

# OVERVIEW OF POCA APPLICATIONS

Proceeds of Crime Act 2002,  
Part 2

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## POCA 2002, PART 2

- **PURPOSE = TO DEPRIVE AN OFFENDER OF ANY FINANCIAL GAIN HE MAY HAVE RECEIVED FROM HIS CRIMES.**



## POCA 2002, PART 2



- POCA 2002 - COURTS MAIN VEHICLE FOR DOING THIS.
- OPERATIONAL FOR 5 YEARS - APPLIES TO OFFENCES COMMITTED ON OR AFTER 24<sup>TH</sup> MARCH 2003.
- PRE-MARCH 2003 – DTA 1994, CJA 1988

# TYPICAL PROCEDURE



- AT SENTENCE, PROSECUTION TELL COURT THERE WILL BE AN FIU INVESTIGATION (s.6).
- DEFENDANT PROVIDES AN AFFIDAVIT/STATEMENT SETTING HIS ASSETS AND MEANS (s.18).
- PROSECUTORS STATEMENT (s.16).
- DEFENCE RESPONSE (s.17).
- PROSECUTION RESPONSE TO DEFENCE RESPONSE (s.16(6)).
- COURT MAKES CONFISCATION ORDER (s.6(5)(c)) [within 2 years, unless exceptional circumstances exist – s.14].

# TWO DECISIONS:

- IN MOST SIMPLE TERMS – COURT HAS TO MAKE DECISIONS ON TWO FIGURES:

**DECISION 1** – VALUE OF DEFENDANT'S BENEFIT?  
(THE BENEFIT FIGURE)

**DECISION 2** – AMOUNT TO CONFISCATE?  
(THE REALISABLE AMOUNT)

**DECISION 1 – VALUE OF DEFENDANT’S BENEFIT?**  
**(THE BENEFIT FIGURE)**



# DECISION 1 – BENEFIT FIGURE?



- DEFINITION IS WIDE RANGING: an offender benefits from his crime(s) if he...

“obtains property as a result of, or in connection with, the conduct”  
(s.76(4)).

- TWO WAYS OF DECIDING WHAT THE BENEFIT IS:

(A) GENERAL CRIMINAL CONDUCT

[‘CRIMINAL LIFESTYLE’ i.e. not just limited to offence].

(B) PARTICULAR CRIMINAL CONDUCT

[i.e. offence specific].

# DECISION 1 – BENEFIT FIGURE?

## (A) GENERAL CRIMINAL CONDUCT

['CRIMINAL LIFESTYLE' i.e. not just limited to the offence]

- DOES THE DEFENDANT HAVE A CRIMINAL LIFESTYLE? – MANDATORY QUESTION FOR THE COURT (s.6(4)(a)).
- IF YES – FOUR ASSUMPTIONS APPLY (s.10(1)-(8)).
- IN SIMPLE TERMS – ANYTHING DEFENDANT HAS NOW, HAS HAD WITHIN LAST 6 YEARS, AND ANYTHING SPENT IN LAST 6 YEARS = BENEFIT.





# DECISION 1 – BENEFIT FIGURE?



- HOW DO YOU GET A 'CRIMINAL LIFESTYLE'?

ROUTE 1 – CONVICTED OF A "LIFESTYLE OFFENCE"  
(s.75(2)(a))

drugs, money laundering, terrorism, people/arms trafficking, fake money, intellectual property, pimping, and blackmail  
[exhaustive]

- NOTE OFFENCES MISSING – including theft, handling, fraud.

# DECISION 1 – BENEFIT FIGURE?



ROUTE 2 – CONDUCT FORMS PART OF A “COURSE OF CRIMINAL ACTIVITY” =

- (a) 3 OFFENCES IN SAME PROCEEDINGS or
  - (b) 1 OFFENCE BUT 2 PREVIOUS OFFENCES IN LAST 6 YEARS
- (s.75(2)(b) and (3)).

ROUTE 3 – OFFENCE COMMITTED OVER A PERIOD OF “MORE THAN 6 MONTHS” (s.75(2)(c)).

THEREFORE, ROUTE 2 AND 3 CATCHES ANY OFFENCE, BUT NOTE RESTRICTIONS:

- (a) OFFENDING MUST AMOUNT TO CONDUCT FROM WHICH DEFENDANT BENEFITED; AND
- (b) VALUE OF BENEFIT AT LEAST £5,000

# DECISION 1 – BENEFIT FIGURE?



- “CRIMINAL LIFESTYLE?” – YES = APPLY ASSUMPTIONS (CAN ALSO INCLUDE PARTICULAR CRIMINAL CONDUCT). TOTAL = BENEFIT FIGURE.
- “CRIMINAL LIFESTYLE?” – NO = HAS HE BENEFITED FROM HIS PARTICULAR CRIMINAL CONDUCT?

(B) PARTICULAR CRIMINAL CONDUCT  
[i.e. offence specific]

**DECISION 2 – AMOUNT TO CONFISCATE?**  
(THE REALISEABLE AMOUNT)



## DECISION 2 – REALISABLE AMOUNT?

- STARTING POINT = ORDER DEFENDANT TO PAY SUM **EQUAL** TO HIS BENEFIT FIGURE (s.7).
- SAVE, WHERE DEFENDANT DISCHARGES **HIS** BURDEN IN SHOWING HIS ASSETS TO BE **LESS** (s.9).



- STARTING POINT OFTEN OVERLOOKED. HIDDEN ASSETS?
- COURTS RELUCTANT TO RECOVER ANYTHING ABOVE THOSE ASSETS IDENTIFIED BY THE PROSECUTION.

# WHEN DEFENDING:

- a) "LIFESTYLE" OFFENCE - CAN YOU PLEAD TO A NON-LIFESTYLE OFFENCE? (BUT DO NOT FALL FOUL OF ROUTE 2 AND 3).
- b) TAKE CARE - OFFERING 3 SUBSTANTIVES IN PLACE OF A CONSPIRACY, MAY TRIGGER ROUTE 2 (AND ROUTE 3).
- c) TICs DO NOT COUNT TOWARDS THE 3 OFFENCES NEEDED TO TRIGGER ROUTE 2.
- d) TAKE CARE - VALUE OF TICs DO COUNT TOWARDS £5k HURDLE IN ROUTE 2 AND 3.
- e) AVOID ROUTE 2 AND 3 BY RESTRICTING NUMBER OF OFFENCES AND LENGTH OF OFFENDING, BY PLEADING TO SOMETHING AS A COURSE OF CONDUCT (useful when dealing with theft, deception and fraud offences).
- f) BASIS OF PLEA - CAN DATES BE LIMITED TO LESS THAN 6 MONTHS? BE PRECISE AS TO THE VALUE OF BENEFIT. LIMIT CRIMINALITY TO THAT PLEADED TO.