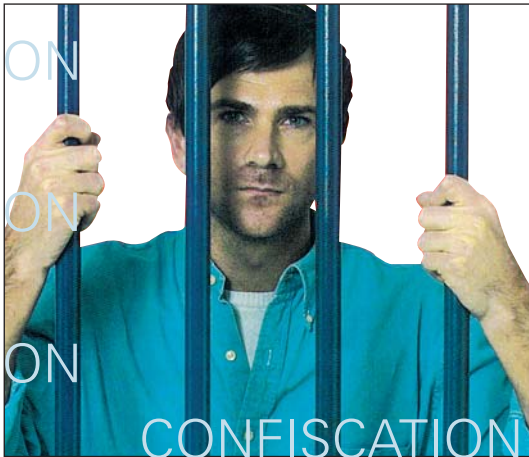


PAYBACK TIME



JOINT REVIEW OF
ASSET RECOVERY SINCE THE
PROCEEDS OF CRIME ACT 2002



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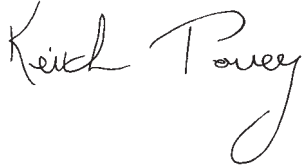
Preface

Volume crime has reduced significantly in recent years but acquisitive criminality remains a multi-billion pound business. Many involved in such crime generate significant personal wealth and openly display the trappings of their success, to the detriment of public confidence in law enforcement and presenting a negative role model to young people. The Proceeds of Crime Act (POCA), 2002, gave law enforcement agencies new powers to address this problem by extending opportunities for criminal asset recovery and specifically targeting money laundering.

While a number of high profile cases have proven the value of the new powers, as heads of criminal justice inspectorates, we were disappointed to find that, by early 2004, use of the powers appeared patchy and evidence of co-ordinated prioritisation of asset recovery across the criminal justice partners was scarce. The joint review was launched to assess the reasons for the poor take-up of the POCA powers and to give renewed momentum to asset recovery.

Our report confirms that, while there are pockets of excellent practice, many opportunities for asset recovery are being routinely missed. There is a widespread lack of awareness amongst practitioners of the powers; strategic leaders need to take a personal role in championing the cause and integrating the use of these powers into mainstream agency business. Increased incentivisation and the existence of this Review have already contributed to enhanced chief officer engagement but sustainable success will require a greater degree of collaborative working across criminal justice agencies. This report highlights the best practice found, identifies the key issues to be addressed and provides a simplified prompt for both practitioners and strategic leaders.

On behalf of the Review team members, thanks are extended to all agencies visited for responding so positively and openly. We also acknowledge the important contribution of Reference Group members, who brought immense experience and knowledge to bear in helping to unpack the complexities of the legislation and ensure that this report’s key messages are simple while remaining technically accurate.



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Executive Summary

The importance of asset recovery

1. Acquisitive crime affects everyone in society. Victims whose homes are burgled, whose cars are stolen, who lose their savings to fraudsters or are robbed in the street all have their lives inextricably altered. The rest of the law-abiding community, to a greater or lesser extent, lives in the fear of being victimised and suffers the indirect impact through rising prices, higher taxes and increased insurance premiums. The visible face of acquisitive crime is increasingly the wealth flaunted by criminals at all levels. Whether it is the large house, yacht and Ferrari of the ‘crime baron’ or the Rolex, Armani suit and BMW convertible of the street-level drug dealer, the proceeds of crime are a signal that, for many, currently crime does pay.
2. A report in 2000 from an influential ‘think tank’, the Performance and Innovation Unit, highlighted the importance of financial investigation in the fight against crime, but noted that it was under-resourced and under-used in the UK. The Proceeds of Crime Act 2002 (POCA) was a consequence of that analysis. Its powers are wide-ranging, encompassing both criminal and civil fields. Put simply, POCA makes it possible to seize cash from a suspected criminal and places the onus on that individual to prove that the money has been acquired legitimately. Confiscation orders, reflecting the value of criminal proceeds, can be made against those who commit any of a wide range of offences or can be shown to engage in a ‘criminal lifestyle’. The Act also creates an all-encompassing web to catch anyone who moves, hides, converts or otherwise has possession of cash or property that represent the proceeds of crime.
3. The Act has, from its inception, received support at the highest level in Government. Money was found to train and deploy asset recovery staff, a new agency was created to raise skill levels and undertake

more complex confiscation cases, as well as using the new civil recovery and taxation powers created by POCA. And unusually, HM Treasury agreed that, from April 2004, a share of recovered assets could be recycled to police forces (the incentivisation scheme) to help maintain momentum. In the first year after enactment, £55 million of suspect cash was seized and almost £38 million confiscated, illustrating the potential of the legislation.

4. Yet, despite this high level of Government support and national enthusiasm for the theory of asset recovery, the actual provisions of the Act remain a mystery to many at executive level within criminal justice (CJ) agencies, and in particular within the police. Asset recovery, confiscation and money laundering are still widely regarded as highly complex and specialised activities, divorced from mainstream business, and hence in many police forces have remained the preserve of financial investigation specialists. While designated chief officers in every police force have nominal responsibility to ‘champion’ the cause of POCA, full integration into force-level priorities and objectives is the exception rather than the rule.
5. Grounds for optimism exist, as some criminal justice areas have made significant headway. But even this early in the lifetime of the Act, key players share a concern that adoption of the new powers has been patchy and that significant potential remains, as yet, untapped. This Review sought to examine both the strategic and practical approaches of criminal justice agencies – specifically, the police, CPS and courts¹ – to secure the impact that the legislators had envisaged for POCA. While acknowledging that implementation of this Act is competing for attention with a raft of other initiatives, improvement is needed in:
 - the strategic framework of objectives and targets;
 - awareness levels;
 - mainstreaming;
 - partnership approaches;
 - the use of intelligence; and
 - enforcement.

¹ These agencies fall within the remit of the three inspectorates conducting this Review – the role of other key players, notably Customs and Excise, is acknowledged but not addressed in detail.

The national framework

6. Chief officers will quite legitimately argue that they risk being overwhelmed by national and local priorities, and that when everything is a priority then nothing is. Although it does appear in the National Policing Plan and in the strategic objectives of the Crown Prosecution Service and the Department of Constitutional Affairs, asset recovery features only marginally in the overall performance framework for criminal justice. Asset recovery may not be as publicly high profile as street robbery but POCA can be a highly effective tool in tackling volume, acquisitive crime – for example, prolific burglars and drug dealers are highly vulnerable to money laundering charges if the right lines of investigation are pursued. Asset recovery is not an end in itself but a mechanism for achieving headline objectives such as crime reduction and, potentially, lowering the fear of crime.
7. This uncertainty about the way that POCA could be used reflects some incoherence in the national framework for setting objectives and targets and monitoring performance on asset recovery. An overall national target exists, to recover £60 million worth of criminal assets in 2004/05. But various agencies have not interpreted the implications for their own activities in complementary ways and thus imperil the achievement of this global total. For example, the CPS has set specific benchmarks (agreed by Association of Chief Police Officers (ACPO)) for the number of confiscation orders to be sought, regardless of monetary value, while police forces measure the value of such orders. Very few police forces or criminal justice agencies have set themselves targets to work towards achievement of the national goal.
8. One way of securing clarity and coherence in the strategic framework of targets and objectives would be to assign responsibility for ‘holding the ring’ to one body, perhaps the National Criminal Justice Board. This option is explored in more detail in this report. Local Criminal Justice Boards (LCJBs) bring together the key players in asset recovery but, disappointingly, it rarely features in their objectives. As almost all agencies struggle with incoherent objectives and targets, LCJBs may be the most suitable forum to resolve these problems and accord asset recovery the priority it merits. But the absence of a clear and robust strategic framework is only one of the problems that need

to be addressed if law enforcement is to meet the challenges posed by increasingly sophisticated criminality.

MEASURING SUCCESS

9. Within a multi-billion pound criminal economy there should be ample assets to target and hence little difficulty in measuring the impact of POCA cases, notably cash seizures and confiscation. Due to the disparate nature of data collection, however, it is difficult to assemble meaningful and validated statistics on the current level of POCA successes. This Review presents evidence of significant variability between police forces in initiating POCA cases. For example, the amounts of cash seized in 2003 ranged from £13,000 in one force to over £7 million in another, while 75% of all prosecutions for money laundering were initiated by just six police forces. Many police forces have yet to make any use of money laundering legislation.
10. In theory, everyone who is convicted of acquisitive crime can be the subject of a confiscation order and anyone living above their means on ill-gotten gains is committing a money laundering offence. This Review sought to examine the issue of attrition – ie, the scale of missed opportunities for POCA consideration at each stage in the CJ process. The confusion that arises from mixed use of pre-POCA legislation and POCA, together with the inadequacy of current data collation and analysis, makes such analysis very difficult. But an attempt by one force to compare the value of stolen goods obtained by all convicted offenders in the county with the value of confiscation orders produced an average confiscation rate over two years of just 10%. Clearly, not all of those convicted would have possessed assets to equal their benefit from criminal conduct, but even this crude analysis points to the need for a much higher profile to be given to powers of asset recovery.
11. Significant resources accompanied the launch of POCA and it is important that core funding for POCA activity is sustained if the full benefits are to be realised. The new incentivisation scheme should energise the police in particular to pursue successful confiscations, to ensure that criminal assets are recycled into the wider fight against crime. Although the incentive funding is not ring-fenced it is vital that the expertise building up in financial investigation units is sustained and increased, using both sworn and unsworn staff.

While incentivisation is welcomed, asset recovery must be regarded as a crime fighting tactic rather than an income generation tool. Also, chief constables should reflect on the need for incentivisation to cascade, so that initiating command units also see a tangible reward for their efforts.

12. The picture on enforcement of confiscation orders made under POCA is complicated by the use of other legislation such as the Drug Trafficking Act to recover criminal proceeds, but success is tinged with some disappointment. The number of new orders rose in 2003/04 over the previous year, as did the number of orders completed (ie, fully paid). But the value of these orders actually fell in 2003/04; the amount remitted to the Secretary of State last year was almost £39 million and some £240 million worth of confiscation orders are outstanding. Tracing the assets of those who are determined to keep them hidden can be a complex task and requires a continued investment in specialist skills, both for investigation and enforcement. This Review highlights the importance of recycling incentivisation funds to increase specialist capacity, creating a virtuous circle. But it also re-inforces the importance of accurate data collection and monitoring so that the evidence exists for recycling recovered funds.

Embedding asset recovery – awareness and mainstreaming

13. Undoubtedly the key lever in increasing the levels of POCA activity is awareness, especially among the ‘gate-keepers’ to asset recovery – the police service. Prosecutors and the Courts are very reliant upon police forces putting cases forward for consideration of POCA powers. But this Review identified a common problem of low levels of awareness of asset recovery issues among operational officers. It is vital that from initial training onwards they have sufficient knowledge of core POCA powers and the confidence to exercise these powers – there remains a mystique around the area of financial investigation that needs to be removed.
14. The police training agenda is heavily overloaded and this Review does not seek to add to it. In fact, the powers under POCA – and in particular those relating to cash seizure and money laundering – are far simpler than perceived. The generic case studies in Chapter 3

of this report are designed to help to demystify the main powers available, at both operational level and for those making strategic decisions about how to tackle criminality. The potential impact on criminals, especially those who currently appear to be always out of reach, is enormous. Once officers see the impact in practice they will undoubtedly be motivated to use POCA further, and enforcement and use of POCA powers could then gain significant momentum. Briefing and tasking are the levers for raising awareness rather than formal training.

15. But it is clearly not all down to the police service; other trigger points in initiating asset recovery procedures exist in charging and prosecution and the courts can act as a fallback in pointing up confiscation opportunities. The CPS and courts did undertake training in anticipation of POCA but now need to refresh that knowledge where the paucity of cases has undermined the pre-POCA preparations. As the number of cases increase, the CPS will need to have effective case management processes, in conjunction with police and appropriate counsel, to ensure efficient progress and appropriate results. It may be possible to secure funding for this from the revised incentivisation process.
16. The key message of this Review is that POCA represents a powerful opportunity to substantially disrupt and deter criminality but only if it is used as a routine investigative process against a wide range of criminality. There are numerous points in the process, from charge through prosecution and court disposal, where confiscation can be triggered but a key starting point is a straightforward stop and arrest. An arrest for the simple offence of driving off without paying for petrol culminated in a confiscation order of £1.5 million. While not a typical case, it illustrates the potential impact when officers and CPS lawyers adopt a ‘confiscation mindset’.

Working intelligently in partnership

17. It is impossible to overstate the importance of co-operation. Asset recovery is not the province of any one agency, it is very much a team game. The large number of key players – from police officers, financial investigation units, prosecutors, courts administration, the Assets Recovery Agency, Customs investigators, the financial sector,

specialist accountants and many others – is both a strength and a weakness. When all are working effectively together in an end-to-end process the results can be spectacular, as this report will illustrate. But it also means that people are operating on a crowded playing field with lots of potential for disjointed effort.

18. This Review revealed many commendable examples of collaborative work, at a national level through bodies such as the Concerted Inter-agency Criminal Finances Action Group, and at very local levels too. Joint training for police and CPS staff, effective liaison between CPS lawyers and financial investigators and good communication flows through to Courts staff are all contributing to confiscation success. Awareness of the role of the Assets Recovery Agency has led to some complex cases being referred there from police, the CPS and courts, often with positive results. And the police and CPS are working together effectively in the Regional Asset Recovery Teams, recently expanded in number. But continuous effort is required to make criminal asset recovery an inclusive and seamless process.
19. It is often said that intelligence is the lifeblood of policing and law enforcement agencies have been given a valuable source of intelligence in the Suspicious Activity Reports (SARs) generated by the regulated sector². The report highlights several examples of the considerable benefits obtained by information in SARs, which are often a starting point for money laundering investigations. But as with all intelligence about crime and criminality, SARs need to be effectively managed and co-ordinated with other intelligence. Too many police forces keep financial intelligence in silos when it can play a part not only in asset recovery but also the investigation of murder and other serious crimes. The report also underscores the need for asset recovery and financial investigation to be embedded within the National Intelligence Model, and possibly made the subject of a Code of Practice within the scope of the Police Reform Act.

The CPS, Courts and enforcement

20. Generally speaking, the CPS and the Courts prepared well for POCA, and some of the variability in practice on the ground stems from the fact that the throughput of cases has not yet reached anything like the

² Principally financial institutions such as banks but also accountants, lawyers and estate agents.

critical mass needed to secure familiarity and expertise. As police forces gear up to improve the front end of the process, the CPS and courts need to ensure that they are adequately staffed to manage a greater volume of POCA cases. Some problems have been identified in communication between CPS lawyers and police financial investigators and in case management, but these can be easily resolved.

21. A greater difficulty is encountered by magistrates' courts in enforcing confiscation orders against criminals who are adept at hiding assets. Magistrates' courts are highly effective in recovering large fines from major companies – for breaches of health and safety for example – and small fines for minor transgressions, but many are ill-equipped to pursue assets hidden abroad. The move to expand the currently small number of centres of excellence for tracing and confiscating criminal assets is very welcome – the potential impact on public confidence and effect on criminal intent of robust enforcement is enormous. All agencies need relentlessly to promote the message that 'crime does not pay'.
22. One final answer to the question 'Is POCA working?' comes from a scrutiny of criminal tactics. For many years, police forces and Customs have been targeting major drug dealers – attacking both supply and demand but predominantly the former – and yet those criminals' methods of operating barely changed. The arrival of effective asset recovery – and particularly cash seizure – legislation has been accompanied by significant alteration in the behaviour of such criminals. Cash is absolutely central to illegal drugs activity and criminals are now going to great lengths to protect it from seizure. For example, 'mules' are being used – placing money in condoms and swallowing them – because protecting cash has become almost as important as concealing the illegal commodity being smuggled.
23. It might be considered churlish to criticise deficiencies in implementing a still relatively new piece of legislation, but the issues at stake are so important that a warning bell needs to be sounded. Every single day opportunities to seize cash, begin the process of asset recovery or bring people to book for money laundering offences are being missed. Money and criminals are slipping through the net and confidence in the criminal justice system is eroded whenever that happens. So this report is intended to be a 'wake up' call, for

all of the agencies involved but most particularly for police forces. The police are the critical entry point for POCA and it is in routine policing operations against perpetrators who cause so much misery to communities that low levels of awareness about the Act most jeopardise its success.

Recommendations

Recommendation 1

That Chief Constables, CCPs, CCMs, JCEs and the future HMCS Area Directors ensure that effective systems are in place to collect and collate POCA data, so that end-to-end performance information can be provided in a timely fashion to support JARD nationally and manage performance locally.

Recommendation 2

That Chief Constables, CCPs, CCMs, JCEs and the future HMCS Area Directors develop a joint suite of performance indicators to reinforce their commitment to crime reduction through obtaining and enforcing criminal confiscation orders, and monitoring the Incentivisation scheme. They should make appropriate use of LCJBs as vehicles for co-ordinating POCA implementation.

Recommendation 3

That the Home Office considers amending the legislation to permit all ARA-accredited police staff FIs to make applications during hearings in the magistrates' courts under S.295 and S.296 of POCA for the detention and forfeiture of seized cash.

Recommendation 4

That ACPO draws up a model framework and guidance for the best use of financial investigation skills to optimise asset recovery, contribute to force priorities and conform to national good practice. Asset recovery activity should feature in internal inspection and review.

Recommendation 5

That NCIS, in consultation with ACPO, issues guidance to all police forces on the most effective means of capitalising on the intelligence potential of SARs.

Recommendation 6

That Chief Constables and CCPs jointly develop processes to ensure that confiscation and money laundering cases are identified at an early stage, and that these processes help improve communications between agencies, management of workloads and ongoing case monitoring.

Recommendation 7

That Chief Constables incorporate POCA considerations into their use of the National Intelligence Model – for example, specifying asset recovery work within control strategies and tactical planning. It is recommended that a national POCA implementation group, along the lines of the Bureaucracy Task Force, is established, to advise police forces and ensure that the opportunities to maximise asset recovery and disrupt criminality are grasped.

Recommendation 8

That Chief Constables, CCPs, CCMs and the future HMCS Area Directors each appoint a suitable member of staff at strategic and operational level as POCA champions to actively pursue opportunities to seize criminal assets and disrupt criminality.

Recommendation 9

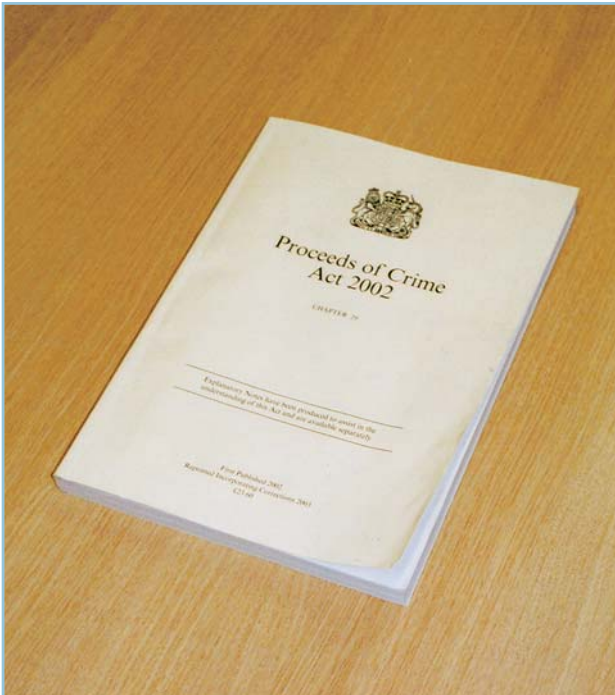
That ACPO and the CPS develop fully complementary local Area targets ensuring that such targets and any associated benchmarks do not introduce competing priorities.

Recommendation 10

That Chief Constables, CCPs, CCMs, JCEs and the future HMCS Area Directors review current levels of practitioner training and awareness and ensure that the National Best Practice Guide for Confiscation Order Enforcement informs local practice in enforcing payment of confiscation orders and disrupting criminality. Further, that Chief Constables review levels of awareness and training in POCA cash seizures and money laundering offences, to improve local practice.

Recommendation 11

That the Home Office considers amending the time limit for application to the magistrates' court following a cash seizure so that the 48-hour period excludes Sundays and Public Holidays.



Chapter 1

Why we need the Proceeds of Crime Act 2002

The importance of tackling criminal assets

- 1.1 Over 70% of all crime is acquisitive in nature and estimates of the total value of the proceeds of such crime vary widely. The most-often quoted figure is the equivalent of 2% of the national gross domestic product – around £18 billion.³ It is clear, however, that crime represents a multi-billion pound industry and, at the top end of the scale, individual crime ‘barons’ accrue literally millions of pounds, usually through a combination of drug importation, tax fraud, and high value acquisitive criminality. They directly employ many ‘middle-management’ criminals to pursue their business ends but they are also indirectly responsible for a massive amount of volume crime, especially that carried out to finance the purchase of drugs by habitual users.
- 1.2 While it is important to tackle the top-level criminals, it can also be highly effective to target those lower down the pecking order. These are both more accessible to general law enforcement agencies, and the impact of disruption or detection can be more visible to both the criminal fraternity and the wider community. Research undertaken by the National Criminal Intelligence Service (NCIS) shows that £20,000 in the hands of a drug dealer would currently purchase

³ Home Office Crime and Policing website on the Proceeds of Crime Act – <http://www.homeoffice.gov.uk/crimpol/oic/proceeds/casestudies.html>

1 kilogram of heroin (at wholesale prices). When distributed at street level this could be expected to generate:

- 220 burglaries, creating (at least) 220 victims;
- an average of £1,000 worth of stolen property from each offence;
- a cost of £100 per offence for each initial police response; and
- between £650 – £10,000 to prosecute each suspected burglar detected.

1.3 The same research further suggests that just over 1,000 crimes are committed each month by addicts; for each offending addict who subsequently proves to be HIV positive there is a cost to the public purse of £75,000 for treatment. At a purely financial level, this illustrates that removing just £20,000 of criminal assets from the system can significantly reduce victimisation, help to break the cycle of criminality and potentially save up to £500,000 of valuable resources within the community and the criminal justice system.

1.4 Perhaps as importantly for the future well-being of society, preventing overt criminals from living off the proceeds of crime can deter impressionable young people from entering or expanding their involvement in criminality. At all levels successful criminals who are seen to be living lives of relative luxury, act as dysfunctional role models for their peers and juniors. In early 2004 a survey was carried out by YouGov⁴ on behalf of the Assets Recovery Agency (ARA). The study sought views of respondents about people within their community who were probably living off the proceeds of crime. One in seven people said they knew at least one person or family in their neighbourhood who derived much of their wealth from crime (the figure climbed to one in five of those living in the North and in Scotland). It clearly appears to many that crime definitely does pay and that the authorities seem almost powerless to intervene.

Government drive and legislation

1.5 The pursuit and recovery of the proceeds of crime can make a significant contribution to crime reduction and to the creation of a safe and just society. It can:

- send out the message that crime does not pay;

⁴ Source Topline Summary (Survey 2) Prepared by YouGov12/02/04 for ARA. YouGov is a company using on-line panels for public policy, market research and stakeholder consultation.

- prevent criminals from funding further criminality;
- remove negative role models from communities; and
- more indirectly, it can help to decrease the risk of instability in financial markets.⁵

1.6 Powers were first introduced to confiscate the proceeds of crime from convicted defendants following the failure to recover funds in a notable drug trafficking case in 1978, known as ‘Operation Julie’. This was the largest police undercover drugs investigation of its time, centring on the manufacture of LSD in a Welsh farmhouse. In that case, £750,000 of drug trafficking proceeds were traced and restrained but had to be handed back when the House of Lords held that the existent legislation could not be used.

Operation Julie, 1978, the largest undercover drugs operation of its time



1.7 Despite such cases, a confiscation regime was not introduced until 1986, with the Drug Trafficking Offences Act, and later extended by the Criminal Justice Act 1988 to cover non-drug indictable and certain specific summary offences. In 1999, the Prime Minister

⁵ Effective disruption and recovery can, given the large sums involved, help to reduce fluctuations in the legitimate market by minimising the detrimental effects of counterfeiting and other illegitimate acts.

declared the Government's intention to strengthen still further the enforcement measures:

"We want to ensure that crime doesn't pay. Seizing criminal assets deprives criminals and criminal organisations of their financial lifeblood. The challenge for law enforcement will become even greater as new technologies hide the money trail more effectively. We must ensure that law enforcement is ready to meet the challenges."

The Rt. Hon. Tony Blair MP, 3 September 1999

- 1.8 In June 2000 an influential report was published by Whitehall's Performance and Innovation Unit (PIU) entitled *Recovering the Proceeds of Crime*. The Unit concluded that financial investigation is an important tool in the fight against crime but that it was under-used, under-valued and under-resourced in the UK. There was also a shortage of people with the right skills and little evidence of cross-agency co-operation or the sharing of best practice.
- 1.9 Despite the stated aim of depriving offenders of the proceeds of their crimes there were anomalies in the legal regime, which had developed in a piecemeal fashion. There were also significant deficiencies in the use of existing legislative provisions, which required:
 - a more strategic approach, with joined-up action from all relevant parts of the criminal justice system;
 - better trained and supported law enforcement officers, able to pursue complex financial investigations;
 - a simpler and more robust legal regime, including extended civil forfeiture powers;
 - greater efforts to stem the laundering of criminal assets;
 - full use of the existing taxation powers;
 - a higher international standard, set by the UK; and
 - new structures and incentive mechanisms to underpin these changes.

- 1.10 The PIU report highlighted the need to:
- place a greater emphasis on financial investigation, making it central to UK law enforcement investigations;
 - create an enlarged cadre of professional, skilled financial investigators; and
 - widen existing financial investigation powers.
- 1.11 In response, the Proceeds of Crime Act 2002 (POCA) was introduced to give those involved in financial investigation an effective tool to deprive criminals of their financial lifeblood. The Act extended and simplified existing legislation, notably the Drug Trafficking Act 1986 (as amended by the Drug Trafficking Act 1994) and the Criminal Justice Act 1988. The main powers of POCA relate to cash seizure, confiscation of criminal proceeds, action against money laundering and the introduction of civil recovery and taxation. POCA created a single set of money laundering offences relevant to the proceeds of all crimes and strengthened the UK's ability to enforce confiscation orders made in their jurisdictions against assets held here.
- 1.12 The thrust of POCA is well illustrated by this comment from the Home Secretary:

“We are beginning to hit criminals where it hurts – in their pockets. Why should career criminals live ‘champagne lifestyles’ paid for at the expense of victims of crime?”

The Rt. Hon. David Blunkett MP (October 2003)

De-mystifying POCA – the principal offences and powers

- 1.13 Despite common perceptions that asset recovery is aimed at the top echelon of criminals, its greatest impact could be felt at street level. The early stages of asset recovery, and the capacity to strike at almost all levels of acquisitive criminality, fall within everyday policing and are not the preserve of specialist financial investigators. There are three main powers and offences that should be of interest to **all** operational police officers (Box A):
- **Cash seizure** – seizing any cash⁶ where there is a suspicion that it is the proceeds of crime, or is intended for criminal use;

⁶ Includes any monetary instrument

- **Confiscation** – depriving a convicted defendant of benefit obtained from criminal activity. In effect, it presents the offender with a bill that reflects the value of criminal proceeds. The offender can choose how this is paid – for example, by selling a house – but will face imprisonment if the order is not satisfied; and
- **Money laundering** – dealing with anything representing the benefit of a criminal offence, including stolen property, or its proceeds.

Box A – POCA – an overview

CASH SEIZURE

- POCA gives police and Customs officers the power to seize cash of £5,000 or more when the cash is believed to represent criminal property or intended for use in unlawful conduct (S. 294). The civil burden of proof – ie, balance of probability – applies and there is no requirement to link the seizure to a criminal offence. The possessor must have a credible explanation – it is not for the police to prove a particular criminal offence.
- The officer must have reasonable grounds to suspect the cash is recoverable property or is intended to be used in unlawful conduct.
- Recoverable property means property obtained through unlawful conduct (any criminal offence).
- This civil process of seizure requires the funds to be the subject of a detention hearing before a magistrates' court within 48 hours of seizure.
- The civil process ends in a hearing at which a court may order forfeiture of the cash.
- Cash includes notes in any currency, postal orders, cheques of any kind including travellers' cheques, bankers' drafts and bearer bonds or shares.

CONFISCATION

- Confiscation is an order made by the court for payment of a sum of money equivalent to the benefit obtained by an offender from criminal activity.
- The confiscation process is triggered by an offence from which a defendant has obtained a financial benefit.
- Confiscation may also follow evidence of criminal activity that points to a 'criminal lifestyle'. This includes:
 - four or more offences heard at the same proceedings where the total benefit exceeds £5,000;
 - one continuing offence which has taken place over a period of at least six months where the total benefit exceeds £5,000;
 - two or more similar convictions on separate occasions over the last six years where the total benefit exceeds £5,000; and
 - offences of drug trafficking; money laundering; human trafficking; arms trafficking; terrorism; pimping and other offences relating to brothels; blackmail; and intellectual property crime.
- In essence, in 'criminal lifestyle' cases, the Act assumes that all property held by the defendant at the time of conviction order.

- A confiscation order requires the payment of a sum of money – a debt, effectively – and if the convicted defendant does not pay voluntarily, compulsory enforcement action may be taken to ensure that the order is paid.

MONEY LAUNDERING

- POCA sets out three principal money laundering offences – the first two trigger criminal lifestyle assumptions as set out above:
 - S.327 – Concealing, disguising, converting or transferring criminal property.
 - S.328 – Arranging the acquisition or retention, use or control of criminal property.
 - S.329 – Acquiring, using or possessing criminal property.
- The term ‘money laundering’ is not in fact restricted to money or stolen property but any property representing such benefit from any criminal conduct. A criminal is laundering when he or she disposes of stolen property and all persons receiving stolen property or the proceeds of such are guilty of the same offence.
- It does not matter, for any of the criminal offences, who was responsible for the criminal conduct or what that criminal conduct was, as long as the offender knew or suspected that the property was ‘criminal property’.
- In a simple example, if a shoplifter steals a CD valued at £15, then sells it to a third party for £5 and uses that £5 to buy cigarettes, both have committed a variety of money laundering offences. (Advice should be sought on the most suitable charges.)

RESTRAINT ORDERS

A Crown Court may grant a restraint order where a criminal investigation or proceedings have been started and there is reasonable cause to believe that the alleged offender has benefited from his/her criminal conduct. At an early stage of an investigation – even before any charges are brought – applications can be made for restraint orders to prevent the disposal of assets.

1.14 It is of concern that these core POCA powers are not well known by police officers, but in addition there are persistent misconceptions about POCA powers that actively discourage operational staff from using them or seeking to find out more about them. It is important for practitioners, supervisors and managers to understand that pursuing criminal confiscation under POCA powers does not:

- relate only to drug offences or serious criminal activity;
- involve a complicated process to invoke action;
- create masses of further work during the investigation phase of a case; or
- mean that expert financial investigators will not assist or take on the case at the appropriate point.

Resourcing asset recovery

- 1.15 It was accepted from the outset that the successful implementation of POCA would require significant initial resourcing to ensure that the intended step-change approach to asset recovery registered on agencies' agendas. Policing received two forms of support, namely additional funded posts and performance incentives. The CPS received Home Office funding and a few Magistrates' Courts Committees (MCCs) received incentivised funds.
- 1.16 In October 2001 the Home Office agreed funding for the recruitment of 86 financial investigators for English and Welsh police forces, at an annual cost of £2.58 million. The funding was initially for three years, until 2004, and later extended to 2006. The funding has been used to employ both civilian police staff and police officers as financial investigators. Training by the ARA was provided free to all newly-recruited investigators. All 43 police forces have benefited, with posts allocated against an ACPO formula that reflects the size of police forces, the amount of asset recovery work they were undertaking at the time and their potential for doing more. The Metropolitan Police Service (MPS), for example, qualified for an extra 14 posts, Greater Manchester for three posts, while Cumbria and Suffolk received one each; clearly, this level of additional staffing can tackle only the 'tip of the iceberg' of the potential workload.
- 1.17 The Government set up the Recovered Assets Incentivisation Fund (RAIF) in 2003/04 to incentivise asset recovery by relevant law enforcement agencies and prosecuting authorities; £15.5 million a year for three years has been allocated to the fund. Of this, up to £12 million a year has been allocated to four new multi-agency Regional Asset Recovery Teams (RARTs) to disrupt organised crime groups, confiscate more criminal assets and tackle money laundering. The Home Office Incentivisation scheme will pay police forces that qualify when the POCA recovered assets targets for 2003/04 and 2004/05 have been met. RAIF is already self-funding from monies recovered. From this fund the CPS also received money to design and deliver training to all prosecuting agencies in the criminal justice system.

- 1.18 In 2004/5 and 2005/6, each police force will receive back monies based on their performance in asset confiscation during these years. The scheme has both a floor and ceiling on returned funds, but there is potentially up to £108 million available over the two years. There are no restrictions on how returned monies will be spent. The total amount confiscated or seized by police forces will be analysed to calculate the percentage of the total amount available for return that each will receive. This underlines the importance of accurate data collection and comprehensive inputs to the Joint Asset Recovery Database (JARD).
- 1.19 To implement POCA, the CPS received additional funding over three years from the Home Office. The CPS was allocated funding of £3.3 million in 2003/04, with £6 million promised for 2004/05 and £9 million for 2005/06.
- 1.20 There was little extra funding for either magistrates' court or the Crown Court to implement POCA. The administrative handling of POCA cases is only a part – and for some courts a very small part of their overall business. Three Magistrates' Courts Committees (Greater London, Greater Manchester and Kent) were awarded additional funding from the RAIF to establish and train specialist confiscation teams. These are fast becoming centres of excellence in enforcement of high volume but low value orders, and the Department for Constitutional Affairs (DCA) plans to expand to a network of seven centres by 2006. This could be of significant benefit in increasing the amount of monies recovered.

Key players in asset recovery

- 1.21 The national scene for asset recovery spans a number of agencies in both the public and private sectors. Briefly, three bodies are driving and pushing through the implementation of POCA – Concerted Inter-agency Criminal Finances Action group (CICFA), the Joint Money Laundering Steering Group and the Asset Recovery Agency. As the overarching body perhaps CICFA is the most significant. Other key players mentioned below make important contributions to delivery.

CONCERTED INTER-AGENCY CRIMINAL FINANCES ACTION GROUP⁷

1.22 CICFA is a non-statutory, multi-agency group with membership from the key agencies using POCA powers. It was established in June 2002 to:

- implement a programme of action in support of the Asset Recovery Strategy;
- assess proposals for funding from Recovered Assets Incentivisation Fund; and
- make recommendations on project funding for which the agreement of Home Office Ministers is needed.

(For more details on CICFA see annex 1)

JOINT MONEY LAUNDERING STEERING GROUP

1.23 Money laundering activities can adversely affect the financial industry and money markets. POCA recognised this by placing a responsibility on the regulated financial sector to notify law enforcement agencies, through NCIS, of all suspicious financial activity (notification is known as Suspicious Activity Reports, or SARs). The Group comprises the leading UK trade associations in the financial services sector. It promulgates good practice in countering money laundering and gives practical assistance to members in interpreting the UK money laundering regulations.

1.24 Linked to this Group is a Money Laundering Task Force, set up by the Home Office in 2003. Members include all law enforcement agencies and financial sector representatives. In essence it tries to manage the different perspectives and give confidence to industry that SARs are being used effectively.

ASSETS RECOVERY AGENCY

1.25 A key feature of POCA was the establishment of the Assets Recovery Agency (ARA) to carry out investigations referred by the police or other law enforcement agencies, leading to the civil recovery of criminal assets. The ARA's remit is to help reduce crime by:

⁷ Current membership comprises Home Office, Department for Constitutional Affairs, HMCE, ACPO, CPS, ARA, Inland Revenue, NCS, NCIS, Financial Services Authority, Northern Ireland Office and Department of Public Prosecutions (Northern Ireland).

- supporting police forces, Customs and other agencies in financial investigations, by providing specialist training and advice;
- investigating cases leading to post-conviction confiscation orders and/or applying for such orders;
- enforcing certain confiscation orders;
- using a new power of ‘civil recovery’ – suing in the High Court for the recovery of the proceeds of unlawful conduct;
- using powers of taxation where there are grounds to suspect that there is income, gains or profits from criminal conduct that is chargeable to the relevant tax; and
- seeking and executing requests for international assistance in obtaining restraint and confiscation and the use of powers of investigation.

CENTRAL CONFISCATION BRANCH (CCB)

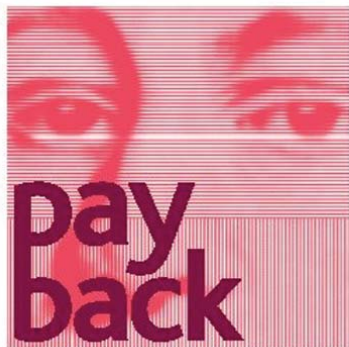
- 1.26 The CCB is part of the CPS Casework Directorate and pre-dates POCA. Its work is in connection with the pre- POCA legislation, obtaining restraint orders from the High Court so that assets are available to satisfy any confiscation order that the Crown Court may make following conviction. The CCB also acts on behalf of foreign jurisdictions to obtain restraint orders and enforce confiscation orders made abroad when assets, from which those order could be paid, are situated in this jurisdiction. Together with Customs and Excise, the CCB operates as part of the Enforcement Task Force set up by the Home Office to collect un-enforced pre-POCA confiscation orders. In addition, the CCB advises and assists CPS Areas on POCA cases and in the registration of POCA orders made in Scotland and Northern Ireland.

REGIONAL ASSET RECOVERY TEAMS (RARTs)

- 1.27 The first Regional Asset Recovery Team pilot was a collaborative initiative involving Warwickshire, West Midlands, Staffordshire and West Mercia constabularies, HM Customs & Excise (HMCE), NCIS and supported by the National Crime Squad (NCS). The aim of RARTs is to provide a focused multi-agency response to asset recovery. They impact on criminals engaged in drugs-related or serious and organised crime that crosses force borders.

- 1.28 From April 2004, four additional RARTs began operation, extending coverage to London (based within ARA offices), the North East (based in Leeds, with sub-office at Durham), the North West (temporarily in Ormskirk) and Wales (based at Bridgend). The composition of each RART essentially reflects the pilot model, but with the following additional elements:
- Money laundering teams
 - Two ARA financial investigators
 - CPS lawyer
 - Inland Revenue financial investigator.
- 1.29 RARTs receive referrals from individual police forces and are also tasked through Regional Tasking & Co-ordination Groups, chaired by an ACPO officer. These Groups set priorities for relevant Level 2⁸ activity in Regions, driven by the National Intelligence Model (NIM) Control Strategy.

Operation Payback, a national⁹ asset recovery initiative



Taking the cash
out of crime

FINANCIAL INVESTIGATION UNITS

- 1.30 At an operational level, financial investigation units (FIUs) play a critical role in taking forward asset recovery, pursuing often complex investigations and helping to raise awareness of asset recovery powers. Their role is considered in some detail later in the report, highlighting the importance of sustained investment in this specialism.

⁸ Level 2 criminality is that which crosses force boundaries (see NIM approach in Annex 4).

⁹ Originated from a London based asset recovery operation co-ordinated by the London RART.

Conclusion

- 1.31 The asset recovery landscape contains a multiplicity of groups with different remits, objectives and structures. While it is positive to have a broad base to such activity, there are concerns that involvement of so many disparate groups could detract from the effective and co-ordinated implementation of new legislation.
- 1.32 The case for powers such as those under POCA is overwhelming, on economic grounds as well as its role in tackling criminality head-on and restoring confidence in the capacity of criminal justice agencies to ensure that crime does not pay. It is therefore important, even at this early stage in POCA implementation, to review the impact that it has had. Is it beginning to deliver against the high expectations set for it?



Chapter 2

Where are we now?

National progress by 2004

- 2.1 The introduction of POCA was welcomed by all law enforcement and criminal justice agencies, and key players had prepared the ground in advance. On behalf of the police service, ACPO stressed the importance of the powers contained in the Act and worked to embed the new legislation within police forces. The CPS trained both lawyers and caseworkers as well as establishing a national service level agreement with ACPO and local area protocols with their respective police forces. Magistrates' courts provided staff training and identified staff to act as experts. The Crown Court also trained some staff to deal with POCA, in anticipation of a flow of cases.
- 2.2 An Assets Recovery Delivery Plan was drawn up in 2003 and was monitored by the Home Office. By early 2004, POCA was beginning to make an impact. In February 2004, a Home Office Minister highlighted some successes in celebrating the impact which POCA had already made.

“After just one year criminals are feeling the pain of having their assets frozen, seized and confiscated on a greater scale than ever before: £55 million suspect cash seized; £37.6 million criminals’ cash confiscated; and £18.9 million the subject of freezing and interim orders in the courts.”

Caroline Flint MP

In February 2004, Home Office Minister Caroline Flint MP announced the expansion of Regional Asset Recovery Teams



- 2.3 Newspaper headlines also trumpeted successes in confiscating criminal assets during the first year:

Officers are praised for recovering crime assets
New powers to investigate money laundering are welcomed

The Informer, Staffordshire Police, February 2003

Court seizes £168,000 from drug dealer

The Journal, Newcastle, 13 August 2004

BUSINESSMAN HAS TO FORFEIT £34,000

Police say bagfuls of notes were crime proceeds

The Journal, Newcastle, 9 December 2003

COCAINE BARON'S £2.2m IS SEIZED

The Northern Echo, 7 October 2004

- 2.4 However, despite overt evidence of success and the degree of agency activity reported, there were increasing concerns regarding the overall impact of POCA. For example, an internal CPS review in autumn 2003 highlighted some problems in the focus of effort, training for Area staff and the use of guidance. Police forces were worried over poor awareness of the new powers and their relevance to reducing volume criminality.
- 2.5 Statistics gathered by the Home Office's Organised and Financial Crimes Unit (OFCU) further evidenced the different levels of take-up by police forces. Confiscation orders obtained by police forces in 2003 ranged from £13,000 to over £6.5 million (in one large metropolitan force).
- 2.6 POCA had been launched and lauded as a multi-agency tool for tackling criminality and, in gauging whether its implementation was proving successful, a review would normally refer to joint objectives and targets, and a system for monitoring progress against these. In fact, the monitoring of performance is as inconsistent as the implementation of the powers.

Monitoring POCA performance

- 2.7 Despite the best efforts of CICFA to collate meaningful data, problems with validation meant that there was little reliable data on asset recovery collected centrally prior to the commencement of POCA. Data was collected separately by the Home Office and HM Customs and Excise and then collated. Even after the introduction of the Act, until the establishment of the JARD database in April 2004, there

remained no consolidated collation of appropriate statistics. Various information was collected by individual agencies, in particular:

- Home Office
- HM Customs & Excise
- Crown Prosecution Service
- Department for Constitutional Affairs
- Regional Asset Recovery Teams (RARTs)
- Assets Recovery Agency (ARA)

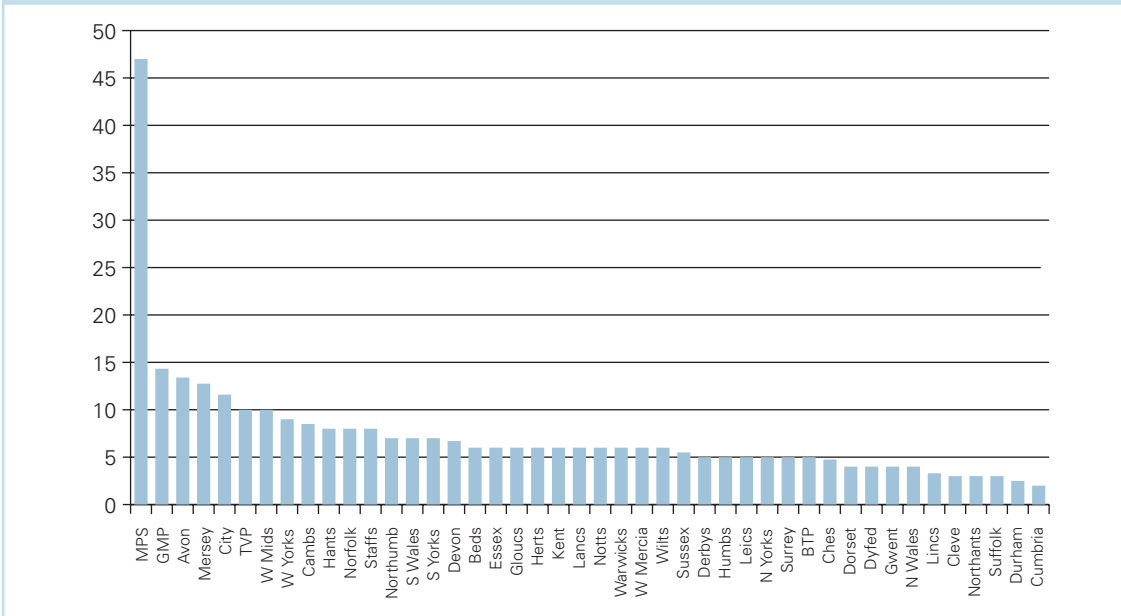
HOME OFFICE

2.8 The Organised and Financial Crimes Unit (OFCU) gathers figures in respect of police activity. This data relates to asset recovery under all existing legislation and is one means of evaluating the impact of the additional financial investigators (FIs). The Home Office measurement covers:

- Number of FIs
- Value of confiscation orders obtained
- Number of money laundering prosecutions
- Number of financial investigations ongoing
- Number of production orders granted by the courts
- Number of forfeitures under Sec. 27 of the Misuse of Drugs Act 1971
- Enforcement of confiscation orders

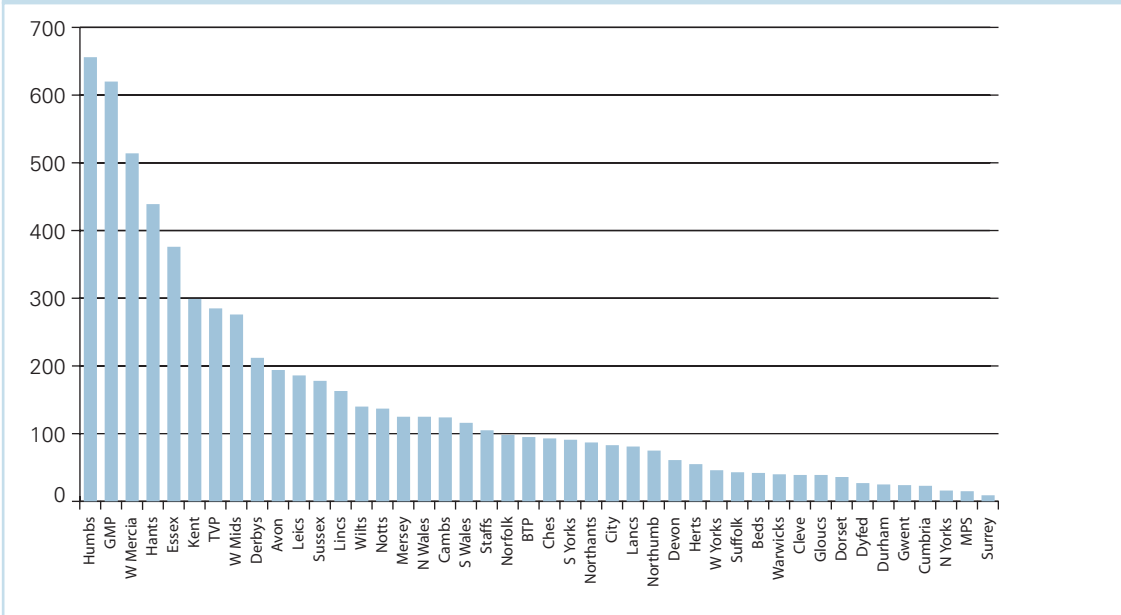
2.9 This data relies on quarterly submission of returns from police forces and should, in theory, inform useful comparisons between police force asset recovery activity. However, there is no quality assurance of these figures – the Home Office relies on FIUs to submit timely and accurate figures, and assumes a consistent interpretation of the data requirements. It does not measure the amount of cash seized and subsequently forfeited – this data is kept separately by the ARA. Examples of the data captured appear in Figures 1 and 2 (opposite).

Figure 1 – Number of Financial Investigators by police force – 2003/04



Source: Home Office OFCU

Figure 2 – Number of Financial Investigations by police force – 2003/4



Source: Home Office OFCU

CROWN PROSECUTION SERVICE

- 2.10 A systematic approach to monitoring performance has been implemented within the CPS since the enactment of POCA, to reinforce POCA as core business for the CPS. The approach includes individual targets for each Area on numbers of confiscation orders. A formal system captures data and ensures that statistics on performance are forwarded to the centre for collation and analysis. An increase in the resource available to analyse data is helping to improve the accuracy of this Area information.
- 2.11 The information collected for internal CPS use includes:
- composite report on numbers of confiscation orders made;
 - monetary value of confiscation orders applied for;
 - collected/enforced amount against confiscation orders;
 - number of restraints applied for; and
 - number of management and enforcement receivers appointed.

DEPARTMENT FOR CONSTITUTIONAL AFFAIRS

- 2.12 The courts have not set specific POCA targets but seek to progress POCA cases within the parameters of pre-existing overall standards for case progression. DCA arranged for the collection of data from magistrates' and the Crown Court as soon as the Act came into force. The data collected reflects closely the national reporting requirements, and relevant national or local targets and standards. Justices' Chief Executives (JCEs) are required to provide quarterly returns of all financial receipts on POCA confiscation orders, identifying separately the confiscation orders relating to Drug Trafficking and 'other' offences.

REGIONAL ASSET RECOVERY TEAMS (RARTs)

- 2.13 RARTs record, in respect of their own activity
- Number and value of confiscation orders
 - Number and value of restraint orders
 - Number and value of cash seizures
 - Total number of cases being handled

ARA AND THE JOINT ASSET RECOVERY DATABASE (JARD)

- 2.14 In an attempt to consolidate and simplify the statistics that are collected by the many agencies involved in asset recovery, a new database – the Joint Asset Recovery Database (JARD) – was initiated

by CICFA and subsequently located in the ARA. The system went live in April 2004, accessible to some 2,000 users in over 300 sites, primarily financial investigators and court staff. CPS Area staff will have access in autumn 2004. The largest group of users is financial investigators but there are also significant numbers of legal staff and court staff using the system.

2.15 JARD holds data on:

- Cash seizures
- Confiscation
- Civil recovery
- ARA taxation receipts

Searches can be conducted by case or by order and JARD allows the user to add, update or view data under:

- Cash seizure cases, cash detention orders, cash forfeiture orders;
- Confiscation cases, restraint orders and confiscation orders, it also allows the user to add/enforce confiscation order;
- Civil recovery asset restraining order; and
- ARA taxation case, asset restraining order.

2.16 While it is too early to comment on the overall effectiveness of JARD, it is beginning to prove its worth (Box B) and any move to consolidate management and performance information across the CJS should improve the accuracy and efficacy of data. However, as with all new systems, user acceptance is crucial to the effectiveness of the system. Careful attention needs to be paid to user training to ensure that user error does not undermine the value of the system. It will also be important that JARD is regarded as **the** central and consolidated database and is structured and supported to allow it to fulfil that important role.

Box B – The value of JARD

A financial investigation involved six defendants following the seizure of half a tonne of cannabis. Initial checks on the targets' finances revealed a bank account containing £39,000 belonging to target A. On checking the targets against the JARD system, the investigator found that target A had a confiscation order in the sum of £50,000 made against him in 2002. Records showed that target A had only paid approximately £9,500 of this order. The Confiscation Recovery Unit was notified and it sought a restraint against target A's account to recoup the funds as a matter of urgency.

Recommendation 1

That Chief Constables, CCPs, CCMs, JCEs and the future HMCS Area Directors ensure that effective systems are in place to collect and collate POCA data, so that end-to-end performance information can be provided in a timely fashion to support JARD nationally and manage performance locally.

Achievement against objectives and targets

2.17 Amidst the plethora of statistics gathered before the arrival of JARD, there have been few consolidated attempts to assess overall performance, although the Metropolitan Police Service (MPS) did previously collate national cash seizure figures from the inception of the Act. Each agency has focused on particular issues relevant to itself and some of the data collected has not even been made available to the local strategic management of the agencies concerned. The general lack of joined-up monitoring made the task of the Review team particularly difficult but, from a combination of the data made available, the following sections provide a broad picture of the progress made in four main areas of POCA activity, namely:

- **Cash seizure**
- **Confiscation**
- **Enforcement of confiscation orders**
- **Money laundering**

CASH SEIZURE

2.18 In 2003, 422 seizures were made, totalling £16.7 million. It is too early to say what proportion of that figure will be subject to full forfeiture by the magistrates' courts until cases are completed, but figures show considerable variation in the number of orders successfully applied (Table 1).

Table 1 – Cash seizures by force for 2003

FORCE	NO	AMOUNT	% OF TOTAL
Avon & Somerset Constabulary	8	£124,915.56	0.75%
Bedfordshire Police	1	£25,000.00	0.15%
British Transport Police (BTP)	6	£839,372.74	5.02%*
Cambridgeshire Constabulary	4	£202,297.27	1.21%
Cheshire Constabulary	2	£125,000.00	0.75%
City of London Police	7	£379,071.42	2.27%
Cleveland Police	9	£303,959.90	1.82%
Cumbria Constabulary	2	£114,000.00	0.68%
Derbyshire Constabulary	3	£63,160.00	0.38%
Devon & Cornwall Constabulary	5	£229,920.00	1.38%
Dorset Police	7	£109,975.00	0.66%
Durham Constabulary	2	£80,560.00	0.48%
Dyfed-Powys Police	2	£37,245.00	0.22%
Essex Police	5	£149,438.07	0.89%
Gloucestershire Constabulary	5	£215,300.00	1.29%
Greater Manchester Police	9	£408,520.01	2.44%
Gwent Police	2	£24,100.00	0.14%
Hampshire Constabulary	6	£297,234.44	1.78%
Hertfordshire Constabulary	2	£21,735.00	0.13%
Humberside Police	3	£51,882.27	0.31%
Kent Constabulary	22	£727,899.72	4.35%
Lancashire Constabulary	21	£537,749.54	3.22%
Leicestershire Constabulary	13	£417,725.67	2.50%
Lincolnshire Police	4	£60,745.00	0.36%
Metropolitan Police	135	£7,267,070.85	43.47%
Merseyside Police	13	£508,710.00	3.04%
Norfolk Constabulary	2	£69,680.00	0.42%
Northamptonshire Police	2	£33,066.29	0.20%
Northumbria Police	14	£492,420.40	2.95%
North Wales Police	4	£52,611.72	0.31%
North Yorkshire Police	3	£58,140.00	0.35%
Nottinghamshire Police	5	£127,927.00	0.77%
South Wales Police	5	£159,075.64	0.95%
South Yorkshire Police	7	£118,885.06	0.71%
Staffordshire Police	5	£478,674.73	2.86%
Surrey Police	7	£344,425.00	2.06%
Sussex Police	8	£206,338.20	1.23%
Thames Valley Police	12	£253,932.08	1.52%
Warwickshire Police	5	£99,443.50	0.59%
West Mercia Constabulary	2	£211,405.00	1.26%
West Midlands Police	19	£654,604.05	3.92%
West Yorkshire Police	25	£774,354.86	4.63%
Wiltshire Constabulary	5	£98,942.00	0.59%
TOTAL	422	£16,717,140.25	100.00%

BTP seizures are included in this spreadsheet however the totals are attributed to the Police Force area in which the seizure occurred.

- 2.19 It should be emphasised that police forces have done well to seize this amount of cash, almost from a ‘standing start’. But there is considerable variation. Of the total cash seized in 2003, the MPS accounted for £7.26m (43.47% of the national total), followed by West Yorkshire and Kent seizing just over £700,000 each (4%). British Transport Police seized £839,372. One small Home Counties force had seized just over £21,000 or 0.13%. Clearly more needs to be done to educate operational staff about the law, practice and procedures in respect of cash seizures.

Large amount of cash seized by Kent Police following a house search



CONFISCATION

- 2.20 Confiscation is the central weapon in the POCA armoury and consequently is the most monitored activity. However, the statistics collected by different agencies do not always correspond and there are analytical difficulties relating to the overlap between use of POCA powers and previous legislation. The following performance statistics are drawn mainly from Home Office data.
- 2.21 In the financial year 2003/04, confiscation orders obtained by the police and CPS exceeded £40 million – this does not include forfeitures of £1.8m under Section 27 of the Misuse of Drugs Act 1971 (Figure 3).

Table 2 – Confiscation orders*Police forces with the highest numbers of orders – 2003/04*

Force	Number of orders
Merseyside	125
Gr. Manchester	122
Metropolitan	86
Kent	74
Lancashire	71

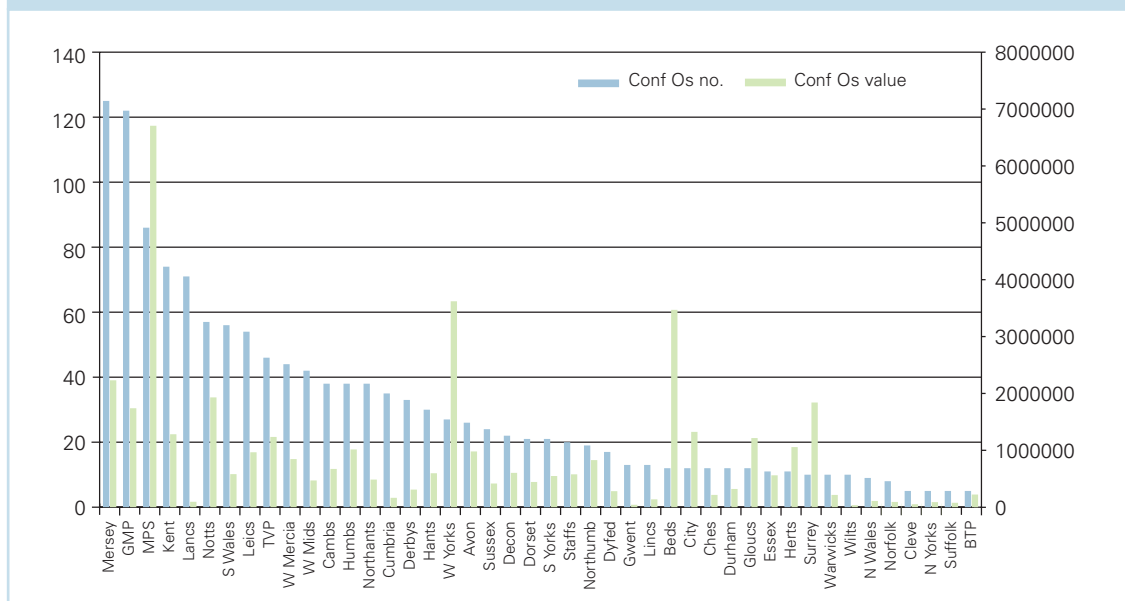
Police forces with the highest values of orders – 2003/04

Force	Value of orders
Metropolitan	£6.7m
W. Yorkshire	£3.6m
Bedfordshire	£3.5m
Merseyside	£2.2m
Nottinghamshire	£1.9m

Note: POCA only went live in March 2003 and so statistics still currently include confiscation activity under all available legislation.

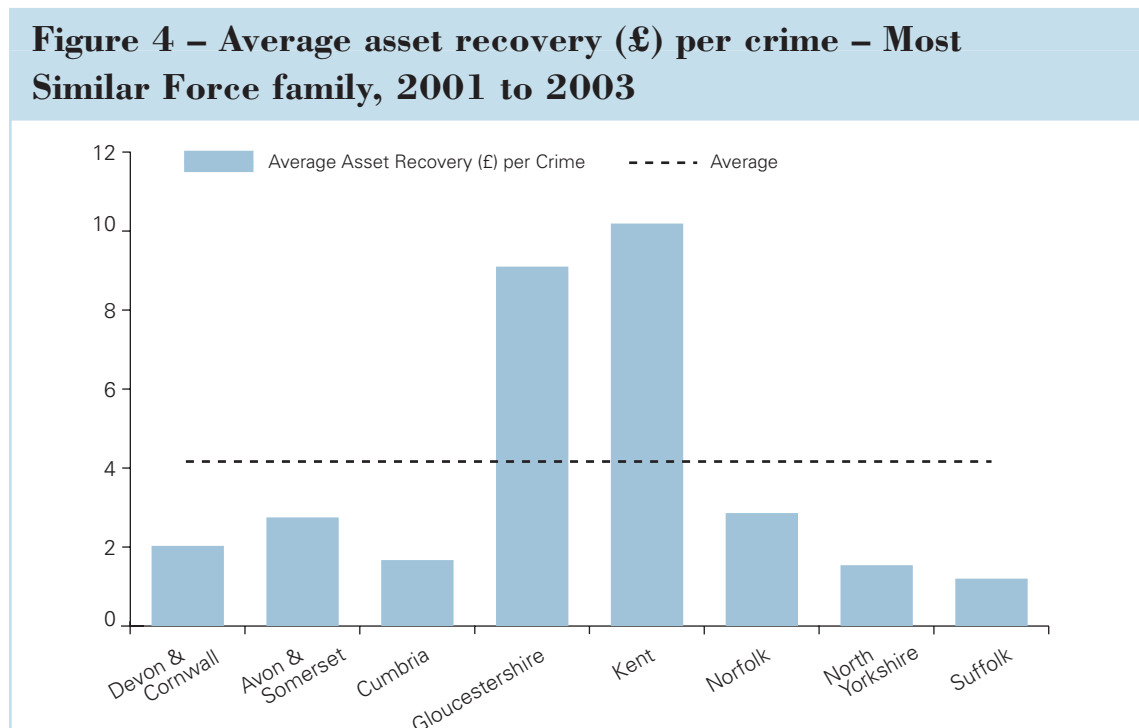
Source: Home Office OFCU

2.22 Table 2 and Figure 3 illustrate the variation in performance between individual force areas. Figure 3 brings together the performances of police forces in respect of the quantity of orders and their value; those with the most orders numerically can be exceeded in value terms by forces with a smaller number of orders.

Figure 3 – Comparison of values and numbers of confiscation orders, 2003/04

Source: Home Office OFCU

- 2.23 Some police forces have set their own objectives for cash seizure and confiscation values, ranging from improving on the previous year's achievements to a 25% year-on-year increase. The MPS has set a target to disrupt at least two criminal networks per Borough per month, by successfully obtaining confiscation orders. Staffordshire's asset recovery target derives from the global CICFA figure, broken down into what the force needed to achieve to meet this and then further cascaded to departments and BCUs. This is a commendable approach to mainstreaming the legislation.
- 2.24 Monitoring of local targets is usually via the individual force performance and monitoring systems regime, which in most but not all cases is robust and demanding. The ACPO lead for POCA issues has recently written to all Chief Constables reminding them of incentivisation and the amount each would receive if they hit their targets. The letters to police forces also contain data on overall totals and illustrated confiscation activity in terms of the average asset recovery (£) per crime per force, compared by their allotted 'most similar force (MSF) family (Figure 4).



Source: Analysis by ACPO POCA Working Group, using Home Office data

- 2.25 There were some inconsistencies in the collection of statistics within the CPS Areas visited, and some orders granted are not being entered

onto the Area spreadsheet. The process developed by the CPS Business Development Directorate (BDD) fulfils a necessary role in accounting for performance. Areas now need to consider how their systems for gathering data will deliver full and accurate statistics on POCA performance.

- 2.26 The BDD produces a report for the CPS Board on overall performance. Some individual Area POCA performance is discussed at performance meetings between the Chief Crown Prosecutor, CPS Chief Executive and Director of Public Prosecutions. Additionally, BDD uses the information to challenge and assess Area performance. This robust approach has improved the overall performance in respect of POCA. The information is also being used to develop targets and benchmarks for 2004/05. At an appropriate point, a review of the current requirements of BDD should be undertaken to ensure that the most efficient method of data collection is used and duplication avoided.

Table 3 – Total confiscation orders and value, 2003/4

Year	Confiscation Orders granted	Value
2003/4	1,379	£41,079,291

Source: CPS statistics

- 2.27 Together with the other agencies involved in asset recovery, the DCA is working to a target set under the Asset Recovery Strategy, to double the amount of money obtained from enforced confiscation orders from drug traffickers and other major criminals, to £60m (ie, to collect at least this amount from confiscation orders determined by the court). It encouraged MCCs to deal with any backlog of confiscation orders under previous legislation. The information provided by MCCs to the DCA is used for monitoring purposes by both the DCA and the Home Office.
- 2.28 Each Crown Court centre is required to submit data half-yearly to the DCA showing the numbers of each of the following: Restraint, Account Monitoring, Customer Information and Production Orders. The most significant numbers have been, so far, in the Production Orders ('interim Orders') category. The number and particulars of confiscation orders made by the Crown Court is also reported to the DCA (table 4 below).

Year	Quarter	General Crime	Drugs	POCA	Total
2003	Q1	117	425	0	542
	Q2	110	402	26	538
	Q3	95	353	45	493
	Q4	116	272	82	470
2003 total		438	1452	153	2043
2004	Q1	102	253	151	506
	Q2	81	225	254	560
2004 (6 month total)		183	478	405	1066

Source: Crown Court Electronic Recording System (CREST)

- 2.29 Records show an increase in POCA orders in every quarter, and they represent an increasing percentage of the total orders made. Data for the first half of the calendar year 2004 showed that 405 POCA confiscation orders had been granted by Crown Courts, to a total value of £13 million, compared with 153 in the full year of 2003.
- 2.30 Recent performance information from the current five RARTs (for the period April to June 2004) indicates a promising start. A total of 20 confiscation orders have been obtained (40 since RARTs were formed) with a value of £1.64m (£2.67m since RARTs were formed to June 04). Realisable assets to the value of £58.87m have been identified to date in post-arrest/conviction cases awaiting a confiscation hearing. Some 39 cash seizures totalling £2.77m are currently being progressed with a view to forfeiture. Assets to the value of £21.54 million are currently the subject of 33 restraint orders.
- 2.31 For the purposes of the incentivisation scheme the money obtained by the RARTs is credited to the referring police force. Performance data on the current five RARTs is compiled by their own analysts and used by CICFA, ACPO and the RART managers to monitor performance against targets.

ENFORCEMENT OF CONFISCATION ORDERS

- 2.32 Clearly, whatever the success rate of police forces, CPS Areas and courts in commencing and making confiscation orders, the sum actually recovered relies on the performance of those tasked with

enforcement of those orders, namely staff employed (or contracted for enforcement purposes) by the magistrates' courts, by ARA, the Enforcement Task Force or by the CPS in cases requiring the appointment of an enforcement receiver. Enforcing confiscation orders demands specialist skills and in many MCCs, the small number of confiscation orders dealt with makes it difficult for enforcement staff to acquire these skills. It is but one task undertaken by MCC staff and may not be accorded a high priority.

- 2.33 The Home Office Research, Development and Statistics Directorate (RDS) collect data (from quarterly returns submitted by the 42 Magistrates' Courts Committees) on the numbers and values of confiscation order enforcement, made under all available legislation of which POCA forms just one part (Table 5).

Table 5 – Enforcement of confiscation orders

Summary of total returns for confiscation orders issued for all offences by year of collection 1999/00 to 2003/04

England and Wales	Year of collection				
	1999/00	2000/01	2001/02	2002/03	2003/04
Completeness ⁽¹⁾ (%)	100	100	100	100	93 ⁽²⁾
Number of orders					
New Orders	1,511	1,410	1,300	1,358	1,494 ⁽³⁾
Orders varied	54	70	87	166	248
Orders completed	1,466	1,265	1,135	907	1,149
Orders carried/brought forward	1,882	1,999	2,164	2,492	2,777
Value of Orders (£,000)					
New Orders	49,146	50,031	62,607	120,564 ⁽⁴⁾	81,296 ⁽³⁾
Orders varied	-1,590	-1,463	-17,051	-39,245 ⁽⁴⁾	-5,660
Orders completed	20,776	20,688	22,837	19,446	18,773
Remitted to Secretary of State ⁽⁵⁾	25,044	19,833	20,609	41,008 ⁽⁶⁾	38,857 ⁽³⁾
Orders carried/brought forward	129,141	157,365	180,084	197,444	240,499

NOTES:

- (1) Proportion of MCCs submitting returns.
- (2) No returns received from Leicestershire and North Yorkshire and Wiltshire (Q3 and Q4 only) MCCs.
- (3) Totals will not equal those given in Tables A and C combined - Greater Manchester MCC only able to supply data for all POCA offences combined in Q3 & Q4 only.
- (4) Includes two orders issued, to the same defendant in GLMCA, to the value of £33.2m which were appealed against in the High Court and cancelled.
- (5) Includes value of orders completed and partly paid.
- (6) Includes full (final) payment of one order of £745,000, two orders each over £500,000 and four orders each over £250,000 (One of which was only a part payment).

2.34 As Table 5 illustrates, reconciling orders made and amounts recovered is not a simple task. There are inherent and necessary time delays between order and payment. Some particular highlights from the figures include¹⁰:

- The number of new orders recorded in 2003/04 was 1,494, a rise of 136 from 1,358 in 2002/03.
- The value of new orders in 2003/04 was £81.3m.
- The number of orders completed (fully paid) rose from 907 in 2002/03 to 1,149 in 2003/04.
- Compared with 2002/03 the value of orders completed (fully paid) fell by £673,000 or 3.5 per cent.
- The number of orders recorded as carried forward at the end of 2003/04 is 2,777 of which the value outstanding is £240.5m. An earlier scoping study by the Enforcement Task Force concluded that £100m worth of outstanding orders are unenforceable.
- The amount remitted to the Secretary of State in 2003/04 was £38,857,000.

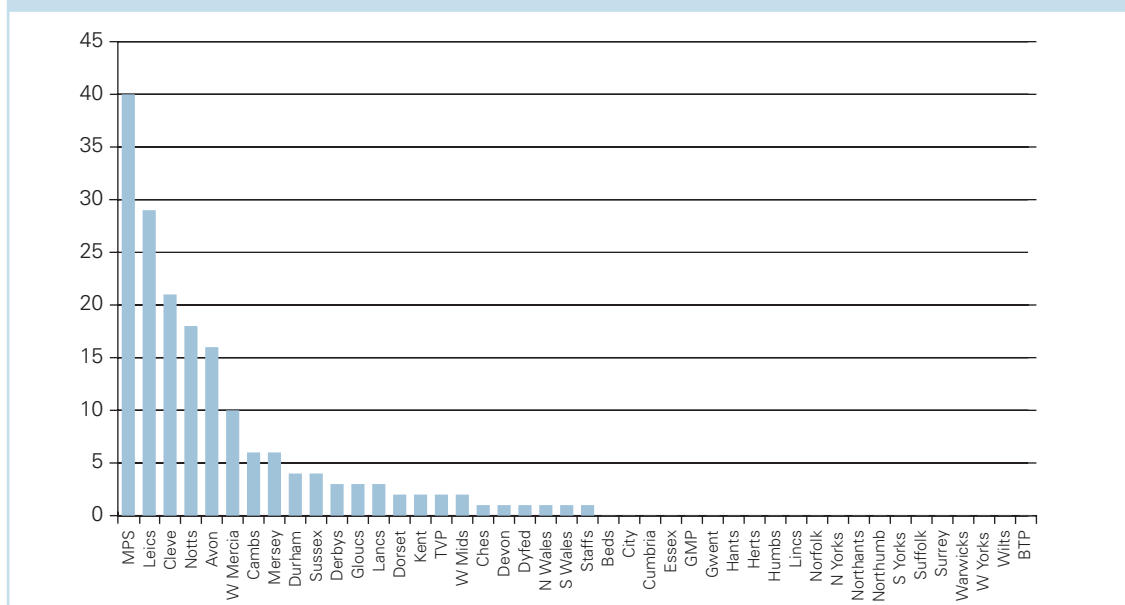
2.35 What the figures show very clearly is that, while the amounts carried forward each year as not enforced are increasing significantly, the amounts remitted fell in 2003/04 compared with the previous year. This is of concern, as poor performance on enforcement will undermine the impact that the legislation might otherwise have on reducing criminality or changing criminal culture. Additionally, as future incentivisation will rely on actual cash collected, enforcement will have a direct impact on future funding for police forces and others in the criminal justice system.

MONEY LAUNDERING

2.36 The Home Office data is useful in examining police forces' use of powers to tackle money laundering. A stark example of variability is that, in 2003/04, many police forces made no use at all of the money laundering legislation, and 75% of all prosecutions were initiated by only six police forces, the most productive being Leicestershire with 29 prosecutions and the MPS with 40 (Figure 5).

¹⁰ It should be noted that POCA is as yet only a small part of the overall performance in enforcement, and the highlighted figures include other enforcement types.

Figure 5 – Number of money laundering prosecutions by force, 2003/04



Source; Home Office OFCU

2.37 While the overall implementation of the money laundering powers is so far disappointing, there are already some good examples of the use of these powers (Box C).

Box C – Effective use of money laundering powers

During a Metropolitan Police Service investigation by Operation Trident of a drugs-related shooting in East London, £1.2 million worth of assets were found hidden in various locations under different names. High value cars and safety boxes containing cash contaminated with heroin were also identified. As a result, a woman and two men were convicted for offences of money laundering and received terms of imprisonment. They were later subject to a confiscation hearing and, in March 2004, a total of £368,803 was confiscated. If they default they each face three years in prison.

A man was charged by West Mercia Constabulary for supply of Class A drugs and, during a search of his home, a large amount of cash was seized. As the search also revealed possession of stolen property, he was additionally charged and subsequently convicted of money laundering offences. A Drug Trafficking Act confiscation order was made against him for the sum of £170,000. Following a confiscation hearing in September 2004, the cash found in his residence was forfeited: the total including accrued interest came to £206,000.

2.38 Financial investigators consistently point out that the offence of money laundering is far easier to prove than handling of stolen goods and the successful uses fully support this assertion. There is significant scope for the wider application of this POCA power, subject to the policy guidance issued by CPS.

The trappings of wealth



City of London police officers guard a seized Ferrari

Tackling attrition

- 2.39 POCA provides wide-ranging opportunities for applications to be made to the court for cash seizures and confiscation orders and for initiating prosecution of money laundering offences. In theory, everyone who is convicted of acquisitive crime, no matter how low the value, can be made the subject of a confiscation order, and anyone living above their means on ill-gotten gains is a potential money launderer. Significant opportunities exist to make criminals pay for their crime, and this Review sought to examine whether the relevant agencies are scrutinising attrition rates – ie, the scale of missed opportunities for POCA consideration at each stage in the CJ process.
- 2.40 A detective inspector from Leicestershire Constabulary researched the value of stolen goods obtained by all charged offenders. The calculation included acquisitive crimes where convictions had been obtained, and thus where asset recovery opportunities had existed. In 2001/02, the total value of acquisitive crime in the force area was £3.1 million, rising to £3.7 million in 2002/03. In those two years, confiscation orders had been made for just £248,614 (8%) and £456,632 (12%) respectively. All of these confiscation orders related

to offences involving drugs or fraud – not one had been in respect of more general acquisitive criminality. While not all of these cases would fulfil the criteria for application of POCA powers, and much of the proceeds of crime may well have been converted to drugs for personal use, the gap between actual and potential confiscation amounts still highlights considerable untapped potential (especially as Leicestershire is notably active in asset recovery).

- 2.41 One police practitioner interviewed noted that opportunities are often missed to pursue confiscation orders against, for example, bank accounts clerks convicted of false accounting offences (often termed ‘white collar crime’) where use can be made of the lifestyle assumptions. These individuals can have considerable assets in, say, the value of their houses which could be pursued.
- 2.42 It was anticipated that FIUs would have, as a matter of routine, management and workload information on matters such as logged referrals, cases actually taken on and final results. In fact, the Review found little evidence of such analysis. Most FIUs visited kept details on referrals simply in order to manage and monitor workloads. Most had spreadsheet databases to maintain their information. The referrals emanated from a wide variety of sources including SARs, force intelligence, and various proactive or reactive crime units.
- 2.43 In one case, FIU staff trawled all force databases specifically seeking POCA opportunities. Generally, a supervisor would then review cases, to ensure they were within the unit’s terms of reference, and disseminate them to staff for follow-up enquiries. This was a daily routine and produced a number of asset recovery opportunities that otherwise may have been missed. While this process generally worked well and provided a good level of measurement for FIU activity, it did not facilitate comparison between incoming referrals and outcomes. No force was able to measure the difference between the potential within initial referrals and the final outcomes – a minimal part of the potential attrition rate.

Incentivisation

- 2.44 In February 2004 the Government heralded the police incentivisation scheme, to be introduced for 2004/05, that would enable police forces in England and Wales, and the Police Service of Northern Ireland, to

receive a share of the criminal assets they recover locally. The scheme, supported by ACPO will ensure police forces benefit by receiving a share of one-third of all the assets recovered nationally above £40 million in 2004-05, increasing to half of the excess for 2005-06.

- 2.45 Under the scheme the first £40 million of recovered assets is already pledged to help fund existing commitments in the asset recovery field (see RAIF above). These commitments include the funding of the five existing RARTs.
- 2.46 The estimated maximum incentivisation benefit available to the police will be £43 million in 2004/05, rising to £65 million in 2005/06. It covers both POCA-related recovery and that empowered by earlier asset recovery legislation, but can only be paid over once confiscation orders have been enforced. This is often referred to as the ‘tin box’ money – ie, that which has successfully been collected and is in possession of the authorities. There are no restrictions on how the police can spend this money – it is not ring-fenced for resourcing of further asset recovery work, although forces should seek to incur this wherever possible. From 2006/07 a new incentivisation scheme will allow all front-line agencies to recoup 50% of what they recover.

Identifying and spreading good practice

- 2.47 ACPO and the CPS have effective mechanisms in place to discuss and disseminate good practice. Police experts and/or POCA champions meet quarterly in an ACPO Working Group, attended by the CPS lead on POCA and representatives of the RARTs. This working group represents police forces in England and Wales and includes heads of FIUs from most of the metropolitan police forces as well as representatives from smaller police forces. The ARA, CPS and NCIS members provide a good cross section of non-police representation. The group meets quarterly and its aims include assisting police forces to maximise the benefits of POCA and spread good practice. Key achievements so far include sponsoring a highly effective training video and a series of national seminars that have proved highly effective.
- 2.48 Two national best practice guides support the enforcement process. The Home Office National Best Practice Guide to Confiscation Order Enforcement covers the process from the point at which a financial investigator has completed an investigation, to the point at which

an order is paid in full. The DCA's Best Practice Guide for the Magistrates' Courts Service was developed in close collaboration with service practitioners and, drawing on the national best practice guide, includes examples of good practice and attempts to promote a consistent approach in order to help MCCs to improve enforcement performance.

- 2.49 The ARA has promoted POCA through several well-attended conferences, and issues regular newsletters. These are commendable and necessary efforts, but they are to a degree 'preaching to the converted'. Key messages about POCA are not reaching the front line, despite the obvious potential for it to be the source of many good news stories – though there are notable exceptions.

Celebrating success



Source: MPS internal newsletter, The Job.

- 2.50 Some police forces are also developing regional collaboration to sustain and improve POCA performance. In the North-East, Durham, Cleveland and Northumbria Police come together to share good practice and are examining the possibility of a joint POCA database. The force solicitor in Durham is in regular contact with Northumbria's legal team to share 'what works' and review the availability of counsel skilled in cash seizure applications. Evidence of similar regional collaboration was found in Leicestershire and Kent, both seeking to establish regional forums to share good practice and discuss

blockages. Additionally, in the absence of RARTs in those regions, they are seeking to work together on POCA operations to fight Level 2, cross-border criminality. Such collaboration is encouraging and could benefit from greater involvement of CPS staff.

Recommendation 2

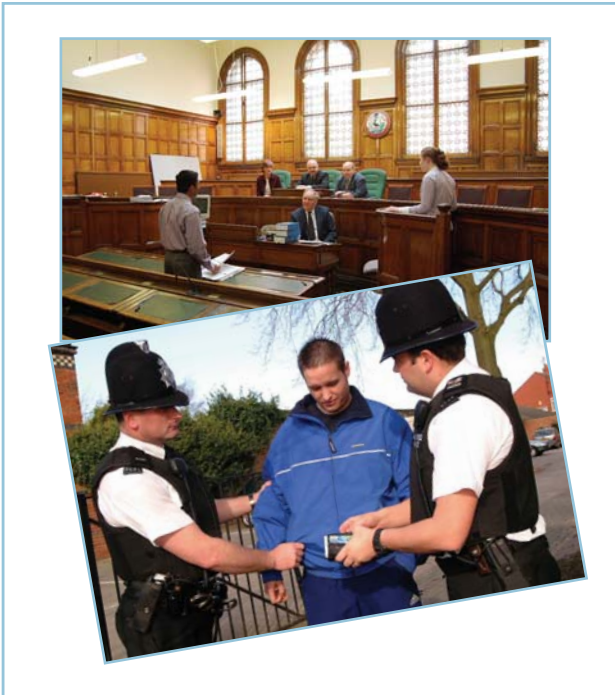
That Chief Constables, CCPs, CCMs, JCEs and the future HMCS Area Directors develop a joint suite of performance indicators to reinforce their commitment to crime reduction through obtaining and enforcing criminal confiscation orders and monitoring the Incentivisation scheme. They should make appropriate use of LCJBs as vehicles for co-ordinating POCA implementation.

Conclusion

- 2.51 The disparate sets of data that pre-dated JARD serve to illustrate both the inconsistency of monitoring activity and the potential for significant duplication of effort. There is little doubt that JARD, together with the updated CICFA Programme of Action (which subsumed the original Asset Recovery Delivery Plan), have genuine potential to provide considerable support to the individual efforts to accelerate the implementation of the powers under POCA. The Programme of Action seeks to give component members of CICFA greater responsibility for delivery of business workstreams. Currently this remains a move with potential rather than a guarantee of success.
- 2.52 This new legislation was intended as a key plank in the drive to improve public confidence, as well as ensuring that criminal activity is not rewarded. But the patchwork quilt of implementation suggests that many opportunities to obtain confiscation orders, and pursue the powerful offence of money laundering, are being missed. The critical task for all relevant stakeholders, but in particular the police service – gateway to POCA – is to embed the Act in everyday activity. Is POCA in the CJ mainstream?

Police should think about POCA in their routine day-to-day activity





Chapter 3

Mainstreaming asset recovery

Working together

- 3.1 It is impossible to overstate the importance of co-operative working across all elements of the CJ system to achieve successful confiscation of criminal assets. The police have primary responsibility for identification and evidence-gathering; the CPS for robust prosecution; and the Courts for considering applications and then enforcing orders made. There are numerous points where the process can go wrong or, more likely, simply fail to get off the ground. The aim of this chapter is to highlight those critical points and help to strengthen the collective effectiveness of the relevant agencies in progressing POCA cases.
- 3.2 The theme running throughout – and indeed the core message of this Review – is that the vision for asset recovery will only be realised when POCA is seen by practitioners as an everyday tool in the disruption of crime and criminality. It should always be considered as an aspect of the early planning within large investigations or proactive operations but, although it can become a complex process, the starting point or trigger may in fact come from a straightforward stop and/or arrest.
- 3.3 Perhaps the greatest area of untapped asset recovery potential lies in routine policing, where officers are tackling those criminals who may often elude arrest, but are known to be criminally active. Often, such suspects are known to possess cash and/or goods that reflect a lifestyle which is clearly beyond legitimate means. Sometimes, the results are spectacular (Box D).

Box D – A confiscation success

A significant confiscation order followed what at first glance was a simple arrest by Derbyshire Constabulary for the offence of ‘bilking’ – ie, driving off from a garage without paying for petrol. The offender was already known to officers and the force FIU followed up his plea of guilty to four offences of stealing petrol (to the value of just over £200) with financial enquiries. These revealed that millions of pounds had gone through the defendant’s bank accounts, even though he had been claiming state benefits for most of his adult life. He was found to have considerable assets in UK and Swiss bank accounts and a confiscation order of £1.5 million was imposed by the Crown Court in April 2004. If the defendant fails to pay within 12 months he faces a sentence of six years imprisonment with no remission, and still owing the imposed amount.

What should trigger POCA consideration?

- 3.4 There are a number of potential trigger points to flag where cases are suitable for progression under POCA. The simple position is that the legislation allows any of the CJ agencies, at any stage of the process, to flag a case for consideration of asset recovery under POCA. However, the onus to identify potential POCA cases will always be on the police, with the CPS acting as a back-stop for cases that have been missed by the police. There can also be a further pick-up point within the courts, but as POCA legislation becomes embedded the need for this should diminish.
- 3.5 It is vital that practitioners in the various law enforcement/CJ agencies are aware of the various points at which POCA should be considered or used (Box E).

Box E – Trigger points for initiating POCA activity

STOP SEARCHES/OTHER INTERACTIONS WITH KNOWN OR SUSPECTED CRIMINALS

All operational officers should be alert to issues around lifestyles and unexplained affluence that point to a person living off ill-gotten gains. The presence of large amounts of cash on the person or in a car stopped by officers should trigger questions to ascertain its provenance, and failure to supply a credible explanation may justify seizure.

POINT OF ARREST

An arrest for acquisitive crime provides an opportunity for identification of assets for restraint and future confiscation – is there evidence of benefit from the crime or criminal lifestyle (eg, driving expensive car, wearing designer jewellery or clothing)?

INTERVIEW OF SUSPECT

Interview of suspects should include lifestyle questioning to inform decisions on confiscation – has there been benefit from the criminal activity? Are there assets?

HOUSE SEARCH

Any authorised search of an arrested person's house provides an opportunity to identify available assets; officers should consider the evidential potential of bank statements, mortgage statements and other financial information, as well as the presence of high-value goods without an obvious legitimate funding source.

INTELLIGENCE LOGGING

Work by intelligence officers on target criminals should always address financial issues – sources of legitimate income plus checks on unexplained wealth, extravagant lifestyle etc. SARs provide a significant source of intelligence.

PRE-CHARGE ADVICE BY CPS

At this point, officers and CPS staff should ask POCA-related questions and ensure that appropriate charges are laid to maximise POCA confiscation opportunities. Completion of the MG3 form should show consideration of POCA.

CUSTODY PROCESSES

Custody sergeants should aim to ask POCA-related questions of the arresting officer at the point of charge, to raise awareness and encourage referrals to the FIU.

FILE REVIEW BY POLICE SUPERVISOR

Supervisors should ensure that files contain POCA consideration and that suitable cases have been referred to FIU; if they have not, supervisors should make appropriate enquiries of the investigating officer.

REFERRAL TO/REVIEW BY FIU

Where officers are in doubt about the POCA potential they should invite the FIU to examine the arrest and initial case file. If the FIU considers that it lacks the necessary expertise and/or capability to take on the work it should consider a referral for civil recovery to the ARA.

FILE REVIEW BY CPS

During review of initial court files, CPS should ensure that all files received have been subject to POCA consideration.

PREPARATION OF FULL FILE IN CJU

CJU staff should 'think POCA' when checking files and ensure that referrals are made to FIU as appropriate.

FULL FILE REVIEW BY CPS

During review of the full file, CPS should ensure that consideration has been given to POCA-related matters.

COURT HEARING

At the trial stage, courts staff or judges can trigger a confiscation investigation if it becomes apparent that assets and benefits have resulted from criminal activity, even though POCA has not been invoked up to that point.

REFERRAL TO ARA

Where criminal proceedings cannot be mounted, have been terminated or otherwise failed to secure a successful prosecution, a referral to the ARA for civil recovery should be considered.

- 3.6 While this Review found that the police were almost always the initiators of POCA consideration, in some Areas the CPS had developed a process to consider POCA in each case. CPS Greater Manchester has a system whereby the reviewing lawyer at first review establishes whether there is potential for confiscation to take place. In cases with POCA potential, the CPS return the papers to the force FIU for further investigation.



- 3.7 In addition to identification during frontline operational policing, officers engaged in proactive operations against target criminals should also consider POCA elements during the planning and early investigation stages. It should, for example, feature in target profiles prepared within the National Intelligence Model framework. In some police forces visited there were good links between proactive officers and the FIU. Equally, it was apparent that in some police forces that there was little consideration of POCA during proactive investigations (Box F).

Box F – Importance of Early Consultation with FIU

A husband and wife were detained on suspicion of offences relating to benefiting from the proceeds of brothels. After consulting with the CPS, the investigating officer charged the couple with offences but did not consult the FIU in relation to restraint and confiscation. The case was later recognised by CPS as having POCA potential and referred to the FIU for investigation. Enquiries commenced and significant assets were identified. However, due to the delay in notification between the original charge and subsequent FIU investigation, vehicles had been sold and funds removed from bank accounts. Early consultation could almost certainly have resulted in the restraint of these assets.

A drug trafficking offender was left with control of his assets due to poor communication between the investigating officer and the FIU. The offender withdrew funds and spent them on drugs for his own use, specifically to avoid confiscation of the money. He was subsequently charged with money laundering offences to which he entered a guilty plea, but there were still no assets for effective confiscation.

- 3.8 Where proactive investigative work involves CPS early in the case this lays the foundation for successful prosecution. Equally, where CPS and FIU are not involved then success is jeopardised. A process which links CPS into both the criminal element of the investigation and also the POCA processes can help the case to progress efficiently and effectively.

Referral of cases to the ARA

- 3.9 Some potentially important and high profile cases may be beyond the capacity of some FIUs, and forces should then consider a referral to the ARA (Annex 2). As the ARA cannot take on every case, certain criteria will be applied. Potential referrals should be discussed with the ARA at the earliest possible stage. Cases where the criminal lifestyle criteria are met would attract a high priority, as would cases where the ARA can add value to the confiscation process through the powers invested in the Director, both during the investigative stage or enforcement.
- 3.10 Other considerations will include the involvement of Level Three criminality, middle market drug trafficking, crime by significant community criminals, or where the case meets a sufficient level of value or complexity (Box G).

Box G – Successful recovery by the ARA

In June 2003, ARA financial investigators used their expertise to assist LB of Waltham Forest Trading Standards Department to obtain a confiscation order at Snaresbrook Crown Court. The order was for £335,000 against a counterfeiter who had been fined just £200 for unauthorised selling of mobile phone covers bearing well-known trademarks. In default, the offender will serve five years imprisonment and still owe money to the court.

A leading terrorist in Northern Ireland was released from prison in 1988 with few assets but soon established himself as a major drugs trafficker. In May 2003 he was shot dead during the course of a drugs turf war. PSNI suspected that he had accrued considerable wealth and referred the case to ARA, which used its powers under POCA to obtain a series of disclosure orders and search warrants. In a search of his former home, ARA investigators found terrorist paraphernalia as well as financial information to assist their enquiries. The ARA subsequently obtained an interim receiving order freezing all assets. The Receiver later recommended that almost all of the assets were recoverable. After initiating action to seek recovery, representatives of the Estate agreed a settlement whereby they retained around £90,000 but the bulk of the estate – estimated at £1.2 to £1.25 million – has been recovered.

The ARA secured a Civil Recovery Order in May 2004 in a case referred to them by West Mercia's Economic Crime Unit. Although for a relatively small amount – £16,049 – it is a significant result against an individual who had a confiscation order quashed and who, had the Proceeds of Crime Act not been in place, would have continued to enjoy the proceeds of his criminality. When the respondent pleaded guilty to drug trafficking in January 2003, he had argued successfully that a proportion of his assets should not be confiscated as they could not be attributed to his drug dealing, but were the profits from other unlawful activity, including the sale of smuggled cigarettes and tobacco. His admissions, used successfully by him to prevent his assets being confiscated, were used by the Agency in this successful civil recovery action.

Large volumes of cash seized by officers of the City of London Police



Practical case studies

- 3.11 The three case studies that follow are designed to cover the main powers made available by POCA, by using generic but realistic scenarios. The case studies cover:
- **Cash seizure** – when there is no criminal offence charged;
 - **Money laundering** – tackling a dysfunctional ‘role model’; and
 - **Confiscation** – from offender following discovery of expensive goods.
- 3.12 These three powers represent the most useful and widely used opportunities provided by POCA to operational staff. The format of the generic case studies is intended to provide a simple aide-memoir for anyone who may be presented with an opportunity to consider asset recovery.

CASE STUDY ONE – CASH SEIZURE

POCA POWER – Cash seizure

- POCA gives police the power to seize cash amounts of £5,000 or more where there are reasonable grounds to suspect it to be or represent ‘recoverable property’ (ie, obtained through unlawful conduct), or it is intended for use in unlawful conduct
- This civil process requires the funds to be subject of a detention hearing before a magistrates’ court within 48 hours of seizure.

- Officer stops a car for traffic violation and sees a bag of cash, for which the driver has no plausible explanation. A PNC check reveals that the driver has previous convictions for supply of drugs.
- Officer estimates cash as £5,000 or more and seizes it, giving reason for this action; cash is ‘double bagged’ and driver signs each bag.
- Officer invites driver to attend police station for civil interview – there is no power to require attendance at this point.
- If evidence of money laundering, follow actions as Case Study 2

Seize the cash

Stage 1

- Driver attends police station for a civil interview – story unchanged.
- FIU notified of cash seizure (or details left if out of hours)
- Form A (receipt for money) and guidance notes served on the driver, giving reasons for cash detention and advising of hearing date & time.
- If third parties are identified as owner(s) of cash or having an interest in it, Form A is also served on these people.
- Officers should consider forensic examination of the cash (local procedures apply).
- Cash is retained under local arrangements for storage, transport and counting; these should comply with force insurance policies.
- The court hearing may be arranged by FIU, but the application for initial detention must occur within 48 hours of seizure (including Sundays and public holidays).
- Cash seizure proceedings run in parallel to any criminal proceedings

Complete documentation

Stage 2

- Initial cash detention hearing before magistrates: A police officer (FIU or other) outlines case for detention based on Form A and supporting information. Detention of up to 3 months may be granted.
- Order Forms B signed by Magistrate and sent with Form C to respondent and other interested parties notifying them the cash is being detained.
- At the appropriate time, police serve a new form A in the magistrates’ court which notifies all interested parties of new detention hearing time and date.

First hearing

Stage 3

- After first hearing FIU officer notifies force solicitor of cash seizure and court process.
- FIU conducts investigation into possible sources for the cash, and considers further detention or service of Form G for forfeiture, within given timescales.
- Further enquires produce no criminal action against the driver but the forfeiture continues as officers suspect that the cash is recoverable property. This leads to a directions hearing, followed by a forfeiture hearing, and Form H (forfeiture order) is served by magistrates’ court.
- Where costs are incurred by a force during a contested further directions hearing, costs can and should be applied for on each occasion.

Court considers forfeiture

Stage 4

CASE STUDY ONE – CASH SEIZURE

WHAT IS 'CASH'?

Any type of currency, cheques, travellers' cheques, bearer bonds, postal orders or bankers drafts.

WHAT DO YOU NEED TO REMEMBER?

STAGE 1 – SEIZE THE CASH

- Initial cash seizure is a straightforward process.
- The officer seizing the cash need only have reasonable grounds for suspecting that it was obtained through unlawful conduct– the owner does not have to have committed a criminal offence.
- The cash might be evidence of an offence, so be forensically aware – eg, counting the cash prior to forensic examination may compromise that examination.
- If there is a criminal investigation this can run in tandem with the cash seizure process.
- The 'trigger' limit for seizure is £5,000 but officers need only estimate at this first stage.
- Do not count the cash at this stage, simply bag it correctly and obtain signatures on each bag from the person in possession.
- Write down the explanation given for possession, noting both significant statements and any non-response to specific questions.

STAGE 2 – COMPLETE THE DOCUMENTATION

- Remember Best Evidence rules. You can undertake a civil interview (not under caution) if appropriate but the civil interview cannot be used in evidence for a criminal case.
- Inform the FIU of the seizure – they will advise and handle any complicated matters.
- You may not need a statement if you have already recorded an explanation.
- Form A must be served on all interested parties.
- The 48-hour deadline is critical – Sundays and public holidays are included.
- To be safe, the time calculation should run from the first sighting of the cash
- The counting, bagging and storage procedures must comply with force policy.

STAGE 3 – FIRST HEARING

- The officer (must be police officer) presenting the case in magistrates' court needs full details of the circumstances of the stop and initial seizure.
- Courts will serve Forms B and C on all interested parties.

STAGE 4 – GRANT OF FORFEITURE

- Proceedings are civil so force solicitor or legal department will arrange representation.
- Any further periods of detention need early application.
- Form G must be served by police on the magistrates' court and a copy sent to respondents.
- Police forces should seek recovery of any costs incurred in respect of each contested hearing.
- **Relevant data to be entered onto JARD throughout.**

CASE STUDY TWO – MONEY LAUNDERING

POCA POWER – Money laundering

POCA sets out three money laundering offences:

- S. 327 – Conceals, disguises, converts, transfers, or removes from the jurisdiction of criminal property.
- S. 328 – Arranges the acquisition, retention, use or control of criminal property.
- S. 329 – Acquires, uses or has possession of criminal property.

The first two offences trigger ‘criminal lifestyle’ assumptions which are relevant when dealing with confiscation (see Case Study 3).

<ul style="list-style-type: none"> ● Local dysfunctional ‘role model’, believed to be involved in acquisitive crime or drug dealing, comes under scrutiny – he has no recent convictions but is visibly living above legitimate means. Police and community intelligence support this assessment. ● Launch criminal investigation supported by financial investigation to provide evidence of money laundering. POCA production orders obtained for bank and building society accounts identify large sums of cash; source is unknown. ● Further intelligence fails to link him to specific crimes but does link to known criminals and it is evident that he is laundering money for himself or another. ● Following arrest for money laundering, authorised search of home address reveals designer clothing, luxury electrical goods, large sums of cash, bank statements and credit card receipts. ● Evidence of money laundering seized; other cash, property and assets made subject of restraint, pending confiscation. If large amounts of cash are involved, FIU can assist in counting and appropriate storage. ● Suspect fails to account for assets so (following liaison with FIU and CPS) he is bailed 47(3) pending financial investigation. 	<p>Catch with cash or property</p> <p>Stage 1</p>
<ul style="list-style-type: none"> ● Based on this evidence from the search, FIU obtains further production orders to examine accounts and pursue other financially based lines of enquiry (eg, with Inland Revenue) then produce a financial report on suspect’s assets to support prosecution. ● Throughout, the FIU liaise with CPS POCA champion to ensure that appropriate evidence is being gathered. ● Suspect returns on bail and is charged with money laundering. 	<p>FIU investigation</p> <p>Stage 2</p>
<ul style="list-style-type: none"> ● Investigation reveals that the suspect’s wife has transferred cash between accounts. ● His solicitor, who represented him in previous criminal cases, has moved cash around in suspicious circumstances. ● If the suspect’s wife and solicitor knew or suspected that the proceeds were criminal property, they would have committed a money laundering offence under Sections 327 or 328. In addition, the solicitor would have committed an offence of failing to disclose to NCIS suspicion of money laundering. 	<p>Consider accomplices</p> <p>Stage 3</p>
<ul style="list-style-type: none"> ● Defendants plead guilty to money laundering offences and receive custodial sentence ● No other criminal offences were charged. ● Court orders confiscation proceedings; orders may ensue for confiscation or compensation in respect of the cash and assets seized or restrained. 	<p>Court result</p> <p>Stage 4</p>

CASE STUDY TWO – MONEY LAUNDERING

Issue	Money Laundering	Handling Stolen Goods
Scope	Broad definition of “Criminal property”	“Stolen Goods” is narrow
Standard of proof	Knows or suspects	Knows or believes
Maximum sentence	14 years	10 years
Scale	All handlers are by definition money launders	Launderers not necessarily handlers

WHAT DO YOU NEED TO REMEMBER?

STAGE 1 – CATCH WITH THE CASH OR PROPERTY

- Money laundering does not refer only to cash – it covers any type of property representing the benefit of criminal conduct.
- Cash must be double-bagged to protect against challenge to integrity and preserve for forensic examination.
- Money laundering charge does not require an associated (predicate) criminal charge.
- Obtain as much evidence of lifestyle and financial dealings as possible. (Consider the use of photographic or video evidence to evidence a suspect’s lifestyle)
- Seek advice and assistance of FIU at an early stage.

STAGE 2 – FIU INVESTIGATION

- Where the suspect has realisable assets that can easily be dissipated, a restraint order should be considered. This requires the authorisation of a Superintendent and will be obtained by the CPS. Early restraint orders can be obtained during the initial stages of the investigation, prior to an arrest, in order to prevent dissipation of assets.

STAGE 3 – CONSIDER ACCOMPLICES

- Consider who else may have had guilty knowledge about the transfer of money (or other property, as defined by the Act – Section 327 to 329 of POCA).
- Certain businesses or agents – notably banks, money transfer agents, accountants, solicitors and estate agents – have a duty to report suspicious transactions. An obvious example is the purchase of a property in cash when the purchaser has no obvious means of financing that transaction. Failure to submit a suspicious activity report (SAR) to NCIS could result in a criminal prosecution.

STAGE 4 – COURT RESULT

- Defendants found guilty and sentenced
- Confiscation order made
- Results on PNC
- **Data to be entered onto JARD throughout**

CASE STUDY THREE – CONFISCATION

General Criminal Conduct – A general criminal conduct confiscation is triggered by:

- a conviction for a drug trafficking, human trafficking, arms trafficking, money laundering (S. 329 POCA 2002), terrorism, pimping, brothel-keeping, counterfeiting or blackmail offence (collectively known as Schedule 2 offences) or
- Four or more offences during the same proceedings where the total benefit is greater than £5,000, or one offence which has taken place over at least six months where the total benefit is greater than £5,000, or conviction for an offence from which the defendant has benefited where the defendant already has two (or more) similar convictions on separate occasions over the last six years and the total benefit is greater than £5,000. (With the general criminal conduct confiscation the court must make certain mandatory assumptions, see opposite page).

Particular Criminal Conduct – Confiscation is limited to an amount equal to the actual benefit from the crime(s) convicted of; if there has been benefit and it falls outside the scope of general criminal conduct. If appropriate, compensation for the victim may also be sought.

<ul style="list-style-type: none"> • Uniformed officer arrests a suspect in the act of burgling a property. • Suspect taken back to police station and detained for interview. • Search of suspect's house is authorised and £400 cash is found, believed to be proceeds of sale of stolen items; cash is seized as evidence. • Evidence of other offences of burglary found at property and seized. • Suspect interviewed and admits five offences of burglary. 	<p>Arrest and seize</p> <p>Stage 1</p>
<ul style="list-style-type: none"> • CPS advice sought on suitability and formulation of charges. • Suspect charged with five burglaries, with overall estimated benefit of £27,500 (ie, value of goods stolen and sold on), and is bailed. • Officer notifies FIU to commence an enquiry to consider confiscation. • Suspect charged and bailed. 	<p>Right charges</p> <p>Stage 2</p>
<ul style="list-style-type: none"> • FIU conducts confiscation investigation, applying reasonable assumptions of criminal proceeds based on, eg value of house and car purchased while suspect has not been in employment. It calculates that: <ul style="list-style-type: none"> – financial benefit from burglary over past 6 years is £57,500 – proceeds from burglaries of £27,500 plus use of assumptions totalling £30,000 – realisable assets after investigation are a car (worth £2,000) and the £400 cash seized during the search, together with the equity of £35,000 in the house; total realisable assets amount to £37,400 	<p>Assess benefit and lifestyle</p> <p>Stage 3</p>
<ul style="list-style-type: none"> • Defendant attends court, pleads guilty and is convicted. • Prosecution request confiscation before sentence • FIU prepare confiscation statement and consult CPS. • Judge agrees confiscation based on statement, imposes an order determines a prison sentence in default of payment. • Asset forms completed by court and consents signed by defendant. Criminal case proceeds to sentencing. 	<p>Court appearance</p> <p>Stage 4</p>
<ul style="list-style-type: none"> • Money held by police (£400) forwarded to magistrates' court, either by defendant agreement or an order by the magistrates under S. 67 of POCA. • Defendant satisfies the order by paying £37,000, selling car and house. • If fails to pay this sum into court, the magistrates' court would be responsible for enforcing the order. 	<p>Confiscation & enforcement</p> <p>Stage 5</p>

CASE STUDY THREE – CONFISCATION

LIFESTYLE ASSUMPTIONS

The Act provides for the assumptions that:

- all property held by the defendant at the time of conviction; and
- all money spent by the defendant within the previous 6 years; and
- all property transferred to or from the defendant within the last 6 years

...is the result of his or her criminal activity and can be taken into account by FIU when calculating a benefit figure, and may then be subject to confiscation.

WHAT DO YOU NEED TO REMEMBER?

STAGE 1 – ARREST AND SEIZE

- Think about criminal assets from the outset.
- During investigation, seize any cash and property that might be evidence – liaise with FIU.
- Look for evidence of accumulated wealth showing that the defendant is living beyond his/her obvious means (eg, bank statements, share certificates, travel documents, vehicle and house purchase documents)
- Are any of the assets at risk of disposal? If so, consider restraint – liaise with FIU

STAGE 2 – THE RIGHT CHARGES

- Get early advice and consider specific offences and/or series of criminal activity and lifestyle.
- Involve FIU as soon as possible.

STAGE 3 – ASSESS BENEFIT AND LIFESTYLE

- Provide FIU with as much information on employment status, assets, income etc as possible.
- FIU need clear procedures with CPS to ensure prosecution and confiscation work in tandem
- Are the lifestyle triggers relevant?

STAGE 4 – COURT APPEARANCE

- CPS should ensure that a ‘basis of plea’ does not unnecessarily limit the overall benefit amount or offending period, thus removing ‘lifestyle assumptions’.
- Postponement timescales for confiscation hearings must allow time for FIU work.
- CPS to check whether the FI is preparing a confiscation statement.
- In addition, the CPS can also apply for a compensation order in favour of victims.

STAGE 5 – CONFISCATION & ENFORCEMENT

- Effective enforcement of confiscation orders is a key element in the Government’s commitment to improve the rate of success in confiscating criminal assets.
- The responsibility for enforcing confiscation orders rests with the Magistrates’ Courts Service, although successful enforcement depends on effective joined-up working by all agencies involved.

- 3.13 While the three case studies cover the most likely circumstances where asset recovery may be applied, there will also be cases where, despite the best efforts, it is not possible to apply for confiscation through the criminal courts. This is likely to occur where the criminal prosecution has been unsuccessful or discontinued. In such circumstances, enforcement agencies may be able to refer the case to the Assets Recovery Agency for a civil recovery.

The role and remit of Financial Investigation Units (FIUs)

- 3.14 For the majority of confiscation and asset recovery situations the main reference point is the individual force Financial Investigation Unit (FIU). All police forces visited had established FIUs, typically evolved from drugs teams which used Drug Trafficking Act 1994 powers to obtain confiscation orders against drug traffickers. FIUs generally fit in the force organisational structure within an Economic Crime Unit, the latter having a wider remit that includes the investigation of fraud and cheque and credit card offences.
- 3.15 There is no central guidance on the size, structure or remit of FIUs. However, the key activities of an FIU typically include:
- obtaining confiscation orders against suitable drug and crime referrals under POCA legislation (will include residual cases of confiscation and forfeiture under drug trafficking and other relevant legislation);
 - POCA cash seizure and managing the civil forfeiture process;
 - obtaining restraint orders in cases identified as suitable – working with CPS;
 - intelligence work in support of proactive investigations;
 - money laundering enquiries as stand-alone investigations and in support of other criminal investigations; and
 - management of Suspicious Activity Reports (SARs) and SARs consent issues.
- 3.16 A more detailed description of FIU work can be found in Annex 3. Other activity being undertaken by effective FIUs includes educating operational staff in the use and benefits of POCA through consultancy, advice and presentations. FIUs will always have an ‘expert’ consultancy role, but action should be taken to ensure that POCA

is on the mainstream police training agenda, and not delivered only as a specialism.

- 3.17 The size and structure of some FIUs has changed substantially since the introduction of POCA, due to Home Office funding of additional FIs and efforts to raise awareness of the legislation, particularly through the national ACPO Proceeds of Crime Working Group. The staffing levels are also heavily influenced by the priority assigned to financial investigation by chief officers and the workload carried.
- 3.18 Within the NIM framework (Annex 4) proactive investigations into serious criminals (NIM levels 2 and 3) are generally well managed, but problems were identified at Level 1 – that is, the local command level dealing mostly with volume crime – where referrals are generally limited to drug trafficking cases only.
- 3.19 Some FIs work on duties other than those appropriate to their role. A survey conducted by the ARA in 2004 revealed that only 25% of trained FIs were still engaged in financial investigation work. In many cases FIs are working as intelligence officers rather than focusing on asset recovery; in one force, investigators were spending 60% of their time undertaking intelligence work. In another force, officers trained as FIs had been deployed to response duties and their training and expertise was not being utilised at all. While not prescribing a period of tenure for FIs, early loss of trained and competent investigators to other duties can represent a poor return on the training investment.
- 3.20 This Review does not seek to specify an optimal structure for an FIU, but argues against a focus upon intelligence or, general duties at the expense of asset recovery. Asset recovery is an ‘end-to-end’ process that requires a balance to be struck between evidence-gathering solely to obtain a conviction and that needed to secure a confiscation order.
- 3.21 Most police forces visited employed a mix of police officers and police staff (formerly referred to as civilian staff) in the role of FI, usually carrying out the same role to good effect. Where appropriate, some staff vacancies had been filled by retired police officers with experience and competence in financial investigation work. This approach took away the need for the detailed and lengthy ARA training that has obvious implications on unit efficiency.

3.22 The Review team found varying levels of integration of police staff ranging from being fully included in all aspects of the role (with the exception of having full powers of a Constable) to one force visited where they appeared isolated, were awaiting full training and were being given less interesting packages to work on. No national guidance exists on staffing ratios or the role of financial investigators. All FIUs visited undertake the civil cash seizure process through a magistrates' court for detention or forfeiture hearings. However, only police officers or Customs officers can make such applications in Court, and FIUs with a lower ratio of police officers find this problematic.

Recommendation 3

That the Home Office considers amending the legislation to permit all ARA-accredited police staff FIs to make applications during hearings in the magistrates' courts under S.295 and S.296 of POCA for the detention and forfeiture of seized cash.

- 3.23 Some police forces have taken a decision to devolve financial investigation to BCUs. While this approach has advantages, especially in maximising contact with front-line officers, some caveats should be noted. It is easy for FIs to be distracted from asset recovery by carrying out financial intelligence work, eg, linked to missing persons. Clear terms of reference (job descriptions) should focus on the financial investigation element of the role.
- 3.24 Good lines of communication need to be maintained with the central FIU, which will normally deal with most complex cases. A useful alternative may be the model adopted in Kent, which appoints local champions known as POCA Single Point Contacts, usually at Detective Sergeant level. Their role includes raising awareness of POCA and ensuring that POCA opportunities are being seized at BCU level. This approach gives police forces a greater capability to target known individuals who fuel crime and impact on force performance. The money laundering powers within the Act give police forces the ability to target and tackle serious and organised activity without having to prove any particular predicate offences.

Recommendation 4

That ACPO draws up a model framework and guidance for the best use of financial investigation skills to optimise asset recovery, contribute to force priorities and conform to national good practice. Asset recovery activity should feature in internal inspection and review.

- 3.25 Funding by the Home Office of posts to support asset recovery has been extended to March 2006. Funding beyond this will be subject to evaluation in respect of efficiency and impact on asset recovery. Some police forces are already convinced of the gains and have directly employed those initially funded under the scheme, back-filling the Home Office-funded posts with new staff members. Chief constables need to begin planning now for retention of these posts if Home Office specific funding ceases in 2006.

An officer from Kent's Financial Investigation Unit displays cash seized



Handling Suspicious Activity Reports (SARs)

- 3.26 The Act places a requirement on the regulated sector – financial organisations such as banks as well as law firms, accountants and estate agents – to disclose to NCIS any suspicion of money laundering offences (defined under Sections 327, 328 and 329 of POCA) revealed within the course of their business activity. SARs are a valuable source of information to support asset recover and civil cash seizures. In addition, they are often a starting point for money laundering investigations, and can be an effective tool in identifying criminal activity (Box H).

Box H – Using SARs to trigger or assist investigation

In Surrey, a SAR revealed that a Post Office worker under investigation for theft from the postal system had profited to the amount of £300,000. At the time of the disclosure, the investigators' working assumption was that the value of property stolen amounted to some £70,000, as admitted by the suspect. The SAR led to a confiscation hearing for the full £300,000, as well as proceedings against five other people for the offence of money laundering.

Cambridgeshire Constabulary and the Immigration Service were conducting an investigation into illegal immigration and people trafficking when two SARs were received in respect of people under investigation. The subjects were later arrested and convicted of offences involving false registration cards and money laundering. The SARs pinpointed the existence of previously unknown criminal assets and led to confiscation of assets valued in excess of £1.5 million.

Durham Constabulary received a SAR regarding a person who had previous convictions for drug dealing. His bank account showed a sudden increase in large amounts of cash, coinciding with intelligence suggesting that the individual travelled regularly into Cleveland to purchase drugs. As a result he was stopped in a car and found to be in possession of over £1,000 in cash. A search of his address recovered a large amount of drugs. The individual was later convicted of drug trafficking, receiving a custodial sentence and confiscation order of £1,650 which was the sum of his overall realisable assets, including the value of a car owned by him and the cash seized.

Also in Durham, an individual became subject of a SAR due to a sudden increase in cash credited to his account. Other intelligence was obtained which led to his arrest at a local public house, where he was found to be in possession of ten bags of heroin and an amount of cannabis resin, along with £1,355 in cash. The individual was found guilty of drug trafficking offences and received a custodial sentence plus a confiscation order in the sum of the cash found upon him on arrest.

- 3.27 Fieldwork for this Review revealed significant variations in the handling of SARs were evident. Most police forces acknowledge the potential of this intelligence source, but within FIUs the analysis of SARs is rarely a high priority. Officers point to the volume of SARs – some 90,000 were generated in 2003/04 – and suggest that many have little obvious investigative merit. In an attempt to use SARs more effectively, some pilot schemes have been established but not yet evaluated. However, the Review team were encouraged by a system developed by the Inland Revenue Special Compliance Office for tracking and case management; it uses a database to track all cases from initial input through to final results, noting key actions taken en- route.
- 3.28 When police forces receive SARs they normally check them against local intelligence and other data for matches with current activity or previous referrals. Due to the volume of SARs, this process is time-consuming and resource intensive. The correct processing of SARs should result in feedback and acknowledgement to NCIS, but compliance with this requirement is variable. NCIS is currently developing a remote access link to its database (known as ELMER), which should simplify the handling of the referrals received by law enforcement agencies.
- 3.29 The requirement to report suspicious activity is a powerful and potentially effective tool in detecting and preventing money laundering of criminal assets. However, it is a laborious and thus expensive task for financial sector bodies, which unsurprisingly seek reassurance that law enforcement agencies are fully exploiting the information provided. The ACPO view is that SARs are indeed an essential source of intelligence in tackling money laundering and those areas of criminality which money laundering funds. In particular, crimes of drugs trafficking and terrorism are financed by extensive money laundering. Although many SARs turn out to be unrelated to criminal activity, the potential benefit to be gained by good use of those that are linked to criminality fully justifies the continued requirement to generate SARs.
- 3.30 Users of SARs intelligence know that it may not produce immediate results. A SAR may sit in a database until a second or even third SAR cross-references it to make the original SAR of value. So simple calculations such as the percentage of SARs that lead to or support

a police investigation are unhelpful and misleading. What would be useful is a regular, rigorous review of data management in law enforcement for any easy wins in the existing databases. In particular, the ELMER and JARD databases may be able to offer some degree of data on SARs usage.

Recommendation 5

That NCIS, in consultation with ACPO, issues guidance to all police forces on the most effective means of capitalising on the intelligence potential of SARs.

The CPS contribution to mainstreaming

- 3.31 There are a number of points at which the CPS can influence the use of POCA. The Criminal Justice Act 2003 took forward the recommendations of Lord Justice Auld, in his Review of the Criminal Courts, so that the CPS determines the decision to charge offenders in the more serious cases. ‘Shadow charging’ arrangements are now in place in many Areas and the statutory scheme is being phased in to all 42 Areas¹¹. At the pre-charge stage, CPS lawyers advise investigating officers on what evidence is needed to build a case. This creates opportunities for front-end identification of cases with potential for invocation of POCA proceedings. The reviewing lawyer should be able, through direct contact with the investigating officer, establish whether there is a potential for confiscation. Later, there is a potential for the lawyer to undertake a POCA review at the same time as completing the MG3 (further advice on charging), and use this review to alert FIU to the case’s POCA potential (Box I).

Box I – CPS review of POCA potential

CPS Greater Manchester developed a review sheet for all cases with ‘yes/no’ questions to help identify whether a case was suitable for POCA investigation. Linked to this review was a formal process for papers to be forwarded to the force FIU to start the investigative process. This systematic approach to review has been adopted by other Areas to improve initial identification.

¹¹ Projected date for full roll out 2006/07

- 3.32** The procedural trigger for the identification of cases should result in more potential cases for POCA confiscation being identified at earlier stages of the process. However, an examination of the CPS Greater Manchester model established that there were a number of issues which will require careful management and development.
- The process needs to be set up in agreement with the FIU, as responsibility for undertaking investigation continues to rest with the police.
 - If cases are not to be pursued (eg, due to FIU resource constraints) a formal process of POCA case closure needs to be agreed between the FIU and CPS.
 - CPS Areas and FIUs need to agree systems to ensure that, where POCA identification has been raised, a report is received from the FIU so that a decision may be made as to closure or continuation prior to any trial and sentencing hearing.
 - A formal agreement on the inter-dependencies on POCA cases needs to be established between the FIU and the local CPS Area, with a policy for monitoring and remedial action.
 - CPS casework quality assurance or other management monitoring needs to ensure that there is a consistent approach to identifying POCA potential cases, and that lawyers are undertaking POCA review at the earliest stage. Later identification by a caseworker or lawyer can result in severe pressure for FIU and create rubbing points.
 - Clear links between all CPS Areas and to CPS Direct (the national out-of-hours service) need to be established particularly in priority areas where statutory charging has been implemented (or planning undertaken in those Areas awaiting implementation).
- 3.33** In none of the areas visited were there clearly defined processes for the checking of POCA cases between the CPS and the FIU. CPS Kent has a system to ensure that statements produced by the FIU and issued to the CPS for serving are being received and served.
- 3.34** Caseload management and awareness is an essential part of the process to establish expected caseloads as well as to ensure that the processes surrounding the prosecution of a case take account of the POCA element. In many instances, ignorance of the POCA investigation within the FIU can lead to a number of CPS actions

which unwittingly undermine the POCA element of the case. Without clear processes, for the monitoring and maintenance of the logs and case papers and individual accountability, POCA processes will fail to deliver maximum benefit.

- 3.35 A simple process for case identification includes the marking of files by CPS Areas, either at the file review stage or when they receive notification of POCA work from the FIU. A flag alerts those dealing with the case – lawyers, caseworkers and administrative staff – of its POCA potential and the need for POCA processes to be followed. A simple £ stamp on the outer jacket of the case file would suffice, at the point when cases are marked on the Case Management System as a confiscation case.

Recommendation 6

That Chief Constables and CCPs jointly develop processes to ensure that confiscation and money laundering cases are identified at an early stage, and that these processes help improve communications between agencies, management of workloads and ongoing case monitoring.

POCA CASE-HANDLING

- 3.36 Unlike other cases dealt with by the CPS, for crimes such as burglar and drug dealing, POCA cases can be ‘parallel processed’, with prosecution led by the CPS while POCA (financial investigation) issues are developed by the police FIU. If cases are to be managed in an efficient and effective manner, a process which ensures that both organisations are aware of the current state of the case is essential. Numerous examples exist of good liaison between CPS and FIU on individual cases. However, in no Area visited was there a process of comparing known cases within the FIU and those live prosecution files in the CPS. Without this, the risk of cases progressing to trial without the financial element being flagged will continue (Box J). A formal process adopted by each CPS Area, including a named CPS contact for each case with FIU involvement, would increase awareness of confiscation action.

Box J – The effects of not sharing information between CPS and FIUs

A suspect was charged with possession of drugs with intent to supply and the case file was passed to the CPS. The prosecution case proceeded and at court the prosecuting counsel agreed to accept a guilty plea on the basis that the dealing was not for commercial gain – ie, the suspect was supplying drugs only to a few friends. Unfortunately the accepted plea limited confiscation to the token sum of £250, the value of the drugs possessed on arrest. Investigation by the FIU had revealed that the defendant had benefited from £30,000 of criminal proceeds in the previous three years. When officers of the FIU later attended court for the confiscation hearing they learned of the basis of plea that had been agreed and any opportunity to apply to confiscate the £30,000 had been lost. Better communications between the FIU and the CPS might have produced a very different outcome.

Large volumes of cash seized by officers of the City of London Police



- 3.37 Some CPS Areas have considered including specific reference in the brief to counsel, highlighting that the case has a confiscation element. The extent and detail of the instructions are dependent on the caseworker or lawyer preparing the brief. To make this approach more consistent and robust, Areas should consider the following:
- Instructions to counsel should include a specific reference to POCA and should emphasise that any plea accepted in the case should not limit the subsequent confiscation element of the case (as per standard CPS instructions and the sample briefs on the National Forms Register).

- Instructions to counsel should highlight that there should be a robust testing of the matters relied upon in mitigation, including the recourse to a trial of issue (or ‘Newton’¹²) hearing if applicable.
- POCA-trained counsel should be selected and used in cases (including the criminal trial) if POCA is involved. Standard instructions set out that counsel instructed by CPS should have attended an approved POCA course
- POCA considerations should feature as part of casework quality assurance or Unit Head/manager checks, and in any advocacy monitoring undertaken.

ADVOCACY REQUIREMENTS

- 3.38 As with all prosecution work, Courts can only deal with cases which the police and prosecution have investigated, prepared and put before them. The effective implementation of POCA is improving as more cases come through the system and agencies become more familiar with the procedures. Some financial investigations are complex and may take considerable time for the FIU to complete. The Act allows two years from the date of conviction for the confiscation to be concluded (S.14 POCA) and in some complex cases this full timeframe will be required.
- 3.39 Although the Act does deal with timing issues, a single timetable for investigation is not feasible, although CPS Greater Manchester seeks the following when requesting confiscation:
- 28 days for the defence to declare assets;
 - 56 days for the prosecution to produce the statement for the defence;
 - 28 days for the defence to reply; and then
 - Confiscation Hearing.
- 3.40 This timetable allows both the prosecution and defence time to prepare and consider appropriate issues prior to the confiscation hearing. Additionally, the timetable also gives the FIU adequate time to produce and request information from other sources.

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A Newton Hearing is a Trial of Issue Hearing following a guilty plea to the offence where the both sides present evidence to the judge who determines the issue which goes to the basis of the guilty plea.

3.41 In one Area visited, a CPS Higher Court Advocate (HCA) undertook a confiscation hearing which was highly effective. The HCA had obviously received effective training in confiscation matters and demonstrated a sound understanding of POCA issues inherent in the case. Using HCAs to undertake confiscation work is an effective way to ensure that control of the case remains within the CPS and alleviates some problems where the prosecuting counsel is not experienced in POCA.

The administration and enforcement of confiscation orders

3.42 The effective enforcement of confiscation orders is a key element in the Government's commitment to improve the rate of success in confiscating criminal assets, and increasing public confidence in the criminal justice system. The enforcement of confiscation orders is primarily the responsibility of the Magistrates' Courts Service (MCS), although successful enforcement depends on 'end-to-end', effective joined-up working by all the agencies involved. A special Enforcement Task Force was set up with Home Office funding in 2003 to enforce pre-POCA confiscation orders.

Magistrates play a key role in the enforcement of confiscation orders and cash seizure hearings



- 3.43 Staff in magistrates' courts and the Crown Court recognise the importance of all agencies working together effectively to implement POCA. The potential to use Local Criminal Justice Boards as a means of achieving this is underdeveloped, although in some areas inter-agency or service level agreements have been or are being developed. These would help to clarify expectations and standards for performance and offer potential to improve inter-agency co-operation and performance.
- 3.44 The Home Office National Best Practice Guide to Confiscation Order Enforcement supports the enforcement process, covering the process from the point at which a financial investigator has completed an investigation, to the point at which an order is paid in full. Based on this guide, the DCA/MCS developed a Best Practice Guide for the Magistrates' Courts Service. This is a comprehensive guide focussing on the processes for enforcement practitioners. It was developed in close collaboration with service practitioners and includes examples of good practice and attempts to promote a consistent approach to help MCCs to improve enforcement performance.
- 3.45 Many MCCs have created dedicated Confiscation Units or teams as a highly effective, expert approach to pursuing the enforcement of confiscation orders. Three designated MCCs were awarded additional funding by the RAIF to establish and train specialist confiscation teams. Such teams, notably in metropolitan areas (Greater London, Kent and Greater Manchester), have proved effective in reducing substantially the backlogs of pre-POCA Confiscation orders which had built up.
- 3.46 Fieldwork identified that, in some cases, delays in sending complete and timely confiscation orders by Crown Court staff to magistrates' courts had caused delay in the enforcement of the order. Staff in both Crown and magistrates' courts placed strong emphasis on the importance of working together effectively. In some of the areas visited, staff from the magistrates' and Crown Court have been proactive in working together to identify, discuss and take steps to minimise the rubbing points at the interfaces between them. The forthcoming unification of the administration of magistrates' and the Crown Courts in April 2005 will facilitate closer co-operation and joint working, while retaining the complete independence of the adjudication process.

Cost-effectiveness issues in respect of POCA confiscations

'DE MINIMUS' THRESHOLDS

- 3.47 Two schools of thought exist on cost-effectiveness of POCA confiscations – that any confiscation has the merit of sending a ‘crime doesn’t pay’ message, or alternatively that the cost to the public purse of pursuing confiscation should be weighed against the likely value of recovery. In some of the Areas visited, a threshold for pursuing confiscation had been set by the FIU, ranging from £500 to £1,000. Elsewhere, CPS lawyers adopt a common sense approach to confiscation. Confiscation is one tool in addressing criminality – it is not appropriate to set a blanket cost-effective threshold for pursuing cases, as each case must be considered on its merits.
- 3.48 This consideration should ask:
- Is the criminal a habitual offender, who will be deterred by confiscation action against them?
 - Is the person a negative role model, and will there be public confidence benefits in pursuing confiscation?
 - Is there other intelligence pinpointing assets which could be confiscated?
 - Is there an advantage in pursuing confiscation in the Crown Court rather than other means to address criminal activity in the magistrates’ court – eg, compensation, fine or forfeiture?

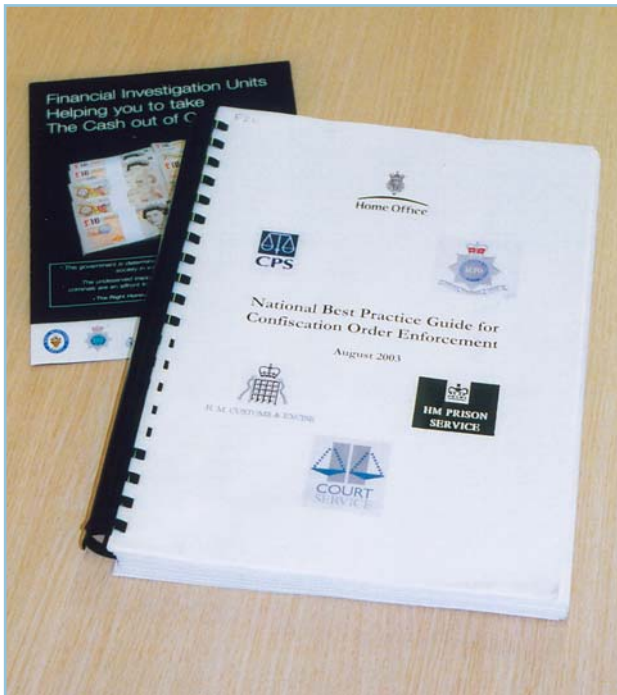
NOMINAL ORDERS

- 3.49 The review highlighted differing approaches to the granting of nominal confiscation orders. In one Area, large numbers of nominal orders are pursued – ie, seeking confiscation for as little as £1, usually when the defendant has few or no assets available to pay the order subsequently. Nominal orders allow the police/courts to pursue confiscation at a later date if the offender has acquired assets, or hidden assets are discovered. Although there are concerns that nominal orders often represent migratory effort, the FIU will already have completed 90% of the work needed to then identify that there are no assets to speak of. In other Areas, no nominal orders had been requested or granted. There needs to be a systematic process to review orders made to ensure that, in cases where there is suspicion of hidden assets, criminals have not released these assets to continue their previous criminality.

- 3.50 Examples were found where offenders had subsequently acquired unexpected wealth from legitimate sources, such as inheritance or large wins on the lottery. If a nominal order has been granted, then an application may subsequently be made to the Crown Court to take these new circumstances into account and to increase the amount of the confiscation payable up to the limit of the benefit from criminal conduct.
- 3.51 Consideration needs to be given to the resource demands of obtaining these nominal orders – on FIUs, CPS and the Crown Court – and to realistic expectations of follow-up, re-assessment and enforcement. This is particularly important when an FIU has indicated that it cannot investigate all cases referred to it by the CPS or courts because of pressures of work. Such situations require sensitive handling and explanation if credibility is to be maintained.

Conclusion

- 3.52 In conclusion, efforts so far to embed POCA as a mainstream weapon in the fight against crime have been disappointing. Police forces in particular are missing countless opportunities to invoke this powerful legislative tool, and thus limiting the possibilities further downstream. To improve this position we need to assess and strengthen the strategic framework governing POCA-related activity.



Chapter 4

The strategic framework for POCA success

Realising the potential

- 4.1 The Proceeds of Crime Act was a radical advance on existing legislation, designed to produce a step-change in policies and strategies within the relevant CJ agencies. Implementing such major change within any organisation is bound to pose challenges at both strategic and operational levels. When the change is targeted across a number of separate but inter-dependent organisations, the challenge is magnified.
- 4.2 The key message of this report is that the full potential of POCA, even at this relatively early stage of implementation, is not being exploited. This is most evident in the fact that POCA is clearly not a mainstream investigative or enforcement tool, especially in police forces, as the previous chapter illustrated. This is a practical manifestation of a failure to establish a robust strategic framework that gives a clear direction for POCA work, supported by strong leadership and good communication. What should this framework look like?

National and organisational leadership

- 4.3 With effect from June 2004, the CICFA Programme of Action replaced the Asset Recovery Delivery Plan. A target of £60 million of seized criminal assets was carried forward, and a target of £100 million was set for 2005/06. A new target was also set for increasing, by 10% year-

on-year, the amount of cash seizures and forfeitures under Part V of the Act. Apart from the increased targets the programme also contained a series of capacity and capability building initiatives, including a review of the role of FIs. A key point about CICFA is that it includes Customs and Excise, which is a major player in respect of confiscation orders and cash seizures or forfeitures¹³.

POLICE FORCES

- 4.4 The National Policing Plan (2003-2006) sets out a clear expectation for the use of POCA, stating that:

“Chief Officers and police authorities should make clear in their plans how they will make maximum use of the new powers available in the Proceeds of Crime Act to attack the assets of local criminals – including those involved in drug dealing and supply.”

- 4.5 In February 2003, the relevant Home Office Minister reminded police forces of the opportunities the new legislation offered, and noted the establishment of the ARA. In the same month, the ACPO lead on POCA wrote to all police forces offering clear and helpful guidance on how to exploit the opportunities offered by POCA. Advice was also given on the referral policy and processes to forward appropriate cases to the Assets Recovery Agency.
- 4.6 Despite this national lead, the evidence of this Review is that POCA is not yet integrated into force plans and rarely features as a priority. In the position statements returned by police forces as part of this Review, one-third stated that they do not include POCA in their Policing Plans. Chief officers point out that, despite the mention in the National Policing Plan, asset recovery does not currently feature in the Policing Performance Assessment Framework or Home Office PSA targets. These focus currently on burglary, robbery, vehicle crime and violent crime. Most Chiefs conceded that successful POCA activity would, however, contribute to the PSA target on increasing confidence in the criminal justice system. Perhaps more importantly, POCA is a potentially powerful tool in tackling the volume crime that does

¹³ Customs and Excise is outside the remit of the three inspectorates conducting this review, but its major contribution to asset recovery is acknowledged.

underpin current national priorities. It merits consideration for the development of a Code of Practice by the National Centre for Policing Excellence.

- 4.7 There were, however, exceptions to this generally disappointing position. Leicestershire Constabulary, for example, demonstrates a commitment to embrace POCA at all levels. It features in the force's three-year strategic plan, encompassing all areas of operational activity, and clear targets are set with named persons responsible for delivery. A senior officer commented that:

"In recent years the need to be able to track criminals' 'footprints in the snow' has been supported first by surveillance, then more recently through tracing and intercepts on mobile phones. Now the future is in financial tracking."

- 4.8 Most police forces currently lack an effective approach to cascade POCA activity into everyday policing. Typically, police forces have created small specialist team to deal with confiscation and forfeiture. Some, but not all, set targets for amount of monies to be seized and confiscation orders made.
- 4.9 The most significant gap in POCA use is evident at the routine operational policing level in basic command units (BCUs). In the absence of direction from chief officers, BCU commanders are doing little to implement POCA. Consequently, opportunities are not being seized, either by patrol officers or proactive teams charged with addressing high levels of criminality committed by drug dealers and local high profile criminals.
- 4.10 BCU commanders explain that they too are under pressure to achieve national objectives set by Government on volume crime, street crime, burglaries and low level anti-social behaviour, and cannot reconcile POCA with such priorities. In one BCU visited, a senior manager attributed the exclusion of POCA consideration to the National Intelligence Model. Unless POCA features in the NIM control strategy at BCU level it is disregarded as a tactical option.

Recommendation 7

That Chief Constables incorporate POCA considerations into their use of the National Intelligence Model – for example, specifying asset recovery work within control strategies and tactical planning. It is recommended that a national POCA implementation group, along the lines of the Bureaucracy Task Force, is established, to advise police forces and ensure that the opportunities to maximise asset recovery and disrupt criminality are grasped

THE CROWN PROSECUTION SERVICE

- 4.11 To ensure a strategic focus on POCA, the CPS National Board set it as a CPS Strategic Objective. Areas were asked to consider how POCA could feature in their business plans and to set specific objectives for both the implementation and use of POCA powers. In 2004/05, 39 of 42 CPS Areas included a specific POCA objective in their business plan. In some instances it is simply ‘ensuring that lawyers are trained to undertake POCA cases’. However, there were also cases of objectives and milestones being set for the numbers of confiscation orders, and aspirational objectives, such as ‘to be in the top 25% of all Areas in numbers of restraint and confiscation orders made’.
- 4.12 The CPS developed a range of guidance in anticipation of the changes required to undertake the new processes as defined in POCA legislation. This guidance was accompanied by extensive training for lawyers, and in most Areas, caseworkers. Additionally Chief Crown Prosecutors (CCPs) were charged with developing local service level agreements with the police on the handling of POCA cases. CPS also produced comprehensive training material on many of the new lawyer tasks that would have to be undertaken in the Area.
- 4.13 The lack of opportunity to put newly learned skills into practice diminished the benefits provided by the pre and post-implementation training and national guidance. A major factor for the low numbers of POCA cases has been the effect of the Transitional Provisions, whereby if any of the offences in the proceedings were committed before 24 March 2003, POCA does not apply. In these circumstances, the Drug Trafficking Act 1994 (DTA) and Part VI of the Criminal Justice Act 1988 (as amended by the Proceeds of Crime Act 1995 if

the offences of which the accused is convicted were committed on or after 1 November 1995) continue to apply. The delaying effect of the Transitional Provisions is now no longer so apparent and by the end of the first quarter of 2004/05 CPS had obtained more POCA confiscation and restraint orders than in the whole of 2003/04.

THE COURTS SERVICE (MAGISTRATES' COURTS AND THE CROWN COURT)

- 4.14 The Department for Constitutional Affairs took early action to inform Crown Court managers (CCMs) and Justices' Chief Executives (JCEs) of the Act, and to specify requirements for data collection. In the Magistrates' Court Service, the National Best Practice Guide on Confiscation Order Enforcement, and the subsequent Magistrates' Courts Guide are widely used and well regarded.

POCA champions

- 4.15 Each of the CJ agencies has appointed POCA champions, although the role varies and so does their impact. Most courts had appointed or were in the process of appointing champions in the administrative processes required for POCA applications. This has generally been found to be effective and helpful. In the Crown Court, designated lead members of the judiciary assist in the development and evaluation of processes for POCA applications.
- 4.16 The rationale behind the appointment of champions is sound. In all sites visited the champion was trying to raise the profile of POCA but the position of that person within the management structure (ie, their seniority) has a significant impact on overall POCA performance. For champions to be able to progress implementation they require authority over both operational elements and the strategic direction of the organisation.
- 4.17 Consequently, where the champion is positioned lower down the hierarchy, the influence on POCA take-up is reduced. This problem was clearly demonstrated in one force where an operational detective sergeant was designated as POCA champion but was unable to secure support in terms of resources, training, planning and inclusion in strategic aims. A similar lack of strategic influence is also evident in CPS Areas, the MCS and Crown Court wherever the POCA champion is not a member of the senior management team.

LEADING ON POCA AT OPERATIONAL LEVEL

- 4.18 To turn strategic intent into operational delivery, most agencies also have a POCA lead role at an operational level. Within the police this is usually the head of the Financial Investigation Unit (FIU) and the post-holder is typically an expert in legislation and associated procedures. In the CPS those fulfilling the role are experienced lawyers and caseworkers with the appropriate levels of technical competence to carry out the post and fulfil a practitioner role in both restraint and confiscation procedures. In the MCS and the Crown Court, operational performance and process is being driven by staff of sufficient seniority and experience.
- 4.19 The role played by the operational champion can differ substantially. In some cases a dedicated champion actively pursues appropriate operational POCA opportunities. This includes ‘spreading the word’ by giving presentations, attending briefings to operational groups and ensuring those responsible for training were provided with accurate and up-to-date information on the legislation. In other cases dealing with POCA is just another part of the ‘day job’, competing with many other demands. One force visited lacked an experienced operational champion and a detective sergeant called a neighbouring force champion for advice after discovering large amounts of cash during a house search, which he thought were the proceeds of crime. Perhaps unsurprisingly, the performance of this officer’s force in confiscation and seizure is poor.
- 4.20 Similarly, in CPS Areas where the operational focus of the POCA champion is restricted to the training aspect of the role, key operational processes have not been developed. These Areas could not accurately account for performance nor effectively communicate with others involved in the process.
- 4.21 Within the Crown Court and magistrates’ courts, having a designated champion for confiscation order enforcement (of which POCA forms a part) has proven effective and helpful. However, dealing with POCA is only a small element of the overall business and therefore a specific focus on POCA has not yet developed; in many instances it may not require the assignment of a specific responsibility.
- 4.22 As POCA success is dependent on the effectiveness of all CJ agencies, it would seem logical for an information-sharing forum to be developed

in each CJ Area. This forum could be linked to existing formal working groups that discuss CJS crosscutting issues, but would require the attendance of all POCA champions. The POCA champion in CPS Kent has established such a forum to discuss POCA (and pre-POCA) issues which were impacting on performance across the Area. The Kent example has demonstrated that formalising a forum of this nature helps interested parties to discuss practice, process and improvement in a joined-up way.

- 4.23 The greatest impact was found where the champions also undertook a training and awareness role, as well as being an expert reference point. This dual role provides:
- one point of contact for interpreting national policy;
 - easy access within Areas to expertise and advice; and
 - accountability for ensuring delivery.

Recommendation 8

That Chief Constables, CCPs, CCMs and the future HMCS Area Directors each appoint a suitable member of staff at strategic and operational level as POCA champions to actively pursue opportunities to seize criminal assets and disrupt criminality.

BENCHMARKING AND TARGET-SETTING

- 4.24 As POCA is a multi-agency process, targets need to drive all organisations in the same direction. Some frustrations are evident at the failure to join up national targets with local, agency-specific targets, and with the lack of coherence or complementarity of targets for each agency. It is recognised that the CPS cannot entirely control the achievement of the confiscation target. As the main identification of POCA potential falls to the police, they influence the numbers of cases that enter the system. There are a number of ways that CPS can influence this process but, as FIUs have ultimate responsibility for the investigation of cases, they cannot drive it.
- 4.25 CPS and ACPO have set complementary benchmarks but the police benchmark is a monetary amount while the CPS benchmark focuses on the number of confiscation orders. Setting a benchmark of £500,000 for a force could be achieved through one large confiscation

order. While recognising that the incentive of additional funding based on performance for police forces may result in the drive them to exceed the benchmark, concerns remain about behaviours once the benchmark has been achieved.

Recommendation 9

That ACPO and the CPS develop fully complementary local Area targets ensuring that such targets and any associated benchmarks do not introduce competing priorities.

- 4.26 Introducing additional targets to a criminal justice area that is already awash with targets would not be popular and may well be unhelpful. Most interviews with senior officials generated a plea of “no more targets”. However, POCA is a major plank in the policy to reduce criminality and targets are one means of driving up performance. Its importance is reflected in the intended inclusion – hopefully from 2005/06 – of a specific performance indicator¹⁴ in the Policing Performance Assessment Framework (PPAF).
- 4.27 For the courts, objectives and standards are in place for the timely completion of administrative processes, and, in the MCS, the effective enforcement of confiscation orders. These relate to all cases, not only to POCA–related cases. There are concerns over the levels of enforcement of confiscation orders, and the available statistics highlight the significant gap between ordered sums and actual confiscation achieved. There are also issues around the time delay built into the system before orders are imposed.
- 4.28 The CICFA Asset Recovery Programme of Action sets out targets for joint performance across the CJS. In the medium to long-term, there is a strong logic that that responsibility for any cross-agency target, or complementary suite of targets should sit with the National Criminal Justice Board, and then cascade to LCJBs.

¹⁴ Subject to consultation the measure will show total value of assets recovered under POCA, related to police per 10,000 population.

Training and awareness of POCA

- 4.29 A core function of the Assets Recovery Agency is to deliver training in financial investigation work through its Centre of Excellence. The ARA trains investigators in tracing criminal assets and other areas of financial investigation, and its training is highly valued by participants.
- 4.30 The implementation of the Act and the creation of Regional Asset Recovery Teams (RARTs) has increased the demand for trained financial investigators. This has created two problems for many police forces. First, the support and mentoring for new staff is placing great burdens on established investigators while their own workloads are increasing. Second, police forces struggle to obtain places on ARA training courses due to the high demand. These problems should diminish as investigators become more experienced and the current demand pressures on courses is alleviated (most grant-funded financial investigators are now in post).

Recommendation 10

That Chief Constables, CCPs, CCMs and the future HMCS Area Directors review current levels of practitioner training and awareness and ensure that the National Best Practice Guide for Confiscation Order Enforcement informs local practice in seizing criminal assets and disrupting criminality. Further, that Chief Constables review levels of awareness and training in POCA cash seizures and money laundering offences, to improve local practice.

TRAINING WITHIN THE POLICE SERVICE

- 4.31 None of the police forces visited had undertaken a systematic awareness or training programme in anticipation of POCA. There had, however, been talks and lectures from FIs in some police forces to raise awareness among rank and file staff of the potential operational impact. This unsystematic approach may be a consequence of the lack of national guidance on the standards required. More positively, in all of the police forces visited there was a good understanding within FIUs of the changes.

- 4.32 The pressures of training for a raft of new initiatives means that POCA training is squeezed in, and rarely features prominently in force training plans. There has been little if any training pitched at chief officers, and this is reflected in their limited awareness of POCA. Within the Scimitar Major Crime courses, as well other management of serious crime modules, chief and senior officers will be exposed to the benefits of the Act, but this is not a dedicated POCA course.
- 4.33 In some police forces visited, POCA has been included in courses for criminal investigation, probationer constables and senior investigating officers. Although this helps to raise the awareness of POCA at operational levels, it does not impact upon the majority of patrol officers who, on a daily basis, have opportunities to apply the Act. It is obviously of concern to hear comments such as “Bobbies on the street are not aware of POCA”, and an experienced detective constable asking “Is money laundering an actual offence?” It is imperative that levels of awareness and training enable all officers to exploit the provisions of POCA. This lack of awareness is evident in many examples of missed opportunities to seize large quantities of criminal cash or use other effective powers, particularly the new money laundering provisions (Box K).

Box K – Missed opportunities to use POCA

An officer on a routine enquiry arrested a suspect (a local drug dealer) who had £5,500 cash upon his person. The officer knew of the original POCA power to seize amounts of £10,000 or above but was unaware that the level had been reduced to £5,000 and took no action to seize the cash. The suspect was later released on bail and his cash was returned. In fact, the custody suite displayed a cash seizure poster on which the £10,000 level had been crossed out and £5,000 inserted, but officers assumed the poster had simply been defaced. This lack of awareness resulted in £5,500 being returned to criminal use.

- 4.34 In some cases an aggravating factor is the statutory 48-hour time limit (including weekends and Bank Holidays) for applications to the magistrates’ court following a cash seizure (Box L). If cash is seized on Friday evening, when FIU staff may not be available to advise and there is no court sitting over the weekend, officers will sometimes struggle to complete the process within the statutory limit.

Box L – Lack of knowledge of time limits

A drugs task force executed a search warrant and seized £55,000 in cash. The search took place on a Friday and a note was issued by a member of the task force to the Financial Investigation Unit requesting that it deal with the cash element of the seizure on the following Monday. The officers executing the search were not aware of the requirements to progress matters within 48 hours from the point of seizure, and the case could not therefore be presented to the magistrates' court. Consequently, a more complex route had to be taken by the Financial Investigations Unit to ensure that the cash was not returned to the suspect.

Recommendation 11

That the Home Office considers amending the time limit for application to the magistrates' court following a cash seizure so that the 48-hour period excludes Sundays and Public Holidays.

- 4.35 To fill the training gap, many police forces are relying upon their intranet sites; these vary from simply being an information tool to distance learning packages on the subject (Box M). Some officers had used these sites to enhance their knowledge, although most stated that they were not given the time or access to IT equipment needed to self-train. There was a heavy reliance on lectures and seminars to raise awareness of the Act, although the effectiveness of this approach has not been measured or followed up with any formal training on the wider impact of POCA.

Box M – The value of self-briefing

A Leicestershire Community Beat Officer who accessed the force intranet to update himself on POCA, arrested a local drugs dealer in possession of £10,000 cash. Following the arrest, the officer successfully sought evidence of money laundering. This individual was later convicted of money laundering offences without any predicate offence needing to be proved.

Awareness poster displayed throughout the City of London Police

CHANGE IN THE LAW

£5k?

Have you arrested or stopped someone in possession of £5k cash?



**Contact the Financial Investigation Unit
urgently via Fraud Desk
on 020 7601 2999 or
after 6pm via Control on 020 7601 2122**



City of London Police
www.cityoflondon.police.uk




**Taking the cash
out of crime**

Images courtesy of Metropolitan Police Service

- 4.36 In an attempt to raise awareness throughout the force, the Metropolitan Police produced a video on the topic of cash seizure, featuring the cast of the ITV's police programme 'The Bill'. It lasts under 15 minutes and is eminently suitable for inclusion in shift briefings. The video was made available nationally and has been very well received by those who have seen it. It is disappointing therefore that, although every force originally received at least one copy, relatively few officers interviewed had seen it. The Review commends the use of this video and supports any plans to expand the idea to cover other provisions of the Act.

TRAINING WITHIN THE CPS

- 4.37 Unlike the police service, the CPS undertook to identify and train POCA champions for each Area prior to the implementation of the Act. This was part of the national strategy to ensure that the CPS was ready to take on cases. A two-day training event was complemented by training material and guidance, to enable further cascade training in each Area. This approach enabled selected lawyers to gain an understanding of the changes and form some grounding in the new processes. Area responses to the Review questionnaire highlighted that training was given to most Trials Unit lawyers and some criminal justice unit lawyers, however in many cases new lawyers (entrants since the initial training programme) have not been trained in POCA.
- 4.38 Some formal training of lawyers and caseworkers had been undertaken in each of the six CPS Areas visited. In most cases this training repeated that given to the POCA champions, and was so complex and in-depth that it confused more than enlightened the recipients. Accordingly, two of the Areas tailored the suggested training package simply to promote awareness of the type of cases suitable for POCA action, avoiding the details of restraint or confiscation orders (Box N). Additionally, CPS Headquarters provides legal guidance via the CPS intranet on a number of matters relating to restraint, confiscation and enforcement. Although this material is available to all CPS staff, many staff remain unaware of it. Areas and CPS Headquarters need to consider the best method of communicating POCA-related guidance to all appropriate staff. CCB remains a valuable centre of excellence for advice.

Box N – Tailoring POCA training

CPS Kent and CPS Greater Manchester tailored the national CPS course on POCA after receiving feedback from lawyers and caseworkers that the training was confusing and complex. Regular short training sessions were delivered to raise awareness about how and where POCA is appropriate. Additional advice and guidance was provided by the champions on the operational aspects of handling POCA cases.

- 4.39 A positive recent initiative is the addition of a CPS lawyer to each of the Regional Asset Recovery Teams (RARTs) with a brief to assist and advise CPS Areas. The existence of a central resource to concentrate exclusively on POCA matters will allow an expertise to develop which can complement the role of the POCA champion within Areas. It may be necessary also to issue guidance to ensure that those Areas outside RART regions have equal access to expert advice and guidance.

TRAINING IN MAGISTRATES' COURTS AND THE CROWN COURT

- 4.40 The Department for Constitutional Affairs (DCA) took action before the introduction of POCA to inform Crown Court Managers (CCMs) and JCEs of the implementation of the Act, and to indicate requirements for data collection. In the Crown Court, initial training for court managers was provided at an early stage, and appropriate procedures were put in place. However, staff awareness of the National Best Practice Guidance for Confiscation Order Enforcement was less widespread than in the MCS, and the limited experience of POCA cases in the first year of the Act created a need for refresher training. Some court staff also suggested that training and guidance specifically tailored to the Crown Court's requirements would have been useful.
- 4.41 Staff interviewed in each of the six MCC areas visited, had participated in, and had appreciated, some form of joint training with partner agencies, usually provided by local police staff. But of the MCCs who responded to the questionnaire, only 24% had benefited from joint training. Crown Court staff were even less likely to have experienced joint training, with only 15% responding positively on this point.
- 4.42 The training of experts is an expensive business. It is of concern, therefore, that in some cases expertise is being lost as post-holders move either on promotion or laterally within their organisations. Staff progression cannot be avoided but the lack of contingency

and succession planning that accompanied many of the moves was of some concern. In two of the CPS Areas visited, POCA champions were about to take up new jobs and in at least one force trained financial investigators were moved to other duties to plug resource gaps. Losing this resource can be highly detrimental for FIUs and the CPS, as training staff to be fully effective can take several years.

Conclusion

- 4.43 In conclusion, the aspirations of the Government in putting POCA onto the statute have yet to be translated into a strategic framework of leadership and direction that will deliver results on the ground. The powers exist, and chief officers need to address how they will be seen and used as everyday tactics against suspected criminals at all levels. The final chapter summarises how the implementation of POCA can move up several gears to begin to realise its potential.



Chapter 5

Moving POCA forward

A wake up call

- 5.1 The fact that this review of POCA implementation has been conducted as a joint exercise by three CJ inspectorates, supported by a Reference Group comprising a wide range of stakeholders, is significant. It reflects the importance of working in partnership to realise the benefits of asset recovery legislation – POCA implementation is very much a joint endeavour and can succeed only if the police, CPS, the Courts and various law enforcement agencies work effectively together.
- 5.2 This Review has highlighted some positive points about POCA implementation, notably:
- the universal acceptance of POCA as a means of fulfilling widely-held aspirations to strike hard at criminality and criminal assets;
 - the enthusiastic response of POCA ‘champions’ to the opportunities presented;
 - some very creditable successes in individual cases;
 - a growing body of expertise throughout law enforcement and the courts in using the legislation; and
 - some evidence that POCA is working its way up what is admittedly a crowded agenda for managerial and political attention.
- 5.3 It might be considered churlish to criticise deficiencies in implementing a still relatively new piece of legislation, but the issues

at stake are so important that a warning bell needs to be sounded. Every single day opportunities to seize cash, begin the process of asset recovery or bring people to book for money laundering offences are being missed. Money and criminals are slipping through the net and confidence in the criminal justice system is eroded whenever that happens. So this report is intended to be a ‘wake up’ call, for all of the agencies involved but most particularly for police forces. The police are the critical entry point for POCA and it is in routine policing operations that low levels of awareness about POCA most jeopardise its success.

- 5.4 Raising awareness, to the point where police officers feel confident about seizing cash when the circumstances of a stop or arrest merit such an action, and where the offence of handling stolen goods is superseded by that of money laundering, is vital. Chief officers will quite legitimately argue that they risk being overwhelmed by national and local priorities, and that when everything is a priority then nothing is. Although it does feature in the National Policing Plan and in the strategic objectives of the CPS and the DCA, asset recovery features only marginally in the overall performance framework for criminal justice. Asset recovery may not be publicly as high profile as street robbery but POCA can be an effective tool in tackling volume, acquisitive crime – prolific burglars and drug dealers are highly vulnerable to money laundering charges if the right lines of investigation are pursued.

What needs to change?

- 5.5 The need to ‘mainstream’ policies and statutes is an all too familiar call. The police service is already working to change attitudes and culture, and incorporate a welter of initiatives through a mainstreaming approach. But the message needs to be repeated here, because it is largely through simple interactions between patrol officers and suspects that the POCA process is likely to be triggered.
- 5.6 This Review highlights the need to raise front-line awareness but also underscores the importance of:
- securing clarity, consistency and coherence in the national framework of objectives and targets;

- clarifying and communicating proactively how the incentivisation scheme works, so that police forces are clear what they need to achieve to get a payback from recovered funds;
- continued financial support for asset recovery work, at least until police forces reach the point of self-financing it through incentivisation;
- making the most of the intelligence potential of Suspicious Activity Reports (SARs) generated by the regulated sector;
- relentlessly promoting the ‘crime does not pay’ message through proactive marketing of success, by the ARA and at more local levels;
- ensuring that the CPS and the courts are geared up to manage a greater volume of POCA cases as police forces improve their front end performance. This may require a review of courts staffing, and specialisation, perhaps financed through the incentivisation process;
- asking Local Criminal Justice Boards to play a key role in facilitating partnership working and ensuring they accord a higher priority to asset recovery;
- improving enforcement activity to improve public confidence and affect criminal intent;
- improving the collection, collation and analysis of performance data across all agencies (and in particular to support JARD) to inform decision-making and monitoring; and
- bringing criminal lifestyles and asset recovery opportunities more firmly within the National Intelligence Model.

5.7 The breadth of these issues highlights the need for concerted action to move POCA forward at a faster rate than hitherto, at both national and local level. A national lead is required to formulate and drive a robust framework of objectives, targets and monitoring and promote coherence in relevant policy-making across three Government departments. This national ‘ring holding’ role could be discharged by the National Criminal Justice Board¹⁵ (NCJB) or by CICFA (though this may require a full-time secretariat function). It could help the process if each Local Criminal Justice Board – whose core members include the police, CPS and the Courts – developed a brief action plan

15 One weakness in this approach is that Customs and Excise do not have a place on the NCJB or on local Boards; however, the creation of the Serious and Organised Crime Agency in 2006 will incorporate the relevant part of Customs and have a place on the NCJB.

identifying key milestones along the route to fuller realisation of the POCA potential. The NCJB or CICFA could then be a useful forum for alignment of these plans and monitoring their achievement.

- 5.8 That greater attention is needed at local level is illustrated by some of this Review's findings. The questionnaire responses indicated that, while POCA did feature in some LCJB plans, the reference was usually in respect of public confidence objectives rather than featuring at the strategic level or in the overall LCJB plan or priorities. No LCJB in the Areas visited had appointed a POCA champion. Within each relevant agency, the delivery of any local POCA milestones usually sat at the operational level and, in a number of Areas, chief officers who sat on LCJBs admitted that POCA performance or requirements were unknown to them. Common responses on the topic of POCA were:

"no knowledge and never discussed."

"some discussion, but not a standing item.."

"I can see the relevance to public confidence issues.."

"POCA is to be included in next year's plan under partnerships.."

- 5.9 In fact, the Lord Chancellor wrote in May 2003 to all courts representatives on LCJBs asking that POCA be made a standing agenda item and requesting feedback on the numbers of applications and orders made. At the time of writing, there is little evidence that POCA features as a strategic item on LCJBs' agendas. This lack of awareness of POCA, and lack of focus at executive level, has meant that the partnership approach, which could have been valuable in a clearly cross-cutting issue, has not been harnessed to full effect.

5.10 In the Crown Court, Resident Judges and their colleagues have played a core role in helping to develop the administrative systems needed to implement POCA orders, and assisting in the critical evaluation of court and inter-agency processes. The judiciary and all courts staff placed strong emphasis on the importance of agencies working effectively together to implement POCA. Both the CC and the MCS see the creation of the unified courts administration in April 2005 as an opportunity for the courts to work even more closely and effectively together to execute asset recovery orders.

Resource issues

5.11 In general, all agencies welcomed the funding that had been provided centrally, although a common theme was a concern around sustainability. Most funding was made initially on a three-year basis and this leaves a degree of uncertainty among those seeking to allocate future resources to activity associated with POCA. The situation requires careful planning. If Ministers are confident that POCA will deliver results and become self-financing, they will be keen to use the resources currently targeted on asset recovery work in the police service and CPS to fund other priorities. Chief officers in these agencies will then need to find ways of maintaining or increasing POCA-related activity within existing budgets.

Conclusion

5.12 In conclusion, there is no quick fix. Greater awareness and competence will flow from strong leadership and effective championing of POCA, and from grasping opportunities through training/awareness raising, high impact communication/marketing and the celebration of success. The stakes are high because criminals are exploiting globalisation and technology – law enforcement agencies need to respond effectively and recognise that asset recovery legislation is a vital weapon in the armoury.

Acknowledgements

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List of Agencies visited

FIELDWORK VISITS

Staffordshire Police

Leicestershire Constabulary

Durham Police

Metropolitan Police Service

Kent County Constabulary

Greater Manchester Police

CPS Staffordshire

CPS Leicestershire

CPS Durham

CPS London

CPS Kent

CPS Greater Manchester

Central Confiscation Branch, CPS

Business Development Directorate of CPS

RESIDENT JUDGES AND COURT STAFF IN:

Durham CC

Inner London CC (Greater London)

Southwark CC (Greater London)

Manchester Crown Square CC (also staff of Bolton CC and Manchester Minshull Street CC)

Leicester CC

Maidstone CC

Stafford CC

MCC AREAS – COURT STAFF AND SOME MAGISTRATES, INTERVIEWED:

Durham MCC

Kent MCC

Greater London MCA

Greater Manchester MCC

Leicestershire MCC

Staffordshire MCC

OTHERS

London RART

West Midlands RART

North Eastern – Durham satellite RART

HM Customs and Excise

ARA

NCS

NCIS

DCA

Home Office Financial Crime Unit

South Yorkshire Police

West Yorkshire Police

Inland Revenue Special Compliance Office – Bristol

Glossary of Terms

ACPO	Association of Chief Police Officers
ARA	Assets Recovery Agency
BCU	Basic Command Unit
BDD	CPS Business Development Directorate
CC	Crown Court
CCB	Central Confiscation Branch (CPS)
CCM	Crown Court Managers
CCP	Chief Crown Prosecutor
CICFA	Concerted Inter-agency Criminal Finances Action Group
CID	Criminal Investigation Department
CJ	Criminal Justice
CO	Confiscation Order
CPS	Crown Prosecution Service
DCA	Department for Constitutional Affairs
DTA	Drug Trafficking Act
ELMER	NCIS SARs database
FI	Financial Investigator
FIU	Financial Investigation Unit
HCA	CPS Higher Court Advocate
HMCE	Her Majesty's Customs & Excise
HMCS	Her Majesty's Court Service
JARD	Joint Asset Recovery Database
JCE	Justices' Chief Executive
JMLSG	Joint Money Laundering Steering Group

LCJB	Local Criminal Justice Board
LEA	Law enforcement agencies
MCA	Magistrates Court Association
MCC	Magistrates Court Committee
MCS	Magistrates Court Service
MPS	Metropolitan Police Service
MSF	Most Similar Family
NCIS	National Criminal Intelligence Service
NCS	National Crime Squad
NIM	National Intelligence Model
OFCU	Home Office Organised and Financial Crimes Unit
PACE	Police and Criminal Evidence Act
PIU	Performance and Innovation Unit
PNC	Police National Computer
POCA	Proceeds of Crime Act, 2002
PSA	Public Service Agreement
RAIF	Recovered Assets Incentivisation Fund
RART	Regional Asset Recovery Team
SAR	Suspicious Activity Report
SLA	Service Level Agreement
SPC	Single Point of Contact

Annex 1

The Concerted Inter-agency Criminal Finances Action Group

CICFA was launched in 2002 as a non-statutory, multi-agency group chaired by HM Customs and Excise, with members drawn from HMCE, ACPO, CPS, Inland Revenue (IR), NCS, NCIS, Financial Services Authority (FSA), HO, DCA, Northern Ireland Office and Department of Public Prosecutions (Northern Ireland).

CICFA aims to improve the UK's response to the financial aspects of crime, particularly the recovery of criminal assets and the detection and prevention of money laundering.

Its key roles are to:

- implement a programme of action in support of the Asset Recovery Strategy;
- assess proposals for funding from the Recovered Assets Incentivisation Fund; and
- make recommendations on project funding for which the agreement of Home Office Ministers is needed.

The main thrust of CICFA activity revolves around the above mentioned Programme of Action. This covers strategic targets that aim to reduce crime through a multi-agency approach that deprives criminals of their assets. Partner department and agencies commit to achieving this through mainstreaming asset recovery activity and through bi-and multi-lateral capacity building.

The plan has over fifteen key activities which include cash seizure targets, numbers and values of confiscation orders, confiscation order enforcement and money laundering investigations. There are also some capacity and

capability-building initiatives including a review of the role and deployment of financial investigators.

The group meets quarterly to monitor and manage its programme and to drive achievement of asset recovery targets.

CICFA has already delivered:

- strong inter-agency commitment to the delivery of challenging financial targets;
- over-achievement of the financial target for 2003/04;
- delivery of the JARD database to timetable and budget;
- promulgation of best practice through the POCA Update and Money Laundering newsletters;
- development of the assets recovery communications strategy; and
- development of the ‘Payback’ branding for all assets recovery activity.

Annex 2

ARA Policy – Confiscation Case Referral Criteria

Context

Acceptance of cases by the Agency is at the Director’s discretion, but the following criteria will be used to determine which cases are eligible for referral. The Agency encourages referring agencies to discuss possible cases at the earliest possible stage.

1 Confiscation investigations

The Agency will often be involved in, but will not be limited to, cases where the criminal lifestyle criteria are met. ARA will seek to work in close partnership with the CPS, HMCE and police forces, which lead on routine confiscation matters, as well as the magistrates’ courts – the enforcement authority. ARA will seek to concentrate on cases where they can add value to the confiscation process through the powers invested in the Director, both during the investigative stage or enforcement.

ARA will become involved in a criminal confiscation investigation where it agrees to a request for assistance from a law enforcement or prosecution agency. Investigations will be eligible for referral to the Agency at any stage in the confiscation investigation (including before one has started) if one or more of the following criteria are met:

- use of the Director’s power to issue a disclosure order is likely significantly to assist the investigation as regards the extent and whereabouts of criminal proceeds; and/or
- the case involves Level Three criminality, or middle market drug trafficking, or other Level Two crime, or crime by significant community criminals, or meets a sufficient level of value or complexity, by satisfying at least one of the following tests:

- suspected benefit from crime should normally be at least £50,000 (or £25,000 in the case of significant community criminals), and/or a significant proportion of the assets to be realised are in the form of real estate, or take the form of a business, or are located abroad or involve complex third party issues, and
 - known assets available for enforcement should normally be at least £50,000 (or £25,000 in the case of significant community criminals), unless exceptional features of the case justify the Agency’s involvement, and/or
 - involve a large number of victims unlikely to be able to pursue a civil action, or involve parallel civil proceedings, or involve issues of particular sensitivity or public concern, or present any other issues which the Agency is best placed to deal with, for whatever reason, and/or
 - is referred by a law enforcement agency other than Customs or the Police and it meets threshold criteria agreed between the Director and the agency concerned;
- and/or
- any other cases which fall within the scope of any Memorandum of Understanding which may be drawn up between the Director and any law enforcement or prosecuting body.

2 Restraint applications to be made by the Agency

The Agency will handle restraint applications prior to charge where it is handling a confiscation investigation or when directed to do so by the lead law enforcement agency in cases where the Agency is assisting the investigation, in agreement with the prosecuting authority.

The Agency will handle restraint and receivership applications post-charge (or post-conviction) only where the Director has agreed to a request to handle the confiscation application.

3 Confiscation applications to be made by the Agency

The Agency will apply for a confiscation order when it has carried out the confiscation investigation.

In other cases the Agency may apply for confiscation at the request of the referring organisation if the criteria in section 1 above are met.

4 Enforcement

The Agency will enforce all its own confiscation cases (ie, where it had conduct of the confiscation hearing). The Agency will be the owner of data contained in the Joint Asset Recovery Database and will have responsibility for monitoring of enforcement of POCA confiscation orders. ARA will seek to offer any advice and assistance to other enforcement authorities where this is possible (and appropriate).

The Agency has the power in law to enforce other confiscation orders where the Director was appointed as the enforcement authority when the confiscation order was made. The Agency will agree to its appointment as the enforcement authority where the enforcement raises issues which the Agency is best placed to handle for whatever reason, bearing in mind the criteria set out in section 1, above, and the impact on crime reduction of the Agency taking enforcement action, as opposed to another body. ARA is not resourced to deal with the vast bulk of routine confiscation cases, where the magistrates' courts are the statutory authority.

5 Transitional procedures

A) INVESTIGATIONS

The Agency has its full investigation powers available in confiscation investigations from 24 February 2003, irrespective of when any offence(s) was/were committed and benefit obtained. The above criteria will therefore apply to all referrals to ARA for adoption of confiscation investigations.

B) RESTRAINT & CONFISCATION

The Agency will only be able to conduct restraint and confiscation proceedings in POCA cases, ie, where the predicate offence was committed after 24 March 2003. Advice & assistance will, nonetheless, be available in pre-POCA cases.

C) ENFORCEMENT

ARA will only be able to act as the enforcement authority (ie, exercise all its enforcement powers under POCA) in cases where, i) the predicate offence was committed after 24 March 2003 and ii) the Director is appointed as the enforcement authority when the confiscation order is made.

The Agency will consider taking a case where alleged victims are considering or have instigated parallel civil proceedings **only** where such proceedings concern multiple small (individual) claimants and not one or two large (institutional) claimants. In such cases, it would expect those institutions to fund their own civil cases.

Annex 3

The role of Financial Investigation Units

FIUs play a central role in the implementation of asset recovery legislation, with core activities relating to:

- Confiscation
- Cash seizure
- Restraint
- Money laundering
- Management of Suspicious Activity Reports (SARs)

Confiscation: This should be seen as the lifeblood of any FIU; in its simplest terms it relates to recovering criminal proceeds taking the identified criminal assets away from convicted persons. It may involve the use of ‘criminal lifestyle’ assumptions as described earlier but also includes particular criminal conduct. This would also include applying for POCA production orders from the Crown Court in support of confiscation and money laundering investigations. In a few cases, DTA powers of forfeiture are used to remove assets from convicted drug dealers. This approach should generally be discouraged in all but exceptional cases in favour of a POCA confiscation order.

Cash seizure: (S.294 & 295 of POCA). This is a new process introduced by the Act to seize large sums of cash for which the suspect has no legitimate or credible explanation. In March 2004, the original cash limit of £10,000 was lowered to £5,000. The application for this cash to be confiscated is a civil process dealt with in the magistrates’ court before a district judge, and normally presented by solicitors or nominated agents, rather than the CPS. The burden of proof is to the civil standard – balance of probability- and the process focuses on the derivation of the cash or its intended use – it is not about the suspected person. Where enquiries need to be made abroad, as a civil law issue, a letter of request can be made via the CPS.

Restraint: This process has now been simplified. At the request of the police, authorised by a designated Superintendent, the CPS can now make application for restraint to the Crown Court. The CPS is then responsible for managing the process, including any requirements for variations that may occur during the lifetime of the restraint order.

Money laundering: In POCA, money laundering refers to more than just money and may relate to any property which represents a person's benefit from criminal conduct. Other than in the MPS, money laundering teams have been established only recently, in response to the new powers in POCA. It encourages the proactive use of this legislation to investigate target suspects who have proved difficult to prosecute for specific criminality in the past. The legislation still requires the prosecution to prove a link to criminality (although not to a specific crime) and therefore POCA is a useful tool within the full investigation process. The concept involves following money trails rather than the suspects.

Management of SARs: Suspicious Activity Reports (SARs) are created by the regulated sector and are accessible by all law enforcement agencies via NCIS which has responsibility for their collation. FIUs then use SARs as sources of intelligence.

Annex 4

A brief outline of the National Intelligence Model

The National Intelligence Model (NIM) is a business process which ensures that information on all aspects of policing is fully researched, developed and analysed to provide intelligence that senior managers can use to:

- provide strategic direction;
- make tactical resourcing decisions about operational policing; and
- manage risk.

The National Policing Plan 2003/04 stipulated that the NIM should be adopted by all forces to commonly accepted minimum standards by April 2004. A Code of Practice will further assist consistency in the use and application of NIM principles and products.

The key benefits of NIM are that it allows police officers to focus on solving priority problems and target the most active offenders. It improves the direction and briefing of patrols and is a mechanism for improving integration with partner agencies.

The model works at three levels:

Level 1 – is based at local command unit level and will typically assist in tackling volume criminals such as prolific burglars and street drug dealers.

Level 2 – operates at force and regional level against more serious criminals whose activities span force boundaries.

Level 3 – aims to disrupt serious and organised crime that is usually national or international in scope.

The NIM process is informed by strategic assessments and control strategies (produced at 6-month intervals) which, at each level provide the ‘big picture’ of what is happening, and prioritises intelligence, prevention and enforcement activity. On a more frequent basis, Tasking and Co-ordinating Groups meet to deploy the resources available around tactical activities that reflect the priorities in the strategic assessment.