



Before you give instructions to your solicitor and supply details of your circumstances, please be aware, if a solicitor believes it is possible that a client or a client's partner/spouse has assets that include proceeds of crime, that solicitor is placed under a number of legal obligations, which can over-ride his/her duty of confidentiality owed to that client.

"Proceeds of Crime" means any money/property/asset which has arisen as a result of any crime. The proceeds of crime include, for example, monies (however low in value) saved as a result of tax evasion or benefit fraud whether that money has been saved or spent.

If a solicitor becomes aware of, or suspects, the existence of the proceeds of crime in your case (whether from you or any other person), in order to enable the solicitor (or any other solicitor) to continue with your case without you and your solicitor committing an offence under the Proceeds of Crime Act 2002 ("the Act"), the solicitor must report the irregularity to the Serious Organised Crime Agency (SOCA). SOCA will then give or withhold permission for your solicitor to continue with the case. Even if SOCA gives permission for the case to continue, it can pass the information received to any relevant body such as the Inland Revenue **and an investigation may take place at any time in the future.**

It follows from the above that, if you have any concerns about irregularities in your financial position or that of your spouse/partner, you may wish to seek specialist accountancy advice to correct those irregularities before you instruct us further. Be aware that accountants are also required to comply with the provisions of the Act.

In addition to your obligation to give full and frank disclosure of your financial and personal circumstances, the Act creates a number of offences relating to the proceeds of crime which include making it a **criminal offence** for **you** to enter into a financial settlement with your spouse or partner if you know that any income, capital or property of whatever nature which you and/or your spouse or partner receives or retains as part of the settlement represents the proceeds of crime. This could include, for example, something as apparently straightforward as sorting financial issues on the breakdown of a marriage or relationship, if any of the assets are, or could be, "tainted".

If your own financial irregularities or those of your spouse or partner are not corrected before you consult a solicitor and/or you do not tell your solicitor the correct position about your financial affairs or those of your spouse or partner, if your solicitor becomes aware of such irregularities during the course of the case, in certain circumstances, both your solicitor and you are required by the Act to disclose those irregularities to SOCA. Further, in certain circumstances, **your solicitor may have to make a report to SOCA without telling you that s/he has done so.** Accordingly, one consequence of not telling your solicitor about irregularities in your family's financial circumstances would be to find that s/he is required to inform SOCA of the correct position without discussing the matter with you.

In rare circumstances, one consequence of this could be that, for example, in family proceedings you resolve your financial relationship with your spouse/partner only to find that you then could become subject to an Inland Revenue investigation and/or criminal proceedings.

Please do not forget throughout your case, that the obligations which your solicitor has under the Act can in certain circumstances override the duty of solicitor/client confidentiality.

If any fee earners engaged in your case spend time in addressing issues arising for you from the Act, that time will be charged in the same manner as any other work undertaken in relation to your case.

*Dunn & Baker – Here to help you*

*Disclaimer: The material contained in this fact sheet is for general guidance only. It is specific to the law of England and Wales, and represents a brief outline of the law current as at the date of the fact sheet. It is not intended to constitute, or to be a substitute for, legal advice specific to your case. Dunn and Baker will be responsible only for advice specifically given to you.*