

[2025]GRC054

**IN THE ROYAL COURT OF GUERNSEY  
(CRIMINAL DIVISION)**

**Between:**

**THE LAW OFFICERS OF THE CROWN**

**Prosecution**

**-v-**

**DARREN EL METTOURI**

**Defendant**

**In the Matter of Confiscation Proceedings under The Drug Trafficking (Bailiwick of Guernsey) Law, 2000 (as amended) (“the Law”)**

**Case heard on: 16<sup>th</sup> April, 2025**

**Draft Judgment circulated: 18<sup>th</sup> June 2025**

**Final Judgment: 3<sup>rd</sup> July 2025**

**Before: Catherine Maureen Fooks, Judge of the Royal Court**

**Counsel for the Prosecution: Advocate P. F. Cobb**

**Counsel for the Defendant: Advocate C. J. Green**

**Cases and Materials referred to in Decision:**

The Administration of Justice (Bailiwick of Guernsey) Law, 1991  
The Drug Trafficking (Bailiwick of Guernsey) Law, 2000 (as amended)  
The Human Rights (Bailiwick of Guernsey) Law 2000

R v May [2008] UKHL 28

R v Waya [2012] UKSC 51

**Introduction**

1. This judgment is concerned with a request by the Law Officers (“P”) represented at the hearing by Advocate Cobb in respect of Darren El Mettouri (“D”) for a Confiscation Order under The Drug Trafficking (Bailiwick of Guernsey) Law, 2000 (as amended), (“the DTL”) in respect of the sum of £20,000 and for the appointment of HM Sheriff as receiver under section 29 of the DTL to realise the D’s boat to satisfy the Confiscation Order.
2. It is agreed that D has benefited from drug trafficking (“DT”), in the amount of £71,358.20, that the amount to be recovered is £20,000 (“the Realisable Amount”) and that a Confiscation Order should be made under section 2 of the DTL in the sum of £20,000 (“the Confiscation Sum”), represented by D’s Boston Whaler fishing boat, his only realisable asset (“the Boat”).

3. By way of background, on 12<sup>th</sup> April 2024 D was sentenced by the Royal Court to a total of 4 years and 4 months immediate custody for two counts of being concerned in the supplying of controlled drugs (cannabis) contrary to section 3(3)(b) of the Misuse of Drugs (Bailiwick of Guernsey) Law, 1974, as amended, and one count of failing to make the necessary Cash Controls declaration, as required under section 1(1) of the Cash Controls (Bailiwick of Guernsey) Law, 2007, in respect of £16,500 which D took to Jersey in excess of the £10,000 limit. D has never disputed the Benefit figure but earlier in the DT proceedings he disputed that the boat was his, arguing that it belonged to his limited company Action Scaffolding limited through which he runs his scaffolding business (“the Business”) and the valuation by P of the Boat at £20,000. He abandoned the argument about ownership of the Boat. He had asked for, and was given, time to secure a valuation of the Boat but, in the end, D accepted P’s valuation. There is no restraint order against the Boat.
4. It is the practice of the Court, where the amount of the Confiscation Order is agreed, as here, to make the Confiscation Order, set a term of imprisonment in default and appoint HM Sheriff, under section 29 of DTL, as receiver in respect of realisable property. D does not oppose the immediate making of the Confiscation Order but he does ask the Court to allow him to have time (12-18 months) after his expected release from prison on parole (September 2025) to sell the Boat and/or to pay the Confiscation Sum through his income and/or by borrowing. He asks that any period of imprisonment in default be set so as to give him that time and he submits that, applying the correct interpretation of section 29 of the DTL, the Court cannot appoint H M Sheriff as receiver at this stage. It was agreed that I deal with D’s request for the deferral of the payment date to enable him to sell the Boat or raise the funds to pay the Confiscation Sum after his release and I was asked to resolve the interpretation of section 29 of the DTL.
5. I have considered all the materials helpfully filed in one bundle and all the submissions made at the hearing by both counsel. I will mention only what I consider relevant to the determination of this matter.

### **Applicable Legal Principles**

6. The applicable law is the DTL and in particular sections 2, 9 and 29. Before looking at the sections, I remind myself of the objective of the DTL which is to “*deprive a defendant of the product of his crime or its equivalent, not to operate by way of a fine [...]*” (Endnotes to R. v May [2008] UKHL 28). Criminals should not benefit from their crimes. The legislative framework for confiscation of the proceeds of drug trafficking is very similar to that in force in England such that the case law is of, at least, considerable assistance and have been regularly cited in the Guernsey Courts. It is clear from the caselaw that the Court is under a duty to give effect to the purpose of the legislation. In R v Waya [2012] UKSC 51, the learned judges of the Supreme Court emphasised the vital task of the judge in ensuring that confiscation orders are proportionate and therefore compliant with Article 1 of the First Protocol to the European Convention on Human Rights incorporated into domestic law through The Human Rights (Bailiwick of Guernsey) Law 2000. I have kept the principle of proportionality at the centre of my deliberations.
7. Confiscation Orders are payable immediately unless the Court grants time to pay. It is for a defendant to satisfy the Court that there is a need to allow time to pay. It is not uncommon to see orders in Guernsey allowing time to pay, for example, to allow an asset such as a house to be realised to pay the Confiscation Sum.
8. If, as here, HM Procureur has asked the Court to proceed under Section 2 of the DTL, the Court is required to go through the process set out in that section to determine the benefit derived by the defendant from DT and the amount to be recovered and then to make a confiscation order. Section 9 of the DTL gives the Court the power to order (and defer on such terms as it thinks fit) a term of imprisonment in default, which power arises immediately upon the making of the

Confiscation Order. It is a matter for the discretion of the Court. There are maximum periods set out in the DTL. The maximum period for an amount exceeding £10,000 but not exceeding £20,000 is 12 months. Any term imposed is served consecutively to any term of imprisonment which a defendant may be serving in respect of the substantive offences. All of this is common ground in this case.

9. Section 29 is the section requiring interpretation; the relevant parts of it read as follows:

*“Realisation of property.*

**29. (1)** *Where a confiscation order-*

- (a) has been made under this Law,*
- (b) is not satisfied, and*
- (c) is not subject to appeal,*

*the Court may, on an application by Her Majesty's Procureur, exercise the powers conferred by subsections (2) to (6).*

*(2) The Court may appoint Her Majesty's Sheriff as receiver in respect of realisable property.*

*(3) The Court may empower Her Majesty's Sheriff as receiver appointed under subsection (2) or under section 26-*

- (a) to enforce any charge imposed under section 27 or 28 on realisable property or on interest or dividends payable in respect of such property; and*
- (b) in relation to any realisable property other than property for the time being subject to a charge under section 27 or 28, to take possession of the property subject to such conditions or exceptions as may be specified by the Court.*

*(4) The Court may order any person having possession of realisable property to give possession of it to Her Majesty's Sheriff as receiver.*

*(5) The Court may empower Her Majesty's Sheriff as receiver to realise any realisable property in such manner as the Court may direct.”*

Advocate Green's argument is that the Court cannot make an order under section 29 unless the conditions in subsection (1) are satisfied notably the passing of the due date for payment and the time for appealing which is 28 days. Advocate Cobb made the point that this is not how the Court has been proceeding under this section especially when dealing with consent orders. She also submitted that in this case the Benefit and Realisable Amount are agreed so no appeal is possible from those orders and that nothing will have changed in 28 days' time. Looking at the section, it is abundantly clear that Advocate Green is right in terms of this case and that there can be no section 29 order simultaneous with the making of a Confiscation Order. This creates a timing issue in terms of orders in that the Confiscation Order will have to be in existence for at least 28 days before there can be the appointment of a receiver (and the Confiscation Order must remain unpaid). I wish to make it clear that I do not consider that this prevents the continuation of the practice of consent orders including section 29 orders.

10. Before leaving section 29, I observe that the Court's powers under section 29 are only exercisable upon application by H M Procureur. I have seen no application signed by her or on

her behalf. It is necessary for a standalone application to be made by HM Procureur or someone duly authorised on her behalf. It is not enough to ask for the order in submissions or via the filing of a draft order.

11. Finally, in terms of applicable legal principles, I note that, under section 26 of the DTL, the Court has the power by order to make a restraint order and, if it does so, it may appoint a receiver without the restrictions in section 29. I am surprised that there is no restraint order in this case but it is not open to me to make one now of my own motion and appoint a receiver because the power conferred on the Court by section 26 to make a restraint order is only exercisable on an application by HM Procureur (section 25).

### **Evidence by D and on behalf of D**

12. In this case, P challenged various factual assertions made by D so Advocate Green called him to give evidence under oath and he was cross-examined by Advocate Cobb and asked some questions by me. D confirmed that he was hopeful of being granted parole from 22 September 2025. He was able to clarify the position as to release on temporary licence (“ROTL”) to which reference is made in the email from Probation dated 9 April 2025 (page 71) which is that, if he were released, he would be unable to return to the Business but would work for another company and would retain 2/3 of what he was paid. He would expect to work a 40 hour week earning £18—20 per hour.
13. In terms of the Business, he was advised by his accountant not to retain the Business in his name. It was subsequently transferred into his sister’s name in late 2024 or late 2023. I observed that he has signed the accounts on 19 January 2024. He said that he is no longer a director. He described his sister and himself as co-owners. His accountant advised that he cannot own it for 3 to 5 years and he is confident that she will give it back. It is still operating, though not taking on new jobs, and will be ready to go once he is released. Scaffolders are busy. He was turning work away before he went to prison. There is enough work for 5 more scaffolding firms. He is in touch with builders and others who have asked him to make contact as there will be work for him. He plans to have back one of his former employees take on two school-leavers and split into two gangs. D was taken to the accounts in particular the Profit and Loss Account page 58 of the bundle showing a distribution (to him) of £20,691 plus a residual profit of £23,628 (and see also the expenditure analysis on page 65 which includes a sum for wages of £59,000 which he said was equally split between him and another worker). D explained that his sister looks after the accounts and that he does not really understand them. He used to take £650 per week for himself gross for rent and the rest went into the Business. He said that this equated to £23-24,000 per annum but accepted Advocate Green’s correction to £33,000 (which is more in keeping with the figure on p 65). He was able to confirm that the distribution of £20,691 was for the Boat. He could not say what the distribution of £11,000 in 2021 was for. He was unable to say what is currently within the Business account. He estimated that it would take him one year to earn enough to pay the Confiscation Sum. He would be living with his fiancée but has not agreed what his contribution would be to the household expenses.
14. In terms of borrowing, if the Confiscation Sum were not paid off within one year he would ask his brother in Dubai. They had not spoken since their father passed away a year previously and he was not prepared just to call him up and ask for £20,000. If he could not pay it through earnings or borrowing after one year, he accepted that the Boat should be taken.
15. D explained that the Boat is stored outside on the Bosom on the Bridge. The only current cost is mooring fees which are being paid from the Business funds. There would be a one off fee of £100 to get it back into the water. Once in the water, there would be insurance to pay of £430.00 pcm which the Business would pay. It has not been used since the work was done under the insurance claim. Its condition is checked by others. The back cover is ripped but that is not a

problem. He has been told that it is in the same condition as when he went into prison (12 April 2024). D bought it in 2022 because it was a bargain. He intended to use it for work. It was not used much for work in 2022 as it was damaged in an accident after a few months and was unusable. He did use it a couple of times for fishing. The statement in the accounts at page 61 was put to him *“the Company purchased a boat in order to transport materials to Sark where the Company is currently completing work. No personal use has taken place.”* D initially said that he did not know who had said this but had to accept that he has signed off the accounts and that the statement appears to be incorrect. He said that using his own boat was preferable to using the ferry service even though it was a sturdier vessel. D said that he has work lined up in Sark and it is easier to transfer men on his own boat. He is not the only scaffolder working in Sark. He said that there is no proof of work in Sark as it is all done by word of mouth and under oral contracts. At page 40 of the bundle, there is a statement from Michelle Peree of Sark. It is not sworn but carries a warning in the same terms as the Administration of Justice (Bailiwick of Guernsey) Law, 1991. She explained that she knows D through her sons, that his company has done work for “us”, that he came to Sark on his boat (which she believed was owned by his business) and that *“we were hoping that Action Scaffolding would do some more work for us in the future”*. It is unclear who “we” are. In the end D accepted that he could just work in Guernsey and not work in Sark and therefore, could sell the Boat.

16. D said that he wants to keep the Boat as he has spent a lot of money and time doing it up. In his view it is worth more like £50,000. He was concerned that it would be sold cheap at auction then sold for three times as much in England. He could do that and clear the debt.

### **Counsel’s submissions**

17. Both counsel had made written submissions. P’s written submissions were drafted by Advocate Watson, who was unable to present the matter, so Advocate Cobb appeared at the hearing. Some of the submissions as to a lack of evidence fell away following the filing of written evidence and the oral evidence given by D. I have dealt with the interpretation of section 29 above. I focus in this section on the submissions which still have substance.
18. Advocate Green emphasised the discretionary nature of both the imposition of a term of imprisonment in default of payment and the appointment of a receiver – in his words, the sections are *“peppered with the word “may”*”. He invited me to make the Confiscation Order and then adjourn for at least 28 days before considering the issue of a default term or appointment of a receiver. P’s response to this was that there was no practical purpose in delaying.
19. P argued that D’s application to delay realisation and allow D to pay the Confiscation Sum at his convenience offends against the purpose and spirit of confiscation proceedings. The DTL was enacted to fulfil Guernsey’s international obligations and to protect the Bailiwick’s international reputation. Counsel referred to the international obligations under the Vienna Convention. Advocate Green’s response was that this simply cannot be right as the existence of the Court’s discretion to make or not to make section 9 and section 29 orders means that any delay is not contrary to the spirit of the legislation.
20. It was submitted by Advocate Green that D should be given the opportunity to pay the Confiscation Sum through his earnings from his Business and/or by borrowing and that this would be proportionate. The 2022 accounts evidence his earning capacity and D is confident that he can repay the sum through earnings. There is no evidence that he needs to take more than the £650 pw for rent. Once out and working, he could potentially borrow money and he was honest about not having approached his brother yet but he could do so if necessary. P’s response was that there was an absence of evidence that the Company was capable of generating sufficient income to pay £20,000 within the proposed time frame or at all. There was no evidence of the status of the Business under the stewardship of D’s sister. Likewise, there was

an absence of evidence that the money could be borrowed – which ultimately Advocate Green accepted in his closing submissions.

21. Advocate Green submitted that there is no suggestion that the Boat is a tainted asset or directly acquired with the proceeds of drug trafficking. Further the benefit sum is calculated by reference to the value of the drugs, not suspicious third party credits or cash deposits in D's personal or business accounts. It was submitted that these factors are relevant to the exercise of the Court's discretion and that, in all those circumstances, it would be disproportionate to order the immediate seizure of the Boat for realisation and that it would be a proper use of the discretion the Court undoubtedly has to give D time to pay. The P response to that is that it is irrelevant that the Boat is not identified as a tainted asset or purchased specifically with the proceeds of DT. It was purchased during the period of the D's offending from his funds and it is assumed that he was meeting other expenditure from his proceeds of crime thus freeing up his Business income to fund the purchase of the Boat.
22. Advocate Green also objected to any immediate order whereby the Boat would be seized and sold on the basis that it is a Business asset. He did not press this in oral submissions which was sensible in view of D's evidence.
23. It was also said that the Boat has sentimental value to D and that he would use it not just for business but also for leisure activities. It was said that D wants to pay the order and is acting in good faith, citing his evidence about the true value of the Boat as a mark of candour. P's response was that D's case was weakened by his evidence and that these are simply not points which the Court should even properly consider when exercising its discretion, bearing in mind the object of the legislation.
24. Advocate Green made reference to the diminution in D's resources as a consequence of his having to pay privately for his legal representation and the ongoing costs of keeping the Boat in terms of mooring fees (£175.00 pcm). P's response was that it was unclear who was paying these expenses. It came out that the Business is paying which led P to question D's role in the Business now and his income from it. P also submitted the costs of keeping the Boat with its associated expenses like mooring fees and potentially expensive maintenance, illustrated particularly to the work set out in the invoices in the bundle even though that cost may have been covered by insurance was not justified. Funds should be applied to the payment of the Confiscation Sum. In response to P's concern about depreciation of the Boat pending D's release and between release and sale, Advocate Green submitted that there was no evidence to support such a claim and cautioned me against making any assumptions.
25. P made the additional point that, taking into account the 8% interest to be applied to any outstanding confiscation amount, any delay in realising the asset could lead to the amount being insufficient to meet the order and prejudice the public purse as the recipient of the seized asset fund.
26. Advocate Green submitted that, if the Court allows D time to pay as he asks, if he could not pay by the appointed date, the Court could then order that the Boat be seized and any period of imprisonment could be activated. If, on the other hand, D could pay without selling the Boat, D would be able to retain the Boat to use for the Business and leisure. In essence, Advocate Green was saying that there would be no substantial prejudice to P or the interests of justice if D were given time to pay. Advocate Cobb completely disagreed. There was no evidence to justify D retaining the vessel or having over a year to pay the Confiscation Sum. She suggested that the real reason he wanted to keep the vessel is because it is highly undervalued. What D seeks is contrary to the spirit of the legislation.

## **Discussion**

27. The issue I have to determine is whether D has satisfied me that he should be given time to pay the Confiscation Sum. Advocate Green is right that giving time to pay is not, of itself, inconsistent with the purpose of the DTL as the Court is specifically given discretion to give time to pay and to make or not to make or to defer the section 9 and 29 orders but P counsel are also right that I must give effect to the purpose of the legislation. I must decide, therefore, how to exercise my discretion and I must act proportionately.
28. I had the benefit of hearing evidence from D. My assessment is that he is entirely focussed on keeping the Boat and was prepared to make what can only be described as promises to pay. Those promises were not underpinned by any evidence and I am inclined to agree that his evidence weakened his case for time to pay.
29. I found his evidence about the Business opaque. The “transfer” to his sister was not evidenced. I am not convinced that he is not the true beneficial owner. The Business has assets and a balance in a bank account. I was surprised that D could not even give the account balance. I am also surprised that this Business has not been more thoroughly investigated. It clearly has assets.
30. I accept D’s evidence that there is work for scaffolders and that he would be in demand on his release but his assertion that he could pay off the Confiscation Sum in one year or so of his release was not backed up by any evidence. Building the business up again would take time. The accounts produced are old. He was not imprisoned until April last year so there must be more recent figures for his income. There was also no proper budget for his income needs. I was not satisfied that there was sufficient evidence that he would be able to repay the Confiscation Sum from income, were he given that opportunity. It is accepted that there was no evidence that he could borrow the money.
31. Turning now to the Boat, the first issue to consider is whether it might be an asset needed by D’s business which would certainly be relevant to my decisions. I do not accept that it is. I accept D’s evidence that he used it a couple of times for work in Sark (possibly without an appropriate licence) and that he would do so again but there was simply no reliable evidence that there would be work in Sark to justify retaining an asset of the value of the Boat to service it. Ms Peree’s evidence was very vague and D himself accepted under cross-examination that he had no need to work in Sark.
32. I have considered the other points raised about the Boat, that it has sentimental value, that D has already spent time and money on it, that it is not a tainted asset and that it would be proportionate for him to keep it. I make no finding as to whether the Boat is a tainted asset or not. The basic principle is that a confiscation order should be paid immediately or as soon as possible and assets should be realised to do so even if they are of great sentimental value and even assets acquired by demonstrably legitimate means are subject to confiscation. That is how DT confiscation works and that is not, of itself, disproportionate. The Court does give defendants time to sell assets such as houses. D is not asking for time to sell the Boat, he is asking for a chance to retain it and he has advanced no good reason for him to do so. There is nothing disproportionate in declining to give D time to pay after he has left prison so that he can try to retain an asset which is available now to satisfy the Confiscation Sum. I note the passage of time during which D could have made efforts to arrange to sell it to a purchaser of his choice but he has not. Enough time has passed and the Confiscation Sum must now be paid. I intend to order that the Confiscation Sum is payable immediately with a term of imprisonment in default, deferred to allow for the orderly sale of the Boat. I cannot appoint a receiver. If HM Procureur applies for the appointment of HM Sheriff as receiver, that application will have to be considered. There has been some suggestion that the Boat may be worth more than £50,000 and D is worried about a fire sale. If it achieves more than £20,000 it is likely that P will apply to increase the Realisable Amount so D will not see the balance. D may make representations about a fire sale if there is a section 29 application.

**Decision**

33. I declare that D has benefited from DT in the sum of £71,358.20 and that the Realisable Amount is £20,000 and I make a Confiscation Order in the sum of £20,000 payable immediately. I set the term of imprisonment in default of payment at 12 months to be served consecutively to the sentence imposed on 12 April 2024 but deferred for a period of two months from the date of my order. It is open to D to apply to have the term of imprisonment deferred for a longer period depending on the progress of the sale of the Boat.

**Catherine Maureen Fooks**  
**Judge of the Royal Court**