

Confiscation: Third Party Rights

A Brief Guide to an Uninspiring
but Important Subject

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The First Stage of Confiscation



- The Court assesses the Defendant's benefit (S 8);
- The Court assumes that the recoverable amount is equal to the benefit (S 7(1)) unless:
- The Defendant shows that the "available" amount is less than the benefit (S 7(2));
- Having decided on the recoverable amount, the court shall "make an order (a confiscation order) requiring him to pay that amount" (S 6(5)(b));
- A term in default is set;
- NB At this stage the Court order does not determine how the recoverable amount is to be raised.

A Second Stage of Confiscation



- Enforcement arises if the Defendant fails to pay and the Crown applies for the appointment of an enforcement receiver (S 50(1));
- The Court appoints the receiver “in respect of realisable property” (S 50(2));
- The receiver’s powers can include taking possession, managing, realising the property (S 51(2));
- In addition, the court can order anyone holding an interest in such property to pay the receiver the value of the Defendant’s interest in it (S 51(6));

A Second Stage of Confiscation



- The Court must not give the receiver the power to manage or realise the property or to require a person holding an interest to make a payment “unless it gives persons holding interests in the property a reasonable opportunity to make representations to it” (S 51(8));
- The powers of a receiver “must be exercised with a view to allowing a person other than the Defendant ...to retain or recover the value of any interest held by him;
- NB It is only at this stage that a third party claiming an interest in property has a right to be heard.

Practical Considerations



- Where third party is member of family/friend (e.g. spouse with jointly owned matrimonial home) they can appear as a witness in stage 1 (fixing available amount) in hope of getting the outcome they want at that stage;
- Appearing as a witness at stage 1 would not appear to prejudice the right to be heard under S 51(8): Norris [2001] 1 WLR 1388
- Legal aid may be available to a third party but remember the statutory charge;