



House of Commons
Committee of Public Accounts

**Assets Recovery
Agency**

Fiftieth Report of Session 2006–07

*Report, together with formal minutes, oral and
written evidence*

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The Committee of Public Accounts

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The current staff of the Committee is Mark Etherton (Clerk), Philip Jones (Committee Assistant), Emma Sawyer (Committee Assistant), Pam Morris (Secretary), and Alex Paterson (Media Officer).

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Summary

The Assets Recovery Agency (the Agency) was set up in 2003 under the Proceeds of Crime Act 2002 specifically to recover assets from criminals using new and unique powers of civil recovery as well as criminal confiscation and taxation. It was tasked also with promoting financial investigation through the training, accreditation and monitoring of Financial Investigators. After five years in existence the Agency is to be disbanded, from April 2008 at the earliest, with its powers and ongoing cases transferring to the Serious Organised Crime Agency and its training functions to the National Policing Improvement Agency.

The new powers of civil recovery allowed the Agency to recover assets that were the proceeds of crime, even where the owner of the assets had not been convicted of a crime. These powers had to be tested through the courts and the Agency was successful in establishing case law in support of the new powers. Amendments have been made subsequently to the legislation to enable the Agency to recover assets more effectively and efficiently.

The Agency was set up, however, with insufficient preparatory work. There was no business case setting out the expectations for the Agency, resulting in unachievable delivery aims. The Agency is reliant on cases being referred to it by other authorities, as it has no power to instigate investigations. Out of a possible 696 potential referral partners only 129 organisations had referred cases (707 cases in total). Two police forces had failed to refer any cases. The Agency did not develop effective work processes: it failed to keep a comprehensive database of cases referred to it; it did not invest in a time-recording system to manage and monitor staff time and the cost of cases; and it failed to put in place formal and consistent case management processes to enable management to monitor the progression of cases effectively. Receivers' fees accounted for almost a quarter of the Agency's budget but the Agency did not introduce fixed price contracts until April 2006. The Agency's office is in central London, making it heavily reliant on temporary staff, and resulting in high levels of staff turnover.

The Agency had recovered assets amounting to only £23 million by December 2006 against expenditure of £65 million, and it has been unable to meet its target of becoming self-financing by 2005–06. Asset recovery has been slow because in most cases the Agency pursued the full value of the assets through the courts rather than negotiate a settlement for a proportion of the assets. It did not prioritise the higher value cases and those that were more likely to realise receipts. In setting its targets the Agency also under-estimated the time it would take to pursue cases through the courts.

The Agency has not been adequately monitoring the accreditation of trained Financial Investigators, despite its obligation under the Proceeds of Crime Act 2002. It did not know, for example, how many active Financial Investigators should have been completing Continuing Professional Development activities in order to retain their accreditation, and it was not monitoring completion of those activities. The Agency has trained some 4,500 Financial Investigators at almost £700 per place, but by summer 2006 only 1,400 of those Financial Investigators were active in the role.

On the basis of a Report by the Comptroller and Auditor General,¹ we examined the Agency on the process of setting up the Agency and using the new powers; how management of cases and monitoring of Financial Investigators might be improved and how performance might be enhanced for the future.

1 C&AG's Report, *The Assets Recovery Agency*, HC (2006–07) 253

Conclusions and recommendations

1. **The Assets Recovery Agency successfully established new powers of civil recovery set out in the Proceeds of Crime Act 2002 to recover assets that are the proceeds of crime, even where the owner of those assets has not been convicted of a criminal offence.** It has tested the law through pursuing cases in the Courts, and laid the foundations for the Serious Organised Crime Agency to make effective use of these powers in the future.
2. **The Agency has recovered only £23 million against expenditure of £65 million, and missed its target to be self-financing by 2005–06.** Whilst its approach has been to investigate cases and pursue them through the courts to test the new legislation, the Agency's largest recovery accounting for half of the £23 million was obtained through negotiation and settlement. As powers are transferred to it, the Serious Organised Crime Agency should:
 - maintain separate records for expenditure on, and receipts arising from civil recovery, taxation and criminal confiscation cases within the records of the Serious Organised Crime Agency, to enable future assessment of the effectiveness of the use of the Proceeds of Crime Act 2002; and
 - actively consider the cost: benefit ratios of pursuing recovery through the courts compared with arriving at a negotiated settlement having regard to the net cash benefit to the Exchequer and the public interest.
3. **Management information systems do not include a comprehensive database of cases referred to and being handled by the Agency, nor a time recording system for staff.** The cost of pursuing individual cases and the productivity of staff cannot therefore be easily assessed by management, hindering effective decision making on, for example, the prioritisation of cases and the most effective deployment of staff resources. The Agency and Serious Organised Crime Agency should implement management information systems to provide reliable and easily accessible information on total caseload activity, prioritisation of work, cost of handling cases, productivity of staff and monitoring of case progression.
4. **90% of the Agency's accredited Financial Investigators had not completed all the Continuing Professional Development activities required to maintain accreditation, whilst almost 30% of those initially trained by the Agency were not actively working as Financial Investigators.** Nearly 70% of Financial Investigators come from police forces where the Agency funds the training yet has no ability to influence which staff are put forward for training or how they are deployed subsequently. The Agency and National Policing Improvement Agency should:
 - set up a complete database of the names of Financial Investigators trained by it and who need to complete Continuing Professional Development activities to retain their accreditation; and

- consider charging for all Financial Investigator training to incentivise bodies putting forward staff to identify only those who they intend to deploy appropriately in such activities.
5. **Work has been hindered by high staff turnover including the loss of half the Agency's legal staff in a twelve month period.** This situation partly reflects the decision to locate the Agency's Head Office in central London and an over reliance on staff seconded temporarily from other organisations or employed on temporary contracts. The Agency should consider whether the location of its activities is cost effective.
 6. **Less than 20% of the approximately 700 bodies which can refer cases for investigation to the Agency have actually done so.** The Agency and Serious Organised Crime Agency should promote the powers provided by the Proceeds of Crime Act 2002 with referral parties, and put in place relationship management arrangements to facilitate referrals and monitoring of performance.

1 Establishing the Agency

1. The Assets Recovery Agency (the Agency) was set up in February 2003, under the Proceeds of Crime Act 2002, to extend the limited provisions for criminal confiscation. The Agency had new, unique powers of civil recovery, to recover assets from the proceeds of crime, even when the owners had not been convicted of a criminal offence. The Agency could also use criminal confiscation to recover assets from convicted criminals and prepare taxation estimates for criminal income, gain or profits. Prior to the inception of the Agency, there was no single, individual organisation tasked with recovering criminal assets. The Agency therefore invested much effort in its first four years of operation in establishing and defending the use of the new powers through the courts. The Agency had recovered criminal assets to the value of £23 million. The Agency's assets recovery functions are expected to be merged with the Serious Organised Crime Agency from April 2008 and its financial investigation training functions will be merged with the new National Policing Improvement Agency. This merger will extend the Serious Organised Crime Agency's existing powers to recover assets through criminal confiscation, to include civil recovery and taxation and increase its existing caseload by some 500 cases.²

2. The Home Office set up an implementation team to assist in the establishment of the Agency so that it could operate as soon as the Proceeds of Crime Act 2002 became law. Insufficient preparatory work was carried out, however, with no feasibility study or business case setting out what the Home Office expected to be achieved, resulting in delivery expectations which proved unrealistic. The Agency assumed, for example, that the cases it pursued would take the same length of time to progress as civil cases. In practice, however, cases have taken twice as long on average, partly due to the additional requirement to set legal precedents.³

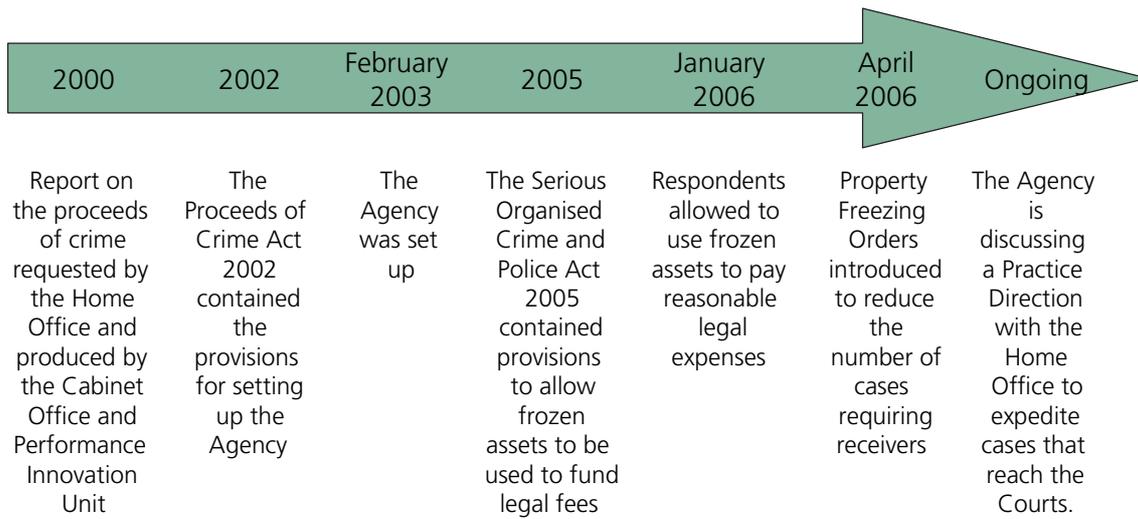
3. The Agency was dealing with novel legislation introduced under the Proceeds of Crime Act 2002, and it was always intended that there would be feedback to allow the legislation to be amended in the light of experience to enable efficient recovery of assets. Although there have been a few examples of this approach working effectively, it can still take two years or more for the Agency to review specific issues, and then for the Home Office and the Ministry of Justice to propose amendments to the legislation, **Figure 1**. So the changes indicated by the feedback are not getting implemented quickly enough.⁴

2 Qq 14, 32, 34, 37, 49–50; C&AG's Report, Figure 4, paras 1.1–2; C&AG's Report, Figure 11

3 Qq 5, 7–9, 15–21, 80–81

4 Qq 6, 14, 48, 83–5, 88–92, 97; C&AG's Report paras 3.5,3.14–15; Ev 30

Figure 1: Timeline showing the setting up of the Agency and amendments to the legislation



Source: National Audit Office and Committee hearing

2 The Agency's case management

4. Progressing cases and recovering assets through effective case management was crucial to the Agency's aims. The Agency gave insufficient consideration to its business processes resulting in basic management failures. For example:

- The Agency did not have a comprehensive database of cases referred to it. It was unable to provide the National Audit Office with a list of all cases under management, even though work by the National Audit Office estimated that only 707 cases had been received.
- The Agency decided against purchasing a staff time recording system, which they estimated would have cost some £300,000. As a result the Agency had no records of the time staff spent on individual cases, making it difficult for the Agency to estimate the cost of individual cases, to make informed decisions on the prioritisation of cases and to make the best use of staff resources, or to monitor the productivity of staff.
- The Agency reviewed cases under investigation on a monthly basis but no formal and consistent case management processes were put in place and staff were not held accountable for the progress of their cases.⁵

5. By the end of 2006 the Agency had recovered a total of £23 million and had cost £65 million to run (**Figure 2**). The Agency's approach had been to investigate cases and pursue them through the courts to test the new legislation. The Agency's largest recovery accounting for half of the £23 million recovered to the end of 2006 was, however, obtained through negotiation and settlement. The Agency had completed this case in 15 months compared to 4 years on average for cases pursued through the courts. Potentially negotiated settlement left the respondent in possession of some assets identified by the Agency as proceeds of crime, but the approach could lead to more efficient and effective recovery overall, increasing the financial benefit to the taxpayer. In Scotland the Civil Recovery Unit was in the process of looking into early settlements.⁶

Figure 2: The Agency's expenditure and receipts

	2003-04 £m	2004-05 £m	2005-06 £m	2006-07 (9 months unaudited) £m
Expenditure (gross)	11.1	14.1	23.6	16.1
Recovered asset receipts (accruals basis)	0.002	4.3	6.4	12.0

Source: National Audit Office

5 Qq 10–12, 29–30, 36, 41–45, 56–66, 125; C&AG's Report para 3.8–3.11

6 Qq 5, 11, 39; C&AG's Report, Figure 4

6. The Agency had set itself a range of targets covering the recovery of assets, the training of Financial Investigators and the public's confidence in its powers. It had exceeded targets for freezing assets and delivering training courses but had not met its target to become self-financing by 2005–06. A review of the cases in the pipeline had suggested that the Agency was unlikely to meet the self financing target by 2009–10.⁷

7. The Agency is unable to instigate cases and is therefore reliant on referrals from partner organisations. Only 129 of a possible 696 referral partners had submitted cases to the Agency by the end of August 2006. Four police forces had not referred any cases to the Agency. Of these, Hertfordshire and Dyfed-Powys Police Forces have since referred cases and Cumbria Constabulary and Humberside Police Force considered that they did not have any cases suitable for civil recovery or taxation, although they both expect to be in a position to refer cases in the future. The other 43 forces had referred over 200 cases to the Agency between them. Police forces are required to consider criminal confiscation in the first instance as this must be used in preference to civil recovery or taxation. Referral partners were confused about the role of the Agency due in part to other changes to assets recovery powers made as a result of the Proceeds of Crime Act 2002, in particular the increased powers available to the police for criminal confiscation and cash seizures. The Agency had been trying to raise its profile and the profile of assets recovery more generally with potential referral partners.⁸

8. Receivers are used now in cases where frozen assets can be managed only by those with specialist skills, mainly where entire businesses have been frozen. The Agency nominates and pays the receivers who are appointed by the courts. Receivers' fees were over £200,000 per case on average, and took up almost a quarter of the Agency's budget. Receivers were required in a lower proportion of cases now that the Agency could use Property Freezing Orders to manage many frozen assets. They remained, however, a costly option in the 10% of disrupted cases where receivers were still appointed, and in the legacy cases where they continued to act. From April 2006 the Agency had let all new receivers' contracts on a fixed price basis.⁹

9. Cases take over four years to complete on average. Continuity in the workforce is therefore key but the Agency had experienced staff turnover of almost 25% in twelve months, rising to 50% within its legal team. The Agency had located its procurement and finance staff in Belfast and criminal confiscation staff in regional offices, but the turnover of operational and training staff was compounded by the location of the Agency's head office in central London, near to the Administration Court, where there was a particularly buoyant employment market. The Agency had relied heavily on temporary staff, using a high proportion of secondees from other organisations including lawyers who were part of the Government Legal Service, which encouraged lawyers to move post every three years. When the Agency merges with the Serious Organised Crime Agency and the National Policing Improvement Agency from 2008 at the earliest, Agency staff would be able to

7 Qq 5, 22–24, 125; C&AG's Report, paras 1.6–7, 1.8, 1.11

8 Qq 13, 25–26, 51–5, 101–7, 109–11; C&AG's Report, para 2.1–2, 2.4, figure 9; Ev 30–32

9 Qq 31, 47, 98–9; C&AG's Report, para 3.14

transfer to the merger organisations or to other Civil Service posts, provided that suitable posts were available and staff were made aware of them in good time.¹⁰

¹⁰ Qq 27–8, 46, 100, 113–20, 121–4; C&AG’s Report, para 3.12

3 The Agency's monitoring of Financial Investigators

10. Under the Proceeds of Crime Act 2002, the Agency is responsible for training Financial Investigators and monitoring their performance. To fulfil its monitoring role, the Agency requires Financial Investigators to complete monthly Continuing Professional Development activities to retain accreditation. The Agency had put in place an electronic learning and support network through which Financial Investigators could complete their Continuing Professional Development activities. The system did not, however, adequately differentiate between the categories of people who could access the system and as a result, the Agency did not have a clear understanding of the number and identity of the Financial Investigators who should be undertaking Continuing Professional Development activities. Following the National Audit Office's examination, the Agency had identified that there were 1,397 Financial Investigators who should be completing Continuing Professional Development activities.¹¹

11. The Proceeds of Crime Act 2002 requires the Agency to monitor Financial Investigators' completion of their Continuing Professional Development activities. Prior to the National Audit Office's fieldwork in summer 2006, the Agency had no monitoring processes in place. 90% of accredited Financial Investigators had not completed all the Continuing Professional Development activities required to maintain their accreditation and almost 60% had completed less than half of their required activities. The Agency was seeking to improve its monitoring of Continuing Professional Development.¹²

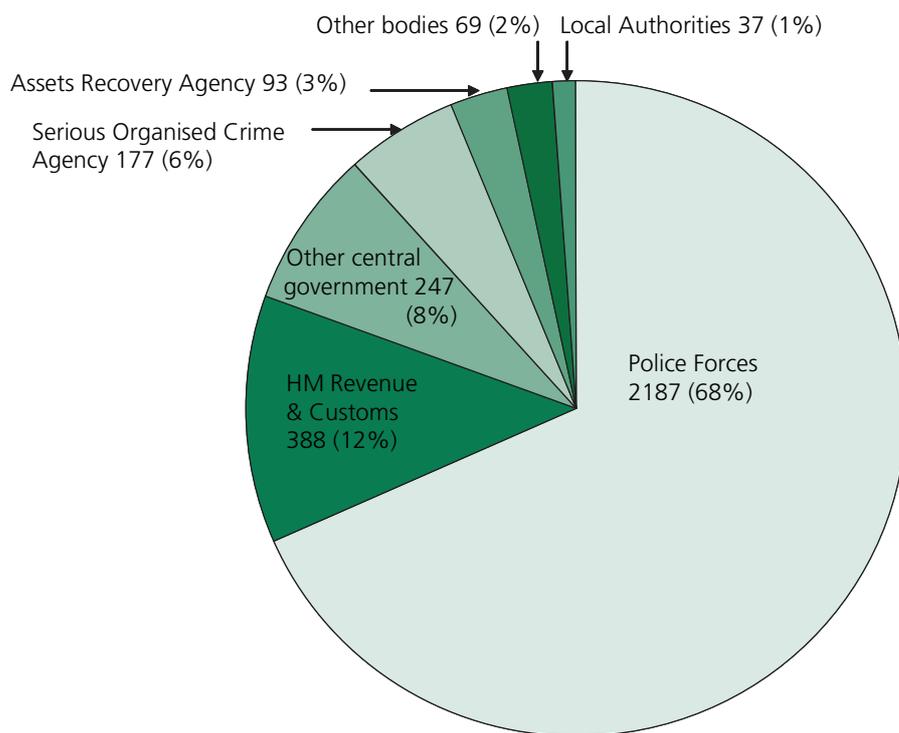
12. Training of Financial Investigators costs almost £700 per place and requires a significant investment of time by the Financial Investigator and their employing organisation during the twelve months that it takes to become accredited. The 1,397 active Financial Investigators identified by the Agency represent just 31% of the 4,500 Financial Investigators trained by the Agency during its four years in operation. The National Audit Office had identified almost 1,000 individuals, representing almost 30% of those registered on the electronic system, who were not actively working as Financial Investigators. The Agency funded training courses for people employed by police forces, who made up over two thirds of the Financial Investigators listed on the electronic system (figure 3), but the decision as to which individuals attended the courses, and the role those individuals took subsequently, lay with the employing organisation.¹³

11 Qq 69–73; C&AG's Report, paras 4.1, 4.3, 4.6–7

12 Qq 67, 108, 125; C&AG's Report, para 4.6

13 Qq 111–2; C&AG's Report, paras 4.3, 4.6

Figure 3: The proportion of Financial Investigators on the electronic system from each type of organisation



Source: National Audit Office

Formal minutes

Monday 9 July 2007

Members present:

Mr Edward Leigh, in the Chair

Mr Richard Bacon

Mr David Curry

Mr Ian Davidson

Mr Philip Dunne

Ian Lucas

Mr Austin Mitchell

Mr Don Touhig

Draft Report

Draft Report (Assets Recovery Agency), proposed by the Chairman, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 12 read and agreed to.

Conclusions and recommendations read and agreed to.

Summary read and agreed to.

Resolved, That the Report be the Fiftieth Report of the Committee to the House.

Ordered, That the Chairman make the Report to the House.

Ordered, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134.

[Adjourned until Wednesday 10 October at 3.30 pm.]

Witnesses

Wednesday 7 March 2007

Ms Jane Earl, Director, Mr Alan McQuillan OBE, Deputy Director, and Mr Charlie Dickin, Deputy Director, Assets Recovery Agency

Ev 1

List of written evidence

1	Assets Recovery Agency	Ev 14, 30
2	Cumbria Police Force	Ev 30, 31
3	Humberside Police	Ev 32

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Second Report	Improving literacy and numeracy in schools (Northern Ireland)	HC 108 (Cm 7035)
Third Report	Collections Management in the National Museums and Galleries of Northern Ireland	HC 109 (Cm 7035)
Fourth Report	Gas distribution networks: Ofgem's role in their sale, restructuring and future regulation	HC 110 (Cm 7019)
Fifth Report	Postcomm and the quality of mail services	HC 111 (Cm 7018)
Sixth Report	Gaining and retaining a job: the Department for Work and Pensions support for disabled people	HC 112 (Cm 7019)
Seventh Report	Department for Work and Pensions: Using leaflets to communicate with the public about services and entitlements	HC 133 (Cm 7020)
Eighth Report	Tackling Child Obesity—First Steps	HC 157 (Cm 7020)
Ninth Report	The Paddington Health Campus Scheme	HC 244 (Cm 7076)
Tenth Report	Fines Collection	HC 245 (Cm 7020)
Eleventh Report	Supporting Small Business	HC 262 (Cm 7076)
Twelfth Report	Excess Votes 2005–06	HC 346
Thirteenth Report	Smarter Food Procurement in the Public Sector	HC 357 (Cm 7077)
Fourteenth Report	Ministry of Defence: Delivering digital tactical communications through the Bowman CIP Programme	HC 358 (Cm 7077)
Fifteenth Report	The termination of the PFI contract for the National Physical Laboratory	HC 359 (Cm 7077)
Sixteenth Report	The Provision of Out-of-Hours Care in England	HC 360 (Cm 7077)
Seventeenth Report	Financial Management of the NHS	HC 361 (Cm 7077)
Eighteenth Report	DFID: Working with Non-Governmental and other Civil Society Organisations to promote development	HC 64 (Cm 7077)
Nineteenth Report	A Foot on the Ladder: Low Cost Home Ownership Assistance	HC 134 (Cm 7077)
Twentieth Report	Department of Health: The National Programme for IT in the NHS	HC 390 (Cm 7152)
Twenty-first Report	Progress in Combat Identification	HC 486 (Cm 7151)
Twenty-second Report	Tax credits	HC 487
Twenty-third Report	The office accommodation of the Department for Culture, Media and Sport and its sponsored bodies	HC 488 (Cm 7152)
Twenty-fourth Report	Ofwat: Meeting the demand for water	HC 286 (Cm 7151)
Twenty-fifth Report	Update on PFI debt refinancing and the PFI equity market	HC 158 (Cm 7152)
Twenty-sixth Report	Department for Work and Pensions: Progress in tackling pensioner poverty—encouraging take-up of entitlements	HC 169 (Cm 7152)
Twenty-seventh Report	Delivering successful IT-enabled business change	HC 113
Twenty-eighth Report	ASPIRE—the re-competition of outsourced IT services	HC 179
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Forty-seventh Report	Improving quality and safety—Progress in implementing clinical governance in primary care: Lessons for the new Primary Care Trusts	HC 302
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Fiftieth Report	Assets Recovery Agency	HC 391

The reference number of the Treasury Minute to each Report is printed in brackets after the HC printing number

Oral evidence

Taken before the Committee of Public Accounts

on Wednesday 7 March 2007

Members present:

Mr Edward Leigh, in the Chair

Mr Richard Bacon
Mr Philip Dunne
Mr Sadiq Khan

Mr Austin Mitchell
Mr Alan Williams

Sir John Bourn KCB, Comptroller and Auditor General, and **Janice Lawler**, Director, National Audit Office, were in attendance and gave evidence.

Marius Gallaher, Alternate Treasury Officer of Accounts, HM Treasury, was in attendance.

REPORT BY THE COMPTROLLER AND AUDITOR GENERAL THE ASSETS RECOVERY AGENCY (HC253)

Witnesses: **Jane Earl**, Director, **Alan McQuillan OBE**, Deputy Director, and **Charlie Dickin**, Deputy Director, Assets Recovery Agency, gave evidence.

Q1 Chairman: Good afternoon. Welcome back to the Committee of Public Accounts where in our second hearing today we are considering the Comptroller and Auditor General's Report, *Assets Recovery Agency*. We welcome Jane Earl, the Director of the Assets Recovery Agency. Do you wish to introduce your colleagues?

Ms Earl: If I may, Chairman, thank you very much. On my right is Alan McQuillan, who is our Deputy Director who looks after operations, and on my left is Charlie Dickin, the Deputy Director who deals with all our services and training of financial investigators.

Q2 Chairman: You are leaving your post next month, are you not?

Ms Earl: I am, Chairman.

Q3 Chairman: And the Agency is being disbanded next year, is it not?

Ms Earl: The Agency is being merged into SOCA (Serious Organised Crime Agency) and the civil recovery powers are being expanded, Chairman.

Q4 Chairman: Is this because the Agency has failed?

Ms Earl: No, I do not believe it is because the Agency has failed. If I might just give you a couple of bits of background about the Agency, but before I do could I put on record our thanks to the National Audit Office and the team that Janice led for the Report. We found the work that we did with the team extraordinarily helpful and I would not like that to go unnoticed in the general rush of questions. Your question was has the Agency failed; my answer is no. There are some things that I wish had gone faster, but I would like to draw to the Committee's attention that, as we sit at the moment, there are 126 individuals who have lost property to the value of £36.4 million. Had the Agency not existed with our civil recovery and taxation powers these would be

people still enjoying the proceeds of their unlawful conduct and who would literally have got away with it within the mainstream criminal justice system.¹

Q5 Chairman: If I could stop you there. That, no doubt, is true, but that is not normally how we conduct our inquiries. In order to keep public sector bodies like yours up to the mark we like to see how you perform against targets. If you look at paragraph at 1.8, figure 4, which you will find on page 11, you can see that the Agency has not met its objective, albeit a modest objective, of recovering assets to the value of its annual revenue. You have not even met the modest target of covering your annual running costs. How can you, therefore, feel that you have succeeded in the task you set yourself?

Ms Earl: Chairman, I am certainly not saying to you that we have succeeded in the entirety of the task we set ourselves, but I would like to come back to where the targets came from. We were set up four years ago to undertake completely new processes with new legislation and we were very excited about that chance, and continue to be excited about it, but we produced our business plan within six weeks of the Agency being set up. At that time we had something less than 20 staff and no cases, and I have to say to you that although we had talked to a lot of other organisations about how long our cases might take, nobody could give us an accurate projection. We thought long and hard about how to project forward and to set ourselves some targets and we worked on the best available information which said that our cases should take approximately two years from start to finish. We turned out to be hopelessly over-optimistic about that, and I have to apologise to you and the Committee for that, we got it wrong. Our cases have taken approximately four years to get from start to finish and I am sure the Committee will want to talk about the reasons for that.

¹ Ev 14-15

Assets Recovery Agency

Q6 Chairman: It is always good when people apologise, but we still have to carry on with the meeting this afternoon so, by any standards, a disappointing performance, you have accepted that. Is it because you did not have the right powers?

Ms Earl: I think it would be wrong of us to blame the powers. There are some things in the legislation which were there properly because Parliament wished to ensure that the legislation would be compliant with the Human Rights Act, in particular. I would like to put on the record and right something that *File on 4* did not accurately report last week: the reason that there is a 12-year period of limitation, beyond which we cannot look at property acquired before that date, was a conscious decision of Parliament, we never sought to have that changed because we understand why that restriction is there. However, we do know that this means there are some large internationally-known names of criminals who are outside the reach of the Agency because of that limitation period. The second thing about powers is that, clearly, we have had to work our way through various things in the Act. One of the early causes of delays was in connection with the ability of respondents to be able to obtain legal representation and funding for their legal representation. We worked closely with the Home Office and managed to get an amendment in place so that we can now have legal funds drawn down from frozen assets. That was a major delay in the first place, we have now rectified that. There are other areas which are not about the powers, they are simply about the length of time which a normal civil litigation process takes.

Q7 Chairman: Your previous answer worries me, although you talk about the speed with which you set this up, this often happens, does it not, that claims and promises are made about the organisation but there is not enough thinking going into the whole project before it is set up and that is what you seem to be confirming?

Ms Earl: Certainly, we have learned about new legislation but we have learned in an active way.

Q8 Chairman: You have learned on the hoof?

Ms Earl: We have learned on the hoof, that is exactly right, Chairman.

Q9 Chairman: Which explains your disappointing performance presumably?

Ms Earl: I think it would have been very difficult to learn in any other way because it has only been when we started to take cases through the courts and see how respondents react to our activities that we have been able to work out what we need to do differently, so although it would have been interesting to have had some further academic research, I am not sure that would necessarily have stood up very long in the light of real experience.

Q10 Chairman: Would it be a fair criticism that you have concentrated on the small guys but totally failed to get what we call the “Mr Bigs”?

Ms Earl: We have had a balanced portfolio of cases, including the small characters, not least as a result of the views of political colleagues who have asked us to concentrate across the spectrum. You will see from our business plan last year that we have been trying to move the volume of cases up so we do deal with some of the larger value cases. We set ourselves a target last year of having a third of our cases at Level Three criminality, the most serious criminality available. We are still moving the case values through.

Q11 Chairman: What worries me is that you have spent £65 million of taxpayers’ money and only recovered £23 million and the Agency received its biggest recovery—this is paragraph 1.10—to date of £11.5 million in November–December 2006, so half of what you have recovered comes from one recovery, that is right, is it not? By any measure, that is not a very impressive performance, is it?

Ms Earl: I would beg to differ with you, as you might imagine, because I am not going to say to you that we would not want to be able to go after some larger cases. Certainly, we have a number of those which are coming through, but it is absolutely right that our largest success to date was against an individual, Dylan Creaven, who had walked away from his criminal trial, acquitted, yet fully admitted in our civil recovery proceedings that he had at least been in possession of large amounts of taxpayers’ money through his MTIC (Missing Trader Intra-Community) fraud activities. So although it is one case, I am very proud of the fact.

Q12 Chairman: I am sure in that one case you did very well, although he seems to have shot himself in the foot by what he said, but, anyway, be that as it may, how much work did you have to do on this one case which made half your money?

Ms Earl: We had the case within the Agency for about 15 months. I cannot give you an exact detail of the amount of work but I can tell you that the legal fees in that case alone were something approaching £200,000, which gives you some idea of the complexity. In that case was, perhaps, a good example of the sorts of things we see happening. We spent quite a lot of time in front of judges in the High Court arguing about how much money Mr Creaven should have to fund his legal expenses. He asked for £600,000, or his lawyers asked for £600,000, for them to be able to prepare their defence to our trial, not to mount the trial, just to prepare the defence. I think that gives us some sort of clue about the complexity of the work that was going on in that particular instance.

Q13 Chairman: Could you look at figure 9. It says there that only 129 bodies out of a possible 696 have referred cases to you, so what is going wrong? Is it because these bodies do not have sufficient incentive to refer cases to you, or what?

Ms Earl: The first thing to say, Chairman, is that with the police forces, Revenue and Customs and the Police Service of Northern Ireland, we have a very good record there of referrals. The gaps where we

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have not had so many referrals come from local authorities, particularly smaller local authorities, perhaps, which run housing benefits departments. We think that these powers present a huge opportunity for local authorities to get better at recovering money which has been fraudulently stolen from the public purse, but it is quite clear that we have a major education programme to do and, of course, these bodies need to want to send cases to us. We have been encouraging them also to look at their own criminal prosecution and confiscation activities, so although they have not come into the Agency, we do know that through the work of the regional asset recovery teams, a number of them have been starting to use the powers of Proceeds of Crime Act to full effect.

Q14 Mr Mitchell: I am afraid it is going to go down in text books as another example of institutional failure, kind of like the CSA, in a sense, it is going to be a familiar scene. What were the origins of this? Where did the impulses that set up the Agency come from? Were they coming from politicians who wanted to show themselves as tough on crime, “We can deal with it and get the money back from the bastards”? Was it frustration on the part of authorities, a desire of the police to have some body which would track funds and get them back? Where did the impulses to set this up come from?

Ms Earl: If I might do a very brief history lesson. What happened was in the year 2000, the Cabinet Office’s Performance Innovation Unit produced a report about the proceeds of crime at the request of the Prime Minister I think and the Home Office, it was before I came into the Civil Service. The aim of that report was to look at three things, first of all, were the powers that currently existed to take money off criminals sufficient; secondly, were the powers that were in existence being used properly and thirdly, were there other things that were being done by other parts of the world that might be more efficient. The existing powers were mainly around criminal confiscation and they were very limited. If I give you a brief example. They were mainly around drug dealing, so you could confiscate money for drug dealing. One of the first cases that came to the Agency was a man who had been convicted of drug dealing and he had had a confiscation order made against him in respect of his drug dealing. He went back to the court and he appealed a proportion of his confiscation order on the grounds that he had not made the money from drug dealing there, he had made it from alcohol and tobacco smuggling and on the basis that that is where his money had come from, he had admitted that was where his money had come from, the court had to give his money back.

Q15 Mr Mitchell: I do not want to spend too long on this because we have not got much time, but here is something from blue skies thinking, is it not?

Ms Earl: Yes.

Q16 Mr Mitchell: We want to stop that gap and get the money out of people, “What can we do”, so that is the inference.

Ms Earl: Yes.

Q17 Mr Mitchell: Who then scoped it and decided whether it would work and what could be done?

Ms Earl: The original scoping was done by the Home Office as the Bill was taken through Parliament, the Proceeds of Crime Act, and when the Bill received Royal Assent—

Q18 Mr Mitchell: You mean the Bill was taken through first?

Ms Earl: The Bill set out the requirements for the Assets Recovery Agency and set out a very headline responsibility for us.

Q19 Mr Mitchell: Nobody thought before the Bill went in: “We can set up this Agency, here is how it will work and what it will do”, that was not thought of first. It was the Bill first, “We can show these bastards” and then we work out how.

Ms Earl: When I arrived in February 2003 we had an Act, we had some powers, we had an implementation team which the Home Office had set up and which had done some useful work, but we did have to move literally, as I said earlier, from a standing start. We did not know how it was going to work until we got into learning.

Q20 Mr Mitchell: The politicians are using easy populous rhetoric, we have to take our revenge and get the money back, the key thing is crime does not pay and nobody is working out, until the Bill goes through, how that is going to be done.

Ms Earl: I think it is difficult for me to give you a categorical answer on that.

Q21 Mr Mitchell: That is likely?

Ms Earl: I am sure it is possible.

Q22 Mr Mitchell: You then came in and took office and you set your own targets. Why did you set such high targets?

Ms Earl: Let me personalise this. I have always thought, as a public servant, that it is really important that we are clear and accountable about what we want to do and I have always thought that it is important that we set ourselves targets which are going to be challenging.

Q23 Mr Mitchell: The ideal of the whole thing is to begin quietly and then build up rather than: “Razzmatazz, we are going to get it”.

Ms Earl: You have already referred to the fact that there have been some suggestions made about the level of activity. What we had to do was see if we could find an appropriate level which we thought we could achieve but which we knew would be very stretching and that is exactly what we did.

Q24 Mr Mitchell: But you were over-optimistic?

Ms Earl: We were over-optimistic and I said that on the record.

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Q25 Mr Mitchell: One of the causes of failures from the Report was that there were too few referrals, their number was too low and you have given some reasons for that to the Chairman. Was it that people did not know about you or you did not publicise yourselves?

Ms Earl: No, I think it was slightly more difficult than that. People did know what was happening but, at the same time, the police forces particularly were also coping with vastly new increased powers on criminal confiscation and cash seizure so there were a lot of other things going on.

Q26 Mr Mitchell: I would have thought if you had set out targets and said: "This is how we are going to do the job", and there is always expectation, people would have been rushing to refer cases to you.

Ms Earl: No, that was not our experience. We have worked quite hard to build a reputation for taking cases through and, as I have already said to the Chairman, some of those were smaller than we would have hoped to start with.

Q27 Mr Mitchell: Clearly, you had a problem with turnover of staff from the Report. I think this is an area where you do need concentrated staff who can see the application all the way through. Why was there such a high level of turnover? Was it a failure of morale, a feeling that it was not working? Why was there turnover in that kind of fashion?

Ms Earl: I am going to ask Mr Dickin to give you the full details but I would say it is not a failure of morale, I have nothing but praise for the staff who work in the Agency who are very committed to what they do. I think Charlie might be able to tell us a little about the breakdown of where the staff have left to give you a little context.

Mr Dickin: I think the context is probably the way in which I would begin my answer to that question on the basis that a new organisation needs different skills sets at different times and clearly that contributed to individuals coming in and out of the organisation. I think the NAO Report helpfully sets out the movement of staff within the organisation over the last 12 month period and focuses in some ways on the Centre of Excellence, the training part of it. What I can tell you is that we have seen quite a high turnover of administrative support staff. We are a very small organisation, we have got a flat structure, nevertheless, we welcome individuals into the organisation and support their development.

Q28 Mr Mitchell: The smaller the organisation, the more disastrous the high turnover is.

Mr Dickin: It is more difficult. I think the point I would come to is in terms of the key posts in that particular area of the organisation, we have seen very little turnover whatsoever. The other thing it is worth mentioning here is that the organisation is a multi-disciplinary organisation with some specialist skills. There is a real need to refresh those skills both in areas of forensic accountants, for example, we second in and out of the organisation. Also, as part of the GLS (Government Legal Service) system with our lawyers and as part of the encouragement for

development of our lawyers, they seek to move on within a three-year period and, of course, we have just come through that period at the present time.

Ms Earl: Can I add one thing, if I might. 50 people left the Agency in the year that the NAO picked up on. 18 of those were temps who came in to do short-term things. Three of them were people who had been on loan from other Departments, seven were secondees from the private sector and other parts of Government and four were people who were on fixed term contracts who we knew would leave. 18 people who were permanent members of staff left the Agency which represents about 9% of staff turnover of permanent staff in that year.

Q29 Mr Mitchell: You have the cases coming in but not enough. Why did you not prioritise them and say: "we will go for the big pots, the headline successes"? Perhaps easier victories rather than big money is what are needed to prioritise. Why did you not?

Ms Earl: I want to take issue slightly with that question because I want to refer you back to the purpose that we were set up for, which was about crime reduction.

Q30 Mr Mitchell: What is in issue now is your survival as an institution. You have got to show yourself successful, otherwise we get what has happened. Why did you not set out to prioritise?

Ms Earl: Again, I am going to answer the question about survival of the institution because I want to be clear with you that I have said throughout my time here that no institution should exist in perpetuity because it is an institution. The important thing is how the powers of civil recovery and taxation are used, to make sure that they are used in more places, more often against more people. We have always believed that there would be a point at which the Agency should not exist but that the powers should go elsewhere. Why did we not go for the big cases? In some places we did go for big cases. I have to say to you that those are some of the ones that are still under litigation at the moment. When you look at our forward projections of cases which we hope will come to conclusion, which Alan can talk about in a little more detail if that would be helpful, those are still in litigation. What we have managed to do is to get them through—

Q31 Mr Mitchell: Seeing that you were effectively taken for a ride by the receivers, which is a not uncommon experience, in long cases they all tend to increase the thickness of the file to maximise their income at the expense of maximising what survives at the end, why did you not expect that? Did you trust them?

Ms Earl: Did we trust them? No, we monitored them very carefully. I do not think we trust them, but actually on some cases it is not about what they are doing; it is about how the respondents react. Alan will give a couple of examples of that.

Mr McQuillan: One of the difficulties we have with receivers is that the receivers we have, have unique powers. They both hold property and they also carry

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out investigations. The way the legislation is structured, once we appoint a receiver, the receiver is the creature of the High Court. They take control of the investigation and we lose control of it. That does not stop us carefully monitoring their expenditure. There are negative sides to that and positive sides to it. One of the positive sides was shown this week. It happened to be a Belfast case where we put a receiver in on a case with an estimated value of £500,000 and within perhaps five months they had identified a further £8.2 million worth of property that we have now frozen. So on occasions receivers come good, but the costs are horrendous and they currently amount to around 22% to 23% of our budget. We recognised that right from the start. You ask if they misinformed us. The answer is: no, they did not. When we were first set up, we noticed the potential for receivers. We took advice from people who had used receivers in other contexts. We immediately began to try to use things called Mareva Injunctions to freeze property without using the receivers, but the advice was that we were on potentially dangerous legal ground there, so we persuaded the Home Office to introduce a new power, the Property Freezing Order.

Q32 Mr Mitchell: You are going and the Agency is being wound up. Would it ever have worked? Should it be kept going?

Ms Earl: My point is not about: is the organisation working? The important point is: are the powers working? I keep coming back to this point. The powers are working. My hope is that within SOCA and with the powers of civil recovery going to other prosecutors, they will not only be used as well as we would have been using them, but they will be used in far more circumstances far more of the time.

Mr McQuillan: In terms of would it ever work, this year we are on target to meet all our operational targets. We will recover this year around £15.6 million against the base budget, the baseline budget of the Agency being £15.5 million. We will meet all our targets for disruptions and completions this year, so we have turned a corner in that sense. There is a long way to go yet. Clearly, as the NAO Report identifies, there are areas where we could further improve.

Q33 Mr Mitchell: The experience will not be lost?

Mr McQuillan: The experience will not be lost. The experience of the staff will be translated into SOCA and also SOCA will inherit a pipeline of cases worth approximately £130 million. So the pipeline at the end of this financial year will be about £130 million of assets in action, which can be realised in future years.

Q34 Mr Khan: Let us be clear. Before your inception, there was no single body tasked with the job of recovering the assets of convicted criminals?

Ms Earl: That is correct.

Q35 Mr Khan: You and Mr McQuillan have been there since the beginning. Mr Dickin joined within the last year.

Mr Dickin: I was there at the beginning as well.

Q36 Mr Khan: You were promoted recently? Good. There are two key things here. One is: do you provide value for money? Two: are there lessons to be learnt? In that context, it seems to me you can break down some of the problems you have experienced as identified by the Report into the first category, which is a steep learning curve. You did not realise cases took that period of time; there were structural problems because you were new. There is a second category, which is basic management failures. Do you accept those two sub-groups?

Ms Earl: Without necessarily accepting the words "management failures", certainly. It is helpful to separate our activities into two sub-groups.

Q37 Mr Khan: This is pioneering stuff. You are doing work that has never been tried before: the length of time you recover assets; the steps that defence lawyers, on instructions from their clients, I hasten to add, will take to prevent recovery; third party interventions, all that sort of stuff, which is pie in the sky?

Ms Earl: Yes.

Q38 Mr Khan: It could not be foreseen reasonably what obstacles you face, so it is not unfair that three years on you have had some problems in that area.

Ms Earl: No. What we did early on was to go and talk to other people who are active in civil litigation to see what sort of obstacles were put in the way of, if you like, normal civil litigation.

Q39 Mr Khan: You have obviously read my script. My next question is: are there any other countries in the world that were doing this stuff when we started to do it a few years ago?

Ms Earl: Yes. The Criminal Assets Bureau in Dublin is probably the nearest in location to us but the powers of the Criminal Assets Bureau, the way it was structured, was quite different from the way in which the Assets Recovery Agency was set up in the United Kingdom. We also looked at the experience of colleagues in South Africa and parts of Australia and parts of the United States to see what we could learn from there. Equally, we have tried to look at other bodies within the United Kingdom that are involved in civil litigation. If I might develop the point for a moment, one thing that people have said to us is that we could have made a difference much more quickly by being prepared to settle cases as would be normally the case in civil litigation. I fully accept that, but I have a particular problem which I will share with you because I am very keen to get your views on this. Our business is as much about ethics as it is about economics.

Q40 Mr Khan: I think you are right. You raise a very fair point, which is a crude balance sheet exercise to see cost recovered versus cost spend as a fair way to assess the benefit you bring. For example, before

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your inception, there were criminals getting away with the proceeds of crime but they now probably will not. Also, you have in the pipeline things about stuff you can hand over to SOCA, who will get all the glory, I am sure, but for your work we wouldn't have gone down there. Is that a fair point to make?

Ms Earl: It is absolutely fair and a point that we have made on occasions.

Q41 Mr Khan: I will make it on your behalf. We just look at the bottom line, I am afraid. There have been, I think you will have to accept, some basic errors made over the last few years. Let me give you a couple of examples. With the best will in the world, and I am trying to be helpful, staff have not been held accountable for the progression of cases. That is a basic failure, is it not?

Ms Earl: We have been trying to find ways of holding staff properly to account. I would like to ask Alan to talk you through what we are doing now, partly as a result, I fully acknowledge, of the way we deal with the National Audit Office.

Q42 Mr Khan: I am sure you are now addressing those. We only have a short time to get in as many questions as we can. A second point is this. There is no formal and consistent case management. Again, that has nothing to do with your pioneering stuff, has it?

Ms Earl: It is to do with our pioneering nature because the volume and type of cases we have been dealing with are very different. What we have not done well enough, and again I am absolutely prepared to put my hands up and apologise for this, is that we have not systematically sat down and worked through processes which we can document, but I can tell you with absolute certainty that there is not a case in the Agency where we are involved in investigation or litigation which we do not review on a monthly basis.

Q43 Mr Khan: That is the present. I am talking about the past.

Ms Earl: No, again I have to come back to you and say that we have been doing that right from the start because we have been very keen to make sure that we know where cases are. What we do not have, and I absolutely acknowledge this, is that documented in the way which we can demonstrate to the National Audit Office, and that is a failure and one for which I apologise.

Q44 Mr Khan: That leads me on to my third criticism which is this. Staff do not record the time they have spent on each case. That is a basic failure, is it not?

Ms Earl: One can view it as a basic failure but again we went and talked to people like the Crown Prosecution Service.

Q45 Mr Khan: Come, come; I did civil litigation and as an equity partner, if any of my solicitors did not bill for the time they spent on a case, they would soon know about it. It is a basic failure, you accept, do you not, not time recording work you have spend on a case. There is case management software.

Ms Earl: I am recording that we looked at producing a time recording system and we looked at acquiring it. At the time it was going to cost about £300,000, which was the cost of another case. We did not buy it and we should have done. I am not disagreeing with you at all. We should have put it in sooner.

Q46 Mr Khan: It is a basic failure. High levels of staff turnover: you have made the point that some of your high levels of staff turnover are because of temporary staff. Clearly you will know from running organisations that the best thing to do is to employ staff who will become permanent staff rather than take on temporary staff. It is not effective, is it? It is a basic point of failure. There is nothing pioneering about this?

Ms Earl: There is nothing pioneering but on occasions, if we are unable to appoint permanent staff, then we take on temporary staff to fill those gaps. That has been the difference.

Q47 Mr Khan: Another basic error we see people making all the time is to instruct private firms for some work that can be done in-house. I give you a good example, which is expenditure totally somewhere in the region of £16 million on private receivers.

Ms Earl: Alan will deal with why we spend that money.

Mr McQuillan: As I was answering Mr Mitchell earlier, we identified potential cost of the receivers at a very early stage and we persuaded the Home Office to change the legislation to give us additional types of freezing activity. In 2004–05, some 68% of our cases that were disrupted were disrupted using receivers. By this year, we have reduced that to 10%.

Q48 Mr Khan: Let me stop you there. I did not disagree with you about that. You have now identified the failing and taken steps to address that. I accept that. My point is that these are basic points that somebody other than a rocket scientist could have worked out, could they not? They are not that difficult.

Ms Earl: Can I pick up on one particular point of detail? The legislation specifically provides that if we have an interim receiving order, that has to be managed by someone who is not a member of staff at the Agency. That is a fundamental point of the legislation.

Mr McQuillan: When we were first set up, the only effective freezing power available to us was an interim receiving order. We immediately identified that. The Home Office then produced amending legislation and we immediately began to do that and we now have 68% of cases—

Q49 Mr Khan: I understand and thanks for that. I have a couple more questions. The first is this. Can you reassure us that when your Agency is merged with SOCA and the other units, we will still be able to assess for example whether the costs spent on this unit exceed or is less than the assets recovered? Will we still be able to do that exercise?

Ms Earl: That is not a question which I can answer.

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Q50 Mr Khan: Can I ask you that question, Sir John? One of the criteria of the PAC, and I know it is a crude one, to assess value for money is whether the cost spent exceeds the amount of assets recovered. When this unit merges, will you still be able to do that task?

Sir John Bourn: Yes. It should have a proper system of management accounts which will provide that information and we shall see that it does have.

Q51 Mr Khan: Thank you. Another basic failure is that one of the explanations for the low number of referrals could be a lack of “advertising” of what you do to the potential detriment of the Agency. Do you accept that?

Ms Earl: No. I am sure we could always do more. That is really important and we recognise that, but over the past four years, we have been engaged with the police service at ACPO level; we have been out in all the forces; we have run regional conferences in partnership.

Q52 Mr Khan: Which are the four forces that did not send you any work at all?

Mr McQuillan: They are: Cumbria², Hertfordshire³, Humberside⁴ and Dyfed-Powys.⁵

Q53 Mr Khan: Did any of those police forces have no convictions in the last three years? Presumably all of those had convictions in the last three or four years?

Mr McQuillan: Yes.

Q54 Mr Khan: There were thefts, drug deals made, all that sort of thing. Have you discussed with them why they failed to refer anybody to you?

Ms Earl: We have continued to go and talk to those forces.

Q55 Mr Khan: When was the first time you spoke to them?

Ms Earl: We have been talking to them literally throughout the four years life of the Agency.

Q56 Mr Bacon: When Mr Khan described some of the activities as basic management failures, I think you said that you take issue with the phrase “basic management failures”. It is slightly unfortunate for me, although it is helpful to remind me of the questions I was going to ask. Mr Khan has asked most of my questions. One of them was about the number of cases. I find it extraordinary that a new organisation, of all things, would not, from the outset, have a way of managing cases. It turns out that there were 707, although that took the National Audit Office a little while to figure out, and indeed they say in paragraph 3.10: “One database listed 536 cases but when we sought to verify this information,

the Agency gave us two additional databases, one for civil recovery and taxation cases and another for criminal confiscation cases, which listed a total of 639 cases. Both the original list of 536 cases and the two new lists contained cases which did not appear on the other lists. We [the National Audit Office] had to manually collate and check the lists to derive the figure of 707 for the total number of cases.” Surely that is a basic management failure, is it not?

Ms Earl: We certainly apologise—

Q57 Mr Bacon: Is it a basic management failure?

Ms Earl: Certainly it is a failure of not knowing how many cases have come through the door. However, that is about the number of referrals we had. Going back to the database, that is about the number of cases we were actively litigating, but a number of those cases that came through at a very early stage were returned because they simply were from people who had sent us things which we could not take forward. I can give you some detail if you would find that helpful.

Q58 Mr Bacon: You said to Mr Khan that you would like to assure him that the Agency tries to keep a track of cases regularly but you did not have them in a form that you could say to the National Audit Office, “Here are all our cases”. If you could not say it to the National Audit Office, it is unlikely you could say it to yourselves, to your management committee. That is a basic management failure, is it not?

Ms Earl: No.

Q59 Mr Bacon: What is it then?

Ms Earl: I am not going to agree with you that it is a basic management failure.

Q60 Mr Bacon: If it is not a management failure, what kind of failure is it?

Ms Earl: One of the things that we are talking about in that 707 cases is cases which came into the Agency and which went through the pre-referral, pre-assessment stage and were referred back to the reporting agency at an early stage.

Q61 Mr Bacon: Have you ever used a spreadsheet?

Ms Earl: Yes.

Q62 Mr Bacon: You know that if you type “page down” you go down to the bottom of it. Do you know how many lines there are on a spreadsheet horizontally now on the latest version of Microsoft Excel?

Ms Earl: A great many.

Q63 Mr Bacon: There are 64,000. I used to be able to trawl to the end and get there. I sat there going “page down” until I got to the bottom and there are 64,000. You could easily have all these cases in one place with one person trained on Excel. It would not have been that difficult. It would not have cost you a lot of money.

Ms Earl: No, and we did not do it.

² Ev 30-31

³ *Note by witness:* We received our first referral from Hertfordshire police force on the afternoon of Wednesday 7 March 2007.

⁴ Ev 31-32

⁵ *Note by witness:* Dyfed Powys police referred a case on 18 April 2007.

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Q64 Mr Bacon: That, surely, is a basic management failure?

Ms Earl: We held information in several different places and one of the things that we have learned is that we were managing activity by different streams. We were managing activity in Belfast; we were managing activity by civil and tax; and by criminal. What we have done is to put them all in one place because you are absolutely right.

Q65 Mr Bacon: Could I ask you if that is a basic management failure?

Ms Earl: I am still not accepting that phrase.

Q66 Chairman: What is it then? This is quite important. In your own words, if it is not a basic management failure, what is it?

Ms Earl: We started out by managing things in silos. We should have managed them as a complete—

Q67 Mr Bacon: Especially with something relatively this small, and I was struck by Mr Khan's phrase. It exactly accorded with my own reading of the Report. Can I turn to the question of financial investigators? You did not keep track of those financial investigators who were following their continuing professional development such that it was possible for people, strictly speaking, to be in a position where they should have been struck off as not being accredited. That is right, is it not?

Ms Earl: I will ask Mr Dickin to deal with that. He has the detail.

Mr Dickin: No, I cannot accept that in the way in which you put it.

Q68 Mr Bacon: What way would you put it?

Mr Dickin: I would like to say, first of all, to put it into context, part of the organisation's continuing objective was to develop financial investigation training. Again, we were starting with nothing. I would like to say in the first instance that since we have begun and the Agency became a lawful organisation, we have delivered training to 4,500 financial investigators.

Q69 Mr Bacon: I know it has got better. It says in paragraph 4.7: "The Agency has now identified that there are 1,937 accredited Financial Investigators who should be completing Continuing Professional Development." It is true, is it not, that when the NAO started you did not know how many financial investigators you should be monitoring for continuing professional development? That is true, is it not?

Mr Dickin: That is not actually correct either.

Q70 Mr Bacon: Can I read from the brief that I have been given by the National Audit Office? It says: "At the start of the audit, however, it [the Agency] did not know how many financial investigators it should be monitoring via its formal system of continuing professional development." Are you saying that is untrue?

Mr Dickin: No.

Q71 Mr Bacon: Is it true or untrue?

Mr Dickin: The figure itself was derived from the individuals who were registered on the Financial Investigations Support System, a part of which is the database that records details of financial investigators. The point I was going to make was that not all of those are financial investigators because we have a number of different categories on the Financial Investigation Support System: managers, administrative support staff and others that with whom we have done financial investigation training. Therefore, the number itself of over 3,000 was not the number of registered financial investigators.

Q72 Mr Bacon: No. So you accept, Mr Dickin, from what you have just said and the Agency has signed up to it, the sentence in paragraph 4.5 that says: "We [the National Audit Office] found contradictory information on the number of Financial Investigators." That is correct?

Mr Dickin: I do accept that they found conflicting information. The point I was trying to make was that we are quite clear that we are aware of all of the financial investigators and where they were located.

Q73 Mr Bacon: But they did not complete their questionnaires, and then in paragraph 4.5 it says: "... completion of the questionnaire being a mandatory requirement for Continuing Professional Development of Accredited Financial Investigators". Out of the 2,788 that the NAO were told about, there were only 1,028 replies received by the deadline. That is true, is it not?

Mr Dickin: I think the figure that the NAO used was the upper figure, the 3,000.

Q74 Mr Bacon: If you read paragraph 4.5, it uses a variety of things. I want to move on because I do not want to miss one other point. It is about the total number of staff you have. It over 200 but how many exactly?

Ms Earl: It is 223 as at yesterday.

Q75 Mr Bacon: You have human resources and facilities at 18.6 people. It is not normal to put in FM with HR. They are normally separate, the bloke who makes sure the central heating works and turns up at 5 o'clock in the morning to open the building up and the person who prepares the pensions and maternity leave. They are not normally bracketed together. How many of those people are HR?

Ms Earl: Our HR team is 7.2.

Q76 Mr Bacon: So the other 11 or so are facilities management?

Ms Earl: They are support staff operating in the two buildings that we have, the building in London and the building in Belfast.

Q77 Mr Bacon: For over 200 staff, you have had 707 cases it finally works out. That is only about three and a half cases per person. It would not have been that difficult to keep track of it all, would it?

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Ms Earl: No, Chairman. I am absolutely prepared to put my hand up and say we should have had a better single database. It would have made the life of the National Audit Office easier and it would have made our life easier. I am perfectly prepared to say that we did not get that right and I am very sorry.

Q78 Mr Bacon: You should send your staff on Excel courses. That is what I do with my staff.

Ms Earl: We may even come and see if you can run a part-time training course.

Q79 Mr Bacon: Parliament does it. I do not do it myself.

Mr McQuillan: I have to say that one of the problems was that we tried to run it on Excel.

Q80 Mr Davidson: I was on the Standing Committee when this was being established and we had great hopes for what you are attempting to achieve. I am a bit surprised at the impression you seem to give us, Ms Earl. When you were appointed, you started off almost with a blank sheet of paper. I was under the impression, from what we told by the Home Office at the time that this was being set up, that they had a cunning plan and that, as soon as the legislation was passed, then it would be up and running right away. That seems really not to be the case. Is that correct?

Ms Earl: Without being unduly frivolous, I think I was probably the cunning plan because we were brought in, Alan and I both arrived at a very early stage, and what the Home Office had given us was actually a very good piece of legislation, but having a piece of legislation that has been passed by Parliament and turning that into something which works, which irons out all the wrinkles, is quite a long process.

Q81 Mr Davidson: I do understand the point about all the wrinkles. I got the impression that you were talking about more work needing to be done than just simply ironing out a few wrinkles, that you were essentially starting with a blank sheet of paper and the preparatory work that could have been done—because this legislation, if I remember correctly, apart from some minor amendments, was going through the House unanimously—and ought to have been done clearly was not done and that therefore delayed your start.

Ms Earl: I do not wish in any way to diminish the efforts of the Home Office and the implementing team.

Q82 Mr Davidson: That is our job.

Ms Earl: What they were able to do was to provide us with a building; they have provided us with some initial set-up arrangements. You need to bear in mind that we were set up as a Non-Ministerial Department, which brings with it a lot of flexibility.

Q83 Mr Davidson: I understand that. That does not cover my point about inadequate preparatory work. Could I follow on this point about the fact that you

have achieved far less and you have moved far more slowly than we were led to expect would be the case. Is that at all because you had insufficient powers?

Ms Earl: There are some areas where the powers were less than we would have hoped. One of those was the point that I have already made about the ability of people to become legally represented in defending themselves in cases in front of High Court judges.

Q84 Mr Davidson: Rather than go through the detail of them, in a sense, in your view, was there an adequate feedback mechanism? We had assurances at the time when the Bill was going through that if flaws were identified, then these would be remedied. You indicated earlier, and I forget what it was, that there was a couple of points where subsequently legislation was amended. Are there still examples outstanding of flaws in the legislation which have not been addressed?

Ms Earl: I think it is not so much flaws in the legislation. We have had good dialogue with the Home Office, DCA, other Departments and the Northern Ireland Office to identify areas where we think we needed to strengthen the powers. Those have gone through a number of the criminal justice bills. The things that we are still talking about are things that we are discovering as we move forward. One of the things that is a particular frustration of mine, which I make no apology for banging on about one more time, is the lack of sanction if our respondents singularly fail to engage with the legal process. If they just do not engage with the courts, if they do not meet the court's set deadlines, what happens is that court cases are deferred; they are rescheduled, and we go back.

Q85 Mr Davidson: Rather than getting into too much detail, it would be helpful, Chairman, if we could ask for a note outlining where difficulties were identified and have been remedied and also where difficulties have been identified that have not yet been remedied and what process they are going through.⁶ This correction, this feed-back look, is an important part of it. It would be helpful to have that. To what extent have you, the people working for you and those you employ been outgunned by exceedingly high priced lawyers and accountants that have been brought in by the guilty?

Ms Earl: The respondents do bring in extraordinarily highly paid lawyers and other professional advisers. We continue to take a robust line. As I mentioned, we challenge the nonsense that the defence could possibly cost £600,000 to prepare, but there is no doubt that if you have a highly paid firm of lawyers, they will continue to rack up costs.

Q86 Mr Davidson: That is not altogether a bad thing. That just bleeds them white in a different way, does it not? It is essentially a transfer of money from criminals to lawyers. Many people may see no distinction there! Legally there is. Therefore, it is a penalty in a way on the guilty, is it not? While I

⁶ Ev 15-16

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appreciate that they can ratchet up large charges and so on, I want to be clear whether or not you find yourselves outgunned by them and not able to cope with the array of talent that is being brought against you, not whether or not they are expensive.

Ms Earl: I think the measure of that, in answer to that question, is: have we lost any cases? The answer is: no, we have not because we do use external counsel to argue our cases in courts where we need to. We do it in-house if we can, where that is better value for money.

Q87 Mr Davidson: That is a complete area where there is no difficulty as far as you are concerned?

Ms Earl: It is not so much that we are outgunned. I will ask Alan to comment in a moment, if I may. It is more the fact that what they will do is seek to find every opportunity to lengthen the processes and to continue to delay. When we get to court, we can normally win but there can be delay.

Mr McQuillan: Going back to the point that other members have raised earlier, the fundamental problem we have had arising from that is that we have won every case; we have won virtually every technical challenge but the difficulty is that it all takes time. For example, the legislation was amended to allow individuals to draw down some of their assets to pay for legal costs. We are seeing some outrageous accounts drawing amounts of money that are wholly disproportionate. We challenge every one of those in the courts. It adds three to five months on to the timescale of the case every time we have to do that. That has had an impact on our ability to deliver the actual money in the box by the right dates. That is the problem we face.

Q88 Mr Davidson: I have covered the point about being outgunned, in a sense. The other point I want to pick up is the question of the civil litigation system being too slow. Is there any way, and it comes back to the question of feedback, in which that could be speeded up that would be helpful to you where requests have been made that have not been met?

Ms Earl: I think I have already made the point about the timetables which we are now talking to the Home Office about and whether we can get some practice-led guidance or guidance in the face of the legislation about timetables so that if you have not responded, then you are deemed to have accepted.

Q89 Mr Davidson: How long have you been pursuing that with the Home Office?

Ms Earl: We have been talking about it in the context of legislation which is being drafted at the moment. We have talked about it in outline with colleagues from South Africa who have something of this sort. They tell us that it is not a panacea but we think it is certainly something worth exploring.

Q90 Mr Davidson: With respect, that does not quite answer the question. I ask you how long you have been raising this with the Home Office.

Ms Earl: It is not so much how long we have been raising it with the Home Office; it is how long we have been trying to work it through ourselves. We have certainly raised it with the Northern Ireland Affairs Committee.

Q91 Mr Davidson: If you have identified what it is you want to have as guidelines, somebody else has to produce those; you cannot produce them yourself. How long has it taken the people who ought to be producing these on your behalf to help you to do so? Is this something that has been outstanding for two years, three years or two weeks? How speedy is this feedback?

Ms Earl: We have probably been in discussion about these things certainly over the last year or so, but with the Home Office, DCA and the Court Service. It is a composite.

Q92 Mr Davidson: It would be helpful if things like that were included in the note that we receive about the issues that you are seeking to pursue.⁷ Could I ask the Comptroller and Auditor General of NAO: was this compared with the Scottish example? Is what is happening here better or not as good as what is happening in Scotland in terms of asset seizure?

Ms Lawler: We did not make any comparison with Scotland.

Q93 Mr Davidson: The legislation went through and it is part of the same legislation and it would have been an obvious thing to have done, would it not?

Sir John Bourn: Yes, it would. We should have done that.

Q94 Mr Davidson: In terms of your own position, do you benchmark yourselves against the Scottish example and have you done better or worse than the Scottish system?

Ms Earl: We do. We have very close links with the Civil Recovery Unit in Scotland, not least because of course of the taxation powers in the process.

Q95 Mr Davidson: Have you done better or worse?

Ms Earl: I am going to give you a weasel worded answer, if I may, because it is difficult to say. The Civil Recovery Unit in Scotland deals with all the cash forfeitures, which we do not deal with; those are dealt with by police forces.

Q96 Mr Davidson: Are you comparing like with like relative to that?

Ms Earl: On civil recovery cases, the volume is much smaller, obviously. I think the values of cases in the Civil Recovery Unit in Scotland have been small, but they are starting to do some very interesting work on early settlements. There is quite a big case in the pipeline with them at the moment which is in the region of just over £1 million, which they are about to settle. The framework is very different but we are in good contact with them to see what we can learn in both directions.

⁷ Ev 16-30

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Q97 Mr Davidson: The final point I wanted to raise is the question of receivers where essentially I think you are telling us that the receiver are bigger rascals than those who are convicted. Presumably, all of this must have been spotted, if not at the time, then fairly soon into the exercise. Again, in terms of feedback, why has that not been changed? Why are you still obliged to use receivers? Presumably you outlined to the Home Office and the appropriate government departments the difficulties that the mechanism that you are stuck with are causing you and sought some change. Why has that change not helped?

Mr McQuillan: That change has occurred and the Home Office were extremely responsive to this. As I have said, we were set up in 2003-04. We really began to take on the bulk of our work in 2004-05 and that year 68% of the disruptions we did used receivers. We had already identified by that stage the potential costs in that and we went to the Home Office to give us a lower cost tool and they gave us Property Freezing Orders. For example, this year we are going to disrupt 40 cases with Property Freezing Orders and six with receivers. The Home Office were responsive.

Q98 Mr Davidson: All this stuff about receivers and the badness thereof is of interest but it is historical and you no longer need to go that route?

Mr McQuillan: It is largely historical. The difficulty with receivers is that once you commission them, the costs continue until the case is concluded, at a different rate but you end up paying the bill until the end of the case. What we are seeing now is that the bulk of the receivership costs we are paying now relates to cases that were commissioned maybe two and sometimes three years ago.

Q99 Mr Davidson: It is a sort of legacy issue working its way through the system?

Mr McQuillan: We also took a policy decision at the start of this financial year, as the NAO have recommended, that we now only let new receiverships on a fixed-price basis and we force the receivers to share risks.

Q100 Mr Davidson: On the question of staffing, why are you based in London when everybody knows that London is the worst place to have and to hold staff? Why not be based in my constituency, for example, where people are much nicer and stay longer?

Ms Earl: I do not think there is anyone from Northern Ireland here, so I would like to take your point but in a different way. When the Agency was set up, there was already a commitment made that there would be a presence in both Belfast for Northern Ireland purposes and in London. The reason for putting us into London was because all of our cases were going to be conducted in the High Court. There was a view that had been taken by the implementation team that we needed to be within fairly easy reach of the High Court. That was a decision that was made prior to my arrival. When we looked at this, what we did was to say, "Are there any things that we do that could be done elsewhere?"

As a result of that, right from the start, we said that our finance team and our procurement function could be much more effectively and economically recruited in Northern Ireland rather than in London. So when we could put people into Northern Ireland, we did. We have not yet looked to go further afield than that, but we have, as we have developed, had a number of our trainers who work from their own homes to cut the cost of accommodation and also the criminal confiscation people who are related to the regional asset recovery teams are out in the regions. The reason we are in London is very much about being close to the High Court for litigation purposes. I think that were we continuing in an independent form, we would have been looking to see where else we could go to reduce the costs and to use new technology, and we already use things like video conferencing very successfully, to make some of those savings.

Q101 Mr Williams: I see from the Report that four police forces have not referred cases. Are you surprised that they have not?

Ms Earl: Yes, we are. I think the point has already been made by one of your colleagues that there is criminality in every part of the country. I am very clear that there is criminality where civil recovery might be an appropriate response.

Q102 Mr Williams: Do these forces have any sort of mitigating argument for the fact that they have not done it?

Ms Earl: Some of them do very well with the use of criminal conviction and confiscation powers. We always have to look at whether there are cases which are suitable for civil recovery. Of course, you can do very well on criminal confiscation. If you can get people locked up and take away all the benefit of their activities, then you never need to use civil recovery. Civil recovery is, if you like, a second route after that.

Q103 Mr Williams: Are these four in that category? Are any of them?

Ms Earl: One of them, I think,

Q104 Mr Williams: Just one. What about the other three? Are they dilatory? Can you tell us which the other three are?

Mr McQuillan: Dyfed-Powys traditionally has had the highest primary detection rate for crime in the UK. It is one of the most successful forces investigating and prosecuting criminals in the UK.

Q105 Mr Williams: I am asking which of the three you were surprised have not submitted anything. Which are they?

Ms Earl: I think Hertfordshire again has a very high level of criminal conviction and confiscation. They have been using that part of the process.

Q106 Mr Williams: You said only one of the four. Now you seem to be jumping around. You said there were four. You said there is one that you were not surprised at, for certain reasons. Each time you are

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asked to name somebody, you provide a reason why they should not be named. Can you tell us who they are? If you do not remember, put in a note.

Ms Earl: The four forces that have not referred are: Humberside, Hertfordshire, Cumbria and Dyfed-Powys.⁸

Q107 Mr Williams: That is interesting. You have no powers to instigate investigations. Is that something that concerns you or does it actually save you a lot of wasted cost in doing preliminary work that is better done by someone else?

Ms Earl: I think it is entirely right, given the way that the hierarchy operates in the Act, that we do not have the power to institute investigations because clearly one of the tests we have to be satisfied about is why criminal conviction has not been possible or feasible. If we ever thought that civil recovery could be an easy way to bypass criminal convictions and confiscation, we would not be acting in the spirit of the legislation.

Q108 Mr Williams: I note that it has been referred to that you were supposed to monitor the performance of financial investigators. The fact therefore has been referred to but as this was a statutory requirement, it was actually written into the Act; a red light was flashing over it. Why on earth was it ignored?

Mr Dickin: I think the Agency had already identified a number of issues around the timeliness of its monitoring regime, particular CPD. It was acknowledged within the Report that we were in the process, through a census questionnaire, of seeking to try and resolve some of those issues. Our early policy in relation to continued professional development mirrors a number of similar professional registers on the basis that they were not time-critical for the completion of all of the activities. The CPD regime is made up of three separate elements, one of which is the activities that were set by the organisation. As I alluded, the policy of the organisation in the early stages was to re-accredit individuals on a 12 month and then three year basis. That in effect meant that, as I said, in line with other professional registers, what we would seek to do is to examine the whole content of each CPD information or box within the Financial Investigation Support System before we were to re-accredit any of the financial investigators in order to give them powers for a further period of time. We have since addressed that and, in line with the helpful recommendation from the NAO, we have changed that policy and taken on board the recommendation that what we should do would be more robust in timeliness and indeed that if individuals did not complete the CPD activity within a three-month period, then we would take action to suspend them.

Q109 Mr Williams: Coming back to my initial question, it suddenly dawned on me that I should have asked this. Have you made any direct

approaches to three of the four that you feel are dilatory by asking them why they have not responded and what explanation have they given?

Ms Earl: The first answer to the question is: yes, we have made approaches to them. We have made approaches to them at operational level and at Association of Chief Police Officer level. The general view that they have come back with is that they have not yet had something appropriate to refer to us. We cannot force people to refer cases to us. That is clearly not part of our remit. What we have to keep doing is continuing to ask them whether they have anything which they think ought to be suitable. My view is that there will be cases in every force where civil recovery would be an appropriate response.

Q110 Mr Williams: I ask the Comptroller and Auditor General: could we ask those forces why they have not? Do we have that power?

Sir John Bourn: You certainly do.

Q111 Mr Williams: With the Chairman's permission, may I ask on behalf of this Committee for an urgent reply within two weeks. There is not much left to cover. I was surprised to see that at least 30% of financial investigators did not subsequently use their skills. How much would it cost to train them? What would be the total cost of training these people and the time of the individuals employed when they went on the training course?

Mr Dickin: That is a difficult question to answer in its entirety. Can I assist you in this way? The initial training for financial investigators, the training that the organisation offers, is appropriate. It takes individuals through various levels and very different disciplines within financial investigation. To train a basic individual to the level of a financial investigator, in essence our charges were at that time were set at just under £700. In terms of timing, the course itself is a three-phased approach, so there would be an element of knowledge and testing earlier on, then a five-day residential programme, followed by the final part, the evaluation, where they would submit a competency-based portfolio, which we would validate. That can take up to 12 months.

Q112 Mr Williams: Why is it, do you think, so many have not continued using their new knowledge?

Mr Dickin: I think it is again an issue which was kindly acknowledged in the Report that we had identified at the end of the last financial year. It is very challenging to monitor and hold to account individuals across 112 organisations when of course they do not work directly for us. What we were seeking to do and to address with the census questionnaire was to provide some more substantive evidence to be able to produce to our stakeholders. Of course, with the planned introduction of the charging as of 1 April this year we hope to focus a bit more on making the best use of this valuable resource.

Q113 Mr Williams: This is my final area of questions. I see that amongst this high turnover, which Mr Mitchell referred to, you lost half of the

⁸ See footnotes 2-5 (Ev 7)

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legal staff. I would have thought they were pretty central to your operations. Why on earth have you been unable to keep half the people you desperately need?

Mr McQuillan: There are two factors but slightly different situations in Belfast and London. A number of the staff in Belfast came in as secondees from the civil service. Typically, after three years, they find they are posted back into the civil service to maintain their career progression in the civil service. The second element is that our lawyers in London are members of the Government Legal Service. Our understanding is that the Government Legal Service actively encourages lawyers to move posts every three years to broaden their experience base and maintain a wide range of experience and for career progression. We face a situation where our lawyers in London are actively encouraged by GLS to seek new posts after three years. That causes some difficulty for us. I think a longer period would be desirable. I do not think that we would expect people to stay with us in perpetuity because you do have to recognise that we operate in a very specialist area of the law. I would prefer that they stayed with us on average for a slightly longer period but the encouragement to them is to go after three years.

Ms Earl: May I add one other point? One of the other things about the lawyers is that the lawyers Alan has been talking about are, if you like, the people who work internally within the Government Legal Service. We also took a view, as part of our learning from other places, that we would benefit from bringing in people from the private sector on relatively short-term secondments, around a year at a time, mainly because we could not get them for any longer. I pay tribute to some of the firms that have allowed us to borrow some of their staff. It has been enormously helpful to us to bring in a new approach to litigation and to make sure who we are dealing with, a point Mr Davidson made about are we being outgunned. We do want to know what sort of tactics these people will be using were they representing people on the other side. We have had lawyers who have gone because they only ever came to us for a year at a time. Alan has made the bulk of the points.

Q114 Mr Williams: I can understand the value of bringing in somebody from outside. Those within the Government Legal Service, you say they are covered by this policy of moving about every three years. Are you given plenty of warning? The loss of 50% sounds severe but if you had a year's warning that they are going, it becomes a different ball game because as long you have been able to re-recruit, it is less of a problem. Is it done in an orderly, controlled and agreed style between yourselves and whoever it is that is responsible for it?

Mr McQuillan: The answer is: yes and no.

Q115 Mr Williams: Which is yes and which is no?

Mr McQuillan: We know what the policy is and therefore we expect a certain level of turnover. The difficulty is that individuals will find vacancies, find promotions, unpredictably, so we cannot control the process entirely. It is fair to say, there are in central

London sometimes recruitment difficulties of getting lawyers at civil service salaries even within the GLA and getting suitable lawyers who are prepared and experienced enough to undertake the work. It is a mixed bag but we do try actively to manage it.

Q116 Mr Williams: In fact, in a way, ignoring the Scottish imperialism of my neighbour, there is a certain sense in what he was implying that you might do better in that respect if you were sited somewhere other than in London or would that not make sense for the end product of the operation?

Mr McQuillan: One of the issues is that all our cases until recently were heard in the Administrative Court in London in The Strand, so being at another court elsewhere could cause us difficulties, although the courts are now changing and are moving more and more cases to the Queen's Bench Division, but initially the courts and the judges wished to hear our cases in the Administrative Court. We understand that was because this was novel legislation and they wanted to see it through that phase initially in The Strand in London.

Q117 Mr Williams: Would an average case be very lengthy? Often financial cases are.

Ms Earl: To give you an example of a case which is not particularly high in value, we have been asked to make available 14 days for the length of the trial. That is a case where we have a receiver in post and the receiver will be asked to make herself available for those 14 days, which will add further to our bills.

Q118 Mr Williams: The cost to the people involved who are coming in to London from outside and keeping them here, say, for 14 days, might that not be offset by the lower sum you pay for them in other parts of the country?

Ms Earl: I think there is a cost benefit analysis to be done.

Q119 Mr Williams: Are you doing it?

Ms Earl: We were starting to look at where else we might go.

Q120 Mr Williams: The Chancellor has asked that government departments should, if possible, be moving outside London. It would be in the spirit of that if you did so. Have you actually started or are you about to start?

Ms Earl: Given the proposal for merging with SOCA, part of the key arrangements for the merger with SOCA are about talking to them about the accommodation needs, location and how best to fit our asset recovery business into their mainstream activities. It is a matter which we will take forward with them but we are not in a position to make a decision about that now.

Mr Williams: Could you put in a written report? Early on you said you wanted to share with us your thoughts about something.

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Q121 Mr Bacon: I want to follow up on something Mr Williams was asking about staff. It is said the Head of Legal Operations was appointed in January of this year, the post having been vacant for three and a half months. A typical public sector horror story would be that you are then wound up and such a person would then get a big pay-off in redundancy. That is not going to happen?

Ms Earl: No.

Q122 Mr Bacon: Are any redundancies going to be paid or are all the staff going to move across to SOCA?

Ms Earl: The commitment that has been made to all the staff is that they will have the ability to transfer into SOCA and the NPIA (National Policing Improvement Agency) in accordance with the civil service code of transfer.

Q123 Mr Bacon: If they do not, will any severance payments be made?

Ms Earl: The Civil Service Code provides for them to move into the new organisation, so I cannot imagine circumstances in which redundancy would be payable.

Q124 Mr Bacon: So it is entirely unlikely that any severance or redundancy, or whatever one calls it, payments to Assets Recovery Agency staff will be made. They will either go into SOCA or they will choose to leave and they will not get their payment for doing that?

Ms Earl: I can think of practically no circumstance in which that would not be the case, but there will of course be a requirement in the civil service generally to be able to find suitable alternative roles for people to be able to move into as a result of that merger.

Q125 Chairman: You have been a very effective witness, Ms Earl. To sum up, you have spent £65 million and you have recovered £23 million. You have no complete record of the cases referred to you. You have worked on over 700 cases and only managed to recover assets in a mere 52; 90% of financial investigators you have trained have not completed the courses that they need to. The fact is that, despite the very effective performance you have put up today, the criminal fraternity are laughing at us, are they not?

Ms Earl: Chairman, I have to say that I do not believe that that is true. I would like you to go and look at the 126 people I referred to earlier on who did leave the criminal court thinking they had got away with it and who have now lost money.

Q126 Chairman: That is such a small proportion?

Ms Earl: I want to say to you absolutely clearly that of course we have not done enough. We have not done enough in the Assets Recovery Agency; we have not done enough across the law enforcement field collectively. I am not going to pretend to you that we have dealt with crime and solved all known problems, but I will say to you that I believe that there is really strong base of work going forward, which I believe that SOCA will helpfully take forward and will start to make a real difference.

Chairman: Thank you very much.

Mr Williams: It is very dangerous to disagree with the Chairman!

Supplementary memorandum submitted by the Assets Recovery Agency

Question 4 (Mr Edward Leigh): *Purpose of asset recovery*

When we presented evidence to the Public Accounts Committee on 7 March one of the lines of discussion we touched on and about which you asked for a note concerned what the asset recovery community in general and the Assets Recovery Agency in particular is intended to achieve.

As you will be aware, the Asset Recovery Community brings together all those bodies involved in taking the proceeds out of crime. The wider community involves police, HMRC, prosecutors and other Government Departments. They use powers of cash forfeiture and criminal confiscation, whilst we at ARA use primarily civil recovery and taxation.

During the course of the session I referred to one of the dilemmas in our priority setting as being the tension between ethics and economics. By this, I mean the question of whether value for money is only measured by the financial return on cases; or whether what matters is our effectiveness in reducing crime. This involves us considering sometimes competing duties to help reduce crime and to act efficiently and effectively—ensuring that we strike the right balance between our effectiveness objectives and our ethical ones.

This is a tension reflected elsewhere in the asset recovery community, as we continue to try to measure the impact of crime. In its simplest sense, the effectiveness measure is the amount of money taken from criminals and returned to the Exchequer. However, we also need to consider other impacts. These might include the amount of money removed from criminals but paid to victims as compensation, rather than to the Exchequer. Or the amount of money they have to use on lawyers and related expenses in defending themselves from Proceeds of Crime litigation. A further measure of impact might be the amount of “working capital” taken from the criminal economy, which might otherwise have funded other criminal activity.

The Proceeds of Crime Act 2002 sets out clearly that the purpose of the Agency is to contribute to crime reduction. This is what drives the decisions we make about what our operational priorities should lie. In making those decisions we work closely with our partner organisations and follow the formal guidance given under the Act by the Home Secretary. This guidance specifically has led us to adopt a balanced mix of cases, where we do not simply concentrate on the largest value cases but also take on smaller ones where we judge that the impact on the community will be significant if we are able to remove the trappings of wealth from visible community role models.

During the past four years we have found increasingly that the impact on communities is not necessarily measured in large value recoveries, but more in terms of the local prominence of the individual against whom we have taken action, and whom local people see and can relate to. This has been particularly clear in the Northern Ireland context where the average value of our cases is much lower than that in England and Wales, and where we have been successful in freezing and restraining assets, but where we are still fighting to get our cases through the courts. In spite of our low volume and value of final recovery orders in Northern Ireland, we enjoy the support and public awareness of something over 80% of the population. And in particular, both communities believe that we are acting fairly. The public reassurance aspect of our work is fed by our active policy of publicising cases on a factual basis as soon as it is legally fair to do so. This approach has been challenged in the courts but we have today received a very positive judgment which sets out that our approach is both morally and legally correct.

In terms of the overall capacity of the Agency to deliver on targets for value of volume of cases disrupted and value of assets recovered, we need to look at the resources available. Larger higher value cases are almost invariably more complex and absorb more of the Agency's resources particularly in the investigation stage. We therefore try to have a mix of cases to maximise the impact of the POCA powers across different areas of crime and of the geography of the UK within the necessarily limited resources available to fund the Agency.

The second area where the dilemma comes clearly to the fore is, as I mentioned at the Hearing, in our policy on settlement. Our external legal representatives, in particular the barristers who represent us in our cases, have on occasions been very keen for us to reach settlements with respondents on the basis of normal civil settlement quanta of approximately 50% to both sides, and sometimes much less. There are occasions on which such settlements would have given a clear quick boost to our recovery figures. However, in the bulk of these cases we have refused to settle on simple commercial terms as to do so would allow the client to legitimise significant assets which we believe to be the proceeds of crime. I have taken the view that to do this would not be consistent with our statutory duty to "best contribute to the reduction of crime".

Our general approach therefore has been to seek to settle cases at a considerably higher level than would normally be the case in the civil courts. On occasions this has lengthened the time our cases take and has increased litigation costs. We have taken the view that to do this is in line with our core social purpose as set out in the Act and is consistent with our crime and harm reduction agenda. It also means that we will never be ashamed to defend publicly those cases in which we have agreed settlement terms because we would be able to demonstrate why we have reached a view in a particular case. This also is the reason why we will never accept a no publicity clause in our settlements.

There are also positive signs that the policy is working in practice. On more and more occasions we are negotiating our clients up from low opening offers to settlements typically in excess of 80% of the total asset value.

Whilst the issues I raise in this note are targeted specifically around civil recovery, I am well aware that these are questions which are equally applicable to all aspects of asset recovery (confiscation following conviction, for example).

I raise these issues not because I believe that the Committee will have an answer, but because I would be particularly interested to hear a debate about the purpose of asset recovery in the field of crime and harm reduction, to enable us to take view about its relative merits in relation to the cost expended on these activities.

Questions 85–92 (Mr Ian Davidson): *Legal changes requested to strengthen the Agency's recovery abilities*

At the hearing on the Assets Recovery Agency on 7 March the Committee asked for details of the legal changes that we have previously requested to strengthen our ability to recover the proceeds of crime, and confirmation of which of those changes have been made.

We have since our inception enjoyed a close relationship with the Home Office, and have had a regular dialogue at both Ministerial and official level about potential improvements to the asset recovery regime. We have regularly discussed possible changes to the Proceeds of Crime Act 2002 (POCA), and (as I mentioned at the hearing) this had led to two very significant changes as a result of the Serious Organised Crime and Police Act 2005:

- the new power for us to seek Property Freezing Orders to prevent property being dissipated during our investigations. Where an Interim Receiver's powers are not required due to the nature of the case or of the assets involved, we are increasingly using these Orders. This allows the Agency to work with greater speed and to continue to investigate cases once assets have been restrained, without the significant costs associated with the appointment of an Interim Receiver;

- a new provision for legal aid to remain an option for those respondents in civil recovery cases who are unable to access restrained assets, which was complemented by the Lord Chancellor’s direction which has disapplied the normal civil legal aid exclusion of business-related cases in POCA cases. This has helped overcome difficulties that had been encountered in the courts, in hearing cases where respondents had no access to restrained assets but were, at the same time, deemed ineligible for legal aid.

We have at various times over the last couple of years discussed with the Home Office potential changes to the civil recovery and tax powers to make them more effective still in the fight against crime. The ideas have been a mixture—some have been firm proposals that have been thoroughly thought through, others are more by way of a “wish list”. (For example, in March 2006 we sent a lengthy “wish list” to the Northern Ireland Affairs Committee.) Please find below, a table setting out some of the main proposals about civil recovery and tax changes that we have raised with the Home Office and which we believe would be particularly helpful.

I would wish to stress, however, two of the points that I made at the hearing. First, POCA is in essence a very effective piece of legislation. Our cases have taken longer to progress than we had anticipated, but this is not a direct result of defects in the legislation. Some of the delays are caused by the understandable desire of our respondents to use any means available to challenge our activities, and the attempt to delay the conclusion of the proceedings for as long as possible. To address this we have been exploring with the Home Office and other partners whether there are new ways to expedite cases. As I mentioned at the hearing, this is really the area where we think significant improvements can be made to the current regime (and such changes might be deliverable through a Practice Direction rather than legislative change). Secondly, we do recognise that some of our proposals for strengthening or enhancing the powers of civil recovery and tax raise significant issues of principle. They would require careful consultation and consideration—they are not “quick hits”.

On one point of detail, on checking our records of discussions with the Home Office we have discovered that we did in fact include on our “wish lists” the issue of the 12 year “statute of limitations” on civil recovery. Whilst this is not a matter that we have actively pursued with the Home Office, given the Human Rights principles involved, it is something that we had mentioned in notes sent to the Home Office. At no point have we suggested to the Home Office that the twelve year rule was an impediment to the operation of the Agency or has affected the delivery of our targets. I would like therefore to correct what I said at the hearing, namely that we had never raised this with the Home Office, and to apologise for having inadvertently misled you on the history of consideration of this issue.

<i>Subject matter</i>	<i>Detail</i>	<i>Reason</i>
Anonymity	Part 12—Miscellaneous and General Section 449 to be extended to allow the Law Society to register ARA lawyers under their pseudonym.	The current system allows ARA lawyers to register their place of business as their previous government employer. The recent recruitment to the legal team has seen an increase of recruitment of lawyers from outside the civil service to whom this current practice as it stands would not be able to extend.
Civil recovery	Introduce a Panel of approved barristers and solicitors who are able to take on civil recovery cases on behalf of respondents/defendants where their legal fees are to be paid from funds to be released from assets frozen in, and the subject of, the investigation and litigation.	This would ensure that where legal fees are to be paid from the assets which are the subject of the civil recovery investigation and litigation only barristers and solicitors who have proved themselves to be competent civil litigators, with a proper understanding of the over-riding objective in civil litigation in England and Wales, and who are familiar with the processes and issues arising in civil recovery litigation can act for the respondent/defendant. Currently where assets believed to be the proceeds of crime are being used to fund respondents/defendants’ legal fees a large number of different barristers and solicitors are being instructed to act on behalf of respondents. We are finding that costs are ballooning in civil recovery proceedings, that

<i>Subject matter</i>	<i>Detail</i>	<i>Reason</i>
		<p>lawyers who are unfamiliar with the principles and rules applying to civil proceedings are being instructed, a number of whom fail to recognise and follow the ethos behind modern civil litigation (to do justice between the parties and resolve cases as quickly and efficiently as possible, avoiding unnecessary litigation and costs). Consequently unnecessary delays are occurring, and inappropriate approaches are being taken to the case by some of those lawyers. In some cases the best interests of the respondents/defendants are not being represented. An approved panel of solicitors and barristers who are able to act in civil recovery cases where their fees are to be paid from assets frozen in connection with the civil recovery litigation should prove effective in saving both costs and time, and ensure respondents/defendants are represented properly and in their best interests.</p> <p>The lawyers would be paid the standard rates set out in the Legal Fees Regulations (Proceeds of Crime Act 2002 (Legal Expenses in Civil Recovery Proceedings) Regulations 2005). The panel would need to be administered by an independent party or body, and the respondent/defendant would be able to select from the approved panel the solicitor and barrister they want to represent him, subject of course to availability.</p> <p>When this issue was raised with the Law Society as a possibility as part of the consultation on the Regulations above the Law Society was not opposed to exploring this further, although it has not been taken further.</p>
Civil Recovery	Part 5—Civil Recovery Amendment of Part 5 to allow for the civil recovery of instrumentalities of crime.	<p>Civil forfeiture worldwide is divided into two categories. Some jurisdictions have laws for civil forfeiture of the proceeds of crime (as the UK does under POCA Part 5), some have laws allowing civil forfeiture of instrumentalities of crime, and some jurisdictions have both. An instrumentality is something which is used to commit a crime. It might be for example a plane used to fly drugs into the country or a house where the garden or the attic has been used as a growing place for cannabis plants.</p> <p>The UK deals with instrumentalities of crime in two ways. Firstly, upon conviction, an instrumentality can be made the subject of a deprivation order. So if a person is convicted in the Crown Court for importing drugs by boat, the Court can order the forfeiture of his boat. The second possibility is in terms of cash forfeitures under Part 5 of POCA which allow the Magistrates' Court to order the forfeiture of not only the proceeds of criminal conduct but also cash which is intended to be used in crime. So clean cash (say borrowed from a relative) which a person intends to use to buy drugs with can be forfeited as an instrumentality.</p>

<i>Subject matter</i>	<i>Detail</i>	<i>Reason</i>
		<p>Arguably the UK is falling behind the international benchmarks. The Commonwealth Model legislation which the Justice Ministers recently agreed and published on the Commonwealth website has civil forfeiture of instrumentalities of crime. The UK does not yet allow for this.</p> <p>Thus in cases of human trafficking, drugs trafficking, intellectual property crime, civil forfeiture of the instrumentalities of crime could be effective to strip out of the hands of organised crime all their business tools even where law enforcement cannot get their proceeds. They could then be auctioned. This would make it more difficult for organised crime to function without the tools of their trade. The objections sometimes raised in this area are the stories from the USA where action has been taken which is perceived as disproportionate to the original action. The UK would have a major safeguard in this area, namely the need for proportionality under ECHR. Thus the courts could not make a forfeiture order where it would be out of proportion to the underlying conduct.</p>
Civil Recovery	<p>Part 5—Civil Recovery Amend section 266 to require a court making a recovery order against property held by a limited company or held by a director of a limited company to consider whether the director or directors ought to be disqualified as company directors.</p>	<p>Corporate vehicles are frequently used to hide property obtained by unlawful conduct. Courts which conclude that corporate structures have been abused should be able to take preventative action to ensure that such abuse does not occur.</p>
Civil recovery	<p>Part 5—Civil Recovery Amend section 282(2) to allow for civil recovery action against cash.</p>	<p>Ability to take civil recovery action against cash alone would be desirable in certain cases. ARA was hoping to test the proposition that this provision (s.282(2) POCA) is simply a jurisdictional one to direct whether a case goes to the Magistrates' Court or the High Court in a case where both options are available in Lorenzo. We settled this case, though, before legal argument was heard on this point. Our argument would have been that where the Magistrates' Court option is not available (either because the money was pre-POCA and did not fall under DTA 1994 or where it could have fallen under one or other of those provisions but was for whatever reason not seized under those provisions) the proceedings against cash alone can be taken to the High Court. There was a further possible line of argument that even if the law prohibits cash only civil recovery cases in relation to where the original seizure was made pursuant to s42 DTA or s294 POCA, it does not apply to cash seized under PACE or any other power in the course of a criminal investigation. Legislative clarification would remove the need to litigate this point and allow ARA to pursue assets currently out of its reach and readily enforceable against.</p>

<i>Subject matter</i>	<i>Detail</i>	<i>Reason</i>
Civil Recovery	Part 5—Civil Recovery Section 242(2) to be amended so that a case for civil recovery may be sustained in circumstances where a respondent has no identifiable lawful income to warrant his lifestyle and purchases.	In <i>Assets Recovery Agency v Green</i> Mr Justice Sullivan held that, to be successful in civil recovery proceedings, while the Director need not allege the commission of any specific criminal offence, she must set out matters that are alleged to constitute the particular kind or kinds of unlawful conduct by or in return for which the property was obtained. However, the court concluded that if the Director satisfied the court that property represents the proceeds of unspecified unlawful conduct, but was unable to show any particular kind of unlawful conduct in relation to that property, the court would not make a recovery order. Mr Justice Sullivan commented that if Parliament had wished the Director to be able to recover property by simply alleging, and thereafter persuading the court, that, on the balance of probabilities, it had been obtained by or in return for some unspecified unlawful conduct, it could have said so, but it did not. Further slight glosses on this have been suggested in <i>Assets Recovery Agency v Olupitan</i> in our favour and in <i>Assets Recovery Agency v. John and Lord</i> against our interests.
Civil recovery	Part 5—Civil Recovery Include a “legislative steer” in relation to civil recovery proceedings in the same way as the Act provides a “legislative steer” in relation to confiscation proceedings.	The leading textbook on confiscation states that the steer sets out in statutory form “the clear purpose of the legislation”. The absence of a legislative steer in respect of civil recovery arguably places this regime in a weaker position than the confiscation regime in that it leaves the public policy to be inferred. In a case where a court may be inclined to exercise its discretion in a way which would have the effect of releasing the property frozen by means of an IRO or a PFO, a legislative steer might well have the effect of tipping the court’s discretion towards a different decision.
Civil recovery	Part 5—Civil Recovery Clarification of section 247(2) to make it clear that IRO is not a provisional measure (CF CPR Part 25) requiring early service of the claim form.	The judiciary have indicated, contrary to the HO’s stated intention in the original instructions, that the principles underlying Part 25 of the CPR apply to the IRO (and therefore the PFO). They interpret both as merely a short-term measure to prevent the dissipation of assets and so have put the Agency under pressure to serve the claim form at an early stage as if these were freezing orders under Part 25 of the CPR.
Civil Recovery	Part 5—Civil Recovery Part 5 to be amended to allow for time limit within which respondents must lodge their defence to civil recovery proceedings.	The South African civil forfeiture legislation, in its Prevention of Organised Crime Act 1998, provides that a respondent who wishes to defend such proceedings must submit to the court, within a specific timescale, an affidavit specifying the nature of his interest in the property and the basis of his defence to the proceedings. Similar provision might be considered but in such a way as to ensure that the court had the power to require further and better particulars if the respondent failed to properly engage with the court on this issue.

<i>Subject matter</i>	<i>Detail</i>	<i>Reason</i>
Civil Recovery	<p>Part 5—Civil Recovery Amend section 305 to extend the tracing provisions to include property which represents, in whole or in part and directly or indirectly, the original property. Alternatively, to accomplish a similar objective by the amendment of section 242.</p>	<p>ARA has encountered a situation where a person was using proceeds of crime to pay for incidental expenses and child benefit to pay a mortgage. The child benefit would obviously have been required to meet these incidental expenses, but for the use of money which was the proceeds of crime. The tracing provisions are not currently wide enough to guarantee that the payments toward the mortgage are recoverable. An alternative approach, which could be more effective, might be to add a provision in section 242 to the effect that where a person uses limited clean income on purchasing property, while using criminal proceeds to fund general lifestyle expenses (which could not have been otherwise afforded) the property which has been obtained by the unlawful conduct.</p>
Civil recovery	<p>Part 5—Civil Recovery Allow civilians working under PoCA to have greater investigative and other enforcement powers. This mirrors the position of civilians operating under the Police Reform Act 2002. Possible amendments include:</p> <ul style="list-style-type: none"> — Interim receivers under Part 5 having the powers of reasonable force in their investigative function. [<i>Ideally this would also be extended to ARA investigators under their search powers</i>]; — Civilians (perhaps only accredited financial investigators, those investigating as the Director and/or designated police civilian staff) having the powers to search for and seize cash under Chapter 3 of Part 5. — Civilian experts being able to accompany the execution of a search, e.g. computer experts and forensic accountants. (Section 356(6) to allow non-ARA staff to accompany a warrant. This section provides that the Director of the Agency may give written authorisation for members of her staff to accompany the person to whom a search warrant has been granted. It does not include an ability to authorise persons who are not members of the Agency staff, such as specialists (eg police, computer experts, and forensic accountants)). 	<p>This mirrors the position of civilians operating under the Police Reform Act 2002.</p>
Civil recovery	<p>Part 5—Civil Recovery Clarification of section 248—registration of interests in land/property.</p>	<p>This has been the root of much debate as to who is entitled to make such application in England and Wales. Subsection (3) states that no notice may be entered in the register of</p>

<i>Subject matter</i>	<i>Detail</i>	<i>Reason</i>
		title under the Land Registration Act 2002 in respect of an interim receiving order—the basis for this is we assume the fact that Hansard (13 May 2002 column 105) stated that the purpose of this was to ensure that the orders are simply registered as pending land actions—this has caused confusion at the land Registries at the enforcement authorities and at the interim receivers—this needs statutory clarification on what is to be registered and by whom).
Civil Recovery	<p>Suggested Amendment—Part 5 Civil Recovery Amend Part 5 to allow for the giving in evidence of previous convictions which would otherwise be inadmissible due to the effect of the Rehabilitation of Offenders legislation.</p>	<p>A significant number of civil recovery cases have been hampered by the courts' refusal to admit evidence of spent convictions during civil proceedings as well as refusing applications for investigative orders where they are being sought for the purpose of civil recovery investigations.</p> <p>The Rehabilitation of Offenders Act allows for a certain amount of judicial discretion to be employed in deciding whether or not to admit evidence of spent convictions. However the bar for this is set very high. Evidence of spent convictions can only be admitted if justice cannot be done except by admitting the spent conviction. Nonetheless experience is demonstrating that this is no longer adequate. In one recent case the court gave a clear indication that it was only likely to accede to such an application in extremis. It also indicated that it seemed illogical that, while in a particular case evidence of the facts underlying the conviction could not be admitted because the conviction was spent, the evidence could have been admitted if the defendant had been acquitted.</p> <p>POCA exists because many criminals reach a point where they are able to insulate themselves from arrest. Over time, their convictions gradually become spent and it is therefore increasingly difficult to prove that financial empires were built on a base of criminal activity.</p>
Civil Recovery	<p>Suggested Amendment Part 5—Civil Recovery Section 247(2)(b) to be amended to remove the words “in relation to the “same unlawful conduct”.”</p>	<p>This inhibiting subsection detracts from the purpose of identifying proceeds of unlawful conduct irrespective of where the conduct took place. It provides a technicality through which property can escape on the basis, for example, that the initial investigation centred on theft whilst the receiver believes that a Ferrari has been purchased with drugs proceeds. Whilst ultimately the car might be recovered, doing so could necessitate a whole new set of proceedings.</p>
Civil Recovery and investigative powers	<p>Part 8—Investigations Section 376 to be amended to allow the Director to issue Letters of Request in respect of civil recovery investigations.</p>	<p>Certain countries may be willing to respond to Letters of Request on a bilateral basis in respect of non-conviction based investigations into criminal proceeds as long as there is a statutory power for the issuing of the Letter of Request.</p>
Civil recovery/enforcement	<p>Introduce in section 245 or 246 the power to apply for a receiving order which freezes the property and appoints a receiver who can be</p>	<p>The current regime allows for property to be frozen while the agency investigates and litigates (a Property Freezing Order s.245A) or for property to be frozen and an interim</p>

<i>Subject matter</i>	<i>Detail</i>	<i>Reason</i>
	a member of the enforcement authority solely to manage the property frozen until the court orders otherwise (ie power to have ARA in-house receivers).	<p>receiver appointed to both manage the frozen property and investigate and report on whether or not the property frozen is recoverable (s.246). There are though many cases where what is needed is an order which allows the assets to be managed by someone other than the respondent/defendant but where for time and costs reasons it would not be either desirable or proportionate to have an interim receiver appointed.</p> <p>There is no scope for property to be frozen and a receiver appointed to manage the property while the Agency investigates and litigates (although there is some debate about whether an interim receiver can be appointed without being granted investigation powers and a given a reporting responsibility). This proposed amendment would allow for property which needed managing to be frozen without any duty to investigate and report being placed on the interim receiver, and allow for that receiver to be a member of the Agency or other enforcement authority, as is the case in Ireland. CAB regularly successfully seeks the appointment of a receiver who is the Chief Legal Officer at CAB to manage the assets while the investigation and litigation is progressed and concluded. This is a considerably cheaper and simpler option and ensures that the enforcement authority remains responsible for the case in all its aspects.</p>
Civil recovery/receivers	<p>Part 12—Miscellaneous and General Section 449 to be extended to encompass interim receivers and their staff.</p>	Security considerations following inadvertent disclosure that an Interim Receiver is operating under non-statutory pseudonym in NI. Consideration should also be given to the Irish approach (originally laid before the House in the Bill) of it being an offence to identify a member of ARA (and with it being extended to receivers).
Civil Recovery/Receivers	<p>Part 5—Civil Recovery Section 247 to be amended so as to allow an interim receiving order to require police to assist the receiver by being present on premises.</p>	Currently, police may not attend with a receiver on property unless there is an imminent or actual breach of the peace. Accordingly receivers are forced to hire private security at costly rates.
Civil Recovery/Receivers	<p>Part 5—Civil Recovery Part 5 to be amended to allow an interim receiver to issue Letters of Request in respect of civil recovery investigations.</p>	Certain countries may be willing to respond to Letters of Request from a receiver in respect of investigations into criminal proceeds as long as there is a statutory power for the issuing of the Letter of Request.
Civil Recovery/Receivers	<p>Schedule 6 The following powers should be added to Schedule 6: (i) A power to effect a forced entry to any premises which are either themselves recoverable property, or are premises where she reasonably believes recoverable property, or evidence which will assist her in locating recoverable property, may be found.</p>	Schedule 6 represents a non-exhaustive list by way of example of powers which may be granted to the interim receiver. It is desirable that some of the more frequently granted powers which do not currently appear in Schedule 6 were incorporated in order to reassure recipients of orders and their legal representatives of the legality of the order.

<i>Subject matter</i>	<i>Detail</i>	<i>Reason</i>
	<p>(ii) A power to extend the order to property not expressly detailed therein where the interim receiver believes upon reasonable grounds that it may be or represent the proceeds of unlawful conduct.</p> <p>(iii) A power to require a respondent to swear a power of attorney.</p> <p>(iv) A power for the interim receiver to delegate her functions and powers to her staff to allow for simultaneous operations at multiple premises.</p>	
Civil recovery/ receivers	<p>Schedule 6—powers of the interim receiver or administrator Extend the powers included in Schedule 6 to cover the following:</p> <ul style="list-style-type: none"> — Power of Attorney (tying in with section 259 (2)); — Authorisation for Police presence; — Power to extend the order to property not expressly detailed therein where the interim receiver believes upon reasonable grounds that it may be or represent the proceeds of unlawful conduct; — Power to delegate authority to staff to allow for simultaneous day one execution of Orders. 	<p>Schedule 6 represents a non-exhaustive list by way of example of powers which may be granted to the interim receiver—it would be useful if some of the more oft granted powers which do not appear in schedule 6 were incorporated in order to reassure recipients of the order and their legal representatives of the reasonableness of a particular order.</p> <p>The power to delegate authority to staff is a particular issue in Scotland.</p>
Civil Recovery/ Receivers	<p>Suggested Amendment Part 11—Co-operation Amend section 443(2) to include references to Part 5.</p>	<p>Currently, an interim receiver appointed in England and Wales under Part 5 has no powers in Northern Ireland or Scotland. Thus, if a receiver knows that property exists in one of the other UK jurisdictions, he has no powers to deal with it. In such circumstances, the Agency must go to the expense of obtaining an order in the other jurisdiction, duplicating costs. It is preferable to have the matter dealt with before one court rather than have two considering the same underlying unlawful conduct.</p>
Civil Recovery/ Receivers	<p>Suggested Amendment Part 5—Civil Recovery Sections 251 and 260 to be amended to allow a discretionary power expressly provided in the Act for the interim receiver to apply <i>ex parte</i> and on an urgent basis for directions where necessary.</p>	<p>POCA requires that any application for directions/variation etc by, <i>inter alia</i>, the interim receiver, must be on notice. This is too cumbersome. There may be occasions where the receiver considers that he needs to ask the court whether he should extend the order to property not currently within its ambit or to seek directions on a matter where the property owner should not have prior notice of the application in case he uses that notice period to dissipate property or conceal evidence or otherwise act to the detriment of a potential recovery order.</p>
Civil Recovery/ Receivers	<p>Suggested Amendment Part 5—Civil Recovery Section 251 to be amended to allow an IRO to be varied by the Court of its own motion following receipt</p>	<p>Currently what occurs is that receivers from time to time require to seek the directions of the court. To support an application for directions, the interim receiver will furnish the court with information as to his findings</p>

<i>Subject matter</i>	<i>Detail</i>	<i>Reason</i>
	of information from a receiver during an application.	so far. The issue then can be whether the Order should be amended in the light of what the receiver has told the court. The Agency has no information other than what is in the possession of the court and the respondent. This would eliminate confusion and prevent the need for duplicate applications by the Receiver and ARA in order to effect a request by the receiver for the inclusion of additional property in the IRO.
Civil Recovery/ Receivers	Suggested Amendment Part 5— Civil Recovery Section 247(3) to be amended to extend the Receiver’s protection.	Section 247(3) deals with loss or damage caused by the interim receiver and limits liability to those instances where such is caused by the interim receiver’s negligence. It seems that there is considerable scope for attacks to be launched against the interim receiver regarding the contents of her reports, claims of injury to reputation etc. Such claims might be used to delay civil recovery proceedings. It could therefore assist to afford the interim receiver some form of immunity in respect of such claims.
Civil Recovery/ Receivers/ Money laundering	Part 7—Money Laundering Section 330 to be amended so as to relieve an interim receiver of the obligation of making a disclosure to SOCA in respect of material covered by her investigation for the High Court.	Section 330 of POCA makes it an offence for a member of the regulated sector to fail to disclose. This is an impossible burden upon the interim receiver. Where the information comes to the receiver and/or her staff via her appointment or proposed appointment in such roles she should be exempt from regulation.
Confiscation and Civil Recovery	Suggested Amendment Part 5— Civil Recovery Amend section 242 to clarify the interpretation of <i>assets obtained by unlawful conduct</i> . Possibly an amendment of section 242(1) to include the words “or in connection with” after the word “by”.	ARA has been advised that if it were faced with an argument that tax (of all types) may have been unlawfully “retained” but was not “obtained” for the purpose of Part 5, it was not certain it would win. A clarifying provision to extend the scope unequivocally to include tax fraud would be helpful. Parliament did not intend the same limitations to Part 5 as they appear to have done to Part 6, but the language isn’t helpful. This may come sooner rather than later if ARA has cases (which we have going through the pipeline) say, involving MTIC fraud.
Contempt of Court	Suggested Amendment—Contempt of Court Orders Amend POCA so as to provide that the maximum penalty for contempt of a court order made by any court under POCA should be five years imprisonment and/or an unlimited fine.	Those who are defending restraint proceedings, confiscation proceedings, or civil recovery proceedings will frequently be subject to court orders requiring them to perform certain actions. These may include court orders to repatriate funds to the jurisdiction, orders to swear a disclosure affidavit, orders to bring documents within the jurisdiction. Experience has shown that defendants and respondents will often show unwillingness to comply with such orders. Where a confiscation order has been made against a defendant in criminal proceedings and he fails to comply, the default sentence can be as much as ten years imprisonment. Where, however, the non-compliance is in terms of non-repatriation of £1 million of funds to the jurisdiction, the maximum penalty for contempt is two years imprisonment. This seems inconsistent. A

<i>Subject matter</i>	<i>Detail</i>	<i>Reason</i>
Criminal confiscation	<p>Part 2—Confiscation Provide management receivers the power to manage or otherwise deal with property held under section 49(2)(b) following an <i>ex parte</i> application, with the exception of selling.</p>	<p>greater degree of compliance with court orders could be engendered by increasing the maximum penalty for contempt.</p> <p>Where there is an <i>ex parte</i> application for management receivership powers, the court has the power to allow the receiver to take possession of the property under section 49(2)(a) but not to manage or otherwise deal under subsection (2)(b). Manage or otherwise deal includes the power to sell (subsection (10)(a)) which is accepted should not be done before representations are made. However, inability to carry on the business has led to practical problems for the receiver and the course of the investigation.</p>
Criminal confiscation	<p>Part 2—Confiscation Section 75(4) to tidy up the criminal lifestyle test. Whitehall Prosecutors Group identified the problem initially.</p>	<p>There has been some confusion over the interpretation of section 75(4) and whether the £5,000 threshold for the “one plus three” offences lifestyle test required £5,000 benefit from each of the 4 offences (ie £20,000 in total) or an aggregate total of £5,000 when the benefit from each of the 4 offences are added together</p> <p>The difficulty is well illustrated by the case of Broadbent which had great success but which would not have been possible had it been a POCA case and not a CJA case. This involved a man caught evading payment for petrol which he had put in his car at a garage forecourt. There were four offences of this totalling about £250 in benefit. The financial investigation indicated a very substantial and unexplained series of assets. The lifestyle provisions were triggered on the one plus three basis, and a confiscation order of £1.2 million made. Because the benefit from the known offences was £250 the lifestyle assumptions would not have been triggered. This is something which could have an impact on the work of the Agency in terms of Trading Standards or veterinary fraud, prescription fraud etc. The Environment Agency, DWP and DEFRA have all been unable to take as many confiscation proceedings as they would like as a result of these provisions.</p>
Criminal confiscation	<p>Part 2—Confiscation Strengthened provisions for the enforcement of confiscation orders. Suggestions, which can be stand alone or mixed together, include:</p> <ul style="list-style-type: none"> — A new scheme by which the court at the confiscation hearing after hearing evidence including that of any party who has an interest in the property, the judge must make a binding order to the amount of the defendant’s interest in the property. There will be no separate enforcement stage. — Amend section 67 (4)(a) so money can be transferred from a bank account to satisfy a confiscation order without a 	<p>Re-litigation at the enforcement stage leads to frustrating and lengthy delays. If enforcement was more robust and immediate, confiscation would gain more credence, be more effective and be publicly acknowledged.</p>

<i>Subject matter</i>	<i>Detail</i>	<i>Reason</i>
	<p>restraint order—modelled on the existing “Third Party Debt Orders”.</p> <p>— Where the property is physically held by law enforcement, an order permitting the police (or which ever agency holds the property) to take title of the property. They will then sell it paying the proceeds to satisfy the confiscation order.</p>	
Gateways	Part 10—Information	There are a number of additions to the “permitted persons” category in Part 10 which are necessary. The facility to update Section 438 is available through the Home Office and is currently underway. This is a lengthy process and is dependent upon the Parliamentary Timetable, but is important to the efficient operation of the regime.
Gateways/tax	Part 10—Information Section 438 to be clarified to allow a gateway between the Agency and interim receivers without the resort by the Interim Receiver to use of Schedule 6 powers.	
Investigation powers	Part 8—Investigations Section 363 to add “safety deposit box”.	Section 363 has no express reference to ‘safety deposit box’ as previously under schedule 2 to the POC Northern Ireland Order 1996. The customer information order provisions in POCA are largely based on the precedent in the Terrorism Act 2000. ARA would like this amended so the legislation gives them the power to search a safety deposit box. Northern Ireland is achieving this by their own legislation.
Investigations	Part 8—Investigations Amend section 380 to clarify the ability to impose an account monitoring order on a solicitor’s client account.	If you want to put an AMO on a solicitor’s client account, then the wording of the Act is very difficult. By way of example a solicitor discloses that he expects a lodgement of what may be criminal proceeds to be lodged to his client account by a client within the next week. The FI wants an AMO to monitor when this happens. Section 370(4) requires the account to be one held by the person specified (ie the person under investigation in the money laundering investigation). But of course the account is not held by him but by an innocent third party, the solicitor. The wording therefore needs to be widened. There is a related and wider issue in relation to the use of Part 8 orders where a third party’s account may be being used and how a financial investigator gets access to those accounts (for example belonging to a relative) without risking breaching their Article 8 right.
Investigations	Part 8—Investigations Amend section 376 to include the ability to issue Letters of Request in civil recovery investigations. <i>[May not be required depending on Home Office progress separately to amend Part 1 of the Crime</i>	There are jurisdictions which it appears will accept Letters of Request in civil recovery investigations, for example the USA. However when the issue arises as to what domestic statutory basis there is for the Director of the Agency to issue such a Letter of Request, there is no domestic statutory

<i>Subject matter</i>	<i>Detail</i>	<i>Reason</i>
	<i>(International Co-operation) Act 2003]</i>	authority which can be called in aid. The inclusion of such a statutory basis would clarify the position.
Publicity of cases (Part 1)	Suggested Amendment Part 1— Assets Recovery Agency Section 2(3) to be amended so as to clarify that the Director may engage in fair reporting of actions taken by her in pursuance of her statutory functions under the 2002 Act.	The Director has adopted the view that fair reporting of action taken by her under the Act is likely to have an impact in terms of reduction of crime. The amendment would provide a more secure and unambiguous legal basis for her doing so.
Tax	Add to Part 6 a provision that allows for title possession property—ie that it is irrelevant for these purposes of Part 6 that the individual or company to be taxed may not have good title, possession or property to the income, benefit, profit or gain.	Under ordinary tax law an individual cannot be taxed on income or gain that is not theirs. In all criminal enterprises there is a legitimate question as to who is the lawful owner. Such an interpretation if brought against ARA would be a serious threat to the Agency’s power to tax. This amend would remove the threat of challenge by making the point explicit.
Tax	Add to Part 6 a provision that allows that no deductible expenses, losses, allowances, capital or otherwise, shall be allowed.	A criminal should not benefit from their crime. This would bring the tax provisions in-line with those for criminal confiscation, that there can be no legitimate expenses incurred in criminal offences. To prevent taxpayers using the above to minimise their tax liability.
Tax	Add to Part 6 a provision that takes away the burden from ARA to show fraudulent or negligent conduct where the law requires it in any circumstances where ARA has raised an assessment (or penalty).	In some circumstances eg where a tax return has been delivered under section 8 or s8A of the Taxes Management Act 1970, the current legal requirement is that the taxing authority needs to demonstrate that fraudulent or negligent conduct (ie the taxpayer knew or ought to have known that the tax return should have been correct). It is inconsistent for example that a taxpayer should be in a different position with regards to the proceeds of unlawful activity if they have filed a tax return compared to if they have not filed one at all. Alternatively, a similar requirement exists if the taxing authority wishes to go back in time further than 5 years. It is extremely difficult to show fraudulent or negligent conduct and having that burden means that the whole burden (to show the tax due) is effectively on the Agency.
Tax	Add to the interpretations and definitions in section 326 to include “source”, “income”, “benefit or profit” and “gain”. <i>For example:</i> — <i>Source refers to the precise activity that generates the profit, income, benefit or gain derives from;</i> — <i>Income is any amount which accrues to any individual or company and is not derived by way of gift;</i> — <i>Benefit or profit shall take their ordinary meaning and are anything other than income, profit or gain;</i>	Need to define the new terms that have been introduced to the tax regime. To make clear that the definitions that are already being used are defined in as wide an application as possible otherwise no point having above suggested amends.

<i>Subject matter</i>	<i>Detail</i>	<i>Reason</i>
	<i>Gain is any gain that a person makes under the Capital Gains Tax legislation or in the ordinary meaning of the word.</i>	
Tax	Amend section 323(3) to make revenue investigative functions (c, d, e & f) available to ARA.	Would make available to ARA the same powers of investigation in tax cases as those held by HMRC. Given ARA is dealing with criminality these powers would be appropriate and invaluable and speed up the cases and enhance performance delivery.
Tax	Amend to/repeal of section 325 and declaration in schedule 8 with regards to the Director's ability to publicise cases with regards to her function in section 2 (1)—where the Agency has reasonable grounds that income has been gained unlawfully then the duty of taxpayer confidentiality is forfeit. Also a new section would have to be added to ensure that any case law was overridden.	Ireland has the ability to release details and there is a quarterly revenue list of defaulters that is published. If someone is guilty of a tax crime, or has admitted evasion and settled administratively, they should be deemed to have forfeited their right to confidentiality. This would allow the ARA to publicise in much more detail our tax actions which would in turn have a positive impact on our statutory requirements to contribute to the reduction of crime.
Tax	Charging of new tax category to tax under Part 6: either — Create a new section containing a new charging provision under Part 6 of POCA to cover " <i>income, benefit, gain or profit derived from unlawful activity</i> "; or — Use existing legislation to charge the above to tax: by creating an amend in POCA stating: " <i>All profits, benefits, income and gains whatsoever whether capital in nature or not in respect of which the Director has reasonable grounds to suspect derive in any way whatsoever from criminal conduct are chargeable to tax under section 5, chapter 2 of the Trading and Other Income Tax Act 2005 schedule D cases 1 and 2 under section 18 of ICTA 1988 if the assessment is in relation tax years preceding 2005-2006 irrespective of anything which says otherwise elsewhere including the Taxes Act 1988 and shall be described in the Assessment as miscellaneous income or 'income, benefit, gain or profit derived from unlawful activity'</i> ".	To ensure that the new wider tax category is actually chargeable to tax otherwise there is no point having no 1 above.
Tax	Clarification of section 317(1) —add profit and benefit to "income and gain" in 317(1)(a) and (b) and throughout where necessary.	Widening the definition of what is income and gain in terms of tax law. For example, in a benefit fraud case ARA would want to tax the money but it is not income as it does not derive from a trade, profession or vocation. ARA has had a number of referrals in relation to fraud where the money comes from stealing. To date we have had to connect the money to a business of some sort

<i>Subject matter</i>	<i>Detail</i>	<i>Reason</i>
		to make it chargeable so that it becomes part of the taxpayer's trade but a lot of cases do not have a trade etc attached to it. Without widening the definition the Director will have no option to reject many cases as she has done.
Tax	Clarify and amend section 320 to make the jurisdiction of the Special Commissioners explicit and remove any suggestion that they have increased powers of review over the Director than they have over the Revenue.	Would include within the definition inheritance tax because as it is currently worded it is not included. Current drafting could be interpreted to expand the powers of review of the Special Commissioners over the Director as beyond that for HMRC. Would apply consistency of jurisdiction of the Special Commissioners with regards to Appeals for ARA and the Revenue. All other appeals would follow the usual routes.
Tax	Further clarification of section 319 with regards to taxable income within a tax year (in addition to amend IV above—would be inserted after section 319(3)). <i>For example: If it is shown that the income, gain, profit or benefit arising or accruing in a particular tax year has a purely legitimate source then the assessment is only discharged if it is shown that it is not chargeable to tax under the normal taxing provisions.</i>	This section would provide ARA with the ability to tax purely legitimate income in a situation where the Director had reasonable grounds of suspicion but the taxpayer had shown that all his income etc was legitimate. If the Director can tax legitimate income obviously this increases her recoverable amounts.
Tax	Include clearer definition/ interpretation of “standard of proof” in section 326 <i>For example: The standard of proof shall be the balance of probabilities. The burden of proof is on the taxpayer to demonstrate that the tax assessed under the assessment is not due.</i>	The clarification is needed because it currently only exists through historic case law. This provision enhances all the other amends and thereby allows the Agency to take on more cases since the burden is on the taxpayer to do most of the work. Having it in statute reduces the scope for argument in relation to where the burden lies.
Tax	Repeal section 324.	ARA deals with an entirely different type of taxpayer to HMRC and therefore the practices/concessions published by the Revenue are not appropriate to those who deliberately flout the tax laws. For example as the Revenue and Customs website indicates that theft etc is not chargeable to tax then we have to reject a lot of cases of theft , burglary and fraud (NI benefit cases) which is a big source of taxation income. In terms of practice the negotiated route advocated by Revenue and Customs practice would prevent us from issuing assessments immediately and listing appeals as quickly as possible. This slows down the whole process of recovering money.
Tax	Replace section 319(1) and (2) to put into effect the removal of the need to identify what activity the income is related to. <i>For example: The assessment shall not be discharged by reason only of the fact that the income, gain, profit</i>	Need to clarify that challenges based upon those grounds: part or indirect derivation from criminal conduct, the Director being unable to identify the precise source or any source will not be made successfully or at all. It is unclear as section 319 currently stands that legitimate income can be taxed by ARA

<i>Subject matter</i>	<i>Detail</i>	<i>Reason</i>
	<i>or benefit derives from criminal activity either in whole or in part, directly or indirectly or that it could have been charged under any other provision of tax law or because the assessment fails to identify the precise source of the profit, income, benefit or gain or because that source is unknown as long as the Director has reasonable grounds of suspicion in relation to each of the elements of the qualifying condition.</i>	ie where some income has been identified as unlawful within a tax year then all income from that tax year is taxable by ARA. This needs to be made explicit in the legislation. We are not clear from the above amend whether section 319(3) and (4) would still be required. This provision will eliminate the taxpayer's ability to challenge the tax assessment and thereby the amount due.

Email of 6 July from Assets Recovery Agency

Mr Davidson requested clarification of some aspects of the supplementary memorandum provided by the Assets Recovery Agency. This clarification is given below:

One of the Agency's key concerns over the civil recovery process is, as raised at the hearing, to seek reforms to the system that would allow for cases to be progressed more rapidly through the courts. There are two types of reform that we have been seeking:

One is a statutory reform, and is included in our list at the bottom of page Ev 19: "Part 5 to be amended to allow for time limit within which respondents must lodge their defence to civil recovery proceedings. The South African civil forfeiture legislation, in its Prevention of Organised Crime Act 1998, provides that a respondent who wishes to defend such proceedings must submit to the court, within a specific timescale, an affidavit specifying the nature of his interest in the property and the basis of his defence to the proceedings. Similar provision might be considered but in such a way as to ensure that the court had the power to require further and better particulars if the respondent failed to properly engage with the court on this issue."

The other reform—which is about changes that may require a legislative underpinning—is outlined on page Ev 16 in the covering note to our list: "we have been exploring with the Home Office and other partners whether there are new ways to expedite cases. As . . . mentioned at the hearing, this is really the area where we think significant improvements can be made to the current regime (and such changes might be deliverable through a Practice Direction rather than legislative change)." (The point is not then repeated in the main list as the list relates principally to potential changes to the law.)

Our list is a consolidated and updated schedule of previous suggestions by the Agency. It draws heavily on the list provided to the Northern Ireland Affairs Committee (NIAC) in March 2006, which it supersedes. Some of the suggestions in the list to the NIAC have been overtaken by events (eg by subsequent case law and by legislative changes); and new issues have arisen over the period since the NIAC list was drawn up.

Letter from Cumbria Police Force to the Clerk of the Committee

ASSETS RECOVERY AGENCY: SIDELINING PROPOSALS

As discussed. This is an honest response to the query and as the report indicates there have been no referrals made to the ARA as we have successfully prosecuted those who have held "criminally obtained assets". I would hope that we could advance the Dyfed Powys defence that we always secure a conviction.

I can add that the Cumbria Constabulary is currently expanding its resources to deliver the so called "Protective Services" which deals with, but not solely so, the level of criminality that is most likely to generate opportunities for us to use the full powers of POCA 2002, this will obviously include relevant referrals to the ARA.

As a result of refocussing our effort within my command we now have a better understanding of our Serious Organised Crime Groups and they are being positively targeted with some success. In each of our current operations we anticipate a successful prosecution and so may not have to use the services of the ARA for these particular jobs, however, the raised profile of the ARA following the Committee's scrutiny has served to highlight how the ARA is another part of our collective toolkit for tackling criminality. I fully anticipate we will make use of the ARA in the future but wherever we can we will try to secure a conviction in the first instance.

The constabulary is committed to using the powers created by POCA and I would suggest our record of cash seizures and our pursuit of forfeiture and confiscation orders is testimony to that. How all police forces use these other powers, in addition to ARA and RART referrals, would undoubtedly give an even fuller picture of what is being done to attack criminal assets.

**Information provided, but not printed.*¹*

Finally, I would also seek to reassure you and the Committee that Mr Baxter, Chief Constable, Mr Sunderland, Assistant Chief Constable (Operations) and our Police Authority are all committed to improving the delivery of Protective Services here in the county. This can be evidenced by their decision to significantly invest in extra resources for the delivery of protective services here in Cumbria.

Chief Superintendent Ron Smith
Commander, Protective Services Command Unit
Cumbria Police

Letter from Detective Inspector Slattery to Chief Superintendent Ron Smith

Sir with reference to the correspondence from Mr Etherton in respect of referrals to ARA I wish to report the following.

Firstly, in order to answer the queries raised from the Committee it is useful to examine the criteria used for referral to ARA;

- The case must normally be referred by a law enforcement agency or prosecuting authority.
- Criminal investigation and prosecution must have been considered and either failed or been impossible eg because of lack of resources in the law enforcement agency.
- For Civil Recovery, there must be evidence of criminal conduct that is supported to the civil standard of proof (ie on balance of probabilities) and that has generated the funding or acquisition of the referred recoverable property. The Civil Evidence Rules will apply and evidence may include hearsay, statements by co-accused or other material that could not be used in a criminal case. The professional opinion of an experienced police officer who knows the subject may also be used as evidence from an expert witness.
- For Tax Cases, there must be material to give rise to reasonable suspicion that there is criminality that has produced an untaxed income. The suspicion may rest in whole or in part on reliable intelligence.
- There must be basis for believing that civil recovery will contribute to a reduction in crime.
- Recoverable property must have been identified to a value of at least £10,000 and acquired within the previous 12 years (or 20 years for Part 6 Tax).
- All relevant case papers both criminal and financial (where applicable) are to be made available for inspection and use by the Agency, in assessing this referral for adoption. (If documents are not made available to the Assets Recovery Agency then this may affect whether the case is adopted.)

ARA itself is primarily responsible for recovering assets through civil action where a prosecution either fails or is impossible. Where we wish to confiscate the assets of criminals prosecuted through the criminal courts then this is done either by ourselves or on referral to RART (Regional Asset Recovery Team) using Proceeds of Crime powers.

It is true that Cumbria Constabulary has not referred any cases to ARA during its four year history. This is because no cases met the criteria above. The Force has had excellent success in tackling organised criminals and in taking away their assets. We have not suffered a failed prosecution of a high level criminal in this period.

We have made referrals in the following cases to RART based in Warrington;

Information provided but not printed.²

Other cases have involved discussions with ARA or consideration has been given to their involvement but Cumbria has not officially referred the cases;

Information provided but not printed.³

It is clear that some consideration has been given to referral of cases to ARA but to date none have been judged as suitable. Clearly were we to experience a failed prosecution of an organised crime group or other individual we should and will consider ARA as the next logical step. However, were we able to obtain criminal convictions and deal with assets by way of POCA either with or without the involvement of RART then we will continue to do so.

¹Information provided, not printed (*subjudice*)

²Information provided, not printed (*subjudice*)

³Information provided, not printed (*subjudice*)

Where we may be able to improve our position with ARA referrals is by using them as tactical option at T&CG. The recent work on organised crime groups in the force has highlighted a significant number of potential Level 2 targets. However, with limited operational resources it is clear that we could not tackle all these groups simultaneously or even within a reasonable timescale. Where active criminals are identified as being in possession of significant assets we could consider a referral to ARA as per the guidelines above rather than attempt to obtain criminal convictions through investigation.

Letter from Humberside Police to the Clerk of the Committee

REFERRALS TO ASSET RECOVERY AGENCY

You are correct in saying Humberside Police has not made a referral to the Asset Recovery Agency (ARA) in the four years since ARA's inception. It is also fair to say we do have a number of asset rich criminals living in our region who have not to date been pursued successfully through the criminal courts and who would make suitable referrals for ARA.

This is a position I was very much aware of when I took the post of Detective Inspector in the department in November 2006.

I have carried out some work to clarify why this is the case and a summary of the problems I identified are as follows:

- (a) Until early 2006 the department was known as the Fraud Department, and much of the work undertaken centred on traditional Fraud investigation, rather than using intelligence, SARS etc to identify targets to be tackled using POCA legislation. This did not lead to identification of suitable targets to be referred to ARA.
- (b) Without wishing to be disrespectful to my predecessors in the department I would describe the department as previously being rather "insular". There was little interaction with our Serious Crime Unit and local drugs and pro active teams which meant opportunities were missed.
- (c) Outside of the Economic Crime Section (previously Fraud Squad) there was very little knowledge or use of POCA legislation. We undertake considerable training on probationer courses, CID courses, supervisor courses to improve this situation.
- (d) Due to other commitments the Force is not able to commit resources to placing Financial Investigators on divisions at this stage, a decision made at ACPO level. The Chief Constable has explained reasons for these decisions, which are completely understandable, however in my opinion this does hold back the recognising of POCA and in particular asset seizure opportunities for the Force and subsequently other agencies such as ARA.
- (e) These budgetary restraints also mean we have a relatively small Economic Crime Section which has limited the number of investigations we can undertake.

Having identified the above issues since November 2006 the following has been put into place:

- (a) Our work is now far more geared towards investigating those criminals with assets who have not been dealt with by other conventional policing means.
- (b) I have made it my policy to "open up" the department. I have done this by establishing far closer relationships with our Serious Crime Section and other teams investigating our local criminals. We also have far more dialogue with other agencies for example RART, Inland Revenue and Customs, and local Trading Standards.

By making these changes I believe we are better able to identify targets for investigation and asset recovery suitable for both ourselves and ARA.

I have spoken at length with many people at ARA and our best chance of being successful with an ARA referral is where we have started a criminal enquiry which for any reason will not result in a criminal conviction, but where civil recovery powers may apply.

Over the last few months the Force has started a number of criminal investigations which would make suitable ARA referrals should the criminal investigation fail or have to be stopped for any reason.

I am constantly reviewing these cases and will refer them to ARA should this position occur. I'm delighted to say we have had some very good criminal convictions over recent months and no suitable ARA referral has come to light.

However I'm sure in the near future a suitable referral will come to light and I will have no hesitation in referring the matter to ARA.

As part of the Major Crime Unit of Humberside Police we are committed to tackling our criminals using all the legislative powers and assistance from other agencies available to us.