

# **"PROCEEDS OF CRIME" MADE EASY EASIER**

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## **Legislation**

### **Proceeds of Crime Act 2002**

s327 – offence of "concealing"

s328 – offence of "arrangements"

s329 – offence of "acquisition, use and possession"

s330 - offence of "failure to disclose"

s333 - offence of "tipping off"

s337 - protected disclosures

s338 - authorised disclosures

s340 - defines criminal property and money laundering

s342 - offence of "prejudicing an investigation"

### **Money Laundering Regulations 2003 SI 2003/3075 - In force 1/3/04**

Brings us all within regulated sector and subject to s330 – the offence of a Failure to Disclose.

**Case**

P v P (Ancillary Relief: Proceeds of Crime) [2003] 4 All E.R. 843; [2004] 1 F.L.R. 193

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s327 – concealing )  
s328 – arrangements ) **Primary offences**  
s329 – acquisition, use and possession )

An offence is committed in the conduct of Ancillary relief proceedings when we do more to progress the case than take initial instructions knowing or suspecting that proceeds of crime are involved. - P v P

There is no defence to primary offences of legal professional privilege.

The test is objective – an offence can be committed negligently.

There is no “de minimis”.

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If you become aware of or suspicious of proceeds of crime then you must make an authorised disclosure.

**Authorised Disclosure – s338**

Make a disclosure to NCIS.

If nothing from NCIS in 7 working days following disclosure, You are free to proceed with the case.

If contacted by NCIS within 7 day period refusing consent to proceed, after a further 31 days from date of refusal, you are free to proceed with the case.

You should inform your client of the need to make an authorised disclosure – the duty is on each individual; client, solicitor, barrister but a joint disclosure can be made.

If client agrees – make an authorised disclosure.

If client does not agree – withdraw from the case.

Do you need to make a disclosure after withdrawing?

No – as long as one of s330 defences apply.

eg. legal professional privilege and no criminal intent on part of client.

Telling the other side after an authorised disclosure.

P v P – such information as is necessary and appropriate – but not if it will lead to a money laundering offence.

s330 – failure to disclosure

s330(10) - Legal professional privilege is extended by this provision beyond the common law definition to include, for example, communication with the opposing solicitor.

Defences to Offences at s327-s329

- making an authorised disclosure and proceeding after imposed delay.
- intending to make an authorised disclosure but a reasonable excuse for not doing so.

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s330 – failure to disclose	)	
s333 – tipping off	)	<b><u>Secondary offences</u></b>
s342 – prejudicing an investigation	)	

**Protected Disclosure - s337**

If you have reasonable grounds for knowing or suspecting money laundering, a protected disclosure to NCIS gives similar protection to an authorised disclosure but in relation to secondary offences. There is no issue of NCIS consent.

Secondary offences cannot be committed in situations where there is legal professional privilege – as long as there is no intent on furthering a criminal purpose.

P v P – it the lawyer's intent to further a criminal purpose that is relevant in s333 – tipping off, and s342 – prejudicing an investigation.

BUT s330 – failure to disclose

Information from client to solicitor is protected by legal professional privilege. This privilege is disapplied if the client has criminal intent.

And finally

If in doubt refer to :

- The legislation
- P v P

## Scenarios

1. Your client, Mrs Weasley, tells you that her husband, as well as working as a civil servant, deals in Muggle Artifacts and the profits from this business have not been declared to the Inland Revenue.

- Inform Mrs Weasley of the duty of disclosure to NCIS.
- If she agrees, make a joint authorised disclosure to NCIS.
- Inform opposing solicitor/after 7 or 31 day period.

Mrs Weasley tells you this in conference 2 days before the FDR.

- Make an ex parte application to adjourn with an order that Mr Weasley receives no papers other than the order for adjournment.

Mrs Weasley says she is happy for you to make an authorised disclosure but she would rather not.

- An uncomfortable situation as the duty is upon each individual and Mrs Weasley is committing an offence in not disclosing – withdraw.

2. Your client, Mr Dursley, tells you that, as well as an important position in Grunnings Drills Ltd., he also has a business dealing in second-hand luxury vehicles about which the Inland Revenue are unaware.

He is outraged when you inform him of the requirement for an authorised disclosure and refuses to make such a disclosure.

- You must withdraw from the case.

When informed that you must withdraw, he complains that he was not warned that this could happen.

- Information on POCA 2002 should be included in a retainer letter.

After withdrawing, should you make a protected disclosure pursuant to s330?

- Probably not as Mr Dursley had no criminal intent in disclosing his business sideline.

3. Your client, Mr Malfoy, having read the retainer letter setting out the provisions of POCA 2002, assures you that his diverse and extensive wealth is all the result of hard work in legitimate businesses.

During the proceedings the solicitor for Mrs Malfoy informs you that as a result of information from Mrs Malfoy as to her husband's business dealings, in particular his association with "Lord" Voldemort, a notorious arms dealer and protection racketeer currently under investigation by the Serious Crime Unit, the solicitor has made an authorised disclosure to NCIS.

What do you tell Mr Malfoy?

- It seems difficult to exclude an element of tipping off in informing him. It is probably appropriate to wait to the end of the consent period.

When you tell Mr Malfoy of the disclosure, he denies any criminal activity but also refuses to tell you where the £250,000 per year entering his various accounts from Switzerland originates.

- Make a protected disclosure s330.

You are concerned as you are being very handsomely paid by Mr Malfoy for your legal services.

- There is no problem as long as fees are reasonable.