



Neutral Citation Number: [2022] EWCA Crim 602

Case No: 202101706

**IN THE COURT OF APPEAL (CRIMINAL DIVISION)**  
**ON APPEAL FROM THE CROWN COURT AT CROYDON**  
**His Honour Judge Ainley**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 03/05/2022

**Before :**

**LORD JUSTICE EDIS**

**MRS JUSTICE MAY**

and

**HIS HONOUR JUDGE POTTER**

**Sitting as a judge of the Court of Appeal Criminal Division**

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**Between :**

**NADIA SAROYA**

**- and -**

**THE QUEEN**

**Appellant**

**Respondent**

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**Mr. Robert Fitt** (who did not appear below) for the **Appellant**  
**Ms. Emily Lauchlan** for the **Respondent**

Hearing date: 7 April 2022  
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**Approved Judgment**

**Lord Justice Edis :**

1. This is an application for leave to appeal against a confiscation order made on 14 May 2021, in the Crown Court at Croydon by His Honour Judge Ainley. The applicant was ordered to pay a confiscation order in the sum of £404,179.82 under Section 6 of the Proceeds of Crime Act 2002, of which £41,440.23 was to be paid as compensation to the London Borough of Croydon. The confiscation order was to be paid within 3 months, and in default a term of 3 years' imprisonment was fixed.
2. The applicant further applies to vary the notice of appeal (see *R v James and Others* [2018] 1 WLR 2749). The variation is to add a new ground of appeal, namely:-

“The offence of which the applicant had been convicted did not come within s.75(2)(c) of the Proceeds of Crime Act 2002 and, accordingly, the lifestyle assumptions required by section 10 of the Act should not have been made.”
3. The original grounds of appeal (relating to inclusion of the value of a property unconnected with the offending and disproportionality) were before the single judge and were drafted by trial counsel. The single judge refused leave and those grounds are not now pursued. The point now at issue in the new ground was conceded before the trial judge, who therefore did not determine it. He applied the lifestyle assumptions because both parties agreed that he should do so. This ground was also not before the Single Judge.
4. The result of this is that the court is now considering a point of law, and the broader questions arising from the making of a confiscation order in the sum which the judge determined are not before us.
5. We agree that the point is arguable and give leave to vary the notice of appeal to raise it, and grant leave to appeal. We shall now deal with that appeal.

**The Proceedings in the Crown Court**

6. The applicant claimed and was paid housing benefit amounting to £47,640.23 from 27 December 2011 at least until 5 February 2017. She falsely stated that she was liable to pay rent to her landlady for a property at 60 Mount Park Avenue, South Croydon and provided a false tenancy agreement in support of her claim. In fact, she and her husband were the legal owners of the property having purchased it in December 2011.
7. She was charged with one offence of dishonestly furnishing false material to a local authority with a view to obtaining Housing Benefit, contrary to section 111A (1)(b) of the Social Security Administration Act 1992. On 30 April 2019, before Croydon Magistrates' Court, the applicant entered a guilty plea to that charge, and was committed to the Crown Court for sentence. The charge was recorded as follows on the memorandum of conviction:-

“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 per [sic], with a view to obtaining a benefit, payment or advantage, namely Housing Benefit, under the relevant social security legislation for yourself. Contrary to section 111A(1)(b) and (3) of the Social Security Administration Act 1992.”

8. On 30 May 2019, in the Crown Court at Croydon (HHJ Gower), the applicant was sentenced to 18 weeks’ imprisonment, suspended for 2 years.
9. Confiscation proceedings followed, with the result set out above.

### **The facts**

10. The appellant was employed by the Croydon Borough Council as an apprentice administrative officer in its Income Team. In 2018 the Council received an allegation that she was claiming Housing Benefit to cover rent which she claimed to be paying in respect of her home which she in fact owned jointly with Waqar Ahmed. The allegation was investigated and found to be true.
11. The principal statement on which the prosecution relied said this:-

“On 16/03/2012 Nadia Saroya claimed Housing Benefit and Council Tax Benefit at 60 Mount Park Avenue, South Croydon, CR2 6DJ from the London Borough of Croydon on the grounds that she was a single person with 2 children working part time with Child & Working Tax Credit entitlement. Initially on the claim form Nadia Saroya stated that she was an owner/occupier.

On 16/04/2012 Nadia Saroya contacted the London Borough of Croydon to advise that she incorrectly stated that she pays a mortgage at 60 Mount Park Avenue, South Croydon, CR2 6DJ and that she is currently paying rent. Nadia Saroya subsequently submitted a tenancy agreement for 60 Mount Park Avenue, South Croydon, CR2 6DJ showing that from 27/12/2011 rent of £850 per calendar month was payable to Jane Swaine c/o James Chiltern Estate Agents Ltd.

On 16/03/18 Nadia Saroya completed an online claim for Housing Benefit and Council Tax Reduction at 60 Mount Park Avenue, South Croydon, CR2 6DJ. On this form Nadia Saroya declared her partner Waqar Ahmed along with 3 dependent children and this time stated that she is liable to pay rent of £800 to Simon May. Nadia Saroya stated on the form that she is working as a Customer Service trainee/apprentice at the London Borough of Croydon.

On the basis of the information that Nadia Saroya provided her entitlement to Housing Benefit was calculated and payment was made to Natwest account ending 9402.

On 15/03/18 Jonathan Bradbourne a Corporate Investigation Officer at the London Borough of Croydon accessed the HM

Land Registry website following an allegation that Nadia Saroya had falsely claimed Housing Benefit by stating that she was a tenant in a property that she actually owned. The Title view showed that Nadia Saroya and Waqar Ahmed purchased 60 Mount Park Avenue, South Croydon, CR2 6DJ for £272, 500.00 on 09/12/2011.

On 26/03/2018 Jonathan Bradbourne contacted Jane Swaine via e-mail who confirmed that the only property she had rented to Nadia Saroya was 7 Park Court, 33 Warham Road, South Croydon. Jane Swaine confirmed that Nadia Saroya rented this property for the period 04/08/2019 [sic] to 09/12/2011 and that she is not the landlord of any other property.

Nadia Saroya attended an interview under caution at Purley Jobcentre on 24/05/2018 accompanied by her Legal representative Harun Matin from the National Legal Service and answered “no comment” to all questions. I produce the transcript of the interview under caution as exhibit GH/1.

Had the London Borough of Croydon been aware of the material fact that Nadia Saroya had no liability to pay any rent at 60 Mount Park Avenue, South Croydon, CR2 6DJ, she would not have been entitled to Housing Benefit.”

12. Thus, the charge which was brought alleged a single act in April 2012, the furnishing of the fraudulent rental agreement, which was intended to, and did, cause regular monthly payments to be made to the appellant from then onwards over a period of years. That single act caused the officials of the London Borough of Croydon who administered the Housing Benefit scheme to believe throughout that period of years that the appellant was a tenant at her home, when she was not.

### **The ruling**

13. In his succinct but complete and clear reserved written ruling, the judge said this:-

“It is not in dispute that this is a ‘criminal lifestyle’ case. It follows that I have to assess not only whether the defendant has benefitted from her particular criminal conduct but also whether she has benefitted from her general criminal conduct.”
14. The judge said the applicant’s forged tenancy agreement had enabled her to make false claims for housing benefit from early 2012 to about 5 February 2017. It is not entirely clear where that latter date comes from, but it does not matter to the issue before us.
15. On this basis, the judge was obliged to make the four assumptions against the appellant, set out in section 10 of the Proceeds of Crime Act 2002. He held that there was no evidence that it would be incorrect to apply the assumptions nor that there would be a serious risk of injustice if the assumptions were made. The ‘relevant day’ for assumptions under section 10(2) (the first assumption) and section 10(4) (the third assumption) was 25 February 2013.

16. The particular benefit was £51,862.57, being the £47,640.23 of dishonestly obtained housing benefit adjusted for inflation. The sum of £352,317.25 was added to that figure as a result of the section 10 assumptions being applied and included monies transferred into the applicant's bank accounts, the increase in the value of her property at 60 Mount Park Avenue and the deposit paid for the purchase of a property at 48 Lancelot Crescent in February 2017.
17. The total benefit figure was £404,179.82. The judge held that he was not satisfied that the available amount was less than the benefit figure and directed that £41,440.23 of the confiscation order sum would be payable as compensation to the London Borough of Croydon.

### **The relevant statutory provisions**

18. In view of the importance of the offence-creating provision to the issue in this appeal, we will set it out in full, so far as relevant. The charge was brought under section 111A(1)(b), but that provision must be construed in the context of the provision as a whole:-

#### **111A Dishonest representation for obtaining benefit etc**

(1) If a person dishonestly—

- (a) makes a false statement or representation; or
- (b) produces or furnishes, or causes or allows to be produced or furnished, any document or information which is false in a material particular;

with the view to obtaining any benefit or other payment or advantage under the relevant social security legislation (whether for himself or for some other person), he shall be guilty of an offence.

(1A) A person shall be guilty of an offence if—

- (a) there has been a change of circumstances affecting any entitlement of his to any benefit or other payment or advantage under any provision of the relevant social security legislation;
- (b) the change is not a change that is excluded by regulations from the changes that are required to be notified;
- (c) he knows that the change affects an entitlement of his to such a benefit or other payment or advantage; and
- (d) he dishonestly fails to give a prompt notification of that change in the prescribed manner to the prescribed person.

(1B) A person shall be guilty of an offence if—

- (a) there has been a change of circumstances affecting any entitlement of another person to any benefit or other payment or advantage under any provision of the relevant social security legislation;
- (b) the change is not a change that is excluded by regulations from the changes that are required to be notified;

- (c) he knows that the change affects an entitlement of that other person to such a benefit or other payment or advantage; and
  - (d) he dishonestly causes or allows that other person to fail to give a prompt notification of that change in the prescribed manner to the prescribed person.
- (1C) This subsection applies where—
- (a) there has been a change of circumstances affecting any entitlement of a person ('the claimant') to any benefit or other payment or advantage under any provision of the relevant social security legislation;
  - (b) the benefit, payment or advantage is one in respect of which there is another person ('the recipient') who for the time being has a right to receive payments to which the claimant has, or (but for the arrangements under which they are payable to the recipient) would have, an entitlement; and
  - (c) the change is not a change that is excluded by regulations from the changes that are required to be notified.
- (1D) In a case where subsection (1C) above applies, the recipient is guilty of an offence if—
- (a) he knows that the change affects an entitlement of the claimant to a benefit or other payment or advantage under a provision of the relevant social security legislation;
  - (b) the entitlement is one in respect of which he has a right to receive payments to which the claimant has, or (but for the arrangements under which they are payable to the recipient) would have, an entitlement; and
  - (c) he dishonestly fails to give a prompt notification of that change in the prescribed manner to the prescribed person.
- (1E) In a case where that subsection applies, a person other than the recipient is guilty of an offence if—
- (a) he knows that the change affects an entitlement of the claimant to a benefit or other payment or advantage under a provision of the relevant social security legislation;
  - (b) the entitlement is one in respect of which the recipient has a right to receive payments to which the claimant has, or (but for the arrangements under which they are payable to the recipient) would have, an entitlement; and

(c) he dishonestly causes or allows the recipient to fail to give a prompt notification of that change in the prescribed manner to the prescribed person.

(1F) In any case where subsection (1C) above applies but the right of the recipient is confined to a right, by reason of his being a person to whom the claimant is required to make payments in respect of a dwelling, to receive payments of housing benefit—

(a) a person shall not be guilty of an offence under subsection (1D) or (1E) above unless the change is one relating to one or both of the following—

(i) the claimant's occupation of that dwelling;

(ii) the claimant's liability to make payments in respect of that dwelling; but

(b) subsections (1D)(a) and (1E)(a) above shall each have effect as if after “knows” there were inserted “or could reasonably be expected to know”.

(1G) For the purposes of subsections (1A) to (1E) above a notification of a change is prompt if, and only if, it is given as soon as reasonably practicable after the change occurs.

19. The Proceeds of Crime Act 2002, “the 2002 Act”, as is well known, provides for certain assumptions to be made by the court in “lifestyle cases” in certain circumstances. The relevant provisions are set out below.

20. Section 10 of the 2002 Act is in the following terms:-

### **10 Assumptions to be made in case of criminal lifestyle**

(1) If the court decides under section 6 that the defendant has a criminal lifestyle it must make the following four assumptions for the purpose of—

(a) deciding whether he has benefited from his general criminal conduct, and

(b) deciding his benefit from the conduct.

(2) The first assumption is that any property transferred to the defendant at any time after the relevant day was obtained by him—

(a) as a result of his general criminal conduct, and

(b) at the earliest time he appears to have held it.

(3) The second assumption is that any property held by the defendant at any time after the date of conviction was obtained by him—

- (a) as a result of his general criminal conduct, and
- (b) at the earliest time he appears to have held it.

(4) The third assumption is that any expenditure incurred by the defendant at any time after the relevant day was met from property obtained by him as a result of his general criminal conduct.

(5) The fourth assumption is that, for the purpose of valuing any property obtained (or assumed to have been obtained) by the defendant, he obtained it free of any other interests in it.

(6) But the court must not make a required assumption in relation to particular property or expenditure if—

- (a) the assumption is shown to be incorrect, or
- (b) there would be a serious risk of injustice if the assumption were made.

(7) If the court does not make one or more of the required assumptions it must state its reasons.

(8) The relevant day is the first day of the period of six years ending with—

- (a) the day when proceedings for the offence concerned were started against the defendant, or
- (b) if there are two or more offences and proceedings for them were started on different days, the earliest of those days.

(9) .....

(10) 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.

21. Section 6 of the 2002 Act, referred to in section 10(1) provides as follows:-

**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.

(4) The court must proceed as follows—

- (a) it must decide whether the defendant has a criminal lifestyle;
- (b) if it decides that he has a criminal lifestyle it must decide whether he has benefited from his general criminal conduct;
- (c) if it decides that he does not have a criminal lifestyle it must decide whether he has benefited from his particular criminal conduct.

(5) If the court decides under subsection (4)(b) or (c) that the defendant has benefited from the conduct referred to it must—

- (a) decide the recoverable amount, and
- (b) make an order (a confiscation order) requiring him to pay that amount.

Paragraph (b) applies only if, or to the extent that, it would not be disproportionate to require the defendant to pay the recoverable amount.

(6) .....

(6A) .....

(7) The court must decide any question arising under subsection (4) or (5) on a balance of probabilities.

(8) The first condition is not satisfied if the defendant absconds (but section 27 may apply).

(9) References in this Part to the offence (or offences) concerned are to the offence (or offences) mentioned in subsection (2).

22. Section 75 of the 2002 Act defines “criminal lifestyle”.

### **75 Criminal lifestyle**

(1) A defendant has a criminal lifestyle if (and only if) the following condition is satisfied.

(2) The condition is that the offence (or any of the offences) concerned satisfies any of these tests—

(a) it is specified in Schedule 2;

(b) it constitutes conduct forming part of a course of criminal activity;

(c) it is an offence committed over a period of at least six months and the defendant has benefited from the conduct which constitutes the offence.

(3) Conduct forms part of a course of criminal activity if the defendant has benefited from the conduct and—

(a) in the proceedings in which he was convicted he was convicted of three or more other offences, each of three or more of them constituting conduct from which he has benefited, or

(b) in the period of six years ending with the day when those proceedings were started (or, if there is more than one such day, the earliest day) he was convicted on at least two separate occasions of an offence constituting conduct from which he has benefited.

(4) But an offence does not satisfy the test in subsection (2)(b) or (c) unless the defendant obtains relevant benefit of not less than £5000.

(5) Relevant benefit for the purposes of subsection (2)(b) is—

(a) benefit from conduct which constitutes the offence;

(b) benefit from any other conduct which forms part of the course of criminal activity and which constitutes an offence of which the defendant has been convicted;

(c) benefit from conduct which constitutes an offence which has been or will be taken into consideration by the court in sentencing the defendant for an offence mentioned in paragraph (a) or (b).

(6) Relevant benefit for the purposes of subsection (2)(c) is—

(a) benefit from conduct which constitutes the offence;

(b) benefit from conduct which constitutes an offence which has been or will be taken into consideration by the court in sentencing the defendant for the offence mentioned in paragraph (a).

(7) The Secretary of State may by order amend Schedule 2.

(8) The Secretary of State may by order vary the amount for the time being specified in subsection (4).

23. The offence was not specified in Schedule 2 to the 2002 Act and the appellant has no other convictions. She could therefore only be found to have a criminal lifestyle if the condition in section 75(2)(c) was met. This requires the offence concerned to have been “committed over a period of at least six months”. The issue on this appeal is whether the offence of which the appellant was convicted was committed over a period of at least six months.

### **The submissions**

24. Mr. Fitt on behalf of the appellant takes a short point. He says that the offence with which the appellant was charged was particularised as having occurred on a single day and involved a discrete act. The offence was complete at the point at which the appellant dishonestly provided the false information with the requisite intent. The fact that she continued to receive housing benefit for several years afterwards did not mean it was a continuing offence. He submits, therefore, that the concession regarding the applicability of the lifestyle provisions made in the Crown Court by counsel who then appeared was wrongly made. The appellant was invited to and did waive her privilege in respect of trial counsel, who was asked for his comments. He said this:-

“4. It would appear that I was wrong to concede the point that the Prosecution had not established a criminal lifestyle, given that the offence she was charged with only took place on a single day.

5. Looking at this matter I should now, in hindsight, have put the Prosecution to proof on this point.

6. I did not act when Ms. Saroya was sentenced. The charge that she pleaded guilty to in the magistrates' court had not been uploaded to the CCDCS when her case was committed for sentence (nor is it at the time of writing this response). In cases of this kind there are usually a number of offences charged, including a failure to disclose a change of circumstances each year, and this normally gives rise to a criminal lifestyle.

7. In this case though, not being aware that she only was convicted of one charge, limited in time, I was wrong to concede the point.”

25. Ms. Emily Lauchlan on behalf of the Prosecution submits:

- i) The appellant's original counsel would have known this fraudulent claim was committed over a period of at least six months and the Respondent submits this is why he did not put the Crown to proof. This was made clear in the case summary where a period of over 5 years was detailed and the value of the benefit was never disputed in any response to the Crown throughout the confiscation proceedings. Both parties had access to the digital case system where the Committal notes a single date of 16th April 2012 and it was made clear in the wording of the charge that this was an ongoing claim and therefore should be found to be a continuing offence when considering the ruling in *Barnet LBC v Kamyab* [2021] EWCA Crim 543, [2021] 1 WLR 4860.
- ii) The appellant accepted claiming Housing Benefit amounting to £47,640.23 from 27th December 2011 to 5th February 2017 which is contained within the case summary at the lower court and no basis of plea was entered to suggest any limit to the date range or claim figure. The date of the charge simply identified the date the document (rental agreement) was provided by the appellant and the charge made clear the offence continued thereafter due to the Housing Benefit claim being made.
- iii) The offending satisfied the criteria under s.75(2)(c) of the 2002 Act and this is a 'criminal lifestyle case'. The judge was correct and obliged to apply the assumptions.

26. Mr. Fitt responds in relation to *Barnet LBC v Kamyab* as follows in his skeleton argument:-

“On behalf of the applicant, it is submitted that *Barnet LBC v Kamyab* is of no relevance to the issue the court must decide in Ms Saroya's case. The offence in *Barnet LBC v Kamyab* was contrary to section 179(2) of the Town and Country Planning Act 1990. That section creates a continuing offence that persists until such time as the defendant complies with the enforcement notice. Section 179(6) makes it clear that the offence is of a continuing nature:

(6) An offence under subsection (2) or (5) may be charged by reference to any day or longer period of time and a person may

be convicted of a second or subsequent offence under the subsection in question by reference to any period of time following the preceding conviction for such an offence.

“As such, the offence is simply not analogous to the offence contrary to section 111A(1)(b) of the Social Security Administration Act 1992 to which the applicant pleaded.

“At paragraph 42 of *Barnet LBC v Kamyab*, the Court of Appeal noted that:

“...whether an offence is by its nature a continuing offence or a “once and for all” offence is a matter of construction of the offence creating provision, as explained in *Hodgetts* [1983] 2 AC 120 and *Russnak-Johnston* [2021] 1 WLR 2444.”

“It is respectfully submitted that this must be the correct position in law and is consistent with the principles to be derived from the case law cited in the applicant’s Advice and Grounds of Appeal, in particular *R v Frost* [2009] EWCA Crim 1737.”

### **Some relevant cases**

27. In *Barnet LBC v. Kamyab* this court allowed a prosecutor’s appeal against a decision that an offence of failure to comply with an enforcement notice, contrary to the provisions of section 179(2) Town and Country Planning Act 1990 as amended, was committed on one day only, and that the benefit was limited to the rental income attributable to that day only. The court held that the offence charged was a continuing offence committed throughout the period which began at the time when the enforcement notice came into effect. As the court recorded in its second judgment at [2021] EWCA Crim 1170 at paragraph [4] this was not advanced as a criminal lifestyle case and the court was not invited to apply the assumptions. The issue was the extent of Mr. Kamyab’s benefit from his particular criminal conduct and not whether the offence was committed over a period of at least six months. There is a difference between benefit continuing to accrue from an offence over a period, and the offence itself being committed over that period.
28. Nevertheless, we consider that the approach of the court in *Kamyab* explained at [42] cited by Mr. Fitt is correct. Whether an offence is capable of being committed over a period of at least six months is a question to be determined by construction of the offence-creating provision. If so, then the focus turns to the factual basis of conviction to determine whether in fact that was the case. The present case concerns section 111A (1)(b) of the Social Security Administration Act 1992 and not the Town and Country Planning Act and the decision in *Kamyab* is relevant only by analogy.
29. Equally, the concept of “an offence” being committed “over a period of at least six months” is a statutory condition which must be taken to be capable of being met. There are no decisions directly on point, so far as we are aware, but there are some decisions which deal with similar questions.
30. In *R v Andrewes* [2020] EWCA Crim 1055 the defendant had obtained the position of chief executive of the Torbay and Royal Cornwall NHS Hospital trust by lying prodigiously in his job application and interview. He worked satisfactorily in that

position for 10 years before his deception came to light. He pleaded guilty to one count of obtaining pecuniary advantage by deception under the Theft Act 1968 and two counts of fraud by false representation under the Fraud Act 2006. A confiscation order was made and challenged on the basis that, as he had provided full value by working satisfactorily in the job, he should not be required to repay all the salary that he had earned. No one at any stage appears to have argued that the criminal lifestyle provisions applied to him. The argument was about (1) causation and (2) the proportionality of making the order at all in circumstances where (it was said) full value had been provided by the defendant to the Trust in doing his job. Counsel for the defendant accepted that the false representations he had made at the job interview about his qualifications and experience were continuing representations. The court expressly agreed with this concession – see paragraph [39] and the discussion (referring to the cases of *Carter* and *Paulet*) at paragraph [47]. In rejecting the argument that there was no causative link (“as a result of or in connection with”) between the benefit obtained and the original deceptions the court emphasised again that the representations were continuing, see paragraphs [72]-[74]. In the end, applying *Waya*, the court decided that the defendant had given full value and had thereby made sufficient restoration of the benefit unlawfully obtained, accordingly the order was disproportionate.

31. Paragraphs [39] and [47] of *Andrewes* are as follows:-

“39. [Counsel for the appellant] very fairly - and in our view correctly - accepted that, in the present circumstances, the false representations were to be regarded as ongoing throughout the periods of employment or appointment, as the case may be: she did not seek to limit the false representations to the date on which the dishonest job applications were submitted. She also accepted the gravity of the appellant's conduct, the ongoing breach of trust involved and the effect on public confidence. But she emphasised that those factors should be reflected in the sentence (here, two years' imprisonment) imposed by way of punishment: and it would be wholly wrong, she said, to reintroduce those factors in support of the assessment of benefit and of recoverable amount.

“47. In *Nelson, Pathak and Paulet* [2009] EWCA Crim 1573, [2010] QB 678, in one of the cases, *Paulet*, the defendant had obtained remunerated employment by falsely representing that he was lawfully entitled to work in the United Kingdom. The court took the same approach as in *Carter*: an argument that the wages were to be taken as paid in return for the efficient performance by the defendant of his duties was rejected. After referring to *Carter*, the court said:

"49. It seems to us to be obvious that where you obtain an opportunity to work from an offer of employment being made to you, and the offer has been induced by a false representation that you are entitled to work, then the false representation continues thereafter for the benefit of the offender who, permitting the representation to continue, is able to obtain

employment. Once made, it continues to have effect throughout the employment which has been taken up. At any stage, had the representation been corrected, it is plain that the employment would have ceased.

...

50. Paulet's case cannot be distinguished. The reality is that throughout the period of his employment he was relying on a continuing dishonest representation to three different employers. He deceived them into thinking that he was entitled to obtain employment with them. That was a crucial element of his criminality."

"The court in that case did acknowledge that in some cases the passage of time might cause the deception to cease to have any meaningful effect on the decision to continue the employment. But self-evidently, we note, that is not the present case. It is clear in this case that the employment and appointments would have been terminated had the truth emerged sooner."

32. Mr. Fitt dealt with this decision in his skeleton argument as follows:-

"In the case of *R v Andrewes* [2020] EWCA Crim 1055, provided to the court by the Registrar in this case, the Court of Appeal noted with approbation [at 39] the decision of the appellant to accept that '...in the present circumstances, the false representations were to be regarded as ongoing throughout the periods of employment or appointment'. Whilst the court in *R v Andrewes* did not have to decide whether the offence under sections 1 and 2 of the Fraud Act 2006 (fraud by false representation) was continuing in nature, impliedly that would have been the conclusion on the facts of that case. The applicant submits that, to the extent to which it is necessary to distinguish her case from *R v Andrewes*, the material difference is to be found in the particular wording of section 111A(1)(b): i.e. 'produces or furnishes'."

33. This line of reasoning led to a concession by Mr. Fitt in argument that if (as she might have been) the appellant had been charged under section 111A(1)(a) then she would have had no defence, and would be caught by section 75(2)(c) because the representation would be continuing over the whole period during which benefit was being paid because of it. There would never be a time in this factual context when "the deception would cease to have any meaningful effect on the decision to continue the" payment. He also submits (after dealing with the failure to disclose offences in section 111A(1A)-(1E) of the 1992 Act):-

"However, the respondent could also have charged Ms Saroya under sections 1 and 3 of the Fraud Act 2006, which do not depend on a change of circumstance but criminalise the

dishonest failure to disclose information that the defendant is under a legal duty to disclose.”

34. *R v Carter* [2006] EWCA Crim 416, referred to above, involved a gang mastering business by which illegal immigrants were provided with false documents in order to be able to work. Two of the defendants were individuals who had produced such false documents, and obtained work thereby. They pleaded guilty to obtaining a pecuniary advantage by deception. Confiscation orders were made against them. Again, this is not a case involving the application of the criminal lifestyle provisions. The court here was considering an argument, similar to that later made in *Andrewes*, that the salary had been obtained by doing the job, and was not sufficiently connected with the original false documents so as to justify an order being made. It was argued that the false documents permitted the opportunity for employment, which was the advantage gained for the purposes of the offence, whereas the salary came from work actually done having taken up that opportunity. This was rejected. The observations at paragraphs [38]-[39] are of particular relevance to the present case:-

“It seems to us to be obvious that where you obtain an opportunity to work from an offer of employment being made to you, and the offer has been induced by a false representation that you are entitled to work, then the false representation continues thereafter for the benefit of the offender who, permitting the representation to continue is able to retain employment”

### **Discussion and decision**

35. We consider that where an offence is capable of being a continuing offence then the court will look at how it was presented by the prosecution, and how the defence and the court treated it to determine whether it was, in the instant case, an offence which was committed over a period of at least 6 months. This is the approach in *Barnet LBC v. Kamyab* at [42] as explained at [28] above. There is nothing in the 1992 Act which requires a different approach.
36. Therefore, the first question is whether, in law, the offence under section 111(A)(1)(b) is capable of being committed over an extended period, or whether it was necessarily complete at the moment which, in this case, the false document was produced.
37. The key provision is worth repeating:-
- (1) If a person dishonestly—
- (a) makes a false statement or representation; or
- (b) produces or furnishes, or causes or allows to be produced or furnished, any document or information which is false in a material particular;
- with the view to obtaining any benefit or other payment or advantage under the relevant social security legislation (whether for himself or for some other person), he shall be guilty of an offence.”

38. The question is, in our judgment, to be answered by construing the whole provision (including the parts we have not just repeated). The offences created in section 111A(1A)-(1E) are required because the section contemplates the reality of benefit claims, namely that they may be initiated by the making of a claim, with or without the production of a document or other “information”, but will then continue to be met at regular intervals over what may be many years. They may, therefore, be honest at the start but then falsified when relevant changes of circumstances occur which are not reported to the paying body. Plainly, a failure to disclose offence is capable of being a continuing offence which will continue from the moment when the duty to disclose arises until the true position becomes known to the paying body. Equally, Mr. Fitt has conceded that section 111A(1)(a) creates an offence which is capable of being committed over a period of time because the act of making the false statement is said to continue throughout the period when it is being relied on. Why should the position be different in respect of section 111A(1)(b)? “Making a false statement” and “producing a document” are phrases which are equally apt to describe a single act which is complete once it has been done “with the view to obtaining any benefit.” If the first phrase should be construed as being capable of being a continuing offence, as is conceded, why not the second?
39. The reason why “making a false statement” may be a continuing offence is, in our judgment, that the statute contemplates a claim being made “with a view to obtaining any benefit or other payment” where that obtaining may be achieved by a series of payments over a period of time. In a case where the statement was made to advance a claim for a single payment, then the offence would not be a continuing one. Where it was made “with the view” to securing a series of payments then the “making” continues throughout the period when payments are made in reliance on the “statement”.
40. There is nothing in the words of section 111A(1)(b) which requires a different construction from that which applies to section 111A(1)(a). On the contrary, in our judgment it is plainly right to construe these two different ways of committing what is in essence the same offence in the same way for the purposes of section 75(2)(c) of the 2002 Act. Any other course would result in all of the offences in section 111A being capable of being continuing offences with the single exception of the section 111A(1)(b) offence. There is no reason for any such distinction. The false document produced in contravention of section 111A(1)(b) is produced by the offender who thereby makes an implied representation that it is true, and that is done “with the view to obtaining” a benefit which will be paid in a series of payments over a period of time.
41. If, as we have held, the section 111A(1)(b) offence was capable of being a continuing offence, then it is clear that (in so far as the matter was considered in the Crown Court) the case was presented on the basis that it had continued, as the judge held from early 2012 until February 2017. This was alleged in the Case Summary and the witness statements, and there was no relevant dispute as to the facts.

## **Conclusion**

42. For these reasons, although the point was argued very capably by Mr. Fitt, we are unable to accept his submissions. In our judgment, counsel who appeared for the appellant at the confiscation proceedings was not wrong to make the concession he did. This appeal is therefore dismissed.