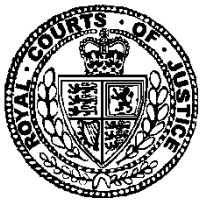

Neutral Citation Number: [2025] EWCA Crim 71

Case No: 202304206 B4

IN THE COURT OF APPEAL (CRIMINAL DIVISION)
ON APPEAL FROM THE CROWN COURT AT SOUTHWARK
HHJ Milne KC
T2019 7030

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 05/02/2025

Before :

LORD JUSTICE EDIS
MR JUSTICE SAINI
and
HIS HONOUR JUDGE LEONARD KC
Sitting as a judge of the Court of Appeal Criminal Division

- -

Between :

ELIE TAKTOUK	**Appellant**
- and -	
THE KING	**Respondent**

(Benherst Finance Limited and Chestone Industry Holding)

- -
- -

Timothy Moloney KC and **Catherine Collins** (instructed by **Peters and Peters**) for the **Appellant**
Kennedy Talbot KC (instructed by **Edmonds Marshall McMahon**) for the **Respondent**

Hearing dates : 23 January 2025

- -

APPROVED JUDGMENT

This judgment was handed down remotely at 10.30am on 5 February 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

Lord Justice Edis:

1. These confiscation proceedings arise from a private prosecution for fraud offences brought by Benherst Finance Limited and Chestone Industry Holding against the appellant. On 2 August 2021, in the Crown Court at Southwark before His Honour Judge Milne KC ("the judge") and a jury, the appellant was convicted of a total of 10 offences, comprising offences of fraud by abuse of position and fraud by representation contrary to the Fraud Act 2006 and using a false instrument contrary to the Forgery and Counterfeiting Act 1981. On 23 September 2021, before the same Court, he was sentenced (in his absence) to a total of 7 years' imprisonment. He was also disqualified from being a company director.

2. On 3 November 2023, the judge ordered the appellant pay a Confiscation Order ("the Order") in the sum of £4,549,925.29, under section 6 of the Proceeds of Crime Act 2002. The order was to be paid within 3 months, and in default a term of 8 years' imprisonment was imposed. The sum of £3,230,811.60 was to be paid from the Order as compensation to Chestone Industry Holding SCS. This is an application for leave to appeal against the Order. We grant leave in respect of two of the four grounds and, having heard full argument, we will now deal with the appeal. We will also give appropriately brief reasons for refusing leave to appeal on the other two grounds.

3. The appellant has passed the point in his sentence for the offences when he was entitled to release and has now been committed to prison to serve the default term, because the Order has not been paid.

Grounds of Appeal

4. There are four grounds of appeal, in two groups. We refuse leave on the first group in relation to benefit, but give leave and now deal with the appeal in relation to the available amount:-

   i) As to the benefit figure determined by the judge it is said:-

      a) Ground 1: That the judge's determination of the figure from the specific criminal conduct was flawed because he should have treated money recovered from Pierre-Adrien Colliac as being jointly obtained criminal property by M. Colliac and the appellant. If the full amount was recovered from the appellant, there would therefore have been an element of double recovery and the benefit figure from specific criminal conduct (which was otherwise agreed) should have been reduced accordingly. It is claimed that the judge's finding on this subject was vitiated by his misunderstanding of what had happened to M. Colliac. He said that he had not been prosecuted. He should have said that he had not been convicted. We explain further about that below.

      b) Ground 2: That the judge's application of the statutory assumptions in what was agreed to be a criminal lifestyle case produced injustice and the figure for the benefit from general criminal conduct should also have been reduced.

   ii) As to the available amount it is said:-

a) Ground 3: That the court should receive fresh evidence from the appellant's brother, Dr. Wassim Taktouk, who is the executor of the estate of their late father. This is said to show that the judge's finding that the appellant had an interest in family-owned assets which he had not been truthful about was wrong. This was the basis on which the judge had held that the appellant had failed to prove that the available amount was less than the benefit figure and thus made the Order in the same sum as the benefit. If anything, Dr. Taktouk in his witness statement is even more damning about his brother's credibility than was the judge and it is therefore common ground before us that the appellant is not to be believed about anything relevant to this case.

b) Ground 4: The appellant also criticises the prosecutor for a disclosure failure in failing to disclose the reports of private investigators retained by it to try and find the fabled family wealth of which the appellant and his father spoke at various times including, in the appellant's case, in the course of his evidence at his trial. In summary, these reports did not confirm various claims which had been made on that subject. The appellant says that they should have been disclosed during the confiscation proceedings and seeks to rely on them now, in this appeal, as further fresh evidence.

The facts of the offending (so far as material)

5. The case arose out of a failed project for the purchase and redevelopment of a flat at 33 Ennismore Gardens in Knightsbridge, London. It was purchased for £7.75 million in February 2015. Part of the purchase price was to be funded by a mortgage. The balance was to be provided by those backing the project either in person or through Special Purpose Vehicles (SPVs). Of that balance, 42 per cent was to be provided by Adrien and Frank Noel, a father and son, paid through Benherst Finance Limited and Chestone Industry Holding, 50 per cent by the appellant's father, Mr Youssef Taktouk, and 8 per cent by M. Colliac, who had introduced the project to the Noels. It was important to the Noels that, as the introducer, M. Colliac should take some of the risk of the project to provide assurance of his integrity. Unbeknown to the Noels, M. Colliac's contribution was funded by the appellant, which proved to be a source of dispute between the Noels and M. Colliac when they discovered what had happened.

6. The appellant was to administer and run the project, for which he was to be paid five per cent of the profits on resale of the flat. In the event, there were no profits. The freeholder obtained an injunction in 2015 prohibiting the continuation of the works, because they had been undertaken without permission. The project defaulted on its mortgage payments. The plans for the redevelopment collapsed. Negotiations to agree a settlement between the parties commenced in 2016. The original agreement had contained an arbitration clause, and arbitration proceedings began. They started in February 2017 and took place in Switzerland. The appellant was not a shareholder and so had no formal role in the arbitration although his father, Youssef Taktouk, did.

7. A confidential settlement agreement was reached between Chestone and Benherst (as claimants) and Youssef Taktouk, EG Property Limited and Dr. Wassim Taktouk, the fresh evidence witness. A settlement was also reached with M. Colliac whereby he paid £1,202,433 to Benherst and Chestone and waived a costs ruling in his favour. M. Colliac was initially charged with a conspiracy count but the count was withdrawn. The written settlement agreement (a "Discontinuance Deed" dated 23 September 2019) with him asserted that this was because it was no longer in the public interest to continue to prosecute him, presumably because he had reached this agreement to pay the prosecutor a large sum of money. It is no part of our remit in dealing with this appeal to attempt to interpret or explain that assertion.

8. The flat was sold at auction in 2017 for £5.5 million; the proceeds of sale were used to satisfy the loans on the property and the Noels were unable to recoup their investment.

9. In his running of the project, the appellant had made cash calls to the investors based on forged documents or other untruths. He diverted investors' funds for his own private use, spending their money on his personal rent, private school fees and an expensive car. It was also alleged that he had misrepresented the mortgage arrangements to the investors. Having failed to get normal mortgage finance, he obtained expensive bridging finance without informing the investors.

10. The appellant's defence case at trial was that, while accepting he had mixed investors' money with his own private funds, he had access to substantial family wealth and discharged the project's obligations as and when necessary and

without dishonesty. He alleged that M. Adrian Noel had known of the true state of progress of the development works as a result of his involvement, and that he was not misled by anything the appellant said or did. To the extent that they said otherwise, he said they were lying. He also said that he had relied upon M. Colliac to keep the Noels informed.

11. Mr. Youseff Taktouk was not called as a witness at the trial. He has died since, but was alive at the time and could have been called. The appellant's evidence about the enormous family wealth available to him was therefore not supported by his father. The jury, of course, did not believe the applicant which is why he was convicted. As we have explained, it is common ground on this appeal that the appellant is a very unreliable witness.

12. Confiscation proceedings were initiated in September 2021 at the point of sentencing. A timetable was established. A hearing was listed in December 2022 but that was adjourned, and the hearing actually started on 15 June 2023. That hearing was limited to the prosecution opening its case, and the case was then adjourned to a two-day hearing starting on 9 August 2023. The case was not completed in that time and a further hearing was held on 25 September 2023. The judge reserved his decision and delivered a written judgment on 16 October 2023 with the Order being formally made on 3 November 2023.

The procedural chronology in a little more detail

13. The criminal proceedings began on 7 February 2019 and on 1 May 2019 an all-assets restraint and disclosure order was made against the appellant. This specifically identified among the known assets to which it related the appellant's shareholding in a family company called Wasseli Investments

Limited ("Wasseli"). This is a company registered in Nigeria. It was set up by Youssef Taktouk and named because he had two sons, Wassim and Elie. The company name combines their names. The order directed the appellant to disclose his assets and sources of income, and to give details of all companies of which he was a director, to include a list of their assets and bank accounts.

14. The appellant purported to comply with that disclosure order in two witness statements served in June 2019. He said that he received his income from Wasseli of which he was a 25% shareholder, but as nominee for his father. He claimed not to know of any assets of the company. In October 2019, a further disclosure order was made requiring him to disclose accounts, and share certificates and other material relating to this company. He produced a letter which said that he could not do this because he had been removed as a director. This became a significant document in the confiscation proceedings. It was on the stationery of a business called Alpha-Genasec Limited (Company Secretaries) which appeared to act as company secretary to Wasseli. It was addressed to Elie Joseph Taktouk, and is dated 15 October 2019, 10 days after the further disclosure order. It says:-

> "We wish to inform you of the recent restructuring exercise carried out by the majority shareholder of the above named company where you are a director and to state that you are among those affected by the said exercise.
>
> In view of the above and in line with section 262 of the Companies and Allied Matters Act [reference given] as invoked by the shareholders, you are no longer to act as a director of the company with effect from Monday 21st January 2019."

15. The prosecution at the confiscation proceedings submitted that this letter could not properly have been sent by any company secretary because there had been

no shareholders' meeting and the removal of a director cannot be backdated. This was not challenged then, and is not challenged now.

16. On 13 July 2020 the appellant was committed to prison for contempt of court for 7 months for 14 breaches of the restraint and disclosure orders.

17. In the course of his trial, the appellant told the jury that the family wealth was held in Wasseli and that it was worth £150m. He had been involved in very acrimonious divorce proceedings in about 2013, and, he said, he had given his 10% shareholding in Wasseli to his children in 2016 to protect it from his ex-wife. In 2015 he had completed a loan application in connection with the project which was the subject of the indictment and had then said Wasseli was worth £180m and his shareholding was 25%.

18. During the divorce proceedings in 2013, Mr. Jonathan Cohen QC, sitting then as a Deputy High Court Judge, had dealt with Youssef Taktouk's evidence about his wealth in these terms:-

> "The father has plainly been hugely successful in business. He told me that he has been trading for over 60 years. When challenged by Mr. Dyer about his capacity to raise £190,000 quickly to complete on the purchase of the former matrimonial home, the father said that he could raise £50 million at, using my phrase, the drop of a hat, and that this represented no more than 10 per cent of the value of his wealth. He has a huge property portfolio in the Middle East and owns a significant number of properties in West Africa. He has property in England, and also has valuable business interests."

19. Mr. Cohen rejected much of the evidence given to him by the appellant and his father, but not this part.

20. During the preparation for the confiscation hearing, the prosecution served a statement under section 16 of the Proceeds of Crime Act 2002 which said that

there was no evidence that the appellant had ever given his shares in Wasseli away, but that, if he had, it was a tainted gift. They also adduced evidence from a forensic accountant that between September 2014 and July 2018 over £9.8m was transferred from overseas to Mr. Youssef Taktouk's Byblos Bank UK account, of which over £1.12m was paid on to the appellant. The prosecution did not say that they accepted that the appellant's wealth was limited to his shareholding in Wasseli and any income he might derive from that company.

21. On 27 June 2022 the prosecution served its disclosure schedule. This identified, among many other things, the investigator's reports which are the subject of Ground 4, the complaint about non-disclosure. They were all marked "CND" (clearly not disclosable) as was every other item on that schedule. Our attention was drawn to:-

MG6C Item Number	**Date**	**Document Description**	**Disclosure**
00058	01/12/2017	Full report put together by K2 Intelligence on Yousef Taktouk (Elie Taktouk's father). Outlines personal information, career, corporate appointments, properties, regulatory checks, reputation and media profile.	CND
00106	18/06/2020	Report produced by BGP Global Services on Elie Taktouk. Contains information on Jefferson Brito, directorships of Nigerian companies linked to Taktouk, information on Grand Service Ltd, and additional research on Solutions Plaza Ltd.	CND

00197	07/10/2021	Report by K2 Integrity dated 7 October 2021 re: assessment of ET's involvement in/ownership of Solutions Plaza Limited, Wasseli Investments, Grand Services Limited, Bonkers Bet. Report finds that ET set up Bonkers Bet website in October 2019 with Kevin Cole, that Bonkers Bet and Grand Services appear inactive and failed ventures, that the last filed return for Wasseli was in 2010 and alleged that ET was a 10% shareholder, that it appears he is no longer a shareholder but no publicly available information to confirm, that to penetrate closely held family structure of Wasseli, the direct engagement of individuals required. The report finds no connection between ET and Solutions Plaza Limited.	CND

22. These reports are among a number of similar documents which show that attempts were made, during the arbitration proceedings in 2017, during the criminal proceedings in 2020, and during the confiscation proceedings in 2021 to establish what wealth Youssef and Elie Taktouk actually had and, if they had any, where it might be found. They were largely unsuccessful, and items 00106 and 00197 failed to find any significant assets belonging to the appellant. Wasseli in particular was impossible to penetrate.

The fresh evidence

23. The submission is that these reports and 10 others which are Appendices to Exhibit NPV 5 to the statement of Mr. Nick Vamos, the appellant's current solicitor, should have been disclosed and should be received as fresh evidence because they tend to confirm the evidence of the appellant at the confiscation proceedings that he had no assets. Mr. Vamos is a partner at Peters & Peters, who have been instructed privately by Dr Wassim Taktouk, to act for the

appellant in this appeal. There is no criticism of JMW Solicitors LLP who acted for the appellant in the Crown Court and there has been no waiver of privilege.

24. The appellant also submits that these documents confirm the evidence of Dr. Wassim Taktouk in his witness statement for these appeal proceedings which is dated 1 October 2024. In summary, this says:-

i) Youssef Taktouk died on 10 April 2022. His will is dated 2013 and leaves nothing to the appellant. Probate was granted in December 2022 and Dr. Taktouk is the executor. Until his father's death he knew very little about his father's assets, but now, as executor, he can say that those assets he has discovered are worth relatively little, certainly far less than the amount of the Order. In any event, the appellant has no legal claim to any of them.

ii) He had been estranged from his brother, partly because he blamed him for dissipating his parents' wealth and leaving them in financial difficulties towards the end of his father's life. He took very little interest in the criminal proceedings and the confiscation proceedings which followed it.

iii) His brother has no legal interest in any of his father's estate or in any other family assets of which he is aware.

25. Dr. Taktouk confirmed his statement on oath in the witness box before us. Mr. Talbot KC elected not to cross-examine on the basis that the prosecution accepts that he genuinely believes that his statement is true, but that belief is founded on such a slender basis that it should be given no weight. In any event, the court

should decline to receive it as fresh evidence because it affords no ground for allowing the appeal and there is no reasonable explanation for the failure to adduce it in the Crown Court. In the context of that submission, it is right to set out an exchange between the judge and Mr. Moloney KC in the Crown Court on 10 August 2023, when the judge himself raised the question of whether Dr. Wassim Taktouk could or should give evidence.

> JUDGE MILNE: The - the other question, which is slightly at tangents from all of this, is simply you - you talk about third hand and second hand which I accept clearly is the case. One of the people who inherited the apparently vast fortune lives in London.
>
> MR MOLONEY: The brother.
>
> JUDGE MILNE: The brother.
>
> MR MOLONEY: The brother can't speak with any authority as to the accounts of Wasseli in my view, Your Honour. He - he's a practising medical professional, he's a - he's a doctor who works full time in that way. But if it - for him to come along and he - he could come along and say something but the - the extent to which he'd be able to give a - a basis for that is - it would be something that really –
>
> JUDGE MILNE: It is just after the gap of a year I wondered if you might know by now what he has inherent. Has he inherited, effectively, a shell company in Nigeria of no value whatsoever, or has he inherited 50% of £187 million?
>
> MR MOLONEY: And - but then - he could say, 'Well, actually I've inherited 50% of £0. But then the inevitable question would be 'Where is that come from?'
>
> JUDGE MILNE: Where has it - where has it gone [as much as anything?] .
>
> MR MOLONEY: No, entirely and - and he can't speak to that –
>
> JUDGE MILNE: Right.
>
> MR MOLONEY: - because he's a hard-working doctor, no previous convictions, no involvement in the business.

> JUDGE MILNE: Right. But he is - I am sure he is blameless in all of this. He is caught in the middle in a sense. No, it is just a thought –
>
> MR MOLONEY: No.
>
> JUDGE MILNE: - or any consideration to be given to whether he could cast any light.
>
> MR MOLONEY: We - we have - we have thought about that, Your Honour. But - but it - one can see that he'd be immediately faced with the questions of 'Where's this come from?' and - and 'Well, I've - I've been told by the accountants'.
>
> JUDGE MILNE: Right.
>
> MR MOLONEY: And then that - that wouldn't be - wouldn't satisfy, certainly, wouldn't satisfy the prosecution. Of course, it's the - the ultimate question is whether or not it satisfies Your Honour but - but in my respectful submission, something rather more rigorous and cogent is - is necessary from an expert financial analytical perspective.

26. This is, therefore, an unusual situation. Counsel, Mr. Moloney KC, who is still instructed took a considered decision, presumably on instructions, not to call the witness whose evidence is now relied upon as fresh evidence on this appeal.

27. It is right to set out the course of the proceedings in the Crown Court in a little more detail, because it shows that the judge did everything he could to allow the appellant and his legal team to procure and present evidence about the value of the Taktouk wealth. This was a very complex and difficult exercise, at least after the death of Youssef Taktouk in April 2022, and the judge was as accommodating as any judge could be while still maintaining some procedural control over the case. It is also necessary to include a little detail about the hearing below because of the way Ground 2, the second ground of appeal against the finding as to the benefit, is advanced. This is what happened:-

i) On 14 June 2023 Dr. Wassim Taktouk met the solicitors then acting for his brother and agreed to produce some documents.

ii) On 15 June 2023 the hearing of the confiscation proceedings started. The prosecution opened its case and the proceedings were adjourned to allow the appellant's team to conduct further enquiries.

iii) On 9 and 10 August 2023 the hearing resumed for the hearing of evidence. The appellant gave evidence and was cross-examined. An accountant instructed by him also gave evidence that he had tried and failed to establish the value of Wasseli, but as far as he could see it was not worth anything much.

iv) On 25 September 2023 the hearing resumed. Some professional witnesses from Nigeria were available to give evidence about the ownership and value of Wasseli, but the appellant's solicitors had failed to secure the agreement of the Nigerian Government to their giving evidence remotely from Nigeria. The judge heard argument and ruled that this prevented him from receiving their evidence in that way. Their witness statements were, however, received in evidence. That having been done, counsel made their closing arguments.

v) On 16 October 2023 the judge delivered a ruling giving his reasons for making the Order. This was a model of how such rulings should be given. It is clear, admirably succinct and, at the same time, complete. It is also fair, and, on the material before him, correct. We have set out above a passage from the transcript which shows the judge doing what he could to assist in ensuring that the material was complete by raising

the question of whether Dr Wassim Taktouk should be called. That suggestion was declined and the appellant decided to rely on his accountant and the material from some professional witnesses in Nigeria.

28. Because of Ground 2, we should say a little about how the assumptions were dealt with. A very large number of receipts, mostly in cash, were received into the appellant's bank account during the period covered by the assumptions. The prosecution limited their case on the assumptions to these receipts. They also took into account only receipts over a certain amount. They contended that it was for the appellant to prove that they were not the result of criminal conduct. He produced what was described as a Scott Schedule setting out explanations for the receipts. This was a long document, because there were so many. Many of the explanations were repeated. One particular receipt was $400k. He said that this was payment for interior design work. The prosecution suggested on 9 August 2023 before the appellant gave evidence that if the judge indicated that it would be an appropriate course, they would seek only that sum under the assumptions. The judge said that he would consider that, but would hear the appellant first. He was cross-examined about this, and failed to produce any documents or anything else to show that he had ever done any interior design work for the suggested "customer". The cross-examination then moved to the receipts into bank accounts listed on what was called the Scott Schedule. Mr. Talbot explored the explanations with the appellant on pages 48-56 of the transcript for 9 August 2023 in a way which was designed to expose their lack of credibility.

29. No-one ever mentioned the subject again and the judge later made the finding he did, finding that all the receipts, except those which the prosecution had accepted were genuine, were caught by the assumptions and constituted the benefit from general criminal conduct. Mr. Moloney never submitted to the judge that he was confined in that respect to $400,000 because of the exchange which had taken place on 9 August and the way in which cross-examination had then proceeded.

30. The position was, of course, that the prosecutor was financially interested only in the specific criminal conduct, which became the subject of a compensation order in its favour. The proceeds of the assumptions and the consequent finding about the benefit from general criminal conduct would not accrue to the prosecutor but to the public. It is perhaps not surprising that the judge declined to accept the prosecutor's suggestion when he came to consider his decision. He had never said anything to suggest that the appellant and his legal team did not need to deal with all the sums on the Scott Schedule.

Our decision on the two grounds on which leave is refused

31. It is not arguable that the benefit figure should have been reduced to reflect the recovery from M. Colliac. There is no evidence that any of the property which the appellant received as a result of the offending was obtained jointly with M. Colliac. The fact that they may have both been guilty of criminally defrauding the Noels does not mean that they received criminal property jointly. The money received from M. Colliac was not money paid under a confiscation order. This was why the judge referred to the fact that he had never been convicted of any criminal offence (in error he said "prosecuted" instead of "convicted", but

the point remains). It was money extracted by the threat that criminal proceedings would continue against him if he did not pay it. There were a number of ways in which he might have been liable to the Noels, in damages and costs, which did not necessarily reflect receipt by him of criminal property. There is no finding that he ever received any criminal property, although he may have done, and the judge was right to reject this submission.

32. We have said enough already to explain why the submission that the judge's approach to the assumptions in respect of the Scott Schedule sums cannot be criticised. It is too late to take this point now and it is, anyway, wholly without merit.

The fresh evidence/disclosure grounds

33. This is, in form, an appeal against sentence. It is also an appeal against sentence in substance because the appellant is serving the default sentence of 8 years. We are not impressed by the argument that this shows that he has no assets. This was examined by a different (but overlapping) constitution of the court in *R v. Butler* [2025] EWCA Crim 1 and found wanting. The appellant will have to serve half of the default sentence if his appeal fails, or 4 years. If he retains assets worth £4,549,925.29 by doing so, that is a return of about £1.1m per year, tax free. Some people may prefer to pay to avoid imprisonment, others may not. If those assets do exist, they are still hidden and he may calculate that he will be able to access and enjoy them on release.

34. However, the fact that a long prison sentence turns on the outcome of the appeal against sentence is hard to ignore when evaluating whether to receive the evidence under section 23 of the Criminal Appeal Act 1968 and the separate

question of whether, having received it, it should lead the court to conclude that the appellant "should be sentenced differently" and quash the order which is the subject of the appeal, or order the Crown Court to proceed afresh under section 6 of the Proceeds of Crime Act 2002, see section 11(3) and (3A) of the 1968 Act. These provisions are not entirely free of difficulty.

35. The application of section 23 to appeals against conviction and to most sentence appeals is well understood and explained by the authorities. The ultimate question for the court is whether a conviction is unsafe or whether a sentence should be quashed and replaced with another sentence. In the present situation, the real question is neither of those. It is whether the court should make an order under section 11(3)(a) quashing the Order and a further order under section 11(3A) directing the Crown Court to proceed afresh, subject to such directions as we may give under section 11(3B). This would require, if Dr. Wassim Taktouk is called on behalf of the appellant in such fresh proceedings, the court to hear that evidence and to decide whether it is reliable and what its proper scope and weight is. Whether the appellant "should be sentenced differently" will depend on the outcome of that exercise, yet this court is required to find that the appellant should be sentenced differently as a precondition for that exercise taking place at all. We consider that this apparent difficulty should not prevent the court from receiving fresh evidence in an appeal against a confiscation order and quashing a confiscation order with an order under section 11(3A) and directions under section 11(3B). That would be an outcome which Parliament cannot have intended.

36. We will therefore apply section 23 of the 1968 Act to decide whether to receive the fresh evidence. The first and necessary condition for this is that it should be "necessary or expedient in the interests of justice", section 23(1). In deciding that we have regard in particular to the four factors listed in section 23(2). Our conclusions in relation to those are as follows:-

a) The evidence appears to be capable of belief. It is accepted that Dr. Wassim Taktouk, for the purposes of these appeal proceedings at least, is an honest witness. It is undoubtedly capable of belief that he has acquired knowledge of his father's true wealth since he became his executor in December 2022. This is a process which began then, and has continued since the conclusion of the confiscation proceedings.

b) If the evidence of Dr. Wassim Taktouk is accepted and if it is accepted that he has a sufficiently comprehensive knowledge of his family's current wealth, then it affords a ground for allowing the appeal because it suggests that the appellant's realisable assets from that source are limited to the value of his 10% shareholding in Wasseli. It has been agreed already that when that shareholding is realised its value will be paid to the prosecutor.

c) The evidence would have been admissible in confiscation proceedings on the issue of the available amount.

d) There is no reasonable explanation for the failure to adduce that part of the evidence which Dr. Wassim Taktouk could have given

> in August 2023. He has acquired some knowledge since then, but we have not been able to determine precisely how much of his evidence falls within that category. It seems likely that he could have given most of it then. The prime reason he did not do so appears to have been his lack of interest in the appellant's fate, but this does not explain why his legal team did not pursue a witness summons. It is true that Dr. Taktouk instructed solicitors who vigorously resisted his being summonsed to give evidence, but the appellant's legal team in the end acquiesced in that resistance. We are not able to be certain about what happened because there has been no waiver of privilege in the events leading up to the way Mr. Moloney dealt with the judge's questions on 9 August 2023. In many proceedings, civil and criminal, this factor would be decisive against the appellant.

37. Balancing these factors and having regard to the interests of justice, we consider that the possibility that the appellant may be serving a long prison sentence when plausible evidence exists which *may* show that the available amount was significantly less than the benefit, and that the default sentence is therefore not the right sentence, is the critical factor.

38. We would not quash the Order on ground 4, non-disclosure. We consider that the intelligence reports of the investigators clearly were disclosable and that the failure to disclose them by the prosecutor was an error. However, they did appear on the Schedule MG6C and at least in respect of item 00197 the description was such as might have been expected to trigger the interest of

defence lawyers scrutinising it. They did not ask for any of these items, and we have had no explanation of that failure. Here the section 23 balance is different, because the evidence is less definitive than that of Dr. Wassim Taktouk. It might have made a difference or it might not. On its own it does not afford a ground for allowing the appeal, but it can be deployed when the Crown Court proceeds afresh and the judge will be able to decide what its significance is.

39. The successful grounds of appeal relate only to the assessment by the judge of the available amount. There is no reason why the Crown Court needs to revisit the benefit calculation, the grounds challenging which have been refused leave. Does the fact that section 11(3A) only permits this court to direct the Crown Court to "proceed afresh" mean that the proceedings have to start all over again? In our judgment the answer is clearly not. If it were otherwise the court would have to set a new timetable for the procedural steps required by the 2002 Act and all the existing evidence would have to be re-served.

40. The court in *R v. Miller* [2022] EWCA 1589; [2023] 4 WLR 6 remitted the issue of the benefit determination to the Crown Court, but not the determination of the available assets. The court did not expressly consider the terms of section 11 of the Criminal Appeal Act 1968 with the present issue in mind. In *R v. Haden (Mark)* [2024] EWCA Crim 344 the court directed that the Crown Court should proceed afresh following the success of prosecution appeals against refusals to make confiscation orders. The court said this:-

> "11. If this court allows a prosecutor's appeal and directs the Crown Court to "proceed afresh" this does not mean that the confiscation proceedings have to start again from scratch. The Crown Court is required to carry on the proceedings from the point at which it had declined to make a confiscation order, on

> the basis that it has jurisdiction to do so. This was agreed before us and we record the fact in case it assists in avoiding future confusion."

41. This issue was not argued in either of these cases, and there has been no argument on it before us, but the position in relation to defendant's appeals is made clear by section 11(3B) which gives the power to give directions, one purpose of which is identified in section 11(3C). That requires this court to give directions which ensure that any new confiscation order made in the Crown Court does not deal with the appellant more severely than the order quashed under section 11(3)(a). In this case that is achieved by directing the Crown Court not to reconsider the benefit figure. This achieves the result required by section11(3C) because it is only if the benefit figure is increased that the new order could be more severe than the Order. The power under section 11(3B) is not limited to the achievement of the purpose identified in section 11(3C) and is a general power to give directions which must achieve that purpose at least, but may serve other procedural functions as well.

42. The judge conducted these proceedings with great skill and fairness and delivered, as we have said, an exemplary ruling. The outcome of the appeal, although it quashes his order, involves no criticism of him at all. He made findings about the credibility of the appellant which were judicially arrived at, and appropriately expressed. They have not been challenged on this appeal. His decision constitutes the starting point for the fresh proceedings and he has not manifested any bias against the appellant. We see no reason why he should not hear the fresh proceedings and every reason why he should do so.

Conclusion

43. We therefore make the following order:-

i) Leave to appeal on Grounds 1 and 2 is refused.

ii) Leave to appeal on Ground 3 is granted and the appeal allowed. The Order is quashed under section 11(3)(a) of the Criminal Appeal Act 1968.

iii) Leave to appeal is granted on Ground 4, but the appeal on that ground is dismissed.

iv) The Crown Court is directed under section 11(3A) of the Criminal Appeal Act 1968 to proceed afresh to determine what order to make under section 6 of the Proceeds of Crime Act 2002.

v) Pursuant to section 11(3B) of the Criminal Appeal Act 1968 the court directs:-

a) The Crown Court may not increase the benefit figure determined by the judge in his ruling of 16 October 2023, and is not required by this order to re-determine that figure.

b) The Crown Court should admit the evidence of Dr. Wassim Taktouk in his witness statement dated 1 October 2024 and the evidence contained in the reports exhibited as Annexes 1-13 of exhibit NPV 5 to the statement of Mr. Vamos dated 1 October 2024.

c) The fresh proceedings should be listed before His Honour Judge Milne KC for a case management hearing as soon as reasonably practicable.

d) Subject only to the directions above, all further management of this case is a matter for the Crown Court.