

18 October 2006

# **Proceeds of Crime Assets Recovery Agency Update Retention of Forensic Accountants**

The hiatus that existed in respect of funding of defence costs as a consequence of the conflict between the exclusion provisions of POCA and the income threshold criteria of the Legal Services Commission was to be resolved by The Proceeds of Crime Act 2002 (Legal Expenses in Civil Recovery Proceedings) Regulations 2005. However as things often are with POCA it was never that simple.

While Solicitor's and Counsel's costs have to date been able to avail of the new exclusion (although we understand even this has recently been challenged) ARA strongly resisted applications being made for the exclusion to be extended to the retention of Forensic Accountants. Given that ARA cases invariably involve complex financial matters many found this stance counterintuitive.

Having received instructions from a number of solicitors acting on behalf of defendants it is not surprising that we were involved in the first case challenging ARA's stance. As many of you will no doubt be aware last week Morgan J ruled in the case of *The Director of ARA –v- Fleming, Fleming and Hook* ([www.courtsni.gov.uk](http://www.courtsni.gov.uk)) that Forensic Accountants could be retained.

***“the court has power in an appropriate case pursuant to section 252(4) of the 2002 Act to make an exclusion in respect of some or all of the proposed costs of a forensic accountant”***

While the ruling does not give solicitors *“carte blanche”* to engage Forensic Accountants it goes a long way to redressing the perceived imbalance that existed between the resources available to ARA and/or the Interim Receiver and the defendant in these proceedings.

While we would be of the opinion that not every case needs a “root and branch” review, however, as a minimum we believe it is vital that the findings of the Interim Receivers Report should at least be reviewed to determine reasonability and also to afford the defendants an opportunity to understand the complex calculations and assessment they face and the extent of the allegations. At a simplistic level this may be no more than a way of helping the defendants reconcile matters in their own minds or to help them swallow what they may view as a “very bitter pill”. Ultimately such an approach in our opinion would have the potential to save time and resources and to avoid a protracted and perhaps fruitless legal battle.

Alternatively the ability to review and therefore challenge the Interim Receiver’s Report allows issues to be identified and (as we have first hand experience of) can result in the Interim Receiver having to issue a Supplemental Report in which matters are conceded and errors corrected.

If matters still remain unresolved or unreconciled then in order to allow the financial aspects to be dealt with in accordance with “the balance of probabilities” test the services of a Forensic Accountant will be needed to present the counter financial arguments.

Goldblatt McGuigan are experienced in POCA, POCO and ARA matters and are well placed to afford any of your clients who find themselves under the Proceeds of Crime microscope relevant and effective financial advice.

Should you require further information on our services and expertise in this area please do not hesitate to contact Gabriel Greene on 028 90311113 or at [greeneg@goldmac.com](mailto:greeneg@goldmac.com).