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([2004] UKHL 50)
on appeal from: [2003] EWCA Crim 3082

APPELLATE COMMITTEE

Regina *v.* Montila and others (Appellants)
(On Appeal from the Court of Appeal (Criminal Division))

REPORT

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from the Appellate Committee

25 NOVEMBER 2004

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ORDERED TO REPORT

The Committee (Lord Bingham of Cornhill, Lord Steyn, Lord Hope of Craighead, Baroness Hale of Richmond and Lord Carswell) have met and considered the cause *Regina v. Montila and others (Appellants) (On Appeal from the Court of Appeal (Criminal Division))*. We have heard counsel on behalf of the appellants and respondents.

1. This is the considered opinion of the Committee.

2. This appeal concerns the meaning of words in legislation which was introduced to combat that aspect of criminal conduct which is popularly known as money laundering.

3. In its typical form money laundering occurs when criminals who profit from their criminal enterprises seek to bring their profits within the legitimate financial sector with a view to disguising their true origin. Their aim is to avoid prosecution for the offences that they committed and confiscation of the proceeds of their offences. Various measures have been taken both internationally and in domestic law aimed at detecting and deterring this activity. They include much closer regulation of the financial sector and the introduction of measures requiring known or suspected money laundering to be reported to the authorities. They also include the enactment of a series of offences to bring the activities of third parties within the reach of the criminal law.

The issue

4. The appellants, who are nine in number, are awaiting trial in the Crown Court at Canterbury. They were arraigned on 18 December 2002 on three indictments. Each of the three indictments has been laid against three of the appellants. Each of them contains counts laid in pairs against those named in the indictment. Each pair comprises one count of converting the proceeds of drug trafficking, contrary to section 49(2)(b) of the Drug Trafficking Act 1994, and one count of converting the proceeds of criminal conduct, contrary to section 93C(2) of the Criminal Justice Act 1988. The particulars of dates, places and sums of money are identical within each pair of counts. It is alleged that between 17 March 2000 and 20 September 2001 in 34 separate transactions the appellants used the services of one or another of two bureaux de change in London to convert a total of over £3m in sterling banknotes into Dutch guilders.

5. A preparatory hearing took place before Judge van der Bijl at Canterbury under section 29 of the Criminal Procedure and Investigations Act 1996. It was held to resolve a point of law which had been raised about the elements within each of the twin offences that the prosecution must prove to establish guilt. The question is whether it is necessary for the Crown to prove that the property being converted was in fact the proceeds, in the case of the 1994 Act, of drug trafficking and, in the case of the 1988 Act, of crime. The argument for the Crown was that, while it had to prove that the defendants knew or had reasonable grounds to suspect that the property being converted was the proceeds of drug trafficking or of criminal conduct, it did not have to prove that the property was in fact those proceeds.

6. On 19 December 2002 Judge van der Bijl held that the clear and unambiguous implication of the words used by the relevant subsections was that the foundation stone of the offences which

they created was that the alleged offenders were dealing with the proceeds of drug trafficking or of criminal conduct. So it was for the Crown to prove that the property being converted was in fact the proceeds of that activity. The prosecutor appealed to the Court of Appeal by way of an interlocutory appeal under section 35(1) of the 1996 Act. On 3 November 2003 the Court of Appeal (Scott Baker LJ, Jackson and Hunt JJ) [2003] EWCA Crim 3082, [2004] 1 WLR 624, allowed the appeal by the Crown. It held that it was not necessary, to prove an offence under subsection (2) of either section 49 of the 1994 Act or section 93C of the 1988 Act, that the property was in the case of the former the proceeds of drug trafficking or in the case of the latter the proceeds of crime: [2004] 1 WLR 624, 633, para 35.

7. The Court of Appeal certified under section 33(2) of the Criminal Appeal Act 1968 that a point of law of general public importance was involved in its decision, namely:

> "In a prosecution under section 93C(2) of the Criminal Justice Act 1988 or under section 49(2) of the Drug Trafficking Act 1994 is it necessary for the Crown to prove that the property was, in the case of the 1988 Act, the proceeds of crime and, in the case of the 1994 Act, the proceeds of drug trafficking?"

The statutory background

8. The offences with which the appellants have been charged found their way into domestic law in response to international initiatives. This forms an important part of the background. A brief review of the history will help to put the offences into their context. An understanding of the context in which the draftsman was working when describing the offences sets the scene for the words that were used to describe them.

9. On 19 December 1988 the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (Cm 804) was adopted in Vienna. It was noted in the preamble that the parties to the Convention were deeply concerned by the magnitude of a rising trend in the illicit production of and demand for and traffic in narcotic drugs and psychotropic substances, and that they were aware that illicit traffic generates large financial profits and wealth enabling transnational criminal organisations to penetrate, contaminate and corrupt the structure of government, legitimate commercial and financial business and society at all its levels. The purpose of the Convention was to promote co-operation among the parties so that they might address more effectively the various aspects of illicit traffic having an international dimension.

10. Article 3 of the Vienna Convention provided that each party was to adopt such measures as might be necessary to establish as criminal offences under its domestic law, when committed intentionally, a variety of activities in connection with narcotic drugs and psychotropic substances. The activities listed in paragraph (a) include their production, offering for sale, transportation and importation. The following activities were listed in paragraph (b):

> "(b) (i) The conversion or transfer of property, knowing that such property is derived from any offence or offences established in accordance with sub-paragraph (a) of this paragraph, or from an act of participation in such offence or offences, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in the commission of such an offence or offences to evade the legal consequences of his actions;
>
> (ii) The concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of property, knowing that such property is derived from an offence or offences established in accordance with subparagraph (a) of this paragraph or from an act of participation in such an offence or offences."

Paragraph (c) contains a further list of activities, subject to each party's constitutional principles and the basic concepts of its legal system, among which are the following:

> "(i) The acquisition, possession or use of property, knowing, at the time of receipt, that such property was derived from an offence or offences established in accordance with subparagraph (a) of this paragraph or from an act of participation in such offence or offences."

11. The Criminal Justice (International Co-operation) Act 1990 was enacted to enable the United Kingdom to join with other countries in implementing the Convention. Part II of the Act was headed "The Vienna Convention". The first group of sections in this Part, comprising sections 12 and 13, was headed "Substances useful for manufacture of controlled drugs". The second group, comprising sections 14 to 17, was headed "Proceeds of drug trafficking". Section 14 was accompanied by the side note "Concealing or transferring proceeds of drug trafficking."

12. The first three subsections of section 14 of the 1990 Act were in these terms:

> "14. (1) A person is guilty of an offence if he –
>
> (a) conceals or disguises any property which is, or in whole or in part directly or indirectly represents, his proceeds of drug trafficking; or
>
> (b) converts or transfers that property or removes it from the jurisdiction,
>
> for the purpose of avoiding prosecution for a drug trafficking offence or the making or enforcement in his case of a confiscation order.
>
> (2) A person is guilty of an offence if, knowing or having reasonable grounds to suspect that any property is, or in whole or in part directly or indirectly represents, another person's proceeds of drug trafficking, he –
>
> (a) conceals or disguises that property; or
>
> (b) converts or transfers that property or removes it from the jurisdiction,
>
> for the purpose of assisting any person to avoid prosecution for a drug trafficking offence or the making or enforcement of a confiscation order.
>
> (3) A person is guilty of an offence if, knowing or having reasonable grounds to suspect that any property is, or in whole or in part directly or indirectly represents, another person's proceeds of drug trafficking, he acquires that property for no, or for inadequate, consideration."

13. Section 14 of the 1990 Act was repealed in its application to England and Wales, but not to Scotland, by section 67(1) of and Schedule 3 to the Drug Trafficking Act 1994. The offences which had been created by section 14(1) and (2) of the 1990 were re-enacted in identical terms as sections 49(1) and (2) of the 1994 Act.

14. Section 14(3) of the 1990 Act was replaced for England and Wales by section 23A of the Drug Trafficking Act 1986, inserted by section 16 (1) of the Criminal Justice Act 1993. That section was in its turn replaced by section 51(1) of the 1994 Act. It provides:

> "(1) A person is guilty of an offence if, knowing that any property is, or in whole or in part directly or indirectly represents, another person's proceeds of drug trafficking, he acquires or uses that property or has possession of it."

An equivalent provision was inserted into the Criminal Justice (Scotland) Act 1987 by section 17(1) of the 1993 Act.

15. It is to be noted that the offence under section 51(1) of the 1994 Act is narrower than that under section 14(3) of the 1990 Act. It requires actual knowledge, as does the offence under what was section 14(1) of the 1990 Act and is now section 49(1) of the 1994 Act. Proof of reasonable grounds for suspicion is not enough. It is also to be noted that sections 49 and 51 of the 1994 Act appear together in Part III of the Act which is headed "Offences in connection with proceeds of drug trafficking". The side note to section 49 is "Concealing or transferring proceeds of drug

trafficking". The side note to section 51 is "Acquisition, possession or use of proceeds of drug trafficking".

16. The example of the Vienna Convention in the field of illicit traffic in narcotic drugs and psychotropic substances was soon followed by European measures designed to combat the laundering of the proceeds of crime generally. The Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime ("the Strasbourg Convention") was signed by the United Kingdom on 8 November 1990. It was noted in the preamble to this Convention that the member states of the Council of Europe considered that the fight against serious crime called for the use of modern and effective methods on an international scale, and that they believed that one of those methods consisted of depriving criminals of the proceeds from crime. Chapter II set out a series of measures to be taken at national level to establish a system of international co-operation for the attainment of this aim. The term "proceeds" was defined in article 1 as meaning any economic advantage from criminal offences.

17. Article 6, headed "Laundering Offences", includes the following:

> "1. Each party shall adopt such legislative and other measures as may be necessary to establish as offences under its domestic law, when committed intentionally;
>
> (a) the conversion or transfer of property, knowing that such property is proceeds, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in the commission of the predicate offence to evade the legal consequences of his actions;
>
> (b) the concealment or disguise of the true nature, source, location, disposition, movement, right with respect to, or ownership of, property, knowing that such property is proceeds;
>
> and, subject to its constitutional principles and the basic concepts of its legal system;
>
> (c) the acquisition, possession or use of property, knowing, at the time of receipt, that such property was proceeds;"

18. The Strasbourg Convention was followed by an EEC Council Directive of 10 June 1991 on prevention of the use of the financial system for the purpose of money laundering (91/308/EEC). The expression "money laundering" was defined for the purpose of the Directive as meaning the following conduct when committed intentionally:

> "the conversion or transfer of property, knowing that such property is derived from criminal activity or from an act of participation is such activity, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in the commission of such activity to evade the legal consequences of his action,
>
> the concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of property, knowing that such property is derived from criminal activity or from an act of participation in such activity,
>
> the acquisition, possession or use of property, knowing, at the time of receipt, that such property was derived from criminal activity or from an act of participation in such activity,
>
> participation in, association to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the actions mentioned in the foregoing paragraphs."

19. The opportunity was taken in the Criminal Justice Act 1993 to implement provisions of Council Directive 91/308/EEC. Among the provisions in Part III of that Act, under the heading "Proceeds of Criminal Conduct", is section 31. The side note to this section is "Concealing or transferring proceeds of criminal conduct." It inserted the following section in the Criminal Justice Act 1988:

> "93C (1) A person is guilty of an offence if he –
>
> (a) conceals or disguises any property which is, or in whole or in part directly or indirectly represents, his proceeds of criminal conducts; or
>
> (b) converts or transfers that property or removes it from the jurisdiction,
>
> for the purpose of avoiding prosecution for an offence to which this Part of this Act applies or the making or enforcement in his case of a confiscation order.
>
> (2) A person is guilty of an offence if, knowing or having reasonable grounds to suspect that any property is, or in whole or in part directly or indirectly represents, another person's proceeds of criminal conduct, he -
>
> (a) conceals or disguises that property; or
>
> (b) converts or transfers that property or removes it from the jurisdiction,
>
> for the purpose of assisting any person to avoid prosecution for an offence to which this Part of the Act applies or the making or enforcement in his case of a confiscation order."

20. These two subsections, which extend to Scotland subject to the modifications set out in section 93E of the 1988 Act as inserted by section 33 of the 1993 Act, appear to have been modelled on sections 14(1) and (2) of the 1990 Act. There is no equivalent in this legislation of the offence which was created by section 14(3) of the 1990 Act, which was repealed by section 79(14) of and Schedule 6 to the 1993 Act.

21. The offences which are currently to be found in the 1988 and 1994 Acts in relation to money laundering have been replaced by a new set of money laundering offences set out in Part 7 of the Proceeds of Crime Act 2002. The relevant sections of that Act were not in force at the time of the judge's decision, but the approach which has been taken to the actus reus of these offences is instructive. Section 327(1) of the 2002 Act provides that a person commits an offence if he conceals, disguises, converts or transfers criminal property or removes criminal property from England and Wales or from Scotland or from Northern Ireland.

22. The meaning of the expression "criminal property" in section 327(1) of the 2002 Act is to be found in section 340 of that Act, which provides:

> "(2) Criminal conduct is conduct which –
>
> (a) constitutes an offence in any part of the United Kingdom, or
>
> (b) would constitute an offence in any part of the United Kingdom if it occurred there.
>
> (3) Property is criminal property if –
>
> (a) it constitutes a person's benefit from criminal conduct or it represents such a benefit (in whole or part and whether directly or indirectly), and
>
> (b) the alleged offender knows or suspects that it constitutes or represents such a benefit."

The description of the offences created by section 327(1) requires the prosecutor to prove that the property is criminal property within the meaning of section 340(3).

The decision of the Court of Appeal

23. The Court of Appeal noted that the judge had given six reasons for saying that he was fortified in the conclusion that he had reached as to what was implied by the words used in the subsection, namely that it was necessary for the Crown to prove that the property was the proceeds of drug trafficking or of criminal activity: [2004] 1 WLR 624, 629, para 18. These were (i) the decision in *R v El-Kurd* [2001] Crim L R 234, in which the Crown accepted that it had to establish that the money had come from drug trafficking or other criminal conduct, (ii) the terms of the Proceeds of Crime Act 2002, (iii) the fact that almost invariably third party money laundering cases include directly or indirectly evidence as to the provenance of the money, (iv) the reference in the subsection to assisting a person to avoid a prosecution, (v) relative unfairness between a principal subject to subsection (1) and a third party subject to subsection (2), and (vi) analysis of international treaties and conventions leading to the passing of the two Acts.

24. Having examined each of these points, the court said that it was not persuaded that any of them required the implication into subsection (2) of words which would have the effect of extending the actus reus of the offence. Turning to the question of construction, the contrast between subsections (1) and (2) was noted. It was beyond argument that the Crown had to prove the source of the laundered money in subsection (1), as the property had to be the proceeds of the defendant's own drug trafficking or criminal activity. But subsection (2) was phrased in an entirely different way. There was no such requirement, and compelling reasons would be required to imply an additional element into the offence.

25. The court said that the Crown's construction was supported by fact that subsection (2) envisaged commission of the offence where the defendant's state of mind fell short of actual knowledge, as reasonable suspicion was enough. The Crown's construction also made practical sense, in view of the difficulty of proving the source of cash where a person was discovered dealing with it. And, on the judge's construction, the Crown would have to prove in every case a coincidence between the defendant's view of the origin and the origin itself. On this view, if the Crown had to prove the origin of the cash, counts under the 1994 Act and the 1988 Act would be mutually destructive in relation to the same cash.

26. Their Lordships prefer to start by examining the words of the subsection, and they propose to do so in the context of the legislation as a whole. There are then a number of other factors which the appellants say can properly be taken into account in reaching a conclusion about the meaning of those words.

The meaning of the words used

27. Subsection (2) states that a person is guilty of an offence "if knowing or having reasonable grounds to suspect that any property is … another person's proceeds of drug trafficking [s 49(2) of the 1994 Act] / of criminal conduct [s 93C(2) of the 1988 Act]" he does one or other of the things described to "that property" for the purpose which the subsection identifies. A person may have reasonable grounds to suspect that property is one thing (A) when in fact it is something different (B). But that is not so when the question is what a person knows. A person cannot know that something is A when in fact it is B. The proposition that a person knows that something is A is based on the premise that it is true that it is A. The fact that the property is A provides the starting point. Then there is the question whether the person knows that the property is A.

28. The opening words of the subsection thus provide a strong indication that it is directed to activities in relation to property which is in fact "another person's proceeds of drug trafficking" or "another person's proceeds of criminal conduct", as the case may be. A further indication is to be found in the absence of any defence if the property which the defendant is alleged to have known or had reasonable grounds to suspect was another person's proceeds turns out to be something different. Subsequent events may show that the property that he was dealing with had nothing

whatever to do with any criminal activity at all, but was the product of a windfall such as a win on the National Lottery. On the Crown's argument it is enough for it to be proved that he had the mens rea at the time when he was dealing with the property and that he was doing what he did for the purpose that the subsection identifies.

29. Further indications that when the subsection refers to "another person's proceeds …" it proceeds on the basis that the property in question is in fact proceeds of the kind described are to be found in the surrounding context. Subsection (1), in the case of both section 49 of the 1994 Act and section 93C of the 1988 Act, states that a person is guilty if he does the things described in relation to "his proceeds" of drug trafficking or of criminal conduct. The reader is left in no doubt that the Crown must prove that the property in question was of the kind the subsection describes, as the Crown for its part accepts without qualification. Then there is the offence created by section 14(3) of the 1990 Act. It was moved to another section in the 1994 Act, and it was not included in what became section 93C of the 1988 Act. But there is no reason to think that the words used in section 14(2) of the 1990 Act changed their meaning when they appeared in the same form in subsequent statutes.

30. It is in regard to section 14(3) that the weakness in the Crown's argument is revealed. There is no defence if the property turns out to not to have been another person's proceeds of drug trafficking or his criminal conduct. What this subsection says is that an offence is committed by a person who, having the state of mind that it describes, acquires the property for no, or for inadequate, consideration. This makes sense if the Crown has to prove that the origin of the property was of the kind described. But it makes no sense to say that the defendant was guilty of an offence of money laundering simply because he acquired the property for no or inadequate consideration, having reasonable grounds to suspect that this was its origin (his purpose being irrelevant in this case), if he is in a position to prove that it was not property of that kind at all.

Headings and Side notes

31. Then there are the headings to each group of sections and the side notes, or marginal notes, to each section. The legislation which is in issue in this case was considered and published with sides notes in the old form. In fact the side notes are side notes no longer. In 2001, due to a change in practice brought about by the Parliamentary Counsel Office, they were moved so that they now appear in bold type as headings to each section in the version of the statute which is published by The Stationery Office: see *Bennion, Statutory Interpretation*, 4th ed (2002), p636. They appear in that form in the Bills that are presented to Parliament, and they also appear in that form in amendments which propose the insertion of new clauses into the Bill. But it remains true that, as Lord Reid said in *Chandler v Director of Public Prosecutions* [1964] AC 763, 789, these components of a Bill, even in their current form, are not debated during the progress of a Bill through Parliament. They are part of the Act when it has been enacted and they are descriptive of its contents. But they are unamendable: *Bennion*, pp 608, 635-636.

32. Mr Perry for the Crown submitted that it was well settled that a side note in an Act of Parliament does not constitute a legitimate aid to the construction of the section to which it relates. Mr Grenfell QC for the appellants said that he was willing to concede the point. But this is not a concession that can be accepted. It was based on a dictum of Phillimore LJ in *In re Woking Urban District Council (Basingstoke Canal) Act 1911* [1914] 1 Ch 300, 322, where he said:

> "I am aware of the general rule of law as to marginal notes, at any rate in public general Acts of Parliament; but that rule is founded, as will be seen on reference to the cases, upon the principle that those notes are inserted not by Parliament nor under the authority of Parliament, but by irresponsible persons."

In *R v Hare* [1934] 1 KB 354, 355-356 Avory J said:

> "Headings of sections and marginal notes form no part of a statute. They are not voted on or passed by Parliament, but are inserted after the Bill has become law. Headnotes cannot control the plain meaning of the words of the

> enactment, though they may, in some case, be looked at in the light of preambles if there is any ambiguity in the meaning of the sections on which they can throw light."

33. These observations were not wholly inaccurate at the time they were made, and they are out of keeping with the modern approach to the interpretation of statutes and statutory instruments. It is not true that headings and side notes are inserted by "irresponsible persons", in the sense indicated by Phillimore LJ. They are drafted by Parliamentary Counsel, who are answerable through the Cabinet Office to the Prime Minister. The clerks, who are subject to the authority of Parliament, are empowered to make what are known as printing corrections. These are corrections of a minor nature which do not alter the general meaning of the Bill. But they may very occasionally, on the advice of the Bill's drafter, alter headings which because of amendments or for some other reason have become inaccurate: *Bennion,* p 609. Nor is it true that headings are inserted only after the Bill has become law. As has already been said, they are contained in the Bill when it is presented to Parliament. Each clause has a heading (previously a side note) which is there throughout the passage of the Bill through both Houses. When the Bill is passed, the entire Act is entered in the Parliamentary Roll with all its components, including those that are unamendable. As *Bennion* states at p 638, the format or layout is part of an Act.

34. The question then is whether headings and side notes, although unamendable, can be considered in construing a provision in an Act of Parliament. Account must, of course, be taken of the fact that these components were included in the Bill not for debate but for ease of reference. This indicates that less weight can be attached to them than to the parts of the Act that are open for consideration and debate in Parliament. But it is another matter to be required by a rule of law to disregard them altogether. One cannot ignore the fact that the headings and side notes are included on the face of the Bill throughout its passage through the Legislature. They are there for guidance. They provide the context for an examination of those parts of the Bill that are open for debate. Subject, of course, to the fact that they are unamendable, they ought to be open to consideration as part of the enactment when it reaches the statute book.

35. There is a further point that can be made. In *Pickstone v Freemans Plc* [1989] AC 66, 127 Lord Oliver of Aylmerton said that the explanatory note attached to a statutory instrument, although it was not of course part of the instrument, could be used to identify the mischief which it was attempting to remedy: see also *Westminster City Council v Haywood (No 2)* [2000] 2 All ER 634, 645, para 19 per Lightman J. In *Coventry and Solihull Waste Disposal Co Ltd v Russell* [1999] 1 WLR 2093, 2103, it was said that an explanatory note may be referred to as an aid to construction where the statutory instrument to which it is attached is ambiguous. In *R (Westminster City Council) v National Asylum Support Service* [2002] 1 WLR 2956, 2959B-C, Lord Steyn said that, in so far as the Explanatory Notes that since 1999 have accompanied a Bill on its introduction and are updated during the Parliamentary process cast light on the objective setting or contextual scene of the statute and the mischief at which it is aimed, such materials are always admissible aids to construction. It has become common practice for their Lordships to ask to be shown the Explanatory Notes when issues are raised about the meaning of words used in an enactment.

36. The headings and side notes are as much part of the contextual scene as these materials, and there is no logical reason why they should be treated differently. That the law has moved in this direction should occasion no surprise. As Lord Steyn said in that case, at p 2958, the starting point is that language in all legal texts conveys meaning according to the circumstances in which it was used.

37. In the present case there are two features about the headings and the side notes that provide guidance. The first is that the subject matter of these sections is "proceeds" – in the one case of drug trafficking, in the other of criminal conduct. The second is that no distinction is made as to subject matter between the various offence-creating subsections within each section. All three, in the case of the 1990 Act, and both, in the case of the 1994 and 1988 Acts, are grouped under the same heading and have the same side note. There is no indication here that the subject matter of the activities that are being criminalised need not, in the case of subsection (2), actually be proceeds of

drug trafficking or of criminal conduct. Such indications as can be gathered from the headings and side notes are to the contrary. They indicate that the mischief that Parliament was seeking to address was the concealment, conversion or transfer of actual proceeds for the purpose of avoiding prosecution for the conduct that gave rise to them or the making or enforcement of a confiscation order calculated with reference to the value of those proceeds. In other words, that the fact that the property in question had its origin in drug trafficking or criminal conduct is an essential part of the actus reus of the offence.

Other indications

38. There are a number of other indications. Common to all three international instruments was the proposal that those third parties whose actions were to be criminalised were people who knew that the property which they were dealing with was the proceeds of drug trafficking or criminal conduct. Reasonable suspicion is not mentioned in any of them. It was of course open to the Legislature to find its own solutions to the problem in the domestic system. There is no doubt that the effectiveness of the measures that were being introduced was assisted by enabling prosecutions to be brought where there was no evidence of actual knowledge but reasonable grounds to suspect could be established. But to broaden the scope of the third party offences still further so as to bring cases within their reach where the Crown could not prove that the property that was being dealt with was the proceeds of drug trafficking or criminal conduct would have been a significant departure from what had been asked for by the international instruments. One would have expected some indication of this to be given to Parliament, and there was none.

39. Two other points were mentioned in argument, but they carry little weight. First, there is the concession in *R v El-Kurd* [2001] Crim L R 234, in which the Crown accepted that it had to establish that the money had come from drug trafficking or other criminal conduct. That was a case where the defendants had been charged with four conspiracies, each of which was indicted as a conspiracy to commit offences under the 1994 Act on the one hand and under the 1988 Act on the other. As Latham LJ pointed out in para 26, the wording of each alternative depended upon whether the property was the proceeds of drug trafficking or criminal conduct. Secondly, there is the way the 2002 Act has dealt with the problem of money laundering.

40. All that need be said on the first point is that the concession, if that was what it was, could not have been held against the Crown if the interpretation for which it is now contending was the right one. There is some authority for the view that official statements by a government department which is responsible for administering an Act may be taken into account as persuasive authority as to what the Act means: *Bennion*, p 597. But the concession that was made in that case fell well short of being an official statement of that kind.

41. As for the second, Parliament is of course free to restructure the offences that it creates in any way it likes. The language that it has chosen to use in the 2002 Act is different from that in the enactments which are in issue in this case. There is no room for any ambiguity. The property that is being dealt with in each case must be shown to have been criminal property. But it would be surprising if the intention was to reduce the scope of these offences. The problem of money laundering has not gone away. The fact that these offences have been designed on the assumption that proof that the property being dealt with was in fact criminal property fits into the pattern which was set by the international instruments and which the wording of the subsections themselves, when properly construed in their context, indicates.

The effect in practice

42. Mr Perry submitted that, if the Crown has to prove the origin of the property, counts alleging that the money was the proceeds of drug trafficking on the one hand and that it was the proceeds of criminal conduct on the other would be mutually destructive if applied to the same property. As Scott Baker LJ put in the Court of Appeal, the Crown would have to prove in every case a coincidence between the defendant's view of origin and the origin itself [2004] 1 WLR 624, 632, para 34. So the jury would have to be told that they could not convict under section 49(2) of the 1994 Act if the defendant thought that the money which was said to be the proceeds of drug

trafficking might be the proceeds of criminal conduct, and that they could not convict under section 93C(2) of the 1988 Act if he thought that the money which was said to be the proceeds of criminal conduct might be the proceeds of drug trafficking.

43. The problem which Mr Perry has identified is plain enough in theory. But it is not a sufficient reason for thinking, despite all the indications to the contrary, that Parliament intended that it should be solved by relieving the Crown of the burden of proving the coincidence. Proof that the origin of the property was of the kind which the subsection describes is, after all, a necessary element of the offence in subsection (1). The coincidence does not need to be proved, because the allegation in a count under subsection (1) is that the defendant is dealing with his own property. But the origin must be proved, and the evidence which goes to prove knowledge or reasonable grounds to suspect for the purposes of subsection (2) will often be sufficient to justify the inference that the origin of the property was coincident with that state of mind.

44. There are other answers to the problem, as Mr Grenfell pointed out. Where (as in this case) the counts are in pairs, the facts proved may be sufficient for a conviction pursuant to subsections (3) and (4) of section 6 of the Criminal Law Act 1967 of attempting to commit whichever of the two offences coincided with what the defendant suspected the origin of the property to be; for Scotland, see the Criminal Procedure (Scotland) Act 1995, section 294 and Schedule 3, para 10(1). Mr Grenfell conceded that the effect of section 1(2) of the Criminal Attempts Act 1981 was that an accused who dealt with such property in these circumstances would be guilty of an attempt: *R v Shivpuri* [1987] AC 1. Or it might have been open to the Crown, if there was a problem about proving origin, to charge the defendants with a conspiracy to launder money which had been obtained illicitly whether by way of drug trafficking or other criminal activity, as Latham LJ said in *R v El-Kurd* [2001] Crim L R 234, para 47. The suggestion that the appellants' construction will put the Crown in an impossible position is not convincing. The problem appears to have been solved for the future by the approach which is taken in the 2002 Act to the definition of criminal property.

Conclusion

45. For these reasons their Lordships are satisfied that the judge's decision was right and ought not to have been reversed by the Court of Appeal. The appeal will be allowed and the certified question will be answered in the affirmative.