Neutral Citation Number: [2018] EWCA Crim 1617

Case No: 201705537/A2

IN THE COURT OF APPEAL (CRIMINAL DIVISION)
ON APPEAL FROM CROWN COURT AT SOUTHWARK
His Honour Judge Robbins
2017 05537 A2

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 10/07/2018

Before:

THE RIGHT HONOURABLE THE LORD BURNETT OF MALDON
LORD CHIEF JUSTICE OF ENGLAND AND WALES
THE HONOURABLE MRS JUSTICE NICOLA DAVIES
and
THE HONOURABLE MR JUSTICE GOSS

- -

Between:

	MEHMOOD BUTT	**Appellant**
	- and -	
	REGINA	**Respondent**

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- -

Miss L Phillips (instructed by **Regal Law Solicitors**) for the **Appellant**
Mr D Pawson-Pounds (instructed by the **London Fire Commissioner,** formerly the **London Fire and Emergency Planning Authority**) for the **Respondent**

Hearing dates: 20 June 2018

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Judgment Approved**The Lord Burnett of Maldon CJ:**

This is the judgment of the court.

1. This is an appeal against the sentence imposed on 17 November 2017 in the Crown Court at Southwark of six months' imprisonment suspended for 18 months with a tagged curfew for six months between 21.00 and 06.00, together with a fine of £250,000 and costs of £14,210. The appellant had earlier pleaded guilty to three counts of failure to take reasonable general fire precautions to ensure that premises are safe contrary to articles 4(1)(c), 8(1)(b) and 32(1)(a) of the Regulatory Reform (Fire Safety) Order 2005 ("the Order") and one count of failure to equip premises appropriately with firefighting equipment and with fire detectors and alarms contrary to articles 13(1)(a) and 32(1)(a) of the same order. The maximum sentence available on each count was 2 years' imprisonment and an unlimited fine. The suspended sentence and curfew were imposed on each count concurrently; the fine apportioned between the counts.

2. The offences arose out of the appellant's ownership of 283, Cambridge Heath Road, London E2. There were seven counts on the indictment. The appellant had indicated his intention to contest all counts but in advance of the trial which had been placed in the

Warned List commencing 2 October 2017 negotiations between the parties led to agreement that he would plead guilty to four counts with the balance to lie on the file.

3. Miss Laura Phillips, who appears on behalf of the appellant as she did in the Crown Court, submits that the sentence was manifestly excessive for three reasons:

   i) The overall sentence did not fairly reflect the criminality of the offending as set out in the prosecution note for sentence and basis for plea. It did not give sufficient weight to the mitigation put forward.

   ii) The Judge should not have imposed a fine £250,000 in addition to a suspended sentence of six months with the curfew, or if a fine was appropriate it should have been substantially lower.

   iii) The Judge made no positive assessment of whether the prosecution costs were actually and reasonably incurred. They were too high and should be reduced.

The Facts

4. 283, Cambridge Heath Road is a five-floor end of terrace building in the London Borough of Tower Hamlets. The appellant, who is now 56, has owned it since 2005 and for a number of years he let rooms in it. It was a "house in multiple occupation". In 2009 the appellant decided to convert the premises into a 13 room bed and breakfast or boutique hotel. He engaged a man called Munawar Hussain, who traded as Future Visions, to design and carry out the project including obtaining planning permission and necessary consents. In November 2009 planning permission was refused for various reasons. Those included that the design provided for an enclosed rear fire escape. The context was that the appellant wished to take out the internal stairs in the building and instead install a lift. In those circumstances the need for a safe and functioning fire escape from the upper floors was obvious. A further application for planning permission was made in November 2011 along with a full plans application for building regulation approval, this time including an exposed rear fire escape. Building regulations approval was refused because the fire escape as proposed was not safe. There were other problems which are not material. Planning permission was finally granted on 26 April 2012. The scheme included the installation of a lift and the removal of the internal staircase. Work began sometime afterwards and came to the attention of the local authority (responsible for buildings regulation approvals) in February 2013. Work had commenced before such approval had been given. There is nothing unlawful in that, but embarking on a building project without satisfying building regulations generates hazard – work may have to be undone or revised. Given that some of the earlier concerns expressed about the fire escape had not been addressed, the chance of obtaining building regulations approval if the plans were unchanged was negligible.

5. Mr Andrew Bower, a building control surveyor of the local authority, visited the site on 21 February 2013. He spoke to Mr Hussain and expressed his concerns. That prompted a fresh application for building regulations approval which was refused a few days later because of the unsatisfactory proposal for removing the internal staircase and adding a fire escape. On 2 May 2013 he visited again. This time Mr Bower met Mr Hussain and the appellant at an hotel the appellant owns a few doors down from the site. They went

to the site. His statement was served in advance of the proposed trial. It was to be read without his being called. In it he said:

> "We discussed the options with regard to the enclosing of the stair to the rear. I informed them that this was likely to require planning permission, reiterated that the Building Regulations application had been rejected and explained that work continues at the owner's risk."

6. The appellant, whose first language is not English, does not dispute being at that meeting; but he does not accept that he appreciated the fundamental problems with fire safety that his project was generating. It was his case, set out in the basis of plea upon which he was sentenced, that he left all the detail to Mr Hussain and to his own son, Zain, and that he did not appreciate fully the growing difficulties. At all events, Mr Bower next visited in December 2013 and discussed matters with Zain when he saw doors inappropriately hung to obstruct the stairway. Moreover, the only route of escape was across property not owned by the appellant and in respect of which he had no right of way.

7. Mr Bower visited once more on 4 March 2014. Carpets were being laid. He was troubled that the business was about to open in a dangerous condition. He had been in touch with the fire brigade before then, and made contact with Samantha Bennett, the relevant inspecting officer to express his concerns.

8. Ms Bennett visited the premises on 25 March 2014. She saw the appellant and Mr Hussain. The appellant was 'the responsible person' for the purposes of article 3 of the Order, fixed with responsibility for ensuring fire safety in conformity with its terms. It was in that capacity that he accompanied her on the visit. The appellant accepts that he was fully aware of all the areas of concern following this meeting. The refurbishment was almost complete but the rooms did not appear to be occupied. Ms Bennett identified the following to the appellant (and Mr Hussain):

   i) The new lift shaft was not fire resistant;

   ii) The external fire escape was not fire resistant in that the windows overlooking it were, (a) able to be opened; (b) within 1.8 metres of the stairway, and (c) not in themselves fire resistant;

   iii) The enclosed yard at the back of the premises was not a place of safety both because of its physical nature (itself curable with some wall building) but also because the appellant had no right to use it;

   iv) The external door to the yard was locked;

   v) The fire alarm system was not operational.

9. It was made clear to the appellant that under no circumstances should anyone be allowed to use rooms other than on the ground floor until all the problems were rectified. The

means of escape from the upper floors and from the basement were not safe. He accepts that. Shortly afterwards, Mr Bower wrote to the appellant setting out his concerns. Then on 22 April 2014 an enforcement notice was served on the appellant by the Fire Authority requiring him to remedy the defects. It was to expire on 15 July 2014.

10. Ms Bennett returned to the premises three weeks before the enforcement notice was due to expire. She was met and accompanied by the appellant. She found that only one minor remedial step had been taken. The ground floor was occupied by people the appellant said worked for his building contractors. Ms Bennett discovered that an upstairs room was occupied by a woman. She could not establish why she was there because of a language difficulty. Ms Bennett reiterated to the appellant that there were no suitable means of escape from the upper floors or from the basement. She emphasised that only the ground floor could be occupied. The defendant assured her that only the ground floor would be used and that at the time nobody was living there because of concerns about fire safety. She said she would return in a about a week.

11. On 2 July Ms Bennett returned with colleagues to make an inspection. They were joined by the appellant and his son. The prosecution flowed from what they discovered on that occasion. None of the problems had been resolved. They were compounded by the fact that the fire alarm system, now operational, was inadequate because it was inaudible or not sufficiently audible in parts of the building. But the most serious finding was that, contrary to the assurances given personally by the appellant, two rooms on the upper floors and one in the basement were clearly occupied. To make matters worse a van containing propane cylinders was parked adjacent to the external staircase. Because of the enclosed nature of the land at the base of the staircase, had it been used people would have been trapped close to the building from which they had escaped. The doors leading to the external staircase were not self-closing and the problem with the windows persisted.

12. The authority formed the view that each of the deficiencies they had identified gave rise independently to a risk of death or serious injury to occupants of the premises. That is an ingredient of each of the offences to which the appellant pleaded guilty and marks them out from offences under the Health and Safety at Work etc. Act 1974 ("the 1974 Act"). The counts on the indictment reflect the state of the premises as seen on 2 July 2014.

The Proceedings and Sentence

13. The summary of the deficiencies are as follows:

i) Count 2 – the risk created by the external fire escape which, following the removal of the internal staircase, was the only means of escape from the upper floors of the premises in the event of a fire. The deficiencies particularised in this count were that the fire escape was not fire resistant and thus unsuitable.

ii) Count 3 – the risk created independently by the lift shaft. It was not fire resistant and would have failed to prevent the spread of fire and smoke.

iii) Count 5 – the risk resulting from there being no suitable internal means of escape

from the upper floors in the event of a fire.

iv) Count 7 – the risk created by the inadequacy of the fire alarm system at the premises. The system had not been in operation when the inspection took place on 25 March 2014. By 2 July 2014 the system was in operation but the alarm sounders were situated in the corridors. As a result, the system failed to achieve the required noise level for each occupant of the premises. In respect of two rooms on the upper floors, both of which showed signs of occupation, the alarm could not be heard at all.

14. The appellant accepts that he should have been aware that people were using rooms after the fire officer's visit in March 2014 and again in June 2014.

15. There was further material history to the offending. Long before these events, when the building was a house in multiple occupation, serious fire safety deficiencies had been noted in November 2007 which resulted in the service of an enforcement notice. Further action was taken in November 2010 when an inspection report led to a notice of deficiencies being served upon the appellant. In May 2012 another enforcement notice was served after there had been a fire. The "responsible person" for the first two of these enforcement actions was the appellant. In respect of the third, his son was noted as the responsible person.

16. The prosecution relied upon the appellant's poor record in relation to fire safety matters as an aggravating feature together with his ignoring warnings from both Ms Bennett and Mr Bower. The breaches subsisted from the date on which the premises were occupied with the most serious risk attaching to the occupation of the upper floors and basement. Although the prosecution suggested in a schedule of aggravating features that the appellant sought financial gain from his failure to remedy the breaches, he denied knowing that those occupying the upper floors and basement were being charged for their occupation, although the relatively modest charges would have flowed into his business. He accepted that he was charging for the rooms occupied on the ground floor.

17. The appellant's basis of plea emphasised that he had relied upon Mr Hussain to make the alterations in compliance with all necessary regulations. He had asked Mr Hussain to seek permission to remove the internal staircase and instead make provision for an external fire escape. He thought that all work was proceeding in accordance with regulations until the visit on 25 March 2014, although he was aware that the substantial delays in the project were the result of the difficulties with consents and included fire-safety concerns. In the summer of 2013 his relationship with Mr Hussain deteriorated as a result of delays due to a redesign required by Mr Bower. That redesign went beyond fire safety matters. After the events which form the basis of the counts to which he pleaded guilty, he parted company with Mr Hussain and engaged different builders to complete the project in compliance with building regulations and fire safety legislation. The whole project went some £100,000 over budget and he was unable to open the premises as a fully functional bed and breakfast for another year. He accepts that he should have taken active steps to ensure that the rooms were not being occupied.

18. His basis of plea does not say that he was unaware of the rooms being occupied after 25 March. Instead he merely suggests that his son was responsible for "much of the day to day management" and accepts that he "should have taken steps …to ensure that the

rooms on the premises (save for the ground floor) were not being occupied."

19. The pre-sentence report records the appellant describing multiple health complaints and suggesting that

> "… he was taking medication which affected and still affects his ability in day to day life as he is unable to focus and concentrate for long periods of time due to pain and fatigue."

He explained that he was drinking to excess and on anti-depressants. We note that the appellant served a very detailed consultant physician's report dated 5 June 2013. It confirmed that he had suffered significant medical problems, which were under control, and that he was "now very active", having recorded that the appellant "goes to the gym daily and does weights and running." It provides no support for the claimed problems described to the author of the pre-sentence report, indeed it confounds them. A further report from the appellant's general practitioner produced for the sentencing hearing also provides no support for any particular problems in 2014. 2014 is not mentioned at all in the report but there is confirmation that by 2015 the appellant was suffering from "low mood and anxiety".

20. Both before the judge and us Miss Phillips suggested that the appellant's medical problems affected his ability at the material time to concentrate on what was happening at the premises, due to pain, fatigue and depression. That is unsupported by the medical evidence and we discount it.

21. Miss Phillips prayed in aid the appellant's lack of previous convictions, his guilty plea and that nobody was actually hurt by the failures.

22. The judge concluded that the breaches were serious and that having regard to previous decisions of this court the custody threshold was crossed. A suspended sentence, curfew and fine met the justice of the case.

The Approach to Sentencing in Fire Safety Cases

23. There are no sentencing guidelines applicable to fire safety cases. In *R v New Look Retailers Ltd* [2011] 1 Cr.App.R. (S) 57 this court applied to prosecutions under the Order the principles earlier articulated in *R v F. Howe & Son (Engineers) Ltd* [1999] 2 Cr.App.R. (S) 37 for cases prosecuted under the 1974 Act. That envisaged that a similar approach to the assessment of harm and culpability would be appropriate and that aggravating and mitigating factors which weighed in health and safety cases would apply in sentencing for breach of the Order. A feature of the offences under the Order with which this appeal is concerned is that the breach must give rise to a risk of death or serious injury. Fire is an especially potent hazard. The products of combustion are capable of overcoming and killing victims quickly or doing them serious harm. The fire itself can do the same. Fire is notoriously unpredictable and can spread far from its seat. It is for these reasons that serious breaches of fire safety regulations have been met with severe penalties.

24. The parties helpfully placed before the judge a series of decisions of this court which

assisted in locating appropriate sentences. *R v Salim Patel* [2015] EWCA Crim 2239 concerned guilty pleas to seven offences under the Order, including failure to comply with an enforcement notice, relating to an hotel. There was a bad history of compliance with fire safety legislation. The mitigation sought to shift responsibility to the hotel manager. The offender received a suspended sentence and a fine of £200,000. *R v Sandhu* [2017] EWCA Crim 908, [2017] 4 WLR 160 concerned another hotel and serious breaches of the order. Once more the mitigation included a suggestion that responsibility for the failures rested with a manager. An immediate custodial sentence was upheld. *R v Takhar* [2014] EWCA Crim 1619 also concerned an hotel with seriously defective fire safety precautions. The eight breaches of the order attracted an immediate custodial sentence.

25. These cases illustrate the serious nature of breaches of the order and the severe sentences that may be imposed. There is now a guideline for health and safety offences (Definitive Guideline on Health and Safety offences, Corporate Manslaughter and Food Safety and Hygiene Offences) but it does not apply to offences committed contrary to the Order. The Sentencing Council considered whether it should encompass within its scope offences contrary to the Order but decided against. In its response to the consultation on the draft Guideline (November 2015) it said:

> "Other offences which were suggested for inclusion included fire safety offences. These were suggested by five respondents, including the London Fire and Emergency Planning Authority. The Council considered the inclusion of these offences, but decided against it. The Council felt that applying the factors in the Guidelines to offences involving risk of fire had the potential for distorting sentence levels." (Pp 14/15)

26. The context of that observation was that the distortion of sentencing levels might be upwards. In the *Sandhu* case at paragraph 22 Judge Collier QC, having referred to sections 142 and 143 of the Criminal Justice Act 2003 dealing with the purpose of sentencing, observed that in fire safety cases the Guideline might provide a "useful check for considering whether a sentence arrived at ... has produced a sentence which is either unduly lenient or manifestly excessive." That comment must be seen in the context we have just mentioned. That said, the structure of the Guideline in identifying the steps involved in determining the seriousness of the offending might usefully be followed to cases of this sort. We repeat the summary set out in paragraphs 7 to 9 of *R v Whirlpool UK Appliances Limited* [2017] EWCA Crim 2186, [2018] 1 WLR 1811:

> 7. The Guideline provides a structure within which to sentence for breaches of health and safety legislation. At Step One, the court is enjoined to determine the offence category. As part of that exercise it must first decide "culpability". There are four levels of culpability: very high, high, medium and low. The conduct described in the Guideline to inform the assessment of culpability ranges from "deliberate breach of or flagrant disregard for the law", at one end, to "offender did not fall far short of the appropriate standard" at the other.
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> 8. Consideration of "harm" follows in the context that the offences under sections 2 and 3 of the 1974 Act are ones of creating a risk of harm. The Guideline requires the court to determine both the seriousness of the harm risked and the

likelihood of that harm arising. Each of those factors may be ascribed to one of three categories. The hierarchy of harm is then divided into four categories by the Guideline …

9. Having identified the appropriate level of harm, the Guideline then requires the court to consider whether the offence exposed a number of workers or members of the public to risk and whether the offence was a significant cause of actual harm. It continues:

"If one or both of these factors apply the court must consider moving up a harm category or substantially moving up within the category range at step two … The court should not move up a harm category if actual harm was caused but to a lesser degree than the harm that was risked, as identified in the scale of seriousness…"

27. In prosecutions for a breach of the Order the harm risked will be at the highest level, level A in the Guideline, because of the risk of death or serious injury. The level of culpability will vary depending upon the circumstances of the offending. The likelihood of harm occurring depends upon the chances of fire breaking out. In most cases there will be no evidence of special risk of a fire breaking out, although in some there may be evidence of an enhanced risk. The law imposes a high standard for precautions to guard against the risk of fire. That is not only because of the very serious consequences that can flow from fire but also because it is so unpredictable how and when it will start. The severe penalties evident in cases of the breach of the Order do not depend upon such enhanced risk. Its presence would be a seriously aggravating factor. The two factors referred to in paragraph 9 of the Guideline (risk to many and actual harm) are aggravating features when sentencing for fire safety offences.

28. In the *Patel* case, as we have seen, a suspended sentence was combined with a substantial fine. A combination of a fine and a suspended or community sentence is available when sentencing. The Definitive Guideline on Offences Taken into Consideration and Totality indicates:

"A fine should not generally be imposed in combination with a custodial sentence because of the effect of imprisonment on the means of the defendant. However, exceptionally, it may be appropriate to impose a fine in addition to a custodial sentence where:

- The sentence is suspended;
- A confiscation order is not contemplated, and
- There is no obvious victim to whom compensation can be awarded; and
- The offender has, or will have, resources from which a fine can be paid."

29. It is particularly apt when the offending is related to a defendant's business or employment, when dealing with offenders with substantial means, or when the sentence

allows an offender to continue in well-remunerated work. For many, a substantial fine coupled with a suspended sentence or community sentence will be an appropriate punishment. Indeed, there may be cases where a substantial fine would be viewed as a greater punishment by an offender than the other part of the sentence.

30. "Resources" include both income and capital. Many Guidelines, including the Health and Safety Guideline, identify fines by reference to bands which are calculated by taking a multiple of a defendant's disposable income. Courts will be astute to recognise that income, evidenced by tax returns, when looking at the means of those in business, and especially family businesses, may not tell the whole story. Moreover, the wealth of an offender may be reflected in substantial capital rather than high income.

31. We would also wish to reiterate the need for defendants in health and safety and similar cases to place detailed evidence of their financial circumstances before the sentencing court. As the Sentencing Council said in the Health and Safety Guideline:

> In setting a fine, the court may conclude that the offender is able to pay any fine imposed unless the offender has supplied financial information to the contrary. It is for the offender to disclose to the court such data relevant to his financial position as will enable it to assess what he can reasonably afford to pay. If necessary, the court may compel disclosure of an individual offender's financial circumstances pursuant to section 162 of the Criminal Justice Act 2003. In the absence of such disclosure or where the court is not satisfied that it has been given sufficient reliable information, the court will be entitled to draw reasonable inferences as to the offender's means from evidence it has heard and from all the circumstances of the case **which may include the inference that the offender can pay any fine.**" (original emphasis)

Application to this case

32. Miss Phillips readily accepts that the offending in this case crossed the custody threshold. She accepts that "fire safety offences are very serious, and the judge was entitled to observe that an immediate custodial sentence might properly have been imposed." That would have been a severe sentence on the facts of this case, but no attack is made upon the suspended sentence or curfew. She submits that there should not have been a fine in addition, alternatively that it should have been small, because the suspended sentence coupled with a curfew was punishment enough.

33. It was common ground that the time at which the appellant entered his guilty pleas should result in a discount on any fine of 20% or thereabouts.

34. Like the judge, we regard this as a serious case. The appellant had a long-standing appreciation of the importance of fire safety regulations in general because of the regulatory difficulty his businesses had encountered in the past. Given that history, it was particularly inapt for him, as the person responsible under the Order, to seek to pass on responsibility to Mr Hussain. There was no evidence before the court that Mr Hussain understood that to be the position. The appellant was given an opportunity to produce contractual or other material evidencing the responsibility of Mr Hussain. None

was forthcoming. As it happens, shortly after the events in question Mr Hussain himself was prosecuted for breaches of the Order in respect of a property he owned. He sought to rely on the same mitigation – that fire safety was the contractual responsibility of someone else – which suggests there was little foundation to place any reliance on him.

35. The appellant had been on specific notice of the deficiencies since 25 March 2014 and had failed, despite his personal promise, to ensure that the property was not used. The shortcomings were reduced to writing both by Mr Bower of Tower Hamlets and by the Fire Safety Officer, Ms Bennett. He was given yet further warning on Ms Bennett's visit shortly before the critical date of 2 July 2014.

36. Miss Phillips argues that the problems with the conversion of the hotel (planning permission, building regulations and fire safety) resulted in substantial delay, and thus lost revenue, together with additional costs. We are unimpressed with that as a mitigating factor. That was the result of the appellant's poor control and poor business practices.

37. The culpability in this case was very high. This was a flagrant disregard of the law which placed those who stayed in the property at risk. The harm risked was also high. By contrast, there is no reason to suppose that the risk of a fire breaking out was anything other than the ordinary and so that potent aggravating feature is absent.

38. The appellant placed some detail of his means before the court. Although contained in an accountant's letter, that simply recorded information provided by the appellant. His latest tax return (for financial year 15/16) showed an income of £51,000 odd, which was the figure given on the appellant's self-assessment. The letter stated the appellant's assets as £1,518,000. That was the appellant's loosely particularised assessment of the value of his properties (£2,950,000) less unparticularised liabilities (£1,432,000). Not a single piece of supporting evidence was provided. No point was taken on the quality of that evidence, which was perhaps a generous view on the part of both the prosecution and the judge. There is a worrying inconsistency between such details of his properties as appear in the accountant's letter and the pre-sentence report. That suggests he owns "multiple properties which includes the five hotels." The accountant mentions only two properties that are hotels.

39. The curfew added little to the punishment in this case because the appellant explained to the author of the pre-sentence report that he returned home in the evening at about 20.00 hours and, at least at the time of sentencing, was fatigued and depressed. Albeit that the curfew may have inconvenienced the appellant from time to time, by contrast with a young socially active offender for whom a curfew may be a serious penalty, it applied when he was generally at home anyway.

40. The £250,000 fine imposed suggests that had the appellant fought the case he might have received a fine of about £300,000 in addition to a possibly longer suspended sentence. Undoubtedly serious though these offences are, we have concluded that the fine is too high by a margin given the totality of the circumstances to which we have referred. The appellant is able to raise a substantial sum to pay a fine and costs, given his significant assets. No issue arises on his ability to pay. We have concluded that a starting point of about £200,000 would have been appropriate. That results in a fine of £150,000 which will be apportioned equally across the offences. In reaching this figure

we have had regard to the costs, to which we now turn.

The Costs

41. Miss Phillips submits that the judge failed to make a finding that the prosecution costs of £14,210 were actually and reasonably incurred before he ordered the appellant to pay them. She is correct in noting that the judge did not use those words, but it is implicit in his ordering the costs that it was his view. In broad terms, she submits that the costs are high and should not be allowed in full.

42. The prosecuting authority produced a schedule of costs which itemised every minute spent on the case by each fee-earner, every letter sent and received, and every telephone call made or taken. The in-house hourly rates (£90 per hour for solicitors and £60 per hour for the investigating officer) are modest. It is not suggested that the time recorded was not actually spent in preparation of the prosecution. We remind ourselves that for a protracted period this was being prepared for a contested trial. Counsel's fees, again fully particularised, are unexceptional.

43. We have no doubt that the costs claimed were actually and reasonably incurred and that the judge was right to order the appellant to pay them.

Conclusion

44. We allow the appeal against sentence to the extent of quashing the fine of £250,000 and substituting a fine of £150,000, to be apportioned between the offences. All other orders, including the order for costs and sentence in default of paying the fine, remain the same.