



FORENSIC INSIGHT

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PROCEEDS OF CRIME ACT - 20 YEARS ON

The Proceeds of Crime Act (POCA), a pivotal piece of UK legislation enacted in 2002, has reached its 20-year milestone.

This Act represents the Government's commitment to tackling money laundering and organised crime by allowing law enforcement to seize assets derived from criminal activities. As we review two decades of its implementation, we see significant impacts and ongoing challenges.

IMPACT ON CRIMINAL JUSTICE

POCA's most notable impact lies in its transformation of the criminal justice landscape. The Act empowered authorities to seize, freeze, and forfeit criminal assets, significantly disrupting the economic foundations of organised crime.

The aim was for this to be a major deterrent to criminal activities and a tool for dismantling criminal networks. Whilst cynics may comment that only the low hanging fruit are picked off rather than the real kingpins, it has changed the focus of prosecutors.

There have been a number of landmark cases in recent years, where considerable sums have been recorded in excess of £20 million, with the highest case to date seeing more than £34 million seized.



GROWTH & EFFECTIVENESS

A critical measure of POCA's effectiveness is its financial performance. In the financial year 2022 to 2023, £339 million was recovered through Confiscation Order, Forfeiture Order, and Civil Recovery Order receipts. This is 49 per cent higher than the six year median of £228 million.

While this figure is high it does represent a fall of five per cent on the previous period (2021 to 2022) which was the highest recorded at £345 million.

Notably, this recent surge in the value of assets recovered has largely been due to an increase in cases where the proceeds of crime recovered exceeded £1 million for both Confiscation Order and Forfeiture Order receipts.

In the financial year 2022 to 2023, assets amounting to £572 million were also restrained, seized, or frozen under POCA.

A full breakdown of POCA's performance during the last five years is recorded [here](#).

Anecdotally, those involved in this work aim to ensure the proceeds actually confiscated exceed the costs of their department and provide a return to their agency. And at the figures reported, it would appear that this should be being achieved.

EVER-EVOLVING LEGISLATION

POCA in the UK has undergone several changes to enhance its effectiveness in combating money laundering and organised crime.

These amendments reflect evolving legal and criminal landscapes, aiming to make the Act more robust and adaptable to new challenges. Here's a summary of key changes:

- 1 Asset recovery:** Over the years, the targets for asset recovery under POCA have been revised upwards, reflecting the Government's growing commitment to fighting financial crimes.
- 2 Improved efficiency:** Various amendments have been made to streamline and improve the efficiency of the asset recovery process. This includes simplifying the legal procedures involved in seizing and forfeiting assets.
- 3 Enhanced powers for law enforcement:** Law enforcement agencies have been granted more extensive powers to investigate and recover assets. This includes increased authority to use surveillance and gather intelligence in financial crime cases.



4 Expansion of the definition of criminal lifestyle:

The definition of what constitutes a 'criminal lifestyle' under POCA has been broadened. This expansion allows for a wider range of crimes to be considered under the Act, enabling the seizure of assets from a broader spectrum of criminal activities.

5 Introduction of new orders and measures:

For example, Unexplained Wealth Orders (UWOs) have been introduced and, as with other POCA legislation, require individuals to explain and evidence the sources of their wealth.

6 Strengthening International Cooperation:

Amendments have been made to facilitate better international cooperation in the seizure and forfeiture of assets. This reflects the global nature of organised crime and money laundering.

7 Updating compliance requirements for financial institutions:

Changes have been made to the compliance requirements for banks and other financial institutions, making them more stringent. These institutions now face greater responsibility in monitoring and reporting suspicious financial activities.

8 Adjustments for digital currencies and online platforms:

As digital currencies and online platforms become more prevalent, POCA has been updated to address these new mediums of financial exchange and crime.

9 Enhanced focus on human rights

considerations: Recent amendments have also put a greater emphasis on balancing the powers under POCA with the protection of individual rights, reflecting a growing concern about civil liberties in asset recovery processes.

10 Improvements in transparency and oversight:

There have been efforts to improve the transparency and oversight of the processes under POCA, aiming to ensure that the powers are used appropriately and effectively.

These changes highlight the UK's proactive stance in adapting its legal framework to counter evolving forms of financial crime and protect its financial systems from abuse.

CHALLENGES & CONTROVERSIES

Despite these successes, POCA has not been without its challenges and controversies. Critics have pointed out issues related to the implementation of civil recovery orders, raising concerns about potential infringements on the presumption of innocence.

Balancing effective law enforcement with the protection of individual rights remains a contentious aspect of POCA. There is still the inherent deemed unfairness that the individual has to provide evidence of innocence, rather than for the prosecution to prove guilt, as to the source of funds.

IMPLICATIONS FOR THE FINANCIAL SECTOR

The financial sector has seen significant changes under POCA, with heightened compliance and monitoring requirements.

These measures, while increasing operational costs, have bolstered the financial system's resilience against money laundering activities.

However, despite the dangers of AML and fraud, as well as the threat of POCA, cases of complex fraud continue to come to trial.

In these cases, it is often the actions of individuals that bring businesses into the spotlight it has helped to highlight the value that forensic accountants can bring to investigations and prosecutions.

INTERNATIONAL COOPERATION

On an international scale, POCA has enhanced the UK's role in combating global money laundering and organised crime.

It aligns with standards set by international bodies like the Financial Action Task Force (FATF) and has fostered better international collaboration in asset recovery and criminal investigations.

FINAL THOUGHTS

Two decades on, the Proceeds of Crime Act remains a fundamental element of the UK's strategy against organised crime and money laundering.

Its record-breaking performance in recent years underscores its effectiveness. However, adapting to new challenges and ensuring a balance between law enforcement and civil liberties will be vital for POCA's future success.

A PATH LESS TRAVELLED?

ROUTES TO ACCESS FINANCIAL INFORMATION IN PRIVATELY OWNED COMPANIES

A reasonably common occurrence we find as Forensic Accountants are issues in relation to the disclosure of financial information in relation to privately owned companies, where the party (or parties) are shareholders and/or directors of the company in question.

One such common example is in relation to Ancillary Relief cases where companies are owned jointly by the husband and wife (or where both husband and wife are directors) or in relation to Shareholder Disputes where the shareholder may or may not also be a director of the company in question.



RIGHTS OF SHAREHOLDERS

Looking first at the position of shareholders, outside of the formal disclosure process, what are the rights pertaining to the shareholder(s) in question under Company Law?

Generally a shareholder's right to company information is more limited vis-a-vis a director's, however, there are a number of non-financial documents which any shareholder is entitled to.

These include the register of members, directors, secretaries and debenture holders, the listing of charging instruments and the directors' service contracts.

In terms of financial information, all shareholders (irrespective of the shareholding size) are entitled to receive a copy of the Annual Accounts and Reports. They are also entitled to see the minutes of general meetings (but not board meetings). However, in small privately owned businesses this right is often toothless, as general meetings may just be a mere formality rather than where business is discussed.

In addition to this, shareholders may have other rights under current Company Law depending on the size of their shareholding.

These include the ability to prevent the deemed reappointment of the company's auditor if they own more than five per cent of the issued shares, and the ability to request an audit of the company's financial statements if they own more than 10 per cent of the issued shares.

Whilst not directly conferring rights of access to financial information, this can give shareholders additional comfort over the quality of same.

RIGHTS OF DIRECTORS

As a rule, directors have relatively more rights when it comes to access to financial information in relation to a company than shareholders.

These rights include the right to see the company documents and financial records and the right to participate in board meetings.

Of course, with these rights come the added responsibilities of the additional duties and responsibilities to which a director must adhere.

One proviso, however, is that this right is not for 'improper purposes' i.e., one which is for any purpose other than for the directors to perform their duties.

This may, of course, have implications depending upon where the parties are, in terms of the litigation process and may particularly impact a 'director spouse' in an Ancillary Relief case, who may not have been actively involved in the running of the company, yet is governed by the duties and responsibilities of a director (even if they may be unaware of same).

WRAP UP

Particularly in light of the Court's tightening in relation to 'self-help' disclosure in recent years, (certainly, no longer would it seem to apply that the 'Lord helps those who help themselves...') it is possibly all too easy to get caught up in the machinations of the discovery process and the complexities and limitations of same.

ARE YOU DOING ENOUGH TO PREVENT FRAUD?

According to Government statistics, it is estimated that fraud was the most common crime in 2022, accounting for 41 per cent of all offences. However, typically fraud has been under reported so this figure may well be higher.

In a bid to tackle fraud, the Government has introduced the Economic Crime and Corporate Transparency Act 2023, which received Royal Assent in October 2023 and is expected to come into force in 2024.

The Act brings in the biggest changes to Companies House since corporate registrations were established in 1844.

As well as enhancing the role of Companies House in fraud prevention, the Act has created a new offence, known as 'failure to prevent fraud', aimed at encouraging businesses to identify and prevent fraudulent transactions at the source.

WHAT DOES THIS MEAN FOR BUSINESSES?

This Act means that businesses are required to take reasonable step to prevent fraud from occurring. Whilst many businesses will already have procedures in place, with new regulations, the Government is seeking to tackle those who do not seek to prevent fraud and expose their customers and suppliers to undue risk.

In practice, it may mean that businesses need to reevaluate their approach to fraud prevention and assess their operations for weaknesses. At the very least, it will require them to review and assess their procedures on a regular basis to ensure that they are still fit for purpose.



WHO CAN BE CONVICTED?

In its current form, the Act states that only large organisations fall into the scope of the offence. "Large" is defined as having two of the following; more than 250 employees, £36 million or more in turnover and more than £18 million in total assets.

This will also apply to a parent company if the parents and its subsidiaries in aggregate meet at least two of the criteria.

If convicted of the offence, an organisation could receive an unlimited fine, which will be decided by the Court.

One important note is that, while individuals can already be prosecuted for committing or assisting fraud, they cannot be prosecuted for failing to prevent fraud under the new law.

TAKING STEPS TO PREVENT FRAUD

New legislation requires all large businesses – including charities and other organisations – to have reasonable fraud prevention measures in place. These might include:

- Using secure authentication methods
- Implementing secure payment methods
- Encrypting sensitive information
- Staff training on common types of fraud
- Random inventory and financial checks
- Education for customers on how fraudsters may target them

If the risk of fraud is very low or non-existent, then it may also be considered reasonable to have no measures in place.

However, it is difficult to identify which organisations would match this criteria but, if they do, it will be key to document the thought process in reaching that conclusion in case the organisation is subject to fraud at some point in the future.

Leadership and training will be key. Policies and procedures indicating best practices are important but will not work unless fraud prevention forms part of the culture of the business.

PROTECTING YOUR BUSINESS

It's likely that we're going to see an increase in corporate responsibility when it comes to preventing fraud, particularly for larger businesses. As this happens, business owners and decision-makers may well need to turn to expert support.

This legislation cannot be ignored by any business. Whilst it is aimed at large businesses, fraud prevention is likely to be inserted into contracts with suppliers as such companies will be deemed to be "associated" with the organisation in question.

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