

SENIOR MASTER PRACTICE NOTE 15 APRIL 2016

POCA CIVIL RECOVERY CLAIMS UNDER CPR PART 8

Civil Recovery Proceedings Practice Direction

Introduction

1. Civil Recovery claims commenced under Part 5 of the Proceeds of Crime Act 2002 (“POCA”) must be brought under CPR 8 in accordance with paragraph 4.1 of the Civil Recovery Proceedings Practice Direction.
2. Part 8 is primarily designed for matters that are not factually contentious. There are normally no statements of case and claims are litigated purely by way of witness evidence.
3. Whilst this remains an appropriate procedure for civil recovery claims that are unlikely to be disputed, where facts may be contested the Part 8 procedure is not necessarily suitable. See for example the note in the White Book Vol 2 3K-4 (end of page 1996 to beginning page 1997) and the cases mentioned; particularly *Director of Assets Recovery Agency v Creaven* [2006] 1 WLR 633 at [11] per Stanley Burnton J. (as he then was); *SOCA v Bosworth* [2010] EWHC 645 (QB) at [26] to [29] per HHJ Seymour; *SOCA v Pelekanos* [2009] EWHC 2307 per Hamblen J. at [3].
4. The court has power to order a case to proceed under Part 7 where appropriate under CPR 3.3 (see Hamblen J. in *SOCA v Pelekanos*). However, that would not assist in civil recovery cases, as many are suitable for the usual Part 8 procedure, and for those where facts are in issue the Part 7 procedure would be likely to unduly delay progress to trial.
5. To resolve these issues, a procedure has been put in place in the Queen’s Bench Division under the court’s case management powers in CPR 3.3 to take effect from 3 May 2016 for the case management of POCA civil recovery claims, as set out in the Schedule to this Practice Note.

The Senior Master

SCHEDULE

1. Before issuing the Part 8 Claim Form, the enforcement authority (as defined in s.316 (1) of POCA) will consider whether to ask the court to make directions (“Initial Directions”) on the papers or at a hearing.

2. If the enforcement authority decides to seek Initial Directions without a hearing, it will

(1) serve on the Defendant (unless evidence is provided to the court that there is good reason not to do so before Initial Directions are given) and

(2) lodge at court

the issued Part 8 Claim Form, accompanied by a short witness statement, with the following exhibits:

- (i) Draft Points of Claim; and
- (ii) Draft Initial Directions providing for:
 - a) The serving and filing of Points of Claim, Points of Defence and Points of Reply;
 - b) A directions hearing to be listed after service and filing of statements of case;
 - c) Permission to the Defendant(s) to apply to court to vary any of the Initial Directions.

3. Where either:

(i) the draft Initial Directions have been agreed with the Defendant(s) or their legal representatives; or

(ii) the court considers that a hearing is not required;

the court will make Initial Directions without a hearing (“the Initial Directions Order”).

4. If the court makes the Initial Directions Order, the enforcement authority will serve on the Defendant(s) within 7 days of receipt of the Initial Directions Order from the court:

(i) Part 8 Claim Form and witness statement with exhibits (unless previously served);

(ii) Points of Claim;

(iii) the Initial Directions Order.

5. If either:

(i) the court considers it is not appropriate to make Initial Directions without a hearing; or

(ii) the enforcement authority considers that it is not appropriate to ask the court to deal with the matter without a hearing;

the court will list a directions hearing for 30 minutes (or longer if requested by either party) and will serve notice of the hearing on all parties.