

POL – Enforcement & Prosecution Policy

Reviewer:	Dave Posnett
Heading:	CRIMINAL ENFORCEMENT
Page:	4 & 5
Paragraph:	Confiscation Proceedings will only be undertaken ...
Comment:	<p>Although Restraint Orders and Confiscation proceedings form part of the Proceeds of Crime Act (POCA) 2002, they are different areas to be instigated at different times and should receive separate attention within the EPP:</p> <ol style="list-style-type: none"> 1. Restraint Order can be obtained on commencement of an investigation where there are reasonable grounds to believe that assets could be dissipated. This should not be dependent on a prosecution decision, which could be many weeks or months after an investigation commences and the delay will be detrimental to recovery prospects in some/many cases. Indeed, the court may reject an application if there is undue delay (why restrain months later if assets haven't been dissipated?). Although an intrusive power, Restraint only freezes assets and a Restraint Order can be varied and/or discharged at any time on application by affected parties. So, there's nothing wrong with obtaining a Restraint Order and then discharging it if prosecution isn't authorised in due course (there is a process for restraint application, including audit trail and authorities – Financial Investigator, Lawyer, Senior Authorising Officer and Judge have to sign it off). 2. Confiscation proceedings commence following conviction and when the Prosecutor asks the Court to proceed; or the Court believes that confiscation is appropriate. This could be months or even years after a Restraint Order has been obtained. Confiscation proceedings effectively start when the Financial Investigator (via the Prosecutor) submits a Section 18 statement (requesting that the Defendant provide details of all assets). The court will then relay a POCA timetable, culminating in a Confiscation Hearing and a Confiscation Order (unless the Defendant pays up in the meantime). However, if POL doesn't ask to enter Confiscation proceedings but the court believes it is appropriate, then the court can insist on it. ... so POLs last paragraph under the heading 'Confiscation Proceedings' may not be agreed by the Court and the Court may proceed to Confiscation regardless. <p>That said, I think by simply deleting the text I've coloured red below, and replacing with the green text (where applicable), will provide more accuracy and clarity:</p> <p>Confiscation Proceedings will only be undertaken by POL where prosecution has been deemed appropriate successful, assets have been identified that can be used to service such an order (or there is a reasonable belief that such assets exist), and such an order is deemed to be in the public interest.</p> <p>POL will:</p> <ul style="list-style-type: none"> • Obtain a Restraint Order where, following the commencement of an investigation, a recommendation and decision to prosecute is made by the Head of Security, evidence is available that a suspect has benefited financially from a crime,

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	<p>assets have been identified as available, there is knowledge or a reasonable belief that there is a real risk that without the order assets will be dissipated.</p> <p>In the event that monies can be obtained voluntarily, monies are recovered via a compensation order in criminal proceedings or via a civil recovery then a restraint order/ confiscation proceedings will be cancelled/ terminated.</p> <p>In determining whether or not confiscation proceedings are appropriate (including the obtaining of restraint orders), POL will consider:</p> <ul style="list-style-type: none"> • The seriousness of the offence and financial loss incurred (generally financial losses will be more than £15,000 but each case should be looked at on its merits) • Whether other factors such as an abuse of trust or vulnerability of victim merit proceedings in cases • A voluntary repayment has made or credibly offered by the date of conviction • Other recovery proceedings have been deemed more appropriate in the circumstances • Other mitigation or explanation provided by the defendant which is deemed relevant
The email	<p>Just an observation ... Whilst I haven't seen the advice from Stephen Hocking (and he probably knows more about it than me), I'm surprised we adhere to the 'spirit' of the Human Rights Act as opposed to the Act itself. We are a Designated Public Authority with prosecution powers, but even so, I would have thought everyone (individual or company) should adhere to the Human Rights Act. Especially from our perspective Article 6 (as mentioned) – Right to a fair trial, along with Article 8 – Right to respect for private and family life and Article 9 - Freedom of thought, conscience and religion ... all of which crop up in an Investigators role. That said, it doesn't feature much in the EPP, rather in the email from Hugh Flemington ... and I know we adhere to the 'spirit' of PACE in certain areas ... so you may want to ignore this comment.</p>

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Reviewer:	Helen Dickinson
Heading:	Introduction
Page:	1
Paragraph:	4
Comment:	POL investigation and legal teams will liaise with the police and other relevant regulatory authorities Should read POL Security
Heading:	ACTIONS AVAILABLE OUTSIDE OF CRIMINAL PROCESS: Disciplinary Proceedings –
Page:	4
Paragraph:	Line 1
Comment:	Teameam (Editing Error)
Heading:	CRIMINAL ENFORCEMENT
Page:	4
Paragraph:	2
Comment:	In determining whether or not confiscation proceedings are appropriate (including the obtaining of restraint orders), POL will consider: <ul style="list-style-type: none"> • The seriousness of the offence and financial loss incurred (generally, financial losses will be more than £15,000 but each case should be looked at on its merits) • A voluntary repayment has been made or credibly offered by the date of conviction