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Case No: CO/947/2019

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATION COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 06/05/2020

Before :

LORD JUSTICE HOLROYDE
And
MR JUSTICE WILLIAM DAVIS

- -

Between :

MR ABIM OLABINJO	**Claimant**
- and –	
WESTMINSTER MAGISTRATES COURT	**Defendant**
- and –	
CROWN PROSECUTION SERVICE	**Interested Party**

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- -

Adam Tear (instructed by **Scott Moncrieff & Associates Ltd**) for the **Claimant**
Tyrone Silcott (instructed by **CPS**) for the **Interested Party**

Hearing dates: 28th April 2020

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Approved Judgment

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LORD JUSTICE HOLROYDE AND MR JUSTICE WILLIAM DAVIS

This is the judgment of the Court**:**

Introduction

1. On 6 November 2018 the Claimant was committed to prison for 227 (subsequently amended to 226) days by District Judge Kreiman sitting at the Westminster Magistrates' Court. The sentence was a default sentence imposed to enforce a Crown Court confiscation order. The Claimant now applies with leave for judicial review of the decision to commit him to prison. He has served the sentence. The remedy he seeks is a declaration that (a) in violation of his Article 6 rights he was not given a fair hearing and that consequently (b) he was deprived of his liberty unlawfully and in violation of his Article 5 rights.

2. His case is twofold. First, he was not legally represented at the hearing on 6 November 2018. He asserts that the District Judge declined to allow him to instruct a solicitor. As a result he was deprived of a fair hearing. Second, the decision to impose the default sentence was made when the District Judge did not have all the relevant material before him. In any event, the District Judge erred in that he did not apply the correct legal test before committing the Claimant to prison.

3. The Magistrates' Court has entered an appearance but has made no representations in these proceedings. The Crown Prosecution Service, as the Interested Party, oppose the application for judicial review. They argue that the Claimant was not refused legal representation. Rather, he chose not to be represented. Further, in the light of the history of the enforcement proceedings, the District Judge was entitled to activate the default sentence.

4. It is conceded on behalf of the Claimant that it would have been preferable had he applied for the District Judge to state a case in relation to the hearing on 6 November 2018. That would have provided a clear basis of fact on which to judge whether any error was made by the District Judge. Judicial review proceedings are less appropriate when matters of fact are in issue. However, where a proper inference can be drawn from the available materials, this court can make findings of fact even in proceedings for judicial review.

History of the criminal proceedings

5. On 19 December 2013 in the Crown Court at Isleworth the Claimant was convicted of three offences of false accounting. He was sentenced to a term of 6 years' imprisonment. His application for leave to appeal against the sentence was refused by the single judge. The Claimant renewed his application to the full Court. That renewed application was refused on 17 June 2014.

6. Confiscation proceedings were taken pursuant to the Proceeds of Crime Act 2002. On 24 April 2015 a confiscation order was made against the Claimant. His benefit from his particular criminal conduct was assessed in the sum of £401,940.00. This was the amount which the Claimant stole by means of the false accounting of which he was convicted.

7. The victim was a not-for-profit company of which the Claimant was the CEO between 2004 and 2007. The order specified (pursuant to Section 13 of the 2002 Act) that the sum confiscated was to be paid by way of compensation to that company. The available amount was assessed in the sum of £14,238.50. The schedule of assets attached to the confiscation order identified this sum as the Claimant's beneficial interest in a property at 215 Burnt Ash Hill, London SE12. The Claimant was given 6 months to pay the sum due.

8. The Claimant applied for leave to appeal against the confiscation order on the basis that the order was disproportionate. His argument was that the property at Burnt Ash Hill was the family home and that he could not satisfy the order without the property being sold. His application was made 18 months out of time. The application was refused by the single judge. The Claimant renewed this application before the full Court. The renewed application was refused on 26 October 2017. In its judgment the Court noted that both the benefit figure and the available amount had been the subject of agreement in the Crown Court. The Court rejected the proposition that it was disproportionate to make a confiscation order based on the Claimant's beneficial interest in the property.

The Claimant's evidence

9. The application for permission to apply for judicial review, filed by claimant in person whilst in prison, was supported by a hand-written statement of facts signed by the Claimant on 7 March 2019. He stated that an extension to the original confiscation order had been made in April 2016 against the family home. Initially he had paid modest instalment payments each month to discharge the confiscation order. In December 2017 the court had asked him to try and raise a loan. The court at the same time had advised the Crown Prosecution Service confiscation unit to remove the restraint order on the property at Burnt Ash Hill in order to facilitate the loan. The Claimant stated that applications to various finance companies for a loan had been declined because of the existence of the restraint order. The court thereafter had ordered the Claimant to write to the confiscation unit asking that unit to remove the restraint order. The Claimant had complied with this order but the restraint order had remained in place. In July and September 2018 there had been hearings in which the court had said that the Claimant had done everything possible to satisfy the confiscation order but the refusal to remove the restraint order had frustrated every attempt to obtain a loan. The court had agreed that the Claimant should try and get a job in order to fulfil a monthly payment plan. At the hearing on 6 November 2018 the District Judge had simply asked him whether he had a job but gave him no chance to explain that he was awaiting the results of interviews. The order for commitment to prison was made despite the Claimant having completed legal aid forms and asking to see the duty solicitor.

10. When granting permission to apply for judicial review the single judge ordered the Claimant to file a witness statement in support of his grounds. This statement is dated 18 October 2019. The Claimant stated that, as a result of his conviction in 2013, his indefinite leave to remain in the United Kingdom had been revoked whilst he was serving the sentence of six years' imprisonment. As a consequence, he was not permitted to work. He said that he had hoped to secure a job so that the Home Office would change their mind and allow him to work. He said that he had applied for loans

because the court had ordered him to prove that he would not be eligible for a loan. He had repeatedly applied for loans. On every occasion he had been told that he could not qualify for a loan because he was not working. The Claimant stated that the Crown Prosecution Service knew that he had been subject to immigration detention at the expiry of his sentence and that he then had been released on immigration bail. Therefore, they were aware that he had no right to work in this country. He said that he had tried to explain to judges at Westminster Magistrates' Court about his immigration status and its effect on his ability to work and to obtain a loan. They had nearly always not understood the issues. He had attended court on 6 November 2018 to explain that he had not been able to locate a job and to obtain a loan because of his immigration status.

The enforcement proceedings

11. Before the commitment of the Claimant on 6 November 2018 there were no fewer than 20 hearings listed before the Westminster Magistrates' Court. The first was on 23 February 2016. Not all of the hearings were effective. Prior to his release from custody there were several occasions when the Claimant was not produced whether in person or via a video link. However, there were at least ten effective hearings prior to 6 November 2018.

12. The only court record of any hearing which we have is the note made by the legal advisor or court associate on 6 November 2018. The Crown Prosecution Service have provided their contemporaneous record of every hearing including the note made by their representative at court on each occasion. The following chronology – which deals only with those hearings where any matter of substance was raised - is taken from that record.

13. On 14 June 2016 the Claimant informed the court that he was waiting for the Court of Appeal Criminal Division to decide his appeal against conviction. There had been a hearing on 20 May but he did not know the result. The proceedings were adjourned for the Claimant to make progress on the sale of the property if his appeal failed.

14. On 12 July 2016 the Claimant told the court that he had received a written notice that his appeal had been refused as being without merit. The proceedings were adjourned for him to obtain legal representation and to show a realistic prospect of satisfying the order. The District Judge told the Claimant that there was a real risk of the default sentence being imposed.

15. On 20 September 2016 the Claimant said that his appeal now was with the Criminal Cases Review Commission. He stated that he would get a job on his release from prison.

16. In the later part of 2016 and for most of 2017 hearings were ineffective due to the Claimant not being produced or were adjourned without any progress being made.

17. On 19 December 2017 the Claimant said that he was taking his case on confiscation to the Criminal Cases Review Commission because there had been a miscarriage of justice. The District Judge told the Claimant that he had an asset and that he needed to

demonstrate progress that he was realising the asset. The Claimant was told that he needed to place the property at Burnt Ash Hill on the market.

18. On 16 January 2018 the court required the Claimant to make payments of £100 per month towards the confiscation order and to write to the Crown Prosecution Service setting out his proposal for release of the equity in the property at Burnt Ash Hill. This was to include a request for a variation of the restraint order permitting such release.

19. On 27 March 2018 the Claimant told the court that he had applied to Ocean Finance for a loan. Telephone enquiry from court by the Crown Prosecution Service of that company revealed no record of the Claimant on their system. The court ordered the Claimant to apply for a loan within 14 days with a copy of the application being provided to the Crown Prosecution Service. The District Judge said that the full amount of the confiscation order was to be paid by 22 May 2018 failing which the default sentence would be imposed.

20. On 17 July 2018 the Claimant produced documents relating to a loan application in May 2018 to "My Sort of Loan" and said that he had had no response from that company. The court ordered the Claimant to provide further information about the proposed loan within 2 weeks. In the absence of adequate information, the Claimant would be at risk of the default sentence being imposed.

21. On 31 July 2018 the Claimant told the court that he was unable to get a loan and that he believed that this was because of the restraint order. The District Judge expressed doubt that the Claimant would get a loan because he was not working. The proceedings were adjourned for the Claimant to provide evidence of realistic job applications.

22. On 25 September 2018 the Claimant told the court that he was making applications for jobs such as warehouse assistant. The District Judge expressed himself as being pleased about this and adjourned the case to 6 November 2018. There is a reference in the CPS record to the Claimant being represented by a Mr Henry. However, appears to be incorrect, since the record indicates that the Claimant himself addressed the court. Certainly, there was no other occasion on which the Claimant was represented in court.

23. The note made on 6 November 2018 by the legal advisor or court associate is handwritten. It would appear to be a note made as the hearing was in progress. It begins with a statement that the Claimant attends with no representation. It then sets out what was said by the Claimant. He said that he had tried his best to get employment and that he was applying for jobs and getting interviews. He stated that he had tried to realise the property. His wife and children lived there, his wife having a full-time job earning £1,800 per month. He said that the property was subject to a mortgage with equity of £14,000. (The note of that hearing made by the representative of the Crown Prosecution Service is that the equity was £28,000. In strict terms this was accurate. The figure of £14,000 clearly related to the Claimant's beneficial interest in the property.) The note then records that the prosecution submitted that matters were no further forward and that the default sentence should be imposed. It was said that the same topics raised at this hearing had been discussed previously.

24. The District Judge is recorded as saying "I am looking for a reason not to send you to custody" to which the Claimant responded by saying that he had done everything he could do and that he was not refusing to pay. The District Judge went on to give his

reasons for imposing the default sentence. He said that the Claimant had been warned in the past of the risk of activation of the sentence. He stated that it was the Claimant's choice not to be represented. He referred to the Claimant having said in March that he would attempt to get a loan to cover the amount due and on other dates that he was seeking employment. The District Judge noted that the order was 3 ½ years old and that no progress had been made. The sentence then was imposed.

25. The warrant of commitment records the fact that the court had considered or tried all other methods of enforcing payment of the sum and it appears to the court that they are inappropriate or unsuccessful.

The application for permission to apply for judicial review

26. The Claimant's application for permission was refused on the papers by Mrs Justice Simler (as she then was). She set out the essentials of the chronology. She concluded that the Claimant had had ample opportunity to obtain legal representation had he chosen to do so. He had been given every opportunity to satisfy the confiscation order within a reasonable time. The property could have been sold or used as security in order to raise the sum due. That would not have required removal of the restraint order: rather variation of the order. The Claimant had never addressed the issue of variation.

27. After an oral renewal hearing, Mrs Justice Andrews granted permission. In her reasons she noted that the District Judge on 6 November 2018 apparently had denied the Claimant the opportunity to avail himself of legal representation. She further observed that the District Judge might have thought that the Claimant's share of the equity was larger than in fact it was and that the judge may have thought that the salary of the Claimant's wife was relevant. Finally, she considered that the Claimant might not have appreciated the implications of the withdrawal of his leave to remain on his right to work and the consequential effect on his ability to raise a loan.

The legal framework

28. The Interested Party accepts that the Claimant qualified for legal aid in relation to these enforcement proceedings and that, consistently with the principles of natural justice and the right to a fair hearing guaranteed by Article 6 of the ECHR, he was entitled to legal representation if he sought it. However, no authority was cited to this court to suggest that a court is required to provide a person facing enforcement proceedings with legal representation if he does not seek it.

29. Enforcement of a confiscation order made by the Crown Court is vested in the magistrates' court: *S.35 Proceeds of Crime Act 2002.* For the purposes of enforcement, a confiscation order is treated as if it is a fine. Thus, the provisions of Section 76 and 84 of the Magistrates' Court Act 1980 apply. The relevant part of Section 84 of the 1980 Act is as follows:

> *"84(2) .....the court may not.....issue a warrant of commitment for a default in paying any such sum unless —*
> *....(b) the court —*

> *(i) is satisfied that the default is due to the offender's wilful refusal or culpable neglect; and*
> *(ii) has considered or tried all other methods of enforcing payment of the sum and it appears to the court that they are inappropriate or unsuccessful."*

As explained in *Munir v Bolton Magistrates' Court [2010] EWHC 3794 (Admin)* and *Cooper v Birmingham Magistrates' Court [2015] EWHC 2341 (Admin)* the meaning of that sub-section is clear. It requires the court to be satisfied of wilful refusal or culpable neglect on the part of the person before the court before any default sentence can be imposed. It further requires consideration of other methods of enforcing payment of the sum.

The parties' submissions

30. On behalf of the Claimant it is argued that anyone at risk of being deprived of their liberty should be legally represented unless that person has indicated clearly that he does not wish to be represented. In this case the Claimant's evidence is that he had asked to be represented but the District Judge had proceeded without acceding to his request. At the very least there was no proper enquiry into the Claimant's wish to be represented.

31. The Claimant further submits that the District Judge fell into error in making his decision. The recorded reasoning makes no reference to "wilful refusal or culpable neglect". Thus, no express findings were made as to whether either circumstance had been established. Moreover, the Claimant should have been informed by the District Judge of the statutory criteria so that he could address them. The facts as set out by the judge cannot establish either wilful refusal or culpable neglect on the part of the Claimant. As to other methods of enforcing payment, there was no reference to appointment of a receiver.

32. The Claimant argues that, unless we are satisfied that we would have come to the same conclusion as the District Judge, the declarations sought by him should be made.

33. The Interested Party argues that the circumstances taken as a whole demonstrate that the Claimant's behaviour in relation to the confiscation order did amount to wilful refusal or culpable neglect. From an early stage he knew that, as a result of his leave to remain having been terminated, he was not permitted to work. As such any application by him for a loan was bound to fail. At no point did he inform the court or the Crown Prosecution Service of his immigration status or of the key fact that he could not lawfully work. The supposed loan applications and applications for jobs as put forward over many months by the Claimant were a charade which evidence a wilful refusal to satisfy the confiscation order. The fact (if such it be) that the District Judge did not refer to the statutory criteria cannot affect the position.

34. The Interested Party accepts that, if the Claimant was refused the opportunity for legal representation, the hearing was not fair, in which event the order made cannot stand. The submission is that the Claimant's credibility is fatally undermined by the contradictions between his signed statement of grounds and his more recent witness statement and by some of the assertions he made in the course of the various hearings

before the magistrates' court prior to 6 November 2018. In those circumstances, the note of the legal advisor/court associate can and should be taken as showing that the Claimant did not ask to be legally represented at the hearing on 6 November.

Discussion

35. The first issue to consider is whether there was a refusal to allow the Claimant to obtain legal representation and, if so, the circumstances in which that occurred.

36. Direct evidence of the course of events on 6 November 2018 in relation to the Claimant seeking legal representation comes from his signed statement of facts dated 7 March 2019. In that account he states that the hearing commenced with the District Judge asking him whether he had a job. No chance was given to him to explain that he was awaiting the results of interviews. The judge moved immediately to making the order committing the Claimant to prison even though the Claimant asked to see the duty solicitor. On that basis the hearing must have been very brief indeed.

37. In the witness statement of 18 October 2019, the Claimant asserts that he attended court on 6 November 2018 to explain that he could not obtain a job because of his immigration status. This is directly contrary to the suggestion that he was awaiting the results of interviews. No explanation is given for this contradiction. It casts doubt on the accuracy, reliability and truthfulness of the account given by the Claimant of the course of the hearing.

38. The general credibility of the Claimant is significantly undermined by an analysis of the content of the statement of facts dated 7 March 2019 and the witness statement of 18 October 2019. In the statement of facts he said that the confiscation order had been extended in April 2016 so that the order now lay against the family home. No such extension was made. His beneficial interest in the family home was identified as the available asset from the outset. He also said that the magistrates' court more than once had advised the confiscation unit to remove the restraint order on the property at Burnt Ash Hill. No such advice was given. Rather, the court advised the Claimant to invite the confiscation unit to vary the order to allow the property to be utilised in the manner anticipated in the confiscation order. In the witness statement the Claimant said that he applied for loans because the court ordered him to prove that he would not be eligible for a loan. This is wholly at odds with the fact that the court, in the light of the Claimant's repeated accounts of seeking work, anticipated that the Claimant would be able to satisfy the order via a loan.

39. Analysis of the chronology of the hearings demonstrates that the Claimant misled the court more than once. In June 2016 he said that he was awaiting the result of his appeal against conviction in respect of which there had been a hearing in May 2016. There had been no such hearing. His application for leave had been refused on the papers in April of that year. In March 2018 he said that he had applied to a particular finance company for a loan when that company had no record of him on their system. In July 2018 he told the court that he believed that he could not get a loan because of the restraint order when he knew that it was because he did not have a job. Most significantly, the Claimant at no stage told the court that his leave to remain had been revoked so that he was not permitted to work. His assertion in his witness statement that he had tried without success to explain this to judges at the magistrates' court is not credible given that his position on 6 November 2018 was that he was awaiting the

results of final interviews. Had the magistrates' court and/or the Crown Prosecution Service been aware of the Claimant's immigration status, the hearings in which applications for loans and applications for jobs were discussed would not have taken place.

40. Against the account given by the Claimant must be read the contemporaneous note of the legal advisor/court associate. At no point in that note is there any reference to a request being made by the Claimant to speak to the duty solicitor or otherwise to obtain legal representation. It is recorded that the Claimant had attended without representation i.e. the issue of legal representation was in the mind of the person who made the note. It is inconceivable that no note would have been made of a request of the kind suggested by the Claimant had that occurred.

41. The contemporaneous note makes it clear that the hearing occupied some little time and followed the course which might have been expected i.e. what was said by the Claimant, what the prosecution had to say, any further comments of the Claimant and the reasons of the District Judge. The record is consistent with the course of the various hearings which had gone before, namely excuses being given by the Claimant which in part were misleading. His assertion that he had tried to realise the property at Burnt Ash Hill bore no relation to reality.

42. In any event the Claimant had attended many hearings without representation. He had been warned on at least four occasions that he was at risk of the default sentence being imposed yet he had never taken steps to be represented. On the Claimant's account he would have had no reason to think that there was anything about the hearing on 6 November 2018 which would render legal representation advisable when he had not obtained it previously. No reason is given as to why he decided at that hearing to complete some kind of legal aid application.

43. The contemporaneous note records the District Judge as saying that he was looking for a reason not to send the Claimant to custody. There is no reason to conclude that this was not said. Assuming that the District Judge said this, it fanciful to suggest that at the same time he refused a request for legal representation.

44. We are satisfied that the only reliable account of what happened at the hearing on 6 November 2018 is the one set out in the contemporaneous note. That account does not support the proposition that the Claimant was denied legal representation. It follows that on the available evidence the principal ground upon which the Claimant relies cannot be sustained.

45. The second issue is whether the District Judge misapplied or failed to apply the relevant tests required to be satisfied before imposing the default sentence. It is correct that it is not recorded that the judge used the words "wilful refusal or culpable neglect" in the course of his remarks prior to imposing the default sentence. But that is not determinative if it can be inferred from what the judge did say that he had the relevant test in mind. We are satisfied that it can. The judge had in mind the history of the case. He referred to what had occurred in March 2018 in relation to a proposed loan. He noted that on other dates the Claimant had said that he was seeking employment. The judge must have been aware that the original confiscation order was made on the basis that the available asset was the property at Burnt Ash Hill. He was aware that no step had been taken to realise that asset despite 3 ½ years having passed since the order was

made. This is the only sensible meaning of the judge's use of the expression "no progress had been made".

46. Whether it is to be described as wilful refusal or culpable neglect, we are satisfied that the behaviour and attitude of the Claimant was entirely focused on avoiding meeting his liability under the confiscation order. That was a conclusion which the District Judge was entitled to reach and did reach. There is nothing in the reasoning of the judge which suggests that he misunderstood the value of the Claimant's interest in the property, still less that he took into account the earnings of the Claimant's wife.

47. The District Judge did not refer to the possibility of a receiver being appointed. The Crown Prosecution Service do not appear to have referred to this power. It does not follow that the court could not have been satisfied that all other methods of enforcement had been considered or tried. The Claimant's submission to that effect is contradicted by the warrant of commitment which records "the court has considered or tried all of its other enforcement methods and it appears to the court that they are inappropriate or have been unsuccessful". Moreover, there was good reason for the District Judge to conclude that the appointment of a receiver was not appropriate. There was a single property available to satisfy the order. It was wholly unnecessary for an enforcement receiver to be appointed to deal with the realisation of that asset, such realisation being entirely within the competence of the Claimant. Thus, it was not appropriate on that ground alone to consider the appointment of a receiver. Moreover, the confiscation order was to be paid as compensation to the not-for-profit organisation which had lost so much at the hands of the Claimant. Appointment of a receiver and the consequent fees would have led to a substantial dissipation of such modest recovery as might otherwise have been due to that organisation. That is a further reason why appointment of a receiver was not appropriate.

48. After the Claimant had served the default sentence and he still had not satisfied the confiscation order, the Crown Prosecution Service wrote to him on 20 March 2019 indicating that they proposed now to seek the appointment of a receiver. The Claimant points to this as evidence that such appointment was appropriate at that point which means that it would have been appropriate in November 2018. We disagree. The imposition of a default sentence often will lead to payment of the sum due. That is the intended purpose of such a sentence i.e. enforcement. When that route has failed, it may be that a course which hitherto had not been appropriate has to be considered in a different light.

49. The secondary submission of the Claimant is that the District Judge erred because he did not inform the Claimant as a litigant in person of the statutory criteria. This failure prevented the Claimant from addressing the criteria. The difficulty with this proposition is that the Claimant - as he had done throughout the long sequence of enforcement hearings - addressed the factual position in terms of his continuing attempts to meet the confiscation order. He said in terms that he had done everything he could and that he was not refusing to pay. Thus, he dealt with the issue of wilful refusal and culpable neglect. In those circumstances, the Claimant was not disadvantaged by any failure on the part of the District Judge to set out the statutory criteria. A statement of those criteria would have made no difference to the course of the hearing or the representations made by the Claimant. The District Judge did not accept those representations but that is beside the point.

50. We are satisfied that the District Judge did not fall into error in his application of Section 84 of the 1980 Act and that his order was lawful.

Conclusion

51. The Claimant fails to acknowledge the reality of his position. He had been made the subject of a confiscation order in April 2015, the amount of which was directly referable to a known and available asset. He appealed against the order. The Court of Appeal Criminal Division refused to grant him leave to appeal in the terms we have already outlined. Thus, the Claimant had an obligation to pay the sum due. Yet he appears to contend that his obligation had been replaced by some different and lesser obligation, namely to obtain work or a loan, and that his inability to meet that obligation was not culpable on his part. Moreover, in all of his dealings with the magistrates' court over many months and multiple hearings, he did not reveal a fundamental fact. He did not disclose that his leave to remain had been revoked so that he could not work, as a result of which he could not obtain a loan. It is suggested on behalf of the Claimant that the Crown Prosecution Service must have or should have known of the position because he had spent some time in immigration detention and was subject to deportation proceedings. We do not accept either proposition. The Crown Prosecution Service quite clearly did not know the position. Had they done so, they would have raised the matter with the magistrates' court. We see no reason to conclude that they should have known the position which was personal to the Claimant. Even if they had, this could not excuse the Claimant's deliberate decision to withhold the information from the court.

52. The confiscation order made against the Claimant was very straightforward. It required the realisation of the asset identified in the order. In October 2017 the Court of Appeal Criminal Division confirmed that such realisation would not be disproportionate, a view substantially informed by the fact that the Claimant had consented to the order.

53. Despite this the District Judge in November 2018 was faced with a man who had signally failed to take any steps to realise the available asset and who had engaged in persistent delaying tactics. Proper application of the test in Section 84 of the Act correctly led to the default sentence being imposed.

54. It is not for us to determine whether we would have made the same decision as the District Judge. Rather, we have to consider whether the Claimant has shown that, on the balance of probabilities, he did not receive a fair hearing and/or that the District Judge misapplied Section 84 of the 1980 Act. The Claimant has failed to do so. Indeed, we are satisfied that the Claimant did receive a fair hearing and that the District Judge applied the statutory criteria wholly correctly. This application for judicial review is dismissed.