

**Neutral Citation no. [2007] NIQB 49**

*Ref:* **HIGF5852**

*Judgment: approved by the Court for handing down  
(subject to editorial corrections)\**

*Delivered:* **06/06/07**

**IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND**

**QUEEN'S BENCH DIVISION**

**IN THE MATTER OF WILLIAM WILSON, CHRISTINE WILSON AND  
THE PROCEEDS OF CRIME ACT 2002**

**Between:**

**THE DIRECTOR OF THE ASSET RECOVERY AGENCY**

**Plaintiff;**

**-and-**

**WILLIAM WILSON and CHRISTINE WILSON**

**Defendants;**

**HIGGINS J**

[1] By an amended Originating Summons dated 23 August 2004 the plaintiff, the Director of the Assets Recovery Agency, commenced civil recovery proceedings under section 243 of the Proceeds of Crime Act 2002 against the defendants, William and Christine Wilson. The application was supported by the affidavit of Edward Marshall sworn on 28 August 2004. The defendants filed three affidavits in defence of the application. These were sworn in March and April 2005 and April 2006. Affidavits sworn by persons other than the defendants were also submitted. A number of financial institutions were served with the originating summons but no appearance has been entered by them and they do not contest the application made to the court.

[2] An Interim Receiver was appointed by order of Coghlin J on 23 March 2004. The Interim Receiver reported on 21 June 2004 and concluded that property, which is now the subject of these civil recovery proceedings, was recoverable property under Part V of the Proceeds of Crime Act 2002. The claim in the Originating Summons is in the following terms -

"1. The Plaintiff claims that the property particularised below and held by or on behalf of the Defendant as set out in the Interim Receiving Report by the Receiver, Louise Rivers, dated 21st June 2004, but is not limited thereto, is recoverable property under Part 5 of the Proceeds of Crime Act 2002.

### Particulars

1.1 the real property situated in Limavady, Co Londonderry (property A) registered in Land Registry Folio (A) County Londonderry in the name of William Wilson.

1.2 the real property situated in Limavady, Co Londonderry (property B) registered in Land Registry Folio (B) County Londonderry the names of William Wilson and Christine Wilson.

1.3 the real property situated in Coleraine, Co Londonderry, (property C) in the names of William Wilson and Christine Wilson.

1.4 the real property situated in Coleraine, Co Londonderry, (property D) in the name of William Wilson and Christine Wilson.

1.5 the investment in MGM Assurance Endowment Policy Account Number (1) in the name of William Wilson.

1.6 the credit balance held in the First Trust Bank, Current Account, Account Number (2) in the name of William and Christine Wilson.

1.7 Toyota Land Cruiser Jeep.

1.8 Vauxhall Corsa 1.2 Hatchback Car.

1.9 Volvo S40 Saloon Car.

1.10 BMW Car.

1.11 All livestock situated on land at property B.

1.12 All livestock identified by the Receiver as belonging to William Wilson located on land at 59 Killunaghty Road, Feeney, County Londonderry.

1.13 All chattels situated on land at property B including all items uplifted from the site by the interim receiver and placed in secure storage.

1.14 Domestic pets.

2. And the Plaintiff further claims that :

2.1 the interest held by the Abbey National PLC in Mortgage Account Number (3) in the name of William Wilson in respect of a mortgage in relation to property A is associated property within the meaning of section 245 of the Proceeds of Crime Act 2002;

2.2 the interest held by the First Trust Bank in Loan Account Number (4) in the name of William Wilson in respect of a mortgage in relation to property B is associated property within the meaning of section 245 of the Proceeds of Crime Act 2002;

2.3 the interest held by the First Trust Bank in Buy to Let Loan Account Number (5) in the name of William and Christine Wilson in respect of a mortgage in relation to property C is associated property within the meaning of section 245 of the Proceeds of Crime Act 2002;

2.4 the interest held by the First Trust Bank in Buy to Let Loan account Number (6) in the name of William and Christine Wilson in respect of a mortgage in relation to property D is associated property within the meaning of section 245 of the Proceeds of Crime Act 2002.

3. The Plaintiff therefore seeks the following specific orders:

A Recovery Order pursuant to section 266(1) of the Proceeds of Crime Act 2002 in respect of all the property particularized in paragraph 1 above.

An Order pursuant to Section 267(1) of the Proceeds of Crime Act 2002 that Alan McQuillan, Assistant Director of the Assets Recovery Agency, P0 Box 592 Belfast, BT4 3YR, be appointed trustee for civil recovery.

An Order pursuant to Section 266(2) of the Proceeds of Crime Act 2002 vesting the recoverable property particularised in paragraph I above, together with any additional property which the court may deem recoverable, in the appointed trustee for civil recovery.

An order pursuant to Section 272 of the Proceeds of Crime Act 202 that the associated property particularised in paragraph 2 above be vested in the appointed trustee for civil recovery with the requirement that, as soon as reasonably practicable, subject to the provision the trustee satisfies the loans and charges in respect of:

(i) The interest in property A held by Abbey National PLC by way of Mortgage Account Number (3) in the name of William Wilson by payment of the amount outstanding to Abbey National PLC;

(ii) First Trust Bank Loan Account Number (4), in the name of William Wilson, in respect of property B by payment of the amount outstanding to First Trust Bank;

(iii) The First Trust Bank Buy to Let Loan Account Number (5) in the name of William and Christine Wilson in respect of property C by payment of the amount outstanding to The First Trust Bank;

(iv) The First Trust Bank Buy to Let Loan Account Number (6) in the name of William and Christine Wilson in respect of property D by payment of the amount outstanding to First Trust.”

[3] The defendants, who married in August 2001, reside at property A which was purchased by the first defendant in February 1999. The second defendant may have come to reside there before they were married, but certainly did thereafter. The first defendant was born on 30 March 1967 and is now forty years of age.

[4] The plaintiff’s case is that there is no lawful source for the defendants’ assets and lifestyle and that the identified property referred to in the originating summons, was obtained through unlawful conduct.

[5] Part V of the Proceeds of Crime Act 2002 makes provision for the civil recovery of the proceeds of crime. Section 240 enables the enforcement

authority (the Assets Recovery Agency) to recover property obtained through unlawful conduct, whether criminal proceedings have been brought against the defendant or not. Section 240 provides: -

“S.240 General purpose of this Part

- (1) This Part has effect for the purposes of—
  - (a) enabling the enforcement authority to recover, in civil proceedings before the High Court or Court of Session, property which is, or represents, property obtained through unlawful conduct,
- (2) The powers conferred by this Part are exercisable in relation to any property (including cash) whether or not any proceedings have been brought for an offence in connection with the property.

Unlawful conduct is defined in section 241 as -

“(1) Conduct occurring in any part of the United Kingdom is unlawful conduct if it is unlawful under the criminal law of that part.”

For the purposes of section 240 and 241 no specific crime need be identified nor alleged.

[6] The unlawful conduct alleged against the defendants includes drug dealing, mortgage fraud, benefit fraud, Inland Revenue fraud and VAT fraud. Social Security Agency records show that for various periods from 1993 the first defendant claimed various types of benefit on the ground that he was unemployed, and in some instances incapacitated. Addresses at 699A, Glenmanus Park, c/o 6, Glenariff Road, Dhu Varren Road, 24A, Glenmanus Road, Portrush, or No Fixed Abode were used. The claims commenced in September 1992. It is not known for how long the first claim lasted. The second claim lasted from 29 November 1993 to 5 February 1996. In that claim he described himself as having worked for Peden in Ballymena as a machine operator. Job Seeker’s Allowance was claimed between 21 March 1997 and 23 June 1999 and again between 26 October 2000 and 26 April 2001. Claims indicated that he had no capital or property or money in the Bank. The address at 699A, Glenmanus Park was used between 26 October 2000 and April 2001. No reference was made to an address at property A or to any other property he allegedly owned. With one exception there is no formal

record of the first defendant being in gainful employment since he left school at the age of 16 years. Nor, with that exception, was he known to the Inland Revenue for tax purposes before a tax return submitted for the year ending 5 April 2003. Nor was he known to Customs and Excise for VAT purposes. The first defendant was for a period employed by Bituseal Limited, apparently a subsidiary of White Mountain Quarries and later a subsidiary of the Lagan Group. Bituseal was engaged in laying or relaying road surfaces using a certain type of surfacing equipment which the first defendant stated he operated for a period of time. This work was seasonal and occurred between April and September or October, if the weather was favourable.

[7] The Interim Receiver's Report identified substantial real and personal property owned by the first defendant at the date of her report to the Court. This included -

1. A detached bungalow at property A.
2. A farmhouse and building site on 5.095 hectares of land at property B together with chattels thereon.
3. Two houses nos. 18 and 19 at property C and property D respectively.
4. Investment in MGM Assurance Endowment Policy in name of William Wilson ( and other policies).
5. Credit Balance in First Trust Bank Account Number (2) in names of William and Christine Wilson and interest in other First Trust Accounts.
6. Three motor vehicles - a Toyota Land Cruiser Jeep, a Vauxhall Corsa Hatchback and a BMW motor car - and a quad, as well as mechanical equipment such as diggers and tractors.
7. Livestock on the land at property B and elsewhere.
8. Domestic pets.

[8] In addition the Interim Receiver investigated four dwelling houses at Berryfields Estate, Ballymena which were purchased by the first defendant, rented out and later sold. The Interim Receiver concluded that she was unable to identify legitimate income sufficient to explain the acquisition of this property.

[9] The Interim Receiver was empowered to investigate the defendants' affairs for a period of twelve years preceding the date of her appointment. The Interim Receiver's report was exhibited and forms part of the evidence in the case. In the Report the Interim Receiver sets out her findings in relation to each Fiscal Year from 1991/2 to 2003/4. In order to place the respective claims of the plaintiff and defendants in context it is necessary to refer to each Fiscal Year and the findings of the Interim Receiver. I do not propose to refer to each finding in each Fiscal Year but to what appear to be the more relevant findings in light of the issues which require determination by the court. I will refer to these findings and then the case made by the defendants.

[10] The role of Interim Receiver is that of a court-appointed expert to investigate the origin and owner of assets and to report to the court on those assets. In the absence of evidence to the contrary such a report will be compelling evidence in any application based upon it. Its detailed contents relating to accountancy matters are accepted as fact unless shown otherwise. I shall refer to portions of it only but I have taken all of it into account.

[11] The first defendant claimed he sold motor cars over the relevant period. In the absence of records to substantiate this claim and based on the figures given by the first defendant to the Interim Receiver, the first defendant was credited with the sale of 20 vehicles in each year at a total profit of £3000. In addition an allowance of £600 per month (£7200 per annum) for living expenses was taken into account.

1991/2.

The first defendant opened an account with the Northern Bank, Portrush, on 17 September 1991. The Northern Bank do not keep details of bank accounts after a certain period of time. There are no banking records for that year. The first defendant was in receipt of unemployment benefit.

1991/2.

Inland Revenue records show that the first defendant was employed by Bituseal Limited between 18 May 1992 and 18 September 1992. His gross pay was £6,06268, £4946.26 net. He was also in receipt of benefits during this year. Taking into account motor trade profit and living expenses the first defendant would have had few surplus funds available. There are no banking records for this year.

1993/4.

Inland Revenue records show that the first defendant was employed by Bituseal Limited between 14 June 1993 and 22 October 1993. His gross pay was £7194.03, £5965.15 net. He was in receipt of benefits when not employed. Taking into account motor trade profit and living expenses the first defendant would have had few surplus funds available. There are no banking records available for this year.

1994/5.

The first defendant was in receipt of benefits throughout this year. Bank account records show £1496 carried forward from the previous year, with lodgements of £2544.59 from unknown sources. Debits of £2140 are shown but the destinations are unknown. There would have been few surplus funds in this year.

1995/6.

The first defendant was in receipt of benefits including incapacity benefit. His Bank account shows an opening balance of £404.59. £903 was lodged in the account and £1158 debited. A second account with the Northern Bank was opened in March '96 with lodgements of £950 the source of which was not identified. There would have been few surplus funds in this year.

1996/7.

The first defendant was in receipt of unemployment benefit throughout the year and income support for part of the year. The opening balance in the bank account was £161 with £7834 lodged and £7834 debited. Direct debits to Hutchinson Cellular of £174 were identified. The source of the lodgements was not identified. There would have been few surplus funds in this year. The Interim Receiver comments that the trading levels claimed do not match the funds passing through the bank account.

1997/8.

The Interim Receiver had no information from Social Security relating to benefits however there was evidence before the court of Job Seekers Allowance being claimed during this period. The bank account had an opening balance of £326. Lodgements of £110 and debits of £339 are shown with direct debits of £226.39 to Hutchinson Cellular. There is little to show where any of the money was coming from and there would have been few surplus funds in this year.

1998/9.

There was evidence that the first defendant was in receipt of job seekers allowance during this year. The Bank account has an opening balance of £98. On 25 (25 or 24?) June 1998 one of the Northern Bank accounts was closed with £42 transferred to the other account. A current account, account number 2 with First Trust Bank in joint names of the defendants was opened on 25 November 1998 with a £100 deposit. On 9 February 1999 £6000 was lodged to the First Trust current account the source of which is unknown. On 19 February 1999 the first defendant opened a First Trust Call account, account number (7) in his sole name and deposited £14,000 on the same day. The source of this deposit is unknown. On 19 February 1999 £6100 was transferred from the Call Account to an unidentified location. On 25 March 1999 £6000 was withdrawn from the Call Account and a bankers draft obtained made payable to a solicitor. This was the cash deposit for property A. Lodgements amounting to £21,191 are shown as well as an account transfer of £1041. Debits of £12,147 are shown with direct debits of £157 to Hutchinson Cellular. The remaining Northern Bank account was closed in September 98. The Interim Receiver noted that Bank deposits and cash expenditure of £27479 were identified but no source was identified, other than the allowance for motor trading of £3000 and benefits of £2765, and commented that reported trading did not match funds passing through the account.



1999/00.

The first defendant was in receipt of benefits. The opening balance in his bank accounts was £8031. Lodgements of £5929 were made with debits of £3799.

On 16 April 1999 the first defendant purchased property A for £65,000. It is a detached bungalow and one of twelve similar properties in a cul de sac. He is registered as the sole owner in full. This was financed by a loan of £50,000 from Abbey National who registered a charge for that amount on the property on 29 April 1999. The deposit of £6000 was withdrawn from his First Trust Bank account as noted above. A Personal Finance Review for the purposes of a mortgage application for property A, lists the first defendant as a motor trader with an address at 651, Glenmanus Park, Portrush with an income of £18,000 and drawings of £1100. The document states that he is single and is a sole trader having established his business in April 1996. The document which is dated 12 March 1999 confirms that the information given is correct and is signed by the first defendant. The application to Abbey National for the mortgage dated 3 March 1999 states that he is a joiner by occupation and had been so for 5 years with an address at 651, Glenmanus Park, Portrush. In an affidavit dated 12 May 2005 the first defendant averred that the deposit of £6,000 came from his dealing and sales in vehicles and that the mortgage was obtained on his behalf by accountants T J Garvin. In interview he said the deposit was paid from 'out of the like of cars and White Mountain Quarry'. In interview with the Interim Receiver he said the deposit came from £13,000 he received for several person injury claims. In an affidavit sworn on 12 March 2005 he stated the deposit came from selling cars and dealing. In evidence he said the deposit came from selling cars and that the repayments on the mortgage came from savings from selling cars. Loan repayments on the mortgage and premiums for associated policies were made throughout the year totally £3719. Five motor vehicles were purchased during this fiscal year totalling £29,250. These included a BMW M3 (£11000) and a Vauxhall Corsa (£4500). In addition a cash sum of £26,810 was identified. Bank deposits and cash expenditure of £67,582 were identified for this year with no evidence to verify the source of these amounts. The Interim Receiver commented that 'In view of the stated level of income reported by the respondent, the trading does not match the funds passing through the bank accounts. Nor does the stated level of trading account for the subsequent acquisition of assets, without an additional source of funding.'

2000/01.

The first defendant was in receipt of benefits. There was an opening balance in the bank accounts of £10,554. Lodgements of £61,500 were made with debits of £25,426. The cash lodgements included a lodgement of £26,740 on 3 April 2001. The source of this money was not identified. A Fixed Term Deposit account, Account Number (8) was opened on 8 December 2000 with an initial lodgement of £10,000 and another £10,000 lodged on 22 December 2000. Direct debits and loan repayments totalled £4400. On 17 July 2000

£10,475 was withdrawn from the Call account. The first defendant purchased a BMW 323i for £7800 and another for £8750. The Interim Receiver identified Bank deposits and cash expenditure of £76,647 with no evidence to show the sources of this money. The Interim Receiver commented that 'In view of the stated level of income reported by the respondent, the trading does not match the funds passing through the bank accounts. Nor does the stated level of trading account for the subsequent acquisition of assets, without an additional source of funding.'

2001/2.

The opening balance in the bank accounts was £46,774. Lodgements of £87,100 and debits of £106,426 were identified. Five cash lodgements totally £14,600 were identified but no source for these monies was identified. On 11 March 2002 a cash lodgement of £17,818 was made but the source was not identified. Direct debits and loan repayments of £3900 were made. £48,200 was transferred from the current account to the Fixed Term Account. A deposit of £54,250 was paid on 17 December 2001 for the four properties at Berryfields Park, Ballymoney. The Interim Receiver comment that this was 8 months after the first defendant was receiving Job Seeker's Allowance. A Toyota Colorado Jeep was purchased at a cost of £26,500. The source of these funds was not traced. The Interim Receiver commented as previously. During this year the defendants married and the second defendant came to live permanently at property A.

2002/3.

The opening bank balance was £29,275. Lodgements and bank transfers totalling £45,600 were identified with debits of £71,421.56. Direct debits and loan repayments amounted to £2750. Cash and cheque lodgements totalling £16,457 were shown with no evidence as to the source of these monies. Other lodgements of £11,700 were made with no source identified. On 24 May 2002 £29,075 was withdrawn from the Fixed Term account. £15,000 was placed in the current account but the destination of the balance of £14,075 was not identified. On 30 April 2002 the purchase of the four houses at Berryfields Park, Ballymoney, was completed. Each was purchased at a price of £54,250. They were funded by a deposit of £54,250 by the first defendant and four mortgage accounts with a company known as the Mortgage Company. The total mortgage involved was £162,748. Each house required a kitchen and bathroom which were put in by the first defendant at a total cost of £60,000 which was paid in cash. During interview the first defendant stated that he rented them out for about twelve months and the rent received amounted to £15,328. They were sold on different dates during 2003 for profits ranging between £31,550 and £32,700 approximately and the monies paid into the first defendant's bank account. In his affidavit dated 12 May 2005 the first defendant averred that the money for the deposit was 'made in my business dealings and trading in the car market'. He told the Interim Receiver it was part of his savings. In an interview with the Assets Recovery Agency he said

the deposit came from savings from his employment with Bituseal in the early 1990s. In his evidence he said this money came from selling cars. On 21 November 2002 5.905 hectares of land, property B, was transferred to the defendants for the sum of £80,000. This included a farmhouse and a building site. First Trust Bank Plc registered a charge on the property on the same date. The purchase was financed through a £56,000 loan from the Bank and a banker's draft for £24,000, withdrawn from his current account, was used to pay the deposit. The original asking price was £120,000. The vendor said he agreed to sell the property for £90,000 and received £80,000 with a digger in lieu of the other £10,000. The first defendant acknowledged that his mortgage repayments in respect of this property were £553 per month. In June 2004 the Interim Receiver valued this property at £350,000. In addition to these transactions a tractor was purchased for £41,125, a quad for £3900 and livestock to the value of £10,000 all of which were paid in cash. While the first defendant paid for the tractor in two instalments the invoice was made out to a third party for the purpose of a possible reclaim of VAT, for which the first defendant was not entitled or registered. The Interim Receiver identified bank deposits and cash expenditure of £140,653. No source could be identified for £117,459 of this money. The Interim Receiver commented as previously. The second defendant was working during this fiscal year and her wages, between £150 and £170 per week, were paid into the joint account. T J Garvin & Co prepared a profit and loss account for the year ended 5 April 2003. This showed sales of £775,986 with purchases of £712,699 and expenses of £19,699 leaving a profit of £42,813. Mr Cochrane of T J Garvin said the figures were supplied by the first defendant, which he denied. A Tax Return was submitted by the first defendant to the Inland Revenue for the year ended 5 April 2003 showing a projected trading loss of £970 on a turnover of £13,137 less expenses of £14,107. T J Garvin & Co is named as the first defendant's agent and his business described as property rentals and sales.

2003/4.

The bank accounts had an opening balance of £3531. Lodgements or transfers to the value of £147,520 were noted with debits of £93,483. The latter included direct debits and loan repayments amounting to £16,010. Lodgements of £129,658 included the sale, at a profit, of the four properties at Berryfields Park in July, September, October and November 2003. Rental of £5000 was noted as was a lodgement of £10,000 from ML Motors. Cheque payments for the building works at property B to the value of £4000, the purchase of a Red Rock trailer for £7637, the purchase of a digger for £20,000 and miscellaneous building material for £1275 were identified. The first defendant purchased two properties, property C and property D, on 23 January 2004 though the negotiation took place earlier in 2003. Each property cost £68,300 and a deposit of £30,583 was paid. A mortgage was obtained from the First Trust Bank Plc for each property in the sum of £54,400 with the balance from the first defendant's current account with that Bank. The prices were reduced from £74,000 as the first defendant undertook to paint and tile the houses and

to install kitchens, bathrooms and fireplaces himself. Other items purchased included a digger for £41,125. This was paid for with a cheque for £20,000 drawn on the current account and £21,125 in cash, the source of which was not identified. The Interim Receiver commented as previously. The second defendant's wages continued to be paid into the joint account. However it was apparent the first defendant was contributing towards her maintenance which was beyond her income.

[12] The following Bank Accounts were identified by the Interim Receiver all of which were opened from November 1998 onwards.

**First Trust Bank Account Number (2) in name of W and C Wilson.**

This account was opened on 25 November 1998. When it became a joint account was not disclosed. By March 1999 £7100 had been lodged. Between April 2000 and April 2001 over £41,000 was lodged to the account. In the following year a further £23,450 was lodged. Between April 2002 and March 2003 over £45,000 was lodged. Between April 2003 and January 2004 over £147,000 was lodged. Some of these lodgements would have derived from the sale of some of the properties referred to above, but the source of much of this money, believed to be about £117,000, was not identified. As at 16 October 2003 there was £83,674.69 in the account.

**First Trust Bank Fixed Term Deposit Account Number (8) in name of W Wilson.**

This was opened on 8 December 2000 with a deposit of £10,000 and further cash lodgements in excess of £70,000 were made between December 2000 and May 2002. These lodgements took place at a time when the first defendant was claiming benefits. In interview the first defendant suggested the £10,000 deposit was the result of the sale of a BMW M3, but he had no records to verify this amount.

**First Trust Bank Market Yield Account Number (7) in name of W Wilson.**

This account was opened in February 1999 with a deposit of £14,000 and a further deposit in May of £3,000. Withdrawals were made subsequently.

**First Trust Bank Loan Account Number (4) in name of W and C Wilson.**

This opened with a loan of £56,000 to which payments of over £1000 and later £553 were made monthly.

[13] Other loan accounts with First Trust and the mortgage account with Abbey National were identified. The application form for the mortgage with Abbey National for property A, list T J Garvin & Co as his Accountant and that he was a self-employed joiner. Five life assurance investments were

discovered, three in the name of the first defendant and the other two in their joint names. In total they provide life cover of £544,000.

[14] Various vehicles and sundry items were identified. These included –

1. A Toyota Jeep purchased in June 2001 for £26,500, paid in two instalments - £24,000 and £1600. There is no evidence such amounts were withdrawn from his bank accounts around the time of purchase. In his evidence he said the money for this vehicle came from profits on car sales;
2. A BMW 323i purchased for £8750 in December 2000;
3. A Renault tractor purchased for £17,000
4. Another tractor costing £44,125 which according to the first defendant was paid for in cash.
5. A small digger costing £6,000 in 2002. In interview he said that at this time he had stopped trading in cars and had commenced to trade in diggers and property.
6. A Hitachi digger costing £41,000 paid by cheque and cash.
7. A Quad bike purchased May 2002 for £3900.
8. A Red Rock Trailer costing £7638.
9. Livestock to the value of £10,000 purchased in 2003.
10. Honeymoon in August 2001 in Barbados.
11. A number of domestic pets valued at £500.

[15] The total amount of expenditure identified over those years ending with the appointment of the Interim Receiver was approximately £300,000. At that date he still had £62,873.67 in his bank accounts with assets valued in the region of £1million. In addition the mortgages taken out required to be repaid and ordinary living expenses catered for. It was estimated that he had unlawful earnings totalling £396,000 over a twelve year period, though most of this was identified as having been accrued from 1998/9 onwards. While the second defendant was in employment her earnings were minimal.

[16] In interviews with the Interim Receiver, the Assets Recovery Agency and the Police the first defendant said that the money could be accounted for by his employment with Bituseal, his self-employment as a car trader operating from his own home and the profits he made on the purchase and sale of various properties. In interview he said he last dealt in cars in August 1999 and then moved into property. On one occasion he said he sold about 40/50 cars per year and on another occasion said it was 10/20 cars per year. In addition he said he also sold some jewellery.

[17] The first defendant was introduced to a partner in a firm called T J Garvin & Co who provide unqualified accountancy services. A partner who is not a qualified accountant gave evidence that he first met the first defendant early in 2003. The first defendant asked them to prepare a set of accounts on

their headed notepaper for mortgage purposes for the purchase of a farm and that he needed to borrow £50 - £60,000. He said the first defendant provided the firm with written figures for his car business indicating sales worth £770,000. The Trading and Profit and Loss Account for the year ended 5 April 2003, referred to above, was produced. This showed Sales of £775,986 with a gross profit of £62,512 and a net profit of £42,813. The Account declares -

“The foregoing Trading and Profit and Loss Accounts has been prepared by us from the records and from information produced to us by Mr Wilson and we certify that it is in accordance therewith.”

[18] According to the witness the written material was returned to the first defendant and no checks were made to verify the figures provided. Documents from the First Trust Bank show Sales of £630,000 in the tax year ended 5 April 2000, £755,000 in the tax year ended 5 April 2001 and £776,000 in the tax year ended 5 April 2002. On 26 January 2004 TJ Garvin and Co wrote to the Manager of the First Trust Bank in Coleraine. The letter states - ‘As Accountants for Mr Wilson we hereby confirm that his Income Tax affairs are up to date’.

[19] His first tax return was made in May 2002. He declared his business as car sales and that he commenced this business on 8 April 2002. In evidence he admitted this was a deliberate misrepresentation to the Inland Revenue to hide his earlier alleged income and to hide from them his alleged earnings as a digger driver.

[20] In relation to the purchase of the tractor in which another party agreed to claim back the VAT he accepted he was deceiving the VAT authorities.

[21] On 26 January 2004 the first defendant completed the tax return for the year ended 5 April 2003, referred to above, in which he declared a loss based on projected figures. He admitted that he knew this was wrong as he was making a profit and that the figures quoted on the form were fictitious.

[22] The defendant left school aged 16 years. He had no regular employment for a number of years. It was suggested that he was involved in car valet work and that he bought and sold horses. His first and only proper employment was with Bituseal. He gave evidence that he worked for Bituseal for about four years from 1987. He earned between £250 and £300 per week net and was able to save over £200 of that as his board and lodgings were paid for or he was living at home. Robert Foster his former foreman with Bituseal confirmed some of his evidence relating to this period of employment. The first defendant said he had no bank account throughout this period and that he saved £20,000 - £30,000 in those four years. From before 1985 he was in a relationship with a young lady and two children were born

in 1985 and 1989. He then became foreman or supervisor earning £500 per week net and working mainly in Scotland. His wages were paid by cheques from Bituseal, by personal cheques of the Managing Director and by Lagan Holdings and all of these were paid into his bank account. He came home every six weeks and gave his partner a few pounds. He estimated he managed to save about £40,000 during the period he was foreman. In interview he stated that he managed to save £60,000 during his period of employment with Bituseal. He accepted that this was largely seasonal work from April to September and for the remainder of the year he dealt in cars. Inland Revenue records disclose that he was employed by Bituseal Ltd from 18 May 1992 to 18 September 1992 and again between 14 June 1993 and 22 October 1993. His gross pay for the two periods combined was £13,257 gross, £10,911 net. Mr R. Foster gave evidence that he was the foreman when the first defendant worked for Bituseal between 1987 and 1990 when he left. He said the work was available between April and September each year. Mr Foster said his earnings were £450 - £500 per week. He understood Bituseal were paying his tax and national insurance but his wages cheque was paid by different firms - Diacom Developments, Bituseal or Peden. The first defendant said he gave up his employment with Bituseal as the wages were reduced due to new rates having been negotiated for the work. As he was then unemployed he claimed benefits but continued to deal in cars. He claimed he bought from dealers, auctions and the public and sold to each of them as well. He was in a partnership with another man (who was never traced ) until 1997 and later with his own brother until 1998. Profits were split evenly. He then traded on his own. The cash that he had saved, which amount to about £60,000 was eventually stored in a wardrobe in his sister's house. Between 1993 and 1996 he estimated he sold 3 - 4,000 cars, though later he said he had bought 400 -500 cars over the years. He dealt often with NW Car Auctions who paid by cheque payable to him or his female partner. This Auction has been closed since 2000 and he believed the manager he dealt with has now gone to live in Australia. Occasionally he advertised cars in the trade magazine Autotrader. He said he was put in touch with TJ Garvin by an estate agent. He gave them information relating to his car sales orally and not in writing and disputed that he provided figures for sales in the sum of £770,000. He said the sum was about £45,000. He claimed that TJ Garvin advised him that it was not necessary to register for VAT.

[23] He claimed the deposit of £6,000 for the house at property A and the deposit of £24,000 for the properties at property B both came from profit on trading in motor cars. The balance of the money for the purchase of the four properties at Berryfield came from profit on trading in motor cars. The down payment of £32,000 for property C and property D came from the sale of the four properties at Berryfields. The purchase of the diggers and plant was financed from his savings from trade in motor cars. From 2001/2002 he also let out diggers and did the driving himself for which he was paid £150 - £250 per day depending on the size of the digger. He was paid cash for this work

and there were no contracts or other documents. In 2002 and 2003 he probably earned an estimated £12 - 15,000 from digger driving. He also let out farm land at property B for an estimated amount of £6,000 per year, which was paid mostly in cash, with some payments by cheque. He said he lodged all of this rental money in the Bank. He also bought 20 - 25 cattle for the farm at £500 - £550 per head. He bred from them and took the calves to market, but he had no records relating to them or relating to his farming.

[24] The first defendant produced no documents relating to his employment or alleged self employment over the years. In particular he produced no records relating to his claim that he was dealing in cars over many years and making a profit from it. He did say there were 'bits and pieces' lying about but nothing was ever produced. He said he made a profit from dealing in cars between 1992 and 1993 and knew he had to pay tax on this profit which should have been disclosed to the Inland Revenue, but 'he never understood about tax'. He paid no capital gains tax on the profits from the sales of property. In 1999/2000 he decided to sort out his tax affairs for the period 1992 - 1999 and went to see TJ Garvin & Co. He expected them to declare his income to the Inland Revenue on his behalf, but it was never done and he had no explanation for not approaching the Inland Revenue.

[25] He accepted that he did not declare he was trading as a motor dealer when he applied for benefits. After he purchased property A he gave an address at 24 Glenmanus Park Portrush on the application forms, thereby concealing the property A address. He accepted he had cheated the benefit system from 1987 to 2001.

[26] The first defendant complained that publicity surrounding the initial application by the plaintiff led persons with whom he had dealt to distance themselves from him and they declined to come to court to give evidence in support of his case. As a result he alleged he was unable to call a number of witnesses who would have confirmed his substantial dealings in the motor trade. He did call George Neilly a car dealer in Coleraine who said he did show the first defendant and his alleged partner some stock and that they may have purchased two or three cars for him ten or twelve years previously. Also called on behalf of the first defendant was J L Kelly an insurance broker and estate agent in Ballymoney. He gave evidence that the first defendant had taken out a motor trader's policy probably for three or four years with his firm, though other evidence would suggest it was between February 2000 and February 2002. Mr Kelly was engaged in relation to the 'buy to let' mortgages relating to the Berryfield investment as well as the mortgage for the house at property A. He said the first defendant had tried to sell him a few cars including 'a flashy 4 X 4'. He was unable to produce any documentation relating to the motor trade insurance. The first defendant had identified himself to Mr Kelly as a joiner. If Mr Kelly had known the first defendant was unemployed and claiming benefits, the applications for mortgages would not



have been submitted nor would the first defendant have obtained a mortgage if he had returned a tax loss in 2003. Both Mr Kelly and Mr Neilly were contacted at the last minute during the course of the hearing. Affidavits were produced from other person to support the plaintiff's case, again at the last minute.

[27] The first defendant's sister gave evidence that she returned to Northern Ireland in 1994/95 and when his relationship with his partner broke down he moved in with her. She said he was always dealing in cars and away in England a lot at auctions buying them. She described how on an occasion in 1995 or early 1996 he gave her a bag containing cash and asked her to mind it for him. She put it in the hot press for safekeeping and having looked in it knew it was a substantial sum of money. She assumed it was from car dealing, but she did not ask him where it came from. At one point she said it was in the house for three years and untouched by him. When she moved house it moved with her. She said he took it away at one stage and brought it back. She thought this occurred at the beginning of 1999. Later at the end of 1999 or the beginning of 2000 he took it away and it was not returned. She described her brother as the type of person who did not tell other people about his business. She had only been approached about this money the week before she gave evidence. She asserted that she had never claimed benefits when she should not have done so. It emerged she had been convicted of making a false claim for benefit when she was in fact working and had been fined.

[28] The second defendant did not give evidence.

[29] Proceedings under the Proceeds of Crime Act 2003 are commenced by originating summons and supported and defended by affidavit evidence. Affidavits were filed in this case exhibiting much other material, some of which was factual and not itself the subject of sworn affidavit. In applications under the Proceeds of Crime Act 2003, where the orders sought can be of major significance, care is required to ensure that material issues are the subject of sworn affidavit and not merely exhibited.

[30] Early in the proceedings Mr Kennedy QC who appeared on behalf of the defendants informed the court that certain matters were in issue in the case and that he wished to challenge evidence produced by the plaintiff and also to adduce evidence on behalf of the defendants. Counsel on behalf of the plaintiff did not accept that this was the appropriate procedure on applications under the Proceeds of Crime Act 2003 commenced by originating summons. I gave the following ruling -

“As this is the first case under the civil recovery procedure established by the Proceeds of Crime Act 2002 it may be helpful if I were to give some guidance

as to how these cases should be progressed. Such applications are by way of originating summons supported by affidavit and are brought under Part V of the 2002 Act. Thus Order 28 of the Rules of the Supreme Court applies. Ordinarily such applications proceed on affidavit evidence only. However provision is made for oral evidence. Thus on completion of the affidavit and any other documentary evidence the parties should decide whether or not the case can proceed on affidavit evidence only. If they are so agreed the Review Judge should be informed and an order made or direction given in writing to that effect. If the parties are agreed that oral evidence is required then the Review Judge should be informed and his direction or an order sought as to the nature of the oral evidence and the persons to be called. His order or directions should be recorded in writing. The Review Judge may take a different view from the parties as to the nature of the oral evidence and person(s) to give it. If the parties are not in agreement and one party or both parties wish to adduce oral evidence then the plaintiff should seek the order or direction of the Review Judge as to the nature of the evidence to be given and by whom. It will always be open to the Judge to give directions on his own motion, particularly where there is lack of agreement. The order or direction of the Review Judge should be recorded in writing. If these directions are followed this should enable the case to be listed at an appropriate date for the required number of days and the necessary witnesses informed.

Where oral evidence is to be adduced the witness should be sworn and examined in the usual way. However where the witness has already provided an affidavit or statement which sets out their evidence in chief the witness may be sworn and their affidavit or statement identified and the contents verified. Any additional questions may then be asked and the witness cross-examined. That procedure should be followed where the parties are agreed about it. If the parties are not agreed the procedure should nonetheless be followed where a) the witness's affidavit or statement has already been served on the other party, or b) where the affidavit or statement has

been served on the other party in sufficient time in advance of the witness giving evidence and in either case where the affidavit is signed or the statement contains the usual declaration as to its truth such as is used in criminal investigations and the opposing party has not established good and cogent reasons why the procedure should not be followed.

The parties are not in agreement in this case. It may be helpful therefore if I give some directions in this matter. The papers tend to show that certain matters are in dispute and I will hear oral evidence in accordance with this guidance in relation to them. They are - the lawfulness of the search at 1 Roslea Gardens; the weight of the powder found during that search; the forensic examination of the scales; the forensic examination of the knife; and the forensic examination of the cash. If the evidence of Florence Hanson is relied on the issue relating to it appears to be as to the weight if any to be attached to it. On the defendant's case the issue in dispute appears to be the origins of his wealth and I will hear evidence relating to that should he wish to do so."

[31] It was apparent that credibility was a major issue in this application and the only way to resolve that issue was for sworn evidence to be given in the usual manner. As it transpired the first defendant's evidence strayed well beyond what was contained in his affidavits, for example, he asserted for the first time that he was often in England purchasing cars, a statement repeated by his sister who also gave evidence. In addition to the oral testimony and in order to do justice to the parties, it was necessary to receive late affidavit evidence filed on behalf of the defendants. This was unsatisfactory in applications which are reviewed over many months and where directions are sought and given relating to the nature and detail of the evidence to be adduced.

[32] The investigation by the Interim Receiver has identified large sums of money the origins of which were never verified. The first defendant asserted that this money comprised legitimate earnings from gainful employment together with the profit made on car sales over many years. Apart from the information from the Inland Revenue relating to the first defendant's employment with Bituseal there was no documentation to verify the defendant's assertion about the origins of the funds. The thrust of the defence of this application was that the first defendant's assertions as to the source of this wealth should be preferred. It was submitted that his accounts to different agencies and his evidence were consistent and detailed and should

be accepted. Thus his credibility was a major issue in the case. The history relating to benefits and tax which he admitted demonstrate that he is not averse to cheating, lying and deception and his evidence before the court, rather than undermining that history, only served to reinforce it and to do so significantly. It is clear that large amounts of cash were used to open bank accounts and enlarge them, and subsequently kick-start the acquisition of property. Some of the property was rented and then sold at profit and the profit used to purchase more property and other assets. I found his assertions that the source of these funds was all from savings from gainful employment and car sales to be without credibility. I do not doubt that he was employed by Bituseal for a number of years both as labourer and foreman. But I cannot accept that during those years, given the sums of money he alleged he was earning or the sums noted by the Inland Revenue, that he was able to save the sums he alleged. He would have had his own living expenses and at the same time expenses arising from his relationship with the lady who bore him two children. I would be satisfied that from time to time over the years he bought and sold cars. But I do not accept that it was anywhere near the nature or extent he alleged or such as would generate the sums of money involved. He had a bank account from 1991 into which he lodged smaller sums of money at a time when he was clearly not working. Why not lodge the rest, if it existed? Why the secrecy over the money his sister said he left with her, if it was legitimately acquired? He may well have been involved more recently in digger driving or rental of diggers or of land. But there is no documentation relating to this and I do not accept that, if it took place, that it generated anything other than a mere fraction of the sums identified by the Interim Receiver. Simply put his assertions relating to the source of all this money are not credible. In his evidence he demonstrated all the attributes associated with cunning and resourceful dishonesty. I reject fully his assertions that the funds identified by the Interim Receiver, much of which I have referred to above, were either savings from gainful employment or the sale of motor vehicles, or more recently, digger driving.

[33] At 10.33 on 11 February 2000 officers of the PSNI attached to the North Region Drugs Squad carried out a search of property A, which was then unoccupied. In a cupboard in the kitchen a Bank of Ireland Bank money bag containing 19.86 grams of a white powder was recovered. Forensic examination revealed this powder was aspirin. In a drawer beside the cooker were three Aspirin tablet containers containing a total of 66 white tablets. Sixty one tablets would have been required to produce the quantity of white powder in the Bank of Ireland bag. In a corner cupboard was found a set of Mettler Electronic Scales in a blue protective case. At the Forensic Science Laboratory washings were taken from the surface of the scales and the inside surfaces of the case. Cocaine (a Class A drug ) and MDMA ( Ecstasy, an amphetamine ) were detected on analysis of the washings. These scales are highly sophisticated and accurate and are expensive to purchase. Cocaine is sold in gram and half gram amounts and such scales are used to weigh

powders in small and precise amounts. In a wheelie bin outside the back door was found a small cardboard box containing Ashtons and Parson infants' teething powders and numerous wrappings in the same name. A black handled knife was found in a bedroom. Traces of brown material on the edges of the blade were identified on forensic examination as cannabis resin. A hand-rolled cigarette was found in an ashtray. An empty Nescafe coffee jar was found in the kitchen and a plastic bag containing coffee in a different area of the kitchen. Coffee jars are air tight containers which are used to keep drugs like cannabis and ecstasy fresh. Aspirin and teething powders can be used as a bulking agent for amphetamines, cocaine and heroin. Teething powder contains an analgesic and can be used to test cocaine. A VG plastic bag containing a substantial amount of cash was found behind the kickboard beneath the kitchen sink. This money was counted and bagged and then removed to a bank for safekeeping. It was again counted and resealed. The amount was £26,810 Stg and two ten punt notes. It was later sent to Mass Spec Analytical Ltd in Bristol for examination for the presence of drugs using mass spectrometry analysis and a report was prepared by Dr. R. Sleeman. Traces of drugs to a recognised level are found on bank notes in general circulation. Examination of these notes revealed traces of cocaine at levels found typically on cash in general circulation, which is generally very prevalent. MDMA was found in a very high proportion of the notes at a level higher than is typical on Sterling notes. THC was identified on a higher proportion of notes than typical and the level of contamination was to an unusual extent when compared to levels found on similar notes chosen at random from general circulation. The traces were higher than those on a sample of notes taken from a Bank in Limavady and which were examined at the same time for comparison purposes. Traces will deplete over time and a higher frequency of contamination suggests more recent contact in terms of the number of handling steps and not necessarily time. It is not possible to identify how a trace may have arisen or how long it might have been present, but cocaine and MDMA are stable and can last a long time. Cross-contamination can occur from note to note and from finger to finger and I bear in mind that these notes were counted on a number of occasions.

[34] The first defendant was interviewed by police on 14 February 2000. He acknowledged he told the custody sergeant that he was unemployed but added 'I'm not employed as such I deal in cars and if I see something cheap I'll buy it and turn a profit on it'. He said he had 'packed in' Whitemountain Quarries about three years before and that he had been drifting in and out of cars. He said he was not self-employed but was living off profits from the past and if he made some money it was a bonus. He was shown the items found in Property A. He said the white powder in the bag was headache tablets crushed up because he could not take the tablets whole. He identified the knife as one he used when fishing some time previously. He denied cutting cannabis resin with it. He said he bought the scales about a month before at a car boot sale in Eglinton and that he used them to weigh gold, gold chains

and jewellery. The empty coffee jar was one he bought brass fittings in. He found the teething powder wrappings blowing about in the garden and put them in the bin. He said £15,000 of the money belonged to his brother and the remainder was his and that he had it over a period of years and it was obtained through work in cars. He told them about cars he had sold recently. He did not put it in the bank as he regarded the money in his bank account as money for his two children (by a previous relationship). He had one bank account only – a market yield account. The money found in the house he had saved over a period of about 5 years or more. He said he had compensation claims and was surprised there was only £11,000 of his money there when there should have been two or three times that amount. He said he lost interest in the car trade after he separated from his former partner. He estimated he sold 40 or 50 cars over a 5 year period. He said he was not claiming benefits at that time. He said his mortgage payments were £325 and the deposit for the mortgage he paid out of savings.

[35] The first defendant's brother who lived in Portrush was also interviewed about the money. Part of his interview was admitted into evidence on behalf of the defendants. His brother told the police he traded in cars from 1995 to 1998 and that he had been in partnership with the first defendant who had done all the paperwork. Cars were bought privately and sold at auctions where his brother was paid by cheque and his brother kept his 50% for him. He accepted that he had a bank account.

[36] A file was submitted to the Director of Public Prosecutions about the findings made in property A in February 2000, but no charges were directed against the first defendant.

[37] On 18 February 2004 ARA investigators searched property A. Extensive files relating to the first defendant's property dealings were seized, but none relating to trading in cars. On this occasion two Chubb security locks and chains were discovered on the interior side of the main bedroom door, to secure it from the inside.

[38] In his evidence the first defendant said he did not deal in drugs. He maintained the same explanations in respect of the items found as he had given the police. The money found was eventually returned to him by the police but he never gave his brother the amount alleged to belong to him. The first defendant was not a credible witness. The standard of proof in applications under the Proceeds of Crime Act 2003 is on the balance of probabilities. However where the allegations are serious, as they are here, so the evidence must be correspondingly cogent. The items found in property A bear all the hallmarks of trade in illegal drugs. The combination of the evidence relating to those items found in property A occupied by the first defendant and the large sum of cash in varied denominations, some of which had higher residues of MDMA than normal, satisfies me, to the appropriate

standard, that the first defendant was dealing in prohibited drugs. His explanations relating to the items found simply confirmed that finding as did, to a lesser extent, his acceptance that he was sometimes in the company of a couple of men whom he knew to have convictions for drugs offences. The coincidence of the finding of items used in the illegal drug trade and the apparent increase in his wealth was significant. It is probable, to the standard necessary for such serious allegations, that the sale of drugs is the source of the cash kept by the first defendant in his kitchen as well as the money lodged in the bank accounts and the money used to purchase the various items for which no source could be identified by the Interim Receiver. I am satisfied that the property identified by the Interim Receiver has been obtained by unlawful conduct, namely offences under the Misuse of Drugs Act 1971, benefit fraud, mortgage fraud, obtaining property by deception and tax and VAT evasion. In the course of the proceedings reference was made to a person named Hemphill and the first defendant's former partner and to statements allegedly made by them. They did not give evidence and any statements by them adverse to the defendants have not been taken into account in reaching these conclusions. I have borne in mind the substance of the affidavits which were sworn by persons who were not called to give evidence on behalf of the defence.

[39] No arguments were addressed to the court about the nature of the alleged unlawful conduct nor were the Interim Receiver's assessments of property obtained through unlawful conduct and associated property challenged in any way. I am satisfied those assessments based on cash payments, lodgements in bank accounts and the obtaining of loans and what flowed from them in terms of property and asset acquisitions are correct. It was submitted that the Interim Receiver and/or the Assets Recovery Agency should have investigated further the claims made by the first defendant that the source of the money was his trade in motor vehicles. The Interim Receiver and the Assets Recovery Agency carried out a full and thorough investigation of the defendants' assets. The suggestion that either or both of them should have gone further to investigate the first defendant's claims is not justified. The first defendant claimed that he was prevented from calling various witnesses as a result of adverse publicity following the appointment of the Interim Receiver. His solicitor did make efforts to secure the attendance at court of a number of persons whom the first defendant claimed he was involved with in the buying and selling of cars. Some said they would be out of the country at the time of the hearing. Others claimed not to know the first defendant only later to acknowledge that they did. There may be many reasons why the intended witnesses did not attend court not least the fact, as this court has found, that the first defendant was involved in supplying drugs. In the event some witnesses were called and affidavits served and I find this complaint without foundation.

[40] On behalf of the second defendant it was submitted that a recovery order in respect of property A would breach her Article 8 rights under the European Convention on Human Rights. Article 8 provides:

“1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

[41] Section 266(3) of the Proceeds of Crime Act 2003 provides that a court may not make in a recovery order any provision which is incompatible with any of the Convention Rights within the meaning of the Human Rights Act 1998.

[42] Mr Kennedy QC submitted that the second defendant’s right to her home, protected by Article 8 would be breached should a recovery order be made in respect of her home. Article 8 grants a right to respect for a citizen’s home. It does not grant or guarantee a right to a home. However where a home has been established then the occupants are entitled to expect that their right to that home is respected. When the defendants were married and the second defendant came to live at property A they established a home there. It was submitted that on marriage and cohabitation the second defendant has established an equitable interest in the matrimonial home. That argument would usually be accepted. Mr Kennedy QC argued that her interest in the home would constitute 50% of the dwelling and that her interest would protect the dwelling as a whole and therefore recovery of it would not be possible. That the second defendant’s interest in property A amounted to 50% must be questionable and no detailed basis for that submission was advanced. In any event whatever the proportion of the interest she may have, more fundamental questions relating to the relevance of Article 8 arise. Property A was purchased by the first defendant over two years before the defendants married. Where a dwelling has been acquired by one party through unlawful conduct, can the other party, whether wittingly or otherwise, acquire rights in that dwelling which has become a home, whether under Article 8 or otherwise? Is there a right in a home which has been acquired through unlawful conduct that requires to be respected? In the absence of detailed submissions in respect of that issue I make no ruling on it. Suffice to state that I shall assume that the second defendant has a right under Article 8 that



requires to be respected. The right under Article 8 arises for consideration if and when a court comes to consider the making of a recovery order in respect of the home. Rights under Article 8 are not unqualified. It was not disputed that interference with the right to respect for the home can be justified where, *inter alia*, it is necessary for the prevention of crime or the protection of the health of others. Nor was it argued that the provisions of the Proceeds of Crime Act 2003 were disproportionate to the need to prevent unlawful or criminal conduct. Nonetheless I have considered that issue and am satisfied that they are proportionate and if there will be an interference with the second defendant's right to respect for her home that interference is justified by the need to control the misuse of drugs and other unlawful activity, in a democratic society.

[43] I am satisfied that the property referred to in the originating summons at paragraphs 1.1 to 1.14 and set out above, is property obtained through unlawful conduct and is recoverable from the defendants.

[44] Associated property is defined in section 245 of the Proceeds of Crime Act 2003.

“245 ‘Associated property’

(1) ‘Associated property’ means property of any of the following descriptions (including property held by the respondent) which is not itself the recoverable property –

- (a) any interest in the recoverable property,
  - (b) any other interest in the property in which the recoverable property subsists,
  - (c) if the recoverable property is a tenancy in common, the tenancy of the other tenant,
  - (d) if (in Scotland) the recoverable property is owned in common, the interest of the other owner,
  - (e) if the recoverable property is part of a larger property, but not a separate part, the remainder of that property.
- (2) References to property being associated with recoverable property are to be read accordingly.
- (3) No property is to be treated as associated with recoverable property consisting of rights under a

pension scheme (within the meaning of sections 273 to 275).”

There are other provisions relating to tracing and mixing property but no issues arose relating to them.

[45] I am satisfied that the property set out at paragraphs (i) to (vi) of the originating summons is associated property within the meaning of section 245. No argument to the contrary was addressed to the Court.

[46] It was submitted by Mr Kennedy QC that it would be unjust and inequitable to make an order that property A is recoverable property. Mr Kennedy QC referred the court to Section 266 (3)(a) of the Proceeds of Crime Act 2003. I set out the relevant portions of Section 266 which provides: -

“266 Recovery orders

(1) If in proceedings under this Chapter the court is satisfied that any property is recoverable, the court must make a recovery order.

(2) The recovery order must vest the recoverable property in the trustee for civil recovery.

(3) But the court may not make in a recovery order—

(a) any provision in respect of any recoverable property if each of the conditions in subsection (4) or (as the case may be) (5) is met and it would not be just and equitable to do so, or

(b) any provision which is incompatible with any of the Convention rights (within the meaning of the Human Rights Act 1998 (c 42)).

(4) In relation to a court in England and Wales or Northern Ireland, the conditions referred to in subsection (3)(a) are that—

(a) the respondent obtained the recoverable property in good faith,

(b) he took steps after obtaining the property which he would not have taken if he had not obtained it or he took steps before obtaining

the property which he would not have taken if he had not believed he was going to obtain it,

(c) when he took the steps, he had no notice that the property was recoverable,

(d) if a recovery order were made in respect of the property, it would, by reason of the steps, be detrimental to him.

(6) In deciding whether it would be just and equitable to make the provision in the recovery order where the conditions in subsection (4) or (as the case may be) (5) are met, the court must have regard to—

(a) the degree of detriment that would be suffered by the respondent if the provision were made,

(b) the enforcement authority's interest in receiving the realised proceeds of the recoverable property.

(7) A recovery order may sever any property.

(8) A recovery order may impose conditions as to the manner in which the trustee for civil recovery may deal with any property vested by the order for the purpose of realising it."

[47] Subsection 5 applies to Scotland only. Thus a court may not make a recovery order where each of the conditions set out in subsection 4 is met and it would not be just and equitable to make such an order. In deciding whether it would be just and equitable to make the provision the court must have regard to the degree of detriment that would be suffered by the respondent to the order and the interest of the Assets Recovery Agency in receiving the proceeds. For Section 266(3)(a) to apply the respondent to the contemplated order must have obtained the recoverable property in good faith. The bungalow at property A was purchased by the first defendant and obtained by him and not by the second defendant. Therefore unless her alleged equitable interest qualifies under sub-paragraph (a), which I doubt, she has not obtained the recoverable property A and condition (a) has not been met. If it did the remaining conditions in subsection (4) require to be met and there is no evidence that the second defendant took any steps of the type contemplated in sub-paragraphs (b), (c) or (d). Therefore my conclusion is

that there is no basis for concluding that it would not be just or equitable to make a recovery order in respect of property A.

[48] Accordingly the following orders are made –

- (1) An Order pursuant to Section 267(1) of the Proceeds of Crime Act 2002 appointing Alan McQuillan, Assistant Director of the Assets Recovery Agency, PO Box 592 Belfast, BT4 3YR, as trustee for civil recovery
- (2) A Recovery Order pursuant to section 266(1) of the Proceeds of Crime Act 2002 in respect of all the property identified in paragraph 2 above and delineated from 1.1 to 1.14.
- (3) An Order pursuant to Section 266(2) of the Proceeds of Crime Act 2002 vesting the recoverable property identified in paragraph 2 and delineated from 1.1 to 1.14 in the appointed trustee for civil recovery.
- (4) An order pursuant to Section 272 of the Proceeds of Crime Act 2002 that the associated property identified in paragraph 2 and delineated 2.1 to 2.4 be vested in the appointed trustee for civil recovery with the requirement that, as soon as reasonably practicable, the trustee satisfies the loans and charges in respect of:
  - (i) The interest in property A held by Abbey National PLC by way of Mortgage Account Number (3) in the name of William Wilson by payment of the amount outstanding to Abbey National PLC;
  - (ii) First Trust Bank Loan Account Number (4) in the name of William Wilson in respect of property B by payment of the amount outstanding to First Trust Bank;
  - (iii) The First Trust Bank Buy to Let Loan Account Number (5) in the name of William and Christine Wilson in respect of property C by payment of the amount outstanding to The First Trust Bank; and

- (iv) The First Trust Bank Buy to Let Loan Account Number (6), in the name of William and Christine Wilson in respect of property D by payment of the amount outstanding to First Trust Bank.