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Neutral Citation Number: [2010] EWCA Crim 65  
**IN THE HIGH COURT OF JUSTICE**  
**COURT OF APPEAL (CRIMINAL DIVISION)**  
**ON APPEAL FROM THE CROWN COURT AT LEEDS**  
**HHJ GRANT**  
**2009.04020b5\*1**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 29/01/2010

**Before:**

**LORD JUSTICE SCOTT BAKER**  
**MR JUSTICE PENRY-DAVEY**  
and  
**MR JUSTICE CRANSTON**

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**Between:**

<b>Regina</b>	<b><u>Respondent</u></b>
<b>- v -</b>	
<b>Simon Guy SHEPPARD and Stephen WHITTLE</b>	<b><u>Appellants</u></b>

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**Mr. A. DAVIES** (instructed by **Williamsons, Hull**) for the Appellant **Sheppard**  
**Mrs L. TURNBULL** (instructed by **Payne & Payne, Hull**) for the Appellant **Whittle**  
**Mr J. SANIDFORD and Ms. Denise BREEN-LAWTON** for the **Respondent**

Hearing dates: 26 and 27 November 2009  
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**Judgment**

## **Lord Justice Scott Baker:**

1. These two appellants appeal with the leave of the full court against their convictions for a number of offences relating to racially inflammatory material under the Public Order Act 1986 (“The 1986 Act”) The Registrar referred their sentence applications to this court.
2. The history of the proceedings is, in brief, as follows. On 11 July 2008 in the Crown Court at Leeds before Judge Grant and a jury Whittle was convicted of four counts of publishing racially inflammatory material (counts 4, 5, 7 and 8). Sheppard was convicted of 9 counts of publishing racially inflammatory material (counts 4, 5, 7, 8, 9, 12, 13, 14 and 15).
3. They then left the jurisdiction and went to the United States of America where they claimed asylum. The trial continued in their absence. On 14 July 2005 Whittle was convicted by a majority of 10 to 1 of one further count of the same offence – count 6 – and Sheppard by a majority of 10 to 1 of two further counts of the same offence – counts 6 and 10.
4. There were 7 counts in relation to Sheppard on which the jury was unable to agree. These were:  
  
Counts 1, 2, 17 and 18 – possessing racially inflammatory material.  
  
Counts 3 and 11 – publishing racially inflammatory material.  
  
Count 16 – distributing racially inflammatory material.
5. There was a retrial in Sheppard’s absence and he was convicted of counts 1, 3, 16, 17 and 18. On 8 January 2009 he was found not guilty on the judge’s direction of count 2 and the prosecution did not proceed with count 11.
6. The claim for asylum in the USA was refused and the two appellants were returned to the jurisdiction. On 10 July 2009 Sheppard was sentenced to a total of 4 years and 10 months imprisonment and Whittle to a total of 2 years and 4 months imprisonment. Included in those sentences were 4 months consecutive sentences for bail offences. The Bail Act sentences are not the subject of the present appeals. The judge also made forfeiture orders under section 143 of the Powers of Criminal Courts (Sentencing) Act 2000 in respect of which Sheppard seeks an extension of time and leave to appeal.
7. The broad nature of the prosecution case was that Whittle composed material which he submitted by e-mail to Sheppard. Sheppard edited the material on his computer and then uploaded it to a website called heretical.com which was set up by him and was hosted by a remote server located in Torrance, California. When posted on the website the material was available for access via the internet by visitors to the website, including people within the jurisdiction of England and Wales.
8. Count 1 related to the possession by Sheppard on 30 May 2005 of a pamphlet called Tales of the Holohoax which was found on a search of his home in East Yorkshire. It was a publication in the form of a comic book, the central theme of which was to cast doubt on the existence of the Holocaust. The publication also suggested that the

Jewish people had a history of inventing stories of the commission of atrocities against them and it portrayed the Jewish people in a way that, as was alleged, made it likely that racial hatred would be stirred up against them if the pamphlet was distributed. Count 2 contained an allegation in identical terms against Sheppard, but a year later.

9. Count 3 related to the publication by Sheppard of the Tales of the Holohoax pamphlet in full on the heretical.com website. There was evidence from a police officer, DC Brown, who visited the site and downloaded the documents.
10. Counts 4 to 8 related to a number of other articles written by Whittle, edited by Sheppard and published by Sheppard on the heretical.com website. All the articles were alleged to contain derogatory remarks about Jewish people and black people.
11. Counts 9 to 15 related to the publication by Sheppard on the heretical.com website of a number of other documents which were likewise alleged to contain material that was threatening, abusive or insulting towards various racial groups.
12. Counts 16 related to the distribution by Sheppard of a pamphlet called "Don't be Sheeple" which was likewise alleged to be racially inflammatory, count 17 to the possession by him on 4 July 2008 of a number of copies of that pamphlet and count 18 to the possession by him on the same date of a number of copies of the Tales of the Holohoax pamphlet.
13. Matters came to light in this way. On 13 August 2004 Professor Klug, a research fellow with the Centre for the Study of Human Rights at the London School of Economics forwarded to Lord Goldsmith, the Attorney General, a pamphlet entitled Tales of the Holohoax which had been sent to her personally. Four days earlier on 9 August 2004 a Mr Whine had written to the Chief Constable of Lancashire complaining that the same pamphlet had been received by the Blackpool Reform Synagogue. A similar complaint was made to the Western Division Police Headquarters. The Crown Prosecution Service was invited to consider prosecuting the publisher under Part III of the 1986 Act.
14. Sheppard was traced through the publisher's address printed on the pamphlet. The Crown Prosecution Service decided that Tales of the Holohoax contained words which were abusive, insulting and possibly threatening towards a racial group, namely Jewish people and that further investigations were required to discover the extent of the publication and distribution. In March 2005 Sheppard was arrested and interviewed. It became apparent that he operated a number of websites, and registrations for 15 websites were found in his name at his home address. The websites had names such as heretical.com; klan.org; nazi.org; and whitepower.co.uk. During a review of this material it became apparent that Whittle had been writing articles under the pseudonym of Luke O'Farrell and these were published by Sheppard on his website heretical.com.
15. Having edited the material, Sheppard posted it to the website in Torrance California. In order to do this he used a format known as File Transfer Protocol. Once the material reached the server, the server then converted the format of the material to HTML which made it available to be accessed on the internet by those visiting the website, including people within the jurisdiction of England and Wales. Sheppard

had control of the website as far as its contents were concerned. He could upload and edit material.

16. The appellants do not challenge the jury's findings that in each of the counts in respect of which they were convicted the material was racially inflammatory; nor could they. Rather, the appeal is concerned with issues of law.
17. The appeals against conviction concern only those counts relating to the internet; that is counts 3 – 15. Indeed the other counts (1, 2, 16, 17 and 18), which concerned Sheppard only, related to hard copy material. Each of the internet counts of which the appellants were convicted involved an allegation of publishing racially inflammatory material contrary to section 19 (1) of the 1986 Act.
18. Section 19 of the 1986 Act provides:
  - “(1) A person who publishes or distributes written material which is threatening abusive or insulting is guilty of an offence if –
    - a) He intends thereby to stir up racial hatred, or
    - b) Having regard to all the circumstances, racial hatred is likely to be stirred up thereby.
  - (2) In proceedings for an offence under this section it is a defence for an accused who is not shown to have intended to stir up racial hatred to prove that he was not aware of the content of the material and did not suspect, and had no reason to suspect, that it was threatening, abusive or insulting.
  - (3) References in this part to the publication or distribution of written material are to its publication or distribution to the public or to a section of the public.”
19. The appellants advance three grounds of appeal. The main one relates to jurisdiction, the argument being that a publication on the internet is only cognisable in the jurisdiction where the web server upon which it is hosted is located and since in this case the location was California the publication falls outside the jurisdiction of England and Wales. We would add that it is common ground that none of the material charged by the internet counts is illegal in the United States of America. The other grounds concern the meaning of “publication” in section 19 and the application of section 19 to publication on the internet and whether the material published on the internet was “written material” within the meaning of section 29 of the 1986 Act. Section 29 provides that “written material” includes any sign or other visible representation.

### *Jurisdiction*

20. The judge found that the test to be applied was to be found in the case of *R v Smith (Wallace Duncan) (No.4)* [2004] 2Cr App R 17, [2004] EWCA Crim 631. That is that the Crown Court had jurisdiction to try the appellants for their conduct because a substantial measure of the activities constituting the crime took place in England. He

rejected the appellants' arguments that the determinative factors were (1) that the act of publishing took place in California when the format of the material supplied by Sheppard was converted to allow it to become accessible on the internet, and when it was accessed by other people clicking on the website; (2) that the act complained of did not constitute a criminal offence in the United States of America because it was not only not a criminal act but also specifically protected by the First Amendment to the American Constitution; and (3) that the wording of section 42 of the 1986 Act was different from the jurisdictional wording of, for example, the Theft Act 1968 and thus the *Wallace Duncan Smith (No.4)* line of authority was not applicable.

21. The judge said in his ruling that the test to be applied was summed up effectively in a quotation at paragraph 55 of the judgment of Lord Woolf C.J. in *Wallace Duncan Smith (No.4)* citing Rose L.J. in *Smith (No 1)*:

“The passage in *Treacy v DPP* to which Roberts CJ refers is the celebrated discussion by Lord Diplock of the bounds of comity and the judgment of La Forest J in *Libman* contains a most valuable analysis of the English authorities on the justiciability of crime in the English courts which ends with the following conclusions:

The English Courts have decisively begun to move away from definitional obsessions and technical formulations aimed at finding a single situs of a crime by locating where the gist of the crime occurred or where it was completed. Rather, they now appear to seek by an examination of relevant policies to apply the English criminal law where a substantial measure of the activities constituting the crime take place in England, and restricts its application in such circumstances solely to cases where it can seriously be argued on a reasonable view that these activities should on the basis of international comity not be dealt with by another country.”

22. The judge pointed out that the material complained of was prepared in England and Wales, was uploaded onto the website from England and Wales and that this must have been done by Sheppard in the knowledge and with the expectation and intent that the material should be available to the public or a section of it within the jurisdiction in England and Wales. He noted there were references to postage for people living in England and Wales should they wish to have the materials sent to them by post. Thus it was in the contemplation of Sheppard that people in England and Wales should have access to the material which he posted on the website. Further, the material appearing on the computer user's screen was exactly or substantially in the same form as it was when it was uploaded by Sheppard. He added that even if the defence were correct that a novus actus occurred in California at the point at which the server was utilised (which the judge said he seriously doubted was the case), use of the server was merely a stage in the transmission of the material requiring no intervention once the website was activated. Any novus actus could only be regarded as that of an agent acting on behalf of Sheppard and thus the act in English law of the principal. It could not, the judge said, be seriously argued on a

reasonable view of all the evidence that the appellants' activities should, on the basis of international comity, be dealt with by another country.

23. Mr Sandiford, for the Crown, submits that the judge was correct to rule that the "substantial measure" test was satisfied for the following reasons:

- Sheppard operated and controlled the website from within the jurisdiction;
- the material was uploaded, maintained and controlled from within the jurisdiction;
- the material, the subject of counts 4 – 8, was written and edited within the jurisdiction;
- the material the subject of counts 9 – 15 was collated and selected within the jurisdiction;
- Sheppard's website included a dedicated British page (no other country had such a page) on the website and offered books for sale with prices and postage quoted in sterling;
- Sheppard's website and Whittle's column in which the material the subject to counts 4 – 9 was published were linked to websites such as that of the British People's Party;
- E-mail traffic between the appellants revealed their intention to publish the material on the website within the jurisdiction and they claimed to have done so in order to satirise political correctness and redress an unbalanced media.

24. There was in our view abundant material to satisfy the "substantial measure" test. However, Mr Adrian Davies for Sheppard in a submission supported by Mrs Linda Turnbull for Whittle submits that this is not the correct test and that *Wallace Duncan Smith (No. 4)* is of no assistance in determining the issue of jurisdiction in the present case. Wallace Duncan Smith was convicted of one count of fraudulent trading contrary to section 458 of the Companies Act 1985 and two counts of obtaining property by deception contrary to section 15 of the Theft Act 1968. Smith, a Canadian national, was chairman and managing director of a merchant bank which ceased trading in 1991. It was subsequently wound up owing its unsecured creditors some £92m. It also controlled other companies based in Canada, including Wallace Smith Holdings (WSH). Working from this country and using a group of companies which he controlled, Smith set up various bogus deals between the merchant bank and WSH which boosted the size of the merchant bank's profits. While the dishonest arrangements were put into operation by Smith in this country, the obtaining of the money took place outside the jurisdiction when the money was paid into a bank account in New York.

25. The problem faced by the court in *Wallace Duncan Smith (No 4)* was a conflict between the decisions of this court in *Smith (No. 1)* [1996] 2 CAR 1 and *R v Manning* [1999] QB 980. As the Lord Chief Justice observed at paragraph 48, the issue was an important one and involved the extent to which it was appropriate for the court to develop the common law as to jurisdiction in order to meet the changing requirements

of society. In the event the court followed *Smith (No. 1)* and in doing so the Lord Chief Justice cited from the opinion of Lord Griffiths in *Liangsiriprasert v Government of United States of America* (1991) 92 Cr App R 77,90.

“Unfortunately in this Century crime has ceased to be largely local in origin and effect. Crime is now established on an international scale and the criminal law must face this new reality. Their lordships can find nothing in precedent, comity or good sense that should inhibit the common law from regarding as justiciable in England inchoate crimes committed abroad which are intended to result in the commission of criminal offences in England.”

26. Lord Woolf went on to point out that *Liangsiriprasert* was applied in *Sansom & ors* (1991) 92 Cr App R 115 in a judgment delivered by Taylor LJ. *Sansom* was another conspiracy case and Lord Woolf could see no distinction in relation to the principles of jurisdiction between conspiracy and obtaining by deception.
27. We have to consider whether there is any basis for not applying in the present case the “substantial measure” principle for establishing jurisdiction as enunciated by the Lord Chief Justice in *Wallace Duncan Smith (No.4)*. The starting point seems to us to be the terms of the 1986 Act. Mr Sandiford points out that sections 18, 19 and 23 contain a comprehensive scheme to restrict the public dissemination of written material intended or likely to stir up racial hatred. Section 18 covers display of such written material, section 19 publication and distribution and section 23 possession. In the interpretation section of the Act, section 29 “written material” is described as including any sign or any visible representation. Whilst in 1986 the world-wide web was a thing of the future and computers were in their infancy it seems to us clear that “written material” is plainly wide enough to cover the material disseminated by the website in the present case. The judge took the same view. He said that what was on the computer screen was first of all in writing or written and secondly that the electronically stored data which is transmitted also comes within the definition of written material because it is written material stored in another form. He drew a comparison with opening and closing a book; when the book is open you can see the writing; when it is closed you cannot.
28. The judge was referred to *Hansard*. Both the appellants and the Crown sought to rely on it. The appellants argue that *Hansard* makes clear that no consideration was given, when the Bill was debated, to the internet. The Crown argue that the debate illustrates Parliament’s intention was to ensure that “written material” in Part III of the 1986 Act was wide enough to cover new forms of communication so that racist organisations and others could not advance the type of argument being put forward in the present case.
29. For our part we think that the meaning of “written material” as interpreted by section 29 is sufficiently clear to cover the present case without recourse to *Hansard*. The word “includes” in section 29 is plainly intended to widen the scope of the expression. We reject Mrs Turnbull’s submission that the written material has to be in visible, comprehensible form with some degree of permanence. We also reject the submission that any assistance is to be obtained from the Obscene Publications Act

1959 which, as originally drafted, was not wide enough to embrace electronic publication.

30. Mr Davies draws our attention to the Sexual Offences Act 2003 where Parliament has legislated to criminalise certain categories of conduct regardless of where the offences are committed and whether or not the conduct is illegal in the country in which it is committed. He submits that the absence of any provisions similar to sections 47 – 50 of the Sexual Offences Act 2003 in the 1986 Act in a clear pointer limiting its extent to England and Wales.
31. Section 42 of the 1986 Act provides that the provisions of the Act extend to England and Wales save for some limited exceptions that mainly relate to Scotland and Northern Ireland. We do not think it assists in taking the present case outside the jurisdiction principle in *Wallace Duncan Smith (No 4)*. We agree with the judge that section 42 is not a restriction of jurisdiction to England and Wales, rather it sets out the limitations imposed by the statute as to its extent within England and Wales. It sets out the extent to which the Act applies within England and Wales. It is not determinative of the jurisdiction of the courts of England and Wales.
32. The position seems to us to be as follows. The conduct the relevant provisions of the Act seek to prevent is the dissemination of material intended or likely to stir up racial hatred. In the present case under section 19 we are concerned with publication of such material, to which we shall come in a moment. The reality is that, as expressed by the judge, almost everything in this case related to this country. This is where the appellants operated one in Preston, the other in Hull; this is where the material was generated, edited, uploaded and controlled. The material was aimed primarily at the British public. The only “foreign” element was that the website was hosted by a server in Torrance California and, as the judge observed, the use of the server was merely a stage in the transmission of the material.
33. What is the test for jurisdiction if it is not as set out in *Wallace Duncan Smith (No.4)*? Mr Davies submitted that there were essentially 3 jurisprudential theories as to publications on the internet. The first is that a publication is only cognisable in the jurisdiction where the web server upon which it is hosted is situated - the country of origin theory. The second is that publication on the internet is cognisable in any jurisdiction in which it can be down-loaded – the country of destination theory. The third is that while a publication is always cognisable in the jurisdiction where the web server upon which it is hosted is situated, it is also cognisable in a jurisdiction at which the publication is targeted – the directing and targeting theory. Since we have come to the clear conclusion that the jurisdiction is governed by the substantial measure principle enunciated by this court in *Wallace Duncan Smith (No.4)* it is unnecessary for us to explore any of these three theories or the effect of applying them to the facts of this case. It seems to us that the substantial measure test not only accords with the purpose of the relevant provisions of the 1985 Act it also reflects the practicalities of the present case.

#### *Publication*

34. Before us Mr Davies put publication at the forefront of his argument submitting that if, as he contended was the case, there was no publication that was the end of the case. His argument is that one cannot have a publication without a publishee (or rather



sufficient publishees) to constitute a section of the public as required by section 19 (3) of the 1986 Act. The judge noted that the only direct evidence of there being a publishee was that of the police officer, DC Brown, and that in one sense he was a self-publishee. In our view, however, the judge put it correctly when he said that what the Crown had to show was that there was publication to the public or a section of the public in that the material was generally accessible to all or available to or was placed before or offered to the public and that that could be proved by the evidence of one or more witnesses. This accords with the definition of publish and publication in the Shorter Oxford Dictionary. As Kennedy L.J. put it in *R v Perrin* [2002] EWCA Crim 747, a case under the Obscene Publications Act 1959, at paragraph 22 “the publication relied on in this case is the making available of preview material to any viewer who may chose to access it ...” The material in the present case was available to the public despite the fact that the evidence went no further than establishing that one police constable downloaded it. It is also to be noted that the natural meaning of publication, as applied by the judge gives effect to the two distinct offences under section 19 of publication and distribution of racially inflammatory material. It also fits neatly with the scheme of Part III of the 1986 Act which creates a comprehensive range of offences in respect of racially inflammatory written material namely section 18 – displaying, section 19 – publishing or distributing and section 23 – possession with a view to the material being displayed published distributed etc.

35. The point that there cannot be publication without a publishee is in our judgment fundamentally misconceived. It is based on an irrelevant comparison with the law of libel. Libel is a tort or civil wrong where it is necessary for the claimant to prove that the words complained of were published of him and were defamatory of him. Nor does criminal libel assist, for reading out socially inflammatory words will amount to an offence under section 18 (1). Further, the offences of displaying, distributing or publishing racially inflammatory written material do not require proof that anybody actually read or heard the material.

#### *Written Material*

36. The appellants’ third ground of appeal contends that even if there was publication and the English court has jurisdiction, any publication was not of written material. We have covered most of the appellants’ arguments on this point when dealing with the issue of jurisdiction and explained why in our view the contention is misconceived. For completeness we should say that we are not persuaded by Mr Davies’ *eiusdem generis* argument which is that “written material” should be limited to something akin to a sign. What section 29 says is that “written material” *includes* any sign or other visible representation and in our view those words are sufficiently wide to include articles in electronic form.
37. In our judgment there is no merit in any of the appellants’ grounds of appeal against conviction.

#### *Sentence*

38. The question is whether the sentences of 4½ years for Sheppard and 2 years for Whittle were either wrong in principle or manifestly excessive. There is no error in principle; what we need to look at is the totality of the criminal conduct of each appellant. There is no appeal against the consecutive sentences of 4 months in each case for the offences under the Bail Act. Sheppard had to be sentenced for a total of 16 offences, 3 of which were for possession, 1 for distributing and the remainder for publishing, racially offensive material. Whittle had to be sentenced for 5 offences, all for publishing racially offensive material. The judge structured his sentence in the case of Sheppard in this way. For counts 1 and 3 which took place between March 2005 and April 2006 12 months imprisonment concurrent; for counts 4 to 10 and 12 to 15 which all involved setting up, running and editing the website heretical.com 2½ years imprisonment concurrent with each other but consecutive to the 12 months; and for counts 16 to 18, which were committed on bail in the summer of 2007, 12 months concurrent with each other but consecutive to the other groups of sentences. Whittle received concurrent sentences for each of the 5 offences involving publication on heretical.com of articles of which he was the author.
39. The maximum penalty for each of these offences was 7 years imprisonment. Sheppard has a previous conviction for 2 similar offences in 2000 under sections 19 and 23 of the 1986 Act for which he received a sentence of 9 months imprisonment. The judge in passing sentence said he had rarely seen or read and had to consider material that was so abusive and insulting in its content toward racial groups within society in this country. We agree with that assessment; this was truly pernicious material. The judge rightly drew attention to its potential for social harm. He observed that by using a server in the United States the appellants thought they had found a way to circumvent English law. We regard the need to deter others as an important element of sentencing in cases of this kind.
40. Mr Davies submits that Sheppard's sentence is manifestly excessive when measured against the sentences passed on *El Faisal* [2004] EWCA Crim 343 (12 months ) and more particularly *Abu Hamza* [2006] EWCA Crim 2918 (21 months). It is trite to say no two cases are the same.
41. The judge having presided over the two trials was well placed to assess the criminality of each appellant. That said, however, the point that has most impressed us is that there is no evidence of how many people saw the material or of the consequences of their having seen it, although we do know that there was several thousand "hits" or visits to heretical.com per day. There was no evidence of any individual having been corrupted, albeit we appreciate such evidence would unlikely to be forthcoming. Clearly a substantial sentence was called for in the case of Sheppard because he was a repeat offender and the offences spanned a not inconsiderable period as well as being repeated whilst on bail. In our judgment each of the constituent elements of Sheppard's sentence was amply justified but we think 4½ years in total was too long. We think the right sentence would have been 3½ years and accordingly we grant leave to appeal against sentence and we achieve that result by reducing the sentences on counts 4 to 10 and 12 to 15 from 2½ years to 18 months. All the other sentences will remain as before. As to Whittle, his involvement was less than that of Sheppard and over a shorter period. He had no previous convictions. On the other had he was the "brains" behind the construction of the offensive material which he fed to Sheppard. We grant leave in his case too and the concurrent sentences of 2 years will

be reduced to 18 months. Accordingly, after taking into account the sentences for the Bail Act offences, which are not the subject of appeal, the total sentence to be served by Sheppard is 3 years and 10 months and Whittle 1 year and 10 months. We grant leave to appeal against sentence and vary the sentences to that extent. Credit is in each case given for the 23 days spent on remand.

### *Forfeiture*

42. The judge made a forfeiture order against Sheppard under section 143 (1) (a) and (b) of the Powers of Criminal Courts (Sentencing) Act 2000 (“the 2000 Act”) with respect to items of office equipment and computers belonging to him. This aspect of his appeal against sentence requires an extension of time and leave to appeal. For reasons we shall explain we do not think there is any merit in the forfeiture appeal and we refuse both an extension of time and leave to appeal.
43. There was, unfortunately, no transcript of the judge’s ruling on forfeiture but in the event it was possible to overcome this problem by playing us in court a tape of the judge’s judgment. This was very helpfully transcribed by the shorthand writer who provided a transcript to the court shortly after the conclusion of the hearing.
44. The judge first referred to section 143 of the 2000 Act which provides:

“Where a person is convicted of an offence and the court by or before which he is convicted is satisfied that any property which has been lawfully seized from him or which was in his possession or under his control at the time when he was apprehended for the offence or when a summons in respect of it was issued –

- a) has been used for the purpose of committing or facilitating commission of any offence or
- b) was intended by him to be used for that purpose,

The court may (subject to sub-section (5) below) make an order under this section in respect of that property.”

Subsection (5) provides:

“In considering whether to make an order under this section in respect of any property, a court shall have regard –

- (a) to the value of the property; and
- (b) to the likely financial and other effects on the offender of the making of the order (taken together with any other order that the court contemplates making).”

45. The court had prepared a schedule. There was agreement about the forfeiture of some items; others were in dispute. There were two categories of disputed items, office equipment and computer equipment. The main thrust of Mr Davies’ argument on behalf of Sheppard before the judge was that he had a legitimate publishing business

by which he earned a living and that loss of the items sought by the Crown to be forfeited would put him in a precarious financial situation.

46. The judge concluded that the computers had clearly been used for legitimate purposes but that they had also been used and were intended to be used by Sheppard for committing or facilitating the commission of offences. The judge did not consider the forfeiture of these items would constitute excessive punishment.
47. As to office equipment, the judge again said he had in mind section 143 (5). He referred to the additional argument that there was no evidence this equipment was used for the production of any of the hard copies that were distributed. The judge said he was entitled to draw the inference that the office equipment in question was, if not used for the commission or facilitating of offences, intended to be used for such purpose. He said he was entitled to draw this inference because of Sheppard's determination and persistence in publishing material of this nature. He had of course a previous conviction for similar offences and committed further offences whilst on bail. We cannot fault the judge's reasoning or his decision. The transcript identifies by number the various items to be forfeited by Sheppard and it is unnecessary for us to repeat them.

### *Conclusion*

48. (1) The appeals against conviction are dismissed.
- (2) Leave to appeal against sentence is granted and the appeals against sentence are allowed to the limited extent indicated.
- (3) Leave to appeal against the forfeiture order imposed on Sheppard and an extension of time for doing so is refused.