

WHAT DOES IT TAKE TO TAKE
THE PROFIT OUT OF CRIME?

THE UK EXPERIENCE

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Introduction

- Political will
- Background to POCA 2002
- POCA 2002
- Case law
- Resources
- Training
- CPS training
- CPS performance management
- Performance improvements
- Lessons learned

Political will

- Take the profit out of crime
- Resources
- Legislation
- Cross agency commitment
- Asset Recovery Board / Criminal Finances Board
- Levels of ambition and monitoring progress at a CJS level
- Carrot and stick – Asset Recovery Incentivisation Scheme and targets

Background to POCA 2002

Report by the Prime Minister's Performance and Innovation Unit in June 2000 found that existing confiscation and money laundering powers were underused and it recommended that:

- Existing confiscation procedures be simplified
- Restraint and investigative powers be extended
- Confiscation orders should be enforced
- Cash seizure / forfeiture powers be extended inland
- Civil recovery and criminal taxation powers be introduced
- Money laundering offences be consolidated.

POCA 2002

- Criminal confiscation
- Civil cash seizure / forfeiture
- Civil recovery
- Criminal taxation
- All crimes money laundering offences
- Dedicated powers of investigation

POCA 2002 - Criminal Finances Act 2017

- Unexplained wealth orders in High Court
- Unlawful conduct includes gross human rights abuses or violations
- Definition of cash extended to include gambling chips
- Summary seizure / freezing / forfeiture procedures for listed assets and money held in bank and building society accounts.

POCA 2002 - Criminal Finances Act 2017

- Disclosure orders available for money laundering and terrorist financing investigations and all investigative orders available for re-visits
- SARs - power to extend moratorium period up to 186 days
- Exchange of beneficial information with OTs and Crown Dependencies
- Information sharing between entities in the regulated sector
- Corporate failure to prevent tax evasion.

Case law

- Criminal confiscation
 - R v Waya [2012] UKSC 51
 - R v Windsor & Others [2011] EWCA Crim 143
- Money laundering
 - R v Anwoir [2008] EWCA Crim 1354;
 - DPP v Bhola [2011] UKPC 44
- Civil recovery
 - Perry v SOCA [2012] UKSC 35
 - ARA v Green [2005] EWHC 3168 (Admin);
- Cash seizure / forfeiture
 - Angus v UK Border Agency [2011] EWHC 461 (Admin)

Resources

- Additional work for the CJS as the court process is extended at both ends
 - Restraint, confiscation and enforcement
 - Investigators
 - Prosecution
 - Defence legal aid budget
 - Court hearing time and delay
- IT (JARD) and other support systems need to be enhanced.

Training

- Trained specialist and general staff
- Training for all police staff and prosecutors as a part of core training as all need to be able to recognise potential cases and how to progress them
- Accredited financial investigators and CPD
- Independent bar and defence solicitors
- Specialist prosecutor and paralegal champions
- Judiciary

CPS training

- Legal guidance, manual and template documents
- National conferences and training packages, including e-learning
- National network of lawyer and caseworker POCA champions
- National network of JARD champions
- National network of POCA enforcement champions
- Awareness raising events for private barristers
- Training package developed with the specialist bar for judges

CPS performance management

- Performance framework and Delivery Unit
- Targets - chief crown prosecutors held to account in quarterly meetings
- POCA champions appointed with time allocated for the roles
- Improved IT support
- SLA and local agreements with the police
- Enforcement SLA with HM Courts & Tribunal Service
- Procurement exercise to create a receivers' panel and framework agreement

Performance improvements

- Money laundering convictions increased from 86 in 2002 to 1520 in 2012
- E&W obtained 1100 confiscation orders to a value of £27m in 2002 compared to 6400 confiscation orders to a value of £278.8m in 2012/13
- CPS obtained about 70 restraint orders in 2002 and this increased to about 1470 orders in 2012/13
- E&W asset recovery enforcement increased from about £25m in 2001-02 to about £179m in 2012/13
- E&W 2015/16 £207m was collected from confiscation and £41m in respect of cash forfeiture - £248m almost 10 times total from 2002.

Lessons learned

- Political will is vital to success
- Confiscation must be a cross-CJS priority to succeed
- Allocate sufficient resources, both money and trained staff, to overcome the barriers to confiscation of insufficient time, knowledge and lack of will
- Set levels of ambition and monitor progress
- Adverse legal costs can be expensive – make management and staff aware
- Enforcement of value based confiscation orders takes time and may not always be possible in the case of "hidden assets" orders.

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