

Legal Expenses and variations for Living Expenses in Account Freezing Orders

Overview

1. This article will deal with how to withdraw legal and living expenses from an Account Freezing Order ('AFO'). Like all freezing or restraint proceedings under the Proceeds of Crime Act 2002 ('POCA'), living expenses can be paid from the account where they are reasonable and continue the current lifestyle of the owner of the account.
2. Parliament have made a conscious decision that the funding of AFO's and the subsequent Forfeiture proceedings should come in the majority of cases from the funds frozen. This is a clear divergence from cash seizures, a contrast to major Restraint orders, and is in line with Civil Recovery Orders under Part 5.
3. I will deal with these two types of exclusions separately below.

Legal Expenses

4. Account Freezing Orders allow Respondents to withdraw money from the account as long as the court is assured that the legal expenses are reasonable. It would be very hard for a court to decide that the funds should not be released, especially if this would mean the order would not be defended.
5. Section 303Z5 (5) of the Proceeds of Crime Act 2002 ('POCA'), states the following:

(5) where a magistrates' court exercises the power to make an exclusion for the purpose of enabling a person to meet legal expenses that the person has incurred or may incur, in respect of proceedings under this Part, it must ensure that the exclusion—
 - a) Is limited to reasonable legal expenses that the person has reasonably incurred or that the person reasonably incurs.*
 - b) Specifies the total amount that may be released for legal expenses in pursuance of the exclusion, and*
 - c) Is made subject to the same conditions as would be the required conditions (see section 286A) if the order had been made under section 245A (in addition to any condition imposed under subsection (4)).*
6. The court must also have regard 'to the desirability to that person being represented in any proceedings under this Part in which the person is a participant' and must not consider the chance that they will be receive legal aid. These provisions are set out in section 303Z5 (6).
7. The Court needs to consider these provisions in the round. They will also have to consider the overall position of the Respondent, any interested parties who also claim the money, and the fairness of them using the money. But this fairness has to be balanced with the potential unfairness of not allowing the orders to be defended.
8. Any application for legal expenses and subsequent withdrawals need to meet the Proceeds of Crime Act 2002 (Legal Expenses in Civil Recovery Proceedings)

Regulations 2005. These provisions set out a requirement for the Respondent to provide a means form. They also set out the hourly rate for the legal team.

Living Expenses

9. Are also allowed under section 303Z5 (2). The provisions state:

(3) An exclusion may (amongst other things) make provision for the purpose of enabling a person by or for whom the account is operated--

(a) to meet the person's reasonable living expenses, or

10. Guidance for exclusions in Restraint Orders can provide guidance in these cases. As with Restraint Orders a release of a weekly amount will be required, though as with Restraint Orders this will depend on whether the account is the primary account for the Respondents living expenses or if this is a separate account.

11. As with Restraint Orders a Respondent is allowed to meet their reasonable living expenses, which should be based on their current expenditure. The court will need to consider the past evidence of the Respondent's expenditure.

Closing Thoughts

12. Both of these exclusions will be the subject of many challenges between Applicant's and Respondents. The reasonableness of the exclusions will have to be considered carefully by the Courts. The potential for exclusions will also have to be considered by Applicant's when considering the practicalities of applying for an AFO in the first place, and provision, especially for living expenses should be made at an early stage.