House of Commons
Committee of Public Accounts

Confiscation Orders


Report, together with formal minutes, oral and written evidence

Ordered by the House of Commons
to be printed 5 March 2014
Committee of Public Accounts
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The Reports and evidence of the Committee are published by The Stationery Office by Order of the House. All publications of the Committee (including press notices) are on the internet at www.parliament.uk/pac. A list of Reports of the Committee in the present Parliament is at the back of this volume. Additional written evidence may be published on the internet only.

Committee staff
The current staff of the Committee is Sarah Petit (Clerk), Claire Cozens (Committee Specialist), James McQuade (Senior Committee Assistant), Ian Blair and Jacqui Cooksey (Committee Assistants) and Janet Coull Trisic (Media Officer).

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Summary

Confiscation orders are central to helping assure the public that crime does not pay and deterring further criminal activity. Identifying and confiscating criminal assets is difficult, but the failure to put in place an effective system to act promptly, prioritise, co-ordinate and incentivise this work, demonstrates that the various bodies involved have simply not done enough. In 2012-13 some 673,000 offenders were convicted of a crime, but only 6,392 confiscation orders were made and only 26 pence was collected out of every £100 generated by criminal activity. Appropriate incentives for bodies to encourage better performance do not exist and the sanctions for offenders who fail to pay confiscation orders do not work.
Conclusions and recommendations

1. Confiscation orders are the main way through which the government carries out its policy to deprive criminals of the proceeds of their crimes. The intention is to deny criminals the use of their assets and to disrupt and deter further criminality, as well as recovering criminals’ proceeds. The Home Office leads on confiscation policy, but many other bodies are involved including the police, the Crown Prosecution Service and HM Courts and Tribunal Service. The overall system for confiscation orders is governed by the multi-agency Criminal Finances Board. The annual cost of administering confiscation orders is some £100 million. In 2012-13 the amount confiscated was £133 million.

2. Poor implementation of the confiscation order scheme has severely hampered its effectiveness. Confiscation orders can be a powerful mechanism for recovering criminal proceeds and combating and deterring criminal activity. The Proceeds of Crime Act 2002 provided powers for enforcement agencies to use confiscation orders, but over 10 years later the government only collects 26 pence out of every £100 generated by criminal activity. Many bodies are involved with confiscation and there is a lack of clarity over who is responsible, with no clear direction, failure to act promptly, weak accountability and no understanding of what makes good performance and delivers value for money. For example, there is limited understanding of the extent to which confiscation orders have disrupted crime. The Criminal Finances Board has failed to address these issues since its creation in 2011, but we welcome the fact that it is now chaired by a Minister and is drawing up a new improvement plan.

Recommendation: The Criminal Finances Board should develop and implement its improvement plan urgently. This plan should include well-defined objectives and success measures so that practitioners can prioritise criminal cases and orders and be able to understand and measure success beyond amounts collected. The plan should also include project milestones that the Board can use to assess progress.

3. Not enough confiscation orders are imposed. Law enforcement and prosecution agencies are missing opportunities to impose confiscation orders with only 6,392 imposed in 2012-13 when 673,000 offenders were convicted of a crime, many of which had a financial element. Each agency uses different criteria to determine when to use confiscation orders and there is a widespread lack of awareness among staff within these agencies of the relevant legislation, and seeking orders is too often given a low profile. To increase the numbers of confiscation orders and provide better guidance, the Crown Prosecution Service is developing common criteria to assess whether pursuing a confiscation order is appropriate and cost-effective.

Recommendation: Law enforcement and prosecution agencies need to agree and apply a common set of criteria to ensure that they consider consistently and properly all crimes with a financial gain for confiscation orders.

4. Not enough is being done to enforce confiscation orders once they have been made, especially in higher value cases. Enforcement bodies are much more
successful in collecting proceeds from low-value orders than high-value ones, with an enforcement rate of nearly 90% for orders under £1,000 compared to 18% for orders over £1 million. In high-value cases, the specialist financial investigators required are often brought in too late; bodies do not collaborate or share information effectively and quick action to ‘restrain’ (freeze) assets is often not undertaken. Only 1,368 restraint orders to freeze assets were imposed in 2012-13, down 27% from 2010-11. Only recently have the National Crime Agency, Crown Prosecution Service, Serious Fraud Office and HM Courts & Tribunals Service jointly identified 124 high priority cases for additional enforcement activity.

**Recommendation:** Law enforcement agencies should work together to ensure that financial investigators are brought in early in high value cases and use restraint orders quickly to prevent criminals hiding their illegal assets. The Crown Prosecution Service and National Crime Agency should also report to the Criminal Finances Board on the enforcement progress of its priority cases.

5. The incentive scheme to encourage the many bodies involved to confiscate proceeds of crime is opaque and ineffective. The existing scheme simply rewards bodies for the amount of money they collect, ignoring the other key policy objectives of asset denial and crime disruption. The scheme also fails to reflect the relative contribution and effort each body makes, with the Home Office receiving 50% of confiscated assets despite its having no operational role. It is not clear how monies received under the incentive scheme are used with only 62% of the organisations involved producing returns in 2012-13. We therefore welcome the Home Office’s decision to review the scheme.

**Recommendation:** The current incentive scheme for bodies involved in confiscation orders should be revised to ensure it is aligned with the success measures and objectives set out in the new Criminal Finances improvement plan and to link effort and reward. The Home Office should also ensure that there is proper reporting on the use made of scheme funds.

6. The bodies involved with confiscation orders do not have the information they need to manage the system effectively. The focus of the management information available to enforcement and collection agencies on confiscation orders is on how much has been imposed and how much has been collected. They lack detailed information on how much different enforcement activities cost, how successful different activities are and how much is realistically collectable in different cases. Without such information enforcement agencies cannot tell which orders they should prioritise for most impact on criminal activity and which approach to enforcing them will be most successful or cost-effective. Enforcement teams also have to rely on dated ICT systems that are not interoperable, leading to errors and time wasted re-keying information between systems. For example, an estimated 45 hours a week is wasted on HM Courts and Tribunals Service’s Confiscation Order Tracking System (COTS) alone. Data quality is further compromised as financial investigators and Crown Court staff provide incomplete and inaccurate data to enforcement units.
Recommendation: All the bodies involved in confiscation need to develop a better range of cost and performance information to enable them to prioritise effort and resources to best effect. They also need to improve their existing ICT systems and their interoperability, as well as cleanse the data they hold.

7. The sanctions imposed on offenders for failing to pay confiscation orders do not work. Offenders who do not pay their confiscation orders face a default prison sentence of up to ten years, which follows their imprisonment for the original offence. They must also pay more as the amount outstanding accrues 8% interest. But many criminals, particularly those with high-value orders, are willing to serve a prison sentence rather than pay up and around £490 million is outstanding for offenders who have served or are currently serving default sentences. The government plans to strengthen the prison sentences for non-payment, but it is not yet clear how this will be implemented in practice.

Recommendation: The Home Office, in conjunction with the Ministry of Justice, must set out how, and by when, it will strengthen the confiscation order sanctions regime. The Joint Committee on the draft Modern Slavery Bill might include this in their deliberations.
1. Under the Proceeds of Crime Act 2002, confiscation orders are the main way through which the government carries out its policy to deny criminals the use of their assets, recover their criminal proceeds and disrupt and deter criminality. The Home Office leads on confiscation policy, but implementation involves many bodies across government and the criminal justice system, including, for example, the Crown Prosecution Service, Serious Fraud Office, HM Courts & Tribunals Service and police forces. On the basis of a report by the Comptroller and Auditor General, we took evidence from the Home Office, National Crime Agency, Director of Public Prosecutions and HM Courts & Tribunals Service on their performance in investigating, imposing and enforcing confiscation orders.

2. In 2012-13 some £133 million was collected from confiscation orders, which represented about 26 pence in every £100 generated by criminal activity. The Criminal Finances Board, a multi-agency body that governs the confiscation order system, does not co-ordinate activity properly and has not produced an overarching strategy. As a result, the bodies concerned are working in silos, objectives are unclear and success measures are not defined. For example, there is limited understanding of the extent to which confiscation orders have disrupted crime.

3. The Home Office told us that they were addressing these issues by making changes to the Criminal Finances Board, for example with a Minister now chairing its quarterly meetings, and by helping it draw up a new Criminal Finances improvement plan. However, the Minister’s appointment as Chair only commenced on 17 December 2013 and no date had been set for publication of the improvement plan.

4. The incentive scheme to encourage the many bodies involved in confiscation orders to initiate confiscation orders and confiscate proceeds of crime—the Asset Recovery Incentivisation Scheme—is opaque, ineffective and fails to incentivise innovation in the use of confiscation powers. The scheme rewards bodies solely on the basis of collected amounts, ignoring asset denial and crime disruption, and distributes the sums collected in set proportions that bear no relation to activity. For example, the Home Office receives 50% of all confiscated amounts despite its having no operational role. The reward basis

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1 Q35; C&AG’s report, paragraph 1.4, figure 1 and figure 6
2 C&AG’s Report, Criminal Justice System: Confiscation Orders, HC738 Session 2013-14, 17 December 2013
4 Qq17-20, Q35, Q50
5 Q1, Q7, Q9; Q16, Qq35-36, Q49; HM Government, Serious and Organised Crime Strategy, Cm 8715, October 2013
6 Q1, Q7, Q9; Q16, Qq35-36, Q49; HM Government, Serious and Organised Crime Strategy, Cm 8715, October 2013
7 Qq17-19, Qq50-54; Ev 20
8 Qq30-33
used differs from that used in other asset recovery types, where cash forfeitures are split 50:50 between the Home Office and the investigating agency—usually police forces.  

5. In 2012-13, only 62% of organisations in receipt of incentive scheme funds provided returns to the Home Office explaining how the funds had been used. The Home Office maintained that all scheme funds were recycled into law enforcement but accepted that there was a lack of transparency on the use of funds as only partial data was collected on how monies were used. The Home Office told us that it would review the current scheme but it needed to avoid creating perverse incentives around rewarding revenue generation at the expense of cutting crime and asset denial. The revised scheme also needed to avoid recreating targets on income collection that incentivised creating poor quality confiscation orders with excessive values.

9 Q14-15, Q30, Q32; C&AG’s report, paragraph 2.11 and figure 8
10 Q32; C&AG’s report, paragraph 2.12
11 Q15
12 Q7, Q15, Q30, Q33; C&AG’s report, paragraph 3.12
2 Imposing confiscation orders

6. Confiscation orders can be imposed following successful prosecutions and financial investigations carried out by law enforcement agencies. However, law enforcement and prosecution agencies are missing opportunities to impose confiscation orders. In 2012-13, 673,000 offenders in England and Wales were convicted of a crime, a substantial proportion of which involved financial gain, but courts imposed only 6,392 confiscation orders. A former member of the Crown Prosecution Service who worked in this area told us that staff in the agencies concerned often have a poor understanding and awareness of proceeds of crime legislation and the tools available to confiscate assets.

7. The Director of Public Prosecutions noted that the low number of confiscation orders arose in part because of a lack of evidence to impose them and that increasing the number would require better guidance for practitioners together with a common set of criteria to assess whether pursuing a confiscation order would be appropriate and cost-effective. In considering which cases would be appropriate for confiscation orders, the Director of Public Prosecutions told us that detailed work was needed and was being undertaken by the Crown Prosecution Service to classify all criminal cases into distinct types, before deciding what sort of recovery action would be most appropriate for each type.

8. The National Crime Agency told us that financial investigation was absolutely central to disrupting criminal activities, preventing criminals’ access to their assets and confiscating criminal proceeds. Since our 2007 report on the Assets Recovery Agency, significant progress has been made in professionalising financial investigation through the proceeds of crime centre. However, despite this progress agencies often bring financial investigators into criminal cases too late in their preparations for court, and in some cases not at all.

9. At the same time the use of restraint orders to freeze assets is reducing: only 1,368 orders were imposed in 2012-13, down from 1,878 in 2010. The Director of Public Prosecutions told us that a recent Court of Appeal case had made it much harder to impose restraint orders and that there is a costs risk with unsuccessful applications. The National Crime Agency informed us that it tried to take the earliest opportunity to restrain assets; but admitted that in its first three months of existence it had not frozen any assets within 24 hours of arrest in any case. The Home Office, National Crime Agency and Crown Prosecution Service referred to the difficulties faced in arranging the imposition of a

13 Q130-Q135
14 Ev 18; C&AG’s report, paragraph 3.5
15 Q54
16 Q130-131
17 Q10
19 Q38-39:
20 Q40-44; C&AG’s report, paragraph 3.7
21 Q44; Ev 20
22 Q81-85
restraint order: the court needs to be shown by the prosecution that a criminal investigation or proceedings has started; that a suspect has benefited from criminal conduct; and that there is a risk that assets will be dissipated.23
3 Enforcing confiscation orders

10. Three enforcement agencies are responsible for collecting the great majority of confiscation orders once they have been imposed. HM Courts & Tribunals Service is primarily responsible for collecting low-value orders while the Crown Prosecution Service and Serious Fraud Office usually lead on the complex, high-value cases. Enforcement bodies are generally successful in collecting low-value orders but not high-value ones, with an enforcement rate of nearly 90% for orders under £1,000, but just 18% for orders over £1 million.\(^\text{24}\) Significantly more value lies in the small number of high orders, with a total of around £1.5 billion of confiscation order debt remaining uncollected.\(^\text{25}\)

11. Cost information relating to individual orders does not exist and performance information is basic, focussing only on amounts imposed and collected. For each outstanding order the agencies therefore do not know how much is realistically collectable, how much enforcement activity is costing and how successful their activity is.\(^\text{20}\) The National Crime Agency told us that serious and organised criminals make it difficult for the authorities by using complex financial instruments such as hiding money overseas or placing it in the hands of spouses but nevertheless significant improvements are required to the confiscation order system.\(^\text{27}\)

12. The agencies could not tell which confiscation orders they should prioritise due to a lack of balanced set of performance and cost information. They also did not know what approaches to enforcement were most successful or cost-effective, and how they were performing against wider policy objectives, including, as the Home Office told us is most important, against the objective of cutting crime.\(^\text{28}\) These gaps not only impede enforcement activity, but also wider governance of the process, including accountability and the effective running of the incentive scheme.\(^\text{29}\)

13. Some bodies have started to prioritise confiscation cases and work together on those identified as the highest priority. For example, the Crown Prosecution Service and National Crime Agency have identified 59 high priority cases that have not yet been enforced, accounting for 61% of the total value of outstanding Crown Prosecution Service cases.\(^\text{30}\) The National Crime Agency, Crown Prosecution Service, Serious Fraud Office and HM Courts & Tribunals Service have together identified another 124 priority cases for additional enforcement action.\(^\text{31}\)

\(^{24}\) Q7, Qq143-145; C&AG’s report, paragraph 1.10 and Figure 4.  
\(^{25}\) C&AG’s report, paragraph 1.11  
\(^{26}\) Q1, Qq17-20, Q30, Q86, C&AG’s report, paragraph 4.6  
\(^{27}\) Qq10-11  
\(^{28}\) Qq1-8; Qq17-19; C&AG’s report, paragraphs 2.10 and 4.6  
\(^{29}\) Q50  
\(^{30}\) Q54  
\(^{31}\) Qq125-126
14. The efforts of the bodies involved in the confiscation order process are hampered by outdated ICT systems that are not interoperable, leading to errors and time consuming re-keying of information between different systems. For example, an estimated 45 hours a week are wasted by HM Courts & Tribunals Service staff just opening, saving and downloading data into the Confiscation Order Tracking System. The need for substantial re-keying of data had resulted in data errors, which, together with some incomplete and erroneous information provided by financial investigators and Crown Courts, had acted to slow progress further and reduce enforcement rates.

15. In subsequent written evidence the witnesses told us that a multi-agency group had been established to identify required changes to the Joint Asset Recovery Database (JARD) and that they expected improvements to be in place quickly. HM Courts & Tribunals Service also told us it was working with the Crown Prosecution Service to deliver a completely new shared ICT system within two years at a cost of between £120-£130 million that would be fully interoperable with JARD and police forces’ ICT systems.

16. Offenders who do not pay their confiscation orders face a default prison sentence of up to ten years, which follows their imprisonment for the original offence. They must also pay more as the amount outstanding accrues 8% interest. However, many criminals with high-value orders are willing to serve time in prison rather than pay-up and around £490 million is outstanding for offenders who have served or are currently serving default sentences. The Home Office told us they plan to strengthen prison penalties and the recently published Serious and Organised Crime Strategy states that the government will be “substantially strengthening the prison sentences for failing to pay confiscation orders so as to prevent offenders from choosing to serve prison sentences rather than pay confiscation orders”. In addition to longer prison sentences there will be less chance of early release. However, the Home Office and the National Crime Agency have not outlined how this will work in practice, how effective this action will be in increasing enforcement rates overall, and its cost-effectiveness when set against inevitably higher resulting prison costs. The Joint Committee on the draft Modern Slavery Bill might include this in their deliberations.

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32 Q49
33 Q98-99; Q100-106
34 Q114-115; C&AG’s report, paragraph 4.14 and figure 17
35 Q98; 35 C&AG’s report, figure 19
36 Ev 20
37 Q103-107
38 Q105; Q114; C&AG’s report, paragraph 4.14 and Figure 17
39 C&AG’s report, paragraph 4.18
40 Q28, Q129; HM Government, Serious and Organised Crime Strategy, Cm 8715, October 2013, page 35
41 Q129
42 Q28, Q122-124
Formal Minutes

Wednesday 5 March 2014

Members present:

Mrs Margaret Hodge, in the Chair

Richard Bacon
Stephen Barclay
Chris Heaton-Harris
Meg Hillier

Stewart Jackson
Fiona Mactaggard
Austin Mitchell
Justin Tomlinson

Draft Report (Confiscation orders), proposed by the Chair, brought up and read.

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

Paragraphs 1 to 16 read and agreed to.

Conclusions and recommendations agreed to.

Summary agreed to.

Resolved, That the Report be the Forty-ninth Report of the Committee to the House.

Ordered, That the Chair 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.

Written evidence was ordered to be reported to the House for printing with the Report.

[Adjourned till Monday 10 March at 3.00 pm]
Witnesses

Wednesday 15 January 2014

Keith Bristow, Director-General, National Crime Agency, Peter Handcock, Chief Executive, HM Courts and Tribunals Service, Alison Saunders, Director Public Prosecutions, Crown Prosecution Service and Mark Sedwill, Permanent Secretary, Home Office

List of printed written evidence

1  R.G Lorkin  Ev 18
2  Crown Prosecution Service, Home Office and the National Crime Agency  Ev 20
List of Reports from the Committee during the current Parliament

The reference number of the Government’s response to each Report is printed in brackets after the HC printing number.

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Oral evidence

Taken before the Committee of Public Accounts
on Wednesday 15 January 2014

Members present:

Margaret Hodge (Chair)

Stephen Barclay
Guto Bebb
Jackie Doyle-Price
Chris Heaton-Harris
Meg Hillier

Mr Stewart Jackson
Fiona Mactaggart
Austin Mitchell
Nick Smith

Gabrielle Cohen, Assistant Auditor General, Aileen Murphie, Director, National Audit Office and Marius Gallaher, Alternate Treasury Officer of Accounts, were in attendance.

Examination of Witnesses

Witnesses: Keith Bristow, Director-General, National Crime Agency, Peter Handcock, Chief Executive, HM Courts and Tribunals Service, Alison Saunders, Director of Public Prosecutions, Crown Prosecution Service and Mark Sedwill, Permanent Secretary, Home Office, gave evidence.

Q1 Chair: Welcome. Happy new year. Welcome, Alison Saunders, in your first appearance before us. I don’t think it will be the most pleasant of experiences, given the nature of the Report, but welcome. And welcome to Keith Bristow, as it is also your first appearance before us. Mark, I am going to start with you. It is uncontentious in this Committee, in the wide world and amongst the British public that we don’t want crime to pay, and criminals should be deprived of the proceeds of their crime. That is why confiscation of assets has always been a very important policy for politicians of all political parties.

I do accept that there are some glimmers of light. You are getting a bit more in than you were 10 years ago. You have a few pockets of good practice. The quality of some of the evidence is coming out as slightly better. But I have to say I think this is one of the worst reports I have read in a long time as Chair of this Committee. We are losing billions and billions and you are just not getting a grip. As I read it, that is what I thought. I know it is tough and difficult, but you are just not getting a grip. As I read it, that is what I thought. I know it is tough and difficult, but nobody has got a grip here. You haven’t got a strategy. You haven’t got co-operation between you all. You don’t prioritise things. You haven’t got the right information database. It is rubbish.

I do not know quite where to start. The fact is we are collecting hardly anything. Excepting all the provisos about whether it is a good way of describing it, if we are really getting only 26p or 35p in every £100 that criminals are benefiting from in their activity, it is pathetic. It is ludicrously small. The other fact—maybe this is where I should start—is that you are spending between you, in the NAO assessment, about £100 million, and in 2012–13 you only got back £130 million. That is dismal. What do you feel about that as a cost-benefit?

Mark Sedwill: Thank you, Madam Chairman, for setting out the case for the prosecution so clearly. I think the basic thrust of the Report—I don’t agree with everything in the Report. I don’t think the 26p or 35p figures are very sensible, to be honest, but the basic—Chair: I think if you produced more accurate figures, they would be worse.

Mark Sedwill: The basic premise of the Report is one that we accept, and indeed set out in the organised crime strategy which we published in October, in the section on criminal finances. It is important to remember that confiscation orders are just one tool among several in tackling criminal finances and criminality. That is their purpose. We set out there that overall—the numbers are slightly different—we collect about £150 million a year, and we deny criminals access to about half a billion a year. We said explicitly in that strategy—a Government Command Paper—that that is small compared with the overall size of the criminal economy.

One can quibble about the figures, and that is a second order issue, but we entirely accept that. We set out in that strategy—I am happy to talk in more detail about it—what we believe we need to do to address that. You are right, Madam Chair, that it is a very complex area. The most serious criminals are very inventive in seeking to squirrel away their assets to other people or overseas. There are serious questions about capabilities throughout the system, from mainstream policing at the local level right the way up to the national level. That is partly why the National Crime Agency was established and has been structured in the way that it has—Keith can talk about that. We accept that this is an area in which we want to have much more of an impact on the criminal economy.

Q2 Chair: I get really fed up with hearing that in this Committee. That is why I started by saying that this is not a contentious public policy area. New strategies will not take you any further; it is the implementation that has failed. There has been a clear implementation failure and a failure to get co-ordination or a grip across government on it. You can produce new
strategies till the cows come home, but that will not change the failure to implement. I will take you back to my original question. Between you, you are spending £100 million of taxpayers’ money on trying to pursue the proceeds of crime on behalf of the British public, and you are only getting in £130 million. For my money, that is an appalling cost-benefit ratio. I want your comments on that and how you are going to start tackling it.

Mark Sedwill: This is a really important point, Madam Chairman. The confiscation orders are a tool for cutting crime. The objective is not to maximise the revenue that we achieve from confiscation orders. Ministers have been quite clear that the objective is to cut crime and to have an impact on criminal activity.

Q3 Chair: The Report doesn’t say that you have that objective. Ironically, one of the things it says is that your objectives should be wider. Am I right, Aileen?

Aileen Murphie: Yes. The serious and organised crime strategy that Mark referred to is wider; it is about all criminal finances.

Mark Sedwill: Yes. It is not about simply maximising the impact in this area, so we spend the money on confiscation orders.

Q4 Chair: Spending £100 million to get £130 million is not good.

Mark Sedwill: But, Madam Chairman, it is not about getting the £130 million; it is about having an impact on criminality. We spend a great deal of money on prosecution, sentencing, etc., and you cannot put a number on those things. They are all tools for tackling criminality.

Q5 Chair: Hang on. You are going off the subject. I understand that the NAO analysis gave a rough and ready figure, but it is a rough and ready estimate of how much is being spent on this area of work, not on prosecuting people generally.

Aileen Murphie: Figure 2 on page 12 breaks it down across the different activities of enforcement, hearings and appeals, and investigations, but not the original criminal investigation.

Q6 Chair: So it is just on this area of work. That is what they have tried to do. You should have the ready data.

Mark Sedwill: I understand the point you are making, Madam Chair. My point is that the cost is £100 million, but the benefit is not just the £130 million that we collect. The benefit is the impact on crime.

Q7 Fiona Mactaggart: But wouldn’t the benefit be more if you collected more than £130 million?

Mark Sedwill: We set out in the organised crime strategy, which is much more overarching, that we want to increase the impact. But it is not about the volume of money that we collect. If you look elsewhere in the Report, the success rate against the small fry, where orders are under £1,000, is very high. Self-evidently, that is because those people do not have the capability to squirrel away the money overseas, and they do not have sophisticated money-laundering and financial capabilities. The most serious criminals have the highest success rate in evading all kinds of efforts. Simply trying to increase the revenue could create the kind of perverse incentives that we had before, which the Report refers to, under the old structure.

Q8 Chair: I have never heard a more nonsensical justification.

Mark Sedwill: I am sorry, Madam Chair. I am trying to answer the basic point. Ministers are clear that the objective is to cut crime, and the benefit is the impact on crime, not the revenue we collect.

Q9 Fiona Mactaggart: On the precise point you are making, one of the things that I was shocked to read in the Report is an account of someone who was in jail for seven years—obviously one of the high-end criminals. He had clearly made the judgment that a few years in the nick was worth many millions of pounds in his future income. So your whole strategy—the whole pattern—is not working if that is the situation with these high-end, organised criminals. The Home Secretary says that her priority is organised crime. That is what Mr Bristow has been set up to deal with. If that guy has just said: “Oh well, I can have three years in the nick, it is worth it. What’s it worth to me? A few hundred thousand pounds a day,” then it isn’t working, is it? I don’t think that your excuse sounds very plausible.

Mark Sedwill: I am sorry. I am not making an excuse. I actually agree with you. That is why, if you look at the organised crime strategy, we have said that one of the things we want to do when parliamentary time permits, and I obviously cannot commit—

Fiona Mactaggart: We are not doing anything else. We’ve got plenty of time, sir.

Mark Sedwill: Parliamentary time is slightly beyond my remit, but we want to strengthen the sentencing for the people in this category.

Chair: We will come on to the strengthening. We are here looking at your record.

Q10 Nick Smith: Mr Bristow, you have a cracking job title: head of National Crime Agency (Economic Crime Command). Mr Sedwill said that we have some serious criminals who are squirrelling their money away. So you ought to know where the criminals are putting their money. We have all seen “The Wire”—some suggest “Breaking Bad”. What are your examples of where these serious criminals are squirrelling away this money so you can’t get at it? Give us a couple of examples.

Keith Bristow: May I correct my job title to start with? Unless you have given me a second job that I wasn’t aware of, I am director-general of the National Crime Agency.

Nick Smith: Excuse me; it’s on the briefing I’ve got here.

Keith Bristow: Economic crime, as it relates to serious and organised crime, is part of what we do as an agency. So the approach that we take is very much in line with what Mark has said. Of course, confiscating
asset and collecting it is hugely important, because that is where some of the effect on serious and organised criminals is secured. But our focus is on financial investigation and asset denial, including asset confiscation, as a way of taking on organised criminals. Because by definition, much of what they seek is profit from other people’s misery. There are other reasons: some people seek sexual gratification if they are exploiting children, but those involved in the majority of organised crime are after money.

We are talking about people that are cunning and manipulative. They will corrupt; they are very difficult people to take on. We see financial investigation as absolutely central to disrupting what they do. That is what we focus on: disrupting their activities, making it impossible for them to undertake their businesses, including taking their resources off them.

Q11 Nick Smith: Give us some examples of where they are putting their money.

Keith Bristow: They will use complex financial instruments; they will place them in the hands of spouses; there will be third-party interests that are declared; they will be hidden overseas. These people are complex. The people at the top end of organised crime have the ability to employ and instruct people who will help them do this in the most creative and difficult ways. Equally, we have very skilled and cunning investigators who will go after these people, but we do have some challenges on occasions in actually getting the assets off the criminals. That requires a joined-up, multi-agency effort. There are some parts of the Report that we would not agree with, but the overarching message of “we must do more” we certainly support, and we must do more.

Q12 Nick Smith: It still feels pretty conceptual and in principle. You are not giving us a very good example of where you have really been digging around on whether or not someone has bought a bar in Ibiza or a car wash in Arizona. Where is this money going?

Keith Bristow: If you will give you a specific example, I cannot say too much, because it is still a live case, but it will involve some of your question. We arrested, charged and convicted somebody who was involved in prostitution and people trafficking. The resources were in houses in the UK, overseas, high-value cars—Chair: If he is convicted, you can tell us. I think it is much more useful to be open about these things when somebody has been convicted.

Keith Bristow: But the process through which we are trying to recover the assets is still ongoing. We are still pursuing these assets. This individual has placed some of those into a position where they have got third-party interests. This individual chose a default sentence rather than paying up. Going back to a point that was made earlier, we are firmly of the view that the default sentence—where the debt has not been settled at the end, the person should not walk away. That is not a choice that should be made; it should be a punitive approach to someone who hasn’t paid. It should be much more robust towards these people. But those are the sort of choices that they make and we need to work hard at pursuing their assets. But it is often a very difficult and complex investigation and operation.

Q13 Chris Heaton-Harris: Based on the Report, which I understand that most of you have disagreements with—that would be interesting to go into—are you comfortable that confiscation orders offer value for money?

Mark Sedwill: The reason I am pausing is because that is a difficult question to answer. They are one tool among many to tackle crime and it is very difficult to make a judgment in value-for-money terms about that range of tools. Because confiscation orders result in a financial return, you can make the kind of comparison that the Chair was asking about earlier, but you cannot in all the other cases: the impact of sentencing and the impact of disrupting criminal finances overseas. So it is a very difficult judgment to make in its own terms and that is why I am pausing on it.

It is an effective tool. It is not effective enough and we are not achieving everything we want to against criminal finances more generally, but I do not think it is very easy to put a straightforward value-for-money framework to judge the effectiveness of the tool.

Q14 Chris Heaton-Harris: Am I being too simplistic in saying that because the Home Office benefits the most from the money taken through confiscation orders, all the other agencies and Departments involved, who are probably closer to the coal face, are disincentivised to do the work that goes on?

Mark Sedwill: To be honest, I think this issue of how much comes in and how much goes out is a red herring. In the end, money is money. The Home Office funds more than three quarters of law enforcement activity in the UK. This money is part of that overall funding. We have protected law enforcement more generally, so policing has had a smaller cut than other parts of Home Office activity. We have maintained in absolute terms counter-terrorism police funding. We have increased the funding for regional organised crime units from about £15 million to about £25 million a year. Part of this money is hypothecated towards regional organised crime units directly and to the regional asset recovery teams that exist within them, but in the end, money is money and this is just part of the money that is available to the law enforcement system as a whole, which goes through the Home Office books.

Q15 Chris Heaton-Harris: But can you understand where that red herring comes from? As a permanent secretary of a very big Department, you will understand that lots of things are going on in your Department, as in the Ministry of Justice and with the Attorney-General and everything else, and if you have got an area of cost that is quite big but you do not really get anything back for that, perhaps you do not prioritise that as much as you should.

Mark Sedwill: There is a separate issue about the ARIS scheme and we will take a look at that, because
I think there are some questions around it. It really goes to the question I raised earlier and you may have heard on the radio this morning one of our police colleagues talking a bit about this. Everybody would like more money, more people, more time, more powers and so on—of course they would. But there is a risk that if we make the incentives financial, we create the kind of perverse incentives we have seen in the past, where, essentially, law enforcement goes after generating revenue rather than cutting crime. That is the prism through which we need to look at it. We are going to look at the incentive scheme, but in terms of the revenue coming in from this, it really comes into the overall criminal budget. It is a fairly small amount of money compared to the £12.5 billion a year that goes into law enforcement—three quarters of that from the Home Office. So it is essentially at the margin in terms of the overall funding of law enforcement.

Q16 Chris Heaton-Harris: Just one final point on this, if I may. How do you cross-departmentally incentivise confiscation orders and try, in the current system, to incentivise the different Departments to do everything that they possibly can?

Mark Sedwill: We have the scheme, and the scheme itself is a relatively second-order component to that. As you see in the Report, it is a complex picture and a lot of Government agencies are involved. That is probably right because we are dealing with the kind of people that Keith Bristow referred to who will seek to find any loophole they possibly can in any part of government. We have to have HMRC involved to go after the tax revenues, DWP and so on.

That all sits within an overall governance structure, which is the Criminal Finances Board. Something we have changed in the past few months is that that is now chaired by the Security Minister James Brokenshire. It was a purely official co-ordination mechanism before; it now has ministerial governance. One of the components of implementation of the organised crime strategy—we don’t agree that we want a strategy for this particular component; there are too many strategies in Government, as the Chair referred to—is a criminal finances improvement plan. That is something more concrete than a strategy and will be overseen by that board and driven through Government. That is essentially the mechanism we are seeking to use at the top level to improve collaboration.

There are also other things happening—again, Keith can probably describe them better than I can. At the more local level there are some proposals around from the national policing lead to collocate regional organised crime units with some members of the Crown Prosecution Service and so on. We are exploring all of that.

Chair: Guto wanted to come in quickly on that.

Q17 Guto Bebb: I just want to clarify this issue. You are clearly saying that the value-for-money argument is too simplistic when we say there is £100 million investment and £130 million recovered. Your argument is that that is too simplistic, yet at the hearing on tobacco smuggling, the Inland Revenue, for example, was very proud of the rate of return on its investigations, highlighting a rate of return of £49 coming back to the taxpayer for every £1 invested. What would you prefer to see as a value-for-money measurement? Clearly there should be some value-for-money measurement on this issue.

Mark Sedwill: We need to look at value for money against the overall objective that the Government have set, which is the impact on crime.

Q18 Chair: You are not answering the question. Just answer the question.

Mark Sedwill: I don’t think in this area that that kind of comparison is the right way to assess value for money. Because I say—

Q19 Chair: What would you rather see? You are being given the opportunity to say.

Mark Sedwill: Impact on crime. That is a complex thing to assess. One could ask the same question about what is the value for money of a five-year prison sentence. This is what we are wrestling with around this issue. Because it is a financial tool, it is easy to conclude that you can assess impact and benefit in the same way as you can assess cost. We know the cost of this, but the impact and benefit goes beyond the revenue that we recover.

Q20 Chair: Okay. I have just got to say to you that I think Joe Public also thinks that it is really important that criminals don’t benefit from crime and that we get the money back. I think that is an objective of this that ought to stand alongside cutting crime. I think you are being very civil servanty in dismissing that; I think people want to see the proceeds of crime brought back.

Mark Sedwill: Madam Chair, since you have said it, let me agree with you again. That is why we set it out in the organised crime strategy. In the end, it is exactly as you have just put it: it is about denying criminals the proceeds of their crime, not about maximising revenue for the state. That is the important distinction.

Chair: Well, however you put it, denying criminals the proceeds of crime would mean that we would get more. At the moment we are getting about a quarter of 1%—a quarter to a third of 1%—on a very crude statistic of what is lost through crime.

Q21 Meg Hillier: One of my questions is whether you are actually deterring crime. I want to touch on the real-life example of James Ibori, a former Nigerian governor, whose assets were frozen by a British court in 2007. He eventually pleaded guilty in 2012—that is, five years later. Now, seven years later, I wonder how much of his £35 million of assets have been recovered. You might not be able to answer that question here now, but I bet it is not most of it.

Mark Sedwill: Unless anyone else actually knows the answer, I think we will have to come back to you.

Q22 Meg Hillier: I am sorry; I should have given you notice of this question. At the point of his pleading guilty there was a great disbelief both in
Nigeria and the UK about how much of those assets were going to be recovered. In Nigeria, this law has been very popular in trying to track down Nigerian criminals. There have been a lot of questions over the Ibori case. He pleaded guilty in the end and will serve a sentence, but he will still end up with the money. I completely see that there is a public value to having somebody in prison and that deterring other criminals; my contention, using the Ibori case as a live example, is that I am not sure it has deterred other Nigerian fraudsters. It has not really: there is a real disbelief about it. Have you any comments?  
Mark Sedwill: It is curious because although, as the Chair said, this is quite contentious, we are actually agreeing on the substance. This is exactly what we set out in the organised crime strategy and exactly what we are seeking to do.  
Q23 Chair: Listen, don’t keep going back to your organised crime strategy. It may take it a little bit forward, but we’ve had the same sort of strategy in government for yonks and yonks. It’s about you putting it into practice. There may be new words or a little bit of progress on the words, but until you get a little bit of action—that is what we really want to test this afternoon.  
Mark Sedwill: What I am saying is that we all agree that this is a tool that we want to be more effective. We have tried to set out some of the measures that we will use to achieve it. Some of that is legislative, because criminals are constantly evolving their techniques; we need to evolve to keep up—some of it is about capabilities and some of it is about governance and co-ordination.  
Q24 Meg Hillier: Maybe you can’t answer this now, but on the Ibori case, he is believed to have bought a Hampstead home for £2.2 million before he was arrested—he did that in cash, allegedly. As it was in Britain, it should be traceable. It is unfair to throw that one at you without notice, but I would be interested to know what progress there has been in tracing that £2.2 million and how much of the rest has been recovered.  
Alison Saunders: I can come back and let you know exactly what has happened.  
Q25 Chair: And we will publish that.  
Alison Saunders: That is absolutely fine, but you will remember that it took a long time to prosecute that case. An awful lot of effort went into it. Many people thought that we would never get a successful prosecution, so I think the deterrent effect is also quite symbolic in that particular case.  
Q26 Meg Hillier: I take your point; it is a half-full, half-empty thing. It is good that it happened, but there is certainly disbelief in Nigeria about whether it will deter others.  
Mr Sedwill, you said that there might be a need for legislative changes, which brings me to my final point. What should Parliament or the Government do to make it easier? We recognise that it is challenging to chase this money. What tools does Mr Bristow have? What have you not got in your toolbox that you could do with?  
Mark Sedwill: Again, there are several things and, at the risk of incurring the Chair’s wrath, we set them out there in the document—which I won’t refer to, Madam Chair. Broadly speaking, they are some of the things that Mr Bristow has already referred to which make it much harder for people to divert their assets to spouses, third parties and others.  
Q27 Meg Hillier: Do you mean after conviction or when they are being investigated?  
Mark Sedwill: Well, of course, as soon as they are investigated there is an incentive, if they have a sophisticated financial capability, to start offloading their personal assets. We need to make it easier to seize the kind of assets that you are talking about as well as financial assets. The police can seize cash, but it is literally cash—notes and so on, off drug dealers and so on—but to make it easier to seize other hard assets—  
Q28 Meg Hillier: Cars?  
Mark Sedwill: Exactly. That kind of thing: strengthening the prison penalties so that they don’t, as I think Ms Mactaggart was suggesting, regard prison as an occupational hazard and they will acquire the benefits at the end of it. There are some legislative changes. The Chair is absolutely right: it’s not just about that; we need to improve the capability of the system—the financial capability, the forensic financial capability and the intelligence capability throughout our system—and we need to improve the collaboration between the other agencies. Those are the kind of things. Other colleagues may have others that they could add to that list.  
Q29 Meg Hillier: I have one other question. If you talk about the financial capability, obviously it takes a very high set of skills to do the forensic investigation to find out where money is being hidden. Who is best at it in the world and where do you recruit from for that?  
Mark Sedwill: I am probably not the best person to answer that.  
Keith Bristow: One of the things that I am pleased is pointed to in the Report is the progress that has been made, through the Proceeds of Crime Centre, in professionalising financial investigation. I think we are up there with the best. There is always more that we can learn, but I think we have a very skilled, highly accredited group of people across the nation who have their performance constantly monitored, so I think there is good progress there. There is always more that we can do, but there is good progress.  
Chair: I was going to move on to who is in charge, but I have a few people who want to come in. Shall we do that first? I have got Fiona, Stewart, Austin.  
Q30 Mr Jackson: Mr Sedwill, I don’t think you have really conceded how terrible this Report is. You seem to be somewhat insouciant about this, as though it was work in progress, but the legislation is 11 or 12 years old. We will talk later about the structural issues, such
as ICT, but given that your Department, the Home Office—for which you are responsible as the accounting officer—takes 50% of the proceeds’ revenue, surely the quid pro quo is that, as a strategic manager, you run the process effectively. I am disturbed that you seem to suggest that there would be perverse side effects if the revenue was reallocated. I am sure that your colleagues in the police service are not keen on hearing that. In terms of the 50% that you take, there is no coherent overall strategy, a flawed incentive scheme, weak accountability and an absence of good performance data or benchmarks. Are you earning that 50% of the proceeds, over and above whether that is an appropriate proportion, which is a bigger issue set against £52 billion-worth of crime committed? As a strategic manager of the legislation in practice, the Home Office is clearly failing.

**Mark Sedwill:** The 50% that comes to the Home Office is recycled into law enforcement, so I do not want you to have the impression—

**Chair:** We do not know that, because you do not tell us. You do not keep the data. NAO could not verify that.

**Mark Sedwill:** We do not hypothecate large amounts of money—you know that; that is not the way that Government revenues work—but the money goes into the budget line for crime and policing. That budget line funds three quarters of law enforcement in the UK. As I said earlier, we hypothecate a proportion of it for regional organised crime units and regional asset recovery teams, so the 50% take is not a primary issue.

Q31 Mr Jackson: It is a primary issue if it is not going to the front line.

**Mark Sedwill:** It is going to the front line.

**Q32 Mr Jackson:** We only have your word for that. We do not have any demonstrable, empirical data to show that, for instance, the funds seized in Cambridgeshire go back to Cambridgeshire constabulary.

**Mark Sedwill:** A proportion does, because if it were cash, Cambridgeshire constabulary would get 50% of it, and in terms of other assets, it would get the VAT per cent of that asset directly. That is given directly. I accept absolutely that we have some issues about reporting because we have not had all the annual requirements that we should have, but that money is directly recycled. You asked about the 50%, and that proportion comes on to the Home Office budget line. On law enforcement, a relatively small proportion of a very large amount of money goes on law enforcement, but we have protected that funding compared with other components of the Home Office budget, so the cuts to policing in general have been less than the overall cuts that we took as a Department. In particular, we have had to squeeze the back office in the Home Office. We have maintained counter-terrorist policing in absolute terms and we have increased the money going on combating organised crime. That is part of the revenue, and apart from the proportion that goes to combating regional organised crime, we do not hypothecate.

**Q33 Mr Jackson:** I do not want to get on to a debate about hypothecation, because we could be here all day, but surely if you want a comprehensive and coherent system that works, you must give incentives to the key stakeholders within that system, whether that is the CPS or individual police services across the country. What comes out of the Report is not just a failure of strategic management, but a failure to think innovatively about trying to incentivise—not individually, but corporately—those police services. If you were able to do that, and to adopt a more flexible methodology and structure, you would achieve more success from those individual component stakeholders.

**Mark Sedwill:** We said that we wanted to look at the incentive scheme, but as I pointed earlier, there is always the risk of perverse incentives. In an earlier version of the system, there was an explicit target to maximise the orders imposed. That was part of the reason that a gap opened up between orders imposed and orders collected, because you immediately create an incentive to maximise one thing rather than another. If you have a purely financial incentive, there is the risk that, essentially, you go after the soft targets, and it becomes a revenue generation target, rather than a combating crime target, because if you look at the cost benefit, the hardest targets to secure revenue from are the most the serious criminals. If we adopt purely a revenue target, the risk is that we incentivise and divert effort to the lower end of the process rather than at the higher end. I am not denying your basic point, Mr Jackson, which is that we need to look at the incentive scheme, but we need to very wary of creating perverse incentives, which divert law enforcement activity away from the core, which is tackling the most serious crime and criminal finances.

**Q34 Mr Jackson:** My final point is that when you come back before the Committee again—because inevitably we will need to look at the work and, hopefully, the improvement that has taken place—you will need to have robust data that can be properly examined by the NAO. You seem to be saying today: “Although the Report is on confiscation orders, that is not the whole story about combating crime.” Given that we are looking at confiscation orders, it is important that you need to demonstrate beyond any doubt a causal link between what you are spending a lot of public money on and a reduction in the prevalence of crime. It seems that today you are not in a position to do that. You speak in a very Sir Humphrey way—“Well, there are other issues in the holistic paradigm” and all this sort of thing. That is all well and good, but there are some really big issues of value for money in this Report that urgently need to be looked at. I would hope that you are in a position to address those issues when you next come back.

**Chair:** We will bring you back before the general election on this.
Mark Sedwill: I know. I am before you almost weekly over the next few weeks, Madam Chair, so I recognise I will be before you on this as well.

Q35 Chair: You and David Nicholson between you. I want to pursue something Stewart said. This Report is hugely critical—in a way that you have not really answered, Mr Sedwill—about the failure of a strategy. If what you are articulating today were the strategy, there might be a bit more comfort, but we have had I don’t know how many PAC inquiries into this—Austin might remember, and Richard is not here—where we have said that one person or a Department should be in charge in charge, and that has not happened. The Report, which you sign off, says that you haven’t a clearly defined strategy, you haven’t proper objectives, you haven’t proper controls and you don’t do proper monitoring. It says this Criminal Finance Board—we tried to look at the organogram and couldn’t make head or tail of it—has good ideas, but does not co-ordinate activity properly. This is a real indictment.

This PAC is not just going to put another report on the shelf; we want to see action. Given that this criticism has been around for many years—before you or I were around—what are you going to do just to get these very basics in place and have a proper strategy, proper accountability, proper controls and proper monitoring?

Mark Sedwill: As I said earlier, I am sorry if I come across as Sir Humphrey—it is not my usual style—but this is a complex area. Confiscation orders are one part of criminal finances, and criminal finances are one part of a broader approach. For entirely understandable reasons, the NAO focused on confiscation orders, but I do not accept the recommendation that we need a strategy for confiscation orders. We need a criminal finances improvement plan. That is what we are working on: it is under the Criminal Finances Board, led by a Minister, and that will have concrete actions, including actions in this area.

Q36 Chair: I draw your attention to what Guto said: you need a value-for-money mechanism for this. At the moment, the only one we have got—and we have more confidence in the NAO than you do—is that £100 million is getting us £130 million.

Aileen Murphie: I want to comment on that. If the criminal finances improvement plan operationalises what is in the overall serious and organised crime strategy, and if it has clear objectives and success measures which we can monitor and has good performance data—and the causal link that Mr Jackson has pointed out as well—I think I would be quite happy with it.

Q37 Austin Mitchell: I take it that from what Mr Bristow said that the techniques used to hide the money—to get rid of it, for hiding purposes—are much the same as the techniques used by lots of big organisations, including drug smugglers and all sorts of groups, for money laundering, which we haven’t been able to control. Once it is laundered overseas, it is much more difficult for you to deal with or to get your hands on. In the same way, the Inland Revenue cannot get people to pay tax on money that has been laundered overseas, yet the Report says, in paragraph 3.6: “Once the confiscation route is chosen, quick action is vital to help successful enforcement”. It goes on to say that this is often not quick enough to stop people disposing of the assets, saying that “many criminals are sophisticated and act quickly, leaving the authorities limited time to impose ‘restraint’ orders”. You are bringing in investigators too late. Why is this? Why can’t you act more quickly in the case of a confiscation order? As soon as people are convicted in court, they are presumably going to start stashing the money anywhere they can.

Keith Bristow: Within the National Crime Agency, every one of our investigations, as soon as we initiate the investigation, has a financial investigator alongside the investigating officer.

Q38 Chair: But do you initiate them early enough in the process?

Mark Sedwill: Within the National Crime Agency we focus on doing that for exactly the purpose that Mr Mitchell is referring to. We know that asset denial—whether ultimately we confiscate them, which I know is what we are talking about today—really hurts organised criminals. It hurts them, because that is what they commit crime for: it is a lifestyle. It hurts them because they need the money to continue to make more money. If we can restrain their assets and ultimately confiscate them, it hurts them. That is where we start from. We want to understand where the money is going, how they are doing it, where they are hiding it and how we restrain it.

The other point about financial investigation is that it is also about understanding how they commit their crime, in order to look for opportunities to bring them to justice, as well as just focusing on the assets, so it is at the centre of what we do. The difficulty, of course, is that we are talking about assets as a whole of those who commit crime, not just those involved in organised crime. The reality is that trying to have a financial investigation around all investigations where there is a financial benefit is probably not a realistic prospect. I note the criticism in the Report and I think it is a fair challenge. If we are going to confiscate the assets, we need to restrain criminals before they hide or get rid of them.

Q39 Austin Mitchell: Is it due to lack of staff? It says in the Report that investigators are not being brought in early enough to gather evidence alongside the criminal case. Why can’t it be done?

Keith Bristow: We do within the NCA. In each of the English regions and within Wales, there is a regional asset recovery team—multi-agency specialists that work alongside investigators in the police and other law enforcement agencies—but on occasion there is simply not enough financial investigation resource alongside every investigation. That is simply not realistic, given how much crime—right the way through from shoplifting, one could argue, to those who have trafficked people, drugs or firearms—there
is a consequential benefit from. Trying to protect that benefit, so that we can get it back in every case, is not realistic.

**Q40 Chair:** Why are restraint orders down this year? There is a 27% drop in the use of restraint orders, why?

**Keith Bristow:** I would need to do some further work to understand why that is the case.

**Chair:** But it is in the Report.

**Keith Bristow:** Certainly, for the NCA, we are not down, although we are a new organisation.

**Q41 Austin Mitchell:** In the October Home Office strategy on this issue, it says that people who face confiscation orders can stymie the whole case just by not turning up, giving themselves time to stash more money away. Why is this?

**Mark Sedwill:** Exactly—that is one of things I mentioned in answer to an earlier question. There were various things we wanted to address through the legislation, and that would be one of them. Another one is the requirement for them to essentially sign—I may not have the technical term quite right—in effect a form of consent to their orders being seized. That is not quite the right technical term.

**Q42 Chair:** Mr Sedwill, can you answer the question: why are they down? Why are there fewer restraint orders? If Keith Bristow is saying he is not responsible, you are—somebody is.

**Mark Sedwill:** Actually, the police forces are, because the volume numbers are in police—

**Q43 Chair:** Why are they 27% down from 2010–11 to 2012–13?

**Mark Sedwill:** I don’t know.

**Q44 Chair:** All this talk about how important it is and how you are trying to up your game, and the evidence is that the actual action is less than it was.

**Alison Saunders:** There are some issues about restraint orders. There was a Court of Appeal case a couple of years ago that made it much harder to get restraint orders, because you have to have shown not only that there is a likelihood that somebody will be convicted and there will be a confiscation order in place, but also the likelihood that they will dissipate their assets. So if they have had those assets for some time, the court has to be convinced that they are going to dissipate them, which is quite a high test to look at, and some of the legislation being suggested is looking at exactly how that test should be. Is it too high at the moment? Should it be changed in order to make restraint easier and earlier?

You are absolutely right. At the point of conviction and applying for a confiscation order, there are things that can help the system: making sure that people have bail provisions applied to them at that point, which does not happen at the moment, which means they can disappear; and making sure that we use restraint. We are using more restraint orders at the point of conviction than we are pre-conviction now. So there are things that can be done there, which is being looked at in the legislation.

**Q45 Chair:** Can we have a note on why the trend is down, which we can publish?

**Q46 Austin Mitchell:** Can you tell me why people who can sign the details and hold everything up are just not turning up for the hearing?

**Mark Sedwill:** It is essentially part of the current process. That is exactly one of the issues that we want to address in the legislation.

**Alison Saunders:** Once you are convicted, the bail provisions do not apply anymore, because you are a convicted criminal. So, in relation to the confiscation proceedings, there is no requirement for somebody to attend, and they can abscond by that stage. If they have not been sentenced to imprisonment, they are at liberty, paying a fine or a community penalty or something like that. Legislative proposals have been put forward to look at that. You should be able to compel people to come to confiscation proceedings, and also to put them on bail so that they cannot abscond. That is being looked at.

**Q47 Fiona Mactaggart:** I understand from something you said, Mr Sedwill, that James Brokenshire had been appointed to chair the Criminal Finance Board. When did that happen?

**Mark Sedwill:** I would have to come back to you on the exact date. I think it was when he took over responsibility for organised crime.

**Q48 Fiona Mactaggart:** Who was the previous chair?

**Mark Sedwill:** I don’t know. It was at official level. We will send you a note on it.

**Q49 Fiona Mactaggart:** If you look at the diagram on page 19 of the Report, it does not surprise me that we are concerned about the leadership of this programme. The routes that everyone feeds into this board, which is supposed to be in charge of the practical direction, are odd and remote, and I cannot believe that there is anyone in the Department for Work and Pensions for whom it is a top priority. Are you confident that this board is capable of leading the programme properly?

**Mark Sedwill:** This is a complex landscape, but we need to co-ordinate between a range of Government Departments and law enforcement agencies. There is the judiciary and the separation of powers between the Executive and the judiciary, and we have the 43 police forces in England and Wales, and Police Scotland, all of whom have their own independence and accountability. This in effect is not only a landscape description of confiscation orders; it is quite close to a landscape description of large parts of the criminal justice system. It is a complex landscape and you cannot say in the criminal justice system that there is one person or one organisation in charge of all of it, given how our Government is structured.

To go back to your point, I don’t know the person concerned, but I would imagine the person in charge...
of the financial investigation unit in DWP does see this kind of criminal finance work as among their top priorities. This is about governance of a system rather than control of a Department, and therefore the Criminal Finance Board is the right mechanism. I have already talked about the improvement plan that it is going to oversit.

Q50 Fiona Mactaggart: I understand that, but I can’t be confident that a board as diverse as this, with goals as, I am afraid, vague as I have been hearing, is going to produce a practical process that is sufficiently accountable.

For example, you quite clearly said to us, Mr Sedwill, that the ambition of this programme is to reduce crime. But you haven’t told us how you are going to measure how this does that. Unless we know that, we can’t hold you to account, because you could say, “Last year, fraud was £73 billion, and this year it is £52 billion. This has worked”. I don’t think so; I think that’s just a difference in counting between last year and this year myself. But I don’t see how you know what works. Could you tell us how you test?

Mark Sedwill: This could almost be a PhD thesis. There is not any one measure. Confiscation orders are a tool. There is not any one measure that one could confidently say and measure the impact.

Q51 Fiona Mactaggart: I absolutely understand that, but how do you measure how well this tool works? That is all I am asking. I am not asking how you reduce crime overall; I am asking how you measure how well this tool works.

Mark Sedwill: I don’t think you can measure any individual tool without reference to all the others, because you cannot determine the purely independent impact of one tool compared with any of the others. This is a tool that happens to have a number attached to it, because it is confiscation orders, and we had that discussion earlier on. I just think that the system, the other influences on criminality, and the things that are driving it are too complicated to say that one can produce an impact measure for any one tool that we can have real confidence in.

Q52 Fiona Mactaggart: I am going to ask Mr Bristow the same question, because he was a police officer, and police officers are used to measuring the results of what they do.

Keith Bristow: Central to how the National Crime Agency operates, our job is to identify, assess and disrupt serious and organised criminals. Disruption would include bringing people to justice or taking their assets off them, or it could include just making their life more difficult through the use of all sorts of control measures. That is our central role.

I agree with Mark’s point absolutely about whole crime, but potentially in the arena of serious and organised crime, where we are using financial investigation and asset denial to disrupt groups and individuals, it would be possible to measure some of the effect of that on their criminality.

Q53 Fiona Mactaggart: Can you tell us how?
It is about identifying those cases where we really need confiscation orders and those which have the most harm, because the way in which we identified those 59 is that they are orders over £500,000 and/or they are organised crime groups and/or they will really impact on public confidence. That is the way we have identified those. All of that is work that we are doing jointly with police colleagues and we will be reporting to the Criminal Finances Board on what is happening in relation to those priority cases.

Q55 Chair: My problem with all of this is that it sounds theoretically really good and then I looked, as I am sure you did, at the investigation by the Standard of a whole lot of cases. To take one of those cases—which you all hailed as a “landmark” success in seizing assets—Gerald Smith was given a confiscation order of nearly £41 million. He was freed in 2010. Two million pounds was spent looking for the assets—by, I assume, you and your predecessor organisation—and so far he has paid back only £1.3 million and his debt is now worth, when you add on the interest, £54.1 million. I could go on. All of those cases in the Standard were of huge, high value, but you have got nowhere. This is what I feel, and I think this is what Stewart Jackson was picking up on: it all sounds so bloody theoretical, but actually the practice on the ground of getting the money—which, I repeat, sounds so bloody theoretical, but actually the practice on the ground of getting the money—which, I repeat, just does not happen. Do you want to comment on that?

Alison Saunders: Yes. In theory, what we have done is work out what are the realisable assets—

Q56 Chair: Give us one case where you have done well—just one case.

Alison Saunders: These are ones that we are identifying for priority now.

Q57 Chair: Okay. Give us one case. Instead of all these cases we hear of in the press where you have done badly and failed, give me one example. By definition, those people are all convicted, so presumably you can give us a case. We have got the Gerald Smith case, and I was cross about that because you collectively called it a “landmark” success in seizing criminal assets, but out of the £54 million you have got £1.3 million.

Alison Saunders: There are lots of successful cases.

Q58 Chair: Give us one.

Alison Saunders: And the volume of assets enforced and recovered has gone up, so last year—

Q59 Chair: You would have thought they would be on the top of your brain as part of your preparation for the hearing today.

Alison Saunders: I will certainly send the Committee a number of examples where we have been successful.
getting assets off people and into the system. That is the biggest challenge we face.

Mark Sedwill: Can I give you a concrete example?

Q64 Nick Smith: We are not getting very far in terms of concrete examples.

Mark Sedwill: Let me give you a concrete example. We have reached an agreement with Spain, a country that has traditionally been a haven for people trying to recover assets, in order to facilitate the recovery of assets overseas. I cannot give you lots of case examples because I don’t have them to hand and I probably wouldn’t be informed about it, but we have done that with Spain. We are looking at several other countries that are destinations for financial transactions and for criminals who want to move their money overseas to make it easier to recover money from overseas. As we discussed earlier, as soon as they are investigated they seek to move their money.

Q65 Chair: Do you know how much money is overseas, Mr Sedwill?

Mark Sedwill: I don’t.

Chair: Well, it is in the Report. It is two hundred and something million, of the one point whatever it is billion that we are owed, so it’s only a tiny bit of the jigsaw.

Q66 Nick Smith: I never fully understood the point that you were trying to make. Are you saying that you are going to get this money back and if so, by when?

Mark Sedwill: We are dealing with the international environment. You wanted a concrete example of what we are doing, and one thing that we have done is, because Spain has been a destination for criminals, we have reached an agreement with Spain to make it easier to recover assets. It is the first step. I can’t give you lots of numbers about what has been achieved. We may have some cases that I can quote.

Q67 Nick Smith: It’s great that you have got that agreement. Have you got any money back through that route?

Mark Sedwill: I don’t know. We can write to you to give you examples of what we have managed to achieve.

Q68 Nick Smith: So you have given us an example, but you don’t know how much?

Mark Sedwill: It’s not a number I have in my head.

Q69 Nick Smith: A couple more quick questions to Mr Bristow. You talked earlier about not having enough financial investigative resource in some places. What did you mean by that?

Keith Bristow: The point I was trying to make is that there are all sorts of ways of trying to assess this. It is challenging to try to judge how much is out there as a result of crime.

Q70 Nick Smith: But that is your job, isn’t it? It is about working out who the big-ticket players are, how much money they are likely to have and where they are likely to have squirreled it away, and you bring your judgment as a professional police officer.

Keith Bristow: What I was trying to do is to differentiate between the two. All the investigations we lead into people who are involved in organised crime are subject to a financial investigation.

Q71 Nick Smith: All of them?

Keith Bristow: All of them. Every one. If we look at the broader crime set of acquisitive crime, where someone takes a profit, not all those investigations in wider policing and law enforcement are subject to a financial investigation because, frankly, from a resource point of view the practicalities—for crimes from shoplifting to drug trafficking—are not realistic; but we financially investigate every big investigation against organised criminals.

Q72 Nick Smith: In that case, it seems that what you are saying is that you have enough resource for the cases that you need to point the resource at.

Keith Bristow: We can always do more, but we financially investigate all the people we are targeting.

Q73 Nick Smith: How do you identify the big-ticket criminals who have sent swag overseas?

Keith Bristow: We have a system that works across the whole of law enforcement called organised crime group mapping—this is all law enforcement, all of policing across the UK—to identify those people based on intelligence and evidence involving organised crime. We estimate at the moment—the numbers change—that there are around 37,000 criminals and 5,500 groups, but the numbers go up and down.

Q74 Nick Smith: But you can’t investigate 37,000 criminals like that with your little professional unit, can you? How many are you concentrating on there?

Keith Bristow: All that data comes into us and, working with policing and others, we identify high priority groups, priority groups and those that remain important because they are involved in organised crime, but they are not subject to NCA attention and co-ordination.

Q75 Nick Smith: That is 37,000 in the big set. Let’s drill down. What are the smaller sets? How many of them are there?

Keith Bristow: Let’s talk about 5,500 groups. We estimate that anywhere at any one time between 30 and 50 of what we call high priority groups are on our radar and we are focused on. If there is a better law enforcement agency to focus on them, we support that agency.

Q76 Nick Smith: Is that 30 or 50 groups, individuals, or sets of people?

Keith Bristow: Thirty to 50 groups.

Q77 Nick Smith: How many individuals?

Keith Bristow: That varies on the number of people involved in the group, but it is into hundreds rather than thousands.
Q78 Nick Smith: Try to be more specific. How many hundreds? Less than 1,000? Less than 500?
Keith Bristow: Here and now less than 1,000 are involved in those high-priority groups, but I must emphasise that when we aggregate the data, which is done regularly, that changes because we disrupt people. Some people go to prison and stop offending. All sorts of things happen that affect their level of offending, so it changes.

Q79 Nick Smith: Of those 8,000 that you are concentrating on, how many of them did you manage to get any money from in the last year?
Keith Bristow: We started operations on 7 October last year. By 23 December we had confiscated £902,000. That is pure asset confiscation, not civil recovery and not cash seizures, although I can give you the numbers for those if you want them.

Q80 Nick Smith: In a month you got just under £1 million?
Keith Bristow: That was between 7 October and Christmas.
Nick Smith: So in three months you got £1 million.

Q81 Stephen Barclay: Can I focus on the timing of all this? Do you freeze assets within the first 24 hours of a high-value arrest?
Keith Bristow: We focus on taking the earliest possible opportunity to restrain assets and that could be within the first 24 hours, but we have to identify that they have assets and then we have to go through a process of doing that. We go for the restraint orders by working with our colleagues in the CPS.

Q82 Stephen Barclay: In what percentage of cases would you freeze assets within the first 24 hours?
Keith Bristow: I couldn’t answer that question. I could do some more work outside.

Q83 Stephen Barclay: Would you accept that in the vast majority of cases you do not freeze assets within the first 24 hours?
Keith Bristow: Probably, yes.

Q84 Stephen Barclay: Are there any EU countries which freeze assets more routinely within the first 24 hours?
Keith Bristow: I don’t know.

Q85 Stephen Barclay: Would Italy, with its experience of the mafia and their ability to move money, tend to freeze money at a far earlier stage than the UK?
Keith Bristow: You are right to say that law enforcement in Italy has particular experience, and we work well with our colleagues in Italy, but I could not answer that specific question.

Q86 Stephen Barclay: How do you think your area’s performance—not the new agency, which has not been in place, but SOCA and other policing performance—compares with Italy?
Keith Bristow: I couldn’t answer that question.

Q87 Stephen Barclay: Can I take an area like trafficking? I spoke with the Human Trafficking Foundation which does a lot of great work—Anthony Steen and others. They said that Italy recovered over €13.5 million relating to trafficking confiscation orders last year, but according to a parliamentary answer to Michael Connarty in December 2012, the figure for the UK was £184,645, which is a massive discrepancy. Could you explain that discrepancy?
Keith Bristow: There are a number of factors. One is that I don’t think the trafficking of people and modern slavery has been the subject of the sort of law enforcement attention that it should be. That is one of the factors. That is something that we are addressing now across policing and law enforcement and more widely, but I don’t know the particular dynamics that you are describing. I can certainly look at those and come back to you.

Q88 Stephen Barclay: You have given a series of answers today talking about disruption as one of the grounds why your performance on confiscation orders was so poor. Finland has managed 100 convictions last year in relation to trafficking, but the UK managed just 11. Surely arrests are part of your disruption.
Keith Bristow: They absolutely are. As I said—

Q89 Stephen Barclay: We are not making the arrests, but we are not confiscating the money either.
Keith Bristow: There has been insufficient law enforcement attention on this particular issue. That is something that we are concentrating on at the moment in terms of lining up all of our disruptive activity to have a greater effect.

Q90 Stephen Barclay: Taking you to paragraph 3.6, where it says, “Many criminals are sophisticated and act quickly, leaving the authorities limited time to impose ‘restraint’ orders that freeze their assets.” Is it not a statement of the bleeding obvious that if you put in place freezing orders at the point of arrest which you then remove if you do not charge, that not only stops the criminal’s ability to move their money, but reduces vastly the subsequent investigation costs? The question is to you, Mr Bristow, as you are heading the function. I am interested in your thoughts.
Keith Bristow: My view is that the earlier we can restrain assets the better, but that has to be done within the law. It is through an application to the court and therefore we need evidence.

Q91 Stephen Barclay: So is there a need for a change of legislation? Or is it that there is legislation to freeze assets within those first 24 hours but you have not been doing so?
Keith Bristow: If we can make out the case sufficiently well to a standard that CPS can take forward, it is possible to restrain assets quickly.

Q92 Stephen Barclay: So why aren’t you doing so?
Keith Bristow: I didn’t say we weren’t. You asked me a specific question about the proportion within 24
hours. I said I would come back to you with that information.

Q93 Stephen Barclay: In an earlier answer you said that when you initiate investigations, you engage financial investigators. At your investigation stage, you have engaged financial investigators, so why are you not freezing assets before the criminals move them?

Keith Bristow: If the opportunity is there to do that, that is absolutely what we do, because confiscation is so important to us. The reality is that these people are complex and we need to undertake an investigation to get the intelligence and evidence required to do exactly what you are suggesting that we should be doing.

Q94 Stephen Barclay: Why do you think they can do it Italy but it is so difficult here?

Keith Bristow: I would need to explore the reasons for that, but it is a totally different jurisdiction. You may be right that there are lessons that we can learn from the Italians, but I am not in a position to comment at the moment.

Alison Saunders: I was going to say that in order to get restraint orders you would have to go to the court and produce sufficient evidence, as I said before, for them to look at the likelihood that there will be a conviction and also that there would be confiscation. That is always very difficult at the earliest stage when you are investigating, because the purpose of the investigation is to build that case. Where you have the evidence and there is intelligence you can do it, but you have to be able to prove to the court to a standard that there will be a likelihood of a conviction and a likelihood of dissipation.

Q95 Stephen Barclay: Sure. This is what I am trying to tease out. What I am trying to establish from today is whether there needs to be a change of legislation. That is the crux of what I am trying to establish. No one is suggesting that at the point of arrest, you confiscate. I am asking whether the legislation allows you to freeze.

Alison Saunders: But that is exactly what I am saying. That is what restraint is. You have to apply to the court and satisfy those tests for the court for restraint—not for confiscation, but for restraint. The test is reasonably high. You can’t just say, “We are investigating those criminals. They have £x million; we are going to restrain it and freeze it.” You have to go to the court and apply and satisfy the court that there is a likelihood.

Q96 Stephen Barclay: Is your evidence that the test is set too high in terms of securing a freezing or restraint order?

Alison Saunders: It certainly seems to be at the moment and that is what some of the proposed legislation is looking at—changing that test.

Stephen Barclay: Because clearly before the arrest is made significant investigation will have taken place.
Q101 Chair: You were there, or someone was. You are accountable, and you have to take responsibility for what happened in the past, not just say, “I wasn’t there, it’s not me.”

Peter Handcock: I am sorry, I wasn’t saying I wasn’t there; I was simply pointing out that the systems are very old and not interoperable. That is because often legislation has come along and changed systems that required interoperability after the point at which those systems were developed. If there are 300 systems operating across—

Q102 Stephen Barclay: They should have been.

Peter Handcock: They should have been, but they were not. The challenge for us in the courts system is exactly the same as the challenge for policing. It is to modernise those systems and make them interoperable.

Q103 Chair: The challenge was there from 2000. Let us go back to this. Maybe our successors will say you have sorted it brilliantly, but the JARD database seems to be critical and has been useless since 2004; the confiscation tracking order has been temporary since 2007; the Libra system you were talking about has been around since whenever. This is one of the simple things. Why on earth can you not have systems that talk to each other? It could have been sorted out. You might have used the proceeds from crime that the Home Office got and given us a bit more satisfaction, just from sorting out your IT.

Peter Handcock: Rather than dwelling on the legacy, and just thinking about the action that can change it, we and the CPS are in the process of developing, with funding, a common IT system. In 18 months or two years, we will be operating the same case management system. It will be a common system, and it will be built to be interoperable with police systems, JARD and other systems.

Q104 Chair: In 18 months’ time? Is that right?

Peter Handcock: That is the plan.

Q105 Chair: How much are you spending on it?

Peter Handcock: We will probably have spent about £120 million or £130 million by the time we have the system deployed.

Q106 Stephen Barclay: You made that commitment, but then said it was not a promise.

Peter Handcock: I didn’t make a commitment. I said “in about 18 months’ time.” I am not making promises about the delivery of major IT projects.

Q107 Stephen Barclay: Is the problem not even more basic? If you turn to paragraph 3.8 on page 29, it says that there is inconsistency in the selection of cases that go to orders. If you are trying to build a database or an IT system that is interoperable between different bodies, but you have different criteria, is that not an impediment?

Peter Handcock: No, I do not think it would be. It is not the court system that makes decisions about cases that will be subject to an application for a confiscation order. That is an issue for prosecutors.

Q108 Stephen Barclay: In terms of the level of seriousness and how you select your criteria, you would expect consistency, wouldn’t you?

Peter Handcock: It would not be for the courts to select the criteria. That is an issue for the prosecutor.

Q109 Stephen Barclay: No, it is the enforcement agencies.

Peter Handcock: The important point is that the data are common, everybody is working from exactly the same data, and you can move the data around the system efficiently. Everyone is always working from the same information, and there is no hands-off.

Q110 Stephen Barclay: But the Report says that the data are not common, and that in the 6,000 cases, there is inconsistency in what ends up as an order.

Peter Handcock: Are you talking about paragraph 3.8?

Stephen Barclay: Yes.

Peter Handcock: The point has already been made that there is scope for thinking about defining the objectives and the success criteria.

Q111 Stephen Barclay: A moment ago, you said that it was down to legislation from politicians changing the goalposts.

Peter Handcock: From the point of view of my organisation, the priority is to ensure that the penalty imposed by the court is delivered. If a confiscation order is made, our priority is to deliver that confiscation.

Q112 Stephen Barclay: But it is too late then, isn’t it, because the money has been moved?

Peter Handcock: Very often we are operating at the end of the spectrum where assets have not been identified, and it becomes very difficult.

Alison Saunders: This comes back to the work that we are doing with police colleagues to identify the criteria for when to apply for a confiscation order, because, as the Report says, there has been some inconsistency in the past—

Chair: Sorry to interrupt, but do you mind speaking up?

Alison Saunders: Sorry. That work will make it very clear to everyone when we should be applying an order and in what sort of cases.

Q113 Stephen Barclay: But the point I am trying to get over is that the confiscation order itself is too late. It is freezing assets before you confiscate that is material. The movement is taking place before you get round to the confiscation. The offender was convicted September 2008 and the confiscation case was heard in August 2010. It is not difficult for a well-paid barrister to delay proceedings, in terms of the confiscation order; it is the freezing prior to that which is the issue for me.
Alison Saunders: May I confirm my point? I probably have not made myself clear, but when we talk about identifying those cases where we would be looking at confiscation orders, it is about making sure that you get the whole financial investigation right at the beginning. You are absolutely right that you need to be able to issue restraint orders and make confiscation. That criteria are very clear, and will have typologies about in what sort of cases that should happen.

Stephen Barclay: That is what many of us thought SOCA was doing when it engaged financial investigators at the point of initiation.

Chair: Steve, before you go on to a different subject, Chris wanted to come back on this issue.

Q114 Chris Heaton-Harris: On the IT, I hear what Mr Handcock says about changing from whatever you are using now, in which it takes 45 hours and the equivalent of 1.25 full-time equivalent staff to input information manually into the confiscation order tracking system. I assume that you must be using BBC Acorns or something. My concern is the issues listed in figure 17. It does not matter what system you are using, or which Department, or agency; they all seem outdated, cranky, broken, and require huge amounts of data entry in a bad way. I understand that there is movement towards something new and better, but I am worried about lots of things falling off the side of the table. How will you make sure that no old cases or confiscation orders slip through, given that you have different data fields for different entries, and all that type of stuff? How will you make sure that no one gets away? I would not worry now about being a barrister and delaying a confiscation order, because by the look of the IT systems, people are not talking to each other, so they will never get to you, anyway.

Alison Saunders: There is a lot of work on JARD, in relation to making sure that proper, accurate data are inputted, and modernising the system. As Peter said, we will have a joint platform, but that is at least another 18 months away, so we need to do something meanwhile. Work has been commissioned by the Criminal Finance Board, which Peter Lewis, the chief executive of the CPS, is leading on to make sure that we update JARD.

Q115 Chris Heaton-Harris: Is that the 31 improvements costing £270,000 that are detailed in the Report?

Alison Saunders: It may be more than that.

Q116 Chris Heaton-Harris: And how quickly is that likely to happen?

Alison Saunders: That will happen much more quickly than the 18 months time scale. I cannot tell you the exact date, but I will be able to shortly.

Q117 Stephen Barclay: Can I just clarify if the new legislation will enable you to put obligations on professional firms acting on behalf of their criminal clients, who are the ones usually moving those assets at the point of arrest?

Alison Saunders: Obviously, there is the suspicious activity report regime, which applies to professional individuals at the moment, which they should be complying with. I have not seen the draft legislation, so I am not sure exactly what the position would be.

Q118 Stephen Barclay: So you cannot confirm that it would stop a professional firm?

Alison Saunders: There are already obligations on them under the suspicious activity regime.

Q119 Stephen Barclay: It doesn’t stop them. I used to file many suspicious activity reports to SOCA in my job before coming here. That does not stop you making the transfer, it just means that you have to report it, doesn’t it?

Alison Saunders: You report it, but it can also mean that they are stopped.

Stephen Barclay: Not in all cases.

Keith Bristow: Not in all cases. In most cases consent is required to move, but notification is not possible in all cases.

Stephen Barclay: So what I am saying is that Miss Saunders’s point is a slight red herring, because if consent is not required, I can report it to what was SOCA and is now the NCA. I, as a professional firm, have covered myself. I have reported the SAR, but you then have the difficulty of acting after that, because the money has now moved.

Keith Bristow: That is a fair description of some of the challenge. The other aspect concerns one of the groups of people that we are most interested in targeting: those who choose in a professional role such as you describe to act dishonestly to help disorganised criminals.

Stephen Barclay: But they would have a defence, because they have not acted dishonestly; they have filed a SAR. My question is: does the new legislation allow you, at the point of arrest, to put a notice out to the professional advisers of the person arrested, to say that until the court process has continued, they are not to move those assets?

Keith Bristow: I am sorry, I have not seen the draft legislation.

Q120 Stephen Barclay: So who has? We have this draft legislation—we have just been told about it—who knows what is in it?

Keith Bristow: Can I answer in a slightly different way? You made the point about a person in those circumstances having a defence. Yes, of course they may, but actually we have collected evidence to show that they are corrupt and are facilitators of organised crime. They may need their defence.

Q121 Stephen Barclay: How many SARs do you get a year? How many did SOCA get a year?

Keith Bristow: Can I check the precise number with my colleague?

Stephen Barclay: Can you give us a rough figure, off the top of your head? You are describing this as a key test in preventing asset transfer. Can you give the Committee an indication of how many SARs would SOCA get in a typical year?

Keith Bristow: I would need to check.
Stephen Barclay: Is it in the thousands, the tens of thousands or the hundreds of thousands?

Keith Bristow: I believe it is in the hundreds of thousands, but I would need to check.

Q122 Mr Jackson: What concerns me greatly are the very stark figures about the failure of the system under existing legislation with respect to interest accrued and also default prison sentences. The figures show that last year only 2% of offenders paid in full once a sentence was imposed. It seems to me that looking at the figures over all, the message is that if you are a very high-end criminal, you have a pretty good chance of getting away without ever having assets confiscated. If you look at figure 16 on page 38, I have two questions. How are you going to convince this Committee and my constituents who want these Mr Big criminals who are dealing in drugs, for example, to be pushed into penury as well as imprisoned, so that they do not go back to their misbegotten ways. How are you going to deal with that top-end group?

Secondly, going back to Mr Barclay’s point, the serious and organised crime strategy mentions strengthening prison sentences. What does that mean and how are you going to expedite that, while keeping costs in the prison estate down? Those are two separate questions: Mr Bigs and new sentencing.

Keith Bristow: Well, if we follow your language through and talk about Mr Bigs—those high priority criminals and groups that we are most interested in—I am afraid that I am slightly repeating what I said earlier: it is about financial investigation from the start of the investigation, seeking to restrain assets at the earliest opportunity and then using asset confiscation, civil recovery and cash seizures to disrupt their activity and then to pursue that relentlessly. We rely on the partnership with our colleagues who enforce the orders to take the assets off the criminals.

Q123 Mr Jackson: But you have had this legislation in place for 12 years and it is not working.

Keith Bristow: I think there are improvements that absolutely can be made in the system. I think the metrics—

Q124 Mr Jackson: Yes—I would say that a 98% failure is a rather significant flaw.

Keith Bristow: There are some real improvements that need to be made in the system, but, in terms of taking the process from identifying these people and then restraining their assets and getting an order to confiscate, that is where the investigation needs to be rigorous. Then we rely on working with our partners elsewhere in the system to get the assets off the criminal.

Q125 Mr Jackson: Yes, but it is not working. The definition of madness is doing the wrong thing over and over again. It is not working. I am trying to help you here. Do you need new legislation? Do you need to look at the experience of comparator jurisdictions such as Italy and the United States? What do you need to ensure that the existing primary legislation works to tackle the people we both want to take the money from and put in prison?

Keith Bristow: There are two real gaps we need to deal with. The first relates to some of the discussion we have had about identifying and restraining the assets, and how some people will choose to hide those assets. I think some of the legislation will help to address that.

The bigger challenge is the 124 priority cases we have identified with the CPS, the Courts Service and SFO. That will be a test of working in a different way for the asset confiscation enforcement teams we have set up to deliver some real effect on some of these orders. That is the way we need to work. It has to be much more joined-up, much more proactive and much more assertive. That requires us to work together in that way.

Q126 Mr Jackson: Do you need a specialist team that can temporarily disregard some of the run-of-the-mill cases and go after the prolific and persistent offenders that you know, from intelligence, are laundering money and earning a living from criminal activity? Do you need a radical approach like that to give people back faith in the system? I think the fact that it is not working undermines people’s faith in the system.

Keith Bristow: As an agency, apart from the people we target who are exploiting children in particular, the vast majority—if not all—of those whom we target do exactly what you have just said: it is all about money, and making money out of other people’s misery. We do need a radical approach and Alison set out earlier how we will work together to target those orders that relate to the people who are continuing in their criminality, where there is money outstanding and we know that we can take the assets. We believe that by working together we can disrupt them and get the money back into the right place. Those 124 cases are going to be a real test for our multi-agency work. We are confident that we are going to make some real progress on this.

Q127 Mr Jackson: What will real progress look like?

Keith Bristow: It looks like delivering the disruptive effect that we want on these people, confiscating their assets more effectively than we have historically and building the trust and confidence in the system that you have just talked about.

Q128 Chair: We are quite short of time, Alison, you wanted to come in on that; then I want to raise a few issues quickly that we have not raised.

Alison Saunders: It was really to agree with what Mr Jackson was saying. We have set up nine regional teams to work with police colleagues around the country to enforce assets, as well as our central team that is working with the NCA, to try really robust techniques to drive through the enforcement. The legislation will help as well. The international work—

Q129 Mr Jackson: What is your view on the sentencing? I know that you cannot go into policy
issues as such, but, as it is in the strategy, what is your professional view?

Alison Saunders: If it is the top-end criminals, we have one case for which there was a £26 million confiscation award. We enforced £4 million, so £22 million was left outstanding. There was an eight-year default sentence for the £22 million, which, if you are on good behaviour, you would serve half of, so it is four years. So for some criminals, that is worth it.

Mr Jackson: That is £6.5 million a year for watching Sky TV and playing ping-pong.

Alison Saunders: Part of the proposed legislation change is to look at default sentences so that they are longer.

Q130 Chair: Can I just ask some quick questions and then we can finish at 4 pm? But you have all got to come back—don’t forget. First, this is for Alison Saunders: there is an attrition rate through the system. Why do only 1% of offenders get a confiscation order?

Alison Saunders: Partly because we do not have the evidence to impose one. Not every financial crime will be one where you look for a confiscation order—you might term shoplifting a financial crime, or small credit card fraud. There are other ways in which to take money, so it might be that there has been a cash seizure.

Q131 Chair: One per cent.

Alison Saunders: I am not saying that that is right—the 1%—at all, but there are other ways to act. Not all financial crimes will end up with a confiscation order, and that is where things such as the typologies we are developing with law enforcement will help to ensure that we are targeting confiscation orders where they should be.

Q132 Chair: What would your view be on how many there ought to be?

Alison Saunders: That, I do not know, because we need to work out what the typologies are—the types of cases we mean—and then look at that.

Q133 Chair: This is not new stuff. I cannot believe there aren’t people in your organisation that have a view on this. I look at it and think that 1% is bonkers, but you are the professional; tell me how many more there ought to be?

Alison Saunders: We are all looking at the same objective. The difficulty with putting a percentage on how many orders we should have, is—

Q134 Chair: What does your organisation think?

Alison Saunders: We do not, because the whole point was not having targets, because that is why we ended up with so many orders.

Chair: I am not asking for a target. One per cent looks wrong. What would make us, the public, feel comfortable that you are going after the criminals to try and get the money out?

Alison Saunders: Once we have done the work that we are doing, we will be able to—

Q135 Chair: I cannot believe this. It has been around for 10 years.

Alison Saunders: I could not and would not put a figure on it at the moment.

Q136 Chair: I find that very unsatisfactory. One other issue: where you do not have a completed case, you put an order with a nominal order on it—I do not know which of the three of you does this; I do not know who it is and you are supposed to come back when you have better information. The Report, on page 25, talks about 7,000 nominal orders. The value is £1 billion, but the total value of the confiscation orders on those 7,000 to date has been £10,000.

Alison Saunders: That is one of the things that we are looking at. Nominal orders in line there because there are no assets to put a value on.

Q137 Chair: Why have we not looked at it in the past? Again, this is not legislation, it is just, “Get a grip!” All this is, “Get a grip.”

Alison Saunders: And we are working on this, because there are places, such as the north-east and the midlands, where we have gone back and addressed some of these nominal orders and are finding that we are now able to enforce much more of them—much more assets—and regain more assets.

Q138 Chair: Very finally, because we are going to be stopped in a minute by the clock, somebody—the CPS—is using private companies to try and get some of our money back and the ratio looks pretty poor to me. It has cost £3.2 million and you have got £15 million back, which, when we look at other ratios for this sort of work, looks poor. About 20% of the money due goes in the cost. Somewhere, Aileen, is the in-house figure.

Aileen Murphie: Which is £9 for every pound.

Q139 Chair: Nine pounds for every pound that you spend. Have you looked at that? What do you feel about that in terms of value for money?

Alison Saunders: We look very hard at when we use receivers and there are certain times when we do use them. We look at the cost as well.

Q140 Chair: Are you aware of the data that it is 9:1 in-house and 5:1 out-house? Have you done anything with those data? Were you aware of them before I mentioned it this afternoon?

Alison Saunders: We have looked at receivers and at ensuring that we get value for money from them. We have a very straightforward contract.

Q141 Chair: Do you think 5:1 is value for money?

Alison Saunders: We can improve the way in which we do it, but the assets they recover are quite substantial and are assets that we could not recover ourselves; we do not have the expertise to do it.

Q142 Jackie Doyle-Price: So you are saying that you are not doing it in-house because it is too difficult for the in-house teams to do.
Alison Saunders: No, because there are things that we need receivers to do that we either do not have the powers to do ourselves or where it is better to get those receivers in to do that work—where there are hidden assets and where there are powers that we need them to use through civil courts.
Chair: We have a vote in about one second.

Q143 Fiona Mactaggart: I just want to ask one very quick question about these relatively low amounts. We are talking more about volume crime, and it affects more of our constituents. They do not believe that the courts are collecting compensation orders and so on in these cases, partly for the reasons that Mr Sedwill said at the beginning. But if you want to get rid of crime, one of the things you have to do is build confidence in the public that you are going to be able to. What are you doing about that?

Peter Handcock: The Report makes it clear that, at the bottom end of the spectrum—lower value orders—we are successful at collecting. We collect around 90% of the very low value orders. There is quite a good story to tell there. The ultimate value of the confiscation order does not matter so much as the availability of assets to satisfy it. At the very bottom end, which is the stuff that HMCTS usually ends up with, you end up, particularly if people have served a default sentence, with something that is effectively no different from a fine, which you are trying to enforce using the same enforcement powers that are available for fines. Again, typically, at the very bottom end of crime, you end up defaulting to a deduction from benefits order for those 9% who do not pay relatively quickly. Then you are inevitably into quite a long period to get the money back.

Q144 Fiona Mactaggart: Because it is much easier. That is why I am shocked that too many of my constituents do not get compensation orders that have been ordered against people who are not dependent on benefits when they come out of jail.

Peter Handcock: You are absolutely right that it should be easier. That is one of the reasons why we are so successful, because people will stump up the money, or we can use a range of enforcement techniques to enable them to pay by instalments. You also have to remember that, at that end of the spectrum, you are also dealing with people who are most unlikely to have any assets at all. So you are just thrown back on the kind of instalment payments enforcement mechanism that applies in the fines system. You are not able to realise assets and make the payment quickly unless the individual comes up with the money, which a large proportion of them do.

Q145 Fiona Mactaggart: Absolutely, but those who resist you, I suspect you are bad at dealing with. We have tools to deal with the high-end criminals who resist, but not so effectively for the cheap criminals who resist.

Peter Handcock: I don’t think the data show that to be the case.
Chair: I am going to stop us; we have a vote. I have to end this by saying that I think that this is a sorry tale of Executive incompetence, Mr Sedwill. We will be returning to it, certainly before the general election. We will get our report out as soon as we can and then return to it within six months after that.

Written evidence from R.G.Lorkin

I was very interested to watch the House of Commons Public Accounts Committee questioning this afternoon on Confiscation Orders, I regret that I missed the first 45 minutes not realising that such an inquiry was being considered.

I left the Crown Prosecution Service as a Paralegal Officer in March 2013 following Voluntary Redundancy. As a Paralegal Officer on the Westminster Team (followed by Inner London & Southwark) I specialised in Restraint Orders and Confiscation as part of my general duties on top of all my branch level work and was thus considered a Proceeds of Crime “Champion”.

Having heard the evidence before the committee this afternoon I felt the requirement to contact you and advise that the CPS in London gave Confiscation a very low priority to some extent understandable given the other priorities the organisation has. However over a period of around 2 years I had no lawyer support in my work as it was felt too much of an inconvenience when dealing with the important day to day caseloads. Given Ms Saunders was the Chief Crown Prosecutor for much of that time I can only assume that confiscation was not one of her priorities either.

I must emphasise here that my Confiscation and Restraint Order work related in the main to lower profile work i.e those cases not dealt with by SOCA and Special Casework etc within the CPS but was at branch level referring to the concerns expressed by Ms MacTaggart with regard day to day Theft and the lower level work by the specialist case squads within the Metropolitan Police. Even these can reach potential assets of £1M plus, R V Leroux was one particular case I dealt with.

I built up a good working relationship with my local Police Payback Team on Restraint Orders and Confiscation issues and they frequently allowed me some “room” as they appreciated I had a criminal caseload to deal with on top of the confiscation work, and that I could not always get the legal support to aid me in my considerations. I would often have to do my own research into the law. At one point my Line Manager asked...
to relieve myself of confiscation duties as I was undergoing a lot of stress dealing with confiscation on my own as well as the on going caseload. My workload was then transferred back to each individual allocated Paralegal & Lawyer, however given their lack of experience and knowledge I would frequently need to deal with these cases in any event.

The committee should also be aware that as a branch level Paralegal I had to apply for financial authority in order to seek a Restraint Order due to the ancillary costs incurred such as payment to the banks for each bank account and to the land registry for the restraint of property. This would in some cases take time depending on the availability of the local business managers. As part of my “business case” I would be dependant on the Officers statement as to the progress of the investigation and as to whether the assets sought were viable in terms easily freezeable and of a sufficient amount to justify:

(i) The ancillary costs incurred
(ii) a consequential Confiscation Hearing.

In essence I would use the £5,000 threshold as a guide in my determinations, and in my business case declare I was content that there was sufficient evidence to proceed and that there would be a liability in the defendant dispersing assets if he/she did not have their assets restrained. I was happy to draft Restraint Orders on behalf of the Police prior to charge and present them to the court, where again I had a good working relationship with the court clerk responsible at Southwark Crown Court where I would send the majority of my requests. I can say the majority of Restraints I dealt with were pre charge. I know an area where a number of committee members were interested in. Based on the Draft Restraint Orders submitted ex parte together with the Witness Statement of the Financial Investigation Officer I can recall none of my 40 plus restraints not being signed by a Judge due to lack of concern on their part over the public interest in the service of a Restraint Order. In deed at Southwark, Restraint Orders were dealt with administratively to avoid an Officer having to attend, and I considered it part of my duty to ensure the Witness Statement was sufficient.

The preparation of Restraint Orders is a responsibility of the Crown Prosecution Service and its duty under the Director to submit them to the court, although to save time Police Officers would try and help by drafting them for me in advance however despite their kind attempts to assist I would often need to re-write or redraft them to ensure there was no legal ambiguities especially as templates were used. The Police should not be doing this work and the CPS should! The Police need to provide the evidence. However all too frequently at Trials as well as through Proceeds of Crime the police find themselves doing CPS work due to the lack of resources within the organisation.

Therefore the assertion by the Director of Public Prosecutions that the lack of Restraint Orders was due to recent legal determinations is an excuse. The real reason, and I can only speak from a CPS London perspective is that no-one is sufficiently trained, and at a branch level the Paralegals and Reviewing Lawyers are struggling with the Trial work at present let alone Confiscation issues on top. Most CPS training is now done via Computer on line whereby Confiscation is a complicated area of law which requires practical courses.

I can recall a number of Lawyers not wanting to get involved in Proceeds of Crime as I say because it added a further burden on their already daily workload.

I also found another area of Restraint Orders I am not sure the committee touched on was 3rd party interest i.e a spouse’ interest in a home or joint bank account which could also lead to subsequent legal actions.

The other is a suspect never returning to the country to be dealt with and a Restraint being considered in perpetuity for instance I had a suspect who joined the Iranian army under conscript to which there was 3rd party interest for which the Crown had to concede in court and lose some of the funds restrained.

Thus some of those restrained funds/assets could be lost prior to confiscation on application to the court by the defendant or 3rd party.

There is a whole lot more I could probably say on this issue however I was compelled to write even to this limited extent so the committee was not mis-advised on the issue and to state in my view the priority given to this subject has not been there for some years and Police Officers at the Payback/Confiscation Units could advise the committee to this extent and the performance of the Crown Prosecution Service in this regard.

I was always apologetic to the Police when they sought my assistance and advice on these issues as I could not provide them always with the time and knowledge they required to prosecute Proceeds of Crime in an effective manner. It is a resource issue as well as a priorities issue within the CPS, and maybe things have changed in the 9 months since leaving but I doubt it and suspect they are probably worse.

I was happy to deal with Proceeds of Crime as it was challenging and different to the other parts of Criminal Law I was only sad I felt o could not do better.

I apologise for taking up your time and wish the Committee good luck in its on going investigation in this subject.

15 January 2014
Written evidence from the Crown Prosecution Service, Home Office and the National Crime Agency

When we appeared before the Committee on 15 January, we undertook to write to you providing further information on a number of issues that arose.

Q21–25: Mr Ibori is believed to have bought a Hampstead home for £2.2 million … What progress there has been in tracing that £2.2 million and how much of the rest has been recovered (case of James Ibori)? (Alison Saunders, CPS)

Asset recovery proceedings against Mr Ibori are ongoing.

On 27 February 2012 Mr Ibori pleaded guilty to a number of offences, including money laundering, conspiracy to defraud and conspiracy to make false instruments. The offences related to corrupt activity and theft of State Government funds whilst Mr Ibori was a serving Nigerian politician, and to fraud concerning the sale of shares in V Mobile. Mr Ibori’s wife, Theresa Ibori, was convicted of money laundering in the same proceedings. Ibori was sentenced to 13 years imprisonment.

The question asked by the Committee relates to the property in Hampstead. This property was ascribed to Theresa Ibori. Theresa Ibori had a confiscation order made against her, in the sum of £5.17M. Receivers were appointed to recover her realisable assets, including the Hampstead property. The property has been realised, and was sold on 7 February 2013 for £3.40M. The net proceeds of sale have been remitted to the court.

In initial confiscation proceedings against Mr Ibori, in September 2013, an amount of £89.78M was sought, of which £49.57M constituted known assets. The remainder is hidden assets.

Mr Ibori used complex financial transactions set up by his co-conspirators to hide his assets. Complex chains of companies, off-shore trusts and investments and loans to companies around the world have been used to try and distance Mr Ibori from ownership of assets. Extensive enquiries have been made across the world to trace these assets, including requests for assistance to other jurisdictions and visits by financial investigators to those countries. As a result, some of the monies have been traced and frozen, although substantial sums remain untraced.

Confiscation proceedings took place from 16 September to 7 October 2013. The Court adjourned the proceedings, at the defence request, to review further evidence. On 17 December 2013 the judge ordered that the confiscation proceedings against Mr Ibori and those against one of his co-defendants, Onuigbobe, should be heard together. The proceedings are now listed for 9 to 11 April 2014. Asset recovery measures will commence subject to the outcome of those proceedings.

Q40–44: why is there a 27% drop in the number of restraint orders from 2010–11 to 2012–13? (Alison Saunders, CPS)

The Government is committed to improving the early use of restraint orders. As stated in the Serious and Organised Crime Strategy, we will, as soon as Parliamentary time allows, amend the Proceeds of Crime Act 2002 so that assets can be frozen more quickly and earlier in investigations. This is partly in response to the case of Windsor v CPS [2011] EWCA Crim 143. We expect to see an increase in restraint orders once this amendment has been made.

The Court of Appeal in that case expressed concerns about ex parte applications for restraint orders at the investigation stage: the prosecutor should provide sufficient evidence to enable the Court to come to its own conclusion that there is reasonable cause to believe that a suspect has benefited from criminal conduct. Suspicion will not suffice. Clarification of the evidential requirement may have precluded a number of restraint applications, where there is insufficient evidence to meet this test at the investigative stage. This may have had an adverse effect on the use of restraint orders over the last two years.

Costs generally follow the event in restraint proceedings, so there is a costs risk where a restraint application is unsuccessful, or where a restraint order is subsequently discharged. Prosecutors should only proceed with a restraint application if they are satisfied that they have sufficient evidence to meet the evidential test articulated by the Court of Appeal.

The CPS works with law enforcement agencies to consider the restraint of assets at the earliest possible stage. This includes joint working with international colleagues, where assets are located abroad or evidence is required from another jurisdiction.

The CPS is re-organising its asset recovery work, to provide a consistent national approach and will ensure that all restraint work is carried out in the Headquarters Hub or in one of the 9 Regional Hubs, by lawyers with asset recovery expertise and experience.

Q47–48: I understand from something you said, Mr Sedwill, that James Brokenshire had been appointed to chair the Criminal Finances Board. When did that happen? (Mark Sedwill, Home Office)

The Criminal Finances Board (and its predecessor Boards), have routinely been chaired by senior Home Office officials, although we understand that on one previous occasion a Home Office Minister chaired a meeting of the Board. The Minister for Security, James Brokenshire, will now chair quarterly Criminal Finances
Board meetings. His appointment as chair commenced with the last meeting, which was held on 17 December 2013.

Q59: I will certainly send the Committee a number of examples where we have been successful. (Alison Saunders, CPS)

CPS CASES

The CPS successfully enforces a large number of confiscation orders each year, as evidenced by the enforcement figures for the last three years: £79.43M in 2010–11; £83.16M in 2011–12; and £90.08M in 2012–13. These figures exclude additional compensation monies recovered on behalf of victims.

The following cases are some examples of CPS confiscation and enforcement successes:

David Dalrymple

27 September 2007: Dalrymple was convicted of Cheating the Public Revenue. Dalrymple did not declare monies in his company accounts, resulting in a tax loss of £1.2M. Additionally, £2.6M of commission payments were diverted to entities controlled by Dalrymple.

4 September 2009: a confiscation order was made for £3.67M, to be paid within fifteen months with a six year sentence in default.

The confiscation order has been fully satisfied, in addition to the entire costs of the receivership.

Dalrymple had managed to conceal much of his property via various trusts and company assets outside the jurisdiction. His wife was found to have a 50% share in numerous assets.

Due to the lack of co-operation, an Enforcement Receiver was appointed. Approximately £2.3M of UK based assets were realised by the defendant and the receiver.

Additionally, as a result of close co-operation between the CPS Proceeds of Crime Unit and the Jersey authorities, the sum of £1.3 million was realised from property held in a trust in Jersey.

Raymond Cox

7 February 2007: Cox was convicted of Conspiracy to Cheat the Public Revenue. The Defendant was a principal in a large Missing Trader Intra Community (“MTIC”) fraud.

26 January 2009: a confiscation order was made in the sum of £6.74M.

To date, £6.32M has been paid into Court by the Receiver. The Receivership has realised the assets of various corporate entities, some of which were situated outside the jurisdiction. The Receiver expects to recover further assets, including a £100,000 tax rebate. After the Receiver is discharged there is likely to be only a small outstanding amount.

The Court of Appeal recently refused Cox permission to appeal the amount of the order, which he claimed should be reduced to £2.69M.

David John Downes

Mr Downes pleaded guilty to conspiracy to defraud and was sentenced to 4 years and 7 months imprisonment. He was one of the main organisers of the fraud.

18 April 2013: a confiscation order was made in the sum of £3.97M, following discussions with the defendant.

Almost all of the assets have been voluntarily realised by Downes.

The case involved a boiler room fraud in which worthless shares were sold to unwitting investors using high pressure sales techniques. The money for the shares was sent by investors to bank accounts in located in various countries.

Sandeep Singh Dosanjh

July 2012: Mr Dosanjh was convicted of defrauding the revenue of in excess of £39M, derived through carbon credit VAT fraud in a period of 69 days. Mr Dosanjh played a leading role in the fraud.

Sentence: 13 years’ imprisonment.

October 2013: following a complex and lengthy financial investigation, a confiscation order was made in a sum just under £13M.

The full sum is to be paid within 6 months; £3M in hidden assets is to be paid within 3 months. Default term: 10 years.
6 January 2014: approximately £3.25M, made up of both visible and hidden assets, has been paid voluntarily.

**Jaswant Raykanda**

7 October 2003: Mr Raykanda had a restraint order made against him.
21 December 2006: Mr Raykanda was convicted of MTIC fraud.
Sentence: four and a half years’ imprisonment.
8 February 2010: a confiscation order was made in the sum of £3.79M.
Default sentence: seven and a half years.
The hidden assets finding amounted to £1.58M. The rest of the confiscation order was made up of UK and overseas properties, vehicles, monies in financial institutions and trust funds.
10 June 2011: the Court of Appeal quashed the confiscation order in relation to the hidden assets. The case was then remitted to the Crown Court.
25 October 2012: The Receiver had recovered £2.24M by this date. By consent, it was agreed at court that the confiscation order would be reduced to £2.76M, saving four weeks of further litigation. Mr Rykanda was ordered to pay a further £519,295 in two parts, including £150,000 in hidden assets.
January 2014: only £300,000 is outstanding, of which the Receiver holds £80,000.

**Terrence Brown**

This case featured one of the largest collections of digital material of use to terrorists ever discovered by the police.
22 February 2011: convicted of offences under the Terrorism Act 2000 (collecting material for terrorist purposes), the Terrorism Act 2006 (dissemination of terrorist material) and money laundering.
9 March 2011: sentenced to 3 years’ imprisonment.
1 February 2013: a confiscation order was made in the sum of £38,383.
Confiscation order paid in full, following an indication that the CPS would apply for an enforcement receiver and/or to activate the default sentence. A restraint order was in place to cover all of the assets.
Mr Brown had indicated that he wished to raise arguments under Article 1 Protocol 1 of the ECHR but this was abandoned following CPS representations on the issue.

**Shirley Banfield**

3 April 2012: convicted of murder, having pleaded guilty to conspiracy to defraud, forgery and dishonestly retaining a wrongful credit.
The case concerned the murder, by Banfield and/or her daughter, of Banfield’s husband, Don Banfield. Banfield also acquired her husband’s interest in property and siphoned off his pension into her personal accounts.
3 April 2012: sentenced to life imprisonment (18 years minimum).
28 January 2013: confiscation order made of just over £140,000.
31 July 2013: the murder conviction was quashed. However the remaining convictions were unaffected and the confiscation order was reduced to £63,713.
The confiscation order has been fully paid. A restraint order was in place to preserve all assets.

**Q66–67:** “It’s great that you have got that agreement (with Spain). Have you got any money back through that route? We can write to you to give you examples of what we have managed to achieve. (Mark Sedwill, Home Office)

The Home Office, the CPS, the NCA and HMRC have agreed on engagement with a number of priority countries, all deemed to be of strategic importance for international asset recovery. Spain is one of the top priority countries for UK asset recovery in terms of the value of assets (held there by criminals who have offended in the UK).
We reached agreement with Spain in 2013 to increase co-operation to tackle criminal finances. Whilst assets have not yet been recovered, the Crown Prosecution Service (who already fund a liaison magistrate in Spain to facilitate requests for assistance), will be posting an additional liaison prosecutor to work exclusively on asset recovery requests. Work is already underway to identify a suitable person to fulfil this role.
Additionally, the NCA and HMRC have officers located in Spain, advising on operational matters.
Spain has also this month posted its first Spanish liaison magistrate to the Home Office.

The UK and Spain will hold a joint asset recovery workshop in Madrid in February to facilitate practical co-operation between law enforcement and prosecutors in both countries. The workshop will be opened by the Spanish and British Security Ministers.

Q82: In what percentage of cases would you (the NCA) freeze assets within the first 24 hours? (Keith Bristow, NCA)

The NCA, which went live on 7 October 2013, has not frozen assets within 24 hours of arrest in any of its cases.

As explained in the answer to Q95–97 below, to obtain a restraint order it needs to be shown that a criminal investigation or proceedings has started; that a suspect has benefited from criminal conduct; and there is a real risk that assets will be dissipated. The challenges in this area have been compounded by the case of Windsor v CPS [2011], as explained in the response to Q40–44, and this has been a factor in restraint being obtained post charge in over 70% of NCA cases. While every NCA investigation includes a financial investigation, the vast majority of these investigations are complex requiring international enquiries, which are often time consuming, to enable the NCA to both demonstrate the risk of asset dissipation and also to identify the asset values.

In addition full and frank disclosure is required to secure the restraint which has the potential to undermine an ongoing investigation—for this reason in around a third of the NCA cases restraint has been secured post conviction.

For these reasons the NCA welcomes the commitment in the Government’s Serious and Organised Crime Strategy to amend POCA so that assets can be frozen more quickly and earlier in investigations. The NCA expects to see restraint orders made more efficiently once this amendment has been made.

Q87: The discrepancy between human trafficking confiscations in Italy and the UK (Keith Bristow, NCA)

As explained in the evidence sessions there are several factors in this:

(i) Human trafficking has suffered from a fragmented law enforcement response. For the first time in the UK, law enforcement (led by the NCA), has established a National Control Strategy identifying areas of national priority. Modern Slavery has been identified as the highest priority level available. This is aligned to EU activity including an EMPACT project led by the UK and the Netherlands, which has been established to address human trafficking. The NCA will use its intelligence, tasking and coordination functions, and its international presence, to build a more comprehensive picture of the threat. This will lead to better targeted, cross agency working, a growing recognition of the importance and value of financial investigation, and result in more prosecutions and therefore an increase in confiscation orders against human trafficking.

(ii) As explained in the answer to Q95–97 the legislative position in Italy is very different. In particular in Italy there are offences where at the conclusion of criminal proceedings confiscation is mandatory and this includes offences of human trafficking and slavery.

(iii) The Modern Slavery Bill and White Paper includes a commitment to use the Proceeds of Crime Act to recover the money made from modern slavery. Human trafficking is already a “lifestyle offence” under Schedule 2 of the Act, meaning that the courts can confiscate relevant assets linked to a defendant’s crimes, whenever those crimes took place, and regardless of whether they have been the subject of criminal proceedings. The White Paper references the Government’s intention to broaden the provision to make forced labour a “lifestyle offence” too. This will make it easier to secure confiscations in human trafficking/modern slavery cases. The Modern Slavery Bill will also consolidate existing human trafficking and slavery offences to make it administratively simpler to prosecute and convict the perpetrators. We are looking at what more we can do to simplify the legislation to ensure it fully supports law enforcement activity to bring the offenders to justice.

(iv) As highlighted in the 2013 Second Report of the Inter-Departmental Ministerial Group on Human Trafficking (IDMG) it remains a concern that prosecutions and convictions for specific human trafficking offences are relatively low. However, wider data shows that traffickers are being prosecuted and convicted for other very serious offences instead, including, for example, conspiracy to traffic, false imprisonment and rape. In 2012, 70% of cases in England and Wales which were flagged by the Crown Prosecution Service (CPS) as initially linked to trafficking resulted in a conviction for trafficking or another offence. This will mean that confiscation order data on JARD will reflect the offences for which the traffickers were prosecuted and may not reference their involvement in human trafficking. The Modern Slavery Bill includes draft legislation to consolidate trafficking offences, so it will be administratively simpler to investigate, prosecute and convict traffickers.

3 The EMPACT project has been established to address the EU Crime Priority “To disrupt OCGs involved in intra-EU human trafficking, and human trafficking from the most relevant source countries, for the purposes of labour exploitation and sexual exploitation; including those groups using Legal Business Structures to facilitate or disguise their criminal activities.”
Q95–97: What is the procedure for obtaining a restraint order in Italy? (Alison Saunders, CPS)

To obtain a restraint order in Italy, it is necessary that:

— A criminal investigation or criminal proceedings have been commenced; and
— If the “free availability” of the asset pertaining to the crime could aggravate or protract the consequences of the crime, or facilitate the commission of other crimes; or
— That at the conclusion of the criminal proceedings a confiscation order may be authorised or will be authorised (there are mandatory confiscation proceedings for certain offences. These proceedings are part of the criminal trial proceedings).

The judge has to be satisfied that there is a reasonable basis to believe that the offence has been committed and that there is a link between the alleged offence and the asset.

There is no requirement in Italy to show a “real prospect of dissipation”.

To obtain a restraint order in England and Wales, it must be shown that:

— A criminal investigation or proceedings have started.
— There is sufficient evidence to enable the Court to come to its own conclusion that there is reasonable cause to believe that a suspect has benefited from criminal conduct.
— There is a real (rather than fanciful) risk that assets will be dissipated unless a restraint order is granted.

Q116: How quickly will JARD be updated? (Alison Saunders, CPS)

A group has been established and a number of potential changes to JARD have been identified. The changes are being analysed at present to determine which changes should be taken forward, by who and by when. As the DPP said at the PAC hearing, we expect changes to be made much more quickly than 18 months.

Q121: How many SARs do you get a year? How many did SOCA get a year? (Keith Bristow, NCA)

The 2013 SARs Annual Report published in December 2013 explains that 316,527 SARs were received in the year ending September 2013, and 278,665 in the previous year. The number of SARs has increased significantly year-on-year; in 2007 there were 220,484 SARs received.

We hope that this covers the key outstanding points raised at the hearing, but please do let us know if you would like more information.

Allison Saunders CB
Mark Sedwill CMG
Keith Bristow QPM

27 January 2014