Neutral Citation Number: [2022] EWCA Crim 475

Case No: 202102377 A3/
202102288 A3

IN THE COURT OF APPEAL (CRIMINAL DIVISION)
ON APPEAL FROM
Her Honour Judge Goddard QC
The Crown Court at Manchester
T20160445

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: Friday 8 April 2022

Before :

LADY JUSTICE MACUR

MR JUSTICE JULIAN KNOWLES
and
HIS HONOUR JUDGE EDMUNDS QC RECORDER OF THE ROYAL BOROUGH OF KENSINGTON AND CHELSEA

- -

Between :

REGINA	**Respondent**
- V –	
(1) JAMES SHIRLEY	**Appellants/ Claimants**
- and-	
(2) ROSS SHIRLEY	

- -
- -

Jonathan Savage (instructed by **Special Fraud Division, Manchester**) for the **Respondent**
Richard Fisher QC (instructed by Forbes Solicitors) for the **1st Appellant**
Quentin Hunt (instructed by Direct Public Access) for the **2nd Appellant**

Hearing date : 24 March 2022

- -

Approved Judgment

This judgment was handed down remotely at 10.30am on Friday 8 April 2022 by circulation to the parties or their representatives by email and by release to BAILII and the National Archives.

Lady Justice Macur:

1. James SHIRLEY (A1) and Ross SHIRLEY (A2) each appeal against the making of a serious crime prevention order (SCPO) pursuant to s.24 Serious Crime Act 2007. The SCPOs were made on 28 June 2021. The duration of the order in each case was 2 years. In the case of A1 the order was to run from the date of his release from custody. In the case of A2 the order was to have immediate effect.

2. A1 and A2 were convicted on 8 June 2018 after a five-month trial of various fraudulent offences. On 10 September 2018 A1 was sentenced to a total of 6 years 3 months imprisonment and A2, a total of 3 years imprisonment. Confiscation orders under the Proceeds of Crime Act 2002 were made on 28th September 2020; A1 in the sum of £100,000 and A2 in the sum of £33,359.

3. Other co-defendants, including the partners and mother of A1 and A2 and a man by the name of Eric Scragg were also convicted. Eric Scragg was also made subject to a SCPO.

The facts in brief:

4. A1 and A2 are brothers who were said, by the prosecution, to have been head of a criminal organisation engaged in money laundering and other criminal offences. A1 was convicted of two offences of Obtaining a Money Transfer by Deception contrary to s.15A Theft Act 1968, Conspiracy to Contravene s.72(1) of the Value Added Tax Act 1994 contrary to s.1(1) Criminal Law Act 1977 and Concealing, Disguising, Converting, or Transferring Criminal Property contrary to s.327 Proceeds of Crime Act 2002. A2 was convicted of one offence of Obtaining a Money Transfer by Deception contrary to s.15A Theft Act 1968 and Concealing, Disguising, Converting, or Transferring Criminal Property contrary to s.327 Proceeds of Crime Act 2002.

5. The offences of obtaining a money transfer by deception involved separate mortgage frauds in relation to domestic dwellings to be occupied by A1 and A2 and their respective partners. In A1's case, he and his partner obtained mortgages in 2003 and 2005 by falsely representing their earnings and the source of deposits. In A2's case, he obtained a mortgage in 2006 by falsely representing his income. Significantly, according to the prosecution, in an email to a mortgage contact centre in November 2007, he enquired what the charges and repayments would be if he paid £75,000 off the mortgage, albeit he had no known legitimate source of monies in that amount.

6. The offence of conspiracy to defraud HMRC of VAT involved 'J Shirley Cars', a business owned and operated by A1 and his partner between January 2007 to August 2008. From early 2007 the business began to purchase high value vehicles which were acquired free of VAT. A1 and Eric Scragg engaged several individuals who were registered disabled and who were paid to purchase cars, zero-rated for VAT, which would then be sold on at significant profit. The great majority of the cars purchased in this way were expensive, luxury brands including Mercedes, BMW, Range Rover, Porsche, and Bentley. In total 120 cars were purchased at a cost of over £6 million. The total VAT avoided was more than £930,000.

7. The offence of converting criminal property in A1's case related to the period between 2006 and 2013 when receipts from unidentified sources in significant amounts were received, payments of significant amounts were made to unknown destinations and

significant amounts were withdrawn in cash. Between April 2009 and March 2012 A1 was arrested on four separate occasions and found to be in possession of cash totalling approximately £10,000. All but £1,350 of that cash was forfeited at uncontested proceedings. There was no evidence from any bank account of the cash sums having been acquired legitimately. On one occasion a total of 11 torn bank notes were recovered, a device known to be used by criminal enterprises as a means of proving identity during a clandestine transaction.

8. In A2's case, analysis of his and his partner's personal bank accounts showed that their daily outgoings could not be met by legitimate income alone, and yet their bank accounts were used to provide significant deposits towards the purchase of property and funded a transfer of £60,000 to J Shirley Cars. Following the execution of a search warrant at their home address, cash totalling £25,860 was recovered. The Judge was satisfied that the total sum of criminal property exceeded £147,000.

The SCPO proceedings:

9. The course of the SCPO proceedings did not run smoothly and took a significant period of time to complete. Although the timetable appears to have been disrupted, as were so many hearings during the pandemic, it is also of note that the draft SCPO's were in their seventh iteration by the time of final approval, and even then, the final SCPO served on A2 is conceded by Mr Savage, representing the Special Fraud Division Manchester CPS, to be incorrect and would be necessary to amend to accord with the order made by the judge below, if these appeals are dismissed or no further amendments made. This is a cause for concern and calls for adverse comment; it suggests a careless disregard for the nature of the order that is sought. Breach of a SCPO is a criminal offence. The terms of the order sought and upon which the relevant DPP delegate should bring their mind to bear should be sufficiently coherent to enable clear understanding of and compliance with the restrictions imposed.

10. Other aspects of the SCPO timetable should be mentioned to put into context some of the arguments in this appeal. Draft notices of application for SCPO's were served on A1, A2 and Eric Scragg on 8 June 2018. The court adjourned the applications to await the results of confiscation proceedings, heard on 28 and 29 September 2020. On 28 September 2020, the judge heard submissions on the necessity for SCPOs to be made. On 29 September, she indicated that she felt the orders would be justified but refused, rightly in our view, to deliver an interim judgment indicating her reasons until she had considered the draft orders proposed. She required the parties to agree the terms of the order.

11. Discussions followed and resulted in significant amendments, but the final draft orders were not agreed. A hearing was fixed for 12 October 2020. However, in the meantime, A2 instructed new counsel. On 7 October 2020, Mr Fisher QC who was briefed after trial for the purpose of the POCA and SCPO proceedings and represents A1 in the appeal, served short written submissions on the court below and the prosecution confirming as had previously been submitted in September 2020, that A1 challenged that (i) the "requisite standard required to be met for a SCPO…is not met: and, (ii) that the terms of the proposed SCPO were "excessive and not directed at the aims of the legislation…". On the same day, Mr Hunt, who by then was instructed on behalf of A2, served a skeleton argument which adopted Mr Fisher's submissions and in addition challenged the legality of the application for want of apparent authorisation by the DPP. His written submissions were appropriately detailed in challenging the factual basis of the application and the proportionality and workability of the terms of the order sought.

The case was relisted for 21 June 2021. The court heard further submissions that day and handed down judgment on 28 June 2021 leading to the SCPOs under appeal.

12. The basis of the prosecution application was evidence contained in the statement of Detective Sergeant Chris Lowe dated 11 October 2018. The statement described A1 as a "career criminal" with involvement in serious crime. His antecedent record covered the period 1998 to 2012. Evidence as to his money laundering and criminal activity abroad was supplied and the fact of what appeared to be targeted serious criminal attempts to cause physical harm to him and other of his family members by rivals. Further, on 15 March 2012, he was said to have been accorded "a gold status Merseyside 'gun crime nominal' due to an intelligence picture around his use and access to firearms."

13. A2 was also described as a "career criminal". His antecedent record covered the period 1998 to 2010. He had a previous conviction for supply of class A drugs. He had committed the mortgage fraud whilst on bail in relation to HGV theft. He too had sent money out of the country. He had been involved in criminal offences abroad. He too, on 15 March 2012, he was said to have been accorded "a gold status Merseyside 'gun crime nominal' due to an intelligence picture around his use and access to firearms."

14. Both A1 and A2 were subject of Merseyside Police intelligence that suggested that they were part of an organised criminal gang, involved in the use of firearms, supply of controlled drugs and violent offences. The police held 250 intelligence reports relating to A1 and 260 in relation to A2. A small number of examples of the intelligence were provided, with the indication that "[A1 and A2's] unexplained wealth has allowed them to live beyond their means, spending money on lavish holidays, expensive houses and high value and specification motor vehicles." Details were also provided concerning Eric Scragg, their associate.

15. Neither Mr Fisher QC nor Mr Hunt, or his predecessor, sought to cross examine DS Lowe. We were told that this decision was tactical. We do not criticise it as such but return to this point below.

16. A1's written submissions opposing the application dated 21 September 2020 prepared by Mr Fisher QC made no challenge to the eligibility of the person named on the application as "Prosecutor" in the CPS, Specialist Fraud Division, and conceded that A1 had been convicted of a serious offence. However, the submissions challenged that there was an "established future risk" on the basis that (i) A1's convictions were in respect of offences that were committed up to 17 years before, and " the most recent offending was over a decade ago"; the "additional matters" (possession of cash dealt with in POCA proceedings etc) occurred nearly a decade ago; A1 had been was arrested in relation to the matters tried on this indictment in 2012 and was on bail thereafter before those proceedings were discontinued. He was subsequently charged by way of summons in 2016 and was on bail thereafter; by the time of A1's release from his sentence of 6yrs 3 months imprisonment on 10 September 2018 it will be the latter part of 2021, that is some 14 years after the commission of the most serious for the offences, the conspiracy relating to VAT); although a specified serious offence for the purpose of Schedule 1 of the SCA 2007, the money laundering offence was an "add on" offence and was in relation to a sum of less than £5,000; the Judge had observed that A1's antecedent history was not of any particular importance at the sentencing hearing; the terms sought appeared to be directed to information gathering by the police rather than at crime prevention which is not, in itself, a justification for the significant interference and burden of a SCPO order.

17. In further written submissions dated 7 October 2020, Mr Fisher submitted that the proposed terms of the redrafted SCPO were excessive and would impose a disproportionate burden upon A1 whilst he is in custody serving the remainder of the custodial part of the sentence and whilst on licence (with terms) thereafter. The information gathering by the police was for the purposes of an intended future application pursuant to s.22 of POCA 2002 and reconsideration of available amount. The defendant's wife and children were moving to Spain in January 2021, and it was A1's intention, upon his release from custody, to join them and reside there. He had made the appropriate application for relocation. The terms of the draft SCPO in many respects had an extra territorial reach which were in excess of the scope of the legislation's stated aims.

18. As indicated above, A2 had changed counsel after the September2020 POCA and SCPO hearing. Mr Hunt prepared written submissions also dated 7 October 2020 in which he challenged the legitimacy of the application, although did not develop this submission further within the document. Otherwise, he adopted the submissions made on A1's behalf as applicable to A2's individual circumstances. DS Lowe categorised A1 and A2 as broadly similar, but a proper forensic analysis of the factual position showed the two brothers to be in different positions. A2, by the time of the final ruling had been released from his custodial sentence for a period of 15 months and there was no further wrongdoing during this time. This is submitted to be particularly relevant as the order as proposed is designed to combat future risk.

19. Mr Clarke QC and Mr Savage, representing the Prosecution prepared a "Response to further submissions by [A1 and A2] on applications for serious crime orders dated 9 October, in which they acknowledge A2's new representation and Mr Hunt's written submissions but "in light of the court's ruling on 29th September 2020 that SCPOs would be made…the following submissions relate solely to the necessity and proportionality of the terms of the orders to be made." That is, they did not address Mr Hunt's written submission / challenge to the legitimacy of the notice of application.

20. Mr Clarke QC and Mr Savage also produced a "Note to assist the parties in relation to the serious crime prevention order applications hearing 21 June 2021". The note is dated 18 June 2021 and provides a summary of the relevant statutory provisions and precedential authorities. There is no issue as to the law, rather its application to the facts. We agree the terms of the note so far as the applicable law is concerned. It is as convenient to set out the relevant considerations which are pertinent to these appeals here than under the section headed determination below.

21. The power to make a SCPO in the Crown Court is governed by section 19 SCA 2007:

    By subsection (2) the Crown Court may only make an order if it has reasonable grounds to believe that the order would protect the public by preventing, restricting, or disrupting involvement by the person in serious crime in England and Wales; the making of an SCPO was dependent a judgement and assessment of future risk see R *v Hancox and Duffy* 2010 EWCA Crim 102.

    Where the Crown Court in England and Wales is dealing with a person who: .....

    > (3)(b) has been convicted by or before the Crown Court of having committed a serious offence in England and Wales. The Crown Court may, in addition to dealing with the person in relation to the offence, make an order if it has reasonable grounds

to believe that the order would protect the public by preventing, restricting, or disrupting involvement by the person in serious crime in England and Wales.

By subsection (5), an SCPO may contain: a) such prohibitions, restrictions or requirements, and b) such other terms, as the court considers appropriate for the purpose of protecting the public by preventing, restricting, or disrupting involvement by the person concerned in serious crime in England and Wales.

Pursuant to subsection (7), an order must not be made under this section except: a) in addition to a sentence imposed in respect of the offence concerned, or b) in addition to an order discharging the person conditionally.

22. The powers of the court to make an order are subject to safeguards set out in sections 6 to 15. The maximum term is 5 years; see s.6(2)).

23. This court concluded in *R v Hancox and Duffy* that a SCPO is made according to law in accordance with ECHR article 8(2) because it is made within a statutory structure. However, any order must be proportionate. The questions which arise under article 8 are – a) will the proposed order be an interference by a public authority with the exercise of the applicant's right to respect for his private life? b) If so, will such interference have consequences of such gravity as potentially to engage the operation of article 8? c) If so, is such interference in accordance with the law? d) If so, is such interference necessary in a democratic society in the interests of the prevention of disorder or crime? e) If so, is such interference proportionate to the legitimate public end sought to be achieved? It is not enough that the order may have some public benefit in preventing, restricting, or disrupting involvement by the defendant in serious crime. The interference which the order will create with the defendant's freedom of action must be justified by the benefit, the provisions of the order must be commensurate with the risk.

24. By section 8 of the SCA 2007, a SCPO may be made only on an application by: a) the Director of Public Prosecutions, b) the Director of Revenue and Customs Prosecutions, or c) the Director of the Serious Fraud Office. Schedule 2 paragraph 2 provides that:

"(1) The Director may, to such extent as he may decide, delegate the exercise of his functions under this Part to a Crown Prosecutor.
(2) References in this Part to the Director are accordingly to be read, so far as necessary for the purposes of sub-paragraph (1), as references to the Director or any Crown Prosecutor."

25. By section 36 (1) – (3), proceedings before the Crown Court arising from section 19 are civil proceedings. The standard of proof is the civil standard of proof. The court is not restricted to considering evidence that would have been admissible in the criminal proceedings in which the person concerned was convicted. By virtue of section 36 (4) the Crown Court dealing with the application, is a criminal court for the purposes of Part 7 of the Courts Act 2003 (c. 39) (procedure rules and practice directions).

26. The imposition of a SCPO creates a criminal offence punishable with imprisonment for up to 5 years and must be expressed in terms from which the person named in the order, and any policeman contemplating arrest or other means of enforcement, can readily know what he may and may not do; see *R v Hancox and Duffy*. The terms of an order should be considered carefully and should be restricted to that which is absolutely necessary; see *R v Carey and Taylor* 2012 EWCA Crim 1592. The fact that the relevant

person named in the order would be released on a licence which would last longer than the order was no reason not to make an order – *R v Hall and Others* 2014 EWCA Crim 2046 24.

The Judge's ruling in summary:

27. The judge described the relevant law as uncontroversial and as set out in the note we have summarised in [21] to [26] above. She noted the consequences of a breach of the SCPO, and the necessity to consider such applications with care.

28. She identified the three pre-conditions that must be satisfied: (i) the defendant had committed a "serious offence"; (ii) the application is made by a prescribed applicant "DPP, Director of RCPO of Director of the SFO or as delegated expressly" and, (iii) the court has reasonable grounds to believe that the order would protect the public by preventing, restricting or disrupting involvement by the person in serious crime in England and Wales.

29. She understood that the first two conditions were conceded and that the issue related to the merits of the application. That is, the defence contended that there were no reasonable grounds for believing that there was a real risk that the defendants would commit further such serious offences and, in the alternative, that the terms of the draft orders were disproportionate.

30. The judge then dealt with the application in relation to each defendant, including Eric Scragg, separately, drawing upon the information contained in the statement of DS Lowe, their antecedent records, and her own "assessment of the circumstances and seriousness of the offences "having heard the evidence during the trial. She said she disregarded DS Lowe's opinions. However, "[t]he mere fact that many intelligence reports have been filed about {A1 and A2] of itself highlights the level of interest the police have in them.

31. As regards A1, the judge found that his antecedent history and the escalation of the seriousness of the offences he committed was relevant to the assessment of risk. Whilst he had not been convicted of any offence that had occurred post 2013, the information in DS Lowe's statement corroborated the conclusion she had reached during the trial that A1 and A2 are "manipulative, dishonest individuals who would do anything to avoid having to account for their criminal activities." Both A1 and A2 lived lifestyles that were "well beyond the means of their legitimate declared incomes" and the categorisation of A1's money laundering offence was because the prosecution could not quantify the extent of criminal monies passing through his accounts. She concluded that A1 is a "determined criminal who has committed serious offences" and neither his claim as to the impact of a custodial sentence or his future intention to live in Spain, did not mitigate the "real risk" of him committing further serious offences in England and Wales. She was satisfied that the order as modified and drafted were "necessary, workable and proportionate".

32. The judge addressed the position of A2 in similar fashion. The offences he had been convicted of committing ended in 2013. He had been acquitted of the most serious offence on the indictment but had been convicted of serious criminal offences reflected in the sentence of three years imprisonment. She described the offending as "relatively sophisticated offending reflecting a layering of criminal monies". She took into account the information in DS Lowe's report albeit that she had not seen the intelligence reports to which it referred. His antecedent history provided a context. She had the opportunity

to "observing" him during the trial and "as with his brother [she] did not form a favourable impression of him – he was a thoroughly dishonest witness and would have gone to any lengths to escape responsibility for his offending." It was clear that his lifestyle could not have been funded from legitimate means. The fact that he had not committed any further offences since his release should be seen in the context of the outstanding application for a SCPO and licence. Given the serious offences committed on the indictment, and the matters referred to by DS Lowe, there is a "real risk" of him committing further serious offences.

33. The judge acknowledged that the conditions sought in the draft SCPOs are "onerous, but it is necessary for the aim of such orders to be achieved that the conditions will of necessity involve detailed restrictions and obligations". However, having regard to the time delay between the offending and the orders, the duration would be limited to two years from the date of release in A1's case, and the date of the order in the case of A2.

The appeal:

34. The appeals are brought pursuant to section 24 of the SCA 2007 with the leave of the single judge. The Serious Crime Act 2007 (Appeals under Section 24) Order2008 (SI 2008/1863) provides the procedure and powers of the Court of Appeal Criminal Division when hearing an appeal as follows:

> 4 (1) Every appeal will be limited to a review of the decision of the Crown Court unless the Court of Appeal considers that in the circumstances of an appeal it would be in the interests of justice to hold a rehearing.
> (2) The Court of Appeal will allow an appeal where the decision of the Crown Court was—(a) wrong; or (b) unjust because of a serious procedural or other irregularity in the proceedings in the Crown Court.
> 5 (1) The Court of Appeal has all the powers of the Crown Court.
> (2) The Court of Appeal may—(a) make a serious crime prevention order;(b) affirm, set aside, or vary any order or judgment made or given by the Crown Court;(c) refer any issue for determination by the Crown Court;(d) order a new hearing in the Crown Court; …
> (3) The Court of Appeal may exercise its powers in relation to the whole or part of an order of the Crown Court.

35. The grounds of appeal for A1 and A2 have common ground. In brief, they complain that:

(i) The applicant for the SCPO was not authorised to make the application.

(ii) The judge erred in her assessment that there was evidence to establish that there was a future serious risk that A1 and A2 would commit further serious offences and that an SCPO was necessary to protect the public by preventing, restricting, or disrupting their involvement in serious crime in England and Wales.

(iii) Alternatively, the terms of the order are disproportionate, excessive, and unworkable.

36. Other than expanding upon ground (i), the submissions echo the points made at first instance as summarised in [16] – [18] above.

37. The Respondent's Notices concede that the notices of the intention to apply to the court to make a SCPO in the appellants' case bore the signature of Simon Rowlinson,

Prosecutor but asserts that the notice was amended and approved by the Head of the Specialist Fraud Division, having been amended and approved by a Deputy Chief Crown Prosecutor. On 6th September 2018 a draft SCPO notice was sent to Deputy Chief Crown Prosecutor ("DCCP"), Janet Potter. On the same day the DCCP sent amendments to the draft notice to Elizabeth Bailey, Unit Head Specialist Fraud Division ("UHSFD"). On 7th September 2018 a re-drafted notice was sent to the DCCP. The draft notice was approved by Kristin Jones, Head of CPS Specialist Fraud Division (one of the 3 CPS Central Casework Divisions) that day. The application for the SCPO was in fact that of the Head of a Central Casework Division (and a DCCP). There was no procedural or other irregularity in the application for the SCPO. As to ground (ii) the Judge exercised a high degree of care in determining whether there existed a future risk of further serious offences being committed by A1 and A2 and had regard to all relevant facts. The Judge was best placed to assess to determine the future risk of committing further serious offences posed by the appellants. She correctly concluded that the applicants were career criminals. A risk may not be "particularly high", but it may nevertheless be a real risk; see *Carey*. The Judge's conclusion that A1 and A2 presented a future risk of committing further serious offences, and that there were reasonable grounds to believe that the order would protect the public by preventing, restricting, or disrupting involvement by the person in serious crime in England and Wales, was correct. The Judge carefully considered the draft conditions proposed by the prosecution. The Learned Judge observed that for orders of this kind to achieve their aim, the terms of restrictions and obligations needed to be detailed. The terms of the SCPO imposed upon the appellants, are not, either singularly or cumulatively, punitive and do not of themselves present a disproportionate risk that A1 or A2 will be unable to comply with all of them. The Judge took into account the onerous nature of the terms and the time delay between the offending and the order being made.

Determination

38. Regrettably, we were unable to determine this case at the conclusion of the hearing listed on 24 March since it was necessary for this court to direct the prosecution to serve evidence, if it was available, relating to ground (i). As we reminded Mr Savage, bare assertions that an authorised applicant had approved the applications were insufficient in light of the apparently legitimate challenge made by A1 and A2 to the written application in the papers before us dated 18 September 2018 and which fails to indicate the 'prosecution authority' by which they were sought.

39. On 25 March 2022, the Prosecution provided evidence to this Court relating to the delegation by the Director of Public Prosecutions of authority to apply for SCPOs to those undertaking certain roles, including the Heads of Central Casework Divisions and Deputy Chief Crown Prosecutors. Specifically, on 27 January 2016, a submission on the delegation of authority for SCPO applications for was sent for the approval of the Director.

40. The submission prepared by a senior policy advisor in the Organised Crime Division headed "Subject: Delegated authority for Serious Crime Prevention Order (SCPO) applications and recommended that the DPP approve amendments to Annex A of the SCPO Legal Guidance, to grant delegation of authority to apply for a SCPO in the Crown Court to Deputy Heads of Casework Divisions. Referring to Schedule 2, paragraph 2, to the effect that the DPP was able to delegate that power to "a Crown Prosecutor". Materially in so far as this appeal is concerned, it went on:

> [6] It was stated in Parliament that it was intended by this section to control the use

> of these powers tightly, by restricting their exercise to those who have been specifically designated by the relevant Director and who have received special training. The intention seems to have been to disapply section 1(6) of the Prosecution of Offences Act 1985, under which every Crown Prosecutor has the powers of the DPP.
> [We interpose here, the term Crown Prosecutor is described in section 1(3) of the Prosecution of Offences Act 1985 ("POA 1985") as "any member of the Service who has a general qualification (within the meaning of section 71 of the Courts and Legal Services Act 1990)] for the purposes of this subsection, and any person so designated shall be known as a Crown Prosecutor". Section 1(6) of POA 1985 provides that "[w]ithout prejudice to any functions which may have been assigned to him in his capacity as a member of the Service, every Crown Prosecutor shall have all the powers of the Director as to the institution and conduct of proceedings but shall exercise those powers under the direction of the Director".]
> [7] During the committee stage of the Serious Crime Bill, the then Attorney General (Baroness Scotland) was asked about these provisions. In particular, it was pointed out to her that the Director could simply delegate this power to every Crown Prosecutor. The Attorney General responded, saying: "It is unusual for such a direct delegation of powers to be made to the Director of Public Prosecutions… It is expressed in this way on this occasion because how decisions are made must be more tightly controlled than it would otherwise have been, because these are very serious orders. So the need to express delegation is a departure from the norm. Normally—for example, under the Prosecution of Offences Act 1985—delegation happens automatically by operation of the legislation. We have departed from that and provided express delegation because we believe that these orders fall into a slightly different category. They will need to be carefully targeted and scrutinised to make sure that the evidence and information on which they are based is sound and in good order to go before the court…It is important to recognise that we cannot expect each director to make every operational decision in relation to every order sought by his organisation. That would be impractical. However, these orders will be applied by highly trained and highly qualified members of the three organisations"
> [8] Currently, authority to apply for SCPOs in the Crown Court is delegated to a number of roles, including Deputy CCPs, but not Deputy Heads of Casework Divisions…
> [9] It is argued that Deputy Heads of Casework Division and the CPP and DCCP for CPS POC are 'highly trained and highly qualified' and that authority should be delegated to these posts, putting them on an equal footing with Area CCPs and DCCPs.

41. Subsequently, on 20 April 2016, the private secretary to the DPP notified that: "The Director has read the below submission and is content with it…"
subject to one small amendment which is irrelevant for the purposes of this appeal.

42. Since the submission rightly recognised the need to exercise tight control of the powers of delegation in respect of these orders, we are somewhat surprised at the lack of formality in the manner of signifying the DPP's consent to delegation pursuant to Schedule 2, paragraph 2. However, we are satisfied from this documentation that there is delegated approval extended to include Heads of Central Casework Divisions and Deputy Chief Crown Prosecutors.

43. We have been provided with a document dated 25 March 2022 and described as "employment confirmation for Kristin Jones, which states that she was "Head of Specialist Fraud Division" between April 2016 and March 2020. The Respondents

Notice asserts that either Ms Potter or Ms Jones was also a Deputy Chief Crown Prosecutor, but there is no evidence provided of that fact.

44. An e-mail dated 7 September 2016 sent by Janet Potter, the Deputy Head of Specialist Fraud Division (North West and Wales) CPS to Kristin Jones referred to "our telephone conversation earlier today" and included the briefing "for you as head of division" to consider approval for the draft SCPOs in respect of [A1 and A2] and Eric Scragg. An e-mail in response from Ms Jones refers to the applications and the need to check one matter but "then proceed as outlined." There is no other document produced before us that purports to be signed by Ms Jones regarding these applications.

45. Neither Mr Fisher QC nor Mr Hunt, who were given permission to provide further written submissions upon these documents have challenged the delegated authority of Kirsten Jones as the head of a central casework division. We are satisfied that the evidence submitted, read as a whole, establishes that she did have delegated authority to make the application. However, that is not the end of the matter.

46. We are not satisfied that A1 or A2 were served with correctly amended and legitimate notices of intention to apply for SCPOs. Section 5 of the application requires the name and address of prosecutor **and** the 'prosecuting authority' by which the application is brought. A footnote to section 5 in the CPD approved application form for a SCPO, specifically directs the applicant to section 8 of SCA 2007 for the "limited class of applicants for such orders". It is omitted, we presume accidentally, from the notice of application served on A1 and A2. CPR 31.3 applies, amongst other behaviour orders, to the making and variation of SCPOs and contains a similar footnote.

47. Mr Hunt refers to the case of R *v Hamer* [2017] EWCA Crim 192 which concerned the making of an application to vary the terms of a Sexual Offences Prevention Order (SOPO). Section 108(2) of the Sexual Offences Act 2003 listed those persons who may apply for an order varying a SOPO. The Court found that since neither of the persons identified at the foot of the relevant application was on the section 108 (2) list, the application did not comply with the statutory requirements. Consequently, there was no valid application before the Judge; and he had no power to vary the SOPO. Mr Hunt argues that this is analogous with the application for a SCPO that was made in this case.

48. As indicated above, Mr Savage in the Respondents Notice, contends that the notice of application dated 18 October 2018 was amended and approved by the Head of the Specialist Fraud Division, and also a Deputy Chief Crown Prosecutor, and that whilst the notice served on the appellant bore the signature of the Senior Crown Prosecutor who had conduct of the prosecution, the application for the SCPO was in fact that of the head of a central casework division. He submitted that the facts of *Hamer* may be distinguished in that the application had not been considered or approved, expressly or impliedly, by a Chief Officer of Police as required by s.108(2) of the Sexual Offences Act 2003.

49. We do not read in Hamer that the application had not been considered or approved, expressly or impliedly, by a Chief Officer of Police.

50. Schedule 2, paragraph 4(1) of the SCA 2007 provides that The Code for Crown Prosecutors issued under section 10 of the Prosecution of Offences Act 1985 (c. 23) (guidelines for Crown Prosecutors) may include guidance by the Director on general principles to be applied by Crown Prosecutors in determining in any case—

(a)whether to make an application for a serious crime prevention order in England and Wales or for the variation or discharge of such an order. The 2018 updated CPS legal guidance on serious crime prevention orders makes clear the careful consideration to be given to the issue of such applications and indicates those officers of the CPS to whom the Director has decided to delegate authority *to* apply for an SCPO in the Crown Court following conviction of a serious offence. The Guidance goes on to indicate that the application in the prescribed form should be accompanied by a draft order and any additional evidence that will be introduced in support of the application and which has not already been placed before the court.

51. Further, "[t]he application for an order must be seen as *a serious step* that can involve the imposition of significant conditions affecting the rights of the individual or organisation. The imposition of an order should not be a normal part of the sentencing process but rather *an exceptional course* in particular circumstances. …prosecutors should bear in mind the policy of the law that "once a man has served the imprisonment which is passed upon him as a punishment, he should be given every help and consideration in re-establishing himself in an honest life and particularly in earning a living. (Emphasis provided)

52. We have referred to the emails which we have been lately provided. We note the intent expressed within them but have not been provided with any further documentation which evidences that the notices served upon the court and A1 and A2 dated 18 October 2018 were correctly "*amended and approved"* to signify the Head of the Specialist Fraud Division as applicant. We consider that the nature of an application for a SCPO, as recognised in the CPS Guidance, requires the Court to be precisely informed of the identity of the prosecuting authority. This did not happen here. Consequently, we consider that the application was void, as is any consequent order.

53. We note that counsel on behalf of A1 did not take this point before the judge below, but the point had been taken on behalf of A2 before the judge's final ruling in September 2021 and was as applicable to A1 as it was to A2. As we indicated in [18] and [19] above, Mr Hunt did challenge the legitimacy of the application in his October 2020 written submissions but did not develop this point further within the document or in oral submissions and the prosecution did not address it. The judge, who understood that A1 and A2 had conceded the point, did not deal with the issue.

54. For the sake of completeness, we make clear that if we did not allow the appeal on ground (i), then we would not have overturned the judge's finding of the risk of commission of further serious crime in either A1 or A2's case. We were not invited to rehear the case and therefore limit ourselves to a 'review' of the judge's decision in accordance with public law principles. The evidence of DS Lowe was not challenged in cross-examination, and the judge was entitled to rely upon the hearsay evidence it contained. The standard of proof was the civil standard. She had formed her own view of A1 and A2 having observed them during a long trial and had regard to their antecedents. The judge clearly considered the arguments advanced on behalf of A1 and A2. The weight she afforded the rival submissions was explained and reasoned and was a matter for her discretion. It is impossible to say that a reasonable judge could not have arrived at this decision.

55. As we reminded all counsel, it is not for this court of its own accord to painstakingly interrogate each sentence of the numerous conditions of the SCPOs with a view to practical and proportionate implementation. We would, however, have found merit in

some of the arguments made regarding whether the terms of the orders were proportionate.

56. Therefore, we allow the appeal because of the procedural irregularity. We set aside the order made. Any new application must be processed afresh, in accordance with the Guidance and in the circumstances that now appertain, and if appropriate to proceed, to be made to the Crown Court.