

Postponement of Confiscation

16 April 2024



Ben Douglas-Jones KC (leading Christopher Jeyes, John McNally, Andrew Taylor, Bethan Evans, Justin McClintock, Umar Shahzad, Nicholas James, Emma Coverley, Rebecca Freitas and Michael Cranmer-Brown) was assigned by the Registrar to represent the ten respondents in *Haden & Others* [2024] EWCA Crim 344.

The Court overruled *Iqbal* [2010] 1 WLR 1985 and found that *Soneji* [2006] 1 AC 340 and *Guraj* [2017] 1 Cr. App. R(S) 32 were clear binding authority. The principles stemming from the judgment are these:

- If confiscation proceedings have not concluded before sentence, they may be started and postponed so that they conclude after sentence. A court becomes *functus officio* when sentence has been imposed and the time for variation or rescission of the sentence has elapsed (56 days from 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 an enabling rather than a limiting provision.

- 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.
- 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.
- 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.
- Non-compliance with procedural requirements of section 14 may be relevant to what order the court considers it fair to make. In some very rare cases it may render the proceedings an abuse of process.
- Courts need to case-manage confiscation proceedings so they are determined in a timely way, striving to ensure they conclude no later than two years after conviction.
- When considering whether there are exceptional circumstances justifying an extension of the permitted period, the court should take a broad view of what constitutes exceptional circumstances.