

Length of Time of the Orders

1. How long can an Account Freezing Order ('AFO') run for. The technical answer is 2 years but the question is that reasonable in the circumstances. 2 years is the maximum set out in s.303Z3 (4) of the Proceeds of Crime Act 2002 ('POCA'), but in practice a shorter time is often appropriate, especially at the beginning of an investigation.
2. The Applicant can then extend the AFO by getting the order varied under s.303Z4. Though it is crucial that the correct procedures are followed. This can then be done for increments, for up to a total of 2 years.
3. Unlike cash seizures, there is no requirement for the Applicant to renew the application every six months. This allows the Applicant to ask for a period of time that they think is appropriate. The Court needs to consider is it reasonable to freeze money for a period of time, given the proposed investigation and the interference with the owner of the money's rights.
4. It is clear that some interference in the owners' rights are appropriate given the public interest in stopping illicit funds, but this interference must be monitored. Therefore, in practice initial AFO's have been between 3 to 6 months, with applications for extensions if it is appropriate, due to the way that the investigation has developed. Though this is not written into legislation it is an appropriate approach.
5. In my view it should only be in cases where there is an obvious extended investigation where an application is made for over 6 months, as this would exclude the courts and the Respondents ability to monitor the investigations progress.
6. So, the monitoring of the order is possible, the applicant must make it clear why the length of the order being applied for is appropriate. Dissipation is not a key factor in AFO's, unlike Restraint Orders, as the order needs to be made for the eventual Account Forfeiture Order to be made. But the circumstances around the money and their effect on the investigation is.
7. This explanation is particularly important in *ex parte* cases. Due to the ability to extend moratoriums and the lack of dissipation, *ex parte* applications should be rare. If they are made, it is expected that a short order would be appropriate which allows a full application at an appropriate time.
8. But the need to have the basis of the application and the proposed investigation makes the requirement for the Applicant after an *ex parte* hearing to serve the application and a note of the hearing on the Respondent. The aim is to put the Respondent in the position that they would be if they had attended the hearing. This duty is highlighted in the cases of *Interoute Telecommunicaitons (UK) Ltd v Fashion Gossip Ltd*, the times, November 10 1999 and *Cinpres Gas Injection Ltd v Mela Ltd* [2005] EWHC 3180. This is highlighted at paragraphs 21 to 23 of *Cinpres*.

9. This duty is vital in *ex parte* cases and is currently being routinely ignored. If it is it could be grounds for an application to discharge on the basis that the Respondent has acted inappropriately.
10. Though it will be in rare occasions when the court discharges an AFO, using the powers in s.303Z4, due to a failure to pursue an investigation in a timely manner, it will happen in rare occasions where an investigation has been carried out in a slow and negligent manner. It also might happen when the proposed investigation has not been carried out, and the Court is not convinced that this failure is reasonable.
11. This will be particularly true in cases where there is an international element. AFO investigations cannot on a normal basis use Mutual Legal Assistance or evidence from Mutual Legal Assistance requests. This is partially due to the new nature of AFO's and the lack of reciprocal legislation in other jurisdictions. This means that in cases with an international element, the investigators will have shown specifically how they wish to carry out the investigation.
12. Therefore, in all AFO's especially ones with an *ex Parte* application the length of the order needs to be monitored. If it is initially too long, an application to vary it can be made, and representations to get updates on the investigation will also be appropriate, with the overall aim of making sure that the investigation is appropriate and that the balance between the public interest and the interface with the Respondent's rights are maintained.