



The Court has the power to make a Confiscation Order, to deprive you of assets it believes are the result of criminal conduct.

The amount of money the court orders you to repay depends on whether or not you have a “criminal lifestyle”.

- a) If you have a criminal lifestyle, then the court can recoup ALL money that it thinks you made from criminal conduct generally – not just from the offence with which you were charged.
- b) If you do not have a criminal lifestyle, then the court only confiscates the criminal “profit” you made from the offence of which you were convicted.

Criminal Lifestyle means

- a) the offence is one of drug trafficking; money laundering; directing terrorism; people trafficking; arms trafficking; counterfeiting; intellectual property offences; pimps and brothel-keeping; blackmail.
- b) **and** the offence is part of a **course of criminal activity**, i.e.
 - you have been convicted of 4 or more offences committed after 23.3.03 on the same occasion from which you have benefited to a total of £5,000 or more (including TICs)
 - OR you have been convicted of one offence after 23.3.03 from which you have benefited and within a 6 year period before the start of the proceedings, you benefited to a total of £5,000 or more (including TICs) from offences on two previous occasions
- c) **and/or** it is an offence committed over a period of at least six months and you have benefited from the conduct to a total of £5,000 or more (including TICs)

If the court determines that you have a criminal lifestyle, unless it leads to a serious risk of injustice, the court is entitled to assume that:

- a) Any property transferred to you within a 6 year period ending with the start of the criminal proceedings was as a result of criminal conduct
- b) Any property held by you after conviction, was obtained as a result of your general criminal conduct
- c) Any expenditure you made within a 6 year period ending with the start of the criminal proceedings, was as a result of your criminal conduct

The court will make you pay

- a) All your financial benefit from your criminal activity within that 6 year period – your **recoverable assets**
- b) Or the total value of ALL your available free property, if less – your **available assets**. This value includes any criminal property you gave away or sold at an undervalue within the last 6 years (“**tainted gifts**”)

The Procedure is:

- After conviction, the Prosecutor asks the Crown Court for a Confiscation Order
- The Court decides if you have a criminal lifestyle (you have a chance to respond to the prosecution statement)
- The Court determines the amount recoverable from you
- That amount must be paid on the day of making the confiscation order or such other time as specified by the court (normally 6 months)

Dunn & Baker – Here to help you

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