

insideinformation – fact sheet

Proceeds of Crime Act

Information courtesy of Mahria Khatana of POCA Consulting Manchester

The year 2002 changed the lives of many people in different ways. The Brazilian football team won the world cup, Harry Potter and the Chamber of Secrets made it a great year for JK Rowling and many Harry Potter fans. Some of the biggest celebrations were probably had by President Bush in that year since he decided to invade Afghanistan; brought about the investigation into Enron and, of course, with the assistance of the UN Security Council froze the assets of Osama Bin Laden, The Taliban and Al-Qaeda. The British government then of course thought “Aha” what a brilliant idea, we can make loads of dosh from this and freeze the assets of all those nasty elements in today’s society. Nothing wrong with that we all say (except the making loads of dosh for the government part of it of course), lets get on and freeze all the assets of Mr Bin Laden, Al-Qaeda and the Taliban. Take away all their goats and camels and start repossession proceedings against their cave. If he doesn’t sell his cave and hand over the dosh then we will make him serve a default sentence so he stays in the cave for a few more years and still take all his goats off him.

Well, that’s how it all started and the rest is history. So what can be done if MI5 the FBI and SOCA can’t get the Bin Laden’s of the world but instead come knocking on your door at 6am with a big metal implement. There isn’t an easy solution to this problem if that’s what you were looking for, but there are certainly things that can be done to make the medicine go down easier.

The most important factor is to get together the best possible defence team on your side, as quickly as possible, and prepare a carefully planned and thought out long term strategy. The longer you leave it the harder it gets and just remember its easier to prevent a fire than trying to put it out. The second point is to fight it and do it as aggressively as possible to the very end. Don’t just give up and take it. The prosecution often tend to rely on the fact that generally defendants are at an all time low and very weak mentally by the time the confiscation proceedings come about. Hence they tend to just give up and accept things rather than putting up a good fight. During POCA the onus is on the defendant to show where the money comes from and in essence prove his innocence. If he can’t do that then they can make assumptions that it’s from illegal earnings and that assumption can stick unless you prove otherwise. They can usually go back 6 years and assume every pound that came in or went out of your control was illegal unless you prove otherwise.

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They will start by coming up with a “benefit figure” and a “realisable assets figure”. The benefit figure is usually very high and often totally ludicrous having been reached by lots of double and triple accounting. This is the amount that is actually owed and the debt will stay with you until your dying day. Quite often defence teams just accept that thinking well the defendant is never going to have that sort of money in his life so it doesn't matter. But of course it matters; if you owe somebody £10 why accept that you owe them £20? The benefit is nothing to do with profit. Many a defendant has cried into his plate of mashed potatoes on a Sunday teatime saying “but I never made any money from it”. It doesn't matter if you made any profit or not it's more a case of how much money passed through your hands. The realisable assets figure is what they feel you actually have and they can take off you, examples being the value of property, cars, money in the bank etc. At the final hearing they will decide on the figures and give you some time to pay, anything up to a maximum of 12 months. 12 months is the maximum time they can allow and of course if you don't pay up then you have to serve the default sentence which in turn has implications on getting a cat D and ROTL. If you're really unlucky then they can throw a “hidden assets” figure into the equation and the problem you then have is how do you prove you haven't got something? But again they can't just make up a figure they have to have some logic to it and you should argue your points in your defence.

The important thing to realise is the fact that you can fight these proceedings and win as long as you get your act together, give it some serious thought and don't just give up on it. To some extent it may prove to be a damage limitation exercise but it's worth the fight because if you don't then chances are you will be wiped out completely. The single biggest reason for a bad result at the end of POCA proceedings is that the defendant left it too late and chose a poor team in his defence and the comment “I didn't think they could do that, we thought everything was going to be ok”.

Wake up and smell the coffee, life just isn't like that!

IMPORTANT NOTICE

Information is given on a strictly 'without-liability' basis, and should be considered for use as guidance only. If you propose taking further action based upon this information you are strongly advised to take further and more specific legal advice before doing so.

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