

IN HARROW CROWN COURT

Case No: S20170168

Courtroom No. 4

Hailsham Drive
Off Headstone Drive
Harrow
London
HA1 4TU

10.00am – 12.52pm
Wednesday, 31 January 2018

Before:

MR RECORDER RUBIN QC

R E G I N A

v

CHANDNI SHAH (1), SANJAY SHAH (2), JAYDIPKUMAR VALAND (3)
AND HARSHA SHAH (4)

MR E ROBB appeared on behalf of the PROSECUTION
MR SCOTT appeared on behalf of the 1st DEFENDANT
MISS TAVAKOLI appeared on behalf of the 2nd DEFENDANT
MISS LANGEVAD appeared on behalf of the 3rd DEFENDANT

WHOLE HEARING

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A Case called at 10.00am.

RECORDER RUBIN: Let us see who we have got. So Mr Scott?

MR SCOTT: Good morning, Your Honour.

RECORDER RUBIN: You are still here. Mr Robb is still here.

B MR ROBB: Yes, Your Honour, good morning.

RECORDER RUBIN: And then I have now, Miss Tavakoli?

MISS TAVAKOLI: Yes, Your Honour, I represent Mr Sanjay Shah.

RECORDER RUBIN: Okay. And Miss Langevad?

MISS LANGEVAD: Good morning, Your Honour, I represent Mr Valand.

C RECORDER RUBIN: Okay, well what I will do is I will give judgment on this point and then I have got, for your information, because the master copy will be the judgment I read into the record, but I have got a copy of it, which you may want to have, which will save time in getting the transcript proper transcribed, and then we will take it from there. I will give you time to think about what I have done, and then we will resume and think of what we do after that.

D RULING

The defendants have been convicted of various offences for breaching parts two and three of the Housing Act 2004 and the Management of Houses in Multiple Occupation (England) Regulations 2006, which I will refer to respectively as the HA 2004 and the 2006 Regulations, made under the HA 2004.

E This was following hearings before District Judge Raggett at the Willesden Magistrates' Court.

The prosecution is following an inspection of a property at 1 Napier Road, London HA0 4AU, on 21 July 2016, which revealed, as found by the District Judge in his written judgment, the property to be grossly overcrowded, unsafe and in very poor repair.

F It is a seven-bedroom house and roughly 25 people were living there together at any one time and maybe, at times, there have been up to 40. The District Judge found that the 'rent' received in relation to the property over the years 2011-2016 was about £180,000, consisting of £2,900 paid to the joint accounts of the first and second defendants and some £3,000-odd, in cash, paid to the fourth defendant, who would use some for food and such maintenance as there may have been, and who would then pass the rest to his 'boss', the fourth defendant.

G The fourth defendant's appeal against conviction was dismissed by Mr Recorder Rosen QC on 5 January 2018.

H The photographs of the property at pages 133 and following, in the bundles, reveal a squalid, overcrowded, dirty and dangerous premises that plainly could never be licensed for multiple

A occupation in the state it was, or with such numbers in mind. There were four to five bunks in
some rooms and only two bathrooms in the house for all 25 occupants. The exterior
B photograph reveals a dilapidated wooden shed in the garden used for residential occupation.
There was no license in force or even applied for, to allow multiple occupation, 'HMO', as
provided for under the Housing Act. There was, however, another sort of license in force for
C the property, to be found at page 80, in volume one of the bundle. It is agreed by all parties
that this license was pursuant to the Selective Licensing Scheme, under Section 88, in part
three of the Act, which only allows a single family to occupy with up to seven members, but by
definition this was not an HMO license. I will call it also an SLS license. The SLS license had
various conditions attached, which relate to safety, in particular the provision of smoke alarms
and the safety of electrical appliances and furniture.

D The judgment of the District Judge recalls the findings at paragraph 12-17 of his judgment. He
convicted the defendants of charges under Section 72 (1), Section 95 (2) and Section 234 (3) of
the Act. The first defendant and the fourth defendant were convicted under each of those
sections. The second defendant was convicted of offences under Section 72 (1) and Section
E 234 (3), so, therefore, not Section 95 (2). The third defendant pleaded guilty to offences under
Section 72 (1) and 234, so not Section 95 (2). Plus each of those two defendants was convicted
of one offence of failing to secure an HMO license contrary to Section 72. They were each
convicted of separate offences relating to aspects of the regulation of the property under Section
234 of the Housing Act 2003.

F These breaches of the regulations were, to take but a sample, offences such as failing to ensure
all means of escape from fire under an HMO were kept free from obstruction, in that a
cupboard, table, chair were located at the bottom of the stairs, thereby obstructing the escape
G route from the first floor. Another related offence was failing to ensure there were fire alarms,
smoke detectors and firefighting equipment. Yet another was the absence of fire doors or direct
means of escape without traversing other bedrooms and, indeed, having some electrically
operated clothes washing machine outdoor in the rain. There was an offence of allowing
significant disrepair, such that the appliance was unsafe and allowing the accumulation of
rubbish in the rear garden.

H The first defendant and the fourth defendant were also convicted of nine separate offences of
failing to comply with various conditions attached to the selective license, Section 95 (2) of the
Housing Act 2004. The fourth defendant, as an aider and abetter of the first defendant, his
sister-in-law, who was the freeholder. These conditions related to the management of the

A property, such as failing to collect references, provide rent books, but also to keep smoke alarms in proper working order, and the fire escapes free from obstruction.

B It is significant that none of these charges alleges overcrowding, and it is only the Section 72 offence that directly concerns the failure to have an HMO license. The District Judge made an order, pursuant to Section 70, sub-section one of the Proceeds of Crime Act 2002 (POCA), referring the cases to the crown court for confiscation proceedings.

C The matter comes before me in this way. The defendants, through their solicitors and counsel, indicated to His Honour Judge Cole, that they took a threshold defence to these confiscation proceedings, which is that in the light of the decision of the Court of Appeal in *Sumal & Sons (Properties) Ltd v London Borough of Newham* [2003] 1WLR 2078, the confiscation pursuant to POCA is not available. In other words, the applications for confiscation are precluded.

D Various other points have been raised in the skeleton arguments and orally, which are said to be, or possibly the threshold points and I shall return to these later in this judgment. *Sumal and Sons (Properties) Limited v London Borough of Newham* was a decision of the Court of Appeal. The court, in that case, decided that confiscation proceedings, under POCA, were not available where a landlord committed an offence of being the owner of a rented property, without a license contrary to Section 95 (1) of the Housing Act 2004.

E The appellant company, Sumal, appealed against the imposition of a confiscation order following its conviction for being the owner of a rented property without a license. Section 80 of the Housing Act had made provision for the introduction by local authorities of selected licensing of rented residential property in the private sector.

F Sumal was the owner and landlord of a property, in an area which was designated as a selective licensing area by the respondent local authority. The local authority wrote to Sumal informing it of the need for a license. Sumal did not obtain a license and was prosecuted by the local authority and was found guilty, after a trial in its absence, in the Magistrates' Court, of being the owner of a rented property without a license contrary to Section 95 (1) of the Housing Act 2004, and was committed to the crown court for sentence under POCA.

G The judge subsequently fined Sumal and ordered it to pay prosecution costs and made a confiscation order under the 2002 Act POCA, in the sum of £6,450, having found Sumal had benefited from criminal conduct with the amount of the rent received while the property was unlicensed. The issue on appeal was whether the confiscation proceedings were available in the context of an offence under Section 95 (1) of the 2004 Act.

H

A The Court of Appeal, Davies LJ, Burton J and Langstaff J, held that Section 95 (1) of the
HA 2004 involved the ‘regulatory’ offence, rather than the case of obtaining property by
dishonest means. Whether or not a regulatory could, when committed, give rise to the
B availability of a confiscation order would depend, they thought, on the terms of the statute or
regulations creating the offence, read with the terms of POCA and set in the context of the facts
of the case. There were, as in many confiscation cases, three questions for the court in deciding
whether to make a confiscation order to ask: a) whether the defendant benefitted from the
relevant criminal conduct; b) if so, what the value of the benefit was, and c) what sum was
recoverable from the defendant.

C The issue in *Sumal and Sons (Properties) Limited v London Borough of Newham* was stated
to be whether any relevant benefit had been obtained. Section 95 (1) created the offence of
having control of or managing a house, which was required to be licensed but was not so
licensed. So any rent could be said to derive from the criminal conduct of not having a license
and thus give rise to the right of confiscation under POCA.

D However, the court held that the Housing Act 2004 had to be read as a whole. Under Section
96 (3), no rule of law relating to the validity or enforceability of contracts and circumstances of
illegality affected the validity or enforceability of the provisions of a tenancy or license
requiring payment of rent. It followed that the right to recover rent remained enforceable,
E notwithstanding that a landlord had no license for the house in question. This was inconsistent
with the notion, as the court held, that the landlord was unlawfully obtaining rent as a result of
or in connection with his breach of Section 95 (1).

Parliament, they said, could not have intended that a landlord of an unlicensed house, might
lawfully seek to recover in civil proceedings rent due under the tenancy, whilst at the same time
F making it a criminal offence actually to receive such rent so recovered. There had to be a
causal connection between the criminal conduct and the benefit received from it and they cited
R v Nelson (John Stanley) 2010 QB 678, which they applied.

G In *Sumal and Sons (Properties) Limited v London Borough of Newham* it was held that the
defendant had continued to receive rent, not because of the Section 95 offence, but in spite of it.

There was no sufficient causal connection. The continued receipt of the rent was not the
product of Sumal’s crime. To impose a confiscation order would, in substance, be in the nature
of a fine, and the provision of Section 76 of POCA, read within the provisions of the Housing
Act 2004, did not permit it. By the continued receipt of rent, Sumal had not ‘obtained
H property’ as a result of, or in connection with, ‘the criminal conduct’. The confiscation order

A therefore was not ever available and would be quashed, see paragraphs 30-32, 35 to 37-39, 43 and 45 of the judgment.

B The defendants submit that the case before me is to be regarded to not being materially different to *Sumal and Sons (Properties) Limited v London Borough of Newham*. Accordingly, they say, that the remedy of confiscation is not available in this case, as it was not in *Sumal and Sons (Properties) Limited v London Borough of Newham*. I should note immediately the offence to which the defendants have been convicted of are not the same as those in *Sumal and Sons (Properties) Limited v London Borough of Newham*. *Sumal and Sons (Properties) Limited v London Borough of Newham* concerns Section 95 (1), not C Section 95 (2), or Section 234 of the Housing Act 2004.

D This is a material distinction, because Section 96 (3) of the Housing Act 2004, which provides that rent is still payable even if a house is ‘unlicensed’, does not apply to Section 95 (2) offences, because such offences do not relate to unlicensed houses, but to licensed houses, where restrictions have been imposed, but have not been complied with. Nor is rent repayment order ‘RRO’ available to recover rent in relation to a licensed house, whereas it is in relation to an unlicensed house, by virtue of Section 40 (3) of the Housing Act 2004. But this may well be, because the very concept of rent recovery from breaches of the condition of the premises, was not in the mind of Parliament.

E The defendants suggest that by parity of reasoning with the analysis of the Court of Appeal in *Sumal and Sons (Properties) Limited v London Borough of Newham*, there can likewise be no confiscation power available in the present case. There are a number of cases that have considered the causal connection between offences of a regulatory or quasi-regulatory nature and the power of confiscation under POCA.

F In *R v McDowell and Singh* [2015] 2 Criminal Appeal Reports (S) 14, it was held that when assessing ‘benefit’ under the provisions of POCA, it was important to identify the criminal conduct at the first stage of assessment. Where trading receipts were obtained ‘as a result of, in connection with’ trading activity which was lawful in itself, the trading was not criminal conduct from which benefit had been obtained and the trading receipts were excluded from the criminal lifestyle provisions under Section 75 (2) of POCA. But here the activity itself was not G lawful and thus the trading receipts were not to be excluded. McDowell was an arms dealer who had been convicted of supplying controlled goods without a license. Singh was a scrap metal dealer who had traded while unregistered. Each had traded openly through a company of H which they were the sole director and shareholder. The court in each case had lifted the

A corporate veil and treated all the company receipts earned while unlicensed or unregistered, as personal receipts. In McDowell's case, the benefit had resulted from McDowell's criminal conduct, in Singh's case, from his criminal lifestyle.

B It was argued by the appellants in that case that they had been convicted of 'regulatory offences' and the underlying trading had been lawful, but for the absence of respectively a license or registration, so that no benefit had accrued for the purpose of POCA, either to the company or to the individual. Singh's appeal was allowed and McDowell was refused permission to appeal. The court, Pitchford LJ, Knowles J and the Recorder of Liverpool held that whether benefit had been obtained from criminal conduct depended upon a proper analysis
C of the statute that created the offence following *Sumal and Sons (Properties) Limited v London Borough of Newham*. They held, however, that trading in breach of a prohibition was criminal conduct from which benefit could be derived, applying the reasoning in the decision of the Court of Appeal in *R v Luigi Del Basso* [2011] 1 Criminal Appeal Reports (S) 41. In *R v Luigi Del Basso*, the Court held that where the defendants carried out a business on land
D without the necessary planning consent, and in defiance of an enforcement notice, the receipts of the business were properly treated as their benefit, for the purpose of POCA. An enforcement notice is a pre-requisite to criminality in the planning context. In the present case, the breach of the conditions under Section 95 (2) and the breach of the individual regulations under Section 234 are criminal offences, without them being a requirement of any further
E notice.

In *R v McDowell and Singh*, the Court of Appeal continue that there was a 'narrow, but critical distinction' between an offence of prohibited activity admitted by the offender or proved against him, as in *R v Luigi Del Basso*, an offence of failure to obtain a license to carry out an
F otherwise lawful activity, as in *Sumal and Sons (Properties) Limited v London Borough of Newham*. McDowell's arms dealing being the underlying transactions were prohibited and unlawful, he had benefitted from criminal conduct. In Singh's case, the judge had been wrong to find his trading activity was criminal activity from which a benefit had accrued. The criminal conduct was the failure to register before carrying on business each day, but Singh's
G trading receipts had been obtained from lawful trading activity, not from his failure to register the particulars of his business. See paragraphs 28, 32-34, 53-54, 59-61 of the judgment.

Pitchford LJ said as follows, at paragraph 34: 'In our judgment these decisions of the court further demonstrate the importance of identifying the criminal conduct of the offender at the
H first stage of the assessment. It is not sufficient to treat 'regulatory' offences as creating a single

A category of offence to which POCA is uniformly applied. We respectfully agree with the
conclusion of the court in *Sumal and Sons (Properties) Limited v London Borough of*
B *Newham* that the question whether benefit has been obtained from criminal conduct must first
depend upon an analysis of the terms of the statute that creates the offence and, by that means,
upon an identification of the criminal conduct admitted or proved. It may be that, as in *Sumal*
C *and Sons (Properties) Limited v. London Borough of Newham*, the wider statutory context of
the offence will assist to answer the critical question: what is the conduct made criminal by the
statute – is it the activity itself or is it the failure to register, or obtain a licence for, the activity?
In our judgment, there is a narrow but critical distinction to be made between an offence that
prohibits and makes criminal the very activity admitted by the offender or proved against him
(as in *R v Luigi Del Basso*) and an offence comprised in the failure to obtain a licence to carry
out an activity otherwise lawful (as in *Sumal*)’.

D In *Hussain v The London Borough of Brent* [2014] EWCA Crim 2334, the Court of Appeal,
Sir Brian Leveson present, of Queen’s Bench Division, Green J and Sir Colin Mackay,
considered a case where a landlord had let his property to numerous tenants in breach of a
planning enforcement notice. The court held that if Hussain had obeyed the enforcement notice
when he became the owner, the lettings would not have been allowed to continue. Therefore,
but for Hussain’s criminal conduct in ignoring the notice, rents would not have come into his
E hands, or within his disposition or control, as they did following *R v Luigi Del Basso* above, at
paragraph 21.

The court further reasoned that whether the tenancies were illegal, and if so, the consequences
did not fall for decision. No decision on the respective rights of duties of Hussain and the
tenants would stop the continued receipt of rent from Hussain from being criminal conduct. Sir
F Colin Mackay, giving the judgment of the court, held, at paragraph 21 that: ‘Applying a
familiar and straight forward test where issues of causation are in play in order to consider
Section 76 (4) in this connection, the position can in our judgment simply be said to be this: if
the appellant had obeyed the enforcement notice when he became owner with his wife of the
G premises the lettings would not have been allowed to continue, no new lettings would have
been allowed, and therefore but for his criminal conduct in ignoring the notice the rents in the
relevant period covered by the charge would not have come into his hands or within his
disposition or control as they did’.

H The defendants submit, through Mr Scott, and also Miss Eastwood, as adopted by Mr Lyons,
that this is a *Sumal and Sons (Properties) Limited v London Borough of Newham* case, a

A lawful business recovering rental payments. It was specifically called by Mr Scott to be a legitimate business. The defendants point out the danger of looking at other statutes and other factual circumstances, in order to answer by analogy the question that arises in this particular case. They cited the decision of the Court of Appeal in *R v Palmer* [2016] EWCA Crim 1049, at paragraph 19, with stress: ‘It is the wording of the statute in question that matters’. The court in *R v Palmer* found that the section in question created and defined as a prohibited act and criminalised the activity engagement in licensable conduct, not simply failing to obtain a license.

B
C The defendants also rely on the *Attorney General’s Reference No 25* [2001], in a case of tax evasion, where a market trader understated his profits and thus evaded tax. He was liable for the benefits of tax avoidance to be confiscated, but not his whole turnover. This was a case of lawful trading operated unlawfully by tax evasion.

D The defendants also says they are on the *Singh* side of the line rather than *McDowell*. They point out that in *Sumal and Sons (Properties) Limited v London Borough of Newham* there was also overcrowding. They say that it is absurd, that taking, for instance, one of the charges of breach of the regulations, failing to affix the name of the licensee and contact details of the manager properly displayed could itself turn a *Sumal and Sons (Properties) Limited v London Borough of Newham* case into a case of criminal activity, caused by the offending behaviour. Yet, they say, that is the logic of the prosecution case, there is no difference in principle, they say, between the fire escape regulations and the manager’s telephone number, for instance. They point out that a RRO can be sought in respect of the Section 72 (1) offence, of which the first and fourth defendants have been convicted. However, I should point out, that that should be for a period of one year and in the case of claims by the London Borough of Brent, would be for the housing benefit element in the ‘rent’ only.

E
F
G The issue in our case is whether the operation of the provision of occupation to large numbers of persons for money, in circumstances where they were in breach of the terms of the selective license, and where the condition of the premises were so appalling due to non-repair and lack of safety and maintenance, in breach of the terms of the license and the regulations, amounts to criminal activity in itself, from which a benefit has been obtained.

H I have considered the Housing Act 2004, as a whole, and it is clear that its legislative purpose, inter alia, is to regulate and thereby to seek to ensure the safety and provision of decent living conditions to those in private residential accommodation. In particular, part two of the Act concerns the licensing of houses in multiple occupation and part three selective licensing of

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other accommodation. Part seven introduces through subordinate legislation, regulations of the conditions of HMOs. Section 61 of the Act provides for limits on the number of residents in licensed HMOs and this is reflected in the considerations that the authority must have under Section 64 (3) and 65, and the conditions to be imposed under Section 67. Section 67 (4) mandates the authority to identify, remove or reduce the hazards in a property to be licensed as an HMO. This, I am satisfied, is intended to improve health and safety and amenity for those residing in properties in which the occupants are vulnerable.

Part three, as I have said, provides for selective licensing of other residential accommodation. It is, however, within this part that the Section 95 offences are found. They cover situations in which the local authority has designated an area or district, to selective licensing, designed to improve the social and economic conditions of the area, Section 80 (3). The conditions of such licensing included, at Section 88 (3) (d), a requirement to consider whether the proposed management arrangement of the house is satisfactory, which includes whether any proposed management structures and funding arrangements are suitable. Section 90 provides for conditions regulating the use and occupation of the house and includes Section 90 (3) conditions, as to the facilities and equipment, repair and improvement.

I note that the offence under Section 95 (2) now carries an unlimited financial penalty, whereas the offence in *Sumal and Sons (Properties) Limited v London Borough of Newham*, Section (95) 1 had a £20,000 limit. However, despite that, I do not, as suggested to me by the prosecution, infer that Parliament necessarily considers Section 95 (2) offence to be more serious than a Section 95 (1) offence because, at the time the Act was passed, the fine for the Section 95 (2) offence was a level five fine, which was a fine kept at £5,000, it had only been a subsequent alteration to the limits that have made it unlimited.

As I have mentioned earlier, this is a case of breach of a licensing provision and conditions, not a case of no license at all. It is true that some defendants were convicted of not having an HMO license, under Section 72, but that does not detract from the fact that the conditions of the license they did have, which allowed them to pretend to be licensed for occupation, were breached in failing to provide means of escape in the case of fire and smoke alarms, and emergency management and failing to keep in repair.

Not having a license does not necessarily create a risk of injury or death to occupants. Not obeying the terms of a license and not obeying the regulations for homes that were in fact in multiple occupation does create a real danger. So it is correct, in my view, to say that here the people living in unsafe conditions were there in connection with the consequences of what was

A criminal activity, for which the defendants have been convicted.

Sumal and Sons (Properties) Limited v London Borough of Newham was a case of no license.

B The equivalent in our case is the Section 72 offence, but that, it is conceded by the prosecution, cannot be the basis of confiscation due to *Sumal and Sons (Properties) Limited v London Borough of Newham*. This is a case of breach of conditions and regulations. I therefore do not think the rousing under *Sumal and Sons (Properties) Limited v London Borough of Newham*, under Section 95 (1), applies directly to these offences under Section 95 (2) and Section 234. Not only is that because they are different, but because there is a license in the present case and the special provisions in relation to recovering rent, which features so prominently in the reasoning of the court in *Sumal and Sons (Properties) Limited v London Borough of Newham* have no application here. It has not been decided whether what has been described as ‘rent’ was a debt capable of legal enforcement, nor is it necessary to do so for the reasons I have given.

D However, given that I do not think Section 96 (3) applies to a ‘license’ as opposed to ‘unlicensed house’, it may well be that the illegality inherent in this operation would have, in itself, defeated any claims for payment of rent or other periodical payments brought by the landlord or some part of such claims had they ever been brought.

E It might be said that the criminality in this case is, in fact, however, more reflected in the Section 72 (1) offence as the defendants were operating an HMO without a valid license and that that is the heart of the wrongdoing. Section 72, as I have said, cannot be the basis for confiscation due to the *Sumal and Sons (Properties) Limited v London Borough of Newham* reasoning. And it would then be said, that is not justified therefore to use Section 95 (2) as a basis for confiscation not available for the more directly applicable offence under Section 72.

F However, I consider the main criminality with which we are concerned here, is the unsafe condition of the premises, rather than the overcrowding in respect of which no separate offence has been brought, apart from indirectly the Section 72 offence, which is not relevant for the reasons I have stated. Accordingly, taking the provisions under Section 234 and Section 95 (2), I am satisfied that these can be the subject of confiscation orders, under POCA, for the benefits obtained from failing to comply with the conditions and regulations. However, I should make clear that I am not deciding, or even indicating, what such benefits may in the end be held to be. So, while I am ruling it is correct to consider POCA confiscation is applicable for Section 95 (2) and 234 offences, arguments shall need to be had in due course, before me or another judge, as to what such benefit can properly be said to be, given the specific offences for

A which the defendants have been convicted. That may well not include rent or all the rent received for any relevant period, it may be that it properly only covers the benefit obtained by saving on the implementing of proper safety and compliance measures.

B The defendants raised a serious of other threshold challenges to the making of an order. These include submissions that there was no criminal lifestyle because the offence specified applied to just one day, 1 July 2016, and did not cover the six-month minimum requirement. It was also said that although it was conceded these offences being more than three and amounted to a number of 'course of conduct' under POCA, each offence would not cross the £5,000 threshold. It was also said that no benefit was obtained directly from the conduct of which constitutes the offences, because avoiding doing repairs or introducing safety measures, do not amount to a peculiar advantage, as there was no debt incurred.

C I do not propose to rule on these matters at this stage, as there was insufficient time to complete argument from counsel on these matters on the day of the hearing. These were not in any case the main business of the day of submissions I heard. The court or another judge shall listen to submissions as to how this matter can now be progressed, and whether these other arguments can and should be dealt with in advance of any plenary disposal of the application for confiscation.

D Very well. Now, what I will do, I will leave two copies of this judgment here, for you to look at for 20 minutes, and then I will resume with a view to where we take it further, but in the meantime, have you prepared what is commonly prepared, a schedule of what you say should be the progress of the matter?

E MR ROBB: Your Honour, yes. There is a timetable, which I will take you through with directions, in due course, plus the Section 18 orders in respect of each of the defendants, which we will be asking you to sign, but which you may want to be addressed on in terms of these other-

F RECORDER RUBIN: Well, why do you not pass all that up to me? I will read all that while you read these, such as you need to. They are not determinative, so I think I will just write on them in case the court goes- Madam, pass those back to me just for a minute. These are for information. I will just write- So there are two copies there. And then you want me to do look at these things?

G MR ROBB: Yes, so Your Honour, in terms of the draft directions, the various periods would start with today's date.

H RECORDER RUBIN: Okay, well let me just go and read that, then I will be better informed. Do you have anything, Mr Scott?

A MR SCOTT: Your Honour, just a brief practical point. I am conscious this is not a digital case, it would certainly be helpful for the parties to have a copy of your judgment to take away. Does Your Honour propose to do that? I appreciate you have provided copies just now for information. It is extremely helpful, as I say-

B RECORDER RUBIN: Well, do you mean, do I have to direct transcript?

MR SCOTT: No, I don't think you do, but if Your Honour has a written judgment-

RECORDER RUBIN: Well that is what I have just handed up.

MR SCOTT: Forgive me, I had understood that this was a draft simply for information.

C RECORDER RUBIN: Well, what I am saying is, it is not determinative. It is what I have said in the transcript that counts, not that. It is not much different, but when I am reading through it, I made the odd change.

MR SCOTT: I understand, Your Honour.

D RECORDER RUBIN: And the odd correction to typos and such like. So all it does is give you a clue, if you needed to know urgently what was in it and analyse it, you have got it, but you will have to wait for the transcript in the normal way.

MR SCOTT: Very well.

RECORDER RUBIN: For the official judgment.

MR SCOTT: Of course, but it would assist if Your Honour's clerk could make a further two copies-

E RECORDER RUBIN: Yes, you can have as many copies of the draft as you like.

MR SCOTT: I am very grateful.

RECORDER RUBIN: But all I am saying is, so you are clear, if the matter were to go further, which I have no reason to know one way or the other. I do not want a subsequent court to be shown that draft and say this is what he said, because there is an official transcript.

F MR SCOTT: Of course, I understand.

RECORDER RUBIN: Okay, I will give you time, 10 past 11.

Court adjourns at 10.43am.

Court resumes at 11.08am.

G MR ROBB: Your Honour, so the question is now, where next?

RECORDER RUBIN: Yes.

MR ROBB: From the authority's point of view-

RECORDER RUBIN: The authority you represent-

H MR ROBB: From the Local Authority's point of view, the next stage is Section 18 of POCA. We need to drill down into what the benefit was and what the advantage was.

A RECORDER RUBIN: Well I can see that the last two requests, about the rent and the repairs are relevant, at this stage, whatever happens, because we cannot really proceed to an articulation of all the threshold issues, at least, until we have some idea of what these are, because if they do not exceed £5,000, for example, there will be an issue.

B MR ROBB: Yes, so it's how much and how's the money distributed, proportionately, bearing in mind our responsibility, as well. So-

RECORDER RUBIN: Well, I mean, a lot of the other stuff is much more general and will take far longer to do and may not, in the end, be necessary.

MR ROBB: Fine. But really what we want to do is get on with the first stage of the process, which is-

C RECORDER RUBIN: So you want information, you want all of it, but I imagine it will be opposed, all of it, so we will have to hear argument on that now.

D MR ROBB: Yes, so we will be looking for information on rent, and this is the rent over the £2,900 which went to Harsha and Chandni, but we will want to establish that those were the actual amounts, through bank statements, even in respect to Harsha and Chandni. Then there is the £3,100, and it is how that was distributed by Mr Valand to Mr Shah, how much was kept back by Mr Valand, how much went to Mr Shah. So that will require us to look closely at bank statements, and any other evidence of receipts. Then there is the question of the pecuniary advantage obtained from not carrying out repairs and all the rest, but that we are more confident we can establish through our own contractors at the Local Authority, but we want to look very closely at the figures in respect to rent, in particular, and where the money went.

E RECORDER RUBIN: So you want, within six weeks you have asked for, the value of the rent and the repairs, if I use just shorthand for those. Firstly, whether it is rent is another question in itself. Rent is a term of ours, but they are payments that they received and whether it is for repairs or safety or whatever, you want that as well?

F MR ROBB: Whether they spent any money as well-

RECORDER RUBIN: You will then say how much they should have spent.

G MR ROBB: I will say how much they should have spent and how much it would be proportionate to claim under POCA because they did after all spend, well what they are proving they spent, on the upkeep. They might have meant to have spent more, according to us, but they will doubtless claim that there were expenses that they did have to bear. So we will need evidence of that and we have to consider this proportionality question. So it's a question of drilling down into the figures for us at this stage.

H RECORDER RUBIN: Well, let me hear those submissions in response and then we will take it from

A there.

MR SCOTT: Your Honour, thank you. May I first of all apologise for not rising properly when we came in, I was distracted by someone else.

RECORDER RUBIN: It is all right. I am very relieved to see you have hair still under your wig.

B MR SCOTT: I am relieved still to have it, not too much of it, it's grey up there. A few points to make, just initially, about the timetable, Section 18. It is, as I would have expected, though I don't necessarily agree with, a relatively wide and detailed Section 18, and it is drafted, it seems to me, on the basis that this is a criminal lifestyle case. That issue hasn't been resolved yet.

RECORDER RUBIN: That is the six-month case and the course of conduct-

C MR SCOTT: And the course of conduct under Section 75 of POCA. If it were to be decided by Your Honour, or another judge, that this wasn't a lifestyle case, it would potentially reduce the amount of information the defendants supply and also reduce the amount of work and time that needs to be spent. I am particularly conscious that the first two defendants are not legally aided, so that of course is coming out of their own pocket. There may well be arguments as to whether or not the assumptions, even if it were to be decided it is a criminal lifestyle case, as to whether the assumptions under Section 10 are appropriate or could give rise to a serious risk of injustice. Whether, overall, the request for information is disproportional, bearing in mind the convictions and the facts behind the convictions, and, finally, whether or not, as Your Honour has flagged, it is appropriate to enquire as to the rent received as a benefit from this particular [inaudible].

D
E
F Now, as things stand, it is not clear to me whether it is appropriate for those arguments to be raised at this stage, or whether or not, by this stage I mean before the Section 18 is responded to, or whether or not they are more appropriate to be raised once the POCA procedure has been gone through. My suggestion, Your Honour, would be this. That the defendants be given a period of two weeks, from today, to make any submissions in respect of the scope of Section 18 and if any of them feel that it is appropriate, to request a hearing on that. The first three defendants will, in any event, on instruction, need a period of eight weeks, to respond.

RECORDER RUBIN: On the Section 18?

G MR SCOTT: On the Section 18.

RECORDER RUBIN: On the whole Section 18?

MR SCOTT: On the whole Section 18.

H RECORDER RUBIN: Well, if you could find out what period you need to deal with the rent and the repairs. In due course, maybe, in a minute.

A MR SCOTT: Your Honour, first of all, in terms of the rent that the first two defendants received, that is a relatively straightforward-

RECORDER RUBIN: Well, the request, let us have a look at what it is.

MR SCOTT: The request was wider than-

B RECORDER RUBIN: Number 15...[inaudible] or gross income received from 28 October 2010 to the present day, including a summary by the occupier tenant detailing the gross rental income received. Names, duration of tenancy, payment amounts, payment methods and frequencies. Details of who received the rental income. Bank books. Agents, tenancy agreements. It goes back obviously seven years. Is it not six years the limit, I thought?

C MR SCOTT: Your Honour, there are two issues with the time period, Your Honour is quite right. We would argue the appropriate time is six years, but we would also say that the end date would be the date of the conviction, rather than to the present day. I have to say, as I'm standing here, I don't know whether those arguments are necessarily correct, but it does seem to me that is an issue.

D RECORDER RUBIN: The date of conviction was in-?

MR ROBB: I am reminded and it has been discussed in this court several times. It is to the date of the hearing on POCA that the period runs. In other words, any benefit that is obtained even between conviction and the date of that POCA hearing is-

E RECORDER RUBIN: Well that is not very many weeks, is it, so- You have got to put forward- At the moment, there is a finding by the District Judge that this rental was obtained since 2011.

MR ROBB: Yes.

F RECORDER RUBIN: And I do not know whether that is going to be challenged by any further evidence or not, or as to what the condition of the premises was at any prior period, and what evidence you are intending to adduce in relation to that.

MR SCOTT: And I can't assist with that at this stage.

RECORDER RUBIN: But it does seem to me that the scope of- You have been whispered some instructions?

G MR SCOTT: I have, and I think this would be a matter for evidence later on. My understanding is that, at a date in 2011, it was accepted by the District Judge that they were legitimate tenants initially, so the overcrowding came at some point-

H RECORDER RUBIN: Well there are two issues. As I have made clear, I am not convinced that the overcrowding issue is necessarily the heart of this issue, although I am not ruling it out. The issue, as I have said, I made it clear in my judgment, is the failure to comply with regulations,

A that is clear. I mean, I think that Parliament ought to have a charge of grossly overcrowding property, which may well be something it should have in law. That is not the charge, so we have got to be careful what these people are confiscated for, and that requires me to look at the nature of the rent and whether it was all forfeitable or whether it should be reduced or ignored.

B MR ROBB: Your Honour, it is pointed out to me, that the last of the charges on the Section 95 (2) for Harsha Shah, and therefore Sanjay, was failure to consult with the Local Authority when putting more people into the property than were allowed under the selective license, and you will recall there were seven allowed. So the Authority's view is that that is very clear. It is a criminal offence of not consulting, and then-

C RECORDER RUBIN: Not consulting meaning, so they-

MR ROBB: They just shoved a lot more people in – overcrowding it.

RECORDER RUBIN: Yes, but that is not the point, I think we discussed before, was it? I do not think we had that mentioned last time.

D MR ROBB: No, but there isn't a specific charge of overcrowding, but the Authority's argument, as we all imagine it will be, you couldn't have committed these criminal offences without overcrowding.

E RECORDER RUBIN: Well it depends on what the offences are – I mean blocking a fire escape is an offence, it does not matter about overcrowding. Well I say it does not matter, but I think there is an argument that that is just an offence and having a washing machine in the garden is an offence, it is not necessarily- you can have a lot of people in the house or very few people in the house.

MR ROBB: Yes.

F RECORDER RUBIN: I think you are going to have to analyse in what respect your claim to the confiscation of rent is advanced.

MR ROBB: Yes, I mean we will be arguing that it is all the rent and alternatively, because we have to consider proportionality, or the court does, it's what proportionate to claim in respect of rent, for instance, for failing to consult the Authority before showing a load more people in.

G RECORDER RUBIN: Well that is interesting, further charges, which affects two of them.

MR ROBB: -which affects two of them. What is proportionate, to get back in rent, when you could have rented out the property lawfully, to a certain number of people in these different periods. So there's going to be alternative ways forward.

H RECORDER RUBIN: Well I am sure that- Listen, it obviously requires some consideration, in the light of my ruling as to how you are going to put it. But I know Mr Scott had not finished yet,

A so shall I just wait for him to continue and then we will come back to you.

MR SCOTT: Yes, Your Honour, thank you. I had almost finished. There are clearly a number of arguments to be had and submissions to be made on the scope of the benefit, whether it rightly includes rent, whether it includes all the rent. It may be that the appropriate time to have those arguments is after Section 18 has been responded to, Section 16's statement has been served, and then responded to. In other words, just before or at the substantive hearing-

B

RECORDER RUBIN: The Section 16 statement is the prosecution's case.

MR SCOTT: Yes, yes.

RECORDER RUBIN: So this would give us 12 weeks before or more, before we even resumed.

C MR SCOTT: Yes, I suspect longer. Your Honour, what I am seeking today is a period of two weeks, 14 days, during which the defendants can consider whether or not it is appropriate to make any submissions or applications, simply as regards to Section 18-

RECORDER RUBIN: And then if you decided there were, what would you do?

MR SCOTT: Then we would list the matter for an application to be made. We would timetable to be set for skeleton arguments, etc.

D

RECORDER RUBIN: Well I would give directions- If I went down that road I would give directions today, and fix a date. If I went down that road, but I am not saying I will, I have not heard from Mr Robb on that.

E MR SCOTT: So, if Your Honour was minded to fix a timetable today, my application is that the initial period for the Section 18, first of all, should be eight weeks, to respond to that.

RECORDER RUBIN: Eight weeks from now, or eight weeks from your two weeks?

MR SCOTT: Eight weeks from my two weeks.

RECORDER RUBIN: So you want 10 weeks?

F MR SCOTT: Effectively, yes. I don't know, because it's too early to tell, but the Section 16 statement, I expect, will raise a whole host of issues, and will take some considerable thought and time in the period of response. I believe the timetable suggested is six weeks.

RECORDER RUBIN: This is step three, is it?

MR SCOTT: This is step three. Step two is the Section 16, step three is the Section 17 response. The first and second defendants, bearing in mind, in particular, the second defendant does not live in the UK, and the first defendant shuffles between the UK and India, my application would be for a period of three months for that reason.

G

RECORDER RUBIN: For which?

H MR SCOTT: Three months for the Section 17.

A RECORDER RUBIN: Step three, you want three months?

MR SCOTT: Yes. Your Honour, three months may seem a long time, however, in my experience, and, I have to say, honest experience, when one starts going back six years, looking at income and expenditure, and when one starts applying the presumptions-

B RECORDER RUBIN: When you are doing this, are you considering the whole of the Section 18 request?

MR SCOTT: Well, the Section 18 request is a-

RECORDER RUBIN: I know what it says, but some of it is easier to find than others. When you wait three months, is that under the assumption I order all of the Section 18 request to be provided?

C MR SCOTT: Yes, I suppose it is. Three months- 12 weeks, is for all the Section 18.

RECORDER RUBIN: Right. Well, what would the position be if it were just 15 and 16?

MR SCOTT: Off the top of my head, I don't know, but I suspect it would be shorter because-

RECORDER RUBIN: I should think so.

D MR SCOTT: Well, certainly for the first two defendants because they will not know, all they will know in relation to Section 15 is that the £2,900 they received, I suspect, I would take instructions.

E RECORDER RUBIN: I will rise if you want to-. There are options here, I am going to hear Mr Robb obviously, but I mean one thing would be to just progress with the more focussed 15 and 16, and get some more points of principle out the way and then work out how much you will get, if I decide how much money you would have to pay, in principle. I mean, I do not know whether that would then necessitate the Section 18 information being obtained or not, it may be it would. It may be the amounts I rule are such that the clients would pay them, without any further investigation. I just do not know what is going to happen. But it does seem to me that that is one option. The other option is to have a complete exercise and have the whole thing done, in which case we are not going to resume until some time in the autumn I would have thought, or late summer.

F MR SCOTT: Yes. Your Honour, my initial response to that is it's a very sensible proposition. However, I do wonder if it would be possible for Your Honour, or another judge, to make a preliminary ruling, on the basis of the Section 18 response. It may be more appropriate for that to take place after the Section 16 statement has been provided, because that Section 16 statement will set out what the counsel says, is what the Local Authority says, is the benefit.

G RECORDER RUBIN: But I am a little bit confused, what is this two weeks you want for?

H MR SCOTT: The two weeks is to raise any preliminary submissions-

A RECORDER RUBIN: Well, you know what they are, you raised them last time.
MR SCOTT: Your Honour hasn't made a ruling on them.
RECORDER RUBIN: I know, I mean, it is really up to you, I mean, if you want these ruled on, if you
are asking, I am not saying I will rule on them. If your application is, I should now to rule on
B these others, in ignorance of any more detail on this case, then that may be your submission.
But if it is not, let us not worry about the two weeks.
MR SCOTT: Your Honour, that is not my application today.
RECORDER RUBIN: Well, I think you need to- Let us have a debate and then you will think about
it, and then we will resume. But anyway, let me hear what Mr Robb has to say and then I think
C everyone- Sorry, counsel, Miss Tavakoli and Miss Langevad, do you have anything to add?
MISS TAVAKOLI: No, My Lord, I would adopt the submissions made.
MISS LANGEVAD: I would also adopt the submissions made. I think Mr Lyons raised at the last
occasion that if a Section 18 question needed to be circulated today, that he would like some
D time to comment on the scope of it. Mr Scott has made that point today, so I would support
that.
MR ROBB: Your Honour, we would need to say that you need to get the questions asked at 15 and
16 dealt with, first off, as soon as possible, with a sensible timeframe, which we would say is
six weeks. On the back of that, the counsel can respond, again in six weeks-
E RECORDER RUBIN: You can provide your Section 16-
MR ROBB: In fact, make it four weeks. No, I'm being told six weeks. But I mean the point is there
is a lot less information to analyse, if that's all that we are getting, so we get the information on
the key aspects, which is the rents and the savings, we respond on those. If there are point of
F principle, at that stage, that need to be dealt with in the light of that information, for instance, is
the pecuniary advantage or the benefit received more than £5,000 a shot, that sort of question,
then we can deal with the question that my learned friend, Mr Scott, has posed, as being
remaining issues of principle. Is there a criminal lifestyle, is it disproportionate, bearing in
mind the convictions, etc. and is rent a benefit at all, or in part, which are the three issues he has
G raised as potential issues of principle that remain. It seems to the counsel that those are matters
which can be dealt with once we get this initial information on these key points. At that stage,
a ruling can be made, and if the Authority feel that it needs some or all of the information that
is currently set out, then a separate timetable can be set out at that stage. So we would hope
that we can get on with these two points.
H RECORDER RUBIN: Well I think therefore the point of principle that we have teased out of all this,

A which Mr Scott will have to consider, is, is he opposing me ordering 15 and 16 at the moment,
or does he want to consider them and make his application in two weeks' time. By posing that
question may not suggest that I am thinking that is a good or a bad idea, I have not decided
that. But I am not encouraging or nor discouraging it, I just want to know what your position
B is in the light of the debate. Before he considers that with his clients and his instructing
solicitor, is there anything else you want to say in response to what he said?

MR ROBB: Not really, Your Honour, no, we don't think that a sensible debate can be had until we
get to the main section.

RECORDER RUBIN: You say his proposed determinations will run into the same obstacles as we
C may already, in a sense, have done before, which is it is all too theoretical.

MR ROBB: Yes.

RECORDER RUBIN: Well, listen, I will give you 10 minutes to consider that with your client. Just
out of interest, and it is not in any sense for any particular reason, I just want to know who is in
court. Are any of your clients in court? Are any of the defendants in court?

D MR SCOTT: No they are not, Your Honour. There is one- Sorry, there are no defendants in court.

RECORDER RUBIN: Are there any representatives of the defendants, lay representatives in court,
persons in the public gallery who are representing you?

MR SCOTT: I think there was a relative of the fourth defendant in court.

RECORDER RUBIN: There was-

E MISS TAVAKOLI: The daughter.

RECORDER RUBIN: Is here in court?

MISS TAVAKOLI: Yes.

RECORDER RUBIN: Can she identify herself so I can-. It is only out of my own interest, I am just-

F Thank you very much. Do you need 10 minutes, Mr Scott?

MR SCOTT: Your Honour, yes, that would be very helpful.

Court adjourns at 11.37am.

Court resumes at 11.52am.

RECORDER RUBIN: So, where are we?

G MR SCOTT: Your Honour, yes, I am very grateful for both Your Honour's suggestion as to a way
forward having had time to consider it. Having spoken to those instructing me and to
Mr Robb, Your Honour's suggestion makes sense. So what I would suggest then is that we
have a Section 18 within six weeks, limited to-

H RECORDER RUBIN: I do want to just talk about the dates. Tell me, you are limited to- I know, I

A anticipate you want to say, to 15 and 16.

MR SCOTT: 15 and 16, within six weeks.

RECORDER RUBIN: And then you want how long?

MR SCOTT: The six weeks takes us to 8 March, then we still would like six weeks for our Section 16
B reply, that's to 19 April. Then Section 17, responding to our Section 16, within six weeks, takes us to 31 May. We can provide a response within four weeks, that's 28 June, and then what we would like, Your Honour, is to set a date for a mention now, at the end of that process, at a time the court can handle it.

RECORDER RUBIN: Well, I do not know about my own availability, but a hearing can be had. I do
C not think, well, tell me what you think. Are you going to argue that only I can deal with this, or can any judge of the court deal with it?

MR ROBB: Our views are that any judge can deal with these following issues, now that you've dealt with *Sumal and Sons (Properties) Limited v London Borough of Newham*.

RECORDER RUBIN: And do you agree with that Mr Scott?

D MR SCOTT: Your Honour, I do, yes.

RECORDER RUBIN: And also Miss Tavakoli and Miss Langevad?

MISS LANGEVAD: Yes, Your Honour.

RECORDER RUBIN: You want to do it. So you can go back into list in July, is what you are
E saying? And-

MR ROBB: For a half-day mention, to deal with these preliminary issues. We would suggest that it might be sensible for both sides to submit a skeleton argument before that.

RECORDER RUBIN: So skeleton argument-

MR ROBB: Skeleton argument from the defendants raising any preliminary issues they wish to, two
F weeks before the hearing. Prosecution's skeleton argument in response a week before the hearing, dealing with any preliminary issues that they feel are right.

RECORDER RUBIN: Just so we are clear about that, we are not going to have the Section 17. 28 June is your response, is it not?

MR ROBB: 28 June is our response to their Section 17, which itself responds-

G RECORDER RUBIN: No, I have got that. They need to look at your response, and then they need to- so you cannot have a-, they have got to have some time after 28 June to work out what they are saying.

MR ROBB: Yes, and then they have a mention perhaps in-

H RECORDER RUBIN: Well they do not know what they are going to be-. So it is going to be take

A them a couple of weeks to do that and then to work out what they want to do, and then a couple of weeks they have got to file the skeleton, so it is a month after 28 June before it is the first date we can have.

MR ROBB: Yes.

B RECORDER RUBIN: Well that makes it late July, which, well, the court will have to, that is the earliest. What is the earliest date that we are agreed that it should be on? Can I have a look at a calendar here?

MISS TAVAKOLI: I was instructed differently to the defendant, but I understand that the direction the court is going-

C RECORDER RUBIN: What are you instructed?

MISS TAVAKOLI: For the record, Mr Shah would like to maintain the two weeks to respond to the Section 18, but obviously all the defendants have to be dealt with in the same way, so-

RECORDER RUBIN: You want a hearing in two weeks' time?

D MISS TAVAKOLI: The argument that Mr Scott made at the beginning, about the scope of the enquiry, that remains-

RECORDER RUBIN: -your position. And what would the advantage be of having a hearing in two weeks? Is there anything that you think might be practically obtained in that two week period that we are missing out on by the current arrangement, about the discussion?

E MISS TAVAKOLI: No, I think it is exactly in that discussion, it is the scope of the enquiry and whether it is proportionate or what is not. There's nothing new.

RECORDER RUBIN: Very well.

F MR ROBB: Forgive me, just so that I am sure we are all on the same page as regards dates. We get to, in terms of the response to the Section 17 statement; we get to the counsel's supplying its response by 28 June.

RECORDER RUBIN: Yes, at the moment we have got 19 April, 31 May and 28 June. 8 March, there we are. 8 March, 19 April, 31 May, 28 June. So we now need a date.

MR ROBB: I would suggest that we need a date for a mention and then before that, the skeleton arguments.

G RECORDER RUBIN: So, skeleton arguments would have to be filed, I would have thought. 19 or 26 July for the skeleton argument. What do you-?

MR ROBB: Let's do 19 July.

RECORDER RUBIN: For D's skeleton. And then your response by 26 July, yes?

H MR ROBB: Yes.

A RECORDER RUBIN: Hearing not before 2 August. But I think, in practical terms, it may not be anything significant to the court, that will mean that I would not be available, but the court may well anyway, I think we may well think it is the sort of case where it might be convenient if one of the regular judges had some conduct of it, so we may do that anyway. But if it were decided, by the powers that be here, that I was to do it, that would then not be till September.

B There is no way around that.

MR ROBB: I am being urged to take a September date anyway because of problems in August, but, Your Honour-

RECORDER RUBIN: Well if the defence do not object to a September date, then-

C MR SCOTT: Your Honour, I appreciate it is simply a matter for my convenience, but just so that the court is aware, I can't do September at all, I start a four-month trial in September so I am out of action.

RECORDER RUBIN: Can you make an August date then?

MR SCOTT: I can make an August date, yes, for a mention.

D RECORDER RUBIN: Well then, I think then if you can, you should, so we will have to have it in August.

MR SCOTT: 2 August I think would certainly work for me and I don't know if others have children's holiday commitments.

E RECORDER RUBIN: I think it is going to be fixed in the usual-, it is a mention so, obviously-. Well it is not a mention as such, it is listed for submissions, is it not?

MR SCOTT: Yes, I would suggest that it is a mention, albeit that it would be fixed for half a day, which would enable two things to happen. One for submissions to be made. It may also and often, in my experience, does, allow discussions to be had in the lead up to that, which would effectively shorten the proceedings.

F RECORDER RUBIN: Before that?

MR SCOTT: Before that and on the day.

RECORDER RUBIN: Okay, so, I will take a note of this. Why do you not-. Let us imagine we went along with that, we would have to fill in these forms, would we not?

G MR ROBB: You would have to strike out those parts of the order that do not apply, so we are left with 15 and 16.

RECORDER RUBIN: What would I do with this thing?

MR ROBB: You would have to fill in the relevant dates with these seven dates. So first of all-

H RECORDER RUBIN: Well, first of all, let us see where we are not in dispute, which is the-

A MR ROBB: Section 18 provision of information by-
RECORDEE RUBIN: Well, I say not in dispute, I mean, in practical terms, unless you get this done
in the first and second weeks, first week in July, in reality I am not going to be able to do it
anyway. I think, because I am out, so basically, I am not going to impose a faster timetable
than the parties want, as in the [inaudible]. Have we not got a sentence as well?

B MR ROBB: That will be dealt with at the confiscation hearing, at the final hearing.
RECORDEE RUBIN: There is no dispute that that should happen then? No. So, number one we
have got 8 March, have we not?

MR ROBB: Then number two is 19 April. Number three is 31 May. Number four is 28 June.

C RECORDEE RUBIN: Well, I am going to leave number four for the moment, and make a note of
that, and then I have got the skeletons, but I need to consider something with the court, as to
whether we have an August or September date. So I will resume in about 10 minutes, okay?

Court adjourns at 12.08pm.
Court resumes at 12.27pm.

D RECORDEE RUBIN: Now, I have had a message that there is a counsel availability issue, is that
right?

MISS TAVAKOLI: I have Mr Lyons diary and he is in, it looks like a 10-week trial.
RECORDEE RUBIN: Yes, but from when?

E MISS TAVAKOLI: It ends on 5 September.
RECORDEE RUBIN: If it ends on 5 September, then we can do it in a week, but-. Oh I see, so you
mean he cannot be there in August. Okay, so we have got, I am just thinking. Just give me a
moment. He could not make 2 or 15 July, could he?

MISS TAVAKOLI: No.

F RECORDEE RUBIN: Mr Scott, how are you in July?
MR SCOTT: I am relatively free in July. Your Honour, I think the reality is it is unlikely a date can
be fixed which will suit every counsel in this case.
RECORDEE RUBIN: All right, well I am sure that is a problem.
MR SCOTT: I will check my-

G RECORDEE RUBIN: You have got this trial in September, did you say?
MR SCOTT: My trial starts at the beginning of September. In July, I have a trial finishing on 6 July,
but it will probably finish before then, so in effect I'm free for most of July. Mr Robb is telling
me he's not free in July.

H MISS TAVAKOLI: In relation to July, the Crown's response is not due before 26 July-

A RECORDER RUBIN: Well, we do not know yet, because I have not fixed all the final dates yet. But I note your point, that is a fair point. I think it is 28 June actually.

MR ROBB: 28 June, prosecutor's response is set for, then there are skeletons through July.

B RECORDER RUBIN: I am just seeing whether or not in practice we could- I am actually thinking the timetable is actually too long anyway, these six weeks periods. I have to say I am concerned about them. I think what I am going to do is, anyway, reduce them, because I think actually there, I do not think this is enough. If I am only doing 15 and 16, I think I am going to give the defendants four weeks, unless they scream that there is a reason why that cannot be done and that would mean-

C MR SCOTT: Your Honour, may I scream at the moment?

RECORDER RUBIN: Why?

MR SCOTT: The first two defendants are due to come back into this country on 24 February.

RECORDER RUBIN: Oh, I see.

D MR SCOTT: There is undoubtedly some work we can do before then to assist in providing a response, but I think they will need -

RECORDER RUBIN: Why is it only then that they are coming back? Can they not come back earlier?

MR SCOTT: Those are my instructions, Your Honour.

E RECORDER RUBIN: Yes, I think that I am going to reduce it at least by a week anyway, so I am going to make that 1 March; and then I am going to reduce the prosecutor's response by two weeks, to make it 29 March; and then I am going to reduce the defendant's response to four weeks, 26 April; then I am going to have the prosecutor's response at three weeks, which is 17 May; and then that means we need a week for you to consider, three weeks for the skeleton which is by 7 June; and the prosecution's response, 14 June – can you do it in that time, one week? I think that may be a little ambitious, I am going to give you until 21 June and then I am going to have this to be listed not before 1 July, so that basically means for a half-day mention, which means a date in July.

G MR ROBB: Would it be possible to have it in that week, if it is-

RECORDER RUBIN: You mean the week of 1 July.

MR ROBB: Then I am here.

H RECORDER RUBIN: Can we have it on a date in the week of 1 July, for half a day? If you could put it in the diary. It will be half a day and who will hear it, is a matter of the court's availability, it could be Judge Wood, it could be me, but it will be a date on 1 July. Would you

A like me to choose a day?

MR ROBB: If it would be possible, the 3rd or 4th would be ideal.

MR SCOTT: 4th is better.

RECORDER RUBIN: Okay 4 July, half a day. There we are, we have made progress. Sorry if that is
B inconvenient, it sounds like Miss Tavakoli, your predecessor, whatever he was called-

MISS TAVAKOLI: Mr Lyons.

RECORDER RUBIN: Mr Lyons is unavailable for the whole summer, it seems, is it not? So I do not
 think we can do much about that. It is the least worst option. And then anyway, these things
 sometimes do not always become effective once the information is available. Good.

C MR ROBB: Thank you for your time.

RECORDER RUBIN: It still means I have got to do a few things, so I have got to change some
 paperwork, so let us just wait. Have you got any more copies of this?

MR ROBB: Yes, we can give you new copies from which we have- Yes, we will give you new copies.
 We've struck out the relevant parts of the order, but I'm sorry could I ask-

D RECORDER RUBIN: Oh, you have done that, have you?

MR ROBB: In fact, if Your Honour looks at the first line of each order, that needs to change to
 1 March, not 8 March.

RECORDER RUBIN: Okay.

E MR ROBB: Yes, and we have limited that in here. What we have done is we've struck out all but 15
 and 16 of the Section 18.

RECORDER RUBIN: So these are the four things I need. That is the actual orders for production and
 then I need to make this-. It will be just one and two. Sitting at Harrow. Hang on a second.

MR ROBB: We are going to give you a clean copy of the timetable as well.

F **.Pause.**

RECORDER RUBIN: That should have been logged. One second. Those are the Section 18 orders.
 I will give you those. These are to be deleted. Those are to be binned, these ones. They have
 to be stamped. That is for the bin. So going through the order. The defendant provided
 information under 18, within six weeks of this order. I think we changed that to five weeks, did
G we not? To 1 March?

MR ROBB: Yes.

RECORDER RUBIN: So I will alter that. Prosecutor – Section 16 – four weeks – which is correct.
 Defendant's response, 26 April, is four weeks, not six. So I will change that. The prosecutor's
H response within four weeks, I think we have now got that down to three weeks? Due to a

A mention... well it is not an update is it, it is for submissions?

MR ROBB: Yes.

RECORDER RUBIN: So it is date for mention and submissions on what issues, further preliminary issues?

B MR ROBB: Yes.

RECORDER RUBIN: Threshold issues. And then it says here, half a day. Defend SUA. I do not know what SUA means?

MR ROBB: It's skeleton argument, SKA apparently.

RECORDER RUBIN: SKA. Now they are to be exchanged, and when are they going to be lodged?

C When they are exchanged, what happens, are they immediately lodged at the court?

MR ROBB: Yes, they'd be-. Yes.

RECORDER RUBIN: Exchanged and logged on those dates, with authorities attached. I will go through this in a minute and you can note it down. I will read it all out. So what it is, it is going to be as follows:

- D
1. The defendant to provide the information required under Section 18 of POCA, within five weeks of the date of this order, being 1 March 2018.
 2. Prosecutor's Section 16 statement, to be served within four weeks thereafter, that is 29 March 2018.
 3. Defendant to respond (Section 17) to the Section 16 statement within four weeks thereafter, 26 April 2018.
 4. Prosecution response, if any, within three weeks thereafter, compliance date 17 May 2018.
 5. Date for mention, to see if matters can be agreed, and submissions on further threshold
- E
6. Defendant's skeleton, 7 June 2018.
 7. Prosecution response skeleton, 21 June 2018.
 8. All such to be exchanged and lodged on those dates with authorities attached.
- F

Yes?

G MISS TAVAKOLI: Yes.

RECORDER RUBIN: Now that order is now available and that needs to be stamped by-. You get that?

MR ROBB: We get that, yes.

H RECORDER RUBIN: Very well, here you are then. Right. I have a copy of the Housing Act.

A MR ROBB: That was supplied by the Council.

RECORDER RUBIN: Yes, I am quite happy to hand it back, but I think it was useful and you should provide the judge with it on the next occasion.

MR ROBB: We will. I am very grateful.

B RECORDER RUBIN: Now, a copy of the judgment is on the transcript and that is, as I said, the determinative copy. These copies you have around, as you will, are broadly the same, but if you want me to just do the typos on them now, I will just very quickly do those, so you have got them. So who has got a copy of this thing? So paragraph six, second word. Get them out and then you will be ready. Are you ready, everyone?

C MR SCOTT: I've mislaid mine.

RECORDER RUBIN: Paragraph six, the second word should be 'two defendants were'. Third line, in respect of regulation of the property, not management. Paragraph nine, penultimate line on the page, after the word available '- in other words precluded'. Paragraph 16, before the figure 96 (3), should be an s. for section. Paragraph 22, sixth line, Section 95 (2) not 94 (2) and penultimate word 'further notice'. Paragraph 24, fifth word 'the' instead of 'he'. Paragraph 36, sixth or seventh word, Section 95 (2), not 94 (2). Page 15, Paragraph 40, but it is over the page, third line from the top of the page - yours is different to mine because I have got a slightly bigger font to you - but it is the word bene should be been, it is just before the word brought apart before Section 72, I do not know if you have seen that, but it does not matter, it is not an important typo. Very well, those are all the typos. Thank you.

D

E MR SCOTT: Thank you, Your Honour.

MISS LANGEVAD: Your Honour I just wanted-. It will come out later in the skeleton argument, but I understand Mr Valand raised on the last occasion, but I am just reiterating for convenience, is that one of the issues that will be raised in our skeleton will be that rent can't seek to go behind Mr Valand's evidence in the appeal, I think he raised that on the last occasion. I think that there has been different evidence about the amount that Mr Shah received, that was given on appeal for Mr Valand, as per the District Judge's ruling.

F

RECORDER RUBIN: Okay, well that is a question of what is admissible on such a hearing.

G MISS LANGEVAD: On 4 July [inaudible].

RECORDER RUBIN: 4 July is for legal argument only, is it not? So defendants are excused unless there is any objection.

MR ROBB: We have no objection to not being here. My learned friend mentioned and he's quite right, they normally are, but if it is for legal submissions, we have no objection.

H

A RECORDER RUBIN: No, I think they can be excused, it is only just something to delay us, I mean
when one of them does not turn up, which unquestionably would happen. Very good. Okay,
well I think that resolves our business for today. Thank you for your time.

MR ROBB: Thank you, Your Honour.

Court rises at 12.52pm.

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