Neutral Citation Number: [2024] EWCA Crim 344

Case Nos: (1) 202303394 B1, (2) 202303995 B3, (3) 202400003 B5, 202400004 B5, (4) 202304133 B4, 202400205 B4, 202400207 B4, 202400208 B4, 202400211 B4, 202400212 B4

IN THE COURT OF APPEAL (CRIMINAL DIVISION)

1. **ON APPEAL FROM THE CROWN COURT AT CAMBRIDGE**
   His Honour Judge Enright
   S20210149

2. **ON APPEAL FROM THE CROWN COURT AT MANCHESTER CROWN SQUARE**
   Mr Recorder Long
   T20197662

3. **ON APPEAL FROM THE CROWN COURT AT CARDIFF**
   His Honour Judge Morgan
   T20200632

4. **ON APPEAL FROM THE CROWN COURT AT LINCOLN**
   His Honour Judge Hirst
   T20207136/7/9 and T20217013

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 16/04/2024

Before :

LORD JUSTICE EDIS
MRS JUSTICE FARBEY
and
THE RECORDER OF SHEFFIELD
His Honour Judge Richardson KC, Sitting as a judge of the Court of Appeal Criminal Division

- -

Between :

	THE KING	**Appellant**
	- and -	
Case 1	**MARK HADEN**	
Case 2	**CHADLEY SMITH**	
Case 3	**(1) JASON BLAIR**	
	(2) PIRET ROHELSAAR	
Case 4	**(1) JAKE MANN**	

(2) KERRY LONG
(3) CHRISTOPHER CARTWRIGHT
(4) STEPHEN TOOTELL
(5) SPENCER WATKINS
(6) JAMES WILL **Respondents**

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Case 1:
Martin Evans KC and Giles Fleming (instructed by the **CPS Proceeds of Crime Division**) for the **Appellant**
Benjamin Douglas-Jones KC and J McClintock (**assigned by the Registrar**) for the **Respondent**
Case 2:
Martin Evans KC and Nicholas Clarke (instructed by **The CPS Proceeds of Crime Division**) for the **Appellant**
Benjamin Douglas-Jones KC and Umar Shahzad (**assigned by the Registrar**) for the **Respondent**
Case 3:
Martin Evans KC and M Cobbe (instructed by **The CPS Proceeds of Crime Division**) for the **Appellant**
Benjamin Douglas-Jones KC and A Taylor and B Evans (**assigned by the Registrar**) for the **Respondents**
Case 4:
Martin Evans KC and Fiona Jackson (instructed by **The CPS Proceeds of Crime Division**) for the **Appellant**
Benjamin Douglas-Jones KC and C Jeyes, J McNally, N James, E Coverley, R Freitas, M Cranmer-Brown (**assigned by the Registrar**) for the **Respondents**

Mr. Evans KC, Mr. Douglas-Jones KC and Ms. Jackson did not appear below.

Hearing dates : 14 and 15 March 2024
- -

Approved Judgment

This judgment was handed down remotely at 10.30am on 16 April 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Lord Justice Edis:

Introduction

1. In these four cases the prosecution seeks leave to appeal against refusals by judges of the Crown Court to make confiscation orders against the respondents because of a failure to complete the proceedings within the permitted time provided by section 14 of the Proceeds of Crime Act 2002 ("the 2002 Act"). The cases are unrelated to each other, but it is convenient to deal with them in a single judgment because the issue is the same. We also heard a fifth case, Bradley Luxton, which raises similar but distinct questions which we will deal with in a separate judgment, handed down immediately after this: see Neutral Citation Number [2024] EWCA Crim 340.

2. Section 31(2) of the 2002 Act, enables the prosecution to appeal, with leave, against a decision of a Crown Court judge not to make a confiscation order. Section 32 provides that on such an appeal the Court of Appeal may confirm the decision, or if it believes the decision was wrong it may either itself proceed under section 6 or direct the Crown Court to proceed afresh under section 6. All applications have been referred directly to the Full Court by the Registrar. We grant leave in all these cases, and we will extend time for appealing in all cases where that is necessary.

Summary conclusions

3. It is convenient to start this judgment by setting out the conclusions we have reached as to the current state of the law. We will amplify our reasons below, but essentially these conclusions are the result of the application of the principles derived from a decision of the House of Lords and a decision of the Supreme Court to the construction of sections 6 and 14 of the 2002 Act.

4. If confiscation proceedings have not concluded before sentence, they may be started and postponed so that they conclude after sentence. Such commencement and postponement must take place before the court is *functus officio*[1]. A court becomes *functus officio* in a criminal case when sentence has been imposed and time for variation or rescission of the sentence under section 385 of the Sentencing Act 2020 has elapsed (56 days from the imposition of the sentence). The postponement provision is a procedural device to prevent a court from being unable to conduct confiscation proceedings after sentence for this reason. It is, therefore, an enabling rather than a limiting provision.

5. The two year permitted period provided by section 14 of the 2002 Act limits the time between the point when the court comes under a statutory duty to proceed as required by section 6 of the 2002 Act and the time when the confiscation proceedings are to be concluded. It is irrelevant to the point at which that duty to proceed arises.

6. The permitted period may be extended if there are exceptional circumstances so that it is longer than two years. This may happen whether the two year period has expired or not, and whether an application was made before expiry or not. It can happen even if no application has ever been made.

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[1] A Latin phrase which describes the legal rule that a court which has finally determined a case has no further power to deal with it.

7. Compliance with the procedural requirements of section 14 of the 2002 Act is not a condition precedent to the court retaining jurisdiction to make a confiscation order. Jurisdiction is retained until the proceedings are determined in accordance with section 6 of the 2002 Act.

8. Non-compliance with procedural requirements of section 14 may be relevant to what order the court considers it fair to make. In some cases it may render the proceedings an abuse of process, but such cases are likely to be very rare indeed.

9. The court should always case-manage confiscation proceedings with a view to their timely determination and should strive to ensure they are completed no later than two years after conviction.

10. When considering whether there are exceptional circumstances justifying an extension of the permitted period beyond the two years from conviction, the court should take a broad view of what constitutes exceptional circumstances.

11. If this court allows a prosecutor's appeal and directs the Crown Court to "proceed afresh" this does not mean that the confiscation proceedings have to start again from scratch. The Crown Court is required to carry on the proceedings from the point at which it had declined to make a confiscation order, on the basis that it has jurisdiction to do so. This was agreed before us and we record the fact in case it assists in avoiding future confusion.

The authorities: summary conclusion

12. The consolidated bundle of authorities supplied to the court contains 601 pages. We do not intend to refer to all the authorities which were cited, and will list those which we will mention here.

Title	Reference	Level	Abbreviation in this judgment
R v. Soneji	[2005] UKHL 49; [2006] 1 AC 340	House of Lords	*"Soneji"*
R v. Hockey	[2007] EWCA Crim 1577; [2008] 1 Cr App R(S) 50	CACD	*"Hockey"*
R v. Iqbal	[2010] EWCA Crim 376; [2010] 1 WLR 1985	CACD	*"Iqbal"*
R v. T	[2010 EWCA Crim 2703	CACD	*"T"*
R v. Waya	[2012] UKSC 51; [2013] 1 AC 294	UKSC	*"Waya"*
R v. Johal	[2013] EWCA Crim 647; [2014] 1 WLR 146	CACD	*"Johal"*
R v. Guraj	[2016] UKSC 65; [2017] 1 Cr. App. R(S) 32	Supreme Court	*"Guraj"*

R v. Halim	[2017] EWCA Crim 33	CACD	*"Halim"*
R v. Anthony Smith	[2018] EWCA Crim 1351	CACD (refusing leave to appeal)	*"Anthony Smith"*
R v. Zakir Ahmed	[2020] EWCA Crim 1396	CACD	*"Zakir Ahmed"*
R v. Forte	[2020] EWCA Crim 1455; [2021] 4 WLR 2	CACD	*"Forte"*
Young v. Bristol Aeroplane Company	[1944] KB 718	CA	*"Young"*
R v. Lalchan	[2022] EWCA Crim 736; [2022] 2 Cr App R 12	CACD	*"Lalchan"*
R v. Layden	[2023] EWCA Crim 1207; [2024] 1 Cr App R 6	CACD	*"Layden"*

13. *Soneji* and *Guraj* taken together represent the source of principle in this area. Decisions which precede *Soneji* are either consistent with it, in which case they add nothing, or inconsistent with it, in which case they should not be followed. Either way, it is not likely to be necessary or helpful to cite them in future.

14. Decisions of the Court of Appeal decided after *Soneji* are, usually, applications of it to particular facts, or, sometimes, inconsistent with it. *Iqbal* and *Anthony Smith* are examples of decisions which cannot be reconciled with *Soneji* and should not be followed. This is an application of the second category of case where the Court of Appeal is not bound by previous Court of Appeal decisions in *Young.* In such cases the Court of Appeal is bound *not* to follow such decisions, and so, thereafter, is the Crown Court.

The key statutory provisions

15. It is sensible to set out the terms of the provision which is key to these appeals at the start of this judgment. Section 14 provides as follows, so far as material:-

> **14 Postponement**
>
> (1) The court may—
>
> (a) proceed under section 6 before it sentences the defendant for the offence (or any of the offences) concerned, or
>
> (b) postpone proceedings under section 6 for a specified period.
>
> (2) A period of postponement may be extended.

(3) A period of postponement (including one as extended) must not end after the permitted period ends.

(4) But subsection (3) does not apply if there are exceptional circumstances.

(5) The permitted period is the period of two years starting with the date of conviction.

(6) But if—

(a) the defendant appeals against his conviction for the offence (or any of the offences) concerned, and

(b) the period of three months (starting with the day when the appeal is determined or otherwise disposed of) ends after the period found under subsection (5), the permitted period is that period of three months.

(7) A postponement or extension may be made—

(a) on application by the defendant;

(b) on application by the prosecutor;

(c) by the court of its own motion.

(8) If—

(a) proceedings are postponed for a period, and

(b) an application to extend the period is made before it ends,

the application may be granted even after the period ends.

(9) The date of conviction is—

(a) the date on which the defendant was convicted of the offence concerned, or

(b) if there are two or more offences and the convictions were on different dates, the date of the latest.

(10) …….

(11) A confiscation order must not be quashed only on the ground that there was a defect or omission in the procedure connected with the application for or the granting of a postponement.

(12) But subsection (11) does not apply if before it made the confiscation order the court—

> (a) imposed a fine on the defendant;
>
> (b) made an order falling within section 13(3);
>
> (c) made an order under Chapter 2 of Part 7 of the Sentencing Code (compensation orders);
>
> (ca) made an order under section 42 of the Sentencing Code (orders requiring payment of surcharge);
>
> (d) made an order under section 4 of the Prevention of Social Housing Fraud Act 2013 (unlawful profit orders).

16. Section 6 of the 2002 Act is also significant. It begins:-

> **6 Making of order**
>
> (1) The Crown Court must proceed under this section if the following two conditions are satisfied.
>
> (2) The first condition is that a defendant falls within any of the following paragraphs—
>
> (a) he is convicted of an offence or offences in proceedings before the Crown Court;
>
> (b) he is committed to the Crown Court for sentence in respect of an offence or offences under any provision of sections 14 to 20 of the Sentencing Code;
>
> (c) he is committed to the Crown Court in respect of an offence or offences under section 70 below (committal with a view to a confiscation order being considered).
>
> (3) The second condition is that—
>
> (a) the prosecutor asks the court to proceed under this section, or
>
> (b) the court believes it is appropriate for it to do so.

17. The rest of section 6 sets out the well-known and mandatory steps towards determining confiscation proceedings which must follow if these two conditions are met. It is of particular importance that this code imposes a duty on the court, and does not impose a duty on anyone else.

The background facts

18. It is important to set out in summary some factual context which affects all these cases. The Coronavirus pandemic had a very significant and long lasting impact on the criminal justice system and on the Crown Court in particular. The capacity of the Crown Court to undertake any work was significantly affected in 2020, and its ability

to conduct trials was seriously affected throughout that year and in 2021. Social distancing meant that the ability to conduct jury trials was seriously impacted. All restrictions were finally removed on 24 February 2022. The Crown Court had remained open for work throughout the pandemic, but a very large backlog built up, which continues at a very high level at the date of this judgment. The backlog includes a high proportion of trial cases, in particular the kind of multi-handed trials which were impossible during the social distancing restrictions. This meant that a level of priority was given to the trials which could be done and to sentencing. Delay in trials and sentencing adds to the trauma of witnesses, victims and defendants and it is inevitable that confiscation proceedings will be rather lower in the order of priorities in such times than resolving issues of guilt or innocence, and sentencing those who have been convicted. The capacity in the system to deal with confiscation proceedings was therefore particularly compromised. The procedural histories we must now set out do not make for comfortable reading, but it must be borne in mind that all those involved, including court staff, CPS staff, judges and advocates, have been working under unusually intense pressure for years. There has been a degree of exhaustion across the system from which it is slowly recovering.

19. During 2022, just as recovery from the pandemic was being felt in the Crown Court system, the Criminal Bar Association undertook a series of actions designed to prevent the Crown Court from functioning to capacity in order to further a long-running dispute with the government about fees. This began with a "no returns" policy, continued into "days of action" and culminated in August, September and October in a situation where a great deal of work was not effective.

20. During this period there were other practical problems which the Resident Judges and court staff had to deal with which also created problems for capacity. It is fair to say that those managing Crown Courts between March 2020 and the date of this judgment have been engaged in a long exercise of crisis management.

21. The confiscation regime is quite complex and has caused problems even in less extraordinary times than these. In November 2022 the Law Commission published "*Confiscation of the proceeds of crime after conviction: a final report*". This work was begun in November 2018 and was in a part a response to a perception that confiscation proceedings were apt to drift and not prioritised. The whole regime of Part 2 of the 2002 Act was subjected to a rigorous review, including the procedural provisions with which we are concerned. This work is not an aid to the interpretation of those provisions, and is mentioned here simply to put the management of these four cases in context. If enacted, the Law Commission proposals will alleviate the problems we are addressing.

22. The digitisation of confiscation proceedings has also not been entirely effective. There does not appear to be a system which diarises automatically the date two years after the conviction in all cases where a postponement of confiscation proceedings has taken place. There is no digital red flag to warn the court that it is at risk of failing to perform its duty. Moreover, the way in which documents are filed on the Digital Case System ("DCS") in confiscation proceedings makes it difficult to identify accurately and quickly what the state of the proceedings is. This is especially so in multi-handed cases where guilty pleas or convictions may occur at very different times for different defendants, and confiscation for some is under way while others are unconvicted and still waiting for their trial. We include some detail about the state of the file in the case

of Smith (Case 2) to show the problem. That case, and Case 4, are both long, serious and complex cases involving multiple defendants. The difficulties in proceeding with them at all in the crisis conditions we have described are apparent from the documents and the judges are to be commended for their persistence in doing so.

The structure of this judgment

23. We have set out our conclusions on the common issues in these cases above. We will now give some further explanation of how they were reached. Finally we will turn to the individual cases and explain our decisions in each.

The common legal issues: discussion

24. There is no purpose in repeating long extracts from the judgments in *Soneji* and *Guraj*. An explanation of the principles with references where necessary will be more helpful.

25. The fundamental principle is that the 2002 Act regime for confiscation imposes a duty to act upon the court. The purpose is to ensure that crime does not pay. This is achieved by requiring the court to proceed in a certain way in order to compel those who have been convicted of an offence to disgorge any benefit they have gained from the offence or from a criminal lifestyle. Any procedural provisions are to be construed in this context and with this statutory purpose at the forefront of the analysis. This is the clear ratio of *Soneji* about which all members of the House were agreed.

26. This is made clear by section 14(11) which prevents this court from quashing a confiscation order "only on the ground that there was a defect or omission in the procedure connected with the application for or the granting of a postponement". This was a statutory corrective to an approach to procedure which had resulted in injustice. Courts had denied themselves the ability to make effective confiscation orders against criminals because of a failure to play the procedural game according to supposedly rigid rules. That section appears to be directed to this court, but, as explained by Lord Hughes in *Guraj* at [14], applies to the Crown Court in deciding whether or not to make an order. There is a complex relationship between section 14(11) and (12), and section 15, which is fully examined in *Guraj* and which requires some consideration in the case of Luxton which we heard immediately after these present appeals.

27. The permitted period in section 14 is a procedural device of a highly unusual kind. It is not a limitation provision. Limitation provisions require proceedings to be started within a certain time. They do not generally control the point by which proceedings which have been validly started must be concluded. Neither is it a provision which requires some condition to be met before proceedings can be validly started. A strict view is taken of such provisions, as illustrated by recent decisions about the status of criminal proceedings which require the consent of a law officer before they are issued (*Lalchan*) or orders by the Court of Appeal Criminal Division for a re-trial which require arraignment on a fresh indictment before the re-trial can lawfully take place (*Layden*). The permitted period in section 14 does not start until the two conditions in section 6(2) and (3) of the 2002 Act are met. At this point the proceedings are validly on foot, and the court has no choice but to proceed. It would be very odd if a court were under a statutory duty to act in the public interest on one day, and suddenly and merely because of the passage of time unable to act at all on the next. This is why in

Soneji and *Guraj* the court has held that non-compliance with the procedural provisions does not deprive the court of jurisdiction to continue, see *Guraj* at [24].

28. The purpose of the permitted period is not to protect the interests of the offender. It is to ensure that the court gives appropriate priority to the fulfilment of its duty to act in accordance with section 6. The court is required to conclude the proceedings within 2 years of conviction unless there are exceptional circumstances. If there are, then it can extend the permitted period for as long as necessary. It can do so of its own motion, since it is in control of these proceedings, see section 14(7)(c) of the 2002 Act. If a party wishes to make an application to extend the permitted period, then it must do so before it expires, *Guraj* at [24]. The absence of an application cannot deprive the court of jurisdiction to act and *a fortiori* neither can a late application, made after the expiry of the permitted period. The "plain words" construction of section 14(8) of the 2002 Act adopted in *Iqbal* cannot survive this approach to construction for which *Soneji* and *Guraj* are clear authority binding on this court.

29. Finality for the offender is not a dominant feature of the confiscation regime. Although the fresh evidence reconsideration provisions of sections 19-21 have a six year time limit, by section 22 the offender remains subject to a risk that later acquired assets will be taken into account in increasing the amount to be paid until the benefit has been fully disgorged. An offender is liable to pay the available amount even if the prison sentence in default of payment has been served.

30. Confiscation proceedings must, of course, be conducted in a way which is fair to the offender. Non-compliance with the procedural code, if it causes delay and prejudice, may be relevant to the order which the court decides to make. If the proceedings have become unfair because of delay, in that it has caused some clear prejudice to the offender, the court has options. Without attempting to list them exhaustively, these include:-

    i) The ordinary ability of a fact finding court to reach conclusions on matters of fact which are fairly arrived at and take into account any evidential prejudice a party may have suffered because of delay.

    ii) The obligation of a court not to order an offender to pay the recoverable amount where it would be disproportionate to do so, see section 6(5) of the 2002 Act.

    iii) Taking unfairness into account in deciding whether there would be a serious risk of injustice in applying the four criminal lifestyle assumptions in section 10 of the Act.

    iv) Staying proceedings in whole or in part as an abuse of process. This is a complex issue detailed consideration of which is beyond the scope of these appeals. There may perhaps be a tension between the way abuse of process was dealt with in *Waya* at [18] and the approach suggested in *Soneji* at [42] by Lord Rodger, with whom Lord Steyn and Lord Brown agreed. Lord Cullen deals with the question at [57]. No other member of the judicial committee expressed agreement with him, but this paragraph is consistent with the majority decision. Lord Hughes in *Guraj* at [31] and [32] deals with remedies for unfairness which may in an appropriate case include preventing the resumption of the process after long delay.

31. In our judgment, the court will not be assisted in assessing the consequences of procedural failure by attempting to divine whether there has been "substantial compliance" with the procedural obligation. Mr. Douglas-Jones KC sought to persuade us to follow dicta in the opinion of Lord Carswell in *Soneji* to the contrary effect. No other member of the court agreed with Lord Carswell. Moreover, the opinion of Lord Steyn (with whom Lord Carswell said that he agreed) clearly, in our judgment, rejects the approach suggested by Lord Carswell. Lords Rodger and Brown agreed with Lord Steyn, as he did with them, and the *ratio* of the case is to be found in their opinions. At [21] Lord Steyn quotes with strong approval a judgment of the Australian High Court in which the "substantial compliance" test was rejected in a favour of a "better" one. When Lord Steyn came to decide the issue applying that test, he did so in his section VIII by applying the "test enunciated in *Attorney General's Reference (No 3 of 1999)"*, see paragraphs [24] and [25]. In that case there had been no compliance at all with the statutory obligation to destroy the DNA sample. It had been retained.

32. The meaning of "exceptional circumstances" for the purposes of section 14(4) of the 2002 Act was established in *Soneji* which considered the same test which appeared in section 72A(3) of the Criminal Justice Act 1988, a predecessor to the 2002 Act. At [28] Lord Steyn said, "Bearing in mind the context, I would not adopt a very strict approach to the meaning of exceptional circumstances". Lord Rodger agreed at [33] and so did Lord Carswell at [66]. Similar things have been said on regular occasions by the Court of Appeal.

33. The relevance of conduct of the parties to the question of "exceptional circumstances" and to the related question of whether the court should decline to make a confiscation order because of procedural fault, usually by the prosecution, requires some examination. In *Anthony Smith* at [13] the question was treated as decisive but that decision is inconsistent with *Soneji* and *Guraj* (and other decisions of the Court of Appeal) and cannot stand. It was a decision on leave to appeal and is not, in any event, authoritative for that reason. The decision that the prosecution's appeal was not even arguable is obviously wrong. In Cases 1 and 3 HHJ Enright and HHJ Wynn Morgan respectively both attributed the delay to failures by the prosecution and held, in effect, that such failures could not amount to "exceptional circumstances". The assumption was that if circumstances are "inexcusable" they cannot be "exceptional". This does not follow as a matter of language, but is also inconsistent with the principle explained at [25] above which is the fundamental basis for the decision in *Soneji*. Most criminal litigation is driven by the prosecutor who decides to bring the case and must thereafter, as the title suggests, prosecute it. The court manages it actively and, it is to be hoped, effectively, but the court does not drive it. Confiscation (part of the sentencing process) is different. For a judge to say to the prosecution "You have behaved so badly that I am going to punish you by depriving the public of assets to which they are entitled and leaving them with the criminal who now has them" is not an obviously effective approach. The management of procedure is not a disciplinary exercise. It is perhaps significant in this context that there is no statutory requirement for the prosecution to show that it has acted with all due expedition or diligence if the permitted period is to be extended. Such requirements are found in section 8(1B) of the Criminal Appeal Act 1968 and section 22(3) of the Prosecution of Offences Act 1985. These deal with extensions of time for arraignment following a direction for a re-trial, and custody time limits respectively. There is no reason why exceptionally incompetent prosecution

conduct of confiscation proceedings cannot amount to "exceptional circumstances" for the purposes of section 14 of the 2002 Act.

34. Quite commonly a court confronted by inexcusable delay by the prosecutor will simply determine the proceedings on the basis of the material available when the case is listed for determination. This may result in a less favourable outcome for the prosecution than might have occurred if unlimited time had been granted to them.

Case 1: Mark Haden

35. Mark Haden pleaded guilty to possession of a controlled drug of class A with intent to supply contrary to section 5(3) of the Misuse of Drugs Act 1971 on 13 May 2021 and was committed to the Crown Court for sentence. The permitted period, unless extended, expired on 12 May 2023.

36. He was sentenced to 4 years' imprisonment on 28 July 2021. The court decided to proceed under section 6 of the 2002 Act and set a timetable. The timetable provided for the documents required by sections 18, 16 and 17 of the 2002 Act and required that the case should be listed for mention/directions "in the new year". This was later varied on two occasions, and the case was listed for mention on 18 March 2022. The judge directed that the parties should identify what was in issue in writing and that the case should be listed on 27 May 2022 so that the case could be listed for a contested hearing if it had not been compromised by that date. So far, so good. The problems begin with that hearing being taken out of the list with no new date fixed. The prosecution emailed the court to ask when it would be listed on 10 June, 25 June, 1 July, 9 July and 15 July. This last email triggered an automatic response, but no actual response was received to any of this correspondence until 18 July 2022 when this email was sent by the court:-

> "I can find no trace of your email to the enquiries inbox. Also there is no attached email so I am unable to process your request."

37. The prosecution sent further emails seeking information about the listing of the case on 5 occasions, and made two telephone calls to the court between 3 August and 7 September 2022. A response was received on 5 October saying:-

> "Due to the CBA strike we cannot list matters which have not had a fixture. We will look to list this matter once the strike is over."

38. Further emails from the prosecution to the court followed, which resulted in an email of 9 November 2022 from the court which said:-

> "We have a huge backlog of cases which require listing. We are aware this matter needs listing and it will be when there is time to do so."

39. On 4 and 12 April 2023 the prosecution again contacted the court and asked for the case to be listed. It does not appear that they referred to the imminent end of the permitted period, although they do say that the case had last been before the court on 18 March

2022. The permitted period, which had never been extended, came to an end on 12 May 2023. On 24 May, the court responded to the contact of 12 April and said:-

> "This is an old matter which seems to have been missed. I am just checking it is outstanding and requires a mention hearing, is that correct?"

40. It appears that the person handling the case for the prosecution thought that the permitted period ran from the date of sentence, because they replied:-

> "Yes, this case needs to be listed for MENTION ASAP as the two year time limit to make a confiscation order expires in July 2023. Please kindly list this without any further delay."

41. On 27 June 2023 His Honour Judge Enright heard argument and refused to extend the postponement period saying that he was not satisfied there were exceptional circumstances in this case to do so. His ruling was succinct and can be set out in full:-

> "This is a proceeds of crime investigation adjourned after the defendant's conviction on the 13th of May '21. Two years have now elapsed, and the Crown seek an extension on the grounds there are exceptional circumstances. The exceptional circumstances on which they rely is that they have made repeated efforts to get the case listed but failed to do so and have produced a number of emails to demonstrate that.
>
> I am not satisfied there are exceptional circumstances in this case. The only exceptional circumstances are the exceptionally inept efforts made to get this case put before the court. But that is not the exceptional circumstances the legislation has in mind. I've been a judge of this court for a very long time and know how easy it is to get a case listed if you really want it listed and how quickly that can be done, and therefore I do not accede to the application to extend. That concludes this ruling. May I thank both counsel for the skeleton arguments placed before the court."

42. The judge therefore proceeded on the basis that he had jurisdiction to extend time if he found that there were exceptional circumstances, but declined to exercise it because there were none. It is submitted on behalf of Mr. Haden that he did not have any such jurisdiction because no application to extend time had been made until after the expiry of the permitted time. In the alternative, it is submitted that the judge was right to refuse the application for the reason he gave.

43. For the reasons already explained we reject the submission that the Crown Court had no jurisdiction to continue with the proceedings. Judge Enright was right to hold that he did, and to consider whether there were exceptional circumstances to justify a further postponement.

44. The judge was, however, wrong to find that there were no exceptional circumstances and wrong to refuse an extension of the permitted period within which the confiscation

proceedings should be determined. The failure of the court to list the case when asked to do so was first caused by the pandemic and the CBA action and continued for reasons which are not obvious. The prosecution repeatedly asked the court to do what was required, but the court failed to do so. That, we hope, is exceptional.

45. The appeal is allowed, and the Crown Court must proceed afresh from the point the proceedings had reached on the 27 June 2023 and must give the directions which Judge Enright should then have given to enable the confiscation proceedings to be determined on their merits.

Case 2: Chadley Smith

46. The Prosecutor applies for an extension of time of 3 days for leave to appeal against the decision of Mr. Recorder Long on 12 October 2023 to refuse to postpone the relevant time periods for a confiscation order, and for leave to appeal against that order.

47. On 18 February 2020, in the Crown Court at Manchester (Crown Square), Chadley Smith pleaded guilty (on a basis) to Conspiracy to Produce a Controlled Drug of Class B, namely Cannabis, contrary to section 1(1) of the Criminal Law Act 1977. On 8 July 2021 before Mr Recorder O'Mahoney, the respondent was sentenced to 3 years and 2 months' imprisonment. Nine other defendants were sentenced on the same day, and the judge recorded in his memorandum that:-

> "POCA for all defendants except Marshall postponed before sentence and timetable set: section 18 by 3/8/21; section 16 by 30/9/21; any section 17s by 28/10/2. Listed for mention (defendants do not need to attend) on 11th November 2021."

48. Thereafter the proceedings became complex. Additional defendants became involved and by the date of the order which is subject to this appeal, the "POCA" section of the DCS contained around 3,000 pages of documents. "Section T1: Proceeds of Crime" contained further documents. The side bar for comments contains many entries, in no particular order. The documents in the two sections where documents relating to the confiscation proceedings might be found are listed in date order, depending on when they happened to be uploaded to the system. Some appear in the list with a title which gives a clue to their content, but others do not. The sections are not sub-divided (as are the sections concerning the original proceedings on indictment), and the resulting filing system is chaotic. The parties' documents under sections 16, 17 and 18 of the 2002 Act with copious attachments appear interspersed with skeleton arguments, emails, law reports, and many other things. Section X "Judges Orders/Directions" contains one email. Fortunately the judges at Manchester Crown Court usually use the Memoranda section to create a record of what orders they have made. Otherwise it would be very difficult to ascertain. The Xhibit Log created during the hearings by court clerks is also a valuable source of information. Although confiscation proceedings can resemble civil proceedings in the way that they are conducted and the issues involved, it is not the practice in the Crown Court for judges or staff to draw up directions orders made by the judge formally and to file them in Section X of the DCS, or anywhere else. The parties do not have access to the Memoranda section of the DCS or the Court Log. It would probably be good practice for a note of orders to be drawn up and uploaded to Section X. If any refinements for the DCS or the Common Platform are ever considered it would be helpful if the recording of decisions of the court and the filing of documents

could be addressed. The situation which arose here is the product of a very complex case being dealt with using a digital system which was not really designed with difficult confiscation proceedings in mind. We are not here being in any way critical of the judges or staff involved.

49. On 15 December 2021 Mr Recorder Hilton granted an application by the Crown, pursuant to section 14 of the 2002 Act for the postponement of the expiry of the relevant time limits in respect of the defendants Hobson, Fowler, Peter Rule and Bradley Rule only, exceptional circumstances having been found. Smith's case was listed and he was represented by counsel, although he was not present. A transcript was obtained of this hearing and uploaded to the DCS with an email from Smith's solicitors which claimed that there had been no extension in his case and that the court was therefore *functus officio*. Prior to the obtaining of the transcript there had been a difference of recollection as to what had occurred at the hearing.

50. The transcript shows that prosecuting counsel began the hearing by saying:-

> "The first matter I need to raise is that the Crown will today be applying for a postponement under section 14 in respect of all of the defendants: Leslie Fowler, Peter Hobson, Peter Rule and Bradley Rule. The position in respect of all defendants is that a section 16 Prosecution Statement has been served. No responses have yet been received. In respect of at least two defendants, Mr. Moffatt and Leslie Fowler, there are still ongoing investigations which are unlikely to resolve before February of next year; and so the Crown today seek to invite the court to reset the timetable."

51. Counsel for Smith said nothing.

52. After some other matters had been discussed, this happened:-

> MR. CALDER: Your Honour, returning, if I may, finally, to the matter I raised at the outset?
>
> If your Honour finds favour with that timetable the Crown would apply for a postponement in respect of Leslie Fowler, Peter Hobson, Peter Rule and Bradley Rule, the two-year period in respect of all of whom expires in February, and the Crown would seek a postponement to the 31st July; and the submission would be that the exceptional circumstances that exist, that permit the court to take that course, arise out of the piecemeal way in which this lengthy and complicated case has resolved.
>
> MR. RECORDER HILTON: Anything else from the Crown?
>
> MR. CALDER: Your Honour, no, thank you, not at this stage.
>
> MR. RECORDER HILTON: So, does it make sense to deal with the application for a postponement first? (Pause) Is that opposed

> by any of the affected defendants: Fowler, Hobson or either of the Rule brothers?
>
> UNIDENTIFIED DEFENCE COUNSEL: No, your Honour.
>
> MR. RECORDER HILTON: It is not opposed?
>
> UNIDENTIFIED DEFENCE COUNSEL: No, your Honour.
>
> UNIDENTIFIED DEFENCE COUNSEL: No.
>
> R U L I N G
>
> MR. RECORDER HILTON: Well, I agree there are exceptional circumstances and I will make an order postponing the expiry of the relevant time limit to the 31st July 2022 in respect of the defendants Hobson, Fowler, Peter Rule and Bradley Rule. So, that is that.

53. Substantive criminal proceedings continued against other defendants, and the POCA proceedings against those who had been convicted also continued. On 4 July 2022, after counsel for Smith had raised the *"functus officio"* point, the confiscation proceedings were adjourned and on 26 July 2022 HH Judge Field KC made a confiscation order against another defendant and adjusted the timetable for the continuing proceedings against Smith and others. His memorandum says:-

> "3. Period of postponement in cases of Fowler, Hobson, Bradley Rule, Peter Rule & Benjamin Moffatt extended to 25.11.22. Exceptional circumstances - court cannot accommodate hearings/parties not ready for hearings before expiry of current periods."

54. In its written submissions, it had been submitted by the prosecution that the order of 26 July was a postponement of the permitted period in Smith's case, but this was not pursued before us.

55. That submission is maintained in relation to a hearing which took place on 4 May 2023. On that date HHJ Nicholls made this memorandum:-

> "Case was supposed to be listed as a POCA, but court had released due to lack of court/judge. re fixed 12/13 October 2023. By which time 2 other defendants may be added to proceedings. Extension under s14, not opposed, exceptional circumstances lack of court/judge/ delay in case because of covid.

56. The Xhibit Log records that the case of Smith, with others, was listed on this day, and Smith was not present but represented by Mr. Shahzad. It then says this:-

> 04/May/2023 12:13 Prosecution Addresses Judge
>
> Was listed for Final POCA hearing, however, Court are unable to accommodate - understand parties have been offered 12/13

> Oct. Would ask under S.14 to extended time limits to Friday 20/10/23 - outlines reasons
>
> 04/May/2023 12:16
>
> Mr Bassano for Rule (x2) and Hobson - no objection to extension
>
> Mr Shahzad (Smith) - No objection
>
> 04/May/2023 12:18 Defendant CHADLEY SMITH; Case to be listed on 12-Oct-2023; ELH 2 days
>
> 04/May/2023 12:19 Defendant CHADLEY SMITH not expected or required
>
> 04/May/2023 12:20 Hearing finished for CHADLEY SMITH

57. This clearly was an extension of the permitted period, granted without objection.

58. On 12 October 2023, in Confiscation Proceedings being pursued under section 6 of the 2002 Act, Mr Recorder Long refused to extend the permitted period in respect of the respondent. If the order of Judge Nicholls was valid (and it has never been challenged) no extension was required and the Recorder should have heard and determined the confiscation proceedings in the case of Smith as he did in the other cases where the extension had been granted by Mr. Recorder Hilton.

59. The transcript of this hearing shows that the judge was taken to the transcript of the hearing before Mr. Recorder Hilton and heard short and focussed submissions about it from both sides. The prosecution invited him to consider the final paragraph of the decision of this court in *Johal* and the hearing concluded as follows:-

> MR CLARKE: The final paragraph, paragraph 48 simply says: "The fact that a court would not wish to see the intention of Parliament defeated by technical points taken to stave off meritorious confiscation orders," and so on. "Obligations to the Act to be taken lightly." I appreciate your Honour reading the ruling of Mr Recorder Hilton, but I take exception to the use of your Honour's use of the word "there was not a hint of an application". All defendants who were before the court on the time----
>
> MR RECORDER LONG: Yes, but he immediately qualified all with specific names. If he just said all defendants and been quiet that would have been fine.
>
> RULING
>
> MR RECORDER LONG: I do not regard this as a technical point. This seems to be an absolutely fundamental point. There is nothing on the record to suggest the Crown ever intended to include this defendant. The application was made excluding him

> specifically and granted only as far as four names were concerned. It is too late to remedy it and that is my ruling.

60. The judge does not appear to have appreciated that HHJ Nicholls had granted an extension on 4 May 2023 until 20 October 2023. No-one told him this, and he is not to be blamed for failing to unearth the fact himself. It is a consequence of our finding on the issues of legal principle that Judge Nicholl's order was unimpeachable, and it was in any event valid unless set aside or varied. Moreover, even in its absence the judge was not deprived of jurisdiction to hear the proceedings in the case of Smith. They were due for hearing that day and, as far as we know, ready to be heard. No unfairness or prejudice in hearing them was found by the judge and they must be sent back to the Crown Court with a direction to proceed afresh. In this case that means that they need to be listed for determination, and determined.

Case 3: Jason Blair and Piret Rohelsaar

61. On 8th September 2020, in the Crown Court at Cardiff, Jason Blair pleaded guilty on a basis of plea, which he subsequently abandoned, to producing a controlled drug of Class B namely cannabis, contrary to section 4(2)(a) of the Misuse of Drugs Act 1971 (Count 1). On 6th December 2021, Piret Rohelsaar pleaded guilty to permitting premises to be used for the production of a controlled drug, namely cannabis, contrary to section 8 of the Misuse of Drugs Act 1971 (Count 2).

62. On 7th January 2022 Her Honour Judge Richards sentenced Blair to 22 months' imprisonment suspended for 24 months, and Rohelsaar to a 12 month community order

63. On 1st December 2023, His Honour Judge Morgan declined to make confiscation orders in both cases. That hearing took place more than 2 years after Blair's conviction, but less than 2 years after that of Rohelsaar.

64. Rohelsaar was Blair's partner and the mother of his children. They each had their own address and both addresses were searched in February 2019. The police recovered cannabis plants growing at both addresses, and the trappings of a moderate sized commercial cannabis production operation at Blair's address. Over £20,250 in cash was seized from his property.

65. The prosecution asserted that Blair had benefitted by £186,261.91 from the proceeds of crime and that £185,703.91 was available for confiscation. In respect of Rohelsaar, it was agreed she had benefitted by £1,840.

66. **Chronology**

Date	Event
8th September 2020	Blair pleaded guilty to Count 1 on a basis and a Newton hearing was listed. Rohelsaar pleaded not guilty to Count 1 and was listed for trial
6th December 2021	Rohelsaar pleaded guilty to Count 2. Blair abandoned his basis of plea

7th January 2022	Respondents sentenced. Timetable set for confiscation proceedings
12th April 2022	Prosecution indicated confiscation proceedings against Rohelsaar were to be withdrawn
29 July 2022	Blair filed section 17 Notice claiming for the first time that Rohelsaar had a 50% interest in a property of which he had previously claimed to be the sole owner
7th September 2022	Blair's two year permitted period ended
6th December 2022	Prosecution indicated at a hearing that confiscation proceedings against Rohelsaar would continue
21st April 2023	During a mention hearing, prosecution indicated an extension of time application may be required for the confiscation proceedings
24th May 2023	Prosecution indicated via email that Blair's conviction date had been wrongly recorded on their records as 08.09.2021 and applied for Blair's permitted period to be extended administratively
1st December 2023	Prosecution applied to extend the two year permitted period which was refused by His Honour Judge Morgan.
5th December 2023	Rohelsaar's two year permitted period ended
29th - 31st January 2024	Listing of contested confiscation proceedings

The Judge's Ruling

67. The judge dealt with two applications by the prosecution on 1 December 2023. The first was to postpone confiscation proceedings in Blair's case to a date outside the two year period. He said that this application was made outside the two period. The second was made within the two year permitted period, and was to postpone the proceedings in Rohelsaar's case. Both postponements would, if granted, take the case to 29-31 January 2024 when the case was already listed for the determination of contested confiscation proceedings.

68. The judge recorded that the reason advanced for the need to extend the permitted period in Blair's case was that the prosecution had wrongly recorded his conviction date as 8th September 2021, instead of 8th September 2020. The prosecution relied upon s.14(11) of the 2002 Act and *Guraj*, submitting that a procedural failure connected with the confiscation proceedings did not preclude the court from imposing a confiscation order.

69. In respect of Rohelsaar, following the section 16 statement from Blair, the prosecution reviewed the situation and determined on 12 April 2022 that proceedings against her should be withdrawn. No undertaking was given. In July Blair served a section 17 statement, in which he changed his position and asserted that Rohelsaar had an interest

in his property. Given this, the prosecution revoked its proposed withdrawal of proceedings against her and decided to proceed against her.

70. Counsel for Blair, relying upon *Iqbal*, submitted that the effect of s.14(8), when read with s.14(3), meant that unless an application for an extension had been made before the expiry of the two year period, no further postponement was possible. Therefore, no order could be made in respect of Blair.

71. The judge referred to the 2002 Act and the authorities. In particular he set out a passage from the judgment of the court given by Irwin J in *Johal* which emphasised the need for listing officers to be alive to the two year period and to the fact that the parties may not alert them to its potential expiry. For reasons he did not explain, the judge read that passage as meaning that its strictures were addressed to the Crown Prosecution Service, rather than to court staff. It is the court which is under a statutory duty to proceed in accordance with section 6 of the 2002 Act, following the procedure set out in section 14.

72. Having set out the passage from *Johal* he concluded:-

> "To his credit [prosecuting counsel] does not suggest that it's the duty of the Court or the duty of the Respondents to these applications to draw these matters to the attention of the Court"

73. This was a clear misdirection. Section 6 of the 2002 Act as interpreted by the passage in *Johal* which the judge had just set out clearly imposes precisely that duty on the Court.

74. The judge concluded:-

> "Accordingly, the judgment of this Court is that section 14(11) does not entitle the Applicant here purely and simply to rely upon it in order to cure a defect as significant as has happened in this case and which, plainly, flies in the face of the determination of Parliament that, insofar as is possible and subject to properly applied for postponements, the hearing in these kinds of cases should take place within two years. And, accordingly, so far as Blair is concerned, the application to postpone is dismissed."

75. In respect of Rohelsaar, where the application was in time, the judge focussed on the time which had elapsed between the service of Blair's section 17 Notice and the hearing on 6 December 2022 when the prosecution informed her and the court that it intended to pursue the proceedings against her after all. He said this "plainly held proceedings up considerably."

76. The judge said this:-

> "Whilst it may be averred, and indeed is averred by Mr Cobbe, perfectly fairly, that given the difficulties about representation at that particular time, it may not necessarily have been possible to advise the parties of the Prosecution's determination to proceed again so far as Miss Rohelsaar is concerned, the Court was not

> advised and, for my part, I can see no reason why, in the light of the circumstances at the time, the Court could not have been advised at an earlier stage. And that, if that had been drawn to my attention, would immediately have resulted in the matter being listed for mention so that these matters could be aired. In my judgment, there are exceptional circumstances for saying that the application for postponement so far as Miss Rohelsaar is concerned outweigh the application, and the application so far as she is concerned is also dismissed."

77. Despite referring to *Guraj* which emphasises the importance of fairness, the judge did not make any finding that it would be unfair to either Blair or Rohelsaar to continue the confiscation proceedings to a conclusion two months later, on the date which had been fixed for that purpose.

78. In the case of Rohelsaar he did not consider whether there were exceptional circumstances justifying the 2 month postponement for which the prosecution were asking. He found instead that there were exceptional circumstances which meant that it should *not* be granted, although he did not say what they were. We presume he meant that the CPS took 4 months to decide to reinstate the proceedings against her and then to inform her and the court of the decision. In fact, the need for an extension in her case arose from the failure by the court to list the case for determination within 12 months from 6 December 2022 when the proceedings against her were resurrected. The judge did not address this period of time. This was probably because he wrongly held that the court had no duty to act as required by Irwin J in *Johal*, see [72] to [74] above.

79. In Blair's case the judge misdirected himself as to the proper construction of section 14 notwithstanding its clear and binding exposition in *Soneji* and *Guraj*. Had he approached the case on a proper basis he would have granted the application and the permitted period would have been extended and the confiscation proceedings determined within that time.

80. In Rohelsaar's case the application was made within the permitted time and the circumstances were clearly exceptional. She had been dropped from the proceedings for perfectly good reasons and then added back into the proceedings, also for perfectly good reasons. It would certainly have been courteous and efficient to inform the court of this prior to 6 December 2023 so that the question of any necessary procedural safeguards for her could be considered if she asserted an interest in the property which Blair had previously asserted was his alone. However, the decision that a failure to do this constituted exceptional circumstances which meant that the proceedings against her should be brought to an end on procedural grounds was clearly wrong.

81. The cases must both be remitted to the Crown Court with a direction that the Crown Court must proceed afresh. In this case, that means that a hearing should be held to ensure that the proceedings are ready for determination and any necessary directions given. A date should be fixed for their determination and the permitted period extended accordingly.

Case 4: Jake Mann, Kerry Long, Christopher Cartwright, Stephen Tootell, Spencer Watkins, James Will

82. The Prosecutor applies for leave to appeal against rulings by His Honour Judge Hirst of 30 October 2023 and 15 December 2023 refusing to extend the permitted period for the making of a confiscation order pursuant to section 14 of the 2002 Act.

83. This appeal involves common issues with Cases 1-3, but also requires us to decide whether it is lawful to start confiscation proceedings more than two years after conviction, or whether the permitted time in section 14 relates only to the length of any postponement. If the proceedings have not been started, they have not been postponed.

84. Case 4 is another long-running drug case with many of the features described above in relation to Case 2. It is actually more complex than Case 2, by some margin. It has been substantially affected by delays caused by COVID-19 and by Bar action. There were in all 12 people charged on the joint indictment which contained 7 counts. All 12 were indicted on count 1, which alleged conspiracy to supply cocaine between 1 June 2019 and 27 February 2020. Counts 2 and 3 alleged offences against James Will, 4 and 5 against Spencer Watkins, 6 against a person with whom we are not concerned, and 7 an offence against Kerry Long converting criminal property, namely money, contrary to section 327(1)(c) of the 2002 Act.

85. The case arose out of Operation Anvil which was a police investigation into the supply of multi-kilograms of cocaine from North Yorkshire, North Lincolnshire and Leicestershire into Lincolnshire. It is unnecessary to say more than that about the facts of the case. The factual basis of the convictions following guilty pleas have been the subject of substantial disputes which explain in part the reason why the proceedings on indictment are not yet concluded in all cases.

86. His Honour Judge Hirst, who dealt with the case throughout, summarised the case in this way:-

> "The case involved a total of 12 Defendants. This case was heavily delayed by the fallout from Covid-19 backlog but ultimately all 12 Defendants pleaded guilty or were convicted after a trial. The pleas of guilty were spaced out over a long period and the last trial concluded on 7 February 2023."

87. All of the six defendants with whom we are concerned pleaded guilty, but others did not, and there were some issues of fact arising from some basis of plea documents. The judge decided, in accordance with the usual practice, to sentence all defendants after the trial of those who did not plead guilty and after resolution of any factual issues. It does not appear that any order in relation to confiscation was made on the occasions when these six respondents entered their guilty pleas. It is suggested that the first mention of confiscation was in the prosecution's sentencing note dated 3 March 2023. By this stage, the trial of co-defendants had finally come to an end, and there were still some factual issues about some basis of plea documents. The prosecution prepared a comprehensive document setting the whole matter out for the court with a view to assisting in the forthcoming sentencing hearing. The document concludes:-

> **ANCILLARY ORDERS**
>
> 120. A Proceeds of Crime timetable will be sought in respect of each Defendant.

> 121. Applications for forfeiture and destruction will be made at the conclusion of any Proceeds of Crime applications.

88. It is necessary to set out the chronology in a little detail. We are very grateful to HHJ Hirst for his careful and comprehensive rulings which contain much of the factual material we need.

Date	Event
15 September 2020	Watkins and Will plead guilty to Count 1
6 November 2020	Cartwright and Mann plead guilty to Count 1
1 March 2021	Long pleads guilty to Count 7
13 April 2021	Tootell pleads guilty to Count 1
January 2022	Trial of co-defendants listed. Adjourned in COVID emergency to give priority to custody cases
9 September 2022	Period of postponement extended in case of Long
14 September 2022	Period of two years from conviction in cases of Watkins and Will ends
October 2022	Trial of co-defendants listed. Adjourned in COVID emergency to give priority to custody cases
5 November 2022	Period of two years from conviction in cases of Cartwright and Mann ends.
January 2023	Trial of co-defendants begins
7 February 2023	Trial of co-defendants concludes
9 February 2023	Period of postponement extended in case of Long
3 March 2023	Prosecution Sentencing Note, see previous paragraph. At this stage factual issues relating to sentence remained in the cases of Mann, Will and Long.
3 April 2023	Mention hearing. No trials of issue required except in cases of Long and Will.
12 April 2023	Period of two years from conviction in case of Tootell ends.
1 June 2023	Resolution of factual issue in Long's case by agreement following a short Newton hearing.
16 June 2023	Sentencing hearing fixed for 2 August 2023 at a hearing.
11 July 2023	Long listed for sentence alone, and informs prosecution and court that she does not agree to an extension of the two year period for confiscation from date of sentence. Hearing does not proceed to sentence for other reasons and is adjourned.
2 August 2023	Prosecution application for extension of the two year period for confiscation from date of conviction. Cartwright and Tootell objected. Argument on issue in their case and that of Long adjourned to 29 September 2023. Sentence for Mann adjourned to 30 October 2023
29 September 2023	HHJ Hirst grants prosecution application to extend the two year period due to exceptional circumstances. Long sentenced to 27 months imprisonment with no victim surcharge.

30 October 2023	HHJ Hirst refuses to extend the two year period in the case of Mann and proceeds to sentence. A Victim Surcharge Order was made.
29 November 2023	Prosecution written application to extend period of postponement in confiscation proceedings in cases of Will and Watkins.
15 December 2023	HHJ Hirst refuses to extend the two year period in the cases of Watkins and Will. He reverses his decision of 29 September 2023 in the cases of Long, Cartwright and Tootell and refuses to extend the period in their cases.
20 May 2024	Watkins, Will, Cartwright and Tootell listed for sentence, following resolution of factual issue in Will's case.

89. The reason why Judge Hirst changed his mind between 29 September 2023 and 30 October 2023 about extending the two year period after its expiry where no application to extend had been made before expiry was that *Iqbal* was drawn to his attention. It was cited to him on 29 September by counsel for Cartwright and Tootell, and on 30 October, he held himself bound by it to refuse the application even though he expressly found that there were exceptional circumstances justifying an extension and no prejudice or unfairness would result if he did so. The prosecution drew his attention to *Soneji, T, Johal, Guraj, Halim* and *Zakir Ahmed*. The judge declined to hold that they together constituted a very clear body of authority showing that *Iqbal* was wrongly decided.

90. It follows from our judgment above on the issues of principle that the judge was led into error by *Iqbal*, although not an error for which he bears the blame.

91. We reject the submission which has been made to us that the reasoning in *Soneji* and *Guraj* does not apply because the court was under no duty to proceed in accordance with section 6 of the 2002 Act in this case because the condition in section 6(3) was never met. The prosecutor asked the court to proceed under section 6 by its sentencing note of 3 March 2023. This request was made more than two years after the convictions in five of the cases before us, but that is entirely immaterial. The two year period does not govern the time when a request must be made under 6(3)(a), but the time for which a postponement may thereafter be granted. A request may be made at any time before the court becomes *functus officio*, i.e. at any time before a date 56 days after sentence is passed. The court may then postpone proceedings for a specified period under section 14(1)(b) which will prevent it from becoming *functus officio* in relation to the confiscation proceedings until they have been determined. Moreover, it is quite clear that at the latest by 29 September 2023 Judge Hirst had formed the belief that it was appropriate to proceed under section 6 of the 2002 Act and, whether the condition in section 6(3)(a) had been met, that in section 6(3)(b) had been. Accordingly, when deciding these applications on 29 September, 30 October and 15 December 2023 Judge Hirst was under a duty to proceed under section 6 of the 2002 Act and the position was not distinguishable from that in the authorities.

92. Judge Hirst was right first time. His orders of 30 October 2023 and 15 December refusing to extend the permitted period were wrong and the cases must be remitted to the Crown Court with a direction to proceed afresh. In these cases this means that they

should be listed for a final directions hearing as if the permitted periods had been extended on 29 September 2023, 30 October 2023 and 15 December 2023 to cover the date of that hearing. A date should be fixed for the hearing, any necessary directions given and the permitted periods further extended as necessary.

93. In Mann's case this requires a direct application of *Guraj* because a victim surcharge order was made in his case because the confiscation proceedings were wrongly thought to have come to an end. This means that section 14(11) does not apply in his case because of section 14(12)(ca). Applying *Guraj* this makes no difference to the present question. This issue is the subject of some further analysis in our separate judgment in the case of Luxton.

Timing

94. It is desirable that these proceedings should now continue without avoidable delay. To that end we direct that each of the cases should be listed within 28 days of this judgment being handed down so that a timetable and any further directions can be dealt with and hearing dates fixed with any necessary postponements granted. It cannot sensibly be argued that the circumstances which now prevail are not exceptional.