

# JOINT THEMATIC REVIEW OF ASSET RECOVERY: RESTRAINT AND CONFISCATION CASEWORK

MARCH 2010

HMCPSI  
HMICA  
HMIC



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## ABBREVIATIONS

Common abbreviations used in this report are set out below, with any local abbreviations explained in the report. A glossary explaining common terms can be found in annex E.

|         |  |       |  |
|---------|--|-------|--|
| ACPO    | Association of Chief Police Officers                 | MG2   | Special measures form completed by police officers             |
| BCU     | Basic (or in London, Borough) Command Unit           | MG3   | Charging form completed by police and charging prosecutor      |
| CJS     | Criminal justice system                              | MG6   | Information on case file form completed by police              |
| CJSSS   | Criminal Justice: Simple, Speedy, Summary            | MG11  | Form used to record a witness's statement and personal details |
| CMS     | Case management system (also known as Compass)       | NWNJ  | No Witness No Justice  |
| CPS MIS | CPS management information system                    | OCJR  | Office for Criminal Justice Reform                             |
| CPS     | Crown Prosecution Service                            | PCMH  | Plea and case management hearing                               |
| DCV     | Direct Communication with Victims                    | PSA   | Public Service Agreement                                       |
|         |  | VPS   | Victim Personal Statement                                      |
| HMCPIS  | Her Majesty's Crown Prosecution Service Inspectorate | VWCDU | Victim and Witness Care Delivery Unit                          |
| HMIC    | Her Majesty's Inspectorate of Constabulary           | WAVES | Witness and Victim Experience Survey                           |
| HMCS    | Her Majesty's Courts Service                         | WCO   | Witness care officer   |
| HMICA   | Her Majesty's Inspectorate of Court Administration   | WCU   | Witness care unit  |
| LCJB    | Local Criminal Justice Board                         | WMS   | Witness Management System                                      |
| LWAC    | List of witnesses to attend court                    |       |  |

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# 1 INTRODUCTION AND PURPOSE OF THE REVIEW

- 1.1 This is the report of the Chief Inspectors of Her Majesty's Crown Prosecution Service Inspectorate (HMCPSI), Her Majesty's Inspectorate of Constabulary (HMIC) and Her Majesty's Inspectorate of Court Administration (HMICA) into the handling of cases involving asset recovery under the Proceeds of Crime Act 2002 (POCA). This work has been undertaken as part of the Criminal Justice Chief Inspectors' joint inspection programme for 2009-10.
- 1.2 The 2009-10 joint inspection programme was drawn up in accordance with the requirements of Part 4 of the Police and Justice Act 2006. This joint thematic review reflects the commitment of the five criminal justice inspectorates (which also includes Her Majesty's Inspectorate of Probation and Her Majesty's Inspectorate of Prisons) to operate in an increasingly joined up way and demonstrates their ability to continue to develop the capacity to inspect end-to-end business processes that span two or more of the criminal justices agencies.
- 1.3 This review has been undertaken in accordance with the government's ten principles of inspection<sup>1</sup>.
- 1.4 Although there has been substantial national focus (as set out below) on the outcomes and strategic issues relating to asset recovery, there has been no detailed analysis of the handling of asset recovery cases from investigation to enforcement, looking critically at the work of all the criminal justice agencies (that is, the police, the Crown Prosecution Service (CPS) and Her Majesty's Courts Service, Her Majesty's Revenue and Customs (HMRC) and Revenue and Customs Prosecutions Office (RCPO)<sup>2</sup> at the same time. It was considered that this is where joint inspection would add most value at this stage, and the purpose of the joint review, therefore, was to carry out such analysis.
- 1.5 The findings of this review will be considered, along with the outcomes of other reviews, studies and action currently being undertaken across criminal justice agencies, to determine whether further joint inspection is warranted and if so where the focus should lie.
- 1.6 The three criminal justice inspectorates have worked jointly to examine a cross-section of the casework process from initial investigation through to enforcement. This approach has unique benefits in allowing inspectors to assess cases in the sample from beginning to end, by examining files held by the police, HMRC, CPS and HM Courts Service (HMCS), and by interviewing staff involved in the process. This review does not report on judicial decision-making or the exercise of judicial discretion.

## Background and context of the joint review

### *Historical background*

- 1.7 From medieval times until the late nineteenth century, the power of the state to seize the property of a criminal was governed by the law of forfeiture. There was no need or provision for judicial "confiscation" in its modern sense, or to distinguish between that property which represented the proceeds of crime, and that which was used in the commission of the crime itself, because all the property of a convicted felon was automatically forfeited to the Crown in any event.

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1 Contained within "The Government's Policy on Inspection of Public Services", The Prime Minister's Office of Public Service Reform, July 2003, p5 <http://archive.cabinetoffice.gov.uk/opsr/documents/pdf/policy.pdf>

2 Now merged with the CPS.

- 1.8 This began to change with the Forfeiture Act 1870 and the development towards a situation where forfeiture could only bite on the items that were immediately connected with a specific crime, not those representing the benefit from the crime. This principle applied in the forfeiture provisions of the Misuse of Drugs Act 1971 (MDA) and the Powers of Criminal Courts Act 1973. In 1980, the House of Lords confirmed (with “considerable regret”) in the “Operation Julie” case<sup>3</sup> that profits of £750,000 from LSD production could not be forfeited under the relevant part of the MDA because they represented the profits of the conspiracy, and were not directly connected to the criminal act itself.
- 1.9 In 1984 the Hodgson Committee noted this lack of provision for the confiscation of the proceeds of crime, particularly in drug trafficking cases, and its recommendations led to the Drug Trafficking Offences Act 1986 (DTOA). For the first time in a century there was now provision for the “confiscation” of assets representing the profits of criminal activity. The DTOA set up a confiscation regime very similar to that which is currently in force under the Proceeds of Crime Act 2002 (POCA). In particular, it included a set of statutory assumptions that assets in possession, and those transferred to the defendant over the previous six years, were profits from his criminal activity. These were then included in the calculation of the defendant’s benefit. The burden of proof thus shifted to the defendant to show to the civil standard that the assumptions were inaccurate, or that “the amount which might be realised” was less than the benefit.
- 1.10 For non-drugs cases, the Criminal Justice Act 1988 set up a parallel confiscation regime with a similar procedure. The Proceeds of Crime Act 1995 then amended the regime and brought the confiscation laws relating to the proceeds of crime for non-drugs cases into line with the more robust confiscation provisions in the drug trafficking legislation. Statutory assumptions were to be applied where a course of criminal conduct was identified, notwithstanding that the defendant had not been convicted of all offences. The defendant could also be required to provide details of his assets.
- 1.11 Despite the creation of this powerful legal framework, only 20% of relevant drug supply cases resulted in a confiscation order, and only 40% of all orders were fully enforced between 1995 and 1999<sup>4</sup>. This prompted a review by the Cabinet Office’s Performance and Innovation Unit (PIU) in 2000, which reported that “there are anomalies in the legal regime, which has developed in a piecemeal fashion. And there are significant deficiencies in the use of legislative provisions”. It recommended, inter-alia, a more joined-up strategic approach, a focus on financial investigation, and a new legislative attack. All three recommendations were eventually embodied in the Proceeds of Crime Act 2002, which now governs the asset recovery regime in the United Kingdom.

#### *The role of the Proceeds of Crime Act 2002*

- 1.12 It was recognised by Parliament that asset recovery could be a weapon in the armoury used to reduce the growing threat of organised and international crime. The then Home Secretary, Jack Straw said in February 2002, that “justice demands that we should stop criminals profiting from their crimes. Confiscating assets and preventing money laundering also reduces the incentives for crime and removes an important source of finance for the continued operation and expansion of criminal enterprises”. POCA thus represented the ‘new legislative attack’ foreshadowed in the PIU report. It trumpeted the intention of the state to use asset recovery as an aggressive weapon against crime rather than a means of balancing the books at the end of a case.

<sup>3</sup> R v Cuthbertson [1981] A.C. 470.

<sup>4</sup> “Recovering the Proceeds of Crime”, the Cabinet Office’s Performance and Innovation Unit, 2000.



- 1.13 POCA took on the stringent characteristics of the DTOA and the Proceeds of Crime Act 1995, with the provisions relating to “criminal lifestyle” and “general criminal conduct” allowing a post-conviction confiscation order to be made in respect of activities for which there has been no conviction and which has never been formally taken into consideration in court proceedings. This was done by the application of statutory assumptions similar to those in the DTOA, with the burden on the defendant to disprove them on the civil standard of proof. It is also worth noting that in most cases there is no room for judicial discretion once the prosecutor (or the court) has decided to institute confiscation proceedings. Once findings of fact have been made by the court, the value of the confiscation order is mathematically calculated. This places a high premium on the prosecutor’s discretionary decision to apply for confiscation, and guidance has recently been issued by the CPS to address where it is right for prosecutors to seek an order.
- 1.14 Key among the new provisions was the extension of civil forfeiture, which was recommended in a Home Office report in 1999, and endorsed by the PIU in 2000. The magistrates’ courts could now order the forfeiture of cash, without the need for a criminal conviction, or even a charge, where it had no apparent legitimate origin, the burden being on the applicant to prove this to the civil standard of proof.
- 1.15 POCA also gives the investigating agency significant additional powers to obtain information proactively and covertly from third parties such as banks and solicitors. Part 8 gives the Crown Court the power to grant production orders, search and seizure warrants, customer information orders, and account monitoring orders, on the application of the investigating agency.
- 1.16 The other main role assigned to POCA was to lend a degree of consistency and relative simplicity to the asset recovery landscape, which previously spread across a range of statutes and geographical differences throughout the United Kingdom. It became the lead statutory authority for asset recovery, impliedly repealing the main operative sections of the other legislation referred to above, and it also provided a unified regime for Scotland and Northern Ireland, as well as England and Wales, for the first time in living memory.
- 1.17 The regime was also simplified and made more consistent by vesting jurisdiction for restraint matters, as well as the investigative tools referred to above, in the Crown Court rather than the High Court. POCA also reduced the scope for restrained assets to be eroded by their use to meet legal fees.

*Analysis of the application and effect of the Act*

- 1.18 The joint criminal justice inspectorate report in 2004, called “Payback Time”<sup>5</sup>, surveyed the asset recovery landscape a year after the Proceeds of Crime Act 2002 had come into force. It found that there were pockets of excellent practice but that the overall application of the powers across England and Wales was patchy, with money laundering and confiscation seen as complex, specialist activities, divorced from mainstream business. Activity was often only targeted at the higher profile ‘crime barons’ and almost exclusively against drug trafficking, leading to failure to use POCA to its full potential. Opportunities to combat those engaged in volume crime, street robbery and low-level drug dealing were being missed.

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<sup>5</sup> Published in two sections: <http://www.hmcp.si.gov.uk/documents/services/reports/THM/PaybackPart1.pdf> and <http://www.hmcp.si.gov.uk/documents/services/reports/THM/PaybackPart2.pdf>

- 1.19 Since then, more work has been done to mainstream asset recovery, and to improve performance in the usage of POCA. Targets were set for police forces and the CPS for first the number and later also the value of confiscation orders obtained each year. In October 2007, the government's Public Service Agreement (PSA) 24 target was for £250m to be recovered (including by way of confiscation, cash forfeiture and civil recovery/tax) by 2009-10, out of a criminal economy estimated to be worth £15bn. However, since the baseline of £125m was established in 2006-07, performance has fallen steadily behind trajectory, and the overall target is very unlikely to be met this financial year. That said, in the last five years, and as a result of concerted efforts by the agencies, there has been a substantial increase in the value of assets removed from criminals.
- 1.20 The likely failure on the target has prompted a series of reviews and surveys. The Prime Minister's Delivery Unit has reported privately on performance twice since 2006, and a variety of recommendations have been made in relation to high-level issues such as the incentivisation scheme (under which recovered assets are divided between HM Treasury and criminal justice agencies) and the relatively freestanding role of asset recovery in the criminal litigation process. The Attorney General's Office (AGO) produced an action plan for the departments she superintends, and agencies were tasked to consider how they might meet the target under the PSA. The AGO has also recently issued guidance to prosecuting agencies on their use of the non-conviction based powers under POCA<sup>6</sup>, and the CPS, in October 2009, released a toolkit for prosecutors for ancillary orders<sup>7</sup>, which includes guidance on the range of POCA orders available pre and post-conviction.
- 1.21 Other work to assess and improve the asset recovery work in the criminal justice system is ongoing: the Association of Chief Police Officers (ACPO) is carrying out a series of "health checks" in relation to asset recovery systems in the police areas; the Serious Fraud Office and RCPO (before their merger with the CPS) have both carried out internal audits of asset recovery systems and procedures; HMCPSI inspected RCPO (including file review of a small number of asset recovery cases) publishing the report in July 2009; and in the same month the Home Office published a research report entitled "Examining attrition in confiscating the proceeds of crime", an outcome-based analysis of the apparent shortfall between expected yield, and actual asset recovery performance. HMCPSI inspected the Organised Crime Division (OCD) of the CPS, which includes a specialist Central Confiscation Unit (CCU), and reported in September 2009. HMIC is also conducting an inspection of HMRC including asset recovery functions, which has informed this joint review, and HMRC has already instituted a Criminal Finances Programme to improve delivery. Finally, HM Inspectorates of Constabulary and Prosecution in Scotland have recently published a report on their joint inspection of the Proceeds of Crime Act 2002.
- 1.22 Since scoping work for this review began, plans for the merger of the CPS and RCPO were announced. Their specialist asset recovery units (the CPS's CCU, and RCPO's Asset Forfeiture Division) have merged to form a Proceeds of Crime Unit, sited within the OCD. Staff transferred from RCPO to CPS in tranches, the first on 1st October 2009, and the last on 1st January 2010. Also since the review, responsibility for drugs cases initiated from frontier interventions transferred from HMRC to the UK Border Agency.

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6 [Http://www.attorneygeneral.gov.uk/Publications/Pages/AttorneyGeneralissuedguidancetoprospectingbodiesontheirassetrecoverypowersunder.aspx](http://www.attorneygeneral.gov.uk/Publications/Pages/AttorneyGeneralissuedguidancetoprospectingbodiesontheirassetrecoverypowersunder.aspx)

7 [Http://www.cps.gov.uk/legal/assets/uploads/files/Ancillary%20Orders%20Toolkit%20-%20%205%20October%202009.pdf](http://www.cps.gov.uk/legal/assets/uploads/files/Ancillary%20Orders%20Toolkit%20-%20%205%20October%202009.pdf)

### Key working hypotheses

- 1.23 The reports and reviews referred to above, and preliminary interviews with the agencies themselves, helped the review team prepare for the fieldwork by identifying likely weaknesses in the joint casework process. These preliminary views were reduced into 12 key hypotheses, against which judgements were made:

#### **Identifying the right cases**

1. There are blockages in the identification of cases by the investigator.
2. Choices are made regarding settlement (especially, but not exclusively tax cases by HMRC) which impact on asset recovery, and this may not be the most effective method of removing proceeds of crime from the economy and improving public confidence.

#### **Linking the investigations (“Mainstreaming”)**

3. Blockages in identification of cases contribute to links between financial and criminal investigations being missed, and the two being kept apart, to the detriment of both.

#### **Identifying and maintaining the assets**

4. Criminal investigations do not effectively utilise the range of financial investigative tools.
5. Opportunities are lost for early identification of assets, and making a realistic assessment of their value, and any conflicting claims to ownership, hampering recovery later.
6. Assets available are squeezed by costs (including receivers’ costs), the claims of third parties, and difficulty in tracing and obtaining assets, especially overseas.
7. Potential restraint applications are missed or delayed, which impacts on confiscation and enforcement further down the line.
8. Dissipation of assets by suspects, or the granting of third party rights over them, before a restraint application is made, is limiting the value of available assets for enforcement of subsequent confiscation orders.

#### **Conducting confiscation proceedings**

9. Confiscation proceedings are made less effective by delays, lack of effective case progression, and insufficient joint working between investigators and prosecutors, which may, in part, be due to skills shortages in the agencies.

#### **Enforcing the confiscation order**

10. There are issues regarding the quality and timeliness of paperwork provided by the Crown Court to Regional Confiscation Units, which causes severe delays in enforcement. This may be partly due to lack of sufficient training to Crown Court staff on the national best practice guidance.
11. The agencies’ ability to meet the national joint target is affected by failure to ensure that all orders are accurate and supported by proper documentation, so as to enable effective enforcement.
12. Enforcement is hampered by the weaknesses with the Joint Asset Recovery Database, despite improvements in its functioning.

1.24 The review tested these hypotheses against a sample of cases from four geographical areas, and identified any new issues not previously considered. References in this report to file examination results relate to the police-CPS area-court case results, except where we specify that we are also, or instead, referring to the small number of HMRC cases examined. We did not, however, examine prosecution files for the Revenue and Customs cases. A fuller explanation of the methodology is set out at Annex A. The findings, set against these hypotheses, are explained fully in Chapters 5 and 6. We note in Annex A, and repeat here, that a relatively small sample of areas cannot give an exact picture of national performance; however, we are content that it proved a good testing ground for the key hypotheses we had prepared in advance.

## 2 EXECUTIVE SUMMARY, ISSUES TO ADDRESS AND GOOD PRACTICE

*The work being by way of an extended scoping exercise, we did not feel it appropriate to make recommendations or identify aspects for improvement. However, we have been able to reach preliminary conclusions on our key hypotheses, and have also determined that restraint and confiscation would benefit from discussion or review of how some parts of the work are carried out. We have identified these in the text as issues to address (ITA), of which there are 22, and we list them here. The relevant paragraph number is cited after each ITA. We have also identified eight instances of good practice, which we list here and in the appropriate sections of the report.*

### Summary of findings

- 2.1 The key message from “Payback Time” in 2004 was that POCA represents a powerful opportunity to disrupt and deter criminality, but only if it is used as a routine investigative process against a wide range of criminality. We found that this message has yet to become a reality in the criminal justice system, although our fieldwork has confirmed that the confiscation system is at least partially effective, insofar as it delivers large sums of cash from the hands of convicted defendants into the public purse, in a manner which is just to defendants, according to the POCA regime. There is also, clearly, value in the impact on criminal enterprises and reduction in harm.
- 2.2 In most of the cases we examined, an order was made that recovered some of the assets of the defendant, although there needs to be better quality assurance of the standard of the confiscation order, and the recording and documentation in support of it. However, there is considerable scope to increase the number and value of confiscation orders and to reduce the delay and wastage that is part of the system. This can be achieved, in part, by work on those blockages (drawn up at the start of this review and captured in the hypotheses) which were borne out to a lesser or greater degree. The one hypothesis that was only partially substantiated was that relating to the accuracy of orders and supporting documentation, where, in the cases we examined, inaccuracies did not impact on the ability to enforce. We also found less evidence than we expected of the impact of some attritional factors.
- 2.3 Paragraph 4.3 sets out the basis on which the PSA target to recover £250m of criminal assets in 2009-10 was established. This review of casework has identified two particular and connected reasons that mean that assets are not likely to be recovered at the optimum rate. It is apparent that the targets fixed do not have a direct correlation with what is achievable or what the system is resourced to deliver.
- 2.4 Firstly, not all cases with restraint and confiscation potential are identified as such, largely because issues are not mainstreamed into the daily work of frontline police investigators and CPS area prosecutors. This does not appear to be as a result of lack of training or awareness-raising. Rather, there is a feeling that the identification of, and exploitation of cases is a job best left to the specialists, because it is a separate complex area of law which should not impinge on the main job of prosecuting and sentencing criminals in the conventional way, or which can safely be left until post-conviction. That this was detrimental to the standard of casework was apparent from our file examination. There was greater awareness within HMRC, but more cases appear to be diverted into other recovery avenues, or cases were limited in their scope, reducing the potential for recovery of assets.

- 2.5 The main principles of restraint and confiscation are not complicated, and there is no reason why every investigator and prosecutor cannot play a part in maximising the number and value of confiscation orders. Asset recovery has a deterrent effect which itself plays a role in protecting the public from harm; which is why it features in PSA 24. The new CPS target seeks to draw the attention of area prosecutors to the scope for confiscation in cases other than drugs supply and fraud. Mandatory MG17 forms for investigators, and a requirement that duty prosecutors advise on restraint and confiscation at the pre-charge stage will help, but a significant investment in bringing about a cultural shift in the mind-set of frontline staff in all the agencies would be required to improve performance significantly, by further developing and incorporating asset recovery into their daily work patterns. Only then would asset recovery work begin to lose its ‘ancillary’ and ‘specialist’ tags. Until this happens, the number of confiscation orders will not increase to its full potential. However, there is clearly a resistance to mainstreaming, sometimes based on capacity, that has proved intractable, and we think consideration should be given to whether it is now time to recognise the need to tailor the degree of contribution expected from non-specialist staff to those factors that impact most on casework, and to focus more on value for money of the orders that can realistically be obtained and enforced.
- 2.6 Secondly, recoverable assets are not always identified or frozen in time or at all. There is some attrition in most asset recovery cases. Aside from the regime-based attrition, which averaged about £105,000 per case in our sample, and which cannot be reduced, the actual attrition is in the region of £15,000 per case. The degree of attrition due to costs, third party claims, and overseas assets was less than envisaged, though, in our hypothesis. Conversely, the degree to which there is an apparently incorrect application of the regime, or inappropriate settlement, was something not envisaged by our hypotheses.
- 2.7 More accurate and realistic assessment of recoverable assets, and more effective restraint of these assets, would serve to reduce the attrition and increase the amount recovered significantly. Police Financial Investigators are often allocated to assist in the identification and categorisation of confiscation cases when the investigative officer first notifies the police economic crime unit (ECU). Their role tends to be limited to this task and they then move on, to return later when the defendant is convicted, without having made any preliminary judgments as to the potential recoverable assets. This investigative vacuum arises at the very point, known by some as “the golden hour”, when it might be most desirable and appropriate to identify, value, and freeze any assets in the hands of the defendant. Generally, it is envisaged that FIs should work throughout the life of the case with prosecutors and investigative officers. However, links between FIs and the criminal investigation are less than clear in some areas, and there is an apparent lack of synchronisation between them in most cases, within the police and HMRC. Therefore, assets are not always properly identified, some are not realistically valued, and few are restrained.
- 2.8 We found no evidence on files in the four areas we visited of use of the investigative tools provided for the first time by POCA. Such tools would normally be used to their best effect soon after identification of the case as suitable for restraint and confiscation. The FIs know about the available orders, but it may be thought that the time and resource needed to apply for them prohibits their use in all but the biggest of cases, at a time when police resources are subject to many competing priorities. HMRC FIs make more use of available databases, but are only slightly more likely to use the range of POCA tools. Equally, it is rare that concealed or overseas assets are fully identified and frozen by the police or HMRC teams. The CPS is not required to advise on the use of investigative tools, and it is doubtful whether all but the

most specialised prosecutors would have the knowledge to do so. This also applied to lawyers within RCPO, but outside their Asset Forfeiture Division, prior to merger with the CPS. However, pre-charge advice rarely does more than identify the case as one suitable for asset recovery, and hardly ever does it advise (even in general terms) on the further investigation of assets. This is a weakness.

- 2.9 Conversely, the CPS is required to advise and represent the police on restraint matters. However, there is a lack of clear national guidance on this, which may be a contributor to the wide variation in usage of restraint from area to area. In turn this is a cause for concern, in that either some areas are allocating resource for no reason, or others are failing to restrain assets that could then be dissipated or concealed. Given that the specialist Regional Asset Recovery Teams apply for restraint as a matter of course, the occasions on which a restraint order would be pointless or counter-productive must be few indeed. Therefore, when such orders can be applied for and granted administratively, it is hard to see why they are used so sparingly in police forces or by HMRC.
- 2.10 Naturally there are other, subsidiary, causes of weak performance. One is the preponderance of nominal orders. They serve to undermine performance in that they take resource without adding to the public purse, or targets, in the short term. Each one requires a prosecutor's statement, court hearings and enforcement, at least in principle. Very few result in re-visit and recovered assets. Greater effort to identify assets early on would help sift out those cases likely to end in a nominal order. Of these, sound decisions could then be made as to whether the order could serve any purpose. In the other cases, no order should be sought.
- 2.11 Delay and waste impact on performance in that they reduce the capability of the system generally. Aside from the lack of permanent involvement of the FI (see above), which would allow presentation of a finalised prosecutor's statement on conviction in most cases, the main cause of delay is a lack of commitment by the parties to resolving the issues promptly. Confiscation proceedings are subject to the Criminal Procedure Rules, but there is a lack of experience and know-how among generalist caseworkers in the CPS and the courts, and the parties are not being held to account for delays, which are considerable. Even allowing for their primary duty to their clients, defence lawyers are slow to react, and often lack detailed knowledge of the regime. There are funding issues, and access to defendants invariably becomes much harder post-conviction. As a result, orders that could be made by agreement within days of the final hearing are often delayed for months.
- 2.12 The initial conclusion, that the restraint and confiscation system is at least partially effective, is due in large part to the commitment and skill of the specialists who make the system work. In fact, the quality of the work overall is adequate only because much of it is done by specialists. Accredited FIs take on the critical tasks in POCA case preparation, and most CPS areas make heavy use of champions, many of whom do a lot of the work as well as providing advice to others. Most Crown Court centres allocate POCA applications to specialist judges, and enforcement proceedings are often brought by specialist Regional Confiscation Units (RCUs) before dedicated enforcement courts where a district judge or specialist legal adviser sits. All are agreed that the presence of the specialists in the other agencies is crucial to their work; the impact of losing a key member of staff would be felt across the system, and the work would suffer.



2.13 There is a dichotomy between the need to mainstream asset recovery if the value recovered from confiscation is to grow significantly, and the risk that a move away from specialisation could dilute skills, knowledge and experience, and prejudice performance if it is not done in a carefully planned manner. One route out of the conflict would involve a significant commitment to training and performance management over a sustained period, in order to achieve the necessary shift in thinking amongst frontline staff in all agencies. Alternatively, the way forward is to recognise that mainstreaming is unlikely to provide value for money, and focus resources where they will be most cost-effective, such as in expanded specialist units. There is also an argument for making the statutory process leading to a confiscation order more streamlined, so that orders take less time, and there are fewer procedural steps to take; this could improve the cost-effectiveness and the commitment to asset recovery at the same time.

#### Future activity

2.14 The findings of this review suggest that agencies need to give further consideration to policy and the strategic issues which affect the recovery of criminally gained assets, in particular: how to ensure asset recovery represents value for money i.e. the cost of the process against what is gained and how that equation should affect the cases in which assets are pursued; whether adjustments to the incentivisation scheme are necessary; whether mainstreaming, while apparently desirable, is in fact truly achievable or cost effective; and whether targets are realistic.

#### Issues to address

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1. NPIA should continue to explore potential electronic capture of relevant data and encourage higher standards in relation to the completion of the form MG17. Any developments or amendments to the MG17 should be undertaken by the prosecution team (paragraph 5.16).
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2. The CPS should ensure that flagging of cases, and accurate recording on CMS of hearings and tasks, is improved (paragraph 5.17).
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3. HMRC should consider the scope of their work, in conjunction with the findings of the review of their activity by HMIC (yet to be concluded), and determine how best to ensure that confiscation is considered, and maximised in criminal investigations (paragraph 5.19).
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4. The extent and limitations of the FI role should be made clear to frontline staff by police managers, and the links between intelligence management and the role of the FI should be explored further (paragraph 5.20).
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5. Within HMRC, there is a need for better consideration of, and liaison with the CPS and RCPO on, strategy and planning at early stages and throughout (paragraph 5.23).
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6. There needs to be further investigation by police forces into the consideration and use of additional powers under POCA by FIs and the possible reasons for their apparent lack of use with the involvement of the NPIA where appropriate (paragraph 5.28).
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7. There is scope for the police and HMRC to develop further the investigation of assets held by suspects in some cases (paragraph 5.30).
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8. Police forces should, in discussion with their CPS area, review policies on restraint to ensure they are not unnecessarily cautious (paragraph 5.44).
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9. The prosecution team should, in each case assessed as a candidate for confiscation, carry out a proper and systematic consideration of restraint at the earliest possible stage, preferably before the suspect is made aware of the investigation. There should be a written record of the reasons for making or not making the application (paragraph 5.50).
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10. The magnitude of delay in obtaining a confiscation order is a significant concern, and merits further investigation by the police, CPS and HMCS, and appropriate action to progress orders more effectively (paragraph 5.65).
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11. The prosecutor should thoroughly review the contents and structure of the Section 16 statement to ensure that it is clear and concise, and correctly covers all relevant matters (paragraph 5.66).
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12. There needs to be better understanding across the prosecution team of the relevant issues at all stages, including the pre-charge decision, selection of charges, and acceptance of pleas or a basis of plea (paragraph 5.67).
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13. The prosecution team should consider measures to ensure that staff at all levels of the organisation, not just champions or specialists, and any counsel instructed, have the experience and expertise, or awareness relevant to their level of involvement, and to enable them to manage cases as effectively as possible so that the specialists (whilst remaining the key resource) are not the only people in the organisation regularly considering POCA powers. Contingency planning for the loss or absence of specialists is also essential (paragraph 5.71).
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14. HMCS needs to ensure that its administrative casework quality assurance mechanisms are effective, and to enable the RCUs to feed back on errors found, and the impact on their work (paragraph 5.75).
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15. There need to be processes in place within police forces to ensure that the review of nominal orders is systematic and that applications to revise orders are made in all cases when it is appropriate to do so (paragraph 5.78).
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16. All HMCS staff involved in asset recovery need the training best suited to their role, and training should be held jointly where appropriate. For example, joint training for police, CPS area staff and court staff on JARD would enhance each agency's appreciation of the role each needs to take to manage the restraint and enforcement processes jointly (paragraph 5.83).
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17. HMCS should satisfy itself that when recognised good practice has not been adopted in a region or area, there are sound business reasons for the decision not to adopt the good practice (paragraph 5.84).

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18. HMCS should ensure that specialist legal advisors have sufficient time allocated for the proper and effective discharge of their duties (paragraph 5.88).

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19. The inclusion by HMCS of asset recovery templates on Libra or JARD would enable these to be standardised, and for each to reflect best practice (paragraph 5.99).

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20. There would be merit in the Home Office revisiting the ARIS generally, and the question of whether the current ARIS creates some inappropriate incentives, in particular consideration should be given to how it impacts on compensation funds (paragraph 6.2).

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21. Consideration needs to be given by the prosecution team to the possibly divisive effects of policies on cash seizures (paragraph 6.7).

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22. There should be consideration by the police, CPS and HMCS of ring-fencing ARIS funds, so that money recovered from POCA is ploughed back into the same work; this ought to incentivise staff further, and improve performance and public confidence (paragraph 6.8).

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### Good practice

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1. In CPS Northumbria, the business manager for the complex casework unit works with the specialist lawyer and administrator to check pre-charge logs to ensure that, in all acquisitive crime cases, the case has been identified by the police, and that the CPS lawyer giving advice has referred the case to a Financial Investigator (paragraph 5.11).

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2. It was encouraging to find that areas had identified the lack of an MG17 as an issue and had implemented plans for improvement. In Northumbria and parts of Nottinghamshire, agreement has been reached between the police and CPS that no charging decision will be given on acquisitive offences unless an MG17 is provided (paragraph 5.15).

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3. In the North East RCU, as it is co-located with the Regional Asset Recovery Team, staff were able to identify appropriate values for assets prior to the application being made for the confiscation order. This meant that assets were valued more realistically and orders were more enforceable. Working with the police FIs, and presenting them with data of how much the RCU had had to write off when varying orders, the RCU was able to persuade the police of the benefits of accurate asset valuations, and of including RCU staff at the earlier stage of the proceeding (paragraph 5.37).

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4. Kent Police reviews annually all orders where the difference between the benefit and order is greater than £5,000 (paragraph 5.78).

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5. In CPS Kent, the specialist enforcement lawyer proactively assists defendants to realise assets when they are not in a position to do so for themselves, whether because they are serving a custodial sentence, or lack the knowledge of how to go about it (paragraph 5.82).

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6. In the North East RCU, a month before the time to pay is due to expire, the unit sends a letter outlining the consequence of non-payment and giving a default hearing date, which the defendant should attend unless the order has been paid by then. This is an improvement on the practice elsewhere in England and Wales of waiting until after the time to pay has expired before setting dates for hearing, which potentially allows the defendant an extra six weeks before enforcement action begins (paragraph 5.86).

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7. In Merseyside, staff from the RCU attend the enforcement hearing to ensure that the court has the fullest information (paragraph 5.87).

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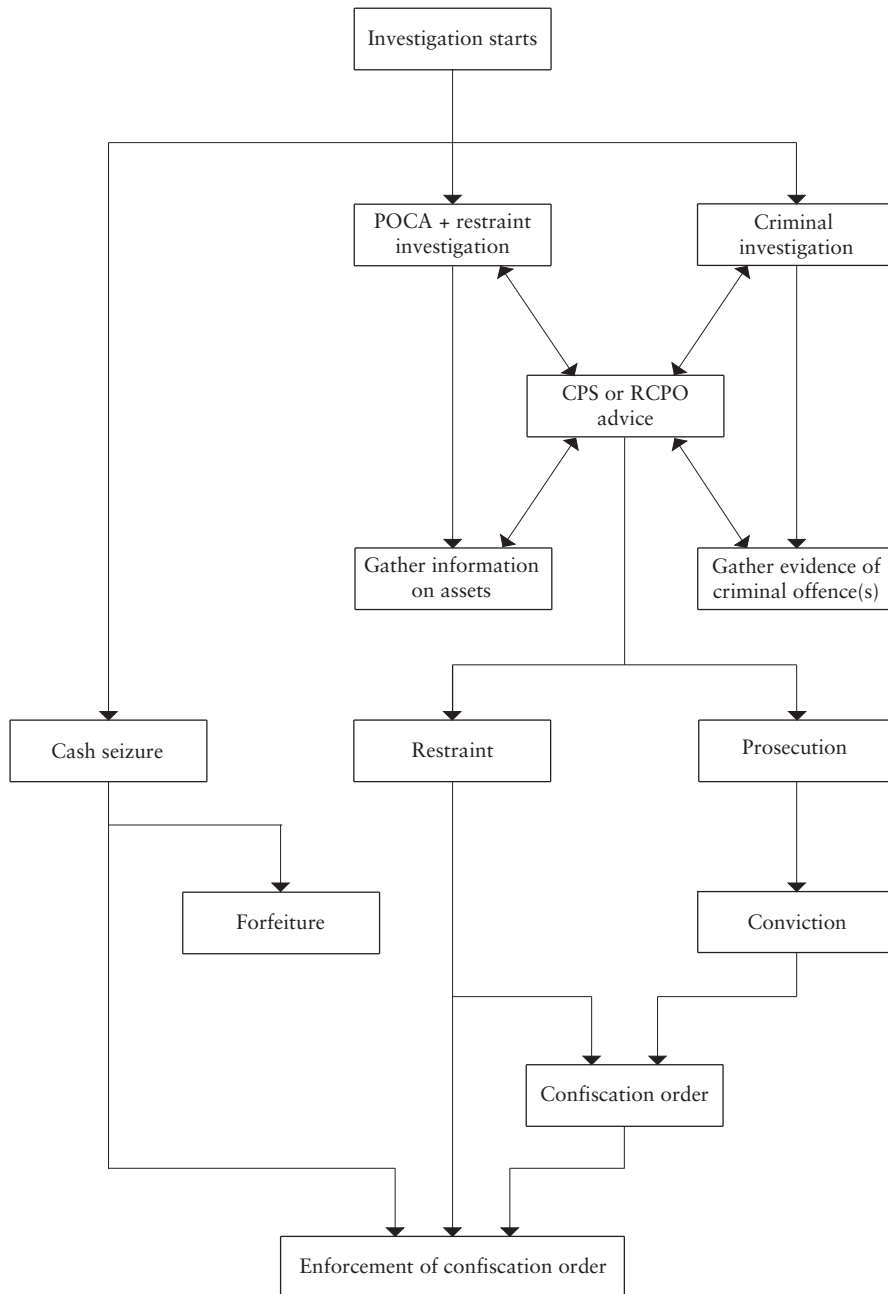
8. The North East RCU area has three locations for hearings, and at each, a designated person is sent a scanned copy of the RCU's papers, and acts as a proxy or agent for the RCU at the enforcement hearing, with a specialist legal advisor present. This ensures that a full set of papers is available in good time, and that no delay is occasioned in returning them to the RCU. The RCU liaise in advance with the specialist legal advisor to ensure that all issues are known and addressed (paragraph 5.89).

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### 3 THE ASSET RECOVERY PROCEDURE

3.1 In examining the issues that impact most on the effectiveness of asset recovery, it is important to recognise the elements of the processes that are relevant to this activity.



#### *The prosecution team*

3.2 It is expected that cases likely to involve a restraint or confiscation element, because they relate to acquisitive or drug trafficking allegations, will be identified and flagged as such by the police from the beginning of the investigation. If it does not already form an integral part of the criminal investigation, a financial investigation to identify assets should begin immediately in such cases, to help prevent the dissipation of any such assets by the suspect as soon as they

realise they are under criminal investigation. This is usually best done by the use of a restraint order. In complex cases relating to organised crime, this procedure tends to happen, but in the general run of cases the financial investigation only starts when the timetable is set on conviction or sentence.

- 3.3 POCA created accredited Financial Investigators (FIs)<sup>8</sup>, who have the power to search for, seize, detain and seek the forfeiture of cash suspected of being the proceeds of crime or is believed to be used to fund future criminal activity; to make cash seizures; and to provide the evidence in support of a restraint application. Importantly, they also have the ability to apply to the court for investigation orders and warrants in financial investigations. By virtue of a service level agreement between the Director of Public Prosecutions (DPP) and ACPO<sup>9</sup>, the CPS does not usually represent the police in such applications, although the agreement states that CPS lawyers may provide advice. In all but the most exceptional cases, the CPS does not provide advice at this stage.
- 3.4 Accredited FIs will provide the evidence in support of a restraint application. However, the CPS is required to advise on, and conduct any application for, a restraint order. This is done as early advice, and the form MG3 (which is generally used to provide pre-charge advice) is used for the purpose. The FI provides a statement in support of the application, endorsed by a police Superintendent, and the CPS drafts the order and makes the application. It was envisaged that such applications would be made administratively, but in some areas the Judge will require the attendance of the applicant in chambers. The CPS then deals with any application to vary or discharge the order.
- 3.5 The CPS is required to provide charging advice in most cases which would fall within the scope of restraint or confiscation<sup>10</sup>, and it is expected that the charging lawyer will advise the police in relation to those aspects as well as the criminal case, although the advice may be limited at that stage, if the financial investigation is at an early stage. Where restraint or confiscation arise as an issue after charge, the CPS should advise the police at the earliest opportunity.
- 3.6 If the FI has been allocated to the case at an early opportunity, they will usually write to the CPS requesting that a timetable for the confiscation proceedings be set by the court at the end of the criminal case in the Crown Court, or upon committal for sentence or confiscation from the magistrates' court. In reality the FI also drafts the Section 16 prosecutor's statement in support of a confiscation application. This analyses the defendant's finances, and sets out the benefit and available assets of the defendant. The CPS then files this at court and serves it on the defendant. The same roles are taken in relation to any further documents that are required.
- 3.7 Case progression is an essential part of the application process. Between the agencies, it is important that the CPS notify the FI of any timetable, that the FI provides the draft statement and evidence on time, and that the court is asked for more time, where appropriate. Whilst

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8 Under Section 3 POCA Accredited Financial Investigators were accredited by the Asset Recovery Agency, which has now been subsumed into the Serious Organised Crime Agency. Since 1 April 2008 accreditation has been the responsibility of the National Policing Improvement Agency.

9 On 2 December 2002, the then DPP signed a service level agreement with ACPO which was intended to serve as a general guide to co-operation between the parties on issues arising from POCA. The SLA was designed to be used as a basis for local protocols between Chief Crown Prosecutors and Chief Constables in relation to the roles and responsibilities of those involved at Area/force level. It is available on the CPS website at <http://www.cps.gov.uk/publications/agencies/slapoc.html>

10 Section 37A Police and Criminal Evidence Act 2004.

the POCA regime has inbuilt provision for failures by the defence to engage in the process, delay is sometimes inevitable and the prosecution team can help reduce this by taking a proactive approach to case progression. Failure to do so places undue pressure on the courts and the prosecution team, including the FI, who may have little time before a hearing to respond to a late statement by a defendant.

#### *The confiscation order*

- 3.8 The application for a confiscation order starts at the point the defendant is convicted or sentenced; proceedings cannot be started after this, although there are powers to postpone proceedings started at conviction or sentence. In occasional cases, where all matters are agreed, it concludes at the same time. Where matters are not agreed, the inherent reverse burden of proof and the need for final hearings to be effective clearly calls for an exchange of documents akin to civil proceedings<sup>11</sup>. POCA requires the prosecution to prepare a statement (Section 16 POCA) outlining the alleged benefit of the defendant's criminal activity, and the available assets. The court also has the power to order the defendant to respond to the prosecutor's statement (Section 17), and to provide disclosure of his assets (Section 18). Therefore, engagement of the defendant post-conviction is required to ensure efficient case progression, although POCA provides the court with authority to make assumptions in default of a defence response, or following a partial response.
- 3.9 Up to the point that a confiscation order is made, proceedings are driven by the prosecution team. The court sets a timetable for exchange of documents and a final hearing date; usually this is done at the point of conviction or sentence. The Criminal Procedure Rules apply in confiscation proceedings, and HMCS is therefore required to play a part in case progression by listing the case for mention where directions are breached, but it is incumbent on the parties to chase each other when due expedition is lacking.
- 3.10 Once findings of fact have been made, the confiscation order is made in a sum of money that represents the value of the benefit figure, if the available assets equal or exceed this sum, or the value of the available assets if they do not. If there are no available assets, a nominal order can be made in the sum of £1. Whilst the CPS drafts the order in restraint applications, the court does this in confiscation proceedings. Other forms are also completed, including a list of the assets that the court has found is available to satisfy the order (called a form 5050A) which are then passed to the regional confiscation unit for enforcement. Any errors in the forms can complicate, delay, or even prevent, effective enforcement.

#### *Enforcing the order*

- 3.11 Thereafter although the order is made in the Crown Court, enforcement is carried out in the magistrates' courts, which have the power to require the defendant's attendance, to commit the defendant to prison for the period in default endorsed on the confiscation order, and to take other steps, such as applying for a charge (which is like a mortgage) over registered land, or for orders for sale. The amount can ultimately be pursued in the civil courts like any other judgement debt.
- 3.12 Where the order is for a sum less than the benefit figure, the matter can be returned to court for reconsideration if the defendant comes into possession of further assets later. Unless the order can be satisfied immediately, the court sets a time to pay period (which cannot exceed

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11 Although, after 5<sup>th</sup> October 2009, the regime will be subject to the Criminal Procedure Rules, rr6.14-6.22.

six months initially) and a default sentence, if the defendant does not satisfy the confiscation order. Activating a default sentence does not wipe out the debt, however.

- 3.13 HMCS pursues enforcement in most cases, except those where the CPS (including the Organised Crime Division and RCPO), or the Serious Fraud Office are designated as “lead agency”. Local arrangements differ, but in most areas the three agencies liaise regularly on enforcement issues to maximise effectiveness.

#### *Regional Confiscation Units*

- 3.14 HMCS has set up Regional Confiscation Units (RCUs) in certain parts of the country to administer enforcement through local magistrates’ courts. For example, the East Midlands RCU in Hinckley pursues enforcement through dedicated courts in Nottinghamshire, Derbyshire, Lincolnshire, Northamptonshire and Leicestershire. The RCU in the North East is co-located with the Regional Asset Recovery Team; in other areas, the RCU is co-located with another agency, commonly the police or magistrates’ courts.

#### *Regional Asset Recovery Teams*

- 3.15 Five Regional Asset Recovery Teams (RARTs)<sup>12</sup> have been established in England and Wales. The teams are formed from officers and staff seconded from various police forces and HMRC. The West Midlands RART was first established as a pilot scheme in April 2003, where they began the ethos of calling upon the specialist skills of the various law enforcement agencies to tackle the vast amount of money being generated from organised and serious crime. This initiative has now been launched in five of the nine ACPO regions, namely the West Midlands, North West, North East, London and Wales. They are centres of expertise, which are able to handle the prosecution of criminal cases (especially money laundering), as well as advising agencies on asset recovery issues. In some areas they are also involved in enforcement. This network will be expanded to cover all nine ACPO regions from April 2010.

#### *Statistical data on asset recovery*

- 3.16 The main source of statistical evidence on confiscation, other asset recovery matters, and for tracking actions by the agencies is the Joint Asset Recovery Database (JARD). Data is entered at critical points by licensed staff from the police, CPS and HMCS. It includes the value of the benefit, assets and the eventual order, and payments received. It records the outstanding balance after payments, and calculates interest, but has limited accounting functions, and other IT systems have therefore been used to supplement JARD, including the magistrates’ courts Libra system (which records hearings and produces standard letters) and a specific confiscation order tracking spreadsheet (COTS).

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12 [www.rart.gov.uk](http://www.rart.gov.uk)



## 4 PERFORMANCE TARGETS

- 4.1 The government's Public Service Agreement 24<sup>13</sup> in 2007 was designed to “deliver a more effective, transparent and responsive criminal justice system for victims and the public”. It included a national asset recovery target (also called the ‘tin box’) to recover £250m of criminal assets in 2009-10 with an interim target of £200m in 2008-09. It is noteworthy that any element of a confiscation order paid as compensation to victims does not count towards the tin box. Also not included are the fees paid to receivers appointed to manage or recover assets. As well as confiscation orders, criminal assets recouped from civil recovery and cash forfeiture count towards the target.
- 4.2 Performance nationally has risen considerably since 2001-02, when £25m was recovered, to £135m in 2007-08. However, this was below the trajectory of £155m, and it is unlikely that the 2009-10 target will be met.
- 4.3 Targets set by Ministers have been based on an assessment of the value of the criminal economy, and to what extent inroads can be made into recovering some of the funds involved. The Home Office valuation in 2005-06 was £15bn. The estimate by the Home Office is based on assumptions that cannot be validated, but it is regarded as being the best available data. The amount amenable to asset recovery was estimated to be £2bn of assets within the UK and a further £2.75bn sent overseas. In that year, just under £100m (1%) was remitted to the tin box. The achievability of the current target is a matter of conjecture, with concerns that earlier satisfactory performance is not replicable, since it was based on clearance of a backlog of cases that no longer exists, and that work done now to drive increased values of orders would take a number of years to show results, given the time needed for investigation, prosecution, and to make and enforce orders. The economic downturn has also undoubtedly affected the value of, and ability to realise, assets.
- 4.4 The PSA 24 national target was supported by the confiscation “pipeline”, which set the level of required value and volume of confiscation orders, and volume of restraint orders. There is also a national enforcement target. In 2008-09, it was to collect £132m from the enforcement of confiscation orders, made up of £120m confiscation and £12m compensation. The 2009-10 enforcement target is £150m, of which, under National Criminal Justice Board targets, £70.99m should come from orders enforced by HMCS and CPS geographical areas. The balance will fall to the Organised Crime Division of the CPS, and other national enforcement agencies, such as the Serious Fraud Office or RCPO.
- 4.5 In July 2008, the Home Secretary published a Policing Green Paper<sup>14</sup> that introduced a single “top down national target for police forces – to deliver improved levels of public confidence”. The new performance landscape allows police forces and partners to drive service delivery, and this has impacted on target setting for asset recovery, one of the key drivers for public confidence. Local Criminal Justice Boards, at the invitation of the Office for Criminal Justice Reform, have set “levels of ambition” for key measures such as volume and number of confiscation orders, restraint orders and enforcement. These have been agreed by the police, CPS (on behalf of the areas) and HMCS. In addition, local police authorities are able to set

13 [Http://www.hm-treasury.gov.uk/d/pbr\\_csr07\\_psa24.pdf](http://www.hm-treasury.gov.uk/d/pbr_csr07_psa24.pdf)

14 [Http://files.homeoffice.gov.uk/police/policing\\_green\\_paper.pdf](http://files.homeoffice.gov.uk/police/policing_green_paper.pdf)

targets in relation to other matters, such as cash seizures, and the CPS, for 2009-10 is measuring confiscation against the level of acquisitive crime (drugs, fraud, theft, robbery and burglary) in the Crown Court.

- 4.6 The Asset Recovery Working Group<sup>15</sup> is reviewing alternative ways of performance management, and ACPO considers that the performance management of asset recovery could be developed into a forecast-based regime rather than through fixed targets. The existing methods (value and volume of orders, number of restraints, and a shared enforcement target) are therefore susceptible to change over the next 12 to 18 months.

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15 The ARWG is made up of representatives from 15 different government departments and law enforcement agencies, including ACPO, Serious Organised Crime Agency, HMRC, CPS, and HMCS, and aims to provide strategic direction and build capacity across all law enforcement agencies. It is a sub group of the Asset Recovery Board.

## 5 TESTING THE HYPOTHESES

### Identifying the right cases

Hypothesis 1: There are blockages in the identification of cases by the investigator.  
*Substantiated.*

*The identification of cases where restraint or confiscation are, or may be, relevant should take place at the earliest opportunity. In pre-planned operations, this should be at the stage where strategy and investigative lines are being established, so that they can reflect matters relating to the recovery of criminal assets. In all drugs cases and acquisitive crime, the potential for seizure, restraint and confiscation should be considered, and discussed by the prosecution team that is, frontline police officers, police Financial Investigators, and prosecutors.*

- 5.1 Although there has been provision for asset recovery of some kind since 1986, and the most recent Proceeds of Crime legislation dates back to 2002, levels of understanding and commitment to mainstreaming of POCA within police forces are variable.
- 5.2 There is an executive lead within each police force with responsibility for POCA usually as part of the public confidence portfolio. Although these leads are increasingly raising the profile of the benefits associated with proceeds of crime legislation and financial investigation, unless the area is an integral part of force business planning, it is less likely to be fully and consistently understood. As a consequence where senior police managers are less familiar with the potential benefits of the legislation frontline staff are less likely fully to engage with it. However, when appropriate potential confiscation proceedings are identified early in an investigation and specialists are properly engaged, opportunities provided by the legislation can be maximised.
- 5.3 The role of the FI has become a specialised area of policing, which requires appropriate training and accreditation to allow them to perform their duties. The National Policing Improvement Agency (NPIA) has the responsibility for accrediting FIs; an unaccredited investigator, whether in the police or HMRC, cannot make the various applications to court for POCA orders. Competing policing priorities mean that Executive and Area Command teams make decisions as to how financial investigation staff are deployed and this resource allocation is likely to have to compete against other key areas of policing. As scarce FI resources cannot be engaged on every case, so it is important that frontline staff understand the importance and relevance of financial investigation, restraint and confiscation, and are able to identify cases which need further financial work or require the use of POCA tools and confiscation proceedings to achieve desired outcomes. HMRC investigators, who are more used to financial elements to their work, have a better understanding of its relevance and importance than non-specialist police staff.
- 5.4 Not all the police forces visited had the same configuration of financial investigation staff, although all had centrally based teams responsible for the financial aspects of investigations into serious and organised crime. These teams were a mix of serving police officers and police staff, drawn from a variety of professional backgrounds, and they were described in various

ways, including Economic Crime Units, Financial Investigation Units and Criminal Assets Teams. For convenience, we refer to these teams as Economic Crime Units (ECUs) throughout the report. All the police areas visited were, to a significant degree, driven by the requirements to report asset recovery performance as part of the public confidence target (this is explained further at paragraph 4.5 above), and ECU business plans reflected this.

- 5.5 HMRC allocate a dedicated restraint and confiscation (R&C) resource to each of the referred investigation teams (RITs) who deal with stops at national borders, such as detentions of those smuggling in drugs or tobacco<sup>16</sup>, but often the involvement of the R&C officer in frontier cases is late in the day. In the multi-functional teams (MFTs), which cover larger-scale investigations, including some very complex frauds such as missing trader or carousel frauds<sup>17</sup>, policy dictates that there is an FI appointed to the team, and a separate R&C officer from the outset, but this rarely happens in reality. The London office has a separate team of FIs.
- 5.6 A full breakdown of the types of cases examined within the police, CPS and courts is at Annex A below. (References in this chapter to the results of file examination relate to these files, not the HMRC files examined, unless specified otherwise.) Two-thirds (53 cases) of our file examination in police force areas involved drug trafficking or other drugs offences<sup>18</sup>. This was perhaps unsurprising, given that most frontline and, to an extent, specialist staff often equate the POCA legislation with unlawful drug possession, cultivation or supply, as was reported by “Payback Time” in 2004. Each of these cases led to terms of imprisonment and confiscation orders and was a mix of intelligence-led enquiries and stop/check type cases where officers had proactively recovered controlled drugs and cash.
- 5.7 A further 13 cases (16%) related to fraud or deception, with seven more (9%) being theft cases and three being stand-alone money laundering prosecutions. Of the 26 acquisitive crime cases, 20 were more serious by virtue of being breach of trust of some kind, with elderly and/or vulnerable victims, or with significant gain or loss (over £50,000). Some had more than one of these aggravating features. The lowest benefit assessed in acquisitive crime was £2,000, with the two next highest being £4,000 and £7,500. The highest assessed benefit from acquisitive crime was just under £1.7m. The HMRC cases tended to focus more on the evasion of tax and duty on tobacco, although there were a few drugs importation cases being investigated by the RITs.
- 5.8 The infrequency of referral of acquisitive crime, particularly at the lower end of the range of offending, suggests a lack of appreciation of how proceeds of crime legislation could potentially assist across the crime spectrum, and may represent a significant gap in the use of the legislation. Data from JARD in 2006-07 (as detailed in the Home Office research report<sup>19</sup>) tends to support this, showing that almost two-thirds of confiscation orders were made in drug trafficking cases, with fraud contributing a further 10%. That said, in some of the cases we examined, officers had used money laundering offences alongside more mainstream legislation as grounds for arresting suspects. This was encouraging, but was by no means the norm either in the police or HMRC investigated cases. To a significant degree more traditional powers of arrest, such as those under the Misuse of Drugs Act, were used by the police, and only later was consideration given to the powers conferred by the POCA legislation.

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16 Frontier interventions involving drugs have now passed to the UK Border Agency.

17 We give a brief explanation of missing trader or carousel frauds in the glossary.

18 National CPS figures for 2008-09 show that drug trafficking cases accounted for 60% by volume and 31% by value.

19 [Http://www.homeoffice.gov.uk/rds/pdfs09/horr17c.pdf](http://www.homeoffice.gov.uk/rds/pdfs09/horr17c.pdf)

- 5.9 Identification of cases within our file sample was generally very good, which is unsurprising, since we specifically targeted cases where there had been confiscation or restraint. In some cases FIs had led investigations, and in most cases, FIs had been alerted to opportunities for applications to seize proceeds of crime, albeit not always at the earliest stage of the investigation. In many cases it was not possible to ascertain when the criminal investigator had identified the restraint or confiscation element, or notified the ECU. Of those cases where it could be ascertained, in 80% of cases, the criminal investigator noted that restraint or confiscation were relevant, and in 89% of cases, the ECU was notified in good time. However, the links between the two strands of investigation were less readily apparent, and we discuss this at paragraphs 5.20 to 5.24 below. In addition, and despite local training provided by FIs to student and other officers, FIs identified limits to officer and staff appreciation of the legislation and were surprised at the obstructions they saw to successful identification and flagging of restraint and confiscation cases.
- 5.10 Identification of the specific nature of a restraint or confiscation case was more variable. In over a quarter of cases, the FI or other investigator did not note as soon as possible whether the case was a “lifestyle” type of case (i.e. one that attracts the assumptions about benefit derived from crime under the POCA regime) as opposed to one of particular criminal conduct, which could impact on the investigation and prosecution. Given the nature of FI training, this was unexpected but would require further work to understand the causes.
- 5.11 Early identification and advice in relation to restraint and confiscation by CPS area lawyers at the statutory charging stage (where the CPS give advice to the police, and decide whether there is sufficient evidence to charge, and if a prosecution is in the public interest) was not consistent. Although there was evidence of the prospect of restraint or confiscation being identified in simple terms, in about a quarter of cases the lawyer gave advice on confiscation without clarification as to the possible impact on pleas, the evidence required, or the best charges.

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#### **GOOD PRACTICE**

In CPS Northumbria, the business manager for the complex casework unit works with the specialist lawyer and administrator to check pre-charge logs to ensure that, in all acquisitive crime cases, the case has been identified by the police, and that the CPS lawyer giving advice has referred the case to a Financial Investigator.

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- 5.12 There was a different structure within RCPO at the time that HMRC files were being examined, although this has since changed, with the merger of RCPO and the CPS. At the time, RCPO had an Asset Forfeiture Division (AFD) which would provide specialist advice on the restraint and confiscation aspects of any cases coming to RCPO, and deal with complex confiscation and restraint. It has now merged with the CPS Central Confiscation Unit, which dealt primarily with restraint and confiscation on the Organised Crime Division’s cases, and had a very limited role in giving advice to the wider CPS, to form a Proceeds of Crime Unit. Lawyers in RCPO but outside the AFD do not always address ancillary matters, including confiscation, at the charging stage, but it is routinely considered as part of continuing file reviews. A satisfactory confiscation order was made in eight of the nine relevant cases in the files examined as part of HMCPSI’s inspection of RCPO in early 2009.

- 5.13 Other inspections by HMCPSI and joint criminal justice area inspections have examined the extent to which confiscation and other ancillary issues are considered at charging. The HMCPSI inspections of the specialist divisions in CPS for special crime and counter terrorism, and of CPS Direct found high standards in the review of ancillary matters. Other inspections, such as of CPS areas, and the Fraud Prosecution Service, have shown less impressive performance on early identification and advice on confiscation issues. The overall performance assessments conducted by HMCPSI of all CPS areas in 2007-08 show an equally mixed picture.
- 5.14 The primary (and most recognised) process by which ECUs ought to be made aware of the fact that a suspect has assets that may be confiscated is via a completed MG17 form. This form, (the template of which is copied at Annex C) sets out a number of relevant matters relating to the type of case and likely application of financial investigation and POCA to it, and is meant to be included in a standard case file prepared by the police, in the same way that other Manual of Guidance (MG) forms agreed between the police and CPS nationally are used. Absence of the form can hamper the identification of confiscation cases to FIs; in addition, the MG17 is meant to assist initial case progression and to alert the CPS lawyer who has to make a decision on charges to any potential issues. It is crucial that the correct charges, and any basis on which the prosecution case is put, are decided with the implications for later POCA orders firmly in mind. Charges should not be put, for example, solely in order to trigger the lifestyle provisions in POCA, but the court's powers to make such an order should not be limited or proscribed at the charging stage inappropriately or without proper consideration.
- 5.15 The police and CPS areas visited had identified that there were fewer MG17 forms included at the charging stage than ought to be the case and manual trawls through all charged cases on the computer systems for the police and CPS were often undertaken which was resource intensive and unnecessarily burdensome. However, it was encouraging to find that areas had identified the lack of an MG17 as an issue and had implemented plans for improvement, for example in Northumbria and parts of Nottinghamshire, agreement had been reached between the police and CPS that no charging decision should be given on acquisitive offences unless an MG17 is provided. This is **good practice**. Custody sergeants had also been instructed to encourage investigators to comply with submission standards for MG17s. In one such area, implementation of these relatively simple measures has resulted in a 75% increase in the inclusion of the MG17 albeit from a very low baseline. The identification of this as an issue was also acting as a catalyst for improvement in liaison with the CPS, and in raising awareness of proceeds of crime amongst case progression and custody staff. This should also bring about an improvement in investigative standards.
- 5.16 We received feedback that the design and contents of the MG17 form were unhelpful to frontline staff and that some areas were deliberately forsaking high completion standards in order to achieve compliance with submission levels. The form does not require or provide room for narrative-style explanations or alternatives to the tick-box answers, which may not be helpful. However, the current layout does make the form shorter. We understand that the NPIA are continuing to develop the design and use of the MG17 form, and are actively considering ways in which key information in relation to potential criminal assets can be captured electronically as near to the point of detention as is possible.

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**ISSUE TO ADDRESS**

NPIA should continue to explore potential electronic capture of relevant data and encourage higher standards in relation to the completion of the form MG17. Any developments or amendments to the MG17 should be undertaken by the prosecution team.

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- 5.17 Identification of cases on the CPS computer system (CMS) was poor. We checked whether there was a flag for proceeds of crime, but also at what point the flag had been added. The purpose of identification of cases is to ensure appropriate handling throughout, so we counted as not flagged any that had not been marked by about the time of the first hearing. On this basis, only 20% were flagged on CMS. In fact, a majority were flagged only at the point that a confiscation order was being sought, or upon finalisation, and some were flagged well after finalisation, one nine months later.

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**ISSUE TO ADDRESS**

The CPS should ensure that flagging of cases, and accurate recording on CMS of hearings and tasks, is improved.

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Hypothesis 2: Choices are made regarding settlement (especially, but not exclusively tax cases by HM Revenue and Customs) which impact on asset recovery, and this may not be the most effective method of removing proceeds of crime from the economy and improving public confidence.

*Substantiated as far as possible within the scope of the review.*

*HMRC has powers to compound some cases, or to pursue civil options rather than to instigate criminal proceedings. Thus, someone found to have evaded Value Added Tax might find that they are subject to civil proceedings to recover the lost revenue instead of a criminal prosecution. Once a non-criminal investigation has been commenced under the civil investigation of fraud procedure, HMRC cannot then turn it into a criminal investigation, as the process gives immunity from criminal prosecution. If, as part of the civil investigation process, the taxpayer makes a false declaration, they can be criminally prosecuted for the false declaration only. Decisions regarding which investigative route to pursue are usually the responsibility of a team within the Intelligence Directorate who match cases to the 'take-on' criteria of the Civil and Criminal Intervention Directorates, subject to acceptance by those Directorates.*

- 5.18 Interviews with HMRC investigators and FIs showed that the criteria used and judgements reached in casework allocation are not widely appreciated. The interviews and file examination also showed that there appears to be limited consideration of cross-Directorate approaches, or of working with other agencies, or the use that can be made of other investigative or intelligence resources within HMRC.



- 5.19 Six of the 20 HMRC cases reviewed originated from action to stop a passenger at a border, to check for drugs or tobacco products. In several instances, there were indications that earlier trips to smuggle in tobacco or drugs had taken place, but further investigative work was not carried out; potential ‘lifestyle’ cases may have been missed as a result. FIs reported that they were not tasked to extend border investigations beyond the initial reason for the arrest, so they did the job that was in front of them.

Case study: The defendant (D) was convicted in 2007 of evading the duty on the importation of cigarettes. A year later, D and his wife were stopped on their way back from a day trip to Europe. Between them, they had nearly 30,000 cigarettes, 4kg tobacco and £2,000 cash. At their home, officers found nearly 6kg of tobacco, about 3,600 cigarettes, and £4,500 cash. The court made an order that they must pay just under £10,000 under a confiscation order for the duty evaded and the purchase price of the tobacco in Spain. Officers were aware of other trips the couple have made to Europe, and suspected that these were also to buy tobacco products. They owned their home, worth some £120,000, outright, and D had a share portfolio worth about £145,000. Neither had a declared income that would explain their net worth, or their ability to purchase large quantities of tobacco. There was no consideration given to widening the investigation to cover the other visits to Europe or possible proceeds of crime charges.

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#### ISSUE TO ADDRESS

HMRC should consider the scope of their work, in conjunction with the findings of the review of their activity by HMIC (yet to be concluded), and determine how best to ensure that confiscation is considered, and maximised in criminal investigations.

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#### Linking the investigations (“Mainstreaming”)

Hypothesis 3: Blockages in identification of cases contributes to links between financial and criminal investigations being missed and the two being kept apart to the detriment of both.  
*Substantiated.*

*The tools available to Financial Investigators are transferable to criminal investigations, and in many cases are equally useful for both. In an ideal investigation, evidence and information obtained by the officers leading both parts of an investigation would be shared and discussed, joint strategies devised, and the prosecution managed by the police and CPS so as to reflect the impact on both parts of the investigation. This would include the prosecution team identifying appropriate evidential material during the investigation, making best use of interview planning to support criminal lifestyle charges where appropriate, and all avenues being followed, as far as is proper, to maximise the opportunity for confiscation.*



- 5.20 Each police force and HMRC area visited was striving to develop financial investigation as far as possible and some of the police areas had allocated additional FIs to divisions or area commands. This was a positive step that assisted areas to mainstream financial investigation amongst frontline staff but their role lacked clarity amongst, and was occasionally misunderstood by, frontline staff. As a consequence, divisional FIs could, on the one hand, find themselves with requests from frontline staff for investigative assistance in cases which were not within their remit; yet, on the other, some felt that the intelligence and tasking processes designed to identify and drive financial investigation could be improved upon. Intelligence management where it relates to proceeds of crime should be explored, as we were unable, within the scope of this review, to establish the depth or causes of such potential blockages.

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### ISSUE TO ADDRESS

The extent and limitations of the Financial Investigator role should be made clear to frontline staff by police managers, and the links between intelligence management and the role of the FI should be explored further.

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- 5.21 In our file sample, there was evidence that restraint and/or confiscation was taken into account in planning pre-arrest investigative strategies in less than half (41%) of the cases where we could ascertain the position. After arrest, there are systems in place to ensure that an FI is quickly involved to provide specialist advice and guidance on confiscation, and this clearly shows in the marked improvement in the file sample of the consideration of restraint and/or confiscation, to 90% post-arrest but pre-charge, and to 100% post-charge. However, this did not necessarily mean that the appropriate degree of asset identification and control began at that point, which we discuss further at paragraph 5.26 below. The early involvement of an FI also did not necessarily lead to a crossover between the financial and wider criminal investigations, such as sharing information or the use of tools from one to assist the other; indeed, in nearly 40% of cases, there was not sufficient joint working between the two, and it was apparent that they were going on in parallel, without regular interaction.
- 5.22 Involvement of the CPS post-charge was patchy, with only 18% of the CPS files showing activity or exchanges between the agencies on strategies for confiscation. This is despite the significant impact that decisions by the CPS on how the case is presented or whether to accept pleas or a basis of plea can have on confiscation. In only one case was there a clearly documented decision on plea that reflected the impact on confiscation of accepting a particular basis of plea.

Case study: The financial investigation into a defendant's assets was not commenced sufficiently early to rebut the basis of plea he put forward to charges of possession with intent to supply 18kg of cannabis and 5.6kg of cocaine. The impact of the basis of plea on the confiscation order did not appear to have been considered. The effect on the final order could not be assessed, as the court had not, at the time of our review, determined the benefit and available assets. It was likely, given recent case law on the position of couriers, to make a difference to the benefit figure.

- 5.23 In HMRC cases, it was apparent that, where there were separate financial and criminal investigations, information was not always shared well. There was limited consideration of cross-Directorate approaches, or of the use that could be made of other HMRC resources, such as the intelligence-gathering function of the agency. The strategy for the criminal investigation and proceedings, such as likely charges, additional enquiries or evidence needed, and discussions at conferences, tended to neglect consideration of the financial side. Save in the most minor cases, there is a need for a detailed financial strategy in each case, which is monitored and updated as the investigation progresses. Whilst recognising the pre-eminent role of HMRC in determining investigative strategy, RCPO/CPS input should be sought into legal aspects of the financial approach so as to ensure that relevant issues are addressed, and potential restraint and/or confiscation are not jeopardised.

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#### ISSUE TO ADDRESS

Within HMRC, there is a need for better consideration of, and liaison with the CPS and RCPO on, strategy and planning at early stages and throughout.

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- 5.24 ECU managers and the FIs were acutely aware that their target for the value of orders could most readily be met with a few large confiscation orders, whereas a lot of smaller orders would not necessarily achieve the value target. The target for value therefore does little by itself to encourage the mainstreaming of financial investigation.

#### Identifying and maintaining the assets

Hypothesis 4: Criminal investigations do not effectively utilise the range of financial investigative tools.  
*Substantiated.*

Hypothesis 5: Opportunities are lost for early identification of assets and making a realistic assessment of their value, and any conflicting claims to ownership, hampering recovery later.  
*Substantiated.*

*There are clear benefits to linking criminal and financial investigations, not just in terms of the evidence obtained as a result, but also in enhanced skills for the investigators, and better understanding of each other's role. FIs have a range of tools available to them to identify and maintain checks on assets held which may be the proceeds of crime. Where they are not identified, secured, and properly valued, opportunities to maximise recovery of criminal assets are missed.*

- 5.25 Varying systems were in place for the allocation of enquiries to FIs, although we were unable, within the scope of this exercise, fully to ascertain strengths and weaknesses associated with these systems. In principle, however, FIs were usually allocated investigations in good time and ECU supervisors were able to prioritise cases that were likely to result in an early conviction. Our file examination showed that POCA was being considered early on, but that this did not always go beyond a consideration of whether there would be a confiscation order sought, and a preliminary look at the assets held by a defendant. This was equally the case in the HMRC cases examined, with a mixed picture on the timeliness for financial investigation, despite

there usually being a timely appointment of an FI in MFTs (carrying out the more serious investigations). In the RIT teams (dealing with stops at the borders), the investigators share the FI resource. Across HMRC, there has been a shortage of experienced FIs since the Inland Revenue and HM Customs and Excise merged in 2005, largely due to deprecations from the Serious Organised Crime Agency (SOCA) and the Borders Agency.

- 5.26 In so far as we could identify from the file examination, police FIs were likely to commence initial enquiries at or close to the point of charge, and then prioritise cases; in some, no substantive work was undertaken to identify assets and prepare POCA applications until a guilty plea was indicated or entered. The use of financial investigative tools to assist the criminal investigation was apparent most readily in cases where the criminal investigation was predicated on financial transactions, such as the three stand-alone money laundering cases, and some of the fraud cases. There was limited evidence of such crossover otherwise.
- 5.27 The tools made available to FIs by POCA (by an application to the court) to identify and maintain assets include production orders, disclosure orders (for third parties), account monitoring orders and customer information orders. Each can assist with tracing and valuing assets where there are reasonable grounds to suspect that a defendant has benefited from criminal conduct. FIs show a good level of awareness of the tools, and it is apparent that they receive training in the full range of powers and tools. It was surprising, then, that we could find no evidence of any of the orders other than production orders being sought by police FIs.
- 5.28 We found production orders used in 25 of the 59 cases where we could ascertain that any tool had been used. In the other 21 cases in our file sample we could not tell whether there had or had not been a production order. There were no instances of any of the other orders being sought, and only a small minority of cases (nine) where the reason(s) for not seeking POCA orders were readily apparent.

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#### ISSUE TO ADDRESS

There needs to be further investigation by police forces into the consideration and use of additional powers under POCA by FIs and the possible reasons for their apparent lack of use with the involvement of the NPIA where appropriate.

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- 5.29 In a few cases, as part of either a restraint order application (Section 41 POCA) or the setting of the timetable for confiscation proceedings (Section 18), the court was asked to order the defendant to disclose assets held before any prosecution statement. Almost invariably, this was at the instigation of the FI, with the CPS rarely voicing an opinion in those cases as to whether this was an appropriate step. Some police ECUs and CPS area specialist lawyers have discussed the strategic impact of the use of disclosure orders generally, as the compulsion to disclose potentially prevents the use of any information gleaned in the criminal case. There were no instances where the CPS were asked for, or gave, advice on use of POCA tools, such as production orders, account monitoring orders etc. The service level agreement<sup>20</sup> between the CPS and police permits the CPS to give advice, but not to make the application, unless certain limited circumstances apply.

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20 <http://www.cps.gov.uk/publications/agencies/slapoc.html>, paragraphs 7.1 - 7.4.

5.30 In eight cases (10%), it was apparent that rudimentary steps had not been taken, in good time or at all, to ascertain what assets were held, such as checking whether any bank or building society accounts were held by the defendant, or obtaining account balances. In five of these eight cases, the prosecutor's statement listed as the available assets only the cash or goods seized, assets that the police knew of from the search, and, in one case, the presumed expenditure on the drugs. In one of the cases, there was no application for a confiscation order for a co-defendant as a result of the lack of information about accounts, even though there was a guilty plea to a lifestyle offence, a conspiracy to supply Class A drugs over an eight-month period. The cases were mainly drugs offences, and all but two were probably or certainly pre-planned searches or arrests.

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#### ISSUE TO ADDRESS

There is scope for the police and HMRC to develop further the investigation of assets held by suspects in some cases.

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5.31 HMRC FIs more frequently and readily made use of available databases, such as credit reference agencies, benefits and tax information, and Land Registry records, and used production orders much more often than did police FIs in the cases examined. However, the full extent of the POCA toolbox was not as well understood or used in HMRC cases either, and an issue with warrants (whether these need to be sought under POCA, PACE or both) has yet to be resolved, and is causing confusion in at least one office.

#### *Attrition*

Hypothesis 6: Assets available are squeezed by costs (including receivers' costs) the claims of third parties and difficulty in tracing and obtaining assets especially overseas.

*Partially substantiated.*

*There may be a need, where there is a restraint order in place, or a confiscation order has been made, to appoint a receiver, for example where a defendant is serving a custodial sentence and cannot manage the asset(s) himself, or where assets are in the form of a company owned by the defendant, and which must continue to trade to maintain its value. Other blockages to deriving the full value of an asset may be third party claims to ownership, (such as a spouse seeking shares of matrimonial assets in family proceedings), or the difficulty in identifying and repatriating overseas assets.*

5.32 We drew up a hypothesis that envisaged attrition by costs, third party claims, and difficulty in tracing overseas assets. In fact, in the files we examined, this was rarely the explanation for the attrition, i.e. the difference between the benefit first assessed by the FI, and the final order. We therefore did further work to examine the causes for attrition in our file sample. For two of the areas visited, where the different figures had been captured, we took the values assessed by the FI and determined by the court for the benefit and available assets and the final order in each case, and attempted to calculate the attrition and ascertain the reasons.

- 5.33 Of the 40 cases, in eight, there was no order made, or the order has yet to be made, or the file contained insufficient information to determine the required figures, so we were left with data for 32 cases. The total attrition (the difference between what the FI first assessed as the benefit and the final order) for these 32 cases was £3,375,398. Some of this attrition is caused by the operation of the regime itself, which sets out how benefit is to be calculated in a way that may not reflect the profit by which the defendant came as a result of his crime. This is particularly the case in lifestyle (general criminal conduct) cases. The regime also requires that the order is made for the lower of the benefit and asset figures, so someone who has squandered the proceeds on things that cannot be recovered or in activities that yield no return may face a considerably lower order than someone who has invested their gains in goods and property.
- 5.34 We then calculated what the attrition might have been if the order had been made in accordance with the figures set out by the FI initially. This involved using the FI's assessments of benefit and assets, and taking the lower as the notional amount ordered. This is one way of dispensing with the element of attrition that comes about as a result of the regime itself (regime-based attrition). The difference between the order based on solely the FI's assessments, and the actual order is therefore what might be termed as non-regime-based attrition. This amounted to £507,845, considerably less than the total attrition. One case accounted for £123,523 of this sum; in that instance the benefit was assessed based on the value of company assets when there was insufficient evidence to show that these were properly attributable to the defendant. The FI also assessed the benefit over the previous six years, when the judge had indicated that he would consider only transactions in the previous two years.
- 5.35 In 12 of the 32 cases, the final order reflected what the FI would have expected to be ordered, i.e. there was only regime-based attrition. In a further two cases, the order was made for more than the FI would have expected; in one of these, the court included interest accrued on cash seized by the police, and in the other, it was unclear why the assets were assessed as higher than the FI's valuation. In the other 18 cases, there was attrition for other reasons, and there could be more than one reason in each case.
- 5.36 There were mixed views expressed in relation to the accuracy of assessments made by FIs of a defendant's available assets. Some interviewees were concerned that the assessment of assets could occasionally be reduced by the court to a level unrepresentative of their gain. However, there were also views expressed that the initial police assessment could be unrealistic, or that it lacked recognition of the current economic climate, particularly regarding houses and luxury goods, which have recently been susceptible to falls in value. The regime itself encourages substantial benefits to be assessed by the FIs in lifestyle cases that a court may later be unwilling or unable to order, whether because of unfairness or subsequent proof from a defendant as to the legitimacy of the funds.
- 5.37 It is apparent that, in our file sample, the FIs' initial assessment of the value of available assets was routinely higher than that put forward by the defence, and this lower figure was often reflected in the final court valuation. Where the defence produced evidence to support assertions in advance of the hearing, the FI agreed the revised valuations. FIs were usually reluctant to vary downwards any assessments where there was no evidence in support of assertions made on behalf of the defendant; it was common for there to be no such evidence produced in advance of the hearing or at all, for there to be no requirement for the evidence to be produced, and for there to be no consequences for the defendant if the evidence was not produced. It

may be that evidence was produced at court, or some other information was made available, but we cannot say whether this is so as it was not recorded on the files, and there was often, therefore, no readily apparent reason for the attrition.

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### **GOOD PRACTICE**

In the North East RCU, as it is co-located with the Regional Asset Recovery Team, staff were able to identify appropriate values for assets prior to the application being made for the confiscation order. This meant that assets were valued more realistically and orders were more enforceable. Working with the police FIs, and presenting them with data of how much the RCU had had to write off when varying orders, the RCU was able to persuade the police of the benefits of accurate asset valuations, and of including RCU staff at the earlier stage of the proceedings.

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- 5.38 In two cases, the court found that there was no benefit from general criminal conduct, in cases where the FI had assessed the case as involving a lifestyle offence. There was no note on either file to suggest that unfairness had been found for not applying the lifestyle provisions.
- 5.39 Eleven cases had no clear explanation for some or all of the attrition; in three of these, it appeared that settlements had been reached, or figures agreed. The settled cases accounted for a total of £57,563 non-regime-based attrition and £81,003 of total attrition.
- 5.40 In none of the cases included in the file sample had receivers been appointed. Anecdotally, it appears that they are not used unless absolutely necessary, because fees can significantly reduce the available assets. However, they may be necessary, for example to preserve the value of the defendant's business as a going concern if their assets are subject to restraint, or they are in custody. The CPS practice is to pick the next appropriately qualified firm of receivers from an agreed list. Whilst value for money was one of the criteria used to compile the list some five years ago, the CPS Proceeds of Crime Delivery Unit is looking at the current arrangements, which expire in 2010, and will be amending the process to include a mini-tendering step in an effort to ensure continuing value for money.
- 5.41 Overseas and hidden assets featured rarely in cases we looked at, although it was difficult to make firm decisions on the likelihood of hidden assets, by their very nature. In the six cases where we considered there were foreign or hidden assets, in only two were appropriate steps were taken to identify them, and freeze them in just one. In one case, the defendant was thought by the police to have property in Canada. This possibility was raised at an early stage, but not mentioned again, and it was not followed up by the CPS. No overseas assets featured in the confiscation proceedings.
- 5.42 In HMRC cases deriving from stops at frontiers, investigations into overseas or hidden assets were, in almost all cases, either not considered, or ruled out because they would be too complex or time-consuming, with delays expected in getting letters of request through the various procedural steps in this country, and in getting the responses from some overseas jurisdictions. Whilst it was less so in the more complex investigations, instances were seen where the opportunity to investigate hidden or overseas assets was not pursued.

- 5.43 We expected to find more attrition in cases due to claims of third parties. In fact, in most of the cases we examined, there were no third party claims upon the assets. Where there were, they were dealt with appropriately in seven out of ten cases, either by requiring reliable evidence to support third party claims before accepting them, or resisting them where there was not reliable evidence. To that extent, this hypothesis was unsubstantiated.

*Restraint*

Hypothesis 7: Potential restraint applications are missed or delayed, which impacts on confiscation and enforcement further down the line.

*Substantiated.*

Hypothesis 8: Dissipation of assets by suspects, or the granting of third party rights over them, before a restraint application is made, is limiting the value of available assets for enforcement of subsequent confiscation orders.

*Partially substantiated.*

- 5.44 Restraint proceedings are an integral part of standard FI training, but in the four police force areas visited, there were differing views on restraint applications. There was reluctance by some officers to pursue an order, citing fears that an early application would be likely to alert the defence to the fact that confiscation, and therefore criminal proceedings, had commenced. A costs order against the prosecution that might be associated with these orders was also an influential factor, but the overall position seemed to be determined primarily by force policy and the position taken by the prosecution team. Costs were also a factor in HMRC's thinking, it appeared, particularly where there was a risk of delays in the investigation leading to discharge of the order.

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**ISSUE TO ADDRESS**

Police forces should, in discussion with their CPS area, review policies on restraint to ensure they are not unnecessarily cautious.

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- 5.45 The implications of restraint for both prosecution and defence are important, the costs associated can be (but rarely are) substantial and criminal justice targets are confusing. These factors contribute to the fact that in one area visited there was an intention to set a new target to increase the numbers of applications by over 100% because the current rate of orders was considered to be low, whereas in another area the agencies seemed quite comfortable that they were able to manage higher numbers of applications in spite of associated costs and risk. It has emerged during our fieldwork that the Office for Criminal Justice Reform (OCJR) has, pursuant to the Policing Green Paper<sup>21</sup>, invited Local Criminal Justice Boards (LCJBs) to set their own local targets, or 'levels of ambition' for aspects of asset recovery which are influential in achieving the Public Service Agreement Target 24 (to deliver a more effective, transparent and responsive criminal justice system for victims and the public). These include levels for the volume of restraint orders obtained. The LCJBs are responsible for developing the levels, although OCJR is likely to continue to review them.

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21 [Http://files.homeoffice.gov.uk/police/policing\\_green\\_paper.pdf](http://files.homeoffice.gov.uk/police/policing_green_paper.pdf)



- 5.46 A prosecution team approach is required to ensure that restraint applications are developed where possible, but the service level agreement between the CPS and police contains little guidance about whether to make a restraint application. Paragraph 3.2 of the SLA says: “If a police force considers that it may be necessary to obtain a restraint order, advice should be sought as soon as the criminal investigation is commenced. Such cases may be complex and involve difficult issues; the police should normally seek early advice from the CPS at Area level.” The CPS guidance to prosecutors says that: “The decision whether or not to apply for a restraint order and if so, the timing of that application are important strategic decisions in the case and should only be taken after careful consideration of the effect on the case both at the investigative or prosecution stage ... A prosecutor should provide the investigator with early advice as to whether in law there is sufficient basis for an application for a restraint order to be made and if there is insufficient evidence, what extra material is required ... Clearly not every case will require a restraint order ... By making local Crown Courts responsible for this jurisdiction, Parliament clearly intended that restraint orders should be more widely used than under the previous legislation.”
- 5.47 We examined the consideration of restraint in the cases in our file sample and attempted to predict likely dissipation, based on the risk that it would happen, when restraint was considered, and whether assets had, in fact, been dissipated. A number of defendants undoubtedly do conceal and/or dissipate assets but it is impossible to assess with accuracy how many and to what value. For example, one defendant in the file sample argued, unsuccessfully, that the assets he holds now should not be counted as the benefit from present offending because they derive from “seed money” successfully concealed from the scope of a previous confiscation order.
- 5.48 It is difficult to say with certainty whether dissipation is likely, or has taken place, but we tried to reach conclusions based on what we could glean from the case papers of risk factors, possible assets, and any actions by the defendant. We were able to make an assessment of the risk pre-charge in 60 cases, and found that the risk of dissipation arose in 21 of them; for the post-charge stage, there was a risk in 27 out of the 49 cases where we could make the assessment. However, restraint was sought in only 22% of applicable cases, and there was timely consideration of restraint in only 17% of applicable cases. There were seven cases where there was no restraint order sought and dissipation did take place; of those seven, we concluded that a restraint order would have prevented the dissipation in six (86%) of relevant cases.

Case study: The defendant signed a consent form to allow his bank to transfer the funds in his account to HMCS to settle some of the confiscation order made against him. Based on the enquiries by the FI when investigating the defendant’s available assets, there was expected to be a balance of £750 more than was in the account when HMCS applied to have it transferred.

- 5.49 In a further five cases, proper consideration of restraint was hampered or prevented by the lack of adequate communication between the police and CPS. In four of these five cases, the police did not tell the CPS soon enough or at all of the existence of assets that were at risk of being dissipated, and in the fifth case, the CPS did not tell the police that a restraint order had been discharged against the defendant’s wife when the case against her was discontinued; a further order was appropriate, the court found, to prevent her disposing of joint assets.



- 5.50 In the HMRC cases, in some instances, a restraint and confiscation officer was appointed late in the process. Restraint orders were not sought by HMRC as often as they could have been, or their use was not sufficiently timely to prevent the dissipation of assets. Where there were sufficient assets amply to cover the likely benefit or order, especially in border interventions, the FI was likely to regard restraint as unnecessary.

Case study: The defendant had previous convictions for evading the duty on tobacco products. When his house was searched, HMRC officers found large quantities of tobacco and cigarettes on which no duty had been paid. The duty evaded amounts to about £60,000. The defendant owned his own home, valued at about £125,000, and had no mortgage. He also had a building society account that contained about £27,000 shortly before his arrest. Shortly afterwards, it was emptied. There was no restraint on the account, as the FI was happy that there was sufficient equity in the house to meet the duty evaded. This is despite the fact that enforcement of the subsequent order would have been simplified had there been cash deposits under restraint. There was also nothing to prevent the defendant selling the house, or reducing the equity by taking out a mortgage, and dissipating those funds.

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#### ISSUE TO ADDRESS

The prosecution team should, in each case assessed as a candidate for confiscation, carry out a proper and systematic consideration of restraint at the earliest possible stage, preferably before the suspect is made aware of the investigation. There should be a written record of the reasons for making or not making the application.

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- 5.51 Restraint orders are applied for as a matter of policy on cases being investigated and prosecuted by investigative officers and prosecutors seconded to the RARTs, whose role is explained more fully at paragraph 3.15 above.
- 5.52 Where they are used, the standard of applications for restraint orders (including the FI's affidavit in support) is high, and we saw no cases where the prosecution team had an application for restraint refused or made subject to criticism on that basis.
- 5.53 In almost all cases, restraint remained in place until confiscation or beyond, in order to secure assets to satisfy the order. Applications by the defence to vary or discharge restraint orders were rare. Where they did occur, they were dealt with fairly and robustly by the prosecution team, and did not impact significantly on the resources available. Many applications to vary are dealt with by consent to meet a proper end, such as to facilitate the sale of a house to satisfy the confiscation order.
- 5.54 As we discussed above (paragraph 5.32) we saw few examples of attrition by allocation of third party rights over assets; to that extent, hypothesis 8 was unsubstantiated.

## Conducting confiscation proceedings

### *Applying for the confiscation order*

Hypothesis 9: Confiscation proceedings are made less effective by delays, lack of effective case progression, and insufficient joint working between investigators and prosecutors, which may, in part, be due to skills shortages in the agencies.  
*Substantiated.*

*The Proceeds of Crime Act sets out clear mechanisms for arriving at amounts for the benefit acquired by a convicted defendant and the available assets. These then determine the amount of the confiscation order. There is no maximum time period set down, but the various steps by which the parties present their arguments are provided for in the Act. Once made, it is for the court to record the details of the order.*

- 5.55 When, upon conviction or sentence, the prosecution applies for a confiscation order, it is unusual for the order to be made immediately. Commonly, the application is adjourned and a timetable is set by the court for the various stages. This may include a requirement for the defendant to supply details of his assets (a Section 18 disclosure order) but more often, the first step is the service of the prosecution statement under Section 16 of POCA. The defendant may then be ordered to respond, and the prosecution given a time by which to reply to that response. The hearing is usually set down at the same time, but sometimes it is not, and this risks drift.
- 5.56 The prosecutor's Section 16 statement sets out the benefit that it is asserted the defendant has gained, either from the specific offence (called 'particular criminal conduct') or, in cases that attract the provisions that say he has a criminal lifestyle, any criminal activity over the past six years ('general criminal conduct'). Often, in lifestyle cases, the Section 16 statement sets out detailed accounts of unexplained cash or other transfers into and out of a defendant's bank accounts, and invites the court to find that they are the proceeds of crime, and should be included in the benefit. It also sets out what the prosecution knows of the defendant's assets, and invites the court to make an order in that amount, if it is less than the benefit, or for the amount of the benefit, if the defendant has assets worth more than the benefit. An order is made for confiscation of that specific sum, not the assets which go to make up that value, so the defendant does not have to sell those assets if he can find some other way to satisfy the order.
- 5.57 Under the POCA regime, if the court orders a defendant to respond to the prosecutor's Section 16 statement, the defendant must provide full details of any facts in the statement that he disputes. If he does not, or fails to respond to an allegation in the Section 16 statement, he is deemed to have accepted it, save that he does not have to controvert allegations that he has benefited from general or particular criminal conduct. Equally, if he is ordered to make disclosure under Section 18 POCA, and fails to do so without reasonable excuse, the court may draw such inferences as it thinks fit. If the defendant complies with a Section 18 order, the onus is then on the prosecution to respond to each allegation, or risk being deemed to have accepted it.

- 5.58 Where there are no or few assets but there is a benefit, the prosecution can apply for a confiscation order for a nominal sum. Under the POCA regime, the prosecution can apply to vary the benefit at any time in the next six years, or the available assets cited in the order. Thus, a defendant may have an order made for a small sum, even £1, in a case where he or she has benefited by a much larger sum but has no assets, or they are not to be found. As long as there is a difference between the benefit adjudged and the available assets, i.e. the order made, if a defendant comes into a sum or acquires assets afterwards, he risks the court agreeing to an increased order, and having to pay that extra sum.
- 5.59 The purpose of the service of statement and responses and the reason why the statutory regime includes consequences for certain failures to do so are to enable areas of dispute to be identified and resolved before the final order is made, thus avoiding the need for evidence to be called, and hearings to be lengthened unnecessarily. In practice, however, this happens much less often than is desirable. The reverse burdens in the regime (putting the onus on the defendant in some instances) require the defence to be engaged with the process, and there is an impact on the smooth running of proceedings if they are not.
- 5.60 In 50 of the 80 cases we examined, we were able to establish whether there was or was not delay caused by the defence for any reason. In 27 of these (54%), the defence did not meet the timetable for service of their response, or did not respond to a Section 18 order to disclose assets, or to the Section 16 prosecutor's statement at all. Delays thus occasioned were significant, often in the order of many weeks or months, and reduced the time available for the FI to investigate matters raised and respond comprehensively, although it was apparent that FIs made an effort to do so, even where time was tight. The quality of defence responses was patchy; in some instances, the defence responded with non-specific or unsupported assertions. In very few cases did the defence particularise which financial transactions were capable of innocent explanation and set out alternative calculations for the benefit and available assets.
- 5.61 In none of these cases was there an indication that the defence were held to account by the court for their failure to provide the required information to the required timescale but there was evidence of the prosecution chasing the defence or asking for a case to be listed for non-compliance in just under half (13 out of 27). There were no instances where the prosecution was recorded as having asked the court to treat as conclusive an uncontroverted Section 16 statement, in whole or part, or to draw the inferences the court saw fit for the failure to comply with a Section 18 disclosure order. Neither was there an instance recorded of the court reaching those conclusions of its own motion. There was a general, low-level malaise amongst FIs regarding the fact that sanctions were rarely imposed.
- 5.62 Reasons suggested for lack of defence compliance were a lack of understanding of the POCA regime and difficulties in taking instructions from clients who were serving a custodial sentence. There were also suggestions that some defence practitioners had been reluctant to engage in POCA work due to limited remuneration; the recently-agreed scale of payment depending on the size of the confiscation case may help address this, if it is indeed a factor. We saw only one such case, but the delay caused had been considerable; the defendant was sentenced in June 2008, and the expectation is that the confiscation hearing will take place in November 2009.

- 5.63 The process within ECUs for preparation of the prosecutor's statement appears generally to be well oiled and fit for purpose. Although in eight of the cases we saw (10%), FIs failed to meet the date set for submission of the prosecutor's statement, they were occasionally in a position to serve the statement before the timetable had been set. In six cases, there were unexplained delays in service on the defence and court by the CPS after timely delivery of the statement by the FI, and other delays which were caused by a failure to act expeditiously by the CPS in four cases, including two where the FI was not told of the timetable set for confiscation. There were also six cases in which we were unable to establish whether the delay in the case was due to the FI or the CPS. In about 30% of cases in all, the dates in the timetable were not met by the prosecution, although this led to delay in the making of the order in only five cases. Delays were, as we have said above, much more likely to be occasioned by the defence.
- 5.64 In one area, the senior member of the judiciary is committed to effective case progression, allocates confiscation order applications personally between his judicial colleagues, and will recall cases to issue directions where the timetable is slipping.
- 5.65 Overall, it takes a great deal of time to obtain a confiscation order. For each of the cases we examined, we noted the time taken between sentencing and the obtaining of the confiscation order. Performance varied, with the fastest area's average being 99 days, and the slowest 160. Overall, the average time taken in the 80 cases in our sample was 134 days. The average time taken for nominal £1 orders was 91 days, which is a matter of concern. HMCS data shows the national picture in 2009, with the average time (per defendant) from conviction to confiscation order being 36 weeks (252 days).

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#### ISSUE TO ADDRESS

The magnitude of delay in obtaining a confiscation order is a significant concern, and merits further investigation by the police, CPS and HMCS, and appropriate action to progress orders more effectively.

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- 5.66 The contents of the Section 16 statement were very occasionally not fit for purpose, but we saw very little evidence that the prosecutor had applied their mind to the defect(s) and there were no cases where the statement had been sent back to the FI by the CPS to re-draft prior to service on the court and defence. In many cases, it was not even apparent that the prosecutor had read the statement; the input from the CPS on the contents gave the appearance of them being merely a post box for the Section 16 statement as it made its way from the FI to prosecution counsel and the defence. In one case, an overly complex summary of the case against the defendant, which contained much confusing information about the evidence against co-defendants, was served on the court and defence as it stood. In a few other instances, mistakes, such as failure to amend the available assets to reflect an agreed position, or failure to recognise that the offence automatically attracted the lifestyle provisions, went unnoticed. Otherwise, there was evidence of better general collaboration between the FI and CPS caseworker once a timetable had been set. There was much clearer evidence on the HMRC files of the RCPO lawyer purposefully reviewing and, where necessary, intervening in the contents of the Section 16 statement.

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**ISSUE TO ADDRESS**

The prosecutor should thoroughly review the contents and structure of the Section 16 statement to ensure that it is clear and concise, and correctly covers all relevant matters.

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Case study: The defendant pleads guilty to possession Ecstasy (Class A) with intent to supply. He fails to meet the deadline for the court order requiring him to disclose his assets, which affects the FI's ability to prepare the prosecutor's statement. There is good liaison between the CPS and FI regarding how to deal with the defence failure, the CPS is proactive in chasing the defence and keeping the court updated on progress, and the case is listed for mention.

- 5.67 Case progression within the agencies and with partner agencies was generally good, although there was little visible proactivity (such as reminding the defence of their obligations) in some areas. The police case progression was sufficient in 91% of cases, and that of the CPS in 72%. However, skills gaps were evident. Frontline police officers, CPS caseworkers and lawyers, other than the few specialist staff, are often not as well-informed as they could be, though this is not, it seems, through lack of training and efforts by the specialists in the CPS and police to raise awareness. This shows in the cases handled by generalist as opposed to specialist prosecutors, especially in the lack of adequate consideration of the impact on POCA of, for example, accepting pleas to lesser offences, or a particular basis of plea. Given the nature of the regime, a move from a criminal lifestyle offence to one that is not can have a significant impact on any final order.

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**ISSUE TO ADDRESS**

There needs to be better understanding across the prosecution team of the relevant issues at all stages, including the pre-charge decision, selection of charges, and acceptance of pleas or a basis of plea.

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- 5.68 It was very difficult from the cases we saw to assess the standard of prosecution counsel, and their expertise in confiscation. In one case, prosecution counsel had properly drawn the attention of the CPS and officer in the case to the need to do more work on asset identification and the application for confiscation. This was the only instance of counsel commenting on the standard of the Section 16 statement, although, as we identified, a number had defects. We discuss the practice of compromising cases at the hearing, for which some of the responsibility must rest with counsel, at paragraphs 5.74 to 5.75 below.
- 5.69 Because of the concerns about skills levels amongst non-specialist staff in case progression, the policy in at least one police area is for FIs to attend court at relevant critical stages to ensure that cases were being satisfactorily dealt with. There was also felt to be a lack of up-to-date knowledge on the part of CPS generalist lawyers, who often consider this area of work as one for specialists. This meant that FIs felt they were required to keep themselves fully up-to-date in order to ensure that recent judicial decisions were incorporated into case progression decisions. Although this is a mandatory requirement as part of the Continued Professional Development of all FIs, their work is unlike other more traditional criminal cases, where generalist CPS lawyers are equipped to provide advice.

- 5.70 There is significant reliance upon the CPS area champions and specialists to ensure that POCA cases are progressed at both a strategic and operational level. It was suggested that if individual CPS champions suddenly moved on, this would be likely to prove fatal to the efficient handling of cases. The champions cannot handle all the casework in any event, and some cases, as a result, do suffer from an insufficiently robust prosecution of confiscation elements. It is apparent, too, that counsel instructed for the prosecution ought to share some of these criticisms; cases were seen where failure to challenge the FI's draft Section 16 statement (in the rare cases where there were inaccuracies in it), or to adhere to the POCA regime and require the defence to do so, impacted on the case, and the amount that could be ordered.
- 5.71 RCPO had, at the time of this review, a specialist Asset Forfeiture Division. Other lawyers in RCPO did not have the same level of expertise as their AFD colleagues, however, and provided inadequate or late advice on restraint or confiscation in several of the HMRC cases examined. The more experienced FIs in HMRC may be better informed than non-AFD lawyers, and in one case, the FI brought herself up-to-date with the pre-POCA asset recovery regime which applied to that case, where the lawyer had been unable to advise.

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#### ISSUE TO ADDRESS

The prosecution team should consider measures to ensure that staff at all levels of the organisation, not just champions or specialists, and any counsel instructed, have the experience and expertise, or awareness relevant to their level of involvement, and to enable them to manage cases as effectively as possible so that the specialists (whilst remaining the key resource) are not the only people in the organisation regularly considering POCA powers. Contingency planning for the loss or absence of specialists is also essential.

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- 5.72 Several of the HMRC cases showed good liaison between HMRC's legal advisors, and RCPO, especially AFD. There was only one instance (of 22 cases examined) where there was lack of timely liaison; in that instance, failure to coordinate the forfeiture proceedings being conducted by the legal advisor and the confiscation proceedings by RCPO led to the payment to the defendant of £3,500 interest on a cash seizure of nearly £200,000 that he denied was his.

#### *Making the confiscation order*

- 5.73 Obtaining the final confiscation order relies on joint working between FIs and prosecutors prior to the court hearing. It is the prosecutor's responsibility to produce the schedule of assets (5050A), but in practice it is completed by the FI. At the hearing, the judge uses this, the prosecutor's statement, and defence responses and representations to determine the amount of benefit attributable to the defendant, their available assets, and therefore the amount of the order. The judge also sets the default sentence if unpaid and the payment period, if any, that is to be allowed.
- 5.74 The POCA regime is clear about how the correct amount for a confiscation order is to be established, and there is no room for discretion or compromise. Notwithstanding this, we saw a significant number of cases where the prosecution and defence purported to settle or agree the benefit and assets figures, thereby reaching a compromise on the amount to be ordered. In

other cases, whilst there was no clear evidence of a negotiated settlement, it was impossible to tell how the final figures had been calculated, the amounts not reflecting the positions taken by either defence or prosecution. In none of the cases had the court apparently required the parties to explain how they had reached the final figures agreed.

Case study: The confiscation order stated that the benefit was assessed as £200,000. The order was, however, made for £130,000 even though it was accepted that the defendant had assets in excess of that amount, his own expert witness putting the value at about £160,000. There was no ascertainable rationale for the benefit or assets figures, which were agreed in private between prosecution counsel, defence counsel and the judge.

5.75 Compromise agreements, reached without the benefit of clarity as to the benefit and available assets figures can contribute to discrepancies and inaccuracies in the orders, and thereby cause problems with enforcing the order. Where there are incorrect default sentences set, or the time to pay is not in accordance with the statutory regime, these can also impact on the smooth running of the RCU. The RCU staff do not always monitor whether the POCA regime has been properly applied; this is partly because they are not tasked or staffed to do so, but partly, in some of the areas we visited, it is due to an understandable diffidence in challenging the court. In one area, where the RCU had done so, they found it an unhelpful experience. However, another area we visited was checking orders carefully, and inviting the court to amend them, where necessary, under the slip rule<sup>22</sup>. The recent extension of the time period for slip rule amendments from 28 to 56 days provides more opportunity for minor corrections to be made efficiently. Several of the RCUs have carried out individual assessments to identify training needs in the Crown Court, and interviewees in a number of areas reported efforts by senior judges to engage other judicial colleagues in asset recovery. However, mechanisms to quality assure orders administratively appeared to lack consistency.

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#### ISSUE TO ADDRESS

HMCS needs to ensure that its administrative casework quality assurance mechanisms are effective, and to enable the RCUs to feed back on errors found, and the impact on their work.

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Case study: The defendant admitted theft of around £70,000 but had no assets. The only realisable asset was the £1,975 cash seized from him upon arrest. However, for a reason that is not apparent from the papers, the order was made for only £1,860. The seized money had been transferred to the RCU account; the RCU therefore had to send the defendant a cheque for the difference, effectively returning stolen funds to him.

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22 This rule enables minor errors in court orders, or 'slips of the pen' to be put right within a short period of time. Para 28, Schedule 8 of the Criminal Justice and Immigration Act 2008: [http://www.opsi.gov.uk/acts/acts2008/ukpga\\_20080004\\_en\\_28#sch8](http://www.opsi.gov.uk/acts/acts2008/ukpga_20080004_en_28#sch8)



### *Nominal orders*

- 5.76 As described above (at paragraph 5.58), the court can make a nominal order, usually for £1, to keep the door open for an increase if assets are acquired or discovered later. Recent Home Office research<sup>23</sup> recommends that attention should be focused on enforcing the orders imposed on serious organised criminals; in our file sample, these were not typical of the cases that led to nominal orders. In the files we examined, of the 72 orders made, nine (12%) were for £1. These nine cases took an average of 91 days from sentencing to the date of the order.
- 5.77 There was little consistency in whether nominal orders were enforced or whether they were deemed to be paid so as to clear them off HMCS's system. Nominal orders have the disadvantage, especially for HMCS, that they take resources without adding to the public purse or targets in the short term.
- 5.78 We found little evidence that nominal orders were being revisited regularly. This was because of deficiencies in existing systems and procedures that could facilitate tracking and enforcement throughout the offending "lifetime" of a suspect. We understand that NPIA intend to develop awareness of the issue, using the Police National Legal Database. The single exception to what we found to be the norm was Kent where the police review annually all orders where the difference between the benefit and order was greater than £5,000. This is **good practice**, and a potential quick win for other police service areas. In another area, we saw an instance where the police discovered by chance that the defendant, against whom a confiscation order was made in 2005, now had a job, and had purchased expensive jewellery. Since there was a gap between the benefit found and the order made in 2005, the police were able to revisit the order, and the order was increased by £2,500 as a result. However, from speaking to staff involved in asset recovery, this is a relatively rare occurrence.

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#### **ISSUE TO ADDRESS**

There need to be processes in place within police forces to ensure that the review of nominal orders is systematic and that applications to revise orders are made in all cases when it is appropriate to do so.

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### **Enforcing the confiscation order**

Hypothesis 10: There are issues regarding the quality and timeliness of paperwork provided by the Crown Court to Regional Confiscation Units that causes severe delays in enforcement. This may be partly due to lack of sufficient training to Crown Court staff on the national best practice guidance.

*Substantiated.*

Hypothesis 11: The agencies' ability to meet the national joint target is affected by failure to ensure that all orders are accurate and supported by proper documentation, so as to enable effective enforcement.

*Partially substantiated.*

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23 Research Report 17: Examining attrition in confiscating the proceeds of crime, Home Office 2009 <http://www.homeoffice.gov.uk/rds/pdfs09/horr17c.pdf>



*The court sets a time period within which the defendant must pay an order. Once this period has expired, the court has a range of powers available to it to enforce the order, as it does with fines and other financial penalties imposed, and including the imposition of a default sentence. Unlike a fine, however, serving the default sentence does not remove the need to pay the amount ordered.*

- 5.79 It is the responsibility of the Crown Court clerk to note all relevant information at the time a confiscation order is made, including the benefit assessed, the amount ordered, the time to pay, and default sentence, the date of the order and the enforcement authority responsible for collection. The schedule of assets produced by the prosecution team must be checked and signed by the Crown Court clerk to indicate the court's approval of the calculated figures, or note any changes made by the judge. Any consent orders signed by the defendant (such as agreement to transfer funds from his bank accounts to the court) should be provided to the court. The result of the case should be entered onto Xhibit (the Crown Court's IT system) by the clerk within three working days (including checking on accuracy). The Crown Court staff should also ensure that the order and the supporting documents are validated and dispatched within five working days to the RCU.
- 5.80 The procedural steps required of all parties are designed to ensure that there is an accurate record of the order, and to assist with effective enforcement of it. Where they are not completed, or completed inadequately, enforcement is hampered, although we saw no instances where the amount that could be recovered was affected, or the validity of the order was in any doubt. To that extent, hypothesis 11 was unsubstantiated. However, the RCU staff rely on accurate information about the order and assets to tailor its activity, and communication with the defendant, so as to take the right action to enforce at the right time.
- 5.81 Of the 80 files reviewed, 39 were managed effectively by HMCS, 16 were not, and we could not reach conclusions in the other 25 cases, for example, because no confiscation order had yet been made. In the files we saw, common mistakes included not recording the section and Act under which the order is being made; insufficient information about assets; errors or lack of clarity regarding time to pay and the default sentence; and orders being made for unspecified amounts. In a few cases, there was a lack of clarity as to whether compensation was to be paid to a victim from any funds recovered under the order; the impact of this could go beyond administrative ineffectiveness. Training for FIs to improve the standard of the schedule of assets (5050A) has recently been delivered with a view to increasing confiscation order enforcement.
- 5.82 Where the CPS was the lead enforcer, the activity taken was proportionate and effective. In CPS Kent, the specialist enforcement lawyer proactively helps defendants by providing advice and assistance to them in realising their assets and remitting the proceeds to the court when they are not in a position to do so for themselves, whether because they are serving a custodial sentence, or lack the knowledge of how to go about it. This is **good practice**.

### *Training*

- 5.83 RCU staff are knowledgeable, and many areas took part in joint training on JARD when the RCUs were introduced. However, there are few standard training packages for RCU or other HMCS staff, although they have received at-desk training and legal updates. We were unable to identify any relevant training produced by the Judicial Studies Board for legal advisors. There is also an urgent need for training for Crown Court clerks; there has been a resource

pack for trainers published recently which incorporates good practice guidance, but planned national training has been delayed, and when experienced staff move on, expertise is lost, and issues with the standard of the paperwork recur, potentially impacting on effective enforcement.

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**ISSUE TO ADDRESS**

All HMCS staff involved in asset recovery need the training best suited to their role, and training should be held jointly where appropriate. For example, joint training for police, CPS area staff and court staff on JARD would enhance each agency's appreciation of the role each needs to take to manage the restraint and enforcement processes jointly.

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- 5.84 Other methods of sharing good practice and skills have been developed locally, but are not systematic. They include internal training and updates; job shadowing by Crown Court and RCU staff; and multi-agency tracker meetings. The latter are attended by court and RCU staff, legal advisors from the magistrates' courts, CPS area specialists, and police FIs; it would be helpful if other prosecuting agencies also attended. HMCS shares good practice between the RCUs, so one unit will be aware of the practices being implemented by another, but they are not necessarily implemented on an individual/area basis.

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**ISSUE TO ADDRESS**

HMCS should satisfy itself that when recognised good practice has not been adopted in a region or area, there are sound business reasons for the decision not to adopt the good practice.

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*Enforcement powers and hearings*

*Once the order has been made, and the relevant information supplied, RCU staff take responsibility for pursuing enforcement of the order in an appropriate and timely manner. The powers available to the RCU staff to enforce an order are the same as those which can be used to enforce fines; a confiscation order is enforceable in the same way as any other judgement debt in the civil courts, such as registering a charge on a property, or seeking an order for sale. However, these measures are available only after the time to pay (TTP) as set in the confiscation order has expired.*

- 5.85 The use of civil enforcement powers has not been taken up universally; for example, charging orders are only now being piloted in one of the RARTs. The potential cost of the work was a barrier, but the pilot has overcome this with police agreement to fund it. The lessons learnt are being shared with colleagues in other RCUs, and with the wider criminal justice community.
- 5.86 The RCU can accept payments before the time to pay has expired. To this end, RCU caseworkers establish contact with defendants early to encourage them to make payments. Often the defendant signs a consent to the transfer to the RCU of funds held by a bank account (possibly one under restraint), or seized cash held by the police, and these funds can be received at an early stage, sometimes before the order has been received from the court.

### GOOD PRACTICE

In the North East RCU, a month before the time to pay is due to expire, the unit sends a letter outlining the consequence of non-payment and giving a default hearing date, which the defendant should attend unless the order has been paid by then. This is an improvement on the practice elsewhere in England and Wales of waiting until after the time to pay has expired before setting dates for hearing, which potentially allows the defendant an extra six weeks before enforcement action begins.

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- 5.87 Of the 63 relevant cases in our file sample, in 39 (almost two-thirds), there were payments of some or the entire ordered amount before the TTP had expired. Where the account was not settled, we found that the staff were persistent in enforcing orders. RCU staff have considerable expertise in debt collection to ensure that enforcement is effective. In most regions, the RCU staff prepare the case for enforcement courts, often providing briefing notes for the legal advisor, and record the outcomes afterwards. In Merseyside, staff from the RCU attend the enforcement hearing to ensure that the court has the fullest information, which is **good practice**. In RCPO, prior to merger with the CPS, the practice was to attend hearings or provide the court in advance with any necessary information. Usually, though, the prosecutor (in CPS or non-CPS cases) does not attend; this is not unusual in enforcement courts, and legal advisors commonly lead on enforcement activity in court with no diminution of the quality of work.
- 5.88 In some HMCS regions, enforcement is dealt with at designated magistrates' courts. This builds skills levels in the court and judicial personnel dealing with the cases, allows the development of specialist legal advisers, enables training to be focused, and can facilitate cases being heard by a District Judge if necessary. Not all regions fund a dedicated, full time legal advisor. Where the specialist resource is not full time, or is based in the court rather than the RCU, they are, from time to time, required to cover courts instead of concentrating on enforcement. In some HMCS regions, any court can deal with enforcement; whilst this allows defendants to have access to local justice, it requires the region to provide all legal advisors with asset recovery training, to ensure that they are able to prepare effectively for such courts. This risks dilution of skills, although, in our small file sample, we saw no instances of enforcement activity suffering as a result.

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### ISSUE TO ADDRESS

HMCS should ensure that specialist legal advisors have sufficient time allocated for the proper and effective discharge of their duties.

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- 5.89 There is the potential for slower administration where courts are spread across large geographical areas. In the North East, we noted that this had been overcome; the region has three locations for hearings and, at each, a designated person is sent a scanned copy of the RCU's papers, and acts as a proxy or agent for the RCU at the enforcement hearing, with a specialist legal advisor present. This ensures that a full set of papers is available in good time, and that no delay is occasioned in returning them to the RCU. The RCU liaise in advance with the specialist legal advisor to ensure that all issues are known and addressed. This is **good practice**.

- 5.90 It was apparent from the file examination that there are efficient links between RCUs and prisons, with regular use of email to obtain the locations, and release dates and addresses of defendants. There was however, a better flow of information from HMCS to the prison (15 out of 21 relevant cases), in our file sample, than from the prison to HMCS (six out of 13 relevant cases). There is a blockage occasioned by the need to produce those serving custodial sentences for enforcement hearings, which ought to be addressed when future legislation is passed to enable them to take place by video link.
- 5.91 The presence of a specialist enforcement lawyer within CPS areas provides benefits for the process, although this is diluted when the specialist has other responsibilities than just confiscation and restraint. In one area, the CPS lawyer presents both CPS and HMCS enforcement cases at court, and, in return, HMCS takes on some of the administrative work. The strength of joint working generally was clear. Staff were aware of, and welcomed, the national Service Level Agreement, but considered that interagency relationships were sufficiently supportive that it was not relied upon.
- 5.92 In most areas, restraint and confiscation work was enhanced by regular multi-agency meetings, attended by staff from the CPS, court, and RCU. However, it is important that representatives of all the agencies and both the magistrates' courts and Crown Court attend to ensure that any bottlenecks identified across the process can be addressed. This should include other prosecuting agencies, not just the CPS.
- 5.93 Joint working, support and knowledge-sharing appear to be particularly strong where two or more agencies are co-located in the same building. The best example of this is the co-location of the RCU and the RART in the North East region. The benefits were visible in, for example, the sharing of contact points and good practice between the different agencies within the region, using the staff from the different agencies based at the RART to influence their colleagues in their 'home' agency, and in neighbouring forces or areas.

#### *Court registers and warrants*

- 5.94 In one area, HMCS staff were keeping a photocopy of the legal advisor's notes from the date of hearing, instead of producing a proper register. The notes were not always signed by the legal advisor, and some were unclear. This is not in accordance with the statutory requirement, under Rule 5.4 of the Criminal Procedure Rules 2005<sup>24</sup> to produce a full and accurate register of all magistrates' court hearings. This finding echoes other concerns about court registers from other recent inspections<sup>25</sup>.
- 5.95 The review also highlighted a concern regarding the withdrawal of warrants by RCU staff. In one area, if the defendant paid the sum in full before the warrant had been put onto the police national computer, the RCU staff were not always returning the warrants to magistrates for formal withdrawal. On the face of it this contradicts HMCS internal guidance. Both matters

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24 New CPR come into force on 5th April 2010, but there is not, according to the Ministry of Justice guide to the new Rules, published in February 2010 (<http://www.justice.gov.uk/news/docs/crim-proc-rules-2010-guide.pdf>), going to be any change to Rule 5.4.

25 These include the inspections of Criminal Case Administration and Resulting in HMCS (<http://www.hmica.gov.uk/files/hmica-ccar-221009-web.pdf>), an inspection of resulting and warrants in Leeds Magistrates' Court ([http://www.hmica.gov.uk/files/HMICA\\_Leeds\\_MC\\_CJJI\\_report\\_draft\\_3.pdf](http://www.hmica.gov.uk/files/HMICA_Leeds_MC_CJJI_report_draft_3.pdf)), joint inspections on electronic monitoring ([http://www.hmica.gov.uk/files/Electronic\\_Monitoring\\_Thema1.pdf](http://www.hmica.gov.uk/files/Electronic_Monitoring_Thema1.pdf)) and on getting orders started ([http://www.hmica.gov.uk/files/start\\_of\\_order.pdf](http://www.hmica.gov.uk/files/start_of_order.pdf)), and HMCS Area inspections in Derbyshire and Nottinghamshire ([http://www.hmica.gov.uk/files/Derbyshire\\_Nottinghamshire\\_pilot\\_2009\\_web\\_version.pdf](http://www.hmica.gov.uk/files/Derbyshire_Nottinghamshire_pilot_2009_web_version.pdf)), and Cleveland, Durham and Northumbria ([http://www.hmica.gov.uk/files/HMICA-CDN\\_web.pdf](http://www.hmica.gov.uk/files/HMICA-CDN_web.pdf)).

were raised formally with senior HMCS officials shortly after the end of the inspection fieldwork. HMCS has informed inspectors that court registers are now being produced in accordance with the statutory requirement. HMCS is still considering the issue of administrative warrant withdrawal and it will be important for clarity and consistency to be established across all regions and business units, taking into account statutory and judicial considerations.

*IT support for enforcement*

Hypothesis 12: Enforcement is hampered by the weaknesses with the Joint Asset Recovery Database (JARD), despite improvements in its functioning.  
*Substantiated.*

*The JARD database is a shared IT resource, previously managed by SOCA but from January 2010 by NPIA, to enable all law enforcement and other criminal justice agencies to track asset recovery cases, and update cases at the restraint, confiscation and enforcement stages. Other HMCS IT systems used to support asset recovery are Libra (which records court hearings) and COTS (confiscation order tracking spreadsheet).*

- 5.96 There are problems with the IT systems used to support asset recovery which can prevent staff from working efficiently; these are with JARD, as we anticipated in our hypothesis, but also with HMCS systems. JARD could not be accessed by HMRC, due to IT problems, although there are now efforts being made to resolve this.
- 5.97 We found that JARD was almost always kept up-to-date by all agencies and the relevant lead agency was generally identified. However, there is widespread recognition, confirmed by inspectors using it and the HMCS staff interviewed, that JARD is not particularly user-friendly, and has drawbacks. In particular, it can be slow, and requires the entry of data which duplicates that held on each agency's own systems. Efforts have been made to improve it, most recently to allow FIs to produce the schedule of assets directly from the system, thus encouraging FIs to set up a JARD account to record their investigation work, and add assets that are identified. This greatly assists enforcement of confiscation orders. Only five of the cases we reviewed featured delay that was attributable to JARD itself.
- 5.98 JARD has limited accounting functionality, so payment details are also entered onto Libra, an HMCS IT system which is used for recording magistrates' court results and producing some letters. Libra does not calculate interest, so a separate account has to be set up to record the payment of accrued interest. Information is also keyed into COTS which is a useful, if somewhat unwieldy tool, and one RCU has devised their own spreadsheet to record values received against each Act at month end. This multiple entry of information onto a number of different systems is repetitive and time wasting for staff and each new entry increases the possibility of mistakes.
- 5.99 The letters generated by Libra are primarily for fine enforcement, and do not readily lend themselves to asset recovery. In the areas we visited, RCU staff were using locally devised templates instead, which slows down the process. Libra also does not note any interest that has accrued, and, without this to remind them, HMCS cash office staff do not always remember to tell the defendant about the interest owing. This means that a defendant may have paid the majority of the sum owing, but be unaware of interest outstanding, which the RCU staff will still have to pursue.

**ISSUE TO ADDRESS**

The inclusion by HMCS of asset recovery templates on Libra or JARD would enable these to be standardised, and for each to reflect best practice.

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- 5.100 The forms used to record confiscation orders can cause difficulties for the RCU. Older versions do not require the completion of the Act or section under which the order is made. Newer forms have more detail, but are designed to be completed electronically, so can lead to mistakes when completed manually (as happens in some areas). Local templates used to produce the order (Xhibit lacks this function) slow down the process, so much so that, in one area, it was not unusual for payments to be received before the forms had arrived from the court. There were no instances, though, of delay in enforcement that was significant and occasioned by the lack of full or timely information.

## 6 POLICY AND STRATEGIC MATTERS

### Incentivisation

*The asset recovery incentivisation scheme (ARIS) provides that sums received, net of any receivers' costs, are divided between the agencies. Half goes straight to the Home Office (HO), and half is divided between the frontline agencies, with 18.75% going to each of investigation and prosecution, and 12.5% to enforcement. Cash seizures by the police that are forfeited by order of a magistrates' court are included, with the funds being divided equally between the HO and police. Any funds recovered under a confiscation order and paid to victims as compensation are not included in the ARIS.*

- 6.1 Our review of cases and discussions with practitioners highlighted some concerns about the potentially counter-productive aspects of the operation of ARIS. It was apparent, too, that there is not universal understanding amongst the staff we spoke to as to how the scheme works. There are few publicly available documents that explain it and it is hardly surprising, therefore, that there are misconceptions as to how it operates, for example, whether the role of lead enforcement agency determines the share received from ARIS, which it does not.
- 6.2 There is no impetus from the operation of ARIS to seek confiscation orders if all funds recovered are going to pay compensation, because anything that is paid to victims does not count towards the amount split between the agencies under the scheme. This recognises the reality that there are no funds made available to the public purse to divide as the funds have gone to the victim(s), but it disregards the intrinsic value of obtaining compensation for victims, and other positive aspects of asset recovery, such as public confidence. The agencies are, of course, funded to prosecute cases and obtain the relevant ancillary orders, and this should include ensuring that restitution is maximised. The wide definition of benefit for general criminal conduct may make more criminal assets recoverable than would be the case under a compensation order. A compensation order cannot be revisited if the defendant comes by additional assets, whereas a confiscation order can be revisited (if the benefit exceeded the amount ordered) for up to six years. In addition, failure to incentivise POCA when no money comes into the national purse lends credence to the criticisms that there is too much emphasis on the gathering of revenue as opposed to the impact on criminal activity.

Case study: Tainted gifts made by defendants in a large-scale fraud were included in the total confiscation orders made against father and son; these included a significant bank deposit which was found to be a tainted gift by the father, and expensive jewellery given by the son to a previous girlfriend, funded by the proceeds of his criminal activity. There is no statutory provision equivalent to that under the POCA regime whereby a compensation order could have included them as a matter of course. The vulnerable victims of the fraud were not going to receive the full amount that had been defrauded from them, but it was important to maximise what could be obtained under the orders.



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## ISSUE TO ADDRESS

There would be merit in the Home Office revisiting the ARIS generally, and the question of whether the current ARIS creates some inappropriate incentives, in particular consideration should be given to how it impacts on compensation funds.

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### *Cash seizures*

- 6.3 Section 294 of POCA gives police and customs officers the power to seize cash sums of more than £1,000<sup>26</sup> if there are reasonable grounds for suspecting that the cash is recoverable property (property obtained through unlawful conduct) or intended for use in unlawful conduct. After 48 hours, the officer needs a magistrates' court order to continue to detain the cash, and this will be granted where there are reasonable grounds for the officer's suspicions, and detention is justified for the purposes of investigating its origin or intended use, if consideration is being given to the bringing of criminal proceedings, or if such proceedings have been commenced and not concluded. The officer can apply to the court to order that the cash be forfeited under Section 298 of POCA, and this is determined on the civil standard, which is the balance of probabilities. Whilst it is still detained, cash can be included in the calculation of benefit for the purposes of a confiscation order. Conversely, cash seized that is included in the benefit calculation when the confiscation order is made cannot then be forfeited.
- 6.4 Cash seizures totalled about £23m in 2007-08, which was about a quarter of the £136m in criminal proceeds recovered in that financial year.
- 6.5 For the police, the attractions of detention and forfeiture are evident: the proceedings are civil, so require less compelling evidence; there is no need for a related criminal prosecution and confiscation application; they may be significantly quicker than a criminal case; and they can involve significantly less work, whilst still disrupting criminal activity and improving public confidence. Cash removed from criminals may have been destined to finance further criminal enterprise, and a seizure can interfere with this, and also provide valuable intelligence for future operations. Perhaps the biggest selling point, however, is that the police keep half of all cash forfeited, instead of the 18.75% they get from ARIS for confiscation orders enforced, for less resource investment. We were told that cash forfeiture applications are often not contested, which is not surprising – a person stopped with a large quantity of cash for which there is no easy explanation may prefer to see it forfeit than to have to give an account of its origins that could lead to further investigation and prosecution.
- 6.6 The matter is not simple, however. A hasty path to forfeiture may cut off the possibility of a wider criminal investigation that will expose more offending, and do more damage to criminal enterprises. Where there are already linked criminal proceedings, and the detained cash has been paid into an interest-bearing account (which is usual practice if forfeiture is likely), the notes can no longer be examined for fingerprints or drugs, and may lose their force as evidence, or found an abuse argument by the defence. Also, the Court of Appeal<sup>27</sup> has commented on the potential unfairness of proceeding with cash forfeiture before or concurrently with criminal proceedings. The cash seizure may also be the only asset of any real value for

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<sup>26</sup> This has fallen from £10,000 when POCA was enacted, to £5,000 in March 2004, and £1,000 in July 2006.

<sup>27</sup> R v Payton, [2006] EWCA Crim 1226.



confiscation proceedings, and forfeiture will deprive partner agencies of the opportunity to meet targets and receive incentivisation funds, which may have an impact on relations between the agencies. Whilst the latter point is felt by partners, it must also be recognised that any benefit from forfeiture would be something of a windfall since only the police are likely to have been involved. For this purpose we treat the court adjudication as part of its ordinary functions rather than an enforcement role, where the added effort justifies the incentivisation.

Case study: File examination in one area demonstrated the impact of the police policy regarding cash seizures. In 11 cases, a total of £12,875 cash was seized, of which £11,100 was eventually forfeited. The total ordered to be confiscated in those 11 cases was £15,921, but would have been £27,021, if the cash forfeitures had also been available. Since the police get 50% of the cash forfeited, but just under 19% of the confiscation funds recovered, the police were better off by £3,441 and the CPS worse off by £2,261 as a result<sup>28</sup>. One can readily see how this could do damage to a prosecution team ethos.

- 6.7 There needs to be a careful weighing of the likely outcomes, and what will be gained from each. We were not persuaded that this is happening in each and every case, and we were told of some concerns within agencies - that each are seeking to maximise incentivisation returns - which may, if left unresolved, cause relationships to suffer. In addition, the current practice may lead to reinforcement of perceptions (as mentioned in paragraph 6.2 above) that confiscation is promoted for the benefit of the agencies' budgets rather than the public good. However, the review did not focus on this aspect, and we are loath to say that we have made any firm findings; we merely sound a cautionary note.

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#### ISSUE TO ADDRESS

Consideration needs to be given by the prosecution team to the possibly divisive effects of policies on cash seizures.

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- 6.8 Public confidence is undoubtedly enhanced by reassurance that the proceeds of crime are being removed from those who commit crime, and being put back into the fight against crime. However, we question whether funds received under the incentivisation are being used to provide additional resources as the public might expect, although the issue may simply be lack of sufficient publicising of that fact. Many police forces can demonstrate (and report in publicly-available documents) which resources have been paid for by ARIS, and these are often FIs or other ECU resources. The CPS and courts are less able to do so, it seems, especially HMCS, whose share of the ARIS funds amounts to over £10m, or 0.5% of their total expenditure. Some of the CPS staff we spoke to were unsighted on what happened to ARIS money, and it is disappointing that agencies are not promoting internally as well as they could the work being done, and its financial and other benefits. By contrast, RCPO took a considered decision to expand its Asset Forfeiture Division in reliance on incentivisation funding, albeit the ARIS receipts were not relied upon to cover its full running costs.

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28 Based on 19% shares for police and CPS on confiscation; the actual percentage is 18.75%.

### ISSUE TO ADDRESS

There should be consideration by the police, CPS and HMCS of ring-fencing ARIS funds, so that money recovered from POCA is ploughed back into the same work; this ought to incentivise staff further, and improve performance and public confidence.

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### Performance targets

- 6.9 We set out a description of the performance targets in Chapter 4 above. Staff in all agencies that we spoke to appear to be motivated by their interest in the work, and in removing assets from criminals to drive up public confidence. However, all were aware of the need to meet targets, and conscious of the drive to do so from their managers.
- 6.10 Although there are concerns over targets, and to what extent they were or are realistic, considerable work has been done to improve performance, and, as a result, there has been a substantial rise in the value of assets removed from criminals over the last five years.
- 6.11 The shared target for enforcement has, the RCUs report, led to a better supply of information from the CPS, although there is now room for improvement in other prosecuting agencies. The CPS now has a different target overlaying those set (as 'levels of ambition') by Local Criminal Justice Boards, which means that the agencies are no longer working towards the same targets across the board, although they are not inconsistent; successful action aimed at the conversion rates of acquisitive crime into orders will almost inevitably also drive up the number of confiscation orders.

### Public confidence and value for money

- 6.12 A recent exercise conducted in order to answer a Parliamentary Question<sup>29</sup> showed that the SOCA now recovers more from its use of the civil recovery provisions of POCA than it costs the agency to implement them. Discovering this was not an easy exercise for SOCA, as the costs are not allocated to specific tasks, but it is one that the other agencies could consider undertaking. An internal audit of RCPO's Asset Forfeiture Division reported that the cost of running the division exceeds the funds received through incentivisation, although this is slightly different calculation. Yet another method of calculation, used by HMCS, shows that in 2008-09, the agency spent about £175,000 less on asset recovery activity than it received from the ARIS scheme. Public confidence in criminal confiscation is, we suspect, predicated on the assumption that it represents value for money. In the case of small or nominal orders, this is far from certain.
- 6.13 Value for money is not the sole driver for restraint and confiscation at present, and instances where a decision has been taken by one agency not to proceed because it would not be cost effective have, on occasions, led to unease in partner agencies. There is a debate to be had here. Public confidence, and the effectiveness of asset recovery activity generally, might be improved by removing the requirement to mainstream, and focussing efforts instead on cases where it is economically more sustainable. Against this, it would not be right if enforcement agencies held back from appropriate action because they did not believe they would recover their costs. To a large extent these are policy matters which would require strategic decisions on value for money and when the various ancillary orders are required or desirable.

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29 [Http://www.publications.parliament.uk/pa/ld200809/ldhansrd/text/90720-wms0004.htm#column\\_WS163](http://www.publications.parliament.uk/pa/ld200809/ldhansrd/text/90720-wms0004.htm#column_WS163)

Mainstreaming has been set as a key aim for a number of years, yet has still not been achieved, and it is debatable whether it is a realistic aspiration. Awareness of the possible impact of decisions such as which charges to put and what pleas to accept is desirable, but increasing the number of lower value cases which fall into confiscation may cost more than the financial returns achieved.

- 6.14 There is a discussion to be had amongst those involved in asset recovery as to whether the cost effectiveness ought to be more determinative of which applications are pursued, or whether the confidence and other benefits of confiscation, outweigh this. If confiscation were to proceed on a value for money basis, there would be much to be said for retreating from attempts to mainstream, and focussing the activity in specialist units, with the expertise and advocacy skills to deal with all an area's confiscation applications and enforcement.
- 6.15 Investigators reported that they valued POCA tools and orders for their potential to add greatly to investigative strategies across a range of cases, such as people, drugs or tobacco trafficking, volume trade-marking or counterfeiting, and serious organised crime, even where the outcome does not include a seizure or confiscation. Our file examination (although based on a limited range of case types) suggested, though, that the legislation was being used most often in relation to controlled drugs, and showed that the full range of tools was not being used. In individual cases, there was some evidence that POCA was disruptive to crime, for example, in removing the product and working funds from low or mid-level drug dealers. In one case, use of financial powers successfully contributed to the disruption of a team of foreign nationals involved in the cultivation of controlled drugs who were eventually deported from the UK. There were also examples of how resources had been removed from members of the community who had flaunted their apparent wealth with personalised number plates and expensive vehicles; intervention in such cases can boost public confidence. However, it was also evident that a number of defendants do not invest their gains in readily identifiable assets; they use them to support drug or gambling habits, fritter them away in other ways, or are smart in concealing them from view. Where this is made known, it must be presumed to have the opposite effect.
- 6.16 We discuss attrition at paragraphs 5.32 to 5.43 above. The extent of attrition would, we conjecture, be a matter for more public concern were it more widely known. However, most of the attrition is based on what happens out of the public view (some of which is a function of the regime itself), for example, that between the initial benefit assessment and the amount found to be the benefit in the order, or the difference between benefit and available assets.
- 6.17 Confiscation is garnering regular coverage, mainly in local newspapers, especially in cases where a new tactic has been used, or a large sum recovered. A good example is the pilot by the North East RART of use of orders for sale in the County Court to force the sale of a house, after an order has gone unpaid. The RART says that the pilot has been effective in bringing defendants back to the table to discuss paying their orders. In one case, where the defendant persisted in non-payment, the house was sold, the first time such an action has been taken to enforce a confiscation order, and this received positive publicity<sup>30</sup> locally.

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30 [Http://www.yorkshirepost.co.uk/news/Exdrug-dealer-who-failed-to.5360859.jp](http://www.yorkshirepost.co.uk/news/Exdrug-dealer-who-failed-to.5360859.jp)



## A METHODOLOGY

In order to obtain a representative sample of frontline casework, inspectors visited four criminal justice areas: Kent, Merseyside, Northumbria and Nottinghamshire. These areas were selected for a range of characteristics that were thought to make them generally representative, including size, geographical location, and performance. Importantly, each has a related RCU, and a RART; the roles of these agencies are explained at paragraphs 3.14 to 3.15 above. Whilst such a relatively small sample of areas cannot give an exact picture of national performance, we are content that it proved a good testing ground for the key hypotheses we had prepared in advance, and which were based on preliminary interviews with the relevant agencies.

Two inspectors from HMCPSI were seconded to HMIC to take part in the inspection of HMRC asset recovery work. The inspectors visited HMRC offices in London, Bristol and Nottingham to read files and speak to investigators.

### *The fieldwork*

Eighty cases were selected which had been dealt with by the police, CPS areas and HMCS, all of which involved proceeds of crime proceedings, mainly, but not exclusively, confiscation orders. Inspectors then examined the police, CPS area and HMCS files relating to these cases, against a set of criteria based on the 12 key hypotheses. In some cases, it was not possible to see the relevant file(s) for one of the agencies; where the questions could not be answered from the papers held by another agency, the answers were recorded as “unknown”. The summary of the results is at Annex B.

Cases were not selected by type of criminality, but the table below shows the spread of cases by type and area.

|                 | Acquisitive crime (26) |          |     |                  |                    |                | Drugs offences (53)    |                           |                         |                            |                    | Total |
|-----------------|------------------------|----------|-----|------------------|--------------------|----------------|------------------------|---------------------------|-------------------------|----------------------------|--------------------|-------|
|                 | Theft                  | Burglary | HSG | Money<br>launder | Financial<br>fraud | Other<br>fraud | Low<br>level<br>supply | Medium<br>level<br>supply | High<br>level<br>supply | Cultivate<br>or<br>produce | Supply<br>firearms |       |
| Northumbria     | 2                      | 0        | 0   | 0                | 1                  | 1              | 6                      | 5                         | 1                       | 4                          | 0                  | 20    |
| Nottinghamshire | 2                      | 0        | 2   | 1                | 4                  | 0              | 9                      | 0                         | 0                       | 2                          | 0                  | 20    |
| Merseyside      | 0                      | 0        | 0   | 0                | 4                  | 1              | 5                      | 2                         | 7                       | 0                          | 1                  | 20    |
| Kent            | 3                      | 1        | 0   | 2                | 2                  | 0              | 3                      | 5                         | 1                       | 3                          | 0                  | 20    |
| Total           | 7                      | 1        | 2   | 3                | 11                 | 2              | 23                     | 12                        | 9                       | 9                          | 1                  | 80    |

The inspectors from HMCPSI seconded to HMIC, read a total of 22 HMRC files, completing detailed questionnaires on 20, and notes on a further two. The corresponding files for the prosecution and court were not read for these cases, therefore, references in this report to file examination results relate to the police-CPS area-court case results, except where specified.



## B RESULTS OF THE FILE EXAMINATION

|  | Numbers |    |     |     | Percentages       |     |     |
|--|---------|----|-----|-----|-------------------|-----|-----|
|  | Yes     | No | N/K | N/A | Yes <sup>31</sup> | No  | N/K |
| 1 Is this a POCA (as opposed to DTA or CJA) case?  | 75      | 2  | 2   | 1   | 95%               | 3%  | 3%  |
| 2 Was there a cash seizure?  | 49      | 22 | 9   | 0   | 61%               | 28% | 11% |
| 3 Is this a lifestyle case? (If no, it must be a particular criminal conduct case.)  | 67      | 10 | 2   | 1   | 85%               | 13% | 3%  |
| 4 Is this an OCD or other specialist team case?  | 8       | 62 | 10  | 0   | 10%               | 78% | 13% |
| 5 Was the FIU involved?  | 75      | 1  | 4   | 0   | 94%               | 1%  | 5%  |
| 6 Is this a RART case?   | 4       | 67 | 9   | 0   | 5%                | 84% | 11% |
| 7 Is this a CCU case?  | 3       | 74 | 3   | 0   | 4%                | 93% | 4%  |
| <b>Overall questions</b>   |         |    |     |     |                   |     |     |
| 13 Does this case relate to organised crime, including drug supply, or large-scale fraud?  | 26      | 47 | 7   | 0   | 33%               | 59% | 9%  |
| 14 Was the case managed effectively by police in relation to asset recovery issues? (E.g. was the asset recovery investigation fluid - or was it stop-start?)  | 49      | 4  | 26  | 1   | 62%               | 5%  | 33% |
| 15 Was the case managed effectively by CPS in relation to asset recovery issues?   | 51      | 23 | 5   | 1   | 65%               | 29% | 6%  |
| 16 Was the case managed effectively by courts in relation to asset recovery issues?  | 39      | 17 | 16  | 8   | 54%               | 24% | 22% |
| 17 Police: Did the asset recovery dimension delay or otherwise impinge unduly on the criminal investigation or prosecution? (The time taken to prepare POCA files, deal with restraint issues, investigate assets etc.)            | 2       | 56 | 20  | 2   | 3%                | 72% | 26% |
| 18 CPS: Did the asset recovery dimension delay or otherwise impinge unduly on the criminal investigation or prosecution? (The time taken to prepare POCA files, deal with restraint issues, investigate assets etc.)               | 0       | 69 | 5   | 6   | 0%                | 93% | 7%  |
| 19 Can it be said that the asset recovery dimension of the investigation served to disrupt or inhibit any criminal activity?   | 28      | 28 | 23  | 1   | 35%               | 35% | 29% |
| 20 Is there a clear record of asset recovery decisions, actions on the file?   | 48      | 12 | 18  | 2   | 62%               | 15% | 23% |
| 21 Was there sufficient joint working between the criminal and AR proceedings? (E.g. were FIs and any separate POCA lawyer included in conferences, was the impact on confiscation of charging or plea decisions considered etc.?) | 22      | 34 | 12  | 12  | 32%               | 50% | 18% |
| <b>Identification of cases by the investigator</b>   |         |    |     |     |                   |     |     |
| 22 Did the investigator note that this is an asset recovery type case as soon as practicable?  | 35      | 9  | 35  | 1   | 44%               | 11% | 44% |
| 23 If it is a lifestyle “general criminal conduct” type case, was this noted by the IO or FI as soon as practicable?   | 32      | 12 | 25  | 11  | 46%               | 17% | 36% |
| 24 Did the investigator notify the FIU in good time?   | 42      | 5  | 31  | 2   | 54%               | 6%  | 40% |
| 25 Did the FIU provide timely advice and assistance? (Includes overall timeliness, communications, and actions.)   | 61      | 0  | 19  | 0   | 76%               | 0%  | 24% |
| 26 Police: Was the case flagged electronically, or a note made that the case is suitable for asset recovery?   | 1       | 1  | 78  | 0   | 1%                | 1%  | 98% |

31 ‘Yes’, ‘No’ and ‘Unknown’ totals are expressed as a percentage of the total excluding the ‘Not applicable’ responses.

|  | Numbers |    |     |     | Percentages |     |      |
|--|---------|----|-----|-----|-------------|-----|------|
|  | Yes     | No | N/K | N/A | Yes         | No  | N/K  |
| 27 CPS: Was the case flagged electronically, or a note made that the case is suitable for asset recovery?  | 15      | 61 | 3   | 1   | 19%         | 77% | 4%   |
| 28 Court: Was the case flagged electronically, or a note made that the case is suitable for asset recovery?  | 0       | 0  | 73  | 7   | 0%          | 0%  | 100% |
| 29 Police: Was asset recovery taken into account when planning pre-arrest investigation strategy? (E.g. was there a strategy meeting, or other exchange of views on the subject? Was there an early decision on whether it was likely to be “lifestyle” type case?)            | 13      | 19 | 44  | 4   | 17%         | 25% | 58%  |
| 30 CPS: Was asset recovery taken into account when planning post-arrest (pre-charge) investigation strategy? (E.g. was there a strategy meeting, or other exchange of views on the subject? Was there an early decision on whether it was likely to be “lifestyle” type case?) | 35      | 4  | 39  | 2   | 45%         | 5%  | 50%  |
| 31 Police: Was asset recovery taken into account when planning post-charge investigation strategy? (E.g. was there a strategy meeting, or other exchange of views on the subject? Was there an early decision on whether it was likely to be “lifestyle” type case?)           | 41      | 0  | 36  | 3   | 53%         | 0%  | 47%  |
| 32 CPS: Was asset recovery taken into account when planning post-charge investigation strategy? (E.g. was there a strategy meeting, or other exchange of views on the subject? Was there an early decision on whether it was likely to be “lifestyle” type case?)              | 12      | 55 | 4   | 9   | 17%         | 77% | 6%   |
| 33 Was the CPS lawyer notified early enough of the asset recovery dimension? (MG3 will help here.)   | 43      | 29 | 7   | 1   | 54%         | 37% | 9%   |
| 34 Did the CPS lawyer advise on asset recovery, whether or not it was included in the police MG3? (CPS MG3 and other records may help here. If advice was given at an early stage in the investigation, please record in comments section, and assess the quality.)            | 16      | 58 | 6   | 0   | 20%         | 73% | 8%   |
| <b>Utilising the full range of financial investigative tools</b>   |         |    |     |     |             |     |      |
| 35 Was the FI or IO aware of the tools available? (E.g. restraint, production, financial reporting etc.)   | 61      | 0  | 17  | 2   | 78%         | 0%  | 22%  |
| 36 Was legal advice (from CPS) obtained about the use of POCA tools? (Including production order, customer information order, account monitoring order, financial reporting order, declaration of assets order etc.)   | 0       | 72 | 2   | 6   | 0%          | 97% | 3%   |
| 37 Was the legal advice on use of POCA tools accurate and sufficient? (E.g. could there have been further useful advice in relation to e.g. customer information orders?)  | 0       | 0  | 3   | 77  | 0%          | 0%  | 100% |
| 38 Is there evidence that POCA tools were appropriately considered by police? (Including production order, customer information order, account monitoring order, financial reporting order, declaration of assets order etc.)  | 41      | 6  | 31  | 2   | 53%         | 8%  | 40%  |
| 39 Was there a clear reason for not using any given POCA tool? (If there is apparent cause to use one of the tools, and (a) it was not considered, or (b) it was considered and ruled out wrongly. A “no” implies lack of consideration, or a flawed decision.)                | 9       | 10 | 27  | 34  | 20%         | 22% | 59%  |
| 40 Was a production order obtained?  | 25      | 34 | 20  | 1   | 32%         | 43% | 25%  |
| 41 Were any other POCA tools used? Note in the comments which one(s).  | 10      | 31 | 36  | 3   | 13%         | 40% | 47%  |



|   | Numbers |    |     |     | Percentages |     |     |
|---|---------|----|-----|-----|-------------|-----|-----|
|   | Yes     | No | N/K | N/A | Yes         | No  | N/K |
| <b>Restraint applications</b>   |         |    |     |     |             |     |     |
| 42 Did the risk of dissipation of assets arise during the pre-charge investigation?   | 21      | 40 | 17  | 2   | 27%         | 51% | 22% |
| 43 Did the risk of dissipation of assets arise during the post-charge investigation?  | 27      | 22 | 27  | 4   | 36%         | 29% | 36% |
| 44 Police: Was there appropriate consideration of applying for a restraint order, as soon as the risk of dissipation arose? (Consider whether there is apparent cause to apply for one, and (a) it was not considered, or (b) it was considered and ruled out wrongly. A “no” implies lack of consideration, or a flawed decision.) | 20      | 6  | 20  | 34  | 43%         | 13% | 43% |
| 45 CPS: Was there appropriate consideration of applying for a restraint order, as soon as the risk of dissipation arose? (Consider whether there is apparent cause to apply for one, and (a) it was not considered, or (b) it was considered and ruled out wrongly. A “no” implies lack of consideration, or a flawed decision.)    | 14      | 27 | 10  | 29  | 27%         | 53% | 20% |
| 46 Was a restraint order applied for at all?  | 17      | 59 | 3   | 1   | 22%         | 75% | 4%  |
| 47 Was consideration of a restraint order made in good time? (Bear in mind the Golden Hour. Given that all cases we have selected are asset recovery related, all should include consideration of restraint.)   | 10      | 48 | 7   | 15  | 15%         | 74% | 11% |
| 48 Where there was no application for a restraint order, could the subsequent dissipation or concealment of assets have been prevented by the use of a restraint order? (Only “yes” if in fact dissipated.)   | 6       | 1  | 30  | 43  | 16%         | 3%  | 81% |
| 49 Police: Was the application for a restraint order prevented by matters beyond the control of the agency?   | 0       | 7  | 9   | 64  | 0%          | 44% | 56% |
| 50 CPS: Was the application for a restraint order prevented by matters beyond the control of the agency?  | 4       | 14 | 4   | 58  | 18%         | 64% | 18% |
| 51 Court: Was the application for a restraint order prevented by matters beyond the control of the agency?  | 1       | 11 | 54  | 14  | 2%          | 17% | 82% |
| 52 Police: Was the application for a restraint order delayed unnecessarily by matters beyond control of the agency?   | 0       | 7  | 10  | 63  | 0%          | 41% | 59% |
| 53 CPS: Was the application for a restraint order delayed unnecessarily by matters beyond control of the agency?  | 0       | 11 | 6   | 63  | 0%          | 65% | 35% |
| 54 Court: Was the application for a restraint order delayed unnecessarily by matters beyond control of the agency?  | 0       | 5  | 58  | 17  | 0%          | 8%  | 92% |
| 55 Police: Was the application for a restraint order prevented or delayed by inter-agency communication problems?   | 0       | 7  | 12  | 61  | 0%          | 37% | 63% |
| 56 CPS: Was the application for a restraint order prevented or delayed by inter-agency communication problems?  | 5       | 11 | 5   | 59  | 24%         | 52% | 24% |
| 57 Court: Was the application for a restraint order prevented or delayed by inter-agency communication problems?  | 0       | 6  | 60  | 14  | 0%          | 9%  | 91% |
| 58 Was the legal advice on whether or not to apply for a restraint order sound?   | 10      | 0  | 3   | 67  | 77%         | 0%  | 23% |
| 59 Were the criminal and restraint and/or confiscation proceedings dealt with by the same prosecutor?   | 32      | 26 | 4   | 18  | 52%         | 42% | 6%  |
| 60 Was the CPS written application for a restraint order adequate? (E.g. Did the CPS identify under which section/Act the order was being applied. Were all the main statutory issues addressed?)   | 17      | 1  | 3   | 59  | 81%         | 5%  | 14% |

|  | Numbers |    |     |     | Percentages |     |     |
|--|---------|----|-----|-----|-------------|-----|-----|
|  | Yes     | No | N/K | N/A | Yes         | No  | N/K |
| 61 Did the prosecution seek restraint order for specific assets (POCA only) where possible and appropriate?  | 17      | 0  | 3   | 60  | 85%         | 0%  | 15% |
| 62 Did the restraint order remain in place until confiscation?   | 16      | 1  | 3   | 60  | 80%         | 5%  | 15% |
| 63 Was there a defence application to discharge the restraint order?   | 4       | 13 | 3   | 60  | 20%         | 65% | 15% |
| 64 Did the defence application to discharge the restraint order impact significantly on resources available to the criminal investigation and prosecution?   | 0       | 3  | 4   | 73  | 0%          | 43% | 57% |
| 65 If there was a defence application to vary or discharge the confiscation order, was it dealt with fairly and robustly by the CPS?   | 3       | 0  | 3   | 74  | 50%         | 0%  | 50% |
| <b>Early identification and valuation of assets</b>  |         |    |     |     |             |     |     |
| 66 Was it likely that there would be identifiable assets when the investigation began?   | 44      | 15 | 21  | 0   | 55%         | 19% | 26% |
| 67 Did the investigation, identification and seizure of these assets start in good time to prevent dissipation or concealment?   | 29      | 9  | 24  | 18  | 47%         | 15% | 39% |
| 68 Did the CPS provide assistance in relation to identification of these assets?   | 0       | 44 | 4   | 32  | 0%          | 92% | 8%  |
| 69 Was there appropriate action to identify foreign/ hidden assets?  | 2       | 4  | 44  | 30  | 4%          | 8%  | 88% |
| 70 Was there appropriate action to freeze foreign assets?  | 1       | 5  | 13  | 61  | 5%          | 26% | 68% |
| 71 Was asset identification a necessary part of the criminal investigation anyway? (Was it necessary to seize assets as evidence of lifestyle to support a criminal prosecution? If not, some effort must have been put into asset recovery in a free-standing sense.) | 32      | 35 | 11  | 2   | 41%         | 45% | 14% |
| <b>Confiscation proceedings</b>  |         |    |     |     |             |     |     |
| 72 Was asset recovery case progression by the courts sufficient? (E.g. is there evidence on file of case progression activity in Crown Court file?)  | 17      | 20 | 34  | 9   | 24%         | 28% | 48% |
| 73 Police: Was asset recovery police case progression sufficient? (Including links between FIU and IO.)  | 40      | 4  | 34  | 2   | 51%         | 5%  | 44% |
| 74 CPS: Was asset recovery CPS case progression sufficient? (Including links between units.)   | 47      | 18 | 10  | 5   | 63%         | 24% | 13% |
| 75 Police: Were skills levels of all case progression officers sufficient? (E.g. Did they all understand the confiscation process?)  | 17      | 0  | 62  | 1   | 22%         | 0%  | 78% |
| 76 CPS: Were skills levels of all case progression officers sufficient? (E.g. Did they all understand the confiscation process?)   | 32      | 5  | 35  | 8   | 44%         | 7%  | 49% |
| 77 Court: Were skills levels of all case progression officers sufficient? (E.g. Did they all understand the confiscation process?)   | 1       | 0  | 70  | 9   | 1%          | 0%  | 99% |
| 78 Police: Was joint asset recovery case progression smooth between all three agencies? (Including whether a trial readiness hearing form used, if in place locally?)  | 23      | 3  | 52  | 2   | 29%         | 4%  | 67% |
| 79 CPS: Was joint asset recovery case progression smooth between all three agencies? (Including whether a trial readiness hearing form used, if in place locally?)   | 51      | 17 | 8   | 4   | 67%         | 22% | 11% |

|   | Numbers |    |     |     | Percentages |     |      |
|---|---------|----|-----|-----|-------------|-----|------|
|   | Yes     | No | N/K | N/A | Yes         | No  | N/K  |
| 80 Court: Was joint asset recovery case progression smooth between all three agencies? (Including whether a trial readiness hearing form used, if in place locally?)  | 15      | 15 | 40  | 10  | 21%         | 21% | 57%  |
| 81 CPS: Did counsel avoid delay in asset recovery case progression?   | 31      | 3  | 12  | 34  | 67%         | 7%  | 26%  |
| 82 Court: Did counsel avoid delay in asset recovery case progression?   | 4       | 2  | 64  | 10  | 6%          | 3%  | 91%  |
| 83 Were all dates in the confiscation timetable met by the prosecution, where possible to do so?  | 43      | 19 | 9   | 9   | 61%         | 27% | 13%  |
| 84 If not, was significant delay in obtaining the relevant order avoided?   | 12      | 5  | 9   | 54  | 46%         | 19% | 35%  |
| 85 CPS: Was the written CPS application for a confiscation order adequate? (E.g. did the CPS identify under which section/Act the order was being applied. Were all the main statutory issues addressed?)   | 61      | 4  | 6   | 9   | 86%         | 6%  | 8%   |
| 86 Court: Was the written CPS application for a confiscation order adequate? (E.g. did the CPS identify under which section/Act the order was being applied. Were all the main statutory issues addressed?) | 13      | 4  | 53  | 10  | 19%         | 6%  | 76%  |
| 87 Was the written response to the defence response adequate? (Including whether all issues dealt with fairly and robustly.)  | 19      | 6  | 6   | 49  | 61%         | 19% | 19%  |
| 88 If there was a defence application to vary or discharge the confiscation order, was it dealt with fairly and robustly by the CPS?  | 0       | 0  | 6   | 74  | 0%          | 0%  | 100% |
| <b>Costs (including receivers' costs)</b>   |         |    |     |     |             |     |      |
| 89 Was the decision to appoint a receiver well considered and sound?  | 0       | 0  | 4   | 76  | 0%          | 0%  | 100% |
| 90 Was the cost of the receiver taken into account when deciding to make the application for one?   | 0       | 0  | 4   | 76  | 0%          | 0%  | 100% |
| 91 Did the CPS resist any third party claims effectively?   | 7       | 3  | 5   | 65  | 47%         | 20% | 33%  |
| <b>JARD</b>   |         |    |     |     |             |     |      |
| 92 Were any delays attributable to JARD?  | 5       | 58 | 13  | 4   | 7%          | 76% | 17%  |
| 93 Is the enforcement authority identified (note which agency in comments section)?   | 64      | 3  | 9   | 4   | 84%         | 4%  | 12%  |
| 94 Is or has there been a 'sensitive' marking on JARD (note if current)?  | 0       | 68 | 8   | 4   | 0%          | 89% | 11%  |
| 95 Is JARD up-to-date regarding activity on case?   | 64      | 5  | 8   | 3   | 83%         | 6%  | 10%  |
| <b>Courts/RCU</b>   |         |    |     |     |             |     |      |
| 96 Was section and Act noted on order?  | 17      | 46 | 8   | 9   | 24%         | 65% | 11%  |
| 97 Did prosecutor provide completed 5050A form?   | 39      | 16 | 16  | 9   | 55%         | 23% | 23%  |
| 98 Did court clerk sign 5050A (confirming amount to be on order)?   | 19      | 32 | 17  | 12  | 28%         | 47% | 25%  |
| 99 Were any signed consent forms handed to the financial investigator?  | 10      | 4  | 57  | 9   | 14%         | 6%  | 80%  |
| 100 Did clerk note dispatch of relevant documents to different parties?   | 5       | 0  | 66  | 9   | 7%          | 0%  | 93%  |
| 101 Is there a Libra account for the order?   | 55      | 5  | 16  | 4   | 72%         | 7%  | 21%  |
| 102 Is there an address for the defendant?  | 39      | 17 | 13  | 11  | 57%         | 25% | 19%  |

|  | Numbers |    |     |     | Percentages |     |     |
|--|---------|----|-----|-----|-------------|-----|-----|
|  | Yes     | No | N/K | N/A | Yes         | No  | N/K |
| 103 Has Notice been sent to the defendant?   | 32      | 4  | 35  | 9   | 45%         | 6%  | 49% |
| 104 Is there a signed consent form(s)?   | 19      | 21 | 31  | 9   | 27%         | 30% | 44% |
| 105 Has any action been pursued prior to an enforcement hearing? (Note what.)  | 28      | 9  | 8   | 35  | 62%         | 20% | 18% |
| 106 Has there been an enforcement hearing? (Note date, which must be after TTP period.)  | 4       | 29 | 8   | 39  | 10%         | 71% | 20% |
| 107 If yes, did the magistrates issue a commitment warrant and impose a default sentence?  | 1       | 2  | 9   | 68  | 8%          | 17% | 75% |
| 108 Was the defendant present?   | 0       | 2  | 11  | 67  | 0%          | 15% | 85% |
| 109 If not, was an arrest warrant issued?  | 1       | 1  | 10  | 68  | 8%          | 8%  | 83% |
| 110 Has payment been made? (Note in comments if pre or post-TTP.)  | 35      | 24 | 9   | 12  | 51%         | 35% | 13% |
| 111 Was first payment directed at compensatee (if relevant)?   | 7       | 1  | 8   | 64  | 44%         | 6%  | 50% |
| 112 If no payment, has the magistrates court taken any action re-enforcement? (E.g. payment orders [post TTP], commitment warrant, instructing bailiffs, etc.)   | 5       | 5  | 10  | 60  | 25%         | 25% | 50% |
| 113 Have any funds been written off or reduced? (If yes, note by whom, because where not collected by the enforcement authority, if written off, the amount must be entered as a payment on JARD to show the true sum recovered from the defendant. A progress note should be entered on JARD to explain unusual payment circumstances.) | 2       | 46 | 9   | 23  | 4%          | 81% | 16% |
| 114 Has a certificate of Inadequacy been issued?   | 1       | 48 | 8   | 23  | 2%          | 84% | 14% |
| 115 If the D was sent to prison as part of the sentence, did HMCS inform the prisons regarding the enforcement of the confiscation order?  | 15      | 6  | 26  | 33  | 32%         | 13% | 55% |
| 116 If the D was sent to prison as part of the sentence, and subsequently released, did the prison inform HMCS of his release address?   | 6       | 7  | 18  | 49  | 19%         | 23% | 58% |
| 117 Has the defendant been committed to prison for non-compliance with order (warrant)?  | 1       | 45 | 11  | 23  | 2%          | 79% | 19% |

## C MG17 – PROCEEDS OF CRIME ACT (POCA) REVIEW

(one form for each defendant)

|     |  |  |  |
|-----|--|--|--|
| URN |  |  |  |
|-----|--|--|--|

**Defendant**

Surname:..... Forename(s):.....  
 D.O.B:..... Pending cases Y / N  
 Address:.....  
 ..... Postcode:.....

|   |            |           |
|---|------------|-----------|
| <b>Section 1 - Confiscation assessment (for Police completion)</b>  |            |           |
| <b>If Yes to any question immediately refer to FIU and attach to MG3 / MG3A for pre-charge advice / decision</b>  |            |           |
| 1. Does the evidence reveal any 'criminal lifestyle' offences, e.g. trafficking of drugs, people or arms, prostitution and child sex; directing terrorism, money laundering, copyright offences, blackmail? |            | Y / N     |
| 2. Did the suspect obtain any property or financial gain?   |            | Y / N     |
| 3. Could the suspect be charged with <b>4 or more</b> offences in the current proceedings that will amount to a total benefit, including TICs, of at least £5,000?  |            | Y / N     |
| 4. Has the suspect been convicted on at least <b>2 occasions within the last 6 years</b> of any offence where the total benefit, including TICs and the current offences are at least £5,000?               |            | Y / N     |
| 5. Has the suspect benefited by at least £5,000, including TICs, from any offending committed over a period of <b>at least 6 months</b> ?   |            | Y / N     |
| 6. Are money laundering charges being considered in this case?  |            | Y / N     |
| 7. Are the victim(s) claiming compensation?   |            | Y / N     |
| 8. Has there been a cash seizure in excess of £1,000?   |            | Y / N     |
| 9. Is a restraint order necessary?  |            | Y / N     |
| 10. Next hearing date:.....at .....Magistrates / Crown Court  |            |           |
| OIC (print name):.....  | Date:..... | Tel:..... |
| CPS lawyer (print name):.....   | Date:..... | Tel:..... |
| <b>Section 2 - Initial Assessment (for FIU completion)</b>  |            |           |
| 11. The case is suitable / not suitable for confiscation proceedings.   |            |           |
| 12. An initial entry has been made / not been made onto the JARD system. (JARD ref. No.....)  |            |           |
| 13. Assets have / have not been identified.   |            |           |
| 14. Restraint may / may not be appropriate in the case.   |            |           |
| 15. Timetable for completion of a financial statement following conviction would be.....  |            |           |
| 16. There are / are no cash seizure proceedings pending.  |            |           |
| 17. There are / are no forfeiture proceedings pending.  |            |           |
| FIU Officer (print name):.....  | Date:..... | Tel:..... |
| <b>Section 3 - Request confiscation statement or JARD closure (for CPS completion)</b>  |            |           |
| 18. Defendant convicted of:.....  |            |           |
| The timetable for confiscation is:.....   |            |           |
| 19 Reasons for not pursuing confiscation:.....  |            |           |
| CPS lawyer (print name):.....   | Date:..... | Tel:..... |



## **D LOCAL REPRESENTATIVES OF CRIMINAL JUSTICE AGENCIES AND ORGANISATIONS WHO ASSISTED IN OUR INSPECTION**

The Chief Inspectors are grateful to the following, who gave their time and expertise to assist with this stage of the thematic review.

### *Police forces*

Detective Superintendent Colin Leeman, Head of Force Crime Operations Unit, Merseyside Police  
Detective Sergeant Mike Garvey, Criminal Assets Team, Merseyside Police  
Detective Sergeant Sue Roberts, Criminal Assets Team, Merseyside Police  
Detective Sergeant Neil Bates, Financial Investigation Team, Northumbria Police  
Helen Farrow, Financial Investigator, Northumbria Police  
Steve Forster, Financial Investigator, Northumbria Police  
Detective Inspector Andy Gimza, Economic Crime Unit, Northumbria Police  
Detective Chief Inspector Jim Mcall, Head of Economic Crime Investigations, Northumbria Police  
Detective Superintendent Stephen Lowe, Nottinghamshire Police  
Detective Inspector Kevin Fiddler, Head of Financial Investigation Unit, Nottinghamshire Police  
Detective Inspector Fairhurst, Operational Lead, Economic Crime Unit, Kent Police

### *CPS areas*

Kevin Kavanagh, POCA champion, CPS Nottinghamshire  
Amanda Kneafsey, POCA administrator, CPS Nottinghamshire  
Vivienne Pearson, POCA champion, CPS Kent, and Group Enforcement Lawyer, South East Group  
Ken Goss, POCA Lead, Complex Casework Unit, South East Group  
Susan Mason, Business Manager, Complex Casework Unit, North East Group  
Neil Taylor, POCA Enforcement Lawyer, Complex Casework Unit, North East Group  
Colin Davies, Head of Complex Casework Unit, Merseyside and Cheshire Group  
Sue Robert, POCA Lead, CPS Merseyside

### *HM Courts Service*

Joyce Stewart, HMCS lead on Confiscation Enforcement  
Geoffrey Appleton, Area Director, Merseyside Regional Confiscation Unit  
Andy Smith, Legal Advisor, East Midlands Regional Confiscation Unit  
Diane Tailby, Unit Manager, East Midlands Regional Confiscation Unit  
Sandra Wood, Head of Operations for Enforcement, East Midlands Regional Confiscation Unit  
Focus group of staff at East Midlands Regional Confiscation Unit  
Marie Crane, Unit Manager, Merseyside Regional Confiscation Unit  
Lesley Handford, Confiscation Senior Responsible Officer and Regional Performance Manager, North West Region  
Paul Healey, Legal Team Manager, Merseyside Regional Confiscation Unit  
Focus group of staff at Merseyside Regional Confiscation Unit  
Cathy Traynor, Crown Court Clerk Manager, Merseyside Crown Court

Lorraine Howell, Unit Manager, North East Regional Confiscation Unit  
Saieed Kazi, Unit Legal Advisor, North East Regional Confiscation Unit  
Michelle Potter, Operations Team Supervisor, North East Regional Confiscation Unit  
Steven Caven, Regional Director, North East Region  
Paul Skelton, Regional Performance Manager, North East Region  
Steve Waite, Head of North East Regional Asset Recovery Team  
Nigel Egerton, Regional Enforcement Manager, South East Region  
Jacquey Gledhill, Unit Manager, South East Regional Confiscation Unit  
Focus group of staff at the South East Regional Confiscation Unit

*Others*

Investigators and accredited financial investigators in HM Revenue and Customs  
Gary Balch, Head of Central Confiscation Unit, Organised Crime Division, CPS  
Jeremy Rawlins, Head of Proceeds of Crime Delivery Unit, CPS  
Alun Milford, Head of Organised Crime Division, CPS  
District Judge Clancey, Liverpool Magistrates' Court  
Detective Superintendent Ian Davidson, National Coordinator, ACPO Proceeds of Crime Portfolio, Derbyshire Constabulary  
Steve Wilkinson, Training Manager, Proceeds of Crime Centre, People and Development, National Policing Improvement Agency



## E GLOSSARY

|   |   |
|---|---|
| Acquisitive Crime                         | Crimes that lead to a gain for the person committing it, such as theft, fraud, burglary and vehicle crime.  |
| Asset Recovery                            | Any financial investigation to recover criminally obtained assets through cash forfeiture, confiscation, forfeiture/deprivation or by utilising the civil/tax provisions contained within POCA 2002.  |
| Business Manager                          | A manager responsible for finance, personnel, business planning and other operational matters.  |
| Caseworker                                | A member of CPS staff who deals with or manages day-to-day conduct of a prosecution case under the supervision of a Crown Prosecutor and, in the Crown Court, attends court to assist the advocate.   |
| Cash Seizure                              | The legal procedure by which the police remove from someone money that the police suspect has been obtained by crime or will be used in crime. A magistrates' court can order that the person is not allowed to have the cash back - this permanent removal of the cash is called "Forfeiture".   |
| Compass CMS                               | IT system for case tracking and case management used by the CPS. Compass is the new comprehensive system used in all areas.   |
| Confiscation Order                        | An order made against someone who has been convicted of a crime, which requires him to pay a set sum of money to the court. The order is made under the Proceeds of Crime Act (although, in older cases, orders were made under the Drug Trafficking Offences Act 1986 or the Criminal Justice Act 1988)  |
| Criminal Conduct (Particular and General) | This is what the court must take into account when deciding how the defendant has benefited from his crime, when making a confiscation order. Particular criminal conduct is the act giving rise to the offence in question. General criminal conduct (or "criminal lifestyle") is any criminal act over the previous six years, which need not be proved to the criminal standard in order for the benefit from it to be taken into account. |
| Charging Scheme                           | The Criminal Justice Act 2003 took forward the recommendations of Lord Justice Auld in his Review of the Criminal Courts, so that the CPS will determine the decision to charge offenders in the more serious cases. Shadow charging arrangements were put in place in CPS areas; and the statutory scheme had a phased roll out across priority areas and subsequently all 42 areas, the last being in April 2006.                           |
| Chief Crown Prosecutor (CCP)              | One of 42 chief officers heading the local CPS in each area, is a barrister or solicitor. Has a degree of autonomy but is accountable to the Director of Public Prosecutions (DPP) for the performance of the area.   |

|  |   |
|--|---|
| <b>Code for Crown Prosecutors (the Code)</b> | The public document that sets out the framework for prosecution decision-making. Crown Prosecutors have the DPP's power to determine cases delegated, but must exercise them in accordance with the Code and its two-stage test – the evidential stage and the public interest stage. Cases should only proceed if, firstly, there is sufficient evidence to provide a realistic prospect of conviction and, secondly, if the prosecution is required in the public interest. |
| <b>Complex Casework Unit (CCU)</b>           | A group (a combination of CPS areas) unit which deals with specialist and complex cases; cases referred are usually defined by the nature of the crime and are mainly governed by a referral protocol.  |
| <b>Crown Advocate (CA)</b>                   | A lawyer employed by the CPS who has a right of audience in the Crown Court.  |
| <b>Either Way Offences</b>                   | Those triable in either the magistrates' court or the Crown Court, e.g. theft, assault occasioning actual bodily harm.  |
| <b>Evidential Stage</b>                      | The initial stage under the Code test – is there sufficient evidence to provide a realistic prospect of conviction on the evidence?   |
| <b>Cash Forfeiture</b>                       | When the police have seized cash from a person (see “Cash seizure”), a magistrates' court can order that the person is not allowed to have the cash back, if they are satisfied that it is from crime or will be used in crime. This permanent removal of the cash is called “Forfeiture”.  |
| <b>Good Practice</b>                         | An aspect of performance upon which the Inspectorates not only comment favourably, but consider that it reflects a manner of handling work which, with appropriate adaptations to local needs, might warrant being commended as national practice.  |
| <b>Indictable Only Offences</b>              | Offences triable only in the Crown Court, e.g. murder, rape, robbery.   |
| <b>Instructions to Counsel</b>               | The papers which go to counsel setting out the history of a case and how it should be dealt with at court, together with case reports. These are sometimes referred to as the “Brief to counsel”.   |
| <b>Local Criminal Justice Board</b>          | The Chief Officers of police, probation, the courts, and the CPS, a local prison governor and the Youth Offending Team manager in each criminal justice area who are accountable to the National Criminal Justice Board for the delivery of PSA targets.  |
| <b>MG17</b>                                  | Form completed by police relating to proceeds of crime, to tell the CPS about a possible confiscation order. MG is the national Manual of Guidance used by police and the CPS.  |

|   |   |
|---|---|
| <b>Missing Trader or Carousel Fraud</b>               | The missing trader fraud exploits the fact that Value Added Tax (VAT) is not charged on transactions which involve the export of goods from one country to another within the EU. In very simple terms the trader imports high value goods such as computer chips and mobile phones on which he doesn't have to pay any VAT at the time of importation. He then sells these goods in the country of importation with VAT added on to the price. He is supposed to account to HMRC for the VAT paid by the customer, but he pockets it and disappears (becoming the 'missing trader'). Usually, there are a number of people involved, selling goods to each other many times, or faking the sale and purchase of goods, with a non-existent trader created to be the missing trader and explain the non-payment of the VAT to HMRC. This is known as a carousel, as the goods appear to go round and round. Often, entire companies or importations are faked to support the fraud. |
| <b>Overall Performance Assessment (OPA)</b>           | An assessment of performance carried out at CPS area level by HMCPSI, which rates overall performance. Each aspect of performance is scored and an overall assessment made. These have been carried out in 2005 and 2007.   |
| <b>Pre-Trial Review</b>                               | A hearing in the magistrates' court designed to define the issues for trial and deal with any other outstanding pre-trial issues.   |
| <b>Proceeds of Crime Act 2002 (POCA)</b>              | This Act sets out arrangements for taking away from criminals the profits they have made from their crimes. It also makes helping to hide, or holding onto those profits a criminal offence.  |
| <b>Public Interest Stage</b>                          | The second stage under the Code test - is it in the public interest to prosecute this defendant on this charge?   |
| <b>Public Service Agreement (PSA) Targets</b>         | Targets set by the government for the criminal justice system (CJS), relating dealing with serious offences and raising public confidence in the CJS.   |
| <b>Restraint</b>                                      | The court process by which goods, cash, bank accounts, or any other belongings of a person are held under a court order to prevent the person from selling or hiding them. It is done where the person is believed to have obtained the items through crime. If he is convicted, and the court will want to make a confiscation order (as explained above), the restraint order is meant to keep the assets safe until the order can be made.   |
| <b>Review, Initial, Continuing, Summary Trial etc</b> | The process whereby a Crown Prosecutor determines that a case received from the police satisfies and continues to satisfy the legal test for prosecution in the Code. One of the most important functions of the CPS.   |
| <b>Strengths</b>                                      | Work undertaken properly to appropriate professional standards i.e. consistently good work.   |
| <b>Summary Offences</b>                               | Those triable only in the magistrates' courts, e.g. most serious motoring offences, common assault etc.   |

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