

T20060330

IN THE CROWN COURT AT MOLD

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The Law Courts,
Civic Centre,
Mold.

B

Before

MR. RECORDER N. PARRY

REGINA

v.

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[REDACTED]

PROCEEDINGS

E

Transcript prepared from the official record by
Cater Walsh Transcription Limited
1st Floor, Paddington House, New Road, Kidderminster, DY10 1AL

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MR. S. AP MIHANGEL appeared on behalf of the Prosecution

MR. W. LLOYD JONES appeared on behalf of the Defendant

H

Thursday, 19th April, 2007

A MR. AP MIHANGEL: Your Honour, we thought it may be a good idea to call this case on to explain to your Honour the stage where we're at.

B MR. RECORDER PARRY: Do we need to translate what's being said at the moment. Who represents [REDACTED] [Short conversation in Welsh between His Honour and Mr. Lloyd Jones] I was just checking whether we needed to translate anything as we go on but unless I'm told otherwise, carry on, Mr. Ap Mihangel.

C MR. AP MIHANGEL: Thank you very much your Honour. I thought it would be prudent or the Bar thought it would be prudent just to explain to your Honour as a matter of courtesy where we're at. There are ongoing discussions. I haven't communicated with my learned friend the extent of what's being discussed at the moment but I don't think we'll be in a position to agree anything as it stands at the moment, I'm still waiting for another telephone call to come through. Your Honour may not have and it will be handed in in due course a second prosecutor's statement which is only dated yesterday which sets out the revised figures put forward by the Post Office. As it stands currently the total benefit is assessed at £82,285.96 and that is made up as follows. The sum which appeared in the indictment is £48,454.87, taken together then with the ----

D MR. RECORDER PARRY: Increase in the value.

MR. AP MIHANGEL: Increase in the value by way of interest is £3,306.80.

E MR. RECORDER PARRY: 80.

F MR. AP MIHANGEL: 80. This may be an aspect, the second limb which makes it up to the 82, which we may need your Honour's assistance. Your Honour may well have read in the other statement report and it is simply mirrored in this new report that the sum of £28,519.76 was in fact salary paid to the defendant and I'll call him the defendant, he's in fact the respondent, during his period of employment. It's a novel argument that's put forward but it's in these terms, that if the Post Office had been made aware of his offending conduct then under his contract he would not have been paid his wages and it is argued therefore that he has benefited by virtue of receiving his salary during the offending period which totals the £28,000. That may be an aspect which we will ask your Honour to adjudicate upon, I don't think we're going to be in any position to agree that. There is a case which we're still considering. It is the case of *Carter* in the Court of Appeal reported in 2006. It deals with the old legislation under the *Criminal Justice Act 1988* but the test is more or less the same. If a person benefits from an offence, if he obtains property as a result of his conduct then that is assessed as being a benefit. The test is more or less the same under the

G MR. RECORDER PARRY: As the current test.

H MR. AP MIHANGEL: *Proceeds of Crime Act*.

MR. RECORDER PARRY: Yes.

A MR. AP MIHANGEL: If it is then to be considered that it is a benefit to an individual in receiving money he wouldn't otherwise have received because he is offending, then it is certainly arguable that he has benefited from that salary, in which case then the benefit of £28,000 is something to be considered and also the interest or the increase in that.

MR. RECORDER PARRY: Just for finality. The increase on the 2851?

B MR. AP MIHANGEL: Is £2,004.53.

MR. RECORDER PARRY: Which gives us the £82,000?

C MR. AP MIHANGEL: £82,285.96. Now I may be speaking out of turn but I don't think we're going to be arguing over the 48,000 and the 3,000 which takes it up to something like 51,700. There may be an argument then as to the remainder, the 30,000 which we [inaudible] but I thought we'd just canvass this with your Honour at this stage just as a matter of courtesy to explain where we're coming from. So it -----

D MR. RECORDER PARRY: This is a case, forgive me for interrupting, this is a case where it is a lifestyle offence but the Crown take the view don't they that the assumptions shouldn't be made in this case, it would be unjust to do so and I think that's perfectly proper. So it's the benefit from the conduct as you say, the certain one which is the 48,000

MR. AP MIHANGEL: Certainly.

E MR. RECORDER PARRY: and then the lesser. Yes?

MR. AP MIHANGEL: So that's the benefit aspect of where we're at. If of course your Honour finds that that is then the case we move on to consider the realisable assets.

F MR. RECORDER PARRY: Yes. So the recoverable amount obviously equates to the benefit and then we want to see what's the available amount and here we come to the

MR. AP MIHANGEL: To the crux.

G MR. RECORDER PARRY: crux of the matter where the property in Anglesey increases at the dramatic rate referred to in the Crown's papers. This is the nub of it isn't it. I doubt if Anglesey has increased in value by that rate.

MR. LLOYD JONES: I'm sure we all wish it had.

H MR. AP MIHANGEL: Well, certain individuals in this court have certainly benefited from it if that's the case. But be that as it may, we now have a new valuer's report served on us Tuesday of this week which values it at £120,000.

MR. LLOYD JONES: Can I take it -- has your Honour in fact had that?

A MR. RECORDER PARRY: No. As I said before this morning, we mentioned it in your absence. It's just simply because I enquired. I didn't have the second affidavit nor have I the valuation. I have the letter from your instructing solicitors I think of the 29th March explaining the difficulties but nothing since then.

B MR. LLOYD JONES: We have a copy of the letter that was sent. It has been sent, it probably hasn't been tied up. Can we provide your Honour with another copy?

C MR. RECORDER PARRY: Thank you. [Handed]

MR. AP MIHANGEL: The relevance of this is that we're more or less now singing from the same hymn sheet in that the property is now valued at £120,000. The Post Office's approach and I say this now and it's not meant in any way to be discourteous because I was taking instructions as we were called on, I was invited to consider another figure by my learned friend. May I make it clear that it is the Post Office's position that if 120 is the value then that's what we're working from.

MR. RECORDER PARRY: And are we then talking about a tainted gift situation?

D MR. AP MIHANGEL: Indeed. The test is -----

MR. RECORDER PARRY: And we're talking 20,000?

E MR. AP MIHANGEL: Indeed. The test, forgive me for interrupting, the test of course is it has to be significantly less and percentage wise 100 over 120 multiplied by 100 of course gives us 87% so it's been sold at 13% under value, market value. I think it's important to put it in percentage terms because if we were talking about property worth half a million pounds and £20,000 was the difference it may not be considered to be significantly less, but we're only talking about 100 and 120 here and so it's a difference of 13% and in those circumstances we maintain that that is significantly less. The other figures -----

F MR. RECORDER PARRY: Again, forgive me. Let's take this. The benefit is £82,000-odd, maximum. The recoverable amount, let's say for a moment it was that, and we're talking about the available amount. The house of course is no longer owned by the respondent.

MR. AP MIHANGEL: Owned by his son.

G MR. RECORDER PARRY: Owned by his son, and the other assets, save for the house?

MR. AP MIHANGEL: The assets then would be £1,500 from Norwich Union, that is an annuity. My investigating officer, who isn't present I hasten to add but is the other side of a phone so I'm taking instructions throughout, he has communicated with Norwich Union and they have said that if the court were to order the release of that annuity, tax having been paid and all other liabilities, the

A estimated realisable sum would be £1,500, so that is another available asset. In addition, there is the Alliance and Leicester current account. It currently has £4,800 or thereabouts, £4,812.04. From that is to be deducted the sum of £2,835.12 because that would be a sum due to the wife when the Phoenix Life Insurance was surrendered, which leaves us a rough and ready figure of just below £2,000.

B MR. RECORDER PARRY: And what's the Crown's position regarding the property being in the name of the respondent's son?

C MR. AP MIHANGEL: That's a tainted gift and that was under-sold with a view to escaping liability for these proceedings.

D MR. RECORDER PARRY: And the consequence of that would be?

E MR. AP MIHANGEL: We would be due half, if it's in joint names and it was in the joint names, we would be entitled to half the £20,000 plus the increase in value of the tainted gift as well.

F MR. RECORDER PARRY: But the available property clearly wouldn't be affected by the value of that property.

G MR. AP MIHANGEL: No but the point is this, it shouldn't have been sold in the first place.

H MR. RECORDER PARRY: No, but it has been.

I MR. AP MIHANGEL: But the point there is it wasn't properly sold and so efforts must be made to find the available assets.

J MR. RECORDER PARRY: I'm not saying that but this is not a case where a sale of that property could be ordered. That's the point I'm making.

K MR. AP MIHANGEL: No, no, but I'm afraid to say it's a position of the defendant is found to have sold it in those circumstances the onus is on him otherwise there would be a period in custody in default. But there is also the increase in value of that tainted gift as well. So hopefully your Honour ----

L MR. RECORDER PARRY: That's helpful. Mr. Lloyd Jones?

M MR. LLOYD JONES: Yes. Your Honour, can I hand in the report and the second statement and on top are copies of the covering letters to prove that they actually have been sent to the court. It matters not, it wouldn't take a moment for your Honour to read them because your Honour now knows the point. If I can recover those letters. Your Honour will see that they have been sent on the 12th and 16th I think of April. [Handed]

N MR. RECORDER PARRY: Yes.

O MR. LLOYD JONES: Your Honour, can I deal with these matters very very briefly by way of an opening shot. I had hoped to persuade my learned friend that he

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ought to be concentrating on the indictment figure because what happened in this case of course is that the defendant was originally charged with theft. The Crown eventually accepted on an agreed basis which your Honour has in the papers

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MR. LLOYD JONES: a plea of guilty to false accounting so it then becomes a question of the benefit and of course there was, because of the way the defendant acted, a deferment of the payment of the money and it's in that way the Crown say that the forty odd thousand is benefit. Now, the likelihood is that we won't argue against that.

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MR. LLOYD JONES: And the way that your Honour has viewed it I'm sure will understand why the defence might take the view that it's not proper to argue points which are really unarguable. Now the question of the salary on the other hand is a different matter in the sense that the Crown never charged him with obtaining by deception. Now, I asked my learned friend whether there were authorities and my learned friend has been able I think through the good services of the officer to provide me this morning with this - I'm not complaining in any way, I'm simply setting out the facts. I've been able to read part of it. Now this is a case and I'll read the rest of it in a moment if your Honour would be good enough to grant us the time, but it does rather appear that in this case there was an actual charge of obtaining pecuniary advantage by deception because it looks from what I've read quickly so far that the defendant or one of them in this case certainly had been in paid employment and therefore a salary through that employment as a result of lying, as he accepts, so my learned friend needs to reflect on that. I point that out -----

D

MR. LLOYD JONES: And the way that your Honour has viewed it I'm sure will understand why the defence might take the view that it's not proper to argue points which are really unarguable. Now the question of the salary on the other hand is a different matter in the sense that the Crown never charged him with obtaining by deception. Now, I asked my learned friend whether there were authorities and my learned friend has been able I think through the good services of the officer to provide me this morning with this - I'm not complaining in any way, I'm simply setting out the facts. I've been able to read part of it. Now this is a case and I'll read the rest of it in a moment if your Honour would be good enough to grant us the time, but it does rather appear that in this case there was an actual charge of obtaining pecuniary advantage by deception because it looks from what I've read quickly so far that the defendant or one of them in this case certainly had been in paid employment and therefore a salary through that employment as a result of lying, as he accepts, so my learned friend needs to reflect on that. I point that out -----

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MR. RECORDER PARRY: You draw that distinction between that case and this because of the circumstances.

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MR. RECORDER PARRY: On that authority.

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MR. LLOYD JONES: For my learned friend to deal with that as He thinks fit. Now when one comes to the question of realisable assets, the defendant is 60 years of age, he's now getting a tiny pension from his Post Office salary, he's been working in the Post Office for many, many years and it is small, there is this tiny annuity which is coming his way. Now, if my learned friend's instructing solicitors have made these enquiries and Norwich Union say that it can be realisable then so be it, there's nothing I can say about that. If that turns out at any date to be wrong the matter can be mentioned and the order amended.

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MR. RECORDER PARRY: And if Norwich Union are right, there's nothing I can do either, is there?

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MR. LLOYD JONES: Exactly. And when it comes to the question of the Alliance and Leicester, well there's a joint account, there's £4,000-odd in it, my learned friend very fairly has agreed because some, fairly recently money from the Phoenix Insurance Company was paid in but some of that related to the wife, that that can be knocked off, then there's nothing I can say, it's a fair compromise.

MR. RECORDER PARRY: Yes.

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MR. LLOYD JONES: Now when it comes to the question of the house, these matters very rarely come before the court thankfully and when they do they settle and therefore many cases which are by way of application don't necessarily come to the attention of either the judiciary or the practising legal representatives, but the question is has there been a transfer for a consideration that is significantly less. It's not less, it is significantly less and that's the test. If there is then the court has to work out the difference and in this particular case, because it's jointly owned, whatever the difference is it then has to be halved again. There is a complicating factor in this case in that the defendant and his wife had very very substantial debts, in fact £100,000 didn't even get rid of the legal expenses and the secured charges, the defendant had to give his solicitor more money to clear the rest of that off and he's still left with the best part of about £50,000 worth of debt insecured. Now what we've done is, your Honour may not have or perhaps your Honour does following the sentencing hearing, the completion statement.

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MR. RECORDER PARRY: What I have is a completion statement regarding the sale of Derwen Post Office which shows a balance due from the respondent of a little in excess of £900.

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MR. LLOYD JONES: Yes, that's right, that's what I'm referring to. So your Honour has it already.

MR. RECORDER PARRY: Yes.

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MR. LLOYD JONES: We have been wondering where that document was and we've got a replacement but it's been there clearly since the sentencing hearing. Now, what we've done is, we've had it valued, we've got the expert here, Mr. Dafydd Rowlands from Morgan Evans and Co., and we've been able to discuss matters with him and I've also said to my learned friend that my learned friend is quite at liberty to speak to the expert to try and sort this out. Now, the simple point it is this. 120 is the paper valuation, yes. What do you if somebody turns up and offers say 5% less or 10% less, is that reasonable and the answer is clearly yes it is reasonable. If the property hadn't been sold in this way the chances are that eventually it would have been dragged into the reckoning by a civil court or by your Honour or one of your Honour's brothers sitting in this court and it could have been in the end a false sale and the court really has to take all these matters into account.

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Now these are the matters that really I've been asking my learned friend to reflect upon with those who give him instructions as to whether or not one really ought to take the 120,000 or to look at the realities of life, because the simple fact is that if this property hadn't been sold because of the dire financial position the

A defendant was in he was not able to pay the mortgage and therefore the interest was going up and up and up, so whatever less there would have been of the sale proceeds to some extent would have been offset by the increase in interest paid to the financial institutions which were secured on the property and what I've been asking my learned friend to do is really to reflect upon all these matters because in the end the court has to be left with two columns, benefit and realisable assets and that's where it comes into it. There has to be a certain amount of give and take and common sense in these circumstances and what I think my learned friend and I would like to do if we can is to reflect on this case to see whether my learned friend has a point at all about salary and also to see whether we can deal with the question of the house.

B Now Mr. Rowlands is here. If we can't deal with the matter relatively quickly I know he has another commitment in Anglesey where he has to be I think at the latest about 3 o'clock and if we end up having to in any way contest this matter then I would ask certainly that he gives his evidence before lunch so that your Honour will have heard what he has to say and he can go on his way.

C MR. RECORDER PARRY: Well we'll certainly accommodate that.

D MR. LLOYD JONES: I'm grateful.

E MR. RECORDER PARRY: What I'm going to do then is to adjourn this matter until a quarter to 1. Hopefully that will if necessary allow us to hear from Mr. Rowlands if I feel that's necessary.

F MR. LLOYD JONES: Yes. Now I know that your Honour wouldn't in any way give any final indications but my learned friend has very fairly if I may say so laid out his stall, I have I hope equally fairly set out some of the arguments that can be advanced. I don't know if any of these matters in any way as far as your Honour is concerned are matters which your Honour would feel able to say anything that would assist the parties because clearly this test of significantly less, when one puts into the equation the question of would it be unreasonable to accept a bit less as one does in the market place and still fall foul of significantly less and what I'm talking about there is a percentage reduction for a quick sale, whether those are matters which your Honour feels the Crown ought to have regard to. If they are then it would no doubt assist my learned friend in his discussion perhaps because he would know where he stands.

G MR. RECORDER PARRY: Was the valuation prepared in the context of and with the benefit of knowing about the history, the opening of the other shop, the opening of Post Office facilities at other premises? Were they factors that Morgan Evans and Company were aware of?

H MR. LLOYD JONES: As I understand it, it's a bricks and mortar valuation but I'll check. Bricks and mortar excluding any business value to the property. To assist your Honour on that and I'm doing this now from memory, the property was going to be sold a considerable time previously by other agents that your Honour has seen mentioned and what my instructions are are to this effect, that it would have been bricks and mortar plus an increase for the goodwill based really on how

much money was coming in from the Post Office salary which if I remember correctly was a factor of about 2½ -----

A MR. RECORDER PARRY: Yes. It came to 70,000. It was 70,000 and the calculation was that due to the delay, due to the opening up of competition, that was then discounted and it left in the region of 115 to 120,000.

MR. LLOYD JONES: Your Honour has that from the defendant's own statement?

B MR. RECORDER PARRY: Yes.

MR. LLOYD JONES: So that's the position. It's whether the Post Office really ought to be in pursuing this case fairly to be sticking to a paper figure or whether they ought to be using a modicum of reality is really the way I put it. Now I don't know if your Honour has -----

C MR. RECORDER PARRY: Well I'm bound to say my preliminary view was and it's a preliminary view only that I agree with Mr. Ap Mihangel that the relevance of the salary is indeed a novel argument, it's not an argument that I had anticipated and I'll take some persuading in respect of that argument. I did have a concern regarding the tainted gift. Having said that, I'm almost certain that the reality is that if somebody advertised a property on the market for 120,000 they'd accept 110. Those are the kind of figures that I had marked down but as I say I didn't have the valuation but I did have Mr. Thomas' first statement.

MR. LLOYD JONES: Yes.

E MR. RECORDER PARRY If that's of any assistance, those are the views I formed before hearing any representation.

MR. LLOYD JONES: No, of course. That's helpful because of course we've invited them with a view to try and sorting out what is clearly a difficult situation and I'm sure we both understand that those are preliminary views without hearing full arguments. Now when it comes to the question of where we go from here, we would value a few minutes to consider those and we don't -----

F MR. RECORDER PARRY: Well, can I say this. First of all, can I thank Mr. Rowlands for attending court, it's extremely helpful and I know that efforts had been earlier to value this property and you were hindered through no fault of your own. I certainly am quite content if Mr. Ap Mihangel - - for you to be released to attend on other business. In those circumstances, I'm here all day and at your convenience. I think if we are to have a hearing about this matter, a decision needs to be made by no later than 2 o'clock, I'd commence a hearing at 2 o'clock. I have another matter as well which is at a similar stage, possibly not as advanced.

H MR. LLOYD JONES: Now if you need to hear Mr. Rowlands then we'll do that at a quarter to.

MR. RECORDER PARRY: Yes.

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MR. LLOYD JONES: I'm grateful. Thank you very much indeed. In terms of other pieces of paper, I'm sure your Honour probably has the others by implication from some of the matters your Honour is saying. Sometimes matters don't through no-one's fault don't tie up. There are many files in this building, there have been many upheavals recently if I can put it in those terms.

MR. RECORDER PARRY: I think I have everything I need.

LATER

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MR. AP MIHANGEL: May we thank your Honour for the time and the kind assistance provided before hand. May I make this position clear. I think we may be in a position -----

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MR. LLOYD JONES: I'm taking final instructions before my learned friend says anything. It may well be that we will be able to deal with the second aspect of the case, can we put it in those terms.

MR. RECORDER PARRY: That is the tainted gift aspect.

MR. LLOYD JONES: Yes and the other assets.

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MR. RECORDER PARRY: Which then leaves the question of the salary.

MR. LLOYD JONES: Yes.

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MR. AP MIHANGEL: And on that point we appreciate and have taken on board your Honour's comments. We would simply ask for a determination because otherwise, if we're simply going to be accepting the point, it will keep cropping up for the Post Office in later cases and -----

MR. RECORDER PARRY: It's not, I can tell you now that it's not an improper application.

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MR. AP MIHANGEL: Well, I'm grateful for that.

MR. RECORDER PARRY: It is appropriate in certain circumstances and the provisions do in fact make it quite clear that if I was to find that the salary was the benefit of the criminal conduct, the court wouldn't in fact have the discretion to reduce that to reflect that which was honestly earned and so clearly it is an application that's always properly put before the court for consideration but I think it always will have to be decided on its individual facts but I certainly don't think that I would, not that I would be able to in any event, but I don't think I'd be able to establish or would want to establish any principle. It couldn't be put forward as a matter for consideration because clearly it can.

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MR. AP MIHANGEL: Yes. I'm most grateful for that indication. As I said, all we would simply ask is then and I think I dealt with them in broad outline in any event moments ago but we'd simply ask for a determination of that one point. It would assist others, I think your Honour would understand, in due course if that

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were to be the case. If we could do that now, deal with those essential features, ask your Honour to determine that, then I think we're going to be in a position to agree the benefit figure and then we can move on and then instructions can be taken I think as to the realisable assets.

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MR. LLOYD JONES: I don't want to appear awkward but I need to sort out the realisable assets and get final instructions because if that's sorted Mr. Rowlands can then go and your Honour will understand he has to get to Anglesey.

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MR. LLOYD JONES: What I would ask your Honour to do if it is at all possible is to let me deal with this now in the next few minutes, then perhaps at 2 o'clock deal

MR. RECORDER PARRY: Come back and deal with all matters.

C

MR. LLOYD JONES: with the arguments because it's not going to be a very long argument at 2 o'clock. Can we ask that, simply in the interests of Mr. Rowlands.

MR. RECORDER PARRY: Yes. So you're asking me to rise?

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MR. LLOYD JONES: Please.

MR. RECORDER PARRY: You don't want me back before 2 o'clock?

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MR. LLOYD JONES: I'm going to ask your Honour to rise for a moment so I can take just final instructions in privacy, if we need to call Mr. Rowlands he's still here, so just to rise literally for a couple of minutes.

MR. RECORDER PARRY: I'll wait for your call.

MR. LLOYD JONES: Yes, thank you very much. We're very grateful.

LATER

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MR. AP MIHANGEL: I think we're going to be in a position to agree matters. May I just as a matter to save a little bit of public funds, I don't think we'll be needing the translators any further and they can be released.

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MR. LLOYD JONES: I agree with that. The only matter they were to deal with was the evidence of Mr. [REDACTED] and in the circumstances it won't be necessary for him to give evidence.

MR. RECORDER PARRY: [Translators spoken to in Welsh] I've just thanked the staff for coming to assist the court and made the point if they hadn't been here we wouldn't have been able to start and make any progress. Thank you very much indeed.

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A MR. LLOYD JONES: Can I deal your Honour, if your Honour will forgive me just without notes now in round figures deal with it in this way. We've now sorted out the realisable property and it is, following the enquiries made by my learned friend, £1,500 from the Norwich Union and if that turns out not to be correct or if there's any problems with it then clearly the matter can be mentioned at a later date because otherwise it would be quite wrong for the court to make an order that he has to pay money which it turns out was never available. Now the next matter is the Alliance and Leicester account. In round figures it's £2,000 - we'll work out the exact figure in a moment - and that is a figure that's been arrived at by my learned friend after giving credit for Mrs. ██████████ Phoenix Life Insurance policy, whatever one wants to call it, that's been paid into the account. Now as far as the house is concerned, the figure has been compromised because these matters are matters of art rather than science as the valuer pointed out, £6,000, in other words 112. Can I say that we're very grateful that your Honour felt able after hearing short argument to say something that enabled my learned friend to take realistic instructions and as I say it's a satisfactory compromise.

B MR. RECORDER PARRY: So that's a half of 12 which reflects Mr. ██████████ interest, excludes Mrs. Thomas' interest.

C MR. LLOYD JONES: Yes. So in round figures ----

D MR. AP MIHANGEL: Well, there's the 119.76 which is the increase in value of that is 112 ----

E MR. LLOYD JONES: Yes, there'd a tiny bit of interest.

F MR. AP MIHANGEL: The interest then on 6 has been calculated at £119.76.

G MR. LLOYD JONES: Well, I can't argue with that because it's clearly right. So that deals with all those matters. Now, we're then left with the legal argument. Now I've read most of that authority now, I haven't read all of it. Your Honour had said 2 o'clock and I'm afraid I took that as read that it would be 2 o'clock. Now, I'm in your Honour's hands.

H MR. RECORDER PARRY: No, 2 o'clock, unless that causes Mr. Ap Mihangel any difficulty?

I MR. LLOYD JONES: I think he was here for the day so I don't think it does although he may ----

J MR. RECORDER PARRY: I'll need a copy of the authority to consider myself and I'm sorry it's [spoken in Welsh]

K MR. LLOYD JONES: Your Honour will see from that that it's another case on its own facts but there actually is a charge there of obtaining.

L MR. RECORDER PARRY: So 2 o'clock. [Speaks in Welsh] Be back by 2 o'clock.

MR. LLOYD JONES: Your Honour I don't imagine the legal argument will take us probably more than a quarter of an hour in total and by then we'll have worked out the exact figures on the Alliance and Leicester.

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- Mid-day adjournment -

MR. AP MIHANGEL: May I thank your Honour for that additional time. We're now in a position to proceed to the full hearing. May I just pause for a moment. I think I've left my actual papers next door but I can work without them.

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MR. RECORDER PARRY: Do you need a moment, Mr. Ap Mihangel? It's no problem.

MR. AP MIHANGEL: I've brought the wrong papers but it doesn't matter. We've provided your Honour now with the available assets. I think we'll be able to provide you with a proper figure in due course.

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MR. LLOYD JONES: Yes.

MR. AP MIHANGEL: I'm grateful to my learned friend for that and I indicated before lunch that the only issue which remained to be resolved by your Honour today is that second aspect of the benefit figure. The investigating officer, Michael Matthews, has provided in his statement to the court and may I refer your Honour to that. It is the original statement that your Honour has before you I suspect.

MR. RECORDER PARRY: 16th January '07?

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MR. AP MIHANGEL: May I just hand in the April one which has been shown to my learned friend and page 2. [Handed] May I just refer to page 2 of that. It's not necessary your Honour with respect to go through it all with you because we're now going to be in a position to resolve the rest of it but your Honour will see the first page deals with the total at 82 or thereabouts with 48 being the figure which reflected the indictment, and over the page then at paragraph 2.5 at page 3, the sum of 28,519.76 which I will loosely label remuneration. It is essentially the salary that he received. It is calculated between October 2004

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and October 2005, a period of 12 months which reflected what was in the indictment. This would have been money received by this respondent as part of his salary. Paragraph 2.4 makes it clear that had the Post Office been aware of his criminal activity, that is to say his false accounting from an early stage, so for example if they had been told in October 2004 or November 2004 of such an activity then of course under the terms of his contract they could have dismissed him or dealt with him in another way.

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MR. RECORDER PARRY: They could have offered help.

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MR. AP MIHANGEL: Indeed, or another means of resolving the situation. By remaining silent and continuing the offence of false accounting he compounded, the respondent that is, his own situation. In other words it is the Post Office's case or the Crown's case on behalf of the Post Office, that he was essentially benefiting from his criminal activity, the criminal activity being the false

accounting. The benefit is that he was receiving a salary. Had he not have been conducting this criminal activity he would not have received a salary.

A MR. RECORDER PARRY: Had he not been conducting the criminal activity he would not have received a salary?

MR. AP MIHANGEL: Sorry.

MR. RECORDER PARRY: If it was known.

B MR. AP MIHANGEL: Yes, if it was known and it is on that basis your Honour, as can be seen from paragraph 2.5 that this money would not have been paid had the Post Office been aware of the true facts in this matter as the defendant's contract to provide services would have been suspended and the officer has quite helpfully then provided a schedule setting out the money owed. So that is essentially what is being asked. I'll develop the point a little further if I may but that is essentially what it is that we suggest and submit at this stage.

C The law, I've already dealt with that briefly with your Honour before hand. The case of *Carter* in fact deals with the old law but it more or less in my submission mirrors -----

D MR. RECORDER PARRY: Well it quotes an identical test, doesn't it?

E MR. AP MIHANGEL: Indeed it does and so I don't propose to go through that and I know your Honour is well versed with what it is that must be satisfied. If there was criminal activity has there been a benefit, if there is a benefit then an order can be made or should be made in fact. The case which is before the court of *Carter* I accept is different in its consideration so far as the offences are concerned, namely that the defendants in that case were charged with obtaining a pecuniary advantage by deception. However, the principle as set out in that case remains a feature which in my respectful submission can be applied to any case and it must be decided on its own merits. Paragraph 25 of the case of *Carter*, I shall quote it in its entirety, it's only three sentences:

F "In our judgment section 71 is clear. The benefit is not receipts, it is not net profit, nor is it the sum after distribution, nor is it the sum after sharing it with others. It is the amount obtained. A person who controls the funds in a bank account has obtained them."

G That's essentially a quite obvious point. The point I think of this argument is whether or not it can be considered a benefit because otherwise, if it is to be considered a benefit, it must follow that that benefit, sorry, the salary was as a result of the benefit and if that's the case it was inappropriately obtained. Paragraph 39 touches on the point in this case. It is dealing there with the offer of an employment and it says:

H "Once made it continues to have an effect throughout the employment which has been taken up.. At any stage had the

A representation been correct it is plain the employment would have ceased. Although the question as formulated in the case of *King* was directed towards a different statutory provision from the one which we are considering, namely whether or not the benefit was obtained, the formulation of the question in our judgment is nevertheless apt. Substituting benefit for property the question is this: was the deception an operative cause of obtaining? In our judgment the answer to that question is plainly

B So that was their conclusions in that case but the test nevertheless is, was the deception an operative cause of obtaining and with respect I think that is the approach which your Honour has to adopt today and so with that test in mind let me conclude the Crown's position in this way. Had this respondent made his position known at an early stage rather than compounding the situation and remaining silent for a period of 12 months, the salary which he has received would not have been paid either in full or in part. If that is the case and your Honour is satisfied that that is the case, then in my respectful submission he has benefited from his criminal conduct, namely the false accounting and if that is so, either in full or in part, the Post Office would be entitled to the full remuneration as set out. I don't think I can take it much further. Those are my submissions.

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D MR. RECORDER PARRY: Very concise and very helpful, Mr. Ap Mihangel, thank you? Mr. Lloyd Jones?

E MR. LLOYD JONES: Your Honour, earlier on this morning my learned friend told your Honour that there was a novel point that he was going to raise with your Honour. If one stands back for moment and considers why is it a novel point, the answer in my submission is blindingly obvious. It's a novel point because there's no merit in it. It's not something that happens in the courts. Can I your Honour for a moment invite your attention to examples. Take the example that happens all too often of a postman who over a period of years helps himself to parcels which look like birthday cards or Christmas cards and the like and he quietly removes them and takes home and helps himself to the contents and he does that over and over and over again. These cases come two years, three years and then one day some little thing alerts somebody to carry out a check and they find a whole mountain of things, usually in the attic or somewhere like that. If my learned friend is right it would mean that that postman, once a Proceeds of Crime application was made in respect of the benefit that he'd had from the theft, could then go on to find the earliest date of the earliest letter and ask for all his salary back. It doesn't happen. It doesn't happen because the legislation doesn't go that far and wasn't intended to go that far.

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G Take another example, bringing it closer to home. The lady who works behind the till who helps herself over a period of years to money. The shopkeeper always suspects that there's money going missing but he can't prove it and then a camera is installed and one day the employee is found to be taking something from the till. That's another example. Do we ever hear of applications of this kind being done? The answer is no.

H The person who works in a warehouse, similarly, sometimes very very expensive equipment is taken from warehouses. Your Honour knows exactly the sort of

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cases I'm talking about, electrical items and things happen, other people get involved, a conspiracy to steal and so on. There's benefit. Do they ask for the salary back? The doctor who perhaps prepares false prescriptions and sells them. Is he ever asked after a period of time to pay his salary back from the National Health Service. I can't think of a single example, I'm sure your Honour can't either. It's novel. It's novel because it goes further in my submission than the legislation in any way ever envisaged.

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Your Honour, can I deal with general matters. The defendant pleaded guilty to false accounting. The charge of theft was not proceeded with, no evidence was offered and a not guilty verdict was entered, there was a basis of plea and all matters were dealt with in that way. As far as the benefit flowing from the false accounting is concerned, there's no issue about it. What he did was to cover up those losses which were in the till. How can it be said that his salary flows from that particular offence? His salary was paid to him as a result of his contract of engagement. The benefit to him comes from the contract, it does not come from the offence.

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My learned friend says oh, if we'd known the full facts then we'd have suspended him and matters of that kind. In my submission, that is to miss the point, it's to look at it from the wrong point of view. In my submission the court ought to be looking at it from this point of view. Where does his salary come from, why is it paid? It's paid because of the contract. It's not paid because of the false accounting. It's not a benefit that comes because of the offence of false accounting. In any event, your Honour, your Honour may have the indictment and may have seen count 2 on the indictment, the particulars of which relate to the way that he would falsify entries on a particular weekly document. I'm afraid I don't actually have a copy of that count in front of me now but that's the recollection

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MR. RECORDER PARRY: I've seen count 2.

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MR. LLOYD JONES: Yes. There we are, your Honour has seen it and therefore will recall that what I've said hopefully is correct. Is the court to have a situation whereby the court has to examine, well, what documents were falsified? On what particular day? Was it one day each week? Is the court then to apportion matters relating to his salary. If it happened on a Wednesday, is it only to be the salary for the Wednesday that is to be taken into account. These are questions which are real questions which would flow if my learned friend's argument is right. There has to be a limit to it and in my submission the legislation entitles your Honour to make a benefit figure relating to the amount to which the false accounting relates and no more. That's the reason it's a novel point, because it simply isn't done.

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Now, could it have been done? Well, each case as your Honour very rightly in my submission put it earlier on turns on its own facts. The case that my learned friend relies upon is an entirely different case. That is a case in which it seems from my reading and understanding of it that there was a conviction for obtaining a pecuniary advantage by deception. If I can for a moment invite your Honour's attention to paragraph 6 in the report, where it says this. The defendant in question was convicted of an offence of obtaining pecuniary advantage by

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deception and then sentenced. The case then deals with money laundering.
Paragraph 7:

A "The central allegation against him was that he, being a person not entitled to work, had obtained employment by deception namely that he was entitled to work."

B This is an entirely separate case because the fact is that Mr. [REDACTED] had been a good and faithful employee of the Post Office for many, many years. He did not obtain his employment by deception, he was an employee who because of matters which he simply still cannot explain found the till was down and then hid what was going on. It's an entirely separate case to a case in which perhaps he had lied to get his job and then having got the job then plundered the till. In those circumstances the prosecution would have been entitled to have charged him of simply with theft or false accounting in the alternative but also a charge relating to the actual obtaining of the employment itself. That's the reason why cases like this in my submission do not come before the court. The prosecution are trying to force a legislative square peg into a round hole and it simply won't fit in the circumstances of this case and that's the way in which I put it. Your Honour, I don't think that I can assist further without going into repetition because in my submission it's an application without any merit whatsoever although in some cases on particular facts it might be but not this one. Can I assist further?

C MR. RECORDER PARRY: I'm very grateful, thank you. Well I'm asked to determine whether the salary of the respondent earned during the period of the commission of the offence admitted on the 29th September 2006 and for which he was sentenced on the 6th November 2006 should be included as benefit derived from his particular criminal conduct. I think it's right to put on record that although this offence falls strictly within the definition of criminal lifestyle offences I do, as I'm very reasonably invited to do so by the prosecution, agree that to deal with it in such a manner would pose a serious risk of injustice and as invited by the prosecution I limit myself to considering the benefit derived by the respondent from his particular criminal conduct. The relevance of the salary of course is the fact that he was in the employment of Royal Mail, the victims of the crime, during the relevant period and in certain cases it is entirely appropriate it appears to me that the respondent's salary in a similar position could be a question for consideration.

D I must be satisfied on the balance of probability that the respondent's salary was obtained as a result of or in connection with criminal conduct. I've been helpfully referred to the case of *Carter* and have regard to it. That's a case under the *Criminal Justice Act 1988* and not the *Proceeds of Crime Act, 2000* and I distinguish that case on its facts from this particular case due to the fact that the salary of the defendants in the quoted case were in fact the subject matter of specific charges and therefore it appears to me indisputably they were obtained as a result of or in connection with the particular criminal conduct. The salaries referred to in those cases were the direct benefit of the charges.

E The test that I apply in this case is, was the deception the operative cause or an operative cause in the obtaining by the respondent of his salary. As I made clear throughout I take the view that these matters must be decided on their unique

A individual facts, and having read all of the papers and in particular having regard to everything I have read about the respondent, the unique particular facts of this case undoubtedly are that for many years, including the year of the commission of the offence, the respondent provided a high quality, highly regarded service to his employers, its customers and the community that it served and that his salary was derived from those services and not as a result of or in connection with the fact of his criminal conduct over the particular 12 months and for those reasons it's my determination that the salary should not form part of the benefit by the respondent as a result of his particular criminal conduct.

B MR. LLOYD JONES: As far as the figures are concerned, I've worked it out on the papers, I don't think my learned friend has the statement in front of him now, but it's £1,500 from the Norwich Union, 1976.92 money from the Alliance and Leicester after deducting the figure that's owing to Mrs. [REDACTED] There's then the £6,000 and the interest, I think my learned friend has the figure for that, it was a hundred and something pounds but I'm afraid I was unable to note -----

C MR. RECORDER PARRY: While Mr. Ap Mihangel calculates that, the benefit figure now is £48,454.87 plus the increase in value on that sum.

D MR. AP MIHANGEL: Indeed. Forgive me. The total then is as follows: the benefit is £48,454.87 and £3,306.80. If one looks then at page 6 of Mr. Matthews' statement -----

E MR. RECORDER PARRY: But that to comes to a total of sorry?

F MR. AP MIHANGEL: £51,761.67.

G MR. RECORDER PARRY: I'm grateful.

H MR. AP MIHANGEL: The summary of available assets then is to be as follows: the tainted gift, sale of the Post Office to his son, £6,000, increase in value of the tainted gift, £119.76, the personal Alliance and Leicester account at £1,776.92, and the money from the Norwich Union at £1,500. If my rough and ready calculations are accurate, the total to be paid therefore amounts to £9,596.68.

I MR. LLOYD JONES: I agree my learned friend's arithmetic.

J MR. RECORDER PARRY: And the -----

K MR. AP MIHANGEL: An amount, sorry forgive me, an amount exceeding 5 but not exceeding 10 carries with it a maximum in default of 6 months and the maximum period for payment is one of 6 months, may be my learned friend can address you as to that, and finally these are civil proceedings and it is appropriate in such cases costs to be applied for, a schedule has been prepared, I hand in a copy of that schedule, it is not a complete schedule given that the financial costs for the investigation unfortunately have not been included but the sum to be added for the investigation of these proceedings is 3825.

L MR. RECORDER PARRY: And that is -----

MR. AP MIHANGEL: Sorry, that should be reduced. It's the financial, we'd included the criminal one in that, that has already been dealt with under of course the criminal matter before the court in Caernarfon, it's simply the financial investigation that should be applied for and that is a sum of £1,125.

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MR. RECORDER PARRY: That is in addition to the 13-12?

MR. AP MIHANGEL: It is.

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MR. RECORDER PARRY: And that's a matter within my discretion?

MR. AP MIHANGEL: It can be in full or a contribution towards.

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MR. LLOYD JONES: Can I deal with these matters. First, as far as the period in default is concerned, my learned friend I see has checked it and of course he's right, it is 6 months imprisonment in default. I would ask in the circumstances the defendant has a maximum period of 6 months in which to raise the money. Can I deal now with another matter and it's this. It's my recollection that at the hearing before Mr. Recorder Roddick, Queen's Counsel, sitting in the Crown Court, when the defendant was sent to prison the learned judge ordered him to pay a contribution towards the prosecution costs in the sum of £750 and it's my recollection that he was given I think 12 months to pay that so he hasn't actually yet come to the time for paying that sum. Now the court in this case has had the advantage now of a whole mountain of paper if I can put it in that way and the statement, the second major statement made by the defendant has attached to it a number of appendices which show the financial position that he is in.

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MR. RECORDER PARRY: Mr. Lloyd Jones, I'm going to take a practical and pragmatic view with regard to costs as I would in the case of a normal defendant bearing in mind possibly above everything else his ability to pay.

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MR. LLOYD JONES: Exactly. He can't pay.

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MR. RECORDER PARRY: [Speaks to defendant in Welsh] I'll say this in Welsh first, I'll repeat it in English. [Speaks in Welsh] On the face of it this is a draconian provision and Act but it was meant to be. I think it's probably right to say that it wasn't intended for cases such as these but for far more serious criminals but cases such as these are caught within the provisions of this legislation and the court simply cannot circumvent those provisions and has a duty to enforce them. I'm satisfied following today's hearing that the benefit to you Mr. [REDACTED] from your particular criminal conduct is £51,761.67. That being the benefit, that is also the recoverable amount. However, the court is permitted to look at the actual amount available, the realisable amount and I'm satisfied that that comes to £9,596.68 and for that reason the confiscation order is in that sum and no more. I grant you the full period of 6 months to pay that and I make you aware that if you require further time it's open to you to make application for that further time to the court. I have to make it clear that if the sum is not paid you would have to serve a further term of imprisonment of 6 months and I have to make you aware also that even if you serve that period the sum would still be due for payment. With regard to the question of costs I take very much into account your financial position at the end of everything that has happened. I'm

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quite satisfied that you simply don't have the means to pay and exercising my discretion I make no order of contribution towards the prosecution costs or the investigative costs. Have I dealt with all matters, Mr. Ap Mihangel?

A MR. AP MIHANGEL: Yes. Thank you very much.

MR. LLOYD JONES: Thank you very much, your Honour.

MR. AP MIHANGEL: I'm just busy filling in the confiscation order.

B MR. RECORDER PARRY: I'll have to sign that, will I?

MR. AP MIHANGEL: Indeed. May I just ask as well, there's no reason for the defendant to be present for this, that it is appropriate to ask that your Honour can direct that the Proceeds of Crime be directed to the Royal Mail as a form of compensation.

C MR. RECORDER PARRY: That must be right.

MR. LLOYD JONES: Yes.

MR. AP MIHANGEL: Otherwise it simply goes into the Crown's coffers. It needs to be directed from your Honour.

D MR. LLOYD JONES: Yes. I think the only other matter your Honour to raise is this. It's the question of who is going to deal with the Norwich Union matter because in the end the enquiries have been made by the investigator. I don't suppose for one moment that Mr. Thomas would object to them approaching Norwich Union if they wish.

E MR. RECORDER PARRY: Well, I'm sure a brief letter of authority to that effect could be signed today before anybody leaves the court.

MR. LLOYD JONES: Yes. Very sensible suggestion. Very grateful.

MR. AP MIHANGEL: May I hand in this form.

F MR. RECORDER PARRY: Yes. I'm grateful to both counsel for their assistance. These matters are far more happily resolved by agreement.

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