



Neutral Citation Number: [2020] EWHC 923 (Admin)

Case No: CJA/12/2019

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 17 April 2020

Before :

THE HONOURABLE MR JUSTICE MURRAY

IN THE MATTER OF BENEDICTA OJEBODE
(also known as BENEDICTA OJEBODE
OLUREMILEKUN THOMAS)

Defendant/
Applicant

- and -

IN THE MATTER OF THE CRIMINAL JUSTICE ACT 1988

Ms Margaret Hodgson (instructed by **JP Law Solicitors**) for the **Defendant/Applicant**
Mr James Fletcher (instructed by the **Crown Prosecution Service**) for the **Crown**

Hearing date: 23 January 2020

Approved Judgment

Covid-19 Protocol: This judgment was handed down remotely by circulation to the parties' representatives by email and release to BAILII. The date and time for hand-down is deemed to be 10:30am on 17 April 2020.

Mr Justice Murray :

1. This is an application dated 9 August 2019 (sealed on 1 October 2019) made by Ms Benedicta Ojebode (who is also known as Benedicta Ojebode Oluremilekun Thomas, Oluremilekun Thomas and Oluremi Thomas) for a certificate of inadequacy under section 83 of the Criminal Justice Act 1988 (“the 1988 Act”) on the basis that her realisable property is now inadequate to pay the amount remaining due under the confiscation order made against her on 10 January 2017 in the Crown Court at Snaresbrook.
2. The confiscation order was made against the applicant following her convictions on 20 April 2015 in the Crown Court at Snaresbrook on the verdicts of a jury after trial on:
 - i) four counts of obtaining money transfers by deception (Counts 1, 3, 4 and 5 on the trial indictment);
 - ii) one count of evasion of liability by deception (Count 2 on the trial indictment); and
 - iii) two counts of possession of an identity document with an improper intention (Counts 6 and 7 on the trial indictment);

for which she was sentenced to a total of 30 months’ imprisonment. The Crown Court also made an order against her under section 24 of the Forgery and Counterfeiting Act 1981 for forfeiture of passports.

The jurisdictional basis of the application

3. Section 83 of the 1988 Act was repealed on 24 March 2003 and replaced by section 23 of the Proceeds of Crime Act 2002 (“POCA”), which provides for a similar procedure, but with the application for a certificate of inadequacy made to the Crown Court rather than the High Court. Section 83 of the 1988 Act continues to apply, however, in relation to a confiscation order made in relation to offences some or all of which were committed before 24 March 2003.
4. Counts 1 and 2 on the trial indictment set out particulars covering relevant offending during the period from 7 April 1997 to 30 October 2014. Count 3 sets out particulars covering relevant offending during the period from 21 March 2002 to 15 October 2003. Accordingly, the court has jurisdiction to hear this application.

The applicant

5. The applicant, Ms Ojebode, was born on 7 May 1942 in Lagos, Nigeria. She is a retired registered district nurse. She was 72 years old at the time of her convictions and is now 77 years old. In her evidence supporting her application, Ms Ojebode says that she has been diagnosed with heart disease and depressive and anxiety disorders, she is frail and she lives with her son, daughter-in-law and their children, her grandchildren, at an address in north London so that her son and daughter-in-law can “support me with attending to my activities of daily living and medications as my cognition has declined since my imprisonment”.

The criminal case against the applicant

6. The criminal case against Ms Ojebode was entirely concerned with benefit and identity fraud. The prosecution's opening note for the trial summarised the case as follows:

- “1. This is a case about benefit fraud and identity fraud.
2. The Crown's case, in a nutshell, is that the defendant, Mrs Benedicta Ojebode, made fraudulent claims for benefits in both her own name and using the false name of Mrs Oluremilekun Thomas. Additionally, she also had under her control Nigerian and British passports in the false name of Thomas.
3. It was a well-orchestrated fraud which went undetected for nearly two decades. Over a period of 17 years, the defendant dishonestly obtained £187,121.13 in benefits to which she was not entitled.”

The confiscation order

7. The Crown brought confiscation proceedings against Ms Ojebode under the 1988 Act. On 10 January 2017 in the Crown Court at Snaresbrook, HHJ Dawson found that Ms Ojebode had a criminal lifestyle, that her benefit from her criminal activities amounted to £1,094,151.27 and the total value of her available or realisable assets was £665,425.00. Accordingly, a confiscation order was made against Ms Ojebode in the sum of £655,425.00, with a term of 7 years' imprisonment to be served by Ms Ojebode in default of payment of that sum. Ms Ojebode was given 3 months to pay the confiscation order. Her time to pay the order therefore expired on 10 April 2017.
8. On 22 May 2017 Lavender J granted an “all assets” restraint order against Ms Ojebode (“the Restraint Order”), restraining her from dissipating any of her assets.
9. On 16 November 2017 the Court of Appeal varied the confiscation order by quashing the default term of 7 years' imprisonment and substituting a default term of 4 years' imprisonment.
10. During the confiscation hearing on 10 January 2017, HHJ Dawson said the following regarding Ms Ojebode's offending and her character:

“Just [dealing] very briefly with the case itself, and the conviction itself, this was a conviction which revolved around what I'll call, in general terms, benefit fraud.

It was the use by Ms Ojebode of false names, false applications and very long applications for benefit, as I say under false names, which meant that she was being paid very [significant] amounts that she wasn't due either because she was claiming them in the wrong name [or] because she was working or both.

...

...[S]adly it has to be said that Ms Ojebode is a thoroughly dishonest person and has been a thoroughly dishonest person for many, many years, and has manipulated the system of public benefit for herself.”

11. In the Annex to this judgment, I set out a table that was included in the Crown’s skeleton argument for this hearing (“the Table”). The Table lists the 27 assets that were set out on the Schedule of available or realisable assets (“the Schedule”) annexed to the confiscation order, together with the value in sterling of each asset ascribed to the asset by the Crown as it appeared on the Schedule and the amount that has been paid as at the date of this hearing by realisation of each asset in whole or in part, which is not in dispute.
12. All of the assets are located in the UK. The first five assets are residential properties, and they are the most significant assets in terms of value on the Schedule. The two most significant assets in terms of value are those listed at rows 1 and 2 of the Table, which I deal with in more detail below. The asset at row 3, a property at 466 Hempshaw Lane, Offerton, SK2 5SU, realised less than half of the value shown on the Schedule. The assets at rows 4 and 5 realised nothing, the former being repossessed by the mortgagee with no funds due to Ms Ojebode following repossession, and the latter having been sold at a loss.
13. The remaining assets in the Table are all bank or other financial accounts. Of these, the one shown at row 14 of the Table, the M&G Investments account, realised a substantial surplus over the value on the Schedule. The ones at rows 6 and 24 of the Table, the Halifax account 110638 00457567 and the Henderson Global Investors account 10234363, realised substantially less than the value shown on the Schedule. The other bank or financial account assets realised a value equal or close to the value shown on the Schedule.
14. In relation to the asset at row 1 of the Table, namely, 15 Bream Close, Ferry Lane, Tottenham, N17 9DF (“15 Bream Close”), that is Ms Ojebode’s home address and the only asset on the Schedule, the value of which has not been fully realised. Ms Ojebode lives there with her son and daughter-in-law and their young children, her grandchildren. Ms Ojebode says that she was unable to sell the property due to its poor condition. On 30 October 2018 the court made an order by consent varying the Restraint Order in order to permit Ms Ojebode to obtain an equity release on the property, with a view to paying the proceeds of the release towards the amount due under the confiscation order. On 8 November 2018 an equity release was obtained from Pure Retirement Limited, a mortgage lender, in the amount of £260,982.50. After deduction of solicitors’ fees and disbursements relating to the equity release, the balance of £257,228.50 was paid to the court towards the amount due under the confiscation order.
15. In relation to the asset at row 2 of the Table, namely, 36 Pettits Road, Dagenham, Essex RM10 8NR, the Crown had ascribed a value of £139,000.00 to the asset on the Schedule, but only £50,122.44 in net proceeds were realised from the sale of that property on 28 February 2019, after mortgage redemption and payment of completion costs. A variation of the Restraint Order had been obtained in order to permit that sale.

16. As at 7 October 2019 Ms Ojebode had paid £332,829.20 towards the sum due under the confiscation order, leaving a balance due, including accrued interest, of £440,563.39.

Relevant legal principles

17. On an application made by a defendant subject to a confiscation order under section 83 of the 1988 Act, the High Court must be satisfied that a defendant's realisable property is inadequate for the payment of any amount remaining to be recovered under the confiscation order. If it is so satisfied, the High Court must issue a certificate to that effect, giving its reasons for doing so.
18. In *R v Najafpour* [2009] EWCA Crim 2723, [2010] 2 Cr App R (S) 38 at [12], commenting on section 23 of POCA, Elias LJ noted that:

“the intention of this provision is clear: it is to ensure that a defendant does not serve a period [of imprisonment] in default where it turns out that he is in fact unable to raise the money which the court anticipated he would be able to do when it imposed the confiscation order.”

Clearly, the same intention also underlies section 83 of the 1988 Act.

19. Once a certificate of inadequacy has been issued by the High Court under section 83(1) of the 1988 Act, the defendant may then apply to the Crown Court under section 83(3) for the confiscation order to be varied. It is for the Crown Court, rather than the High Court, to determine whether the confiscation order should be varied and, if so, by how much. Accordingly, the only issue for me to determine is whether I am satisfied that the realisable property is inadequate for the payment of any amount remaining to be recovered under the confiscation order. The burden of establishing this is on the applicant, the civil standard of proof applies, and the application must be supported by clear and cogent evidence: *Glaves v Crown Prosecution Service* [2011] EWCA Civ 69 at [13] and [54]-[56] (Toulson LJ).
20. The principles underpinning the issuance of a certificate of inadequacy have recently been considered and reaffirmed by the Court of Appeal in the case of *Adams v Crown Prosecution Service* [2017] EWCA Civ 185, [2017] 1 WLR 3732. The defendant must satisfy the court that his or her “realisable property” is “inadequate” to pay the remaining amount under the confiscation order. The property that is realisable and its adequacy are assessed as at the time of the application for the certificate of inadequacy, which may be many years after the confiscation order was made: *Adams* at [19] (Hamblen LJ).
21. The Court of Appeal in *Glaves* at [18] approved the following summary of the general principles to be applied by the High Court when determining an application for a certificate of inadequacy:

“... The general principles were succinctly summarised by Mr David Holgate QC, sitting as a deputy High Court judge, in *B* [2008] EWHC 3217 at para 74:

- (1) The burden lies on the applicant to prove, on the balance of probabilities, that his realisable property is inadequate for the payment of the confiscation order (see *Re O'Donoghue* [2004] EWCA Civ 1800, per Laws LJ at para 3).
- (2) The reference to realisable property must be to 'whatever are his realisable assets as a whole at the time he applies for the certificate of inadequacy. If they include assets which he did not have when the confiscation order was made, that is by no means a reason for leaving such fresh assets out of consideration' (*Ibid* and see also *Re Philips* [2006] EWHC 623 (Admin).)
- (3) A s 83 application cannot be used to go behind a finding made at the confiscation hearing or embodied in the confiscation order as to the amount of the defendant's realisable assets. Such a finding can only be challenged by way of an appeal against the confiscation order. (See *Gokal v Serious Fraud Office* [2001] EWCA Civ 368, per Keene LJ at paras 17 and 24.)
- (4) It is insufficient for a defendant to say under s 83 'that his assets are inadequate to meet the confiscation order, unless at the same time he condescends to demonstrate what has happened since the making of the order to realisable property found by the judge to have existed when the order was made'. (See *Gokal* para 24 and *Re O'Donoghue* at para 3).
- (5) The confiscation hearing provided an opportunity for the defendant to show that his realisable property was worth less than the prosecution alleged. It also enabled the defendant to identify any specific assets which he contended should be treated as the only realisable property. The s 83 procedure, however, is intended to be used only where there has been a genuine change in the defendant's financial circumstances. It is a safety net intended to provide for post-confiscation order events. (See *McKinsley v Crown Prosecution Service* [2006] EWCA Civ 1092 per Scott-Baker LJ at paras 9, 21-24, 31 and 35).
- (6) A Section 83 application is not to be used as a 'second bite of the cherry'. It is not an opportunity to adduce evidence or to present arguments which could have been put before the Crown Court judge at the confiscation hearing (para 38 of *Gokal* and paras 23, 24 and 37 of *McKinsley*)."

22. In *Glaves* at [52]-[56], Toulson LJ went on to set out additional guidance on the proper approach to an application for a certificate of inadequacy, which, in my view, is of particular relevance to this case, for reasons that I will give in due course:

“52. The starting point for considering any application for a certificate of inadequacy is the confiscation order itself. Since the burden of proof at the time of the making of a confiscation order is on the defendant to show that his available assets are less than the benefit figure, it follows that there may be cases in which a confiscation order is properly made in a larger sum than the defendant is in truth able to pay, and this may result in him having to serve a period of imprisonment in default for failing to pay what he cannot pay. It may be that the defendant has been dishonest or cavalier in his evidence or it may be that, although truthful, he has not been able to produce evidence sufficient to discharge the burden of proof which rests on him. In the case of money which has gone through a bank account in modest amounts over the course of time, and for which he is not kept detailed records, he may be unable to give more than a generalised explanation.

53. Mr Dennison [counsel for the CPS] submitted that the fact that his evidence is of a general kind ought not to prevent a judge from accepting it, if the defendant is in truth being candid. I agree, and this is a point which should be remembered, although the prosecution usually take a less accommodating position on the making of such applications. As the prosecutor’s statements in the present case illustrate, courts are routinely reminded of the dictum in *Wallbrook and Glasgow* [(1994) 15 Cr App R (S) 783, 786] that the defendant must produce clear and cogent evidence, and that generalised assertions will rarely be sufficient to discharge the burden. The truth is that there is a balance of judgment to be struck. The courts are right to treat with some scepticism generalised assertions by someone whose credibility may be deeply suspect by reason of the facts of the offence. Absence of independent credible evidence to corroborate a defendant’s account is not fatal as a proposition of law, but it may well be fatal as a matter of fact. That, as I have said, is a matter for the judgment of the court considering the confiscation application. The fact that a defendant may end up with a confiscation order for more than he can pay, because he has been unable to produce sufficient evidence to satisfy the court of his true means, rather than because he has been deceitful or evasive, is hard but not unjust. It is not unjust,

because it is right that the burden of proof should be on him.

54. At the stage of an application for a certificate of inadequacy, the burden of proof is again on the defendant. He is unlikely to succeed unless the court is satisfied that he is being candid, and an application for a certificate of inadequacy is not intended to be a means of the defendant having a second bite at the same cherry. Those principles are clearly established. However, as a rule of law which said that the court could not be persuaded that the defendant was unable to pay the outstanding amount by reason of a worsening of his financial circumstances unless he gave full disclosure of what had happened in the meantime to all his assets, including previously unidentified assets, would trammel the width of s 83 by imposing a restriction which is not in the statute. It would also be capable of causing not merely hardship but hardship amount to injustice.
55. In the case of previously unidentified assets, it is possible that a defendant may genuinely have no idea or only a dim recollection what had originally happened to them. He should be allowed to try to persuade the court, if this be the case, that his identified assets have shrunk in value and that as a result he is not able to pay the amount outstanding. What the court makes of that evidence will be a matter for its judgment. Much will no doubt depend on the nature of the case. Cases involving unidentified assets can vary greatly. The case of an international drug dealer with evidence of a lavish lifestyle, ready access to large sums of cash and connections with a web of offshore companies and bank accounts, may merit different treatment from the case of a defendant whose apparent circumstances and amount of unaccounted for assets are much more modest. It is for the court to consider the totality of the evidence before concluding whether it accepts that the defendant has suffered a change of fortune such that he is probably not able to pay the balance of the outstanding money. If the defendant is not permitted the opportunity of trying to establish this, there is a real risk that even though he can demonstrate a change in his circumstances, possibly very great, he may serve an additional period of imprisonment through failure to do that which is impossible by reason of his change of circumstances.

56. ... On the question of whether [the defendant] can persuade the court that it is right to grant a certificate of inadequacy when he cannot now give any further account of what has happened to the previously unaccounted for assets, the court in *O'Donoghue* was cautious not to lay down a rigid rule. Laws LJ said that the proper conclusion would depend on the court's appreciation of all the evidence. Pill LJ added his own emphasis that the matter must depend on an overall view and that the court needs to keep a sense of proportion in conducting the exercise. The point that he emphasised is important. It has been said many times that the statutory scheme for confiscating the proceeds of crime is intended to be draconian. So it is, but in administering the scheme it is right that the courts should keep a sense of justice and proportion, bearing in mind the essential purpose of the scheme, which is not to punish a defendant a second time for conduct for which he will have been sentenced but to deprive him of the benefit of his criminal conduct. ...”
23. In the *Adams* case the defendant sought to rely on the case of *McKinsley v Crown Prosecution Service* [2006] EWCA Civ 1092, [2006] 1 WLR 3420, which was an appeal concerning an application under section 17 of the Drug Trafficking Act 1994 (“the 1994 Act”), a provision with an effect comparable to section 83 of the 1988 Act. The issue in the appeal was in what circumstances, if any, it was possible for the applicant for a certificate of inadequacy to challenge the findings made by the Crown Court in the confiscation proceedings as to the applicant’s realisable assets.
24. The Court of Appeal in *McKinsley* concluded that a close examination of section 17 of the 1994 Act against the background of the 1994 Act as a whole pointed strongly to the construction that the Administrative Court was limited to consideration of post-confiscation order events and was not entitled to go behind the confiscation order even if there had been a manifest error. Consequently, the structure of the 1994 Act pointed strongly to the construction that it was not open to the Applicant for a certificate of inadequacy to challenge the findings of the Crown Court that made the confiscation order as to the realisable assets of the applicant: *McKinsley* at [31] and [44] (Scott Baker LJ).
25. In this case, Ms Ojebode does not challenge the findings at the confiscation hearing. She says, however, that there has been a relevant change of circumstances, namely, that the assets shown on the Schedule have been fully realised, with the exception of the remaining equity in relation to the property 15 Bream Close. Not only is she having difficulty selling that property to realise the remaining equity, but in any event that remaining equity falls a long way short of the amount needed to repay the confiscation order.

The evidence

26. In support of her application, Ms Ojebode provided a witness statement dated 9 August 2019 (section 10 of her application refers to a witness statement dated

21 June 2019, but presumably that is an error or the witness statement dated 9 August 2019 has, in any event, replaced it), to which was exhibited a number of documents, and a supplemental witness statement (headed “Addendum Statement of Benedicta Oluremilekun Thomas”) dated 17 December 2019, accompanied by statements and correspondence relating to her pension. She also provided an Affidavit dated 21 January 2020 made by her daughter, Ms Oluyemisi Adedeji, who lives in Burlington, New Jersey, U.S.A., notarised by a New Jersey notary public, together with bank statements for a UK account of Ms Adedeji with Barclays Bank plc.

27. At the hearing before me, Ms Ojebode was cross-examined on her evidence by Mr James Fletcher, of counsel, for the Crown. The nature of Ms Ojebode’s convictions affect her credibility. In addition, I found that Ms Ojebode, when giving evidence, often gave unclear, evasive or non-responsive answers to questions put to her. She was not a satisfactory witness.
28. The evidence submitted by the Crown in opposition to the application was principally in the form of the witness statement dated 19 September 2019 of Ms Clare Farmer, a financial investigator employed by the Department of Work and Pensions, who was first assigned to look into the financial affairs of Ms Ojebode on 23 April 2015. In her witness statement Ms Farmer set out the results of her recent investigation into Ms Ojebode’s financial situation to assist in the enforcement of the confiscation order.
29. At the hearing, Ms Farmer was cross-examined by Ms Margaret Hodgson, counsel for Ms Ojebode. Her evidence was given in a clear and straightforward manner. I found her to be an honest and reliable witness.
30. The Crown produced additional evidence for the hearing, including (i) the transcript of the confiscation hearing before HHJ Dawson on 10 January 2017, (ii) correspondence between solicitors for Ms Ojebode and the Crown principally relating to variations to the Restraint Order necessary to effect the sale of the property at 36 Pettits Road and the equity release in relation to the property at 15 Bream Close and related matters and (iii) the HM Land Registry register of title for 15 Bream Close, London N17 9DF as at 31 July 2019 showing Ms Ojebode as the sole holder of the freehold and a charge on the property in favour of Pure Retirement Limited.
31. As part of her most recent financial investigation of Ms Ojebode, Ms Farmer obtained reports dated 29 July 2019 from Equifax in relation to “Benedicta Ojebode” and “Oluremilekun Thomas”. The report for “Benedicta Ojebode” showed that Ms Ojebode had obtained unsecured loans from four different lenders in January and February 2018, namely, Hitachi Capital, Marks & Spencer Financial Services (“MSFS”), Clydesdale Bank and Santander.
32. On 8 August 2019, production orders were obtained under Part 8 of POCA from the Crown Court at Bournemouth seeking further information in relation to the loans from Hitachi Capital, MSFS and Clydesdale Bank, as well as for bank statements from Barclays, Nationwide and Halifax in relation to accounts of Ms Ojebode. On 20 August 2019 a further production order was obtained in respect of an additional Nationwide account.
33. The information regarding the personal loans can be summarised as follows:

- i) In relation to the loan from Hitachi Capital, Ms Ojebode signed a fixed sum loan agreement regulated by the Consumer Credit Act 1974 (an “FSLA”) on 12 December 2017 for a principal amount of £25,000 at a fixed rate of 5.7 per cent per annum (10.6 APR), repayable monthly over a period of 74 months at £455.48 per month. In the FSLA Ms Ojebode confirmed her employment status as “retired” and her gross income as £20,400 per annum. According to the Equifax report, the loan start date was 8 January 2018, and the balance outstanding on 29 July 2019 was £25,962.
 - ii) In relation to the loan from MSFS, Ms Ojebode signed a FSLA on 10 January 2018 for a principal amount of £25,000 at a fixed rate of 6.8 per cent per annum (6.8 APR), repayable monthly over a period of 60 months at £490.27 per month. In relation to the FSLA, Ms Ojebode represented to MSFS that her personal net monthly income was £1,900 and her personal monthly outgoings were £791.99, so that she had monthly disposable income of £1,108.91. According to the Equifax report, the loan start date was 12 January 2018, and the balance outstanding on 29 July 2019 was £21,571.
 - iii) In relation to the loan from Clydesdale Bank, Ms Ojebode signed a FSLA for a principal amount of £20,000 at a fixed rate of 7.023 per cent per annum (12.9 APR), repayable monthly over a period of 84 months at £355.15 per month. According to the Equifax report, the loan start date was 31 January 2018, and the balance outstanding on 29 July 2019 as £17,513. Ms Ojebode’s signature appears to be dated 26 July 2018 in manuscript on the fourth page of the FSLA, but, as I have noted, the loan start date is shown as 31 January 2018 and (as noted at [54] below) the proceeds were credited to Ms Ojebode’s Halifax account 110638 00457567 on 7 February 2018.
 - iv) In relation to the loan from Santander, the Equifax report indicated that the loan was repayable monthly over a period of 60 months at £455 per month, the loan start was 7 February 2018 and the balance outstanding on 29 July 2019 was £16,056.
34. In addition to information about the personal loans obtained by Ms Ojebode, Ms Farmer’s witness statement deals with the information obtained as a result of the production orders relating to the following accounts of Ms Ojebode:
- i) Halifax account 110638 00457567 for the period 25 August 2017 to 24 May 2019;
 - ii) Nationwide account 070436 15079826 for the period from 19 August 2017 to 7 August 2019;
 - iii) Barclays account 20604 23644561 for the period from 18 September 2017 to 30 July 2019; and
 - iv) Nationwide account 070116 13692290 for the period from 2 February 2017 to 19 August 2019.
35. In her witness statement, Ms Farmer highlighted references in the Equifax report to a Halifax account that appears at Row 6 of the Table, a Barclays account that appears at

row 25 of the Table and a Nationwide account that appears at row 27 of the Table. As these were included on the Schedule and therefore known at the time the confiscation order was made, it is not clear what conclusion the Crown was inviting the court to draw from these references in Ms Farmer's witness statement.

36. Ms Farmer also highlighted in her witness statement that the Equifax report for "Oluremilekun Thomas" showed an unsatisfied County Court judgment made on 6 January 2016 against "Oluremilekun Thomas" for £4,174 and an unsatisfied County Court judgment made on 15 May 2018 against "Oluremi Thomas" for £15,862.
37. Ms Farmer's witness statement also noted rental income received by Ms Ojebode from "O Obisanya" for rental in relation to "35 Pettits [L]ane" (presumably this is a typing error and was intended by Ms Farmer to be a reference to the property at 36 Pettits Road), as noted on statements for her Halifax account 110638 00457567 during the period from 25 August 2017 (the start of the first period on the statements obtained for that account under the relevant production order) until November 2018. Ms Farmer also notes in her witness statement that from December 2018 rental payments from "O Obisanya" in relation to "35 Pettits Lane" appear as credits on the statements for Nationwide account 070116 13692290. That rental income would have come to an end when the property at 36 Pettits Road was sold on 28 February 2019.
38. Ms Farmer noted in her witness statement that, in connection with the realisation of the assets on the Schedule, Ms Ojebode had at one stage provided to the Crown a memorandum of sale dated 20 March 2018 for the property at 15 Bream Close with the proposed purchaser being Francis Layi Ojebode, however that sale subsequently did not complete. On 28 August 2018 £10,000 was paid into Ms Ojebode's Halifax account 110638 00457567 by Francis Layi Ojebode. In her evidence in chief at the hearing, Ms Farmer said that it was only when Ms Ojebode's supplemental witness statement dated 17 December 2019 was provided that Francis Ojebode was identified as her son. During the hearing, Ms Ojebode confirmed that the £10,000 paid into her account on 28 August 2018 was from her son, Francis.
39. Ms Farmer also noted in her witness statement that the statements for Nationwide account 070116 13692290 show various payments in from "HICCU", which she believed to be a credit union. During her evidence in chief, Ms Ojebode was asked about the HICCU credits and said that the HICCU is a credit union that she had joined about a year earlier in order to start saving money there. She had not used the money in her HICCU account to pay down the confiscation order because she "needed the money". During cross-examination Ms Ojebode said that she put £50 per month into the HICCU account and did not use it to pay her confiscation order as she wanted the money to use to buy presents for her children and grandchildren in December.
40. In her evidence in chief, Ms Ojebode explained that at the time the confiscation order was made she had rental income from her properties at 36 Pettits Road, 466 Hempshaw Lane and 5 Benton Street. When she applied for the personal loans, she based her disclosure to the lenders in relation to income on her pension income and her rental income. The latter has come to an end since the sale of each of the rental properties.
41. In her witness statement, Ms Farmer noted that Ms Ojebode was receiving regular income, credited to her Nationwide account 070116 13692290, from a shareholding in

the BT Group. She noted in her witness statement that this shareholding had been held for some time and was identified during the financial investigation. During cross-examination by Ms Hodgson, Ms Farmer indicated that she believed that she had obtained copies of the share certificates before the confiscation order was made but did not have them to hand.

42. During her evidence in chief, Ms Ojebode admitted that she had an asset in the form of a shareholding in the BT Group, which she says was obtained “over 20 or 30 years ago”. She did not consider the shareholding to be her own asset, but rather an asset held for her whole family. During cross-examination she said that only two of the shares were hers, the other shares belonging to her family. She also said that she could not get share certificates for her own two shares, but if she had been able to, she would have sold the shares and paid the proceeds towards the confiscation order.
43. During her evidence in chief, Ms Ojebode said that originally she had been paying £500 per month towards her confiscation order, but she was not able to sustain that, and she had obtained a court order to permit her to pay £150 per month instead, which she is what she is currently doing.
44. At paras 3 to 7 of her supplemental witness statement dated 17 December 2019, the principal purpose of which is to deal with the personal loans obtained in early 2018, Ms Ojebode said the following:
 - “3. I aver that between 7 January and June 2018, I obtained unsecured personal loans from Hitachi Finance, Marks & Spencer, Clydesdale Bank and Santander respectively and the total loan amount was £90,000.
 4. The loans were taken out for my son (Francis Ojebode) at his request as [he] was facing financial difficulty at the time. Also, the loan amount was transferred to my son’s bank account as agreed by my family.
 5. I am aware that I was the only person legally responsible for repaying the loans as per my agreement with the Lenders. However, my daughter (Oluyemisi Adedeji) agreed to be repaying the loan until Francis is financially stable and able to repay the loan amounts.
 6. The purpose [of] the loans and repayment plan had been discussed and agreed by my family before I obtained the loans.
 7. I aver that the loans were unsecured and therefore not secured on any Asset. I still receive regular income monthly as I am still in receipt of private and state Pension respectively. I worked as a Registered District Nurse and I retired 17 years ago. I am 77 years of age and in receipt of state pension and NHS private pension respectively.”

45. In her affidavit dated 21 January 2020, the applicant's daughter, Ms Adedeji said the following about the personal loans:
- “3. ... I am aware that between 7 January and June 2018, the Applicant obtained unsecured personal loans from Hitachi Finance, Marks & Spencer, Clydesdale Bank and Santander, respectively, and the total loan amount was £90,000.
 4. ... the loans were taken out for my brother (Francis Ojebode) to help him with his financial difficulties at the time.
 5. ... my family unanimously agreed for the said loans to be taken out for our brother Francis Ojebode.
 6. ... I agreed to be repaying the loans until Francis is financially [able] to do [so.]”
46. Ms Adedeji enclosed with her affidavit a copy of her US passport and three statements from her Barclays Bank account (account number ending ...7003) showing transactions for the periods 16 September 2019 to 3 October 2019, 15 October 2019 to 8 November 2019 and 25 November 2019 to 5 December 2019. Among the entries shown on those statements are the following:
- i) a credit of £5,000 on each of 3 October 2019 and 2 December 2019 with the description “Counter Credit Ojebode Francis LAYI BGC”;
 - ii) a debit of £355.15 on each of 30 September 2019, 28 October 2019 and 28 November 2019 with the description “Standing Order Clydesdale Bank Benedicta Ojebode STO”;
 - iii) a debit of £490.27 on each of 25 September 2019, 23 October 2019 and 27 November 2019 with the description “Standing Order M&S Bank 0802906506 STO”; and
 - iv) a debit of £455.48 on each of 23 September 2019, 23 October 2019 and 25 November 2019 with the description “Standing Order Hitachi 028348388 STO”.
47. During cross-examination by Mr Fletcher, Ms Ojebode was taken to the FSLA that she had signed with Hitachi Capital on 12 December 2017, which showed her gross income as £20,400. She said that Hitachi Capital must have made a mistake. She said that she would have told Hitachi Capital about her pension and rental income, but she did not say it was £20,400 per year. She then went on to say, however, that she was earning about £20,000 per year then, but less now that her rental income has ceased following the sales of her rental properties.
48. Mr Fletcher then asked Ms Ojebode about entries on the statement for her Nationwide account 070116 13692290 relating to the Hitachi Capital loan. She agreed that the

credit of £25,000 to that account on 9 January 2018 represented the proceeds of the loan. That credit is followed immediately by the following debits totalling £24,000:

“09 Jan	Cash withdrawal	5,000.00
	Payment to HALIFAX	9,000.00
	Payment to HALIFAX	1,000.00
10 Jan	Cash withdrawal	2,500.00
11 Jan	Cash withdrawal	1,500.00
	Transfer to 070116 21424998	5,000.00”

49. Mr Fletcher asked Ms Ojebode as to the purpose of those payments, for example, the first withdrawal of £5,000. She said that she owed money to “someone”. She did not want to be in debt. She said that some of the withdrawals were to pay friends and some to pay organisations such as Virgin Card. Her creditors were “bugging” her. She had to pay interest on those other debts. She did not have any documents with her at the hearing evidencing any of those debts.
50. Ms Ojebode was then taken by Mr Fletcher to the statements for her Halifax account 110638 00457567, which showed credits of £9,000 and £1,000 on 9 January 2018 from Benedicta Ojebode, which she agreed corresponded with the debits on her Nationwide account and were proceeds of the Hitachi Capital loan. These credits are immediately followed by four debits of £2,500 each made on the 9, 10, 11 and 15 January 2018, which Ms Ojebode said also went to pay creditors. Mr Fletcher asked her why she transferred the monies to her Halifax account before paying her creditors rather than simply withdrawing the monies from her Nationwide account, as she did for other creditors, and paying those creditors directly. She gave no clear answer to that question nor was she able to identify the relevant creditors.
51. Mr Fletcher then took Ms Ojebode to a credit of £25,000 on 16 January 2018 on the same Halifax account, which she agreed represented the proceeds of the MSFS loan. That credit was also followed immediately by the following debits totalling £25,000:

“19/01/2018	DEB 110785 CD 9120	£2,500.00
19/01/2018	FPO Ojebode B Ojebode ...	£10,000.00
19/01/2018	FPO F Ojebode ...	£5,000.00
20/01/2018	DEB 110809 CD 9120	£2,500.00
22/01/2018	DEB 110785 CD 9120	£2,500.00
24/01/2019	FPO Ojebode B Ojebode ...	£2,500.00”

52. Ms Ojebode said that these monies were to pay her creditors, as “there are a lot of people I owe money to”. She confirmed that the transfers to “Ojebode B Ojebode” were to herself and the monies were used to pay creditors, for example, a lawyer owed fees for conveyancing. It was put to her that these looked like bank transfers, but she denied that saying that they were cash withdrawals.
53. In relation to the FSLA signed with MSFS, Mr Fletcher took Ms Ojebode to the document signed by Ms Ojebode on 10 January 2018, and then to an internal memo obtained from MSFS which showed that she had represented to MSFS that she had personal net monthly income of £1,900 and personal monthly outgoings of £791.99, leaving her with net monthly disposable income of just over £1,100. She was asked whether these figures were correct and said “yes”. When she was asked whether she

had told MSFS about the Hitachi Capital loan, she said that MSFS had not asked her about it.

54. Mr Fletcher cross-examined Ms Ojebode about the Clydesdale Bank loan, the proceeds of which were £20,000. That amount was credited to her Halifax account 110638 00457567 on 7 February 2018, with amounts of £10,000 and £5,000 immediately afterwards withdrawn. The latter amount, she said, was paid to repair the roof at 36 Pettits Road.
55. Mr Fletcher asked Ms Ojebode whether the £10,000 was transferred to her Nationwide account 070116 13692290, which had a credit on the same day with the description “Bank credit B Ojebode”. She did not give a clear reply. Mr Fletcher then asked her about the next item on that statement, a debit of £5,000 with the description “Transfer to 070246 47265641”. Ms Ojebode said that she could not remember which account that is. She was not able to provide any other explanation for that transfer.
56. Finally, in relation to the Santander loan, Ms Ojebode confirmed that the principal amount of the loan was £20,000, that her monthly payment obligation was £455 and that as of July 2019 she owed about £16,056 in respect of that loan.
57. When asked by Mr Fletcher what the purpose had been of obtaining £90,000 in personal loans, Ms Ojebode said that her son had wanted to buy 15 Bream Close, and he needed money for the down payment. Unfortunately, he had not been successful in obtaining the necessary finance to buy the house due to his having a poor credit rating. Not all of the money, however, was for his down payment. Ms Ojebode needed part of the money to pay all of her debts. When Ms Ojebode was asked how much of the £90,000 in loan proceeds had gone to her son, she said about £50,000 to £60,000. Ms Ojebode confirmed that a payment of £10,000 with the description “Transfer from 070116 21424998”, shown as a credit on 28 August 2018 on her Nationwide account 070116 13692990 was from her son. Ms Farmer had noted this credit in her witness statement, but at that stage the ownership of the transferor account was unknown. £9,000 was withdrawn in cash from the same account in three tranches of £3,000 each on 29 August, 30 August and 5 September 2018. Ms Ojebode said that this was because she “owed people money”.
58. Mr Fletcher asked Ms Ojebode about the source of a credit of £1,000 to her Nationwide account 070116 13692990 on 1 April 2019 and a credit of £5,000 to the same account on 4 April 2019. She said that she had “asked some people to give me money” to help her pay her debts.

The Crown’s grounds of opposition to the application

59. As I have already noted, in relation to the 27 assets shown on the Schedule, there is no dispute as to the amount realised by Ms Ojebode and paid toward the confiscation order from the proceeds of realisation. It is therefore common ground that those assets have been exhausted, with the important exception of the property at 15 Bream Close (row 1 on the Table), in relation to which Ms Ojebode obtained an equity release, the proceeds of which were applied toward payment of the confiscation order. The Crown maintains that Ms Ojebode has equity in that property that remains available to be realised.

60. That is the first of the Crown's two principal grounds of opposition to the application. The other ground is that Ms Farmer's most recent financial investigation of Ms Ojebode provides evidence that she has other available assets that could be realised in order to reduce or discharge the remaining amount due on the confiscation order. As is clear from paragraph (2) of the summary of the principles relevant to applications under section 83 of the 1988 Act in *Glaves* at [18], which I have set out at [21] above, recovery against Ms Ojebode's assets is not limited to those assets on the Schedule. The Crown says that Ms Farmer's most recent financial investigation strongly suggests that she has other available income and assets.

Submissions

61. At section 10 of her application and in her witness statement dated 9 August 2019, Ms Ojebode made the following submissions:
- i) she is a 77-year-old retired nurse in receipt of a State and an NHS pension, with no other sources of income;
 - ii) she has been diagnosed with heart disease, depressive and anxiety disorders which are precipitated by her current predicament; she suffers panic attacks on a regular basis and is currently receiving treatment for her mental and physical health;
 - iii) she has realised all of the assets identified in the Schedule save for 15 Bream Close and paid the monies received towards the amount due under the confiscation order;
 - iv) she has had difficulty in selling 15 Bream Close, which is in poor condition, however she managed to raise funds to pay towards the amount due under the confiscation order in the sum of £260,982.50 by way of an equity release;
 - v) she currently resides at 15 Bream Close with her son, daughter-in-law and their young children who help her with her daily activities as she is frail and has difficulties in dealing with daily living and medications;
 - vi) she is currently paying £150 per month towards the confiscation order;
 - vii) the court has not yet had the opportunity to consider her available and realisable assets following the making of the confiscation order; and
 - viii) it is evident that her available and realisable assets are insufficient to satisfy the balance of the confiscation order, together with the accrued interest, and it is therefore just to grant her a certificate of inadequacy under section 83(1) so that she can apply to the Crown Court to vary the confiscation order.
62. At the hearing, Ms Hodgson made the following additional submissions on behalf of Ms Ojebode:
- i) The property at 15 Bream Close is not in saleable condition. This must have been accepted by the court when it approved a variation of the Restraint Order in order to permit the equity release.

- ii) The court cannot go behind the Crown Court's determination that all of her realisable assets at the time of the confiscation order were set out on the Schedule. All of those assets have been realised to the best of Ms Ojebode's ability, and yet there remains a considerable shortfall relative to the outstanding amount due under the confiscation order.
 - iii) A recent valuation of 15 Bream Close dated 17 December 2019 was obtained from Barminster Property Services, a copy of which was at page 63 of the applicant's bundle for the hearing, having been exhibited to Ms Ojebode's supplemental witness statement dated 17 December 2019. It confirms that if 15 Bream Close were sold, it would yield no more than about £90,000, which is only a fraction of the current outstanding balance due under the confiscation order, which is well over £400,000.
 - iv) Ms Ojebode is not under an obligation to wait until she has sold the property at 15 Bream Close before applying for a certificate of inadequacy. It is already clear that there is a substantial inadequacy of available and realisable assets, and she continues to incur interest liability on the outstanding balance.
 - v) As to the suggestion of the Crown that Ms Ojebode must have undisclosed assets or income in light of the four personal loans obtained in early 2018, there is no evidence that she is repaying those loans. Most of the transactions on Ms Ojebode's accounts regarding which she was cross-examined by Mr Fletcher concern the loans. The evidence of Ms Ojebode's daughter, Ms Adedeji, confirms Ms Ojebode's own evidence that, although Ms Ojebode did take out the personal loans, they were taken out to assist her son Francis, who lives with her at 15 Bream Close, together with his wife and children, and that Ms Adedeji had agreed to repay the loans.
 - vi) It is common ground that Ms Ojebode had been required to pay £500 per month towards the confiscation order as well as to realise the assets set out in the Schedule. There is undisputed evidence that the court in due course agreed that this should be reduced to £150 per month.
 - vii) Rather than Ms Ojebode having excess income, the evidence shows that she has got herself in serious debt. The County Court judgments highlighted by the Equifax report are evidence that she could not pay, rather than would not pay. There is no evidence that she has assets sufficient to pay the outstanding balance on the confiscation order. Accordingly, the court can be satisfied that her assets are inadequate for purposes of section 83(1) of the 1988 Act.
 - viii) The penalty for failure to pay the confiscation order in full is imprisonment, which would be a severe penalty for Ms Ojebode, given her age and state of health.
63. Mr Fletcher made the following submissions on behalf of the Crown in opposition to this application:
- i) Ms Ojebode has failed to discharge her burden of proof that she has realised all of her available assets for the following reasons:

- a) she has spent money, in breach of the Restraint Order, to repay unsecured loans obtained on the basis of her declared income, which means that she must have available income or assets, which should be used in priority to repay the sum due under the confiscation order;
 - b) she remains the sole legal owner of the freehold 15 Bream Close, which is mortgage-free, apart from the charge in favour of Pure Retirement Limited for the equity release, and it is therefore more likely than not that she has outstanding equity available in that property;
 - c) she has failed to set out or provide full disclosure of the current status of her assets;
 - d) Ms Farmer's analysis of Ms Ojebode's financial position shows that she has told various financial institutions that she was in receipt of significant income;
 - e) Ms Ojebode was able to repay four unsecured loans on a monthly basis in the sum of £1,755 per month, which means that she must have income equal to or in excess of that amount absent evidence of other borrowings;
 - f) the loan proceeds obtained by Ms Ojebode in January and February 2018 were received by her and dissipated in a very short period of time without any proper explanation by Ms Ojebode; and
 - g) Ms Ojebode opened a Nationwide building society account in her "Thomas" identity after the confiscation order was made.
- ii) The four loans obtained by Ms Ojebode and subsequent account activity are in blatant breach of the Restraint Order, for which Ms Ojebode has not sought any approved variation from the court. This suggests that she has been attempting to hide the extent of her assets.
 - iii) Given Ms Ojebode's history of committing serious offences of dishonesty, she must have known that the court would require clear and cogent evidence in relation to the source of the various significant credits on her bank accounts and the destination and purpose of the significant debits. Instead, her evidence, both written and oral, was vague and unparticularised. She has failed to show by clear and cogent evidence that her assets are inadequate to satisfy the amount outstanding under the confiscation order.
 - iv) Ms Ojebode said during her oral evidence that she had given an honest account of her financial condition to each of the lenders in respect of her personal loans, but it is clear that she overstated her income and failed to disclose, when appropriate, to each lender the other personal loans that she had taken out.
 - v) Ms Ojebode raised £90,000 in personal loans in January and February 2018 but has failed to provide any proper evidence as to what happened to that money, which she says has gone partly to her son and partly to pay her

creditors. In relation to her creditors, she has been unable to identify any of the creditors who were paid using the proceeds of the personal loans or to provide any supporting documentation. It is also notable that Ms Ojebode has not provided any evidence from her son to support her account. Furthermore, Ms Ojebode has been inconsistent in her account of the purpose of the personal loans, saying first that it was to assist her son, Francis, in relation to his financial difficulties, then simply to assist him to purchase 15 Bream Close and then finally partly to assist Francis to purchase 15 Bream Close and partly to pay various unidentified creditors.

- vi) In relation to the personal loans, it is not sufficient for Ms Ojebode simply to say that the personal loans only amount to £90,000 and therefore do not cover the amount outstanding on the confiscation order.
- vii) Ms Ojebode's supplemental witness statement dated 17 December 2019, which deals with the personal loans, was served late, and the evidence provided is unsatisfactory, and is contradicted by her oral evidence at the hearing as to the purpose of the personal loans. Ms Adedeji is based in the USA, but she is using a UK account, although no explanation for this is given. Ms Adedeji's bank statements only cover the period from September 2019 and so do not establish who was making the monthly loan payments before that. There is no explanation as to why a full set of statements showing all of the monthly payments have not been provided. The Barclays Bank account statements provided do not appear to cover the monthly payments in respect of the Santander loan.
- viii) Ms Ojebode has admitted that she has monies in the HICCU but has not been able to explain how much. She has given an account in relation to her holding of BT shares, but has not been able to provide a value for her shares or provide any other evidence concerning them.

Analysis

- 64. My initial observation is that the evidence provided by Ms Ojebode in support of her application is woefully inadequate. Her personal evidence is unreliable, not only because of her history of serious offences of dishonesty committed over a period of many years, but also because she gave vague, evasive or non-responsive answers to most of the questions put to her in cross-examination. She also gave some answers that were inconsistent with her witness statements, for example, as to the purpose of the personal loans. Her answers were only reliable when they confirmed matters that were clearly established by the evidence provided by the Crown.
- 65. Regarding the evidence of Ms Ojebode's daughter, Ms Adedeji, I note that her evidence was not subject to cross-examination, it was not fully consistent with other evidence given by Ms Ojebode and it deals only with a relatively limited period of time, namely, September 2019 to November 2019. She says in her affidavit, for example, that she agreed to repay the personal loans until her brother, Francis, was able to do so. She has provided statements for her Barclays bank account that show debits equal to the agreed monthly payments for the personal loans from Clydesdale, MSFS and Hitachi Capital. But there is no supporting evidence that she has paid any

of the Santander monthly loan payments, and there is no evidence that she made any of the monthly payments prior to September 2019.

66. I also note that the statements for Ms Ojebode's Nationwide account 070116 13692290, which were exhibited to Ms Farmer's witness statement and which cover the period from 16 January 2017 to 20 August 2019, show that the monthly payments in respect of the Hitachi Capital loan were debited from that account each month from 8 February 2018 to 10 June 2019, the monthly payments for the Clydesdale loan were debited from that account from 11 January 2019 to 28 June 2019, the monthly payments for the MSFS loan were debited from that account from 19 December 2018 to 28 June 2019 and the monthly payments for the Santander account were debited from that account from 3 January 2019 to 3 June 2019. So, it appears that the arrangement that Ms Adedeji would make those payments appears to be relatively recent and to post-date this application, which is dated 9 August 2019 (although not sealed until 1 October 2019).
67. Ms Adedeji's evidence supports Ms Ojebode's evidence in her supplemental witness statement dated 17 December 2019 that the purpose of raising the personal loans was to help her son Francis Ojebode, who was facing financial difficulties. It may be true that he was facing financial difficulties, but nonetheless it appears that the purpose was to provide him with money for a down payment so that he could purchase the property at 15 Bream Close, which appears to be an odd way of addressing his financial difficulties.
68. Moreover, in her oral evidence, Ms Ojebode admitted that the purpose of the personal loans was partly to help her repay various personal debts to unidentified creditors (and, in relation to which, she was able to provide no documentary evidence whatsoever), but, she said, £50,000 to £60,000 out of £90,000 in loan proceeds went to her son, Francis. It is doubtful, however, that as much as that went to Francis. Mr Fletcher's cross-examination of Ms Ojebode in relation to each personal loan tended to show that most, if not all, of the proceeds were disbursed from the same account within a few days of the loan proceeds having been received, in amounts ranging from £1,000 to £10,000, these payments being characterised by Ms Ojebode during her oral evidence as monies owed repay personal debts, because her creditors were "bugging" her and "there are a lot of people I owe money to". One of the largest single disbursements is £10,000 transferred out of her Halifax account on 19 January 2018, three days after she received into that account the £25,000 in proceeds of the MSFS loan. She confirmed, as I have already noted, that that amount was a transfer to herself and used to pay creditors, for example, to pay a lawyer for conveyancing. Out of that £25,000, there was a transfer of £5,000 to "F Ojebode", which is presumably her son, Francis.
69. So, I think that Ms Ojebode was, at best, exaggerating when she said that £50,000 to £60,000 was given to Francis. It is likely to have been no more than half that. This appears to be supported by the fact that Ms Ojebode received two payments of £10,000 from her son, Francis, on 28 August 2018, one into her Halifax account 110638 00457567 and the other into her Nationwide account 070116 13692990. Ms Ojebode gave no explanation for those payments, but they are likely to have been repayment of sums advanced to assist Francis Ojebode by providing a down payment towards the purchase 15 Bream Close in order that that property could be kept in the

family, despite the confiscation order. We know that Francis's attempt to purchase that property, evidenced by a memorandum of sale dated 20 March 2018, failed.

70. The characterisation of the purpose of the personal loans as monies raised to assist Francis Ojebode in relation to unspecified financial difficulties was therefore most likely an embellishment (to put it kindly) by Ms Ojebode in her supplemental witness statement made on 17 December 2019 (and Ms Adedeji in her Affidavit made on 21 January 2020), in order to meet points raised about the personal loans in the skeleton argument for the Crown, which is dated 18 October 2019. It is noteworthy that Ms Ojebode failed to provide any evidence from her son, Francis, to support her application.
71. Ms Ojebode's evidence regarding her shareholding in BP Group shares was unsatisfactory, however no evidence was adduced by either side regarding the value of that shareholding. The significance of that evidence for this application is, in my view, considerably reduced by the evidence of Ms Farmer that the Crown were aware of that shareholding at the time of the confiscation order. It does not appear on the Schedule as a realisable asset. The implication is that it was considered by the Crown at the time not to be realisable and available.
72. The evidence regarding the monies saved by Ms Ojebode in an account at the HICCU shows that Ms Ojebode has not been frank and forthcoming in disclosing the current status of her assets, but it is not suggested by the Crown that this is a significant financial asset for purposes of assessing whether there is an inadequacy of realisable property. It is clear, however, that if Ms Ojebode is capable of saving £50 per month in her HICCU account, as she admitted she did, then she is capable of paying at least £200 per month towards her confiscation order and forgoing those savings, rather than paying only £150 per month towards her confiscation order as she is currently doing.
73. It is clear from my summary of the legal principles applicable to this application that the burden of proof in establishing that there is an inadequacy of realisable assets is on the applicant, that the applicant cannot simply rely on a generalised assertion that she has insufficient assets to repay and that the application must be supported by clear and cogent evidence.
74. In assessing the application, I should look at the totality of the evidence, including the evidence provided by the respondent, and draw appropriate inferences from it in reaching a view as to whether there is an inadequacy of assets on a balance of probabilities. Despite the almost wholly unsatisfactory state of the evidence provided by Ms Ojebode, I have reached the view that, on a balance of probabilities, Ms Ojebode's realisable property is inadequate for the payment of the full amount remaining on the confiscation order, having regard to all of the evidence, including the evidence provided by the Crown.
75. The starting point is the list of realisable assets in the Schedule. It is common ground that, with the exception of Ms Ojebode's remaining equity in her residential property at 15 Bream Close, the realisable assets shown on the Schedule have been exhausted. This, in my view, is clear and cogent (indeed, undisputed) evidence. The amount payable under the confiscation order was the cumulative amount of the Crown Court's valuation of the assets at the confiscation hearing. Ms Ojebode fell well short of achieving the full amount that it was effectively predicted she would achieve when

realising those assets, however, there has been no suggestion from the Crown that there was anything improper or negligent, much less fraudulent, with regard to her realisation of those assets.

76. The value of 15 Bream Close has been partially realised through a release of equity. Ms Hodgson submitted that the court must have accepted that the property was, as Ms Ojebode has said, not in saleable condition when it approved the variation of the Restraint Order in order to permit the equity release. I note, however, that the variation was by consent, and it is not clear that the court went into the matter before giving its approval to the variation.
77. More relevant, however, to the question of whether there is an inadequacy of assets is the fact that even if 15 Bream Close were now sold, the valuation evidence from Barminster Property Services (which I have no reason to disbelieve) suggests that only a further £90,000 would be realised, after allowing for completion costs in relation to a sale. That is less than a quarter of the current amount outstanding under the confiscation order. Even a higher recovery than £90,000 would fall massively short of bridging the gap.
78. Having reviewed the transcript of the confiscation hearing, I find no reason to conclude that the Crown Court considered that there were likely to be hidden assets, although that does not exclude there being hidden assets now.
79. Mr Fletcher has invited me to infer that Ms Ojebode must have hidden assets and/or income in order to service the £90,000 in personal loans that she undertook full legal responsibility, even if there is evidence that her daughter has been repaying three of those loans since September 2019.
80. I agree that the evidence shows that Ms Ojebode borrowed £90,000 and did so apparently misleading the lenders about the extent of her disposable income. It also seems likely that she failed to disclose to each lender the existence of the other personal loans and/or her intention to procure other personal loans. But it also appears that she dissipated that money relatively quickly, and it seems to me more likely than not that she was, in fact, using most of that money to pay personal creditors, as she says, even if £20,000 to £30,000 went to her son for a down payment in relation to his abortive attempt to purchase 15 Bream Close. I disbelieve her evidence that as much as £50,000 to £60,000 went to her son out of the loan proceeds. Mr Fletcher's cross-examination of Ms Ojebode in relation to the transfers out of her account immediately following receipt of the original proceeds of each loan showed it to be highly unlikely that more than about a third of the loan proceeds went to Francis Ojebode.
81. Even if, however, Ms Ojebode used most or all of the personal loan proceeds (including the £20,000 repaid to her by Francis on 28 August 2018) to acquire other assets, those assets at very favourable rates of return would still not come close to covering the full amount currently outstanding under the confiscation order.
82. While I do bear in mind that the burden of proof is on the applicant, I note that the Crown has not produced any direct evidence that Ms Ojebode now has assets or income that she has not disclosed that would be sufficient, together with the remaining equity in 15 Bream Close, to pay the amount outstanding under the confiscation order. I am asked to draw an inference from the fact that Ms Ojebode

appears to have found the resources to make monthly payments on her personal loans that amount to £1,755 per month, at least until September 2019 when her daughter, it appears, began repaying those loans.

83. Ms Ojebode did not provide a complete record of the personal loan repayments, which should have been within her power to do, whether the repayments were made by Ms Adedeji, by another family member or by her. Ms Hodgson had submitted that there was no evidence that Ms Ojebode had made any of the loan repayments, but, as I noted at [66] above, it appears that the monthly loan repayments for the Hitachi Capital loan were debited from Ms Ojebode's Nationwide account 070116 13692290 for a period of 17 months, the monthly loan repayments for the Clydesdale and MSFS loans were debited from the same account for a period of seven months and the monthly payments for the Santander loan were debited from the same account for a period of six months. To be fair, these debits to that account were not put to Ms Ojebode during cross-examination, so I have not had the benefit of her explanation of those debits from her account and how that is consistent with the evidence in her supplemental witness statement and the witness statement of her daughter, Ms Adedeji.
84. Although I have expressed considerable scepticism about Ms Ojebode's evidence, and I do proceed cautiously in considering it in light of her history of serious dishonesty and the inconsistencies, vagueness and lack of particularity in most of her evidence before me, nonetheless it seems to me that it is probably the case that most of the proceeds of the personal loans were used to pay personal debts, and that Ms Ojebode survives financially by borrowing from one creditor to pay another creditor. The County Court judgments revealed by the Equifax report in relation to Oluremilekun Thomas support Ms Hodgson's submission that rather than having income beyond her pension, Ms Ojebode has got herself seriously into debt.
85. I bear in mind Ms Ojebode's age and her status as a retired registered nurse with a pension. She no longer has the rental properties that she bought with the fruits of her fraudulent criminal activity, and therefore her only recognised income is her pension income. Her physical and mental health difficulties, as well as her age, make it highly unlikely that she would be able to earn sufficient income to pay the balance outstanding under her confiscation order. The penalty for failure to pay the confiscation order in full is imprisonment, which would be a severe penalty for Ms Ojebode, given her age and state of health.
86. Taking the most unfavourable view of the evidence presented by Ms Ojebode, bearing in mind that the burden is on her, I nonetheless do not see how I can conclude that it is more likely than not that she has assets sufficient to discharge the balance due under the confiscation order, having regard to the evidence as a whole. I bear in mind the observation of Toulson LJ in *Glaves* at [54] that:

“... a rule of law which said that the court could not be persuaded that the defendant was unable to pay the outstanding amount by reason of a worsening of his financial circumstances unless he gave full disclosure of what had happened in the meantime to all his assets, including previously unidentified assets, would trammel the width of s 83 by imposing a restriction which is not in the statute. It would also be capable

of causing not merely hardship but hardship amounting to injustice.”

87. I do also take note of Toulson LJ’s comment in the same passage that a defendant is unlikely to succeed in making an application under section 83 of the 1988 Act “unless the court is satisfied that he is being candid”, and it should be clear from my assessment of Ms Ojebode’s evidence that I am far from satisfied that Ms Ojebode has been candid, particularly in relation to the purpose, disposition and repayment of the personal loans. I also bear in mind Toulson LJ’s observations in *Glaves* at [55]-[56] that the court must consider “the totality of the evidence” and needs to keep “a sense of proportion in conducting the exercise” of assessing whether there is an inadequacy of assets.
88. Having regard to all of the evidence adduced both by Ms Ojebode and by the Crown and having regard to the civil standard of proof, I conclude, despite serious reservations about the manifold weaknesses in the evidence presented by Ms Ojebode, that her realisable property is inadequate for the payment of the amount remaining to be recovered under the confiscation order.
89. I will therefore issue a certificate of inadequacy under section 83(1) of the 1988 Act. For that purpose, I only need to decide whether Ms Ojebode’s realisable property is inadequate for the payment of the amount remaining to be recovered under the confiscation order. I do not need to determine the amount of the shortfall.
90. The certificate of inadequacy will entitle Ms Ojebode to go to the Crown Court to seek a variation of the confiscation order under section 83(3) of the 1988 Act. Ms Ojebode will need to persuade the Crown Court of the extent to which the amount outstanding should be reduced, which may be very little indeed if she is not able to provide much better and more credible evidence, including relevant documentary evidence, addressing the many inadequacies in her evidence highlighted by the Crown during this hearing, as I have attempted to summarise. In other words, Ms Ojebode would be well-advised to address the many weaknesses in her evidence in support of this application if she chooses to pursue the matter before the Crown Court.

Conclusion

91. The application is granted. I will issue a certificate of inadequacy under section 83(1) of the 1988 Act on the basis that Ms Ojebode’s realisable property is now inadequate to pay the amount remaining due under the confiscation order made against her.

ANNEX

**TABLE SHOWING ASSETS
ON THE SCHEDULE TO THE CONFISCATION ORDER
WITH ORIGINAL VALUE AND REALISED VALUE**

Row No	Description of asset	Value shown in the Schedule	Amount realised and paid to date
1	15 Bream Close, Ferry Lane, Tottenham N17 9DF Title No. EGL316129	£477,000.00	£257,228.50
2	36 Pettits Road, ¹ Dagenham RM10 8NR Title No. NGL198820	£139,000.00	£50,122.44
3	466 Hempshaw Lane, Offerton SK2 5SU Title No. GM679467	£15,000	£6,700.66
4	Flat 15, 2 Jamaica Street, Liverpool L1 0AF Title No. MS562388	£15,000	£0.00
5	5 Benton Street, Moston, Manchester M9 4NG Title No. GM969150	£8,000.00	£0.00
6	Halifax account 110638 00457567	£1,200.00	£997.42
7	Halifax account 110638 00457575	£41.24	£41.08
8	Nationwide account 070116 13692290	£50.00	£50.00
9	Nationwide account 0165/148559848	£78.89	£78.89

¹ Shown on the Schedule incorrectly as “Pettits Lane”.

Row No	Description of asset	Value shown in the Schedule	Amount realised and paid to date
10	Nationwide account 070040 01031552	£159.28	£159.28
11	Nationwide account 0269/324365877	£41.83	£41.83
12	Nationwide account 0270/181702044	£254.83	£254.83
13	M&S account 0447025940	£852.18	£871.17
14	M&G investments account	£3,342.84	£5,009.90
15	Santander account X05897152	£157.93	£157.93
16	Santander account D02088195	£214.83	£214.83
17	NatWest account 600534 56121083	£350.00	£350.00
18	NatWest account 600534 82020515	£89.98	£89.98
19	NatWest account 600534 23670096	£153.22	£153.22
20	Yorkshire Building Society account 1264993245	£589.69	£590.15
21	Nationwide account 0253/149080546	£55.38	£55.68
22	Barclays account 204673 03240649	£572.00	£572.57
23	Barclays account 204532 00515531	£270.00	£270.00

Row No	Description of asset	Value shown in the Schedule	Amount realised and paid to date
24	Henderson Global Investors account 10234363	£2,066.69	£1,316.13
25	Barclays account 206804 23644561	£626.00	£626.00
26	Barclays savings account O Thomas	£8.92	£8.92
27	Nationwide account 070436 15079826	£250.00	£250.00