

Sarah Wood discusses the confiscation case of R v Saroya for Lexis Nexis

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R v Saroya [2022] EWCA Crim 602 (03 May 2022)

Corporate Crime analysis: **Sarah Wood** for Lexis Nexis PSL

The Court of Appeal held that, on the facts, an offence contrary to section 111A(1)(b) of the Social Security Administration Act 1992 (SSAA 1992) in which the particulars of the charge had been pleaded by reference to the provision of a false document by the defendant on one particular date was capable of being committed over a period of at least six months. Therefore, it had been appropriate for the Crown Court to apply the assumptions within section 10 of the Proceeds of Crime Act 2002 (POCA 2002) when assessing the extent of the defendant's benefit.

What are the practical implications of this case?

Given the facts of this case, the judgement of the Court of Appeal will take few confiscation practitioners by surprise. However, it serves as a timely reminder that prosecuting authorities do need to give careful thought to ensuring that the full facts and continuing nature of any alleged offence are expressly set out within any case summary and evidence in support to ensure that it is apparent that the case is put on the basis of a continuing offence if the prosecution wish to rely upon the POCA assumptions in due course.

The relatively recent case of *Barnet LBC v Kamyab* [2021] EWCA Crim 543 (to which the Court of Appeal were referred) has already underlined that it is possible for offences contrary to section 179(2) of the Town and Country Planning Act 1990 to be continuing offences even if pleaded by reference to one day only, but that case was concerned with an assessment of a defendant's particular benefit from his offending. This case has wider implications as it concerns an application of the statutory assumptions but, ultimately, the point is the same and comes down to the question of whether a statute is capable of being construed and interpreted as giving rise to a continuing offence.

Whether an application of the assumptions was *Waya* proportionate in this case given that the total benefit figure was a tenfold multiple of the particular criminal benefit was not considered by the Court of Appeal, but it obviously remains an important argument that can be made on behalf of clients who find themselves on the wrong end of an application by the prosecution to rely upon POCA 2002, s 10 assumptions.

What was the background?

Mrs Saroya had pleaded guilty in the magistrates' court to one offence of dishonestly furnishing false information to a local authority contrary to SSAA 1992, s 111A(1)(b) and her case was then committed for sentence. The particulars of the charge stated:

'On 16/04/2012 at Croydon, London dishonestly produced or furnished a document or information to a local authority, namely London Borough of Croydon which was false in a material particular, namely a document purporting to be a rental agreement with a view to obtaining a benefit, payment or advantage, namely housing benefit....'

The prosecution case (about which there was no dispute) was that Mrs Saroya had contacted London Borough of Croydon on 16 April 2012 to advise that the information she had previously supplied in her application for housing benefit that she was the owner/occupier of the property she was living in was incorrect and that she was, in fact, paying rent. She subsequently produced a rental agreement purporting to show that she had been paying rent from 27 December 2011 to a Jane Swaine. On 16 March 2018 she completed an online claim for housing benefit in which she stated she was now paying rent to Simon May.

The investigation subsequently revealed that she was the joint owner of the property, having purchased it in December 2011 and that the rental agreement produced had been fraudulent. It was assessed that she had been fraudulently in receipt of housing benefit in the sum of £47,640 between December 2011 and early February 2017.

Following her guilty plea, the case was committed for sentence to Croydon Crown Court and confiscation proceedings then followed. Within those proceedings the benefit figure was assessed as £404,179.82 by an application of the assumptions within POCA 2002, s 10, with Mrs Saroya being ordered to pay that sum within three months. At the Crown Court stage it had been conceded by counsel representing Mrs Saroya (who did not appear in the Court of Appeal) that the assumptions applied on the basis that the offence fell within POCA 2002, s 75(2)(c) as being an offence that had been committed over at least six months.

Mrs Saroya's appeal focused upon the very narrow question of whether the offence she had pleaded guilty to fell within POCA 2002, s 75(2)(c) given the particulars of the charge.

What did the court decide?

The Court of Appeal held that where an offence is capable of being a continuous offence then the court will look to see how the facts of the case were presented by the prosecution and how both the defence and court had regarded it to determine whether it was an offence committed over a period of six months.

The Court of Appeal concluded that offences contrary to SSAA 1992, s 111(A)(1)(b) were capable of being committed over an extended period by reference to a construction of the

entirety of the offences created in SSAA 1992, ss 111A(1A)-(1E) which clearly envisage being committed over a period of time by a failure to report a change in circumstances. Moreover, offences contrary to SSAA 1992, s111A(1)(a) where a false statement is made (as opposed to a false document being produced as per SSAA 1992, s 111(1)(b)) are also capable of being committed over a period of time, leading the court to ask the rhetorical question as to why the position should be any different in respect of offences contrary to SSAA 1992, s 111A(1)(b)? The court held that there was nothing within SSAA 1992, s 111A(1)(b) which required a different construction to SSAA 1992, s 111A(1)(a) and found that the sections established different ways of committing what is, in essence, the same offence.

Having held that SSAA 1992, s 111A(1)(b) could give rise to a continuing offence, the court went on to consider the particular facts of the case and found that it was clear from the case summary and the witness statements that the offence had been committed between 2012 and 2017, about which there had been no dispute on the facts.

This analysis was first published on LexisNexis® on 08/06/2022 and can be found [here](#) (subscription required).

Case details

Court: Court of Appeal, Criminal Division

Judges: Lord Justice Edis , Mrs Justice May, and His Honour Judge Potter sitting as a judge of the Court of Appeal Criminal Division

Date of judgment: 10 May 2022

Sarah Wood is Joint Head of the Business Crime Team at 5SAH and is ranked in both Chambers & Partners and Legal 500 for her confiscation and asset recovery work. Sarah is also recognised in Chambers & Partners in Financial Crime - Private Prosecutions spotlight table.

"She is fantastic and very clever. She has a really soft approach and is like a silent assassin."

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