Neutral Citation Number: **[2026] EWCA Crim 1457**

Case No: 202600384 B5
202600385 B5
202600386 B5
202600387 B5
202600388 B5

IN THE COURT OF APPEAL (CRIMINAL DIVISION)
ON APPEAL FROM THE CROWN COURT AT SOUTHWARK
HHJ LEONARD KC
T20147239
HHJ GLEDHILL KC
T20167022

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 13 November 2026

In the matter of five references by the Criminal Cases Review Commission

Before :

THE VICE PRESIDENT OF THE COURT OF APPEAL CRIMINAL DIVISION
Lord Justice Edis
MR JUSTICE GOOSE
and
MR JUSTICE MOODY

- -

Between :

ALEX PABON **JAY VIJAY MERCHANT** **JONATHAN MATHEW**	**Appellants**
- and -	
THE KING	**Respondent**
COLIN BERMINGHAM	**Appellants**
- and -	
THE KING	**Respondent**
and	
HIS MAJESTY'S COURTS AND TRIBUNALS SERVICE	**Intervening**

- -
- -

Thomas Allen KC and **Nick James** (instructed by **Constantine Law**) for **Alex Pabon**
Katherine Hardcastle and **Tim James-Matthews** (instructed by **Hickman & Rose**) for **Jay Vijay Merchant**
Katherine Hardcastle and **Tim James-Matthews** (instructed by **Hickman & Rose**) for **Jonathan Matthew**
Andrew Thomas KC (instructed by **Adkirk Law**) for **Colin Bermingham**
James Hines KC and **James Waddington KC** (instructed by **the Serious Fraud Office**) for the **Prosecution**
Barnaby Hope (instructed by **the Government Legal Service**) for **His Majesty's Courts and Tribunals Service**

Hearing date: 8 October 2026

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Approved Judgment

This judgment was handed down remotely at 10.00am on 13 November 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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The Vice-President:

1. The five appellants' cases were referred to this court by the Criminal Cases Review Commission on 29 January 2026. On 7 October 2026 we quashed their convictions for reasons given then. Each of them had been convicted by a jury of one count of conspiracy to defraud contrary to common law. The first three appellants were convicted of that offence in relation to alleged manipulation of the LIBOR interest rate. Those convictions took place on 29 June 2016 following a trial presided over by HHJ Leonard KC. The fourth and fifth appellants were convicted following trials presided over by HHJ Gledhill KC. The allegation in their cases related to alleged manipulation of the EURIBOR interest rate. Philippe Moryoussef was convicted on 29 June 2018. Colin Bermingham stood trial alongside him but the jury could not agree in his case. He was convicted at a re-trial on 28 March 2019. Also convicted in that trial was Carlo Palombo.

2. Almost all relevant facts appear in the judgment of the Supreme Court in *R v Hayes (Tom); R v Palombo (Carlo)* [2025] UKSC 29; [2025] 2 Cr. App. R. 21, handed down on 23 July 2025 ("*Hayes and Palombo*"). Mr Hayes was convicted following a separate trial of alleged manipulation of the LIBOR rate. The allegations concerning the LIBOR appellants in the present cases were very similar, but they were tried separately from him. The procedural history of the trial of Mr Hayes and the trials with which we are concerned is set out in *Hayes and Palombo*, and we will not repeat it in this judgment.

3. This judgment concerns the consequences of the quashing of the convictions. The disputed issue we have to resolve is whether we should order the payment of interest on sums which will be repaid to the appellants named in the title of this judgment now that the confiscation orders and costs orders have fallen away. Mr Moryoussef (whose conviction was quashed with the others) makes no application for any costs order or interest and does not appear in the title to this judgment. There is no issue about the payment of interest on Legal Aid contributions because that is provided for by statute. The Criminal Legal Aid (Contributions Order) Regulations 2013 Regulation 37(1) provides for repayment of contributions following the quashing of a conviction "together with compound interest thereon from the date of the payment at the rate of 2% per year with yearly rests". No such provision exists in relation to payments made under costs or confiscation orders. It is notable that the 2013 Regulations do not involve an order of a court, and certainly not the Court of Appeal Criminal Division. The Court of Appeal quashes the conviction and the Regulations provide for the consequence to follow as a matter of law.

4. This short identification of the issue does not reflect its complexity and difficulty. There has been a court of appeal in a broadly similar form to the modern Court of Appeal Criminal Division since 1907. In the 119 years since then, no order for interest on sums repaid by the state following the quashing of a conviction or other order has, so far as we are aware, ever been sought or made. Parliament has never, in or since the Criminal Appeal Act 1907, legislated to confer such a power.

5. The orders with which we are concerned are orders for prosecution costs and confiscation orders. The modern costs regime in criminal cases is derived from the Prosecution of Offences Act 1985 ("POA 1985") and the modern confiscation regime is found in the Proceeds of Crime Act 2002 ("POCA"). Orders for the payment of prosecution costs following conviction under POA 1985 and confiscation orders under

POCA are included in the definition of "sentence" for the purposes of section 50 of the Criminal Appeal Act 1968 and an appeal lies to this court by virtue of section 9 of the 1968 Act with leave in the same way as any other part of a sentence.

6. The powers of this court on appeal in relation to sentences, including costs and confiscation orders, are provided by statute, in sections 11(3) and 11A of the 1968 Act:-

> (3) On an appeal against sentence the Court of Appeal, if they consider that the appellant should be sentenced differently for an offence for which he was dealt with by the court below may—
>
> (a) quash any sentence or order which is the subject of the appeal; and
>
> (b) in place of it pass such sentence or make such order as they think appropriate for the case and as the court below had power to pass or make when dealing with him for the offence;
>
> but the Court shall so exercise their powers under this subsection that, taking the case as a whole, the appellant is not more severely dealt with on appeal than he was dealt with by the court below.
>
> **11A Quashing of certain confiscation orders: supplementary**
>
> (1) This section applies where the Court of Appeal—
>
> (a) quash a confiscation order under section 11(3)(a) ("the quashed order"), and
>
> (b) under section 11(3A), direct the Crown Court to proceed afresh under the relevant enactment.
>
> (2) Nothing in this section prevents any sum paid by the appellant pursuant to the quashed order being a sum which is recoverable from the Secretary of State as a debt owing to the appellant, but the Court of Appeal may direct that any such sum is not to be repaid until such time as the Crown Court makes a confiscation order, or decides not to make such an order, when proceeding afresh pursuant to section 11(3A).
>
> (3) Nothing in this section prevents an amount which would otherwise fall to be repaid as a result of the order being quashed being set against an amount which the appellant is required to pay by virtue of a confiscation order made by the Crown Court in those proceedings.
>
> (4) In this section "confiscation order" and "relevant enactment" have the same meaning as in section 11(3D).

Interest in *Hayes and Palombo*

7. The same issue arose in the Supreme Court in *Hayes and Palombo* and it is necessary to set out in some detail how it was dealt with then. This is because it might be that the approach of the Supreme Court is binding on us and absolves us from the need to decide the question. Whether that is so or not, the approach of the Supreme Court is plainly important. The successful appellants in *Hayes and Palombo* recovered interest and any decision that the appellants before us should not would plainly engage questions of fairness.

8. The Supreme Court order in that case was the first time interest has been awarded on sums repaid following the quashing of costs orders or confiscation orders, as far as we are aware.

9. After receiving the Supreme Court's judgment allowing the substantive appeals, the parties sought to agree a consequential order. It was agreed that sums paid by the appellants by way of prosecution costs or under confiscation orders should be refunded to them, but interest was not agreed. The Supreme Court considered rival draft orders without a hearing and made this order on 6 October 2025:-

> **Confiscation orders**
>
> 3) The confiscation order made against Mr Hayes in the Crown Court at Southwark on 23 March 2016 in the sum of £852,560.94 is set aside. Any payment under that order to be a debt to the Appellant, recoverable with interest from Central Funds.
>
> 4) The confiscation order made against Mr Palombo in the Crown Court at Southwark on 1 April 2019, in the sum of £182,000.00 is set aside. Any payment under that order to be a debt to the Appellant, recoverable with interest from Central Funds.
>
> **Prosecution costs orders**
>
> 5) The order for Mr Palombo to pay a contribution towards the costs of the prosecution made in the Crown Court at Southwark on 1 April 2019, in the sum of £725,000.00 is set aside. Any payment under that order to be a debt to the Appellant, recoverable with interest from Central Funds.

10. This order did not specify a rate of interest or a period over which it accrued. It was in the form advanced on behalf of the appellants. The principal sums were paid by HMCTS without delay, but interest was not paid. After some correspondence, the Supreme Court Registry emailed the parties on 29 October 2025 saying this, among other things:-

> "However, those provisions in the order do appear to be causing some confusion, so the court would also be assisted by submissions as to what parties' intent was in the drafting of those provisions please.

> Specifically, on what basis is interest payable, at what rate, and for what precise period?"

11. The parties filed submissions and, after considering them, the Supreme Court made a further order, which is the operative document we must consider. It provided:-

> THE COURT having considered submissions received from the parties in response to questions arising from the Order on these appeals dated 6 October 2025
>
> AND having decided that the power to make a Defendant's Costs Order pursuant to s16(5) of the Prosecution of Offences Act 1986 [sic] does not include costs incurred in making applications to the Criminal Cases Review Commission because these are not costs of "an application made to that court [ie the Court of Appeal] for leave to bring the appeal" and thus are not costs in the "proceedings" as defined in section 21(1) of the Act
>
> AND having considered what interest should be included in the sums payable under paragraphs 3, 4 and 5 of the Order dated 6 October 2025 to reverse the financial effects of the confiscation orders made against Mr Hayes and Mr Palombo and order for Mr Palombo to pay a contribution towards prosecution costs
>
> THE COURT ORDERS that:
>
> 1) The Order dated 6 October 2025 be varied to delete in paragraph 8(a)(iii) the words "(to include legal costs of the Appellants' applications to the Criminal Cases Review Commission)".
>
> 2) The interest recoverable from Central Funds pursuant to paragraphs 3, 4 and 5 of the Order dated 6 October 2025 shall be calculated at a rate of 2% per annum up to (and including) 31 December 2021 and at a rate of 5% per annum thereafter, compounded with yearly rests, to run from the date when any relevant payment was made until the date on which the payment (plus any interest accrued) is refunded.
>
> 3) There be liberty to apply.

12. We are only concerned with the second recital and paragraph 2 of the order.

13. The Supreme Court clearly decided that it had jurisdiction to award interest on the sums to be repaid, and exercised its discretion to make such an order, and to specify the compound basis of interest and the rate and period to be used when calculating the award. It did not give reasons, except to say that it intended, by making the order, "to reverse the financial effects of the" orders concerned.

14. We have reviewed the written submissions placed before the Supreme Court by the parties. The appellants made this submission about jurisdiction:-

> It is well established that the appellate courts have a restitutionary power to make orders consequential on appeal and that this includes the power to award interest: see *Nykredit Mortgage Bank v Edward Erman* [1997] 1 WLR 1627, pp. 1636H-1637D ("*Nykredit")*; *Delta Petroleum (Caribbean) Ltd v British Virgin Islands Electricity Corporation* [2020] UKPC 23 at §§46-54 ("*Delta Petroleum*"); and *Evonik UK Holdings v HMRC* [2025] EWCA Civ 1392 ("*Evonik*") at §§52 and 58. In summary, those authorities recognise that:
>
> (1) The appellate courts have the power to make restitutionary orders on setting aside an order on appeal, including to require the respondent to pay interest on amounts to be repaid to the successful appellant.
>
> (2) The existence of this power to make restitution derives from "the inherent jurisdiction" of the court: *Delta Petroleum* at [50] per Lord Leggatt JSC. It is "*sui generis based on the simple fact that an appellate court has decided that the order should not have been made*": *Evonik* at [44]. It follows, as Falk LJ explained in that case, that "*it would not, for example, necessarily require the normal elements of an unjust enrichment claim to be established*": at [44].
>
> (3) It is based on the need to enable the appeal court to give "*full effect*" to the result of a successful appeal: *Delta Petroleum* at [49] per Lord Leggatt. The payment of interest on sums to be repaid is a necessary part of the "*unravelling*" of the order made by the court below in order that an appeal does not become an "*idle exercise*": *Nykredit* at page 1637A-B.
>
> (4) The power is also necessary to produce a just result for a successful appellant. Justice will not be done unless the appellant who has had its money improperly taken from them has this money restored to them with interest to reflect "*the ordinary fruits which are derived from the enjoyment of money*": *Rodger v Comptoir d'Escompte de Paris* (1871) LR 3 PC 465 ("*Rodger*") at page 475 per Lord Cairns, as endorsed by Lord Leggatt in *Delta Petroleum* at [48].
>
> (5) This power does not, however, give a successful appellant the automatic right to interest on sums it is entitled to be repaid: *Evonik* at [52(c)] and [58] per Falk LJ. It will be exercised "*in suitable cases*" (*Nykredit* per Lord Nicholls) and in accordance with "*what the justice of such a case demands*" (*Rodger* per Lord Cairns).

15. The appellants then referred to Rule 29(1) of the Supreme Court Rules 2009 which provides that the Supreme Court has "all the powers of the court below and may" (among other things) "make orders for the payment of interest". It is perhaps not clear whether that means that the power to make such orders exists only if the court below

possessed it, or whether there is a free-standing power in the Supreme Court to make such orders even where the court below had no power to do so.

16. The Serious Fraud Office ("SFO") made submissions which accepted that the appellants were entitled to interest but said that the proper way of recovering it was "through an appropriate civil claim for damages and not in the Forum of the UKSC". It did not identify the cause of action or the proper defendant in that "claim for damages".

The issue in this court

17. In this court, His Majesty's Courts and Tribunals Service ("HMCTS") were given leave to intervene because they would be the paying party in respect of repayment of sums paid under confiscation orders which had been founded on convictions which had been quashed. The SFO, which had received the fruits of orders for the payment of prosecution costs, were, of course, already joined.

18. The parties and HMCTS helpfully presented an agreed order dealing with all consequences which should follow if the convictions were quashed. This was done because the court directed that all issues should be dealt with at the same hearing and invited the parties to work on the assumption that the convictions would be quashed. That order included a provision for interest which replicated that made by the Supreme Court in *Hayes and Palombo*. At that stage HMCTS and the SFO were inclined to concede that claim and, so Mr Thomas KC on behalf of Mr Bermingham submits, actually did concede it in a binding agreement. This court does not determine claims in contract.

19. The Criminal Appeal Office, at the direction of the court, emailed the parties on 30 September 2026 (prior to the hearing which was expected to start on 7 October 2026) saying:-

> When quashing a conviction, the practice of the Court is to make no order as to the resulting sentence, which under the Criminal Appeal Act 1968, includes Confiscation Orders and other ancillary financial orders (Compensation, Prosecution Costs etc). The Court would also make no order as to the repayment of Legal Aid contributions as there is a statutory mechanism for those contributions to be refunded by the LAA.
>
> Accordingly, the parties (and the intervener) are invited to address the following issues, in writing by 10am on Monday 5th October 2026.
>
> 1. On what basis is it appropriate and/or necessary for the Court to deviate from its established practice above in these cases.
>
> 2. In what respects the draft Agreed Order does deviate from any statutory provisions that would otherwise be in place, should the Court make no order as to the Confiscation Orders and other ancillary orders.

> 3. Why it would be appropriate for the Criminal Division of the Court of Appeal to award interest (compounded) on a restitution basis for amounts confiscated/prosecution costs ordered in a criminal case. While it is noted that such orders were made in the Supreme Court in R v Hayes and Palombo, Rule 29 of the Supreme Court Rules 2009 permits such order. There does not appear to be a similar power expressly granted to the CACD.
>
> 4. Whether that approach would be contrary to authority, given the burden for the restitution would be at public expense (see *R (Henderson) v Secretary of State for Justice* [2015] EWHC 130 (Admin); [2015] 1 Cr App R 29 ("*Henderson*") at paragraphs 35-39 and *Steele Ford & Newton v CPS (No 2)* (1993) 97 Cr App R 376; [1994] 1 AC 22 ("*Steele Ford & Newton*") at paragraphs 33-40)."
>
> 5. If there are any technical difficulties in making the order which has been agreed by the parties, can the agreement take effect, in any event, without an order from the court?
>
> 6. The court wishes to hear oral submissions from the parties and the intervener at next week's hearing. The court may re-consider this direction if the above matters are sufficiently dealt with in the written submissions.

20. With commendable speed and exemplary skill, the parties and HMCTS lodged a bundle for this issue including their written submissions on these questions so that it was available for us on 5 October 2026. We are extremely grateful to them for this, and for their oral submissions.

21. Having considered those documents, the court first heard the appeals against conviction on 7 October 2026. After allowing them and giving reasons, the court indicated that on the following day it wished the parties to address a point which emerged from their written submissions. These set out the agreed position that no interest is payable in the ordinary case where a confiscation order or prosecution costs order falls away because the conviction on which it depended has been quashed. The court asked for assistance on why that was so, if there was a power to award interest on the basis identified in *Nykredit*, *Delta Petroleum* and *Evonik*.

22. The oral submissions developed that issue by reference in particular to the way in which this court dealt with the case of *R v Yasain* [2015] EWCA Crim 1277; [2016] QB 146 ("*Yasain*"). Ms Hardcastle, whose work on this case has extended over many years, and who has provided conspicuous assistance to the court throughout that time, submitted that the claim for interest was based on *Yasain* which held that the Court of Appeal Criminal Division has the same implicit jurisdiction as the Civil Division, see *Taylor v Lawrence* [2002] EWCA Civ 90; [2003] QB 528 ("*Taylor v Lawrence*"). At [37]-[40] of *Yasain* Lord Thomas CJ, giving the judgment of the court, said:-

> [37] We must therefore address the issue as a matter of principle. In *Taylor v Lawrence,* as we have set out, the court based its

> decision on the implied or implicit power to that which is necessary to achieve the objectives of an appellate court, in circumstances where no express power was conferred on the court and its powers were exclusively based on statute.
>
> [38] The way in which the Civil Division approached its power to reopen an appeal is grounded in clear principle. We can see no basis for any distinction between the Civil Division and the Criminal Division as to the principles applicable to the jurisdiction under the implicit powers of an appellate court. The appellate jurisdiction of each is statutory. There is no reason why both do not have the same implicit jurisdiction and the same general basis for jurisdiction.
>
> [39] However, it is necessary, as Lord Woolf CJ explained at para 54 of the judgment in *Taylor v Lawrence*, to distinguish between the implied or implicit jurisdiction of the court and the way in which that jurisdiction is exercised.
>
> > "It is very easy to confuse questions as to what is the jurisdiction of a court and how that jurisdiction should be exercised. The residual jurisdiction which we are satisfied is vested in a court of appeal to avoid real injustice in exceptional circumstances is linked to a discretion which enables the court to confine the use of that jurisdiction to the cases in which it is appropriate for it to be exercised. […] "
>
> [40] The fact that both have the same implicit jurisdiction does not mean that the jurisdiction has necessarily to be exercised in the same way by the Criminal Division as it would be in the Civil Division.

23. The case for interest before us was advanced as an exercise of the "residual jurisdiction which is vested in a court of appeal to avoid real injustice in exceptional circumstances".

24. It is not clear that the Supreme Court approached the question in *Hayes and Palombo* on that basis. The submissions based on *Rodger, Nykredit*, *Delta Petroleum* and *Evonik* set out above did not suggest that exceptional circumstances were required, only that the case was "suitable" for such an award or that the "justice of the case" required one, see the appellants' submissions to the Supreme Court quoted at [14](5) above. Those submissions did not cite *Yasain* or *Taylor v Lawrence*, but did conclude the passage on whether interest should be awarded with this passage:-

> 45. It is respectfully submitted that the justice of these cases demands the award of interest, and the Order was thus correct to include it. Any other outcome would be unconscionable: as a result of the repeated errors of law identified by the Court, the Appellants have been deprived by the state of significant sums of money, over an extended period of time. The award of interest is needed to give "full effect" to the decision that neither

appellant should have been awarded to pay these sums of money, and achieve the "unravelling" of their wrongful convictions.

25. In general terms, when awarding the restitution of monies, interest is awarded because such cases are "suitable" and the "justice of the case" requires the award of interest. The power to award simple interest in proceedings for the recovery of a debt or damages is established in the High Court by section 35A of the Senior Courts Act 1981, and in the County Court by section 69 of the County Courts Act 1984. This is a discretionary power which certainly does not require exceptional circumstances before it can be exercised.

26. The basis on which that interest should be assessed in restitutionary claims on a compound basis, rather than the simple interest basis provided for under the statutory discretion, was considered in *Sempra Metals Ltd v IRC* [2007] UKHL 34; [2008] 1 AC 561, and *Littlewoods Retail Ltd v HMRC (No 2)* [2014] EWHC 868 (Ch) and [2015] EWCA Civ 515. These were both claims for loss of the value of the use of money which had been wrongly paid to the Revenue, and they succeeded. Decisions of the Supreme Court in *Littlewoods Retail Ltd v HMRC (No 2)* [2017] UKSC 70; [2018] AC 869 and *Prudential Assurance Co Ltd v HMRC* [2018] UKSC 39; [2019] AC 929 are analysed in *Goff & Jones Unjust Enrichment,* 10th ed, at 36-39 to 36-52. The difficulties explained at 36-52 probably require resolution in a civil court on the basis of a fully pleaded civil claim with argument on both sides.

The powers of the Court of Appeal Criminal Division

27. Section 11A of the Criminal Appeal Act 1968 contemplates that a quashed confiscation order may give rise to a situation where money paid is "recoverable from the Secretary of State as a debt". It does not confer jurisdiction on the Court of Appeal Criminal Division to entertain such an action.

28. The Court of Appeal Criminal Division is a creature of statute whose principal statutory powers in relation to sentence appeals are set out above. The court also has a power to quash unsafe convictions. There are express statutory powers ancillary to these principal functions and, as described in *Yasain*, implicit powers, so far as "necessary to achieve the objectives of an appellate court, in circumstances where no express power was conferred on the court and its powers were exclusively based on statute".

29. The court does not have any express power to compensate those whose convictions or sentences are quashed. Where a conviction is quashed, the court does not order the release of a person from imprisonment or the repayment of any sums paid by way of fine, compensation, costs or confiscation. These things happen in consequence of the quashing and, generally, without any further order of any court. If a person were not to be released, they would have an action for habeas corpus and wrongful imprisonment available in the civil courts. As we shall explain, if money were not repaid when it ought to have been, a civil claim for payment would lie.

30. The Court of Appeal Criminal Division has, expressly, no power to compensate those whose convictions are quashed for the adverse consequences of the conviction. That power is reserved to the Secretary of State who can exercise it in the limited circumstances prescribed by section 133 of the Criminal Justice Act 1988. There is

therefore no power to remedy the consequences of an unsafe conviction in which a power to award interest might be implicit.

31. These appellants would probably not be able to recover compensation from the Secretary of State under section 133 of the 1988 Act because their convictions were not "reversed … on the ground that a new or newly discovered fact shows beyond reasonable doubt that there has been a miscarriage of justice", see section 133(1) of the 1988 Act. In *Hayes and Palombo* (which we followed in allowing the present appeals) at [9] the court said of the cases before it:-

> In each case there was ample evidence on which a jury, properly directed, could have found the appellant guilty of conspiracy to defraud. But the jury was not properly directed.

32. *Steele Ford & Newton* and *Henderson* are decisions on which the Criminal Appeal Office sought the assistance of the parties in their email of 30 September 2026 at [19] above. They deal with the award of costs from central funds in criminal cases and decide that there is no common law power to make any such award in the entirely statutory scheme which governs the circumstances in which public funds may be expended. At page 33E in *Steele Ford & Newton*, Lord Bridge said:-

> But still more important, in the present context, is the special constitutional convention which jealously safeguards the exclusive control exercised by Parliament over both the levying and the expenditure of the public revenue. It is trite law that nothing less than clear, express and unambiguous language is effective to levy a tax. Scarcely less stringent is the requirement of clear statutory language for public expenditure. As it was put by Viscount Haldane in *Auckland Harbour Board v. The King* [1924] A.C. 318, 326:
>
> > 'It has been a principle of the British Constitution now for more than two centuries … that no money can be taken out of the consolidated Fund into which the revenues of the state have been paid, excepting under a distinct authorisation from Parliament itself.'

33. These decisions seem to us to be of limited relevance. Here, it is not in dispute that the appellants are entitled to a payment out of public funds where there is no express statutory warrant for it. They were entitled to the return of their money paid under orders made following unsafe convictions. Section 11A of the 1968 Act (at [6] above) deals with confiscation orders. It provides for what should happen to "any sum paid by the appellant pursuant to the quashed order being a sum which is recoverable from the Secretary of State as a debt owing to the appellant" pending redetermination of confiscation proceedings following an appeal. It does not create the entitlement to recover the sum as a debt, it preserves it. The origin of that entitlement must be a right to restitution which has never had to be enforced because the executive meets its obligation without compulsion. In the event of failure, an action would lie in the civil courts. The same analysis applies to monies paid under an order for prosecution costs, although there is no equivalent to section 11A of the 1968 Act in that regard.

34. It seems to us that interest could be awarded by the civil court in an action for debt, although where payment had already been made that may not be possible under s35A of the Senior Courts Act 1981 which jurisdiction is expressly limited to cases where proceedings are instituted in the High Court for "the recovery of a debt or damages", see *Goff & Jones* 36-52 fn 154, and 36-29. In that situation, the appellants would have to rely on the resolution in their favour of the difficulties identified in *Goff & Jones* at 36-52. That would seem likely to succeed, given the *Rodger, Nykredit*, *Delta Petroleum* and *Evonik* line of authority. Those powers to award interest on a debt are not statutory in the civil context, but no-one can doubt that they may be exercisable against the state, with any award to be met out of public funds.

35. However, it does not follow that these powers are vested in the Court of Appeal Criminal Division. As we have said, this court does not entertain actions on contracts or claims for the recovery of debt. Why should it have the power, implicit in a jurisdiction it does not have, to award interest on debt or damages which it cannot award?

36. The fact that this position is correct is demonstrated by the way in which Ms Hardcastle presented her case before us in her excellent oral argument. This was not the same as the written representations on interest placed before the Supreme Court in the appellants' document in *Hayes and Palombo* dated 5 December 2025, see [22]-[24] above. Before us, she accepted that the general rule is that interest is not awarded, but sought to rely on the exceptional circumstances of these cases and invoked the residual jurisdiction vested in a court of appeal to avoid real injustice in exceptional circumstances. This is the jurisdiction recognised in *Taylor v Lawrence* and *Yasain* cited above. But as we have sought to demonstrate, the *Rodger, Nykredit*, *Delta Petroleum* and *Evonik* jurisdiction is not limited to exceptional circumstances. It is, therefore, more generous than the jurisdiction which Ms Hardcastle seeks to rely upon. Its existence also negates the need for any jurisdiction in this court to award interest to "avoid real injustice". The interest being sought can be sought in civil proceedings, if it is due at all, and those proceedings are a substantially more suitable forum for resolution of any dispute about the award of interest in principle or about the rate of interest or the period over which it is due than are these criminal appeal proceedings. No injustice, "real" or otherwise, is done by leaving the exclusive jurisdiction to deal with this issue to the civil courts.

37. The Court of Appeal Criminal Division has an important but limited jurisdiction and resources which are stretched. The determination of this dispute occupied one day of the time of three judges and a significant amount of time before and after the hearing in reading and writing. That time could have been spent on dealing with appeals against sentence or conviction in other cases where this court has exclusive jurisdiction and is the only home for such appeals. That is not a reason for refusing to consider complex issues where they must be resolved. It is, however, a further reason for scrupulously observing the limits of the jurisdiction.

38. Left to our own devices, therefore, we would have refused the claim for interest on the basis that we have no jurisdiction to deal with it and held that the appellants must pursue their claim for it in the civil courts, if they wish to do so.

The Supreme Court and fairness

39. We are not, however, left to our own devices. The Supreme Court has made the award of interest now claimed in other closely related cases. This must mean that it decided that it had jurisdiction to do so, although it did not explain what the basis of that jurisdiction was. It did not decide, in terms, that this court has the same jurisdiction, although that might follow depending on the basis on which the Supreme Court found its jurisdiction. Rule 29(1)(d) of the Supreme Court Rules 2009 expressly empowers the Supreme Court, on an appeal, to make orders for the payment of interest. There is no equivalent provision for this court. We do not know to what extent that Rule may have played a part in the approach of the Supreme Court. It appears clear that it did not decide the case before it on the basis now argued before us, namely the residual jurisdiction vested in a court of appeal to avoid real injustice in exceptional circumstances. The brief explanation of the decision - "to reverse the financial effects of the confiscation orders made against Mr Hayes and Mr Palombo and order for Mr Palombo to pay a contribution towards prosecution costs" – does not involve any determination that the circumstances were exceptional. The argument before the Supreme Court was materially different from that before us, see [36] above.

40. For these reasons, we do not regard ourselves as bound by the decision on interest in *Hayes and* Palombo to accept that we have jurisdiction to make the order sought.

41. It would, however, be obviously unfair if Mr Bermingham were denied interest which Mr Palombo had been awarded when the two of them were convicted in the same trial on the same evidence. The same connection may also be made between the other appellants before us and Mr Hayes and Mr Palombo, although it is somewhat less striking.

42. It is the intervention of this court which has caused the paying agencies to resile from their agreement to pay interest in these cases on the same basis as was ordered in the Supreme Court. The intervention of the court was inspired by a desire to achieve clarity about the jurisdictional position for other cases, rather than to see different appellants in the same situation treated differently in these cases.

43. In these circumstances, although we consider that we do not have any jurisdiction to make an order in the terms of the agreed order which was submitted to us, we do consider that fairness requires the SFO and HMCTS to honour the commitment to pay interest which they made when it was agreed. Doing so would not be an act of altruism because, as we have said, the enforcement of a right to repayment is within the jurisdiction of the civil courts and, subject to the issues discussed above, an award of interest in the same terms as ordered by the Supreme Court would also be within that jurisdiction. There is no merit in requiring these appellants to bring new civil proceedings if HMCTS and the SFO are satisfied that the sums claimed in interest should be paid in the circumstances of these cases.

Conclusion

44. We therefore decline to make an award of interest in these cases, but hope that the issue will not require further litigation.