

Landmark Supreme Court win

20 July 2022



Ben Douglas-Jones QC, together with Nathaniel Rudolf QC (25 Bedford Row) and William Douglas-Jones (St Ives Chambers), instructed by Ben Henry of Jonas Roy Bloom Solicitors, secure landmark Supreme Court win.

The judgment confirms that defendants whose assets are restrained in criminal cases may pay for civil proceedings relating to the same or similar facts as those of the offence(s) giving rise to the restraint order.

Issue

The appeal related to the scope of permitted legal expenditure as an exception to a restraint order granted pursuant to section 41 of the Proceeds of Crime Act 2002 (POCA). The Supreme Court was asked to decide whether section 41(4) prohibits an exception for reasonable legal expenses in respect of civil proceedings relating to the same or similar facts as those of the offence(s) giving rise to the restraint order.

Facts

The respondent, Mr Luckhurst, faces criminal proceedings in the Crown Court. The indictment alleges fraud and theft arising out of Mr Luckhurst's conduct practising as an independent financial advisory in a company called BBT Partnership Limited which he vehemently denies. The CPS' case is that Mr Luckhurst ran a fraudulent Ponzi scheme and stole money from clients. In 2016, a number of BBT's investors brought civil proceedings in the High Court against Mr Luckhurst and others. Those civil proceedings are ongoing. In December 2017, on the application of the CPS, the Crown Court made a restraint order against Mr Luckhurst under POCA. This was to preserve Mr Luckhurst's assets to meet any confiscation order which may be made by the Crown Court under the POCA in the event of Mr Luckhurst's conviction. Mr Luckhurst instructed solicitors to defend the civil claim against him and sought a variation to the restraint order to pay those solicitors £3,000 for advice on a settlement. Mr Luckhurst's variation application was refused by the judge at first instance but allowed on appeal. The Supreme Court has confirmed that such civil expenses are permitted. In a judgment given by Lord Burrows, with whom Lord Hodge, Deputy President, Lord Kitchin, Lord Hamblen and Lord Stephens agreed, the Court found, agreeing with Mr Douglas-Jones QC:

- (1) the issue was one of statutory interpretation and the correct modern approach to statutory interpretation is found in *R (O) v SSHD* [2022] UKSC 3;
- (2) on a natural meaning of the words in their context, legal expenses in civil proceedings for a cause of action (for example, a tort or equitable wrong) do not relate to a criminal offence;
- (3) any attempt to carve out a meaning for legal expenses in civil proceedings for a cause of action that "relate to an offence" will be artificial and problematic;
- (4) the pursuit of the policy of maximising confiscation is qualified by the need to

ensure that restraint orders do not unfairly prevent the (alleged) criminal incurring reasonable expenses of certain kinds;

(5) there are two specific indicators that the primary focus of the policy underlying the preclusion of legal fees in s.41(4) was on the legal expenses of defending the alleged criminal offence(s) and resisting the confiscation and restraint orders themselves:

(a) the June 2000 Report "Recovering the Proceeds of Crime", chapter 8; and

(b) the quid pro quo for s.41(4) was that, by amending Sched.2, Access to Justice Act 1999, legal aid was extended to cover restraint proceedings;

(6) as with reasonable living expenses, it will be for the courts to follow the "legislative steer" in s.69(2) so as to strike the correct balance in the exercise of their discretion in determining whether the legal expenses are reasonable: a blanket preclusion could operate to contradict the policy of ensuring maximum confiscation of a criminal's ill-gotten gains; and

(7) interpretation of the subsection to allow such expenditure reflects the spirit of the reasoning of the Court of Appeal in *In re S (Restraint Order: Release of Assets)* [2005] 1 WLR 1338.