

## Confiscation order in Enforcement Notice case upheld by Court of Appeal

24 July 2020



Josh Normanton was instructed by the London Borough of Haringey to respond to an appeal in the Court of Appeal by Mr Boruch Roth, a landlord who had received a confiscation order of over £0.5M following Crown Court proceedings for letting out self-contained flats in breach of an Enforcement Notice.

Before the Court, the Appellant sought to argue points which went to the heart of the question of whether rents obtained from a property subject to an Enforcement Notice could be a benefit under POCA 2002. The Appellant also sought to argue technical points regarding the potentially defective nature of a summons.

The court rejected the Appellant's argument concluding that "*The fundamental point remains that had the appellant here complied with the requirements of the Enforcement Notice (as he should have done) by ceasing to use the property as self-contained flats, he could not have rented it out in the way that he did.*" The court also rejected the argument with respect to the summons, finding that the charge was sufficiently worded, the appellant knew the case he had to meet and if there were technical deficiencies in the drafting of the summons they were not fatal. In doing so, the court distinguished an earlier decision called *Panayi* [2019] EWCA Crim 413 where a similar issue had arisen (as the summons only alleged offending on one day due to an error, the amount for confiscation could only be the property obtained on that day).

The result was that all of the grounds of appeal against the confiscation order were rejected and the appeal dismissed.

The case is of particular interest for two reasons. First, because of the court's strong rejection of the argument that its previous decisions (in *Sumal* [2012] EWCA Crim 1840 and *Siaulyis* [2013] EWCA Crim 2083) could be applied to enforcement notice cases. The conclusions in those decisions was that property obtained *despite* criminal conduct rather than because of it was not benefit for the purposes of POCA. The court emphasised that those were decisions turning on their own statutory and factual circumstances and expressed a hope that this argument was not advanced before the Court of Appeal again. Second, this judgment will be useful in responding to challenges to the scope of the confiscation proceedings based on *Panayi*.

The neutral citation number of the appeal is [2020] EWCA Crim 967.