



## Chapter 4

# The strategic framework for POCA success

### Realising the potential

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

### National and organisational leadership

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

on-year, the amount of cash seizures and forfeitures under Part V of the Act. Apart from the increased targets the programme also contained a series of capacity and capability building initiatives, including a review of the role of FIs. A key point about CICFA is that it includes Customs and Excise, which is a major player in respect of confiscation orders and cash seizures or forfeitures<sup>13</sup>.

#### POLICE FORCES

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

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

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

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

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

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

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

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

## Recommendation 7

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

### THE CROWN PROSECUTION SERVICE

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

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

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

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

#### **POCA champions**

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

#### LEADING ON POCA AT OPERATIONAL LEVEL

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

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

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

### **Recommendation 8**

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

#### **BENCHMARKING AND TARGET-SETTING**

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

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

### **Recommendation 9**

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

- 4.26 Introducing additional targets to a criminal justice area that is already awash with targets would not be popular and may well be unhelpful. Most interviews with senior officials generated a plea of “no more targets”. However, POCA is a major plank in the policy to reduce criminality and targets are one means of driving up performance. Its importance is reflected in the intended inclusion – hopefully from 2005/06 – of a specific performance indicator<sup>14</sup> in the Policing Performance Assessment Framework (PPAF).
- 4.27 For the courts, objectives and standards are in place for the timely completion of administrative processes, and, in the MCS, the effective enforcement of confiscation orders. These relate to all cases, not only to POCA-related cases. There are concerns over the levels of enforcement of confiscation orders, and the available statistics highlight the significant gap between ordered sums and actual confiscation achieved. There are also issues around the time delay built into the system before orders are imposed.
- 4.28 The CICFA Asset Recovery Programme of Action sets out targets for joint performance across the CJS. In the medium to long-term, there is a strong logic that that responsibility for any cross-agency target, or complementary suite of targets should sit with the National Criminal Justice Board, and then cascade to LCJBs.

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

## Training and awareness of POCA

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

### Recommendation 10

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

### TRAINING WITHIN THE POLICE SERVICE

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

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

#### **Box K – Missed opportunities to use POCA**

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

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

**Box L – Lack of knowledge of time limits**

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

**Recommendation 11**

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

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

**Box M – The value of self-briefing**

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

Awareness poster displayed throughout the City of London Police

**CHANGE IN THE LAW**

# £5k?

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



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



**City of London Police**  
www.cityoflondon.police.uk




**Taking the cash  
out of crime**

Images courtesy of Metropolitan Police Service

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

#### TRAINING WITHIN THE CPS

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

### Box N – Tailoring POCA training

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

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

#### TRAINING IN MAGISTRATES' COURTS AND THE CROWN COURT

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

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

## **Conclusion**

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



## Chapter 5

# Moving POCA forward

### A wake up call

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

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

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

### **What needs to change?**

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

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

5.7 The breadth of these issues highlights the need for concerted action to move POCA forward at a faster rate than hitherto, at both national and local level. A national lead is required to formulate and drive a robust framework of objectives, targets and monitoring and promote coherence in relevant policy-making across three Government departments. This national ‘ring holding’ role could be discharged by the National Criminal Justice Board<sup>15</sup> (NCJB) or by CICFA (though this may require a full-time secretariat function). It could help the process if each Local Criminal Justice Board – whose core members include the police, CPS and the Courts – developed a brief action plan

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

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

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

*"no knowledge and never discussed."*

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

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

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

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

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

### **Resource issues**

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

### **Conclusion**

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

# Acknowledgements

## Review Team

### HM INSPECTORATE OF CONSTABULARY (LEAD INSPECTORATE)

Kate Flannery – HM Inspector

Peter Todd – Assistant HM Inspector

Neville Pinkney – Lead Staff Officer

Helen Notman – Inspection Support Manager

Geoff Hussey – City of London Police (fieldwork secondment)

Bob Cairns – West Midlands Police (fieldwork secondment)

### HM CROWN PROSECUTION SERVICE INSPECTORATE

Jerry Hyde – HM Deputy Chief Inspector

Anthony Rogers – HM Inspector (Business Management)

### HM MAGISTRATES' COURTS SERVICE INSPECTORATE

Colin Smith – Director, MCSI Leeds

Sandra Brown – HM Inspector

John Peacock – HM Inspector

### JOINT INSPECTION SECRETARIAT

Sharon Davidson

Martin Edgerton

Simon Heath

### REFERENCE GROUP

Roger Aldridge, ACPO

Paul Evans, HM Customs & Excise

Jim Bradley, Home Office

John Tanner, Asset Recovery Agency

Jeremy Rawlins, CPS

Ron Sargent, Dept for Constitutional Affairs (DCA)

Joyce Stewart, DCA

Terry Burke, National Crime Squad

David Thomas, National Criminal Intelligence Service

Matthew Fleming, Jill Dando Institute of Crime Science, University College,  
London

## List of Agencies visited

### FIELDWORK VISITS

Staffordshire Police  
Leicestershire Constabulary  
Durham Police  
Metropolitan Police Service  
Kent County Constabulary  
Greater Manchester Police  
CPS Staffordshire  
CPS Leicestershire  
CPS Durham  
CPS London  
CPS Kent  
CPS Greater Manchester  
Central Confiscation Branch, CPS  
Business Development Directorate of CPS

### RESIDENT JUDGES AND COURT STAFF IN:

Durham CC  
Inner London CC (Greater London)  
Southwark CC (Greater London)  
Manchester Crown Square CC (also staff of Bolton CC and Manchester Minshull Street CC)  
Leicester CC  
Maidstone CC  
Stafford CC

### MCC AREAS – COURT STAFF AND SOME MAGISTRATES, INTERVIEWED:

Durham MCC  
Kent MCC  
Greater London MCA  
Greater Manchester MCC  
Leicestershire MCC  
Staffordshire MCC

**OTHERS**

London RART

West Midlands RART

North Eastern – Durham satellite RART

HM Customs and Excise

ARA

NCS

NCIS

DCA

Home Office Financial Crime Unit

South Yorkshire Police

West Yorkshire Police

Inland Revenue Special Compliance Office – Bristol

# Glossary of Terms

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

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

## Annex 1

# The Concerted Inter-agency Criminal Finances Action Group

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

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

Its key roles are to:

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

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

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

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

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

CICFA has already delivered:

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

## Annex 2

# ARA Policy – Confiscation Case Referral Criteria

### Context

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

### 1 Confiscation investigations

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

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

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

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

## **2 Restraint applications to be made by the Agency**

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

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

## **3 Confiscation applications to be made by the Agency**

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

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

## 4 Enforcement

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

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

## 5 Transitional procedures

### A) INVESTIGATIONS

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

### B) RESTRAINT & CONFISCATION

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

### C) ENFORCEMENT

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

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

## Annex 3

# The role of Financial Investigation Units

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

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

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

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

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

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

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

## Annex 4

# A brief outline of the National Intelligence Model

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

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

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

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

The model works at three levels:

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

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

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

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