connection with relevant criminal conduct (or the commission of that offence)

(iv) If so whether the benefit from relevant criminal conduct was identical to the amount of the property so obtained.

(v) If so whether there was any way in which any individual finding of 'benefit' could be reduced as a matter of discretion

(vi) If it was decided to make any confiscation order what Michel's net realisable assets were.

25 The terms "to benefit from relevant criminal conduct" and "to obtain property as a result of or in connection with that conduct" are no longer to be interpreted as ordinary English language terms - if they ever were - but have become terms of art particular to this legislation.

26 The way in which these terms have come to be interpreted - and the way in which this legislation generally has come to be interpreted and understood - can be traced back to

earlier Drug Trafficking Law that instituted confiscation proceedings for drug trafficking offences.

- 27 Courts are cautioned about applying the approach to those laws to the different provisions of money laundering laws but, by reason of the considerable similarity of the drug trafficking and money laundering provisions, authorities on drug trafficking confiscation provisions are relied on heavily for money laundering confiscation.
- 28 Perhaps two points of particular significance emerged from Drug Trafficking law and practice. First, that where drugs or drug related money passed from hand to hand (with or without profits and losses of trade being reflected in value passed at each stage) every person involved criminally in this chain could be subject to a confiscation order to the extent of the full value (not the profit element only) of what passed through his/her hands. Second, in drug trafficking cases it is often the case that a defendant of low personal wealth will have traded in or dealt with drugs of very high value. In these circumstances it has often been inevitable that the Determination of 'Benefit' in drugs cases has far exceeded a defendant's net realisable assets thus leading to an inevitable order that will leave the defendant penniless on his/her release from prison. The possible significance or influence of these two points will be considered below.
- 29 In all confiscation law - drugs or money laundering - the following has been a reality. Determinations have been made by judges alone without juries. Accordingly there has been no occasion for a judge to direct a jury in *general* terms about confiscation law (there is no Judicial Studies Board Model direction in consequence). Each determination has been on the facts of the case that the judge has been dealing with. Every such judgment looks at the facts and fits those facts to the relevant statute - drug trafficking or money laundering - announcing points of general application only so far as relevant for the particular case.
- 30 In this case there are 10 separate counts each with a unique factual setting. Count 1 has 20 sub-sets of facts. It is clear that a general direction to the Jurats would have been desirable if one had been available.
- 31 In the absence of such a general direction - and the Commissioner was no more able to reconcile recent authorities than the Court of Appeal of England and Wales that has acknowledged that some of these authorities are hard to reconcile - the Jurats were informed of certain principles of interpretation or application of the law on which to make their determination. Of those in the printed directions the following may be seen - in the light of the determinations ultimately made - to be of central importance using paragraph numbers of the original direction:
- "(5) The law in this area is clearly still in development. The UK C of A as recently as 2005 (in a case that may go to the HoL on a topic that could be interest in this case) suggested that the word 'benefit' or the phrase 'simple benefit' could really be a misnomer. In understanding that term misnomer or not, the court observed that although Drug Trafficking cases - with which you as Jurats may be more familiar than you are with money laundering cases - may be of value but need to be treated with some caution as the wording of the relevant statutes are not identical and that there are a number of decisions under both drug trafficking legislation and the Criminal Justice Act 1988 (the act most parallel to the statute you are dealing with) are not always easy to reconcile.*
- (6) In these circumstances I must identify what clear principles of law can be found in the authorities for you to apply in your task, leaving to you the application of the law in your exercise of judgement and discretion, knowing that gaps in the law that cannot be filled by me must not be filled in a capricious way or in a way likely to harm the interests of the defendant.*
- (7) This short process will, I hope, provide you with sufficient direction to decide on 'benefit' count by count. If you cannot decide and feel that you need further assistance in law you must let me know and I will attempt to give you that further direction after discussion with counsel. I will not add in private when you are in retirement to the direction I give publicly.*
- (8) Because of the difficulties in identifying what the word benefit should be held to mean and in a case with consequences for the defendant of considerable scale in financial terms, or even in terms of lost liberty should he fail to meet any order made, I have not stopped counsel for the Defendant from saying something about other cases although this might not normally be regarded as relevant. It may be that from what you have heard you will decide that there can be instances - including instances in higher courts - where identifiable principles seem not to have been followed and where confiscation orders lesser than the strict application of the law would require have been approved. Any order made is your order and were you to feel in conscience that you could not follow the law because its consequences are simply too harsh then - as with the jurors commemorated in the Old Bailey who refused to follow a judicial direction to convict despite efforts to starve them into compliance - you should recognise*

that the decision is yours and nobody else's. However you are here to administer the law and it is clear on authority that the law is harsh or 'Draconian' in its potential effect. You may think that in law the most obvious way in which you can reflect a conscientious inability to meter out an order you find excessive is by stopping at the discretion stage and declining to make any order on a particular count or on all the counts. But the decisions - count by count are yours. And there may possibly be one way in which you can legitimately mitigate an order you would otherwise make and I will return to that later.

DISCRETION (whether to make an order at all; count by count)

(9) The legislative purposes of the law and of similar laws has been considered in several cases. Most recently it has been said that a confiscation order:

'(i) is a penalty....

(ii) is designed to deter those who consider embarking on criminal conduct

(iii) is designed to deprive a person of profits received from criminal conduct and to remove the value of the proceeds received from criminal conduct from possible future use in criminal conduct

(iv) is designed to impoverish defendants, not to enrich the Crown.'

If a proposed confiscation order would not meet the identified purposes then this could be a powerful reason not to exercise your discretion to make the order sought. But this is an all or nothing decision: to decide that the confiscation order would only serve some or one of the identified purposes or would only do so to a limited extent would not allow you to make a reduced order.

(11) There is, as noted above, one possible exception or seeming exception to this strictness of approach and I will deal with when covering Benefit.

(12) The Defence have relied heavily on the case of Glatt and I draw the following from the written argument you have received [extensive citation from Defence written argument on Glatt].

(15) There have been other observations about the purpose of the statute being to deprive a defendant [only] of his ill gotten gains. But these have all been without identifying a clear principle that would limit recovery to such sums (as they may be commonly understood to be) and I cannot advise you that it would be appropriate to measure the scale of the confiscation order that might otherwise be calculated against the [lesser] personal ill gotten gains to justify an exercise of discretion against making any order.

BENEFIT

(16) Clear from early on that you face a question about 'obtaining' not 'retaining' and any observations that might suggest a match of 'obtaining' to 'ill-gotten gains retained' would be clearly wrong.

(17) As I explained at the start of the case, other cases from superior courts have made it quite clear that you are not concerned with 'benefit' as might be understood in ordinary language; here a term of art particular to this and associated statutes.

(18) There have been cases where funds or property jointly held have led to apportionment of that money or property between the several defendants concerned; there has been at least one such case in the UK Court of Appeal. But where the issue has been further examined there has been no identifiable principle that can be found to justify that course. This may be of importance were you to consider whether there should, in principle, be a sharing of 'benefit' between the defendant the clients he served but who were involved with him in the crime.

(19) In drug cases with which you will be familiar it has been authoritatively established that in a chain of individuals through whose hands drugs pass each can be subject to confiscation in respect of the total value of drugs passing not just in respect of his/her profit.

(20) A chain can be of only two people and so it must be the case - and DLQ effectively acknowledged this - that if all criminal money passes first through A to B then both A and B can be liable for the full amount for confiscation.

(21) In drugs cases joint holding of an account can expose those jointly holding to orders in the full amount of what is held, even if two or more might be liable to the same order.

(22) To defend the consequences of these authoritative positions, Mr Le Q told you of another fact situation revealed in another case:

'Defendant was in charge of an office in a shop. Drugs were found in a cabinet in his office. He would on instructions remove amounts of the drugs and put them in his car for collection by others. He was paid £10 per kilo for this. Judge said "I am satisfied that the was not a retail seller of the drugs to addicts, but I am equally satisfied that e was a trusted participating custodial or 'minder' of the drugs

On appeal, the confiscation order of the value of the drugs found in defendant's possession was squashed; the benefit was found to be the money which defendant had been paid, and confiscation was ordered of £3,475.00

Note that defendant, was not just a minder, but a "participating custodian", who sub-divided the drugs which he minded and put smaller amounts in his car for collection, yet the benefit he obtained was not found to be the value of the drugs, but what he was paid. The analogy with PM and client money is clear; he was no more than a 'trusted participating custodian' of his clients' assets.

(23) If on the balance of probabilities you conclude that Michel matched the role of custodian and no more then it would be open to you to make confiscation orders (wherever that applied) in the sums re received and no more.

(24) If you do not reach this conclusion then you have to look at the facts as you know them to be with the concept of joint account holding or chain of possession in mind, each of which might allow you to make a full order in the sums sought by the prosecution.

(25) Seeking analogous fact situations that might guide you it is clear on authority that;

(26) "a conspirator who acts as the collector or banker for the other conspirators will be regarded as having obtained a benefit in the total sum passing through his hands.

(27) Where proceeds are paid into a joint bank account, each account holder has received the whole amount and each may be vulnerable to a confiscation order in the full amount - someone who has joint control of property has 'obtained' the property.

(28) Even where money enters someone's account at first innocently, the person not suspecting that it was the proceeds of crime on becoming suspicious, and with that state of mind transferring the money out, he is in possession sufficient for a confiscation order in the full amount. By dealing with it following the acquisition of knowledge, upon the instructions of the alleged criminal he was for the purpose of onward transmission, obtaining property in connection with the commission of the offence ... accordingly his benefit was the value of the property so obtained."

(29) Another approach that can guide you is whether the Defendant was instrumental in getting the property out of the crime. His acts must have been a cause of that being done. Not necessarily the only cause: there may, plainly, be other actors playing their parts. All that is required is that the defendant's act should have contributed, to a non-trivial (that is, not de minimis) extent, to the getting of the property.

(30) All the above approaches may not involve a separate requirement that the defendant must be shown to have control over the property, although in reality if he has been instrumental in getting it he will, no doubt, in some sense (and at some stage) have had control over it. You may find consideration of the extent if any of his control a useful guide.

(31) On this topic remember how Mr Le Quesne relies on the 'Admissions' (his tab 14)[admissions sought by the Prosecution for the purposes of the trial to the effect that Michel did not control the companies of his clients]. Recall the Prosecution answer that 'control' for those purposes - the trial - does not limit the real picture you have of the control of funds that are tainted and of businesses that were criminal. Mr Le Quesne is entitled to ask you to look at the Prosecution's sought admissions and to question whether the change of meaning for the word control is not in reality a significant change of approach, significant for this hearing. But you must then look at the facts and ask whether in fact there was control, if so with what effect on your decision about obtaining.

(33) If, having exercised your discretion and decided to make an order and if after having calculated what that order must be in law you remain concerned about the scale of the award can you do anything to reduce the award in accordance with the law? It has been argued that it may be disproportionate to take identical sums from more than one person and indeed in breach of European Law to do so. Well here there is no question of others being subject to confiscation orders but there is evidence of recovery of sums by the Revenue, of sums sent back to those very people who have been involved with the defendant and on some counts evidence of little or no established loss. The Courts have said no more to date than that there may be circumstances where

an apportionment approach might be justified, for example where several defendants all have substantial assets so that double or triple orders would lead to double or triple recovery and that in such circumstances one relevant consideration would be whether the revenue authority that was the loser had lost more or less than was being recovered by confiscation orders. Here although the facts are different you might be justified in reducing any order if satisfied that it dwarfed the loss, if any, sustained. But there is no present authoritative guidance to justify this step although I remind you that the orders to be made are ultimately your orders.

32 In light of directions given, the Jurats identified the purposes of confiscation in this case to be:

- (i) A penalty
- (ii) A deterrent
- (iii) A deprivation of profit from criminal conduct from possible future use.

33 The Jurats recognised the difference between this case and the *Glatt* case, to which Advocate Le Quesne referred.

34 Turning to the issues before the Jurats (paragraph 25 above) determinations were as follows:

(A) WHETHER THE DEFENDANT HAD BENEFITED FROM ANY RELEVANT CRIMINAL CONDUCT (A JUDGMENT FOR THE JURATS TO MAKE FOLLOWING THE EXERCISE OF DISCRETION).

This was not seriously challenged by Advocate Le Quesne wherever criminal conduct was established. The Jurats decided as an exercise of discretion in all cases to determine whether the Defendant had benefited from relevant criminal conduct. They found that Michel had so benefited wherever, on the evidence or by application of the Assumptions, they were satisfied that there was underlying criminal conduct. The Jurats found that the Defendant had benefited from relevant criminal conduct in respect of 10 of the clients identified in count 1 and in respect of all Counts 2 - 10.

(B) WHETHER THE COURT WOULD MAKE A CONFISCATION ORDER AGAINST HIM (A DISCRETION FOR THE JURATS TO EXERCISE)

The Jurats followed the Commissioner's direction that they had discretion count by count, and client by client for Count 1. There may be two (or more) points in deliberation on any possible confiscation order to consider whether the discretion should be exercised: at the start of deliberation; part way through if some particular fact in the matter under consideration required reconsideration of the discretion; at the end of the consideration of the particular count (or particular client in Count 1) and/or at the end of the assessment of all possible confiscation orders where general issues including questions of overall proportionality might arise. In all cases where it was found that Michel *had* benefited from relevant criminal conduct the Jurats' *initial* decision was that a confiscation order should be made. Those initial decisions were on no occasions displaced by later considerations.

(C) WHETHER HE HAD OBTAINED PROPERTY AS A RESULT OF OR IN CONNECTION WITH RELEVANT CRIMINAL CONDUCT (OR THE COMMISSION OF THAT OFFENCE).

In all cases where the Jurats found underlying criminal conduct, and following the direction in law of the Commissioner, the Jurats found that he had obtained property as a result of or in connection with relevant criminal conduct.

(D) IF SO WHETHER THE BENEFIT FROM RELEVANT CRIMINAL CONDUCT WAS IDENTICAL TO THE AMOUNT OF THE PROPERTY SO OBTAINED.

In all cases the Jurats found that Benefit was identical to the amount of property obtained, each term being used in the way explained by the directions in law.

(E) IF SO WHETHER THERE WAS ANY WAY IN WHICH ANY INDIVIDUAL FINDING OF 'BENEFIT' COULD BE REDUCED AS A MATTER OF DISCRETION.

In all cases where the Jurats found there was underlying criminal

conduct and where they found that Michel had obtained property as a result of, or in connection with, relevant criminal conduct they were unable, and or not disposed as a matter of discretion, to reduce the finding. For reasons that appear below it did not become necessary to consider whether in light of the *overall* findings of benefit to be made further consideration should be given to the overall confiscation order(s) that resulted.

35 The Jurats' overall factual findings that led to the above results, particularly to the results in sub-paragraphs c to e above were that they accepted that Peter Michel responded to the directions of his clients but found that his central position of being the signatory of the company or trust accounts gave him a controlling influence. At any time he could have stopped whatever process was taking place. His clients trusted him to carry out the necessary concealment which then enabled them to evade tax or to pursue other criminal objectives. He undoubtedly controlled the movement of the funds from one account to another, and operated a process which often made the origin of the funds difficult to trace. He controlled the 'money laundering process'. He then delivered the clean cash. On other occasions he would facilitate activities of his clients by responding favourably to their instructions without question, even though their requests were highly suspicious. In the Bhandal case he knew the proceeds of crime were involved and yet was willing to conceal the identity of the crooked beneficial owner of Heatherside.

36 In the overall assessment of Benefit etc the Jurats had in mind the statements made by the Defence relating to benefit obtained and in particular to the following key indicators:

- (i) Substantial causation of the creation or transfer of the criminal property.
- (ii) Control over the criminal property.

37 They considered the approaches suggested by Advocate Le Quesne for the Defendant - restriction to fees received, calculation by reference to tax evaded etc - and while recognising that such results might appear to have been indicated as appropriate in other cases or even in the language of the 1999 Law construed in an ordinary way, could find no support in the Commissioner's direction on the law that would justify saving the Defendant from an order that reflected in value the assets coming into, or passing through, accounts of entities he had established and over which he had control. They noted that in no case had the UK authorities or the Jersey authorities pursued the Defendant's clients in the criminal courts for the same activities as were pursued against the Defendant here. In those circumstances, apportionment (between the Defendant and his clients) - something that might otherwise have been appropriate - was not considered possible.

38 In general the Jurats determined that 'criminality' (benefiting from relevant criminal conduct) was established in respect of any particular client where there had been a 'Hansard' deal. In cases where there was no evidence of a Hansard deal the Jurats were, subject to three exceptions, not satisfied that criminality was established. The three exceptions where the Jurats were satisfied of criminality despite no Hansard deal are Bhandal and Pearce, Smith and Peltola, for the reasons set out below and/or in the table at paragraph 41.

39 As to the Bhandal counts (Counts 7 and 8) the Commissioner directed the Jurats specifically:

(32) Turning to the Bhandal counts the following can be asserted as a matter of law: It may be that "obtains" does not include a case where a person causes property in which he has no beneficial interest to be received by someone else over whom he has no control. Although "obtain" does include the cases where a defendant retains control over property received by a third person as a result of steps taken.

(34) In the Bhandal count there is a request that you should make an order in the amount of the loan facility itself. The Prosecution says that the facility is worth what the loan was to be. It happens that the prosecution can, by way of alternative, invite you to consider the drawing down on the loans as justifying orders in a way much more like all other counts although subject to the direction above about property passing to third parties. If the Prosecution is right about your being able properly to make an award in respect of the facility itself then that order would be justified the minute the facility was available even if not one penny had been drawn from it. You may think that in those circumstances issues of proportionality would arise, there being nothing whatsoever gained in any real sense by the wrongdoer, s/he becoming immediately vulnerable for an order in millions of pounds. You may prefer to focus your attention on the other approaches of the Prosecution by reference to sums that were drawn down, looking at where they went and considering what control, if any, the defendant had on them.

40 For these counts the Jurats were presented by the Prosecution with a very stark choice on

limited evidence. First, the Prosecution sought an order in respect of the mere granting of loan facilities in the sums of £13,650,000 or £5,400,000 saying that the mere grant of the loan facility was to create property received by the Defendant in the amount of the loan even if it was not taken up. This position would have had the Defendant liable for confiscation orders in the sums sought on the very day that the facility was granted and even if no drawing down were ever made on the loan! The Jurats rejected this argument as being completely unrealistic and self-evidently disproportionate. Alternative formulations that led to the Prosecution seeking an order in respect of Bhandal counts in excess of £20 million were also regarded as disproportionate and the Jurats found themselves having to identify themselves a fair figure that would result from the exiguous material available to them, and did so as follows focusing on money shown as having passed through entities under Michel's control:

Heatherside (See Sowden's Report at page 34):

The benefit for these two accounts (Counts 7 and 8) may well be regarded by the Prosecution as low. The Jurats, however, are satisfied that this figure is proportionate and derives from the available evidence whereas the massive £20 million urged upon the Jurats by the Prosecution was disproportionate and insufficiently evidenced. Drawings from loans that did not pass through Heatherside or any other Michel entity have not been included on the ground that they were not 'obtained' by the Defendant - in the sense of that word in these proceedings - and that he exercised insufficient control over the monies passing for an order to be made.

Balance held in bank accounts as at 1 July 1999	5,624
Funds received into bank accounts after 1 July 1999	48
Value of Updown Court as at 1 July 1999	1,550,000
Net Benefit	1,555,312
Abey (See Sowden's Report at page 35)	464,122
Bridgeland (See Sowden's Report at page 36)	31,652
Oakbrook (See Sowden's Report at page 37)	7,482
TOTAL BENEFIT	2,058,568
Inflated benefit (Applying factor of 1.1893)	2,448,254.

41 So far as Gavin Graham is concerned (Counts 1 and 10) the Jurats were not satisfied that the Van der Aa monies of some £1,340,000 qualified as the Defendant's benefit; further the opening share portfolio of £816,387 (see Sowden's report page 44/45) did not qualify as property obtained by the Defendant given the lack of control he was revealed as having over this portfolio. Accordingly in this case the total figure of benefit before inflation is £3,422,446 (Sowden page 47) less £1,340,000 less £816,387 = £1,266,059. Applying the same inflation factor of 1.1893 results in a benefit figure of £1,505,724.

42 It will be seen that for 10 cash clients a nil finding results from the Jurats not being satisfied as to 'criminality'. For all these cases involving UK clients but where there was no evidence of a Hansard deal the Jurats decided NOT to apply the Assumptions considering it inappropriate to do so in circumstances where the possibility of monies being held by the Defendant for clients who were wholly without criminality had to be considered. In the case of Peltola they did rely on the Assumption, given a more substantial evidential substratum (false invoicing) and notwithstanding the absence of any evidence of Finnish tax evasion.

43 The Jurats have found the Williams Settlement a difficult feature of the case, even during the substantive trial (Jurats Le Brocq and le Breton). The settlement holds very large sums of money or other assets. The Prosecution have at all times - for good reason - asserted that the Defendant is the beneficial owner of the assets in the Williams Settlement. Not least by way of evidence is a handwritten document of the Defendant where he lists the Williams Settlement as his property! If the Settlement is the Defendant's property then the question arises of where the money came from to build the settlement and how it reached the settlement - for no satisfactory evidence on either of these issues has been provided. It might have been expected that the assets of this settlement would have been part of the Prosecution's positive case at trial against the Defendant had the Prosecution assessed the evidence they had to be sufficient to include an allegation about the Williams Settlement. Alternatively, an invitation to place reliance on the Assumptions in respect of the settlement at the confiscation stage might have flushed out details from the Defendant that would have enabled the Court to know with some precision what was the underlying reality of this trust and whether it should itself be the subject of a confiscation order additional to what would be ordered for in respect of all other transactions. The consequences of the Jurats being able to make a better decision about the Williams Settlement would be significant, one way or another. If the Jurats were to have been satisfied that the money represented, for

example, gains of the Defendant from some otherwise un-revealed criminal conduct then the Court's whole view of the Defendant might have been different and with marked consequences. On the other hand, were the court to have been satisfied that the money was actually *not* the Defendant's then it might have had to reconsider the orders being made on the grounds that the orders would have stripped the Defendant of all assets and would have sent him penniless from prison to a life where both his wife and Mrs Buckley would have had to suffer sale of the homes they occupy, conclusions or results the Jurats might *then* have adjusted by exercise of the discretion they have. In the event the Jurats are entirely satisfied that the Williams Settlement *is* property of the Defendant and thus available to meet the confiscation order being made, but they know no more. This bare finding also means that the order being made may be met without the Defendant being rendered penniless and dependent on charity when released from prison, but in a somewhat 'hit and miss' way.

44 It may be that the Prosecution's approach was influenced by the experience (referred to in paragraph 28 above) of confiscation orders in drugs cases dwarfing personal assets with the result that defendants are deprived of all they possess and that they (the Prosecution) thought it safe to let the Williams Settlement feature simply as assets to be recovered in respect of an order that would have to be reduced from some huge Benefit figure to the Defendant's net realisable assets, that would then have included the assets of the settlement. Any such calculation by the Prosecution would now be shown to be flawed, as appears below.

45 The decision of the court is set out count by count and client by client for Count 1 in an extended version of the table helpfully provided by Advocates Whelan and Le Quesne at the hearing. Where a Prosecution figure is accepted and a confiscation order made in that figure without further explanation then the Jurats accepted the Prosecution's reasoning, usually as set out in the report of Mr Sowden, and found that the Defendant's measure of possession and/or control as evidenced complied with the legal requirement for 'obtaining'. Where clients appeared in Count 1 and in another count the Jurats' decision has been consolidated for that client on one or other part of the schedule. The Figures used are those appropriately inflated to the date of the hearing in September. The Prosecution declined the invitation to adjust inflation further to the date of this decision on the ground that the increase would be slight. In respect of the figure achieved for the Bhandal counts the Jurats have inflated from the base figure they achieved by the same inflationary factor of 1.1893 that was used for all other figures.

AG v Peter Michel

Estimated tax evasion by Hansarded clients

	Cash Count deliveries £	Benefit pre inflation £	Benefit including inflation £	Hansard deal £	Tax evasion estimated at 2/3 of Hansard £	Fees £	Jurats Decision £	Jurats' figure including inflation £
Cash clients	1							
Nigel Mason	237,020	716,305	851,878	1,068,988	712,659	15,806	Determination here includes Count 6	851,878
Robert Rodwell	130,000	156,359	185,953	0	0	22,648	Nil; no established criminality	0.0
Allen, Goncalves and Gills	133,700	1,456,177	1,731,783	2,500,000	1,666,667	34,391	Determination here includes Count 4	1,731,783
Les Gray	50,400	56,852	67,612	0	0	7,360	Nil, no established criminality	0.0
Rob Oubridge	225,000	813,693	967,698	0	0	14,515	Hughes said no tax liability	0.0
Tony Wynne	168,000	1,119,765	1,331,700	500,000	333,333	26,776	Nil; no established criminality	1,331,700
							Nil; no established criminality	

Kevern Knight	20,000	2,152,304	2,559,664	0	0	11,466	Although no Hansard deal client in Finland and other evidence of criminality - vis false invoicing - satisfied Jurats.	0.0
Risto Peltola	28,668	38,629	45,940	0	0	4,887	Assumption relied on	45,940
Prab Nallamilli	10,000	18,010	21,419	0	0	4,026	Nil; no established criminality	0.0
Robert Wyld	49,000	49,000	58,274	400,000	266,667	3,897	58,274	
Gerry Kreizl	30,000	30,000	35,678	386,717	257,811	20,153	Determination here includes Count 9	1,315,057
Verna Haughton	30,000	30,000	35,678	0	0	1,633	Nil; no established criminality	0.0
Patrick Cantwell	48,654	48,654	57,863	650,000	433,333	1,112	57,863	
Derek Bell	5,000	5,000	5,946	0	0	0	Nil; no established criminality	0.0
Tony Pearce	32,000	32,000	38,057	0	0	0	Dealt with below	0.0
Michael Sampson	35,000	35,000	41,624	0	0	408	Nil; no established criminality	0.0
Andrew Wightman	10,000	10,000	11,893	86,100	56,400	498	11,893	
Selwyn Tash	17,000	17,000	20,218	0	0	0	Nil; no established criminality	0.0
Matthew Yallop	20,000	20,000	23,785	250,000	166,667	543	23,785	
Gavin Graham	5,000	5,000	5,946	1,189,026	792,684	31,325	Determination here includes Count 10, see paragraph 41 above.	1,505,724
Total Cash Clients	1,284,442	6,809,748	8,098,610	7,030,831	4,687,221	201,439		
Simon and Timothy Trant	2	89,000	107,898	128,321	168,754	112,503	8,280	128,320
Hutchings and Bennett	3	0	54,719	65,076	117,000	78,000	1,650	65,076
Allen, Goncalves and Gills	4	133,700	1,456,177	1,731,783	2,500,000	1,666,667	34,391	Dealt with above 0.0 No Hansard as a Jersey

Smith	5	0	130,000	154,605	0	0	1,500	case; criminal conduct proved and/or admitted	154,605
Nigel Mason	6	237,020	716,305	851,878	1,068,988	712,659	15,806	Dealt with above	0.0
Bhandal and Pearce	7 & 8	32,000	20,638,412	24,544,568	0	0	81,870	See paragraph 40 above	2,44,254
Gerry Krejzl	9	30,000	1,105,771	1,315,057	386,717	257,811	20,153	Dealt with above	
Gavin Graham	10	5,000	3,422,446	4,070,203	1,189,026	792,684	31,325	Dealt with above	
Total all clients (including double counting)		1,811,162	34,441,476	40,960,117	12,461,316	8,307,544	396,414	This figure excludes double counting by dealing with clients who appear on Count 1 and another count once only	9,730,152
Less cash count clients who also had separate count		437,720	2,239,482	2,663,342	5,144,731	3,429,821	101,675		
Totals after adjusting for double counting		1,373,442	32,302,994	38,296,774	7,316,585	4,877,728	294,739		

REALISABLE ASSETS

46 The final issue for the Jurats was (f).

IF IT WAS DECIDED TO MAKE ANY CONFISCATION ORDER WHAT WERE MICHEL'S NET REALISABLE ASSETS?

47 The relevant law on realisable assets is to be found in Section 2 of the 1999 law:

2. Meanings of expressions relating to realisable property

(1) In part 2, "realisable property" means

- (a) any property held by the defendant;**
- (b) any property held by a person to whom the defendant has directly or indirectly made a gift caught by Part 2; and**
- (c) any property to which the defendant is beneficially entitled .**

(2) However, property is not realisable property if an order under Article 32 of the Drug Trafficking Offences (Jersey) Law 1988 or Article 29 of the Misuse of Drugs (Jersey) Law 1978 is in force in respect of the property .

(3) For the purposes of Part 2, the amount that might be realised at the time a confiscation order is made is the total of the values at that time of all the realisable property, including -

- (a) the total value of any property to which the defendant is beneficially entitled, less -**
 - (i) any amount due in respect of a fine or other order of the Court or the Court of Appeal or the Magistrate's Court or the Youth Court, imposed or made on conviction for an**

offence, where the fine was imposed or the order was made before the making of the confiscation order,

(ii) any sum in respect of which the person to whom it is due would, if the defendant had become bankrupt before the making of the confiscation order, be entitled to claim preference ("préférence") or privilege ("privilège"), as the case may be,

(iii) any sum the payment of which is secured on all or any of the realisable property by a simple conventional hypothec or a judicial hypothec created in accordance with the Loi (1880) sur la Propriété Foncière before the making of the confiscation order, and

(iv) any sum the payment of which is secured on all or any of the realisable property by a security interest created in accordance with the Security Interests (Jersey) Law 1983, before the making of the confiscation order; and

(b) the total of the values at that time of all gifts caught by Part 2

(4) Subject to the following provisions of this Article, for the purposes of Part 2 the value of property (other than cash) in relation to any person holding the property means the market value of the property.

(5) References in Part 2 to the value at any time (referred to in paragraph (6) as the "material time") of any property obtained by a person as a result of or in connection with an offence are references to -

(a) the value of the property to the person when the person obtained it, adjusted to take account of subsequent changes in the value of money; or

(b) where paragraph (6) applies, the value there mentioned,

whichever is greater.

(6) If at the material time the person holds -

(a) the property that the person obtained (not being cash); or

(b) property that, in whole or in part, directly or indirectly represents in the person's hands the property that the person obtained,

the value referred to in paragraph (5) (b) is the value to the person at the material time of the property mentioned in sub-paragraph (a) of this paragraph or (as the case may be) the property mentioned in sub-paragraph (b) of this paragraph so far as it so represents the property that the person obtained.

(7) Subject to paragraph (10), references in Part 2 to the value at any time (referred to in paragraph (8) as the "material time") of a gift caught by Part 2 are references to -

(a) the value of the gift to the recipient when he or she received it, adjusted to take account of subsequent changes in the value of money; or

(b) where paragraph (8) applies, the value there mentioned,

whichever is greater.

(8) Subject to paragraph (10), if at the material time the person holds -

(a) the property that he or she received (not being cash); or

(b) property that, in whole or in part, directly or indirectly represents in his or her hands the property that he or she received,

the value referred to in paragraph 7 (b) is the value to him or her at the material time of the property mentioned in sub-paragraph (a) of this paragraph or (as the case may be) sub-paragraph (b) of this paragraph so far as it so represents the property that he or she received.

(9) A gift (including a gift made before the commencement of this Article) is caught by Part 2 if -

(a) it was made by the defendant at any time after the commission of the offence or, if more than one, the earliest of the offences to which the proceedings for the time being relate; and

(b) the Court considers it appropriate in all the circumstances to take the gift into account,

and for the purposes of this paragraph an offence to which the proceedings for the time being relate includes, where the proceedings have resulted in the conviction of the defendant, a reference to any offence that the Court takes into consideration when determining his or her sentence.

(10) For the purposes of Part 2 -

(a) the circumstances in which the defendant is to be treated as making a gift include those where the defendant transfers property to another person directly or indirectly for a value that is significantly less than the value provided by the defendant; and

(b) in those circumstances, the preceding provisions of this Article shall apply as if the defendant had made a gift of such share in the property as bears to the whole property the same proportion as the difference between the values referred to in sub-paragraph (a) bears to the value provided by the defendant.

48 Gifts to Mrs Michel and to Tracey Buckley, Justin Michel and Mr Michel's daughter have been taken into account in the manner revealed in the schedule below.

49 There was little controversy about realisable assets. Gifts and other asserted interests were not supported by recipients, or by the defendant, in evidence. If any such legal rights exist they may be raised at any time when the assets concerned are to be disposed of in execution of the order to be made.

50 The Jurats found the Defendant's net realisable assets to be as appears on the expanded schedule provided during the trial by both advocates with explanation only where necessary:

R v Peter Michel

Prosecution Schedule of Realisable Property

The references to page numbers in the evidence column are either to the bundle served with the Attorney General's statement (marked AG) or to the bundle of information provided by the Viscount (marked V)

Bank balances are as at 30 th June.

Total Realisable Property = £13,869,507 + Spanish property

DEFENCE POSITION FOR MR MICHEL'S REALISABLE PROPERTY (see columns 5 and 6) = £2,347,193

Property	Why Realisable	Value of Property	Value of Realisable Property	Defence say realisable value is	Because	Issue as per Defence response to AG's statement	Prosecution comment	Pros. Evidence	Court's decision	Court's determination of amount realisable
Bank balances in name of Michel	(i) Held by Michel (ii) beneficially owned by him	£667,161 (£100,000 of this has been transferred to the Viscount's account to cover costs. It nonetheless remains realisable property until spent)	£667,161	333,580	50:50 marital asset	Michel claims his wife has an interest in this	Wife has no interest in property paid for by him, and in his name. No property adjustment order has been made, or is being sought	1) Prosecution schedule AG p.8; 2) V pp 86 - 89		667,161
						Placing money in a				

Bank balances in name of Michel and his wife	(i) Held by Michel and (ii) Beneficially owned by him (iii) to extent wife has an interest, it is a gift caught by the Law	£775,312	£775,312	£387,656	50:50 marital asset	Michel claims his wife has an interest	joint account is very limited evidence that both parties have an interest. Any interest is a gift that fulfils the criteria of the Law. It should be counted as its ultimate source was the Williams Settlement via the PTC transaction. It is wrapped up in criminal conduct. Mrs M's interest in her home has been allowed for.	1) Prosecution schedule AG p.8; 2) V pp 86 - 89	775,312
Bank balances in name of Michel & Co.	(i) Held by Michel; and (ii) Beneficially owned by him	£91,427	£91,427	£45,713	50:50 marital asset	Michel claims his wife has an interest	Wife has no interest in property paid for by him, and in his name. No property adjustment order has been made, or is being sought.	1) Prosecution schedule AG p 8; 2) V pp 86 - 89	91,427
Bank balances in name of Chimel. (this does not include Chimel funds held for the benefit of clients. It was proved at trial that Michel mixed his own money with that of his business and his clients).	i) Held by Michel; and ii) Beneficially owned by him	£926,576	£926,576	£463,288	50:50 marital asset	Michele claims his wife has an interest	Wife has no interest in property paid for by him, and in his name. No property adjustment order has been made, or is being sought.	1) Prosecution schedule AG p 8; 2) V pp 86 - 89	926,576
Bank accounts in name Williams Settlement	i) Held by Michel and ii) Beneficially owned by him	£7,955,192	£7,955,192	£0	Belongs to ACJ, if prosecution correct, then would be 50:50 marital asset	Michel claims ACJ is beneficial owner	Prosecution do not accept defence assertion	Bank balances: AG, 8, V pp 86-89. Ownership of Williams: 1) Reports of accounts, AG tabs 14 and 17; 2) Asset List at tab 15	7,955,192
Investments in Infinitum held in	i) Held by Michel and ii)	£288,512	£288,512	£104,756	50:50 marital	No issue	Paid for by Michel and	Balances AG p 9, V p 89 Ownership, V p 89; Extract from statement by	388,512

name	Beneficially owned by him	£309,510	£309,510	£134,750	marital asset	notified	Williams Settlement	Sowden, AG p. 9a; Extract from report on Williams Settlement, AG pp 108 - 109	£309,510
Chimel for PWM									
Savings Investment	Property of insufficient value to assess	£80	Nil	£0		Belongs to Steve Fass		N/A	0.0
Pot du Rocher	i) Held by Michel (and wife) ii) Beneficially owned by Michel (& wife)	£1.3 million	£650,000	£650,000	Purchased for £62,000 in 1978 using funds from previous property sale plus mortgage	Wife has interest	Wife's interest allowed for	Legal ownership not disputed, but see St By DS Gay @ AG, p.11. Valuation by estate agent @ AG 30 d.	650,000
Villa Sul Mare	i) Held by Michel and Buckley. ii) Beneficially owned by Michel and Buckley iii) Buckley's interest arose by way of gift. The prosecution does not contend that his gift should be caught by the Law, as it was made before the raid on Michel and Co. In July 01. Only Michel's interest is claimed	£670,000	£335,000	0	Intended to be for Tracey and the children, Mr Michel makes no claim	Belongs to Buckley	Buckley's interest allowed for	Legal ownership not disputed but see DS Gay st. at AG p 12; Property paid for by Williams Settlement see report at AG tab 14, esp AG p.104	335,000
121 Escourt Rd Fulham	i) Held by Michel ii) beneficially owned by him	£490,000	490,000	£245,000	50:50 marital asset	Bought for Justin, but "accounted for" as belonging to Michel and his wife	1) Property registered in name of Michel; 2) Included on M's asset list 3) Statement re payment of council tax awaited; 4) Wife has no interest in property which she did not pay for, and which is in his name. No property adjustment order has been made, or is being	1) Legal ownership DS Gay, AG p 13; 2) statement re council tax awaited; 3) estate agent valuation pending 4) asset list AG tab 15.	490,000

								sought				
	i) share held by Michel, 2 shares held by Buckley;							Buckley's interest allowed for. Property bought by M, with Williams Settlement money. The evidence that Buckley beneficially owns the share held by M is a declaration of trust signed by M and Gallichan dated August 02 - post raid. If this is a genuine gift to Buckley, it is difficult to see why it was not made when the other shares were gifted to her in January 2001. the DOT is a sham, alternatively a gift				
3 shares in capital holding	ii) 1 share beneficially owned by Michel, 2 shares owned by Buckley											
	iii) alternatively, if Michel's 1 share is beneficially owned by Buckley, it is a gift caught by the Law;	£257,481	£85,827	£0		Bought for Tracey's children, Mr Michel makes no claim	Buckley owns company for benefit of children		Valuation of shares at V. p 77;	Share ownership and DOTs at AG pp.21 - 30 Purchase evidence in Accountants' report on Williams Settlement AG, tab 14, p. 03 - 104.		85,827
	iv) the shares in Buckley's name were given to her by Michel before the raid in July 01; the prosecution do not contend that this gift is caught by the Law											
Shares held in name of Chimel	i) held by Michel and;	ii) beneficially owned by him	£77,000 as at 2004	Up to date valuation awaited		50:50 marital asset	No issue notified			Sowden's statement at AG p. 9a	Up to date figure given during hearing	90,900
Porsche 966 + plate registered in name Buckley	i) beneficially owned by Michel; or	£24,000 + £500	£24,000 + £500	£0 + £250		Belongs to ACJ, financed by distribution from Williams Settlement see Tab 14 of defence bundle	Car belongs to ACJ (relies on Williams distribution memo). Plate belongs to Mrs M.	1) Bought with money from Williams Settlement;	1) Fount at Pot, Jandron's statement AG p.58;			
	ii) gift caught by the Law							2) Transfer to Buckley was in May 2002. Car found at Pot du Rocher in 2004;	2) bought by Williams, AG tab 14, p 109 - 110;	Number plate may belong to Mrs Michel and its value excluded	24,000	
								3) Valuation obtained by Viscount is at AG p.10	3) Transfer from Michel to Buckley May 02, DS Gay's statement AG p 13			
								3) Transfer is sham alternatively gift.				
								1) Acquired by Michel in 1997 registered in his name;				
Ferrari + plate registered in name Justin	i) beneficially owned by Michel; or	£37,000 + £6,000	£37,000 + £6,000	£0 + £0		Car belongs to Justin; plate belongs to Paul Doran	Car belongs to Justin; plate belongs to Paul Doran	2) Registration transferred to Justin Michel in May 2002;	1) Registration of car, statement of DS Gay, AG p. 18;	Number plate excluded as property	37,000	
									2) Found at Pot statement of Jandron AG p. 58.			

Paul Doran	ii) gift caught by the Law					Paul Doran does not want to claim it.	car found at Pot du Rocher in 2004;	3) Valuation obtained by Viscount, AG p.10	of a friend		
Jaguar + plate registered in name of Michel	i) Held by Michel; and ii) Beneficially owned by him	£15,000 + £500	£15,000 + £500	£7,500 + £250	50:50 marital asset, purchased for £500 2 nd hand in the 1970s	No issue notified		Valuation obtained by Viscount, AG p.10	Number plate included	15,500	
Austin Healey + plate	i) Held by Michel; and ii) Beneficially owned by him	£15,000 + £500	£15,000 + £500	£7,500 + £250	50:50 marital asset, left hand drive purchased for £4,500	No issue notified		Valuation obtained by Viscount, AG p.10	Number plate included	15,500	
Mercedes + plate	i) Held by Michel; and ii) Beneficially owned by him	£10,900 + £4,000	£10,900 + £4,000	£5,450 + £2,000	50:50 marital asset	No issue notified		Valuation obtained by Viscount, AG p.10	Number plate included	14,900	
Household items	i) Held by Michel; and ii) Beneficially owned by him	£8,000 (but valued at £70k in asset list)	£4,000	£4,000	50:50 marital asset	Nothing of value	Interest of wife allowed for	Bonham's valuation for Viscount is at AG p.30 m	Discounted to nil;	0.0	
Spanish flat and boat or sale proceeds thereof	i) Held by Michel; and ii) Beneficially owned by him	?	?	£0	No boat or property. Pesetas converted to Euro or Sterling when Pesetas ceased to exist	Owens no boat	Property not located by prosecution. Pesetas coming in were identified, but their whereabouts is now unknown		No material to make valuation	0.0	
Paintings	i) Beneficially owned by Michel in asset list	Valued at £120,000 by Michel in asset list	£120,000	£0	Genuine gifts, if not accepted then 50:50 marital asset	Genuine gift first to wife, then by her to children	2) It is odd that his wife gifted all the paintings to her children after the raid, at the same time as other "gifts" were made	1) Statement of Jandron who was told of transfers, AG p. 59; 2) Asset list, AG tab 15.	50% property of Mrs Michel for whom bought as presents but jointly held.	60,000	
							3) Prosecution say these assets have been put out of the way to				

						evade confiscation.			
50% of shares Le Blonde & Mallin which are registered in the name of Adv Justin Michel	i) Beneficially owned by Michel or ii) gift caught by the Law	Company's net value, after secured creditors: £148,927	£74,463	£0	Genuine transfer in exchange for legal services plus value negligible if not developed, if not accepted, then 50:50 marital asset	Genuine transfer in exchange if for legal services; value reduced by loans	1) Transfer to Justin Michel on 5/11/01 is sham, for reasons in AG's statement para 42; 2) Value of secured creditors allowed for	Documents evidencing share transfers AG, pp 31 - 35; 2) Valuation of companies are at V. p74; 3) Evidence of sham includes correspondence at AG tab 13.	£74,463
50% of shares PMP registered I the name of Adv Justin Michel	i) Beneficially owned by Michel or ii) gift caught by the Law	Company's net value £176,362	£88,181	£0	Genuine transfer in exchange for legal services plus value negligible if not developed, if not accepted then 50:50 marital asset	Genuine transfer in exchange if for legal services; value reduced by loans	1) Transfer to Justin Michel on 5.11.01 is sham, for reasons in AG's statement para 42; 2) Value of secured creditors allowed for	1) Documents evidencing share transfers AG, pp 36 - 4-); 2) Valuation of companies are at V. p74; 3) Evidence of sham includes correspondence at AG tab 13	88,181
50% of shares in Parade Hire Cars	i) Beneficially owned by Michel or ii) gift caught by the Law	Company's net value after secured creditors £662,878	£331,439	£0	Genuine transfer in exchange for legal services; plus value negligible if not developed, if not accepted then 50:50 marital asset	Genuine transfer in exchange if for legal services; value reduced by loans	1) Transfer to Justin Michel on 5/11/01 is sham for reasons in Ag's statement para 42; 2) Value of secured creditors allowed for	1) Documents evidencing Share transfers AG, pp 41 - 44; 2) Valuation of companies are at V. p 74; 3) Evidence of sham includes correspondence at AG tab 13	331,439
50% of shares in Pellin	i) Beneficially owned by Michel or ii) gift caught by the Law	Company's net value after secured creditors £183,366	£91m683	£0	Genuine transfer in exchange for legal services; plus value negligible if not developed, if not accepted then 50:50 marital asset	Genuine transfer in exchange if for legal services; value reduced by loans	1) Transfer to Justin Michel on 5/11/01 is sham, for reasons in AG's statement para 42; 2) Value of secured creditors allowed for	1) Documents evidencing Share transfers AG, pp 45 - 49; 2) Valuation of companies are at V. p74; 3) Evidence of sham includes correspondence at AG tab 13	91,683
6 shares in Combe Dingle registered in name of Adv Justin Michel	i) Beneficially owned by Michel or ii) gift caught by the Law	Combe Dingle's value is £425,000	£283,333	£0	Genuine gift to Justin Michel, if not accepted then 50:50 marital asset	Shares are beneficially owned by Justin Michel	Prior to December 2001 these 6 shares were held by Michel. In December 2001 they were transferred to Justin Michel. Prosecution say that transfer is a sham, or gift	1) IDENTIFICATION OF ASSETS OF Combe Dingle is in DS Gay's statement, at AG p. 14; 2) Valuation of those assets is at V p.90. 3) Share transfer docs at AG p. 50 - 52.	283,333

					caught by the Law, for the reasons set out in the AG's statement at para 42.	4) Correspondence relevant to sham are at AG tab 13		
Shares in EMG and Norac referred to in AG's statement	These were gifted by Michel or his wife to their children. Where gifts were made by Michel this was done before the raid. These assets are not claimed	N/A	N/A	£0	Genuine gift to Sara, presumably should not count. Appears to be dispute as to assets of companies	N/A	N/A	0.0
Bank transfers to Mrs Michel	Gifts	£398,000	£397,000	£0	Genuine transfers to Mrs Michel, Mr Michel considered 50% of the sale of business to PTC to be due to Mrs Michel, in addition £48,707 said to have been transferred to Mrs Michel was actually transferred to another Mr Michel account	Transfers to Mrs Michel from Mr Michel after the raid, ultimately funded by Williams Settlement money	Charts produced by Sowden, AG tab 16, pp 130 - 135	Unclear whether included in 775,312 2nd entry of this table. If not then £397,000 should be added to the total figure otherwise achieved
TOTAL					13,492,907			

51 It follows that the defendant is able to pay a confiscation order in the sum of £9,730,152 and he is ordered to make such a payment within 12 months.

52 In default the defendant will service a prison sentence of 3 years consecutive to the present 6 years term he is serving.