

Relief from the forfeiture rule: *Amos v Mancini* [2020] EWHC 1063 (Ch) and *Challen v Challen* [2020] EWHC 1330 (Ch)

07.10.2020



Emma Loizou

Call: 2018

Barrister

Emma Loizou has experience in a broad range of commercial and chancery work. She has appeared in the First-tier Tribunal, the County Court and the High Court. She accepts instructions across chambers' core practice areas.

Introduction

1. Two cases this year demonstrate the court's approach to claims for relief from the forfeiture rule. The first case concerns Sandra Amos' claim following her conviction of causing the death of her husband by careless driving. The second follows the case of Sally Challen, initially convicted of the murder of her husband. Mrs Challen's conviction was subsequently quashed by the Court of Appeal and her guilty plea to manslaughter was later accepted by the Crown.
2. The cases provide guidance on the scope of the forfeiture rule, the availability of relief and the test to be applied. However, whether the court ultimately awards relief from forfeiture in any given case will likely turn on the particular facts.

The forfeiture rule: the legal framework

3. The forfeiture rule is defined in section 1 of the Forfeiture Act 1982 ("the Act"). It is a rule of public policy which in certain circumstances prevents a person who has unlawfully killed another person from benefitting from the killing, for example by inheriting under that person's will. It ultimately stems from the principle that a wrongdoer should not benefit from his or her wrong. Crime should, in theory, not pay.
4. Section 2 of the Act gives the court the power to mitigate the effects of the forfeiture rule where the court is satisfied that:

"having regard to the conduct of the offender and of the deceased and to such other circumstances as appear to the court to be material, the justice of the case requires the effect of the rule to be so modified in that case."
5. There are strict time limits to the court's power to modify the forfeiture rule where a person stands convicted of unlawfully

killing another. Proceedings for relief under section 2 must be brought within three months of the “conviction”. This time limit has been described as “immutable” with no statutory power to extend it.

6. It is worth briefly mentioning that relief from the forfeiture rule under section 2 is not applicable where a person stands convicted of murder.

“There was no logical basis to apply the forfeiture rule to all cases of manslaughter including those which involved inadvertence, but to exclude a case of causing death by careless driving. Where the application of the rule in the latter case is unjust, the appropriate course is for the court to exercise its powers to modify the forfeiture rule.”

Amos v Mancini

7. Mrs Amos, whilst driving her husband home at his request, collided with a vehicle in front of her and caused a four-vehicle shunt. Initially her husband did not appear seriously injured, but he died in hospital later that evening. Mrs Amos pleaded guilty to causing his death by careless driving at the earliest opportunity. She was convicted and given a suspended sentence. She sought a declaration as to whether the forfeiture rule applied to her offence and, if it did apply, modification under section 2 of the Act.

(1) The application of the forfeiture rule

8. The first question for the court was whether the forfeiture rule applied in cases of causing death by careless driving. There was no direct authority on this particular point. HHJ Judge Jarman QC considered there was no logical basis to apply the forfeiture rule to all cases of manslaughter including those which involved inadvertence, but to exclude a case of causing death by careless driving. Where the application of the rule in the latter case is unjust, the appropriate course is for the court to exercise its powers to modify the forfeiture rule under section 2.

(2) Relief from the forfeiture rule

9. The second question for the court was whether justice required the effect of the forfeiture rule to be modified. The judge considered the conduct of Mrs Amos and of the deceased and the material circumstances of the case in accordance with section 2 of the Act, among which he made reference to the following: (1) the remarks made by the court when sentencing Mrs Amos; (2) Mrs Amos’ significant, but brief lapse of concentration when driving; (3) the intention she and the deceased shared when jointly purchasing their former matrimonial home; and (4) the lack of opposition by the two beneficiaries of the residuary estate.
10. The judge concluded that it would be unjust for the forfeiture rule to apply so as to deprive Mrs Amos of the deceased’s share in their former matrimonial home and to the gift in his will. The judge said such deprivation would be “significantly out of proportion to her culpability in the offence in question”. He therefore exercised his discretion under section 2 and granted Mrs Amos relief.

Challen v Challen

11. In *Challen*, Mrs Challen had killed her husband with whom she was in a relationship for about 40 years. Her original conviction for murder was quashed by the Court of Appeal. Mrs Challen subsequently tendered a guilty plea to manslaughter by reason of diminished responsibility, which was accepted by the Crown. The claim before HHJ Paul Matthews concerned her application for relief from the forfeiture rule.

12. The three issues before the judge were (1) the timing of the application for relief; (2) the test to be applied; and (3) the merits of the application.

(1) The timing of the application

13. Since the time limit is triggered on "conviction" under section 2 of the Act, it is important to know with some certainty what "conviction" means in these circumstances. In *Challen* the timing point was particularly significant since if "conviction" meant (i) when Mrs Challen first pleaded guilty to manslaughter or (ii) when the Crown indicated it was willing to accept her plea, then her application would have been out of time. However, if it meant when her plea was formally accepted and she was sentenced, then it was in time.
14. The judge concluded that the defendant's position is definitive at the point of sentence and therefore it is only at that point that the three month time limit starts to run. "Conviction" in section 2(3) of the Act refers to the point of sentence.

(2) The test to be applied

15. The test under section 2 of the Act requires the court to take all the relevant circumstances into account and decide whether justice requires that the forfeiture rule be modified in the particular case. However, before the court exercises its discretion under the Act it has to determine first whether the forfeiture rule applies at all ("the Threshold Question").

(3) The merits of the application

16. In relation to the Threshold Question, the judge observed that the evidence established that Mrs Challen was suffering from psychiatric illness as a result of the coercive control exercised by the deceased. This illness was sufficient to reduce the offence from murder to manslaughter by reason of diminished responsibility. However, the judge considered that the killing was still deliberate as opposed to accidental. The judge held that the forfeiture rule applied in the circumstances.

17. The judge then went on to consider whether to exercise his judicial discretion and disapply the effect of the forfeiture rule. He noted that the main features of the case included Mrs Challen's lengthy relationship with the deceased and the deceased's conduct towards Mrs Challen, which included infidelity, violence, humiliation, isolation and gaslighting. The judge referred to the deceased's coercive control over Mrs Challen, noting that such control was made a criminal offence in 2015, though it was not an offence at the time of the killing. He commented that the deceased had "undoubtedly contributed significantly to the circumstances in which he died".

18. The judge also mentioned the effect of disapplying the forfeiture rule. Mrs Challen would inherit the estate of the deceased rather than her two sons. Consequently there would be tax advantages since it would amount to an exempt transfer for inheritance tax purposes. Mrs Challen's intentions were for her sons to benefit from the tax-free inheritance she would have obtained.

18. The judge concluded that the justice of the case required him to disapply the forfeiture rule. However, he cautioned that every case must be decided on its own merits. The facts of this case were so extraordinary, "with such a fatal combination of conditions and events" that he did not expect them easily to be replicated in any other.

"The test under section 2 of the Act requires the court to take all the relevant circumstances into account and decide whether justice requires that the forfeiture rule be modified in the particular case. However, before the court exercises its discretion under the Act it has to determine first whether the forfeiture rule applies at all."

Comment

20. The two cases provide useful guidance on the scope of the forfeiture rule and the time limits in which an application for relief must be brought. *Amos* confirms that the forfeiture rule is applicable to cases of causing death by careless driving, as it is to cases of manslaughter. *Challen* confirms that an application for relief under section 2 must be brought within three months from the point of sentence. It is only at that point that the individual's position is definitive and there is a "conviction" which triggers the time limit.
21. The cases together suggest that the court will approach an application for relief by considering first, whether the forfeiture rule applies to the case at all and second, whether the court ought to exercise its discretion to modify the rule in the circumstances.
22. It is the answer to the second question which is likely to be more difficult to anticipate. Though the two cases provide examples of the court's approach to the exercise of its discretion, their usefulness should not be overstated. Whether the court exercises its powers to modify the rule in a future case is likely to be highly fact-sensitive, turning on the particular circumstances of the case.

This publication and its contents are not intended to provide legal or other advice and you must not treat them or rely on them as such. Any views expressed are those of the author and not of Radcliffe Chambers, its members or staff, or any of them and the contents do not necessarily deal with all aspects of the subject matter to which they pertain.

Radcliffe Chambers is a barristers' chambers specialising in commercial, insolvency, pensions, banking and finance, private client, property and charity law.

Radcliffe Chambers and its barristers are regulated by the Bar Standards Board of England and Wales ("BSB"). When practising as barristers, they are self-employed. They are registered with and regulated by the BSB, and they are required to practise in accordance with the Code of Conduct contained in the BSB Handbook.

If you do not wish to receive further marketing communications from Radcliffe Chambers, please email events@radcliffechambers.com.