

“You are right. It is draconian.”

Wise words uttered to me by a client who was embroiled in the final stages of the POCA process. He had been convicted of possession with intent to supply and at the end of his trial the Judge considered confiscation.

As my client had committed a lifestyle offence the Financial Investigator (usually either an accountant or former Police Officer specifically trained to be an FI) was entitled to ask for information about and to look into all transactions, accounts, dealings etc going back 6 years from the date of the offence.

A section 18 POCA 2002 had been ordered. That compelled my client to disclose full details in accordance with a Court Order about all bank accounts, all possessions, all cash that he had in his possession or control or had given to others. Failure to comply with this request can lead to an adverse inference being drawn when the Court considers how much has to be paid to the State and how much time you will do if you don't pay up.

The FI then drafts a s16 POCA2002 Statement of Information which is in reality a huge fishing net. The FI's role appears to be to seek out and find as much money as possible that can be confiscated. This then causes the Defendant to respond by way of a s17 POCA2002 Statement explaining the who, what, where, why, when and how about the money and possessions. This statement is a sworn statement and therefore if it contains deliberately lies can of itself result in a conviction for Perverting the Course of Justice.

There are certain aspects of the process thereafter which are patently unfair. Let's imagine that you and your partner own a house together. Because you are a lovely man you have gifted 50% interest in that property to your partner. The FI and the Court are able to take the entire value of the property into account. Your partner is not a party to the proceedings. She can only intervene if there is a Restraining Order or if enforcement proceedings are to be taken through a Receiver. Receiver's are rarely appointed as they are expensive. What can your partner do?

After some time the Court will then decide how much you should have to pay to the State. The Court will consider the Benefit you have had and the Recoverable Assets. If the RA figure is lower than the Benefit figure then that is how much you will be ordered to pay ie the lower figure.

One client recently thanked his lucky stars that he had not married his partner of 30 years and she owned their home in her sole name. He had no legal interest in that property. The value of that property was removed from the calculation and the State got about £900 instead of £90000. The FI had assumed they were married because she had adopted the client's surname.

The Police and the Courts are very enthusiastic about POCA because the money recovered is used in part to fund the Police and the Courts. That's why the FI is often characterised as a “dog with a bone”.

If you don't pay up you get time added to your sentence and you still owe the money when you are released.

The most difficult thing for Defendants to get to grips with is the fact that the POCA proceedings are civil in nature (so the strict rules of evidence of a criminal trial do not apply) yet can be punished through custody and the Act places obligations upon the Defendant to be pro active and to provide information or suffer the consequences eg loss of home, car, cash and extra jail time.

POCA is draconian and either this year or next the National Crime Agency, when it comes into being, will take over the Serious Organised Crime Agency functions. POCA is a popular weapon in the armoury of those who pursue criminals because it is draconian and because it brings in money to the organisation. Recently SOCA on its website trumpeted a success in relation to a £35 million money laundering operation and the conviction of the two men accused of running it. Now the POCA process is to begin.

If you are likely to face a POCA process then you need to get advice as soon as possible.

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