



House of Commons
Home Affairs Committee

Proceeds of crime

Fifth Report of Session 2016–17



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*Report, together with formal minutes
relating to the report*

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Home Affairs Committee

The Home Affairs Committee is appointed by the House of Commons to examine the expenditure, administration, and policy of the Home Office and its associated public bodies.

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Publication

Committee reports are published on the Committee's website at www.parliament.uk/homeaffairscom and in print by Order of the House.

Evidence relating to this report is published on the [inquiry publications page](#) of the Committee's website.

Committee staff

The current staff of the Committee are Carol Oxborough (Clerk), Phil Jones (Second Clerk), Harriet Deane (Committee Specialist), Adrian Hitchins (Committee Specialist), Kunal Mundul (Committee Specialist), Peter Stam (Committee Specialist), Andy Boyd (Senior Committee Assistant), Mandy Sullivan (Committee Assistant) and Jessica Bridges-Palmer (Committee Media Officer).

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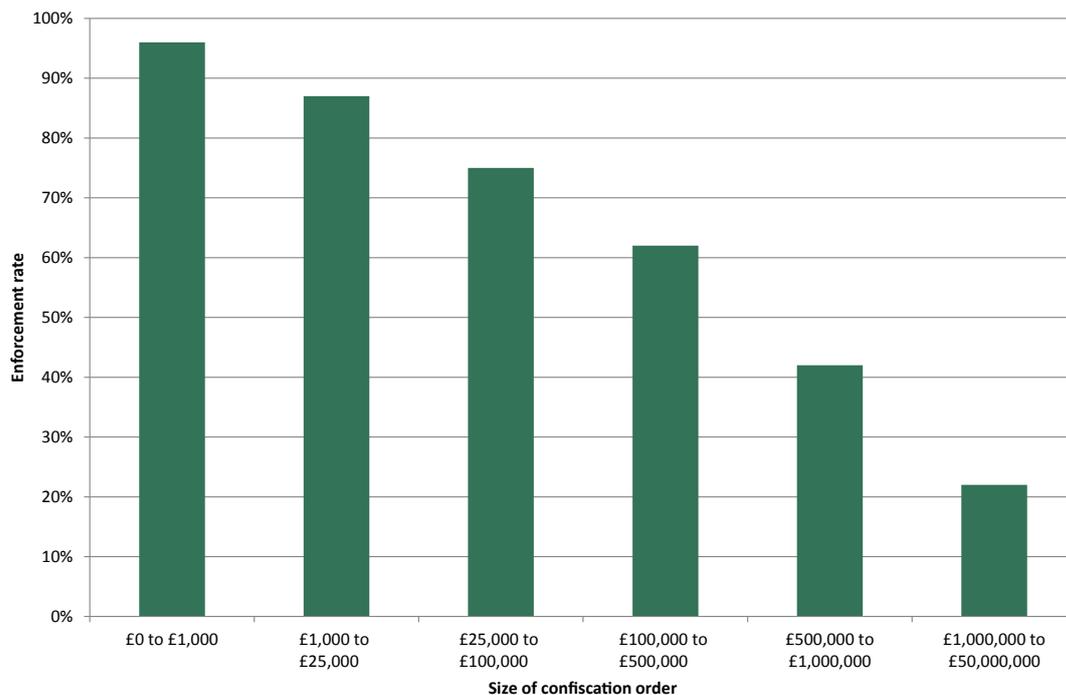
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Key facts

The main relevant legislation is the Proceeds of Crime Act 2002. Further provisions were made in the Policing and Crime Act 2009 and the Serious Crime Act 2015. Further details about the legislation are set out in Chapter 1.

- **640,000 offenders** were convicted of a crime in the UK in 2014–15. Over the same period **5,924 confiscation orders** were made, meaning that less than **1%** of convictions led to a confiscation order.¹
- In that time, **1,203 restraint orders** were used to freeze assets before they could be hidden.²
- The overall enforcement rate of all confiscation orders was **45%**. This varied with the size of the confiscation order, ranging from **96%** of orders up to £1,000 to **22%** of orders above £1 million.³

Figure 1: Enforcement rates by size of confiscation order



Source: Committee analysis of data provided in National Audit Office, *Confiscation Orders: progress review*, [HC 886](#), March 2016

- At September 2015, there was **£1.61 billion** total debt outstanding from confiscation orders. This was up from £1.46 billion in September 2013.⁴
- The interest rate on unpaid debt is **8%** a year. This now makes up **£470 million** of the outstanding debt (nearly 30%).⁵

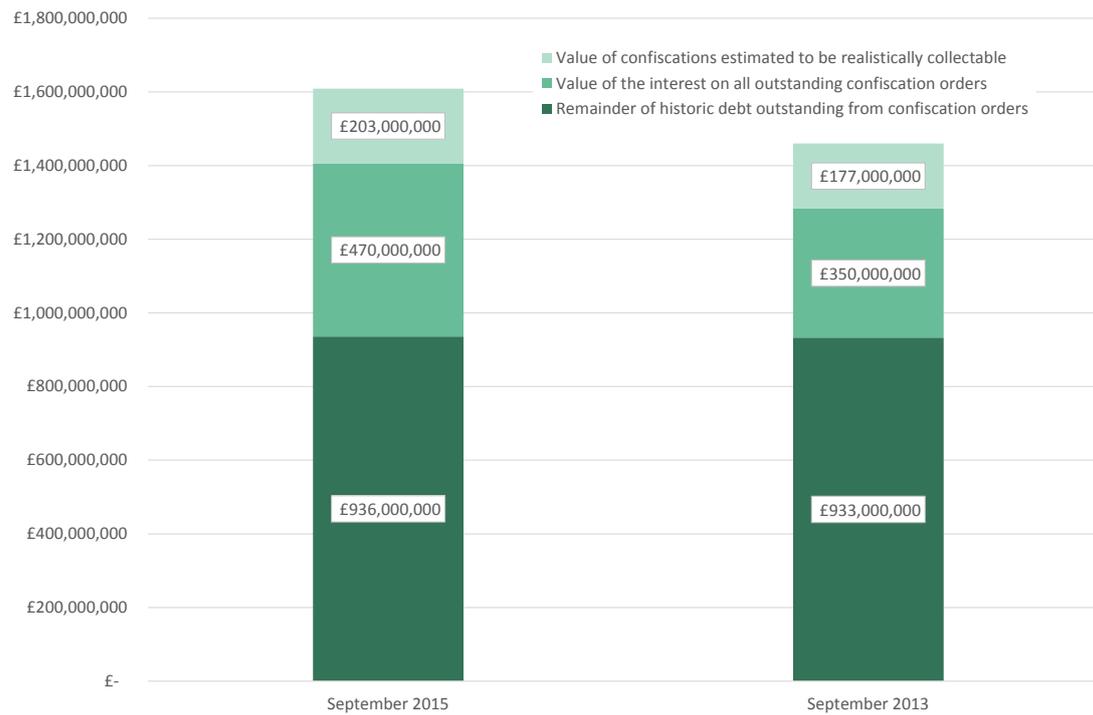
1 National Audit Office, *Confiscation Orders: progress review*, [HC 886](#), March 2016, p 14

2 National Audit Office, *Confiscation Orders: progress review*, [HC 886](#), March 2016, p 30

3 National Audit Office, *Confiscation Orders: progress review*, [HC 886](#), March 2016, p 22

4 National Audit Office, *Confiscation Orders: progress review*, [HC 886](#), March 2016, p 10

5 Serious Fraud Office ([POC0013](#)) para 35

Figure 2: Breakdown of outstanding debt of confiscation orders

Source: Committee analysis of data provided in National Audit Office, *Confiscation Orders: progress review*, [HC 886](#), March 2016 and National Audit Office, *Confiscation Orders*, [HC 738](#), December 2013

- Enforcement agencies collected **£155 million** from confiscation orders in 2014–15. The cost to administer that process was estimated to be more than **£100 million**.⁶
- In the five years between 2010 and 2015, **£116 million** was returned to victims of crime.⁷
- It is estimated that at least **£100 billion** is laundered through the UK every year.⁸ More than 130 countries in the world have a GDP smaller than £100 billion (including Angola, Hungary and the Ukraine).⁹
- The value of property in the UK subject to criminal investigation for being proceeds of international corruption in 2004–15 was **£180 million**.¹⁰
- By the end of October 2015, the National Crime Agency had closed **119 suspicious bank accounts** in the UK.¹¹

6 National Audit Office, *Confiscation Orders: progress review*, [HC 886](#), March 2016, p 21

7 Home Office ([POC0019](#)) para 2

8 Q94

9 The World Bank, '[GDP ranking data](#),' accessed 10 June 2016 [NB: On that date 1 USD=1.44 GBP]

10 Transparency International ([POC0025](#)) section 5

11 National Crime Agency ([POC17](#)) para 28

1 Background and Introduction

Seizure of Criminal Proceeds

1. The Proceeds of Crime Act 2002 (POCA) set out the powers under which the Government could seize the proceeds of a criminal's activities. It represented the rationalisation of various pieces of legislation which enabled law-enforcement bodies to pursue proceeds of crime.¹² The Home Office stated that “the aim of the asset recovery scheme in POCA is to deny criminals the use of their assets, recover the proceeds of crime, and deter and disrupt criminality”.¹³

2. In its recent report analysing the confiscation elements of POCA, the Royal United Services Institute (RUSI) summarised the four key elements of recovery:

- (1) Criminal confiscation: Part 2 of the POCA sets out powers to confiscate the proceeds of crime following a criminal conviction as part of the sentencing process.
- (2) Civil recovery: Part 5 (Chapter 2) of the POCA sets out a system for confiscating the proceeds of crime in the absence of a criminal conviction through the civil courts.
- (3) Cash forfeiture: Part 5 (Chapter 3) of the POCA sets out powers to seize and forfeit cash, through a civil process, where there are reasonable grounds to suspect that it is the proceeds of crime.
- (4) Criminal taxation: Part 6 of the POCA allows the National Crime Agency to access revenue powers to tax income which it has reasonable grounds to suspect are the proceeds of crime.¹⁴

Of these, criminal confiscation is the main way through which the Government enforces POCA, with £155 million being collected by enforcement agencies in 2014–15.¹⁵ The majority of the evidence that we received tended to concentrate on the criminal confiscation of proceeds of crime and the content of this Report reflects that evidence.

3. Since its adoption, the Government's performance in seizing criminal proceeds under POCA has come under criticism both within Parliament and from the media.¹⁶ The author of the RUSI report, and witness in our inquiry, Helena Wood, set out examples of how government policy was undermined by reported poor performance:

The headlines make for stark reading: £1.6 billion in unenforced confiscation orders with only £203 million deemed to be enforceable; so-called ‘Mr Bigs’

12 For example, section 27 of the [Misuse of Drugs Act \(1971\)](#) was the one of the first instances of asset-forfeiture legislation in the UK.

13 Home Office ([POC0019](#)) para 5

14 Royal United Services Institute, [Enforcing Criminal Confiscation Orders](#) (February 2016), p 2

15 National Audit Office, *Confiscation Orders: progress review*, [HC 886](#), March 2016, p 21

16 For example *Evening Standard*, [Criminal Mr Bigs escape having to pay back illicit profits after prosecutors give up on cases](#) (2 October 2015), *Evening Standard*, [Ex-crime boss Terry Adams may avoid paying back illicit gains because he is too poor](#) (9 October 2015) and *York Press*, [College administrator who stole nearly half-a-million pounds to repay £62,000](#) (15 June 2016)

paying £44,000 in private school fees while ignoring the outstanding £4 million confiscation order still owed to the state; and criminals ‘choosing’ to serve ‘default sentences’ instead of paying back the proceeds of their crimes.¹⁷

Ineffectiveness of confiscation orders

4. The National Audit Office (NAO) has scrutinised the effectiveness and value-for-money of confiscation orders. It published two Reports, one making comprehensive recommendations in 2013 and a progress review in 2016.

5. In its 2013 Report, the NAO concluded that the amounts actually confiscated were small, finding that of every £100 of criminal proceeds, the amount confiscated was a paltry 26 pence.¹⁸ The NAO made a number of recommendations about improving performance. The subsequent Report by the Committee of Public Accounts (PAC), which reported in March 2014, made recommendations in broadly the same six areas:

- better governance and strategy;
- more use and awareness of orders;
- better enforcement operations;
- more effective sanctions;
- better performance and cost information; and
- a more effective incentive scheme.

The Government accepted all of the PAC’s recommendations in June 2014 and stated that they would be implemented by 2015.¹⁹ However, in 2016, the NAO published its progress review which expressed disappointment that the Government had not met this commitment:

The criminal justice bodies have not met five of the Committee’s six recommendations, despite agreeing to do so by the end of 2015, and they have not met their ambitious targets for implementing the Criminal Finances Improvement Plan. As a result, many of the fundamental weaknesses in the system identified two years ago remain.²⁰

Background to our inquiry

6. The 2013 NAO report, and the lack of progress since then, contributed to our own increasing concerns about the effectiveness of the way proceeds of crime provisions were being implemented. We announced an inquiry in January 2016. Among the questions that we posed at that stage were:

- Whether additional measures are required to achieve the objectives of ensuring criminals do not benefit from their crimes.

17 Royal United Services Institute, [Enforcing Criminal Confiscation Orders](#) (February 2016), p 2

18 National Audit Office, *Confiscation Orders: progress review*, [HC 886](#), March 2016, p 6

19 HM Treasury, *Treasury Minutes*, [CM 8871](#), June 2014

20 National Audit Office, *Confiscation Orders: progress review*, [HC 886](#), March 2016, p 12

- The steps needed to improve the performance of the range of agencies involved in the confiscation order process—including how best to incentivise agencies to use them.
- Measures needed to address the lack of awareness of confiscation orders amongst staff in the relevant agencies, and of the associated enforcement processes.
- How best to address weaknesses in IT systems and data-sharing which are hampering effectiveness.
- Steps needed to strengthen coordination across the various agencies involved in confiscation orders, including whether one agency should be given lead responsibility.
- How to increase accountability and make performance measurement more meaningful.
- Further steps which may be necessary to address low enforcement rates, including toughening sanctions for non-payment.
- How investigations related to criminal benefit can be made more transparent.
- The implications for effectiveness of the complexity of the relevant legislation, and the benefits which an increased body of case law might bring.²¹

7. We published 22 written submissions. On 8 March 2016, we took oral evidence from Jonathan Fisher QC, Visiting Professor in Practice, London School of Economics and Barrister, Devereux Chambers, Dr Colin King, Senior Law Lecturer, University of Sussex, and Helena Wood, Associate Fellow, Royal United Services Institute; Richard Fisher QC, Doughty Street Chambers, Tim Owen QC, Matrix Chambers, and Kennedy Talbot QC, 33 Chancery Lane Chambers; and Martin Bentham of the *Evening Standard*. On 3 May we took oral evidence from Robert Barrington, Executive Director, Transparency International UK; Mark Thompson, Head of Proceeds of Crime Unit, Serious Fraud Office; Bill Browder, Founder and Chief Executive, Hermitage Capital Management; Henry Pryor, Property Buying Agent and Market Commentator; Laurence Sacker, Partner, Corporate Finance and Money Laundering Reporting Officer, UHY Hacker Young LLP. On 24 May we took oral evidence from Detective Chief Superintendent Dave Clark, Head of the Economic Crime Directorate, City of London Police, Nick Price, Head, National Proceeds of Crime, Crown Prosecution Service and Donald Toon, Director of Economic Crime, National Crime Agency.

8. We also visited a Queen's Warehouse at Heathrow Airport which is one of a number of facilities around the country where Border Force stores seized goods connected with investigations and prosecutions. We are grateful to everyone who contributed to our inquiry. We are also grateful to our specialist adviser for this inquiry, Jane Bewsey QC; her advice and legal expertise have been invaluable.²²

21 Home Affairs Committee, '[Proceeds of crime inquiry launched](#),' accessed 15 June 2016

22 Relevant interests of the specialist adviser were made known to the Committee. The Committee formally noted that Jane Bewsey QC principally prosecutes in serious and complex corporate fraud and tax cases. She has been instructed by all the major government prosecution agencies including the Serious Fraud Office, the Crown Prosecution Service (CPS Organised Crime Division, CPS Central Fraud Group—fiscal and non-fiscal, HM Revenue and Customs, and the Department for Business Innovation and Skills), and by defence solicitors acting in the same fields of work. She is currently instructed in cases involving money laundering, tax evasion, corporate fraud, mortgage fraud and fraud against the NHS. The financial nature of these cases means that almost every case leads on to confiscation proceedings.

2 Collecting proceeds of crime

9. This chapter follows the three main stages of collecting proceeds of crime: investigation, prosecution and enforcement.

Investigation

10. In order for law enforcement agencies to collect money which represents criminal proceeds, it must first be established that a crime has taken place. This starts with the investigative agencies—predominantly the police, including the National Crime Agency (NCA), and Her Majesty’s Revenue and Customs (HMRC). The NAO summarised the main bodies responsible for initiating investigations which could lead to the collection of criminal assets.

Box 1: Main bodies involved in administering confiscation orders (financial investigation and preparing a case)

Accredited financial investigators from a range of law enforcement agencies, including:

- Police forces, including Regional Asset Recovery Teams;
- HM Revenue and Customs;
- Department for Work and Pensions;
- Serious Fraud Office; and
- National Crime Agency.

Prosecution agencies:

- Crown Prosecution Service; and
- Serious Fraud Office.

Source: National Audit Office, *Confiscation Orders: progress review*, [HC 886](#), March 2016, p 7

11. While there must be a criminal conviction for a confiscation order to be made, it is important that, as soon as these agencies start to investigate a crime where the offender has benefitted financially, action is taken to ensure that the proceeds are protected from being hidden. Too often this is not the case and we heard that the recovery of criminal benefit is rarely part of the early stages of a criminal investigation. Jonathan Fisher QC, Visiting Professor in Practice, London School of Economics, and Barrister, Devereux Chambers, told us that the investigation often focussed solely on securing a conviction for the crime—usually at the expense of investigating the financial element of recovering the proceeds of the crime. He summarised much of the evidence that we received that the two elements should be investigated concurrently:

The financial investigators should be working alongside the criminal investigators and they should be using the power that they have to discover the whereabouts of assets and then sweeping in at an early stage simultaneously with the execution of search warrants. There has to be a culture shift. They

have to understand that just as it is important to get the evidence to prove the criminal case, they also need at the very same time the evidence to prove the existence of the assets and their whereabouts.²³

Awareness at investigation level: Early restraint and seizure

12. Much of the evidence we received regretted the fact that the recovery of criminal assets was often an afterthought only considered after a conviction.²⁴ We heard that, by that stage, any organised criminal would have hidden or moved any assets far beyond the reach of the law. Pinsent Masons LLP recommended that proceeds should be effectively frozen at the very beginning of an investigation so that they were available to be confiscated upon conviction and specifically that investigating agencies should freeze suspected criminal assets “within two months of the commencement of an investigation” which they believed would “significantly improve enforcement and recovery rates of confiscation orders”.²⁵ Pinsent Masons LLP also stated that:

Too often, cases are investigated and prosecuted without due consideration for how a confiscation order would ultimately be enforced. It goes without saying that confiscation orders will be enforced with much greater success if a restraint order is also obtained in good time.²⁶

13. We received evidence that poor collection performance could be improved through better training at an investigation level. Often investigators did not know that they could and should seize or restrain criminal assets, or what process to follow if they suspected financial gain from a crime being investigated. The NCA trains and accredits all financial investigators employed by any organisation legally authorised to use the Proceeds of Crime Act 2002 powers.²⁷ Detective Chief Superintendent Clark, Head of the Economic Crime Directorate at the City of London Police, recommended that—while there was a need for specialist financial investigators—training should be provided to “mainstream” the financial investigative ability of officers to conduct these investigations more competently and speedily:

The overseas and hidden assets are the issues in terms of recovery. The police service absolutely needs to mainstream the ability of officers, either on entry to service or as part of detective training.²⁸

The City of London Police subsequently told us that:

New recruit content includes a one hour session on POCA and cash seizures and the frequency of any refresher training is at the discretion of forces. It is our view that a one-day training session should be compulsory for post-probation uniform officers to improve understanding of POCA and identification of money laundering offences.

23 Q35

24 For example British Bankers’ Association ([POC0021](#)), Crown Prosecution Service ([POC0018](#)) and Pinsent Masons LLP ([POC0012](#))

25 Pinsent Masons LLP ([POC0012](#)) para 3.4.3

26 Pinsent Masons LLP ([POC0012](#)) para 4.1

27 National Crime Agency, ‘[Financial investigation training courses](#),’ accessed 15 June 2016

28 Q284

On training for detective officers, it went on to state that:

Currently new detective training is around 6 weeks which includes a one-day module on money laundering. Our view is that this should be extended to two days and delivered to all existing detectives. In addition, the overall content of new detective courses should be developed so that identifying and dealing with money laundering offences forms part of the broader curriculum and is embedded as a fundamental part of training for dealing with all acquisitive crime.²⁹

14. Criminals are becoming more sophisticated at concealing the proceeds of their crimes. Ensuring the efficient recovery of these proceeds should be one of the first issues an investigator tackles. Ideally, assets should be frozen simultaneously with the criminal becoming aware of the investigation for the first time (this will often be at the time of arrest, although not always). Waiting for a conviction is far too late. As part of their training police officers should be equipped to deal with these challenges.

15. We recommend that, upon entry into the service, all police officers receive at least one full day of financial investigative training, accredited by the National Crime Agency (NCA), so that all officers are equipped to secure recovery at a much earlier stage and have a good understanding of the impact of charges, offences and pleas on asset recovery. Secondly, all detective officers should receive advanced financial investigation training on at least an annual basis so that appropriate evidence is gathered about financial gain, as well as criminal conduct in every investigation into a serious crime offering financial gain. We recommend that NCA training and accreditation of specialised financial investigators emphasises the importance of initiating asset freezing at the earliest stages of an investigation. Performance against this objective should be measured for all the agencies involved by recording whether assets are frozen and ready to be recovered as soon as a confiscation order is made.

Specialisation at investigation level

16. Recovery of criminals' assets often requires complex and technical financial skills. Organised criminals make use of complicated avoidance and concealment techniques to prevent their illicit gains being found, seized and returned to either victims or the State. Highly trained investigators are therefore needed to combat this. However, we heard evidence that retaining specialised investigators was difficult, largely because of "poaching" by the private sector. Detective Chief Superintendent Clark told us that the City of London Police investigators were often drawn to the higher wages that the private sector was able to offer, resulting in a high turnover of officers.³⁰ In subsequent written evidence, the City of London Police told us:

In the last year, we have had 22 investigators leave City of London Police who were trained in financial investigation or financial intelligence. Four were accredited financial investigators. Around 70% left to take up employment in

²⁹ City of London Police supplementary evidence ([POC0029](#))

³⁰ Q285

the banking sector. The remaining took up employment in other industries (namely insurance and gambling), other law enforcement agencies and regulators.³¹

17. The Serious Fraud Office (SFO) agreed that “experienced accredited financial investigators with the skills to deal with complex financial crime are scarce within the public sector, and their skills are increasingly attractive to financial institutions in the private sector”.³² It reported that, since its establishment in 2009 it had employed 15 Senior Financial Investigators. It told us that, of those, six had left the SFO and the resulting recruitment campaigns had had very “limited success”.³³ The NCA told us that a “cross-Whitehall working group has been formed to explore this issue to identify and understand the factors affecting recruitment and retention”.³⁴

18. We heard in evidence that retention of investigators with necessary but scarce skills in financial investigation is a problem. Skilled staff are being “poached” from the public sector because it cannot match the remuneration incentives being offered by large financial firms—which may themselves be increasingly concerned about becoming the subject of financial investigations. We understand that a cross-Whitehall working group has been set up to try to address this issue. The Government should publish details of the working group’s membership terms of reference, remit and timetable for reporting its findings immediately. When the report is published, we expect it to include a clear timetable for action and targets for progress on recruitment and retention against which subsequent progress can be measured.

Suspicious Activity Reports and ELMER

19. The principal method for industry to report any concerns to be investigated about the validity and legality of clients or transactions is through the submission of Suspicious Activity Reports (SARs). The NCA is responsible for this regime and described the process of reporting suspicious activity:

The Suspicious Activity Reports (SARs) regime describes the end-to-end system by which industry spots suspicious activity related to money laundering or terrorist financing and reports this to the UK Financial Intelligence Unit (UKFIU). Upon receipt, SARs are logged onto the UKFIU internal SARs database (known as ELMER). The UKFIU analyses the SARs to extract strategic and tactical intelligence, and makes all SARs available to law enforcement agencies for investigation (with the exception of SARs in certain sensitive categories).³⁵

20. It is crucial that the financial services industry (and connected industries such as real estate and professional services) have confidence in the robustness and objectivity of reporting what they consider to be suspicious activity. Without the support of industry, investigation and enforcement agencies will be unable to target some criminals, nor spot patterns of wrongdoing.

31 City of London Police supplementary evidence ([POC0029](#))

32 Serious Fraud Office ([POC0013](#)) para 14

33 Serious Fraud Office supplementary ([POC0028](#))

34 National Crime Agency ([POC0017](#)) para 12

35 National Crime Agency, ‘[The SARs regime](#),’ accessed 15 June 2016

21. Both we and our predecessors in the last Parliament have been concerned over a number of years that the IT system designed to support the SARs regime (ELMER) was not fit for purpose.³⁶ Donald Toon, Director of Economic Crime at the NCA, told us that ELMER was currently processing 381,882 SARs, despite having been designed originally to cope with a much smaller number of around 20,000.³⁷

22. The private sector shared the concerns. Laurence Sacker, Partner, Corporate Finance and Money Laundering Reporting Officer at UHY Hacker Young LLP said that his perception was that the system was so overloaded, that many SARs were never actually investigated. He believed that many firms were submitting SARs simply so that the reporting officers were “in the clear” in terms of having met their statutory requirement and that investigators “probably only look in detail at the consent SARs that go to them, which is about 15,000 in a year. The others are just recorded somewhere and may get passed on eventually”.³⁸

23. It was not surprising, therefore, that the Government announced in response to a recent Parliamentary Question that the ELMER system will be replaced because the “IT infra-structure is coming to the end of its life”:

In the Action Plan for anti-money laundering and terrorist financing, the Government set out that a replacement for the existing SARs IT infrastructure will be designed to support a significant improvement in the UK’s anti-money laundering regime. The benefits will include; more effective processing of SARs, including; automated cross-checking with law enforcement databases; development of intelligence on those responsible for money laundering; and better information on threats for sharing with the private sector. We are consulting on the proposals to improve the anti-money laundering regime.³⁹

We also note that the aim of improving the effectiveness of SARs was announced in the Queen’s Speech in May 2016.⁴⁰

24. We have been deeply concerned for some time that the ELMER system for Suspicious Activity Reports (SARs) is heavily overloaded and therefore rendered completely ineffective. The ELMER system currently processes 381,882 SARs despite being designed to manage only 20,000 and, of this figure, only 15,000 looked at in detail. We have reminded the Government time and again that it must be replaced. The failure of ELMER has made the SARs system a futile and impotent weapon in the global fight against money laundering and corruption. We note that the Government has finally given a commitment to make the system work in this year’s Queen’s Speech, although we have yet to receive details of how this will be achieved. An effective regime to help organisations report suspicious financial activity must be introduced without further damaging delay. We recommend that the Government replaces ELMER with a robust system for handling Suspicious Activity Reports by 31 December 2016.

36 For example [Letter from the Home Secretary to the Chair of the Home Affairs Committee](#), 11 October 2012; and [Letter from the Chair of the Home Affairs Committee to the Home Secretary](#), 9 December 2015

37 Q334

38 Q215

39 Response to Parliamentary Question [35758](#), answered on 3 May 2016

40 HC Deb [18 May 2016](#), col 3

25. To repair the damage to the reputation of the SARs regime caused by the failure of ELMER, we recommend that the Government involves those who actually use the SARs system to make reports—as well as those charged with investigating at the other end—in designing the replacement to ELMER. Only by doing so can the Government rebuild industry’s trust in the regime and ensure that the next generation of SARs does not suffer the same fate.

Prosecution

26. In order to deprive a criminal of the benefit of their criminal conduct, a confiscation order can be made by a judge. These orders are made after a criminal has been convicted of a crime. Helena Wood of RUSI explained how confiscation orders worked on a practical level:

A confiscation order is a post-conviction court order, which is value-based rather than asset-based. It does not *confiscate* property, but is an order of the *value* of ‘criminal benefit’ and is, in effect, akin to a debt. The framing of the law in this way negates the need for the prosecution to link a particular asset to specific criminality.⁴¹

27. The NAO summarised the main bodies involved in the prosecution, hearing and judgement side of administering confiscation orders:

Box 2: Main bodies involved in administering confiscation orders (prosecution, confiscation hearing and judgement)

Prosecution agencies:

- Crown Prosecution Service; and
- Serious Fraud Office.

Court hearing:

- HM Courts and Tribunals Service; and
- Judiciary.

Source: National Audit Office, *Confiscation Orders: progress review*, [HC 886](#), March 2016, p 7

Consistency at prosecutor and court level

28. Because the vast majority of collection occurs after a conviction, the processes and attitude of the prosecution authorities (and the courts) towards the recovery of criminal assets is crucial to its effectiveness. We heard that one of the failings of the recovery system was that the prosecution agencies did not get involved early enough. For example, Pinsent Masons LLP recommended that prosecution and investigation teams should work together as soon as it became apparent that asset recovery would be made:

41 Royal United Services Institute, [Enforcing Criminal Confiscation Orders](#) (February 2016), p 4

Where it is believed that the crime under investigation has resulted in some financial benefit to the potential defendant or loss to a victim, the prosecuting agency should be working closely with the financial investigators to collate the information necessary to obtain a restraint order without delay.⁴²

29. Many witnesses pointed out that asset recovery and proceeds of crime were seen as being a very niche area of law which neither prosecutors nor judges were enthusiastic about pursuing as a specialism.⁴³ The British Bankers' Association told us that it was concerned that judges and prosecutors were not consistently trained, nor actually interested in engaging with such training:

It could be argued that the Judiciary has not embraced the POCA confiscation process powers as fully as possible. Recent publications show that very few Judges have attended training in this area of the law. In addition, the relevant training, in what is a complex legislative area, has been scaled back. Some Crown Court Judges are openly critical of this piece of legislation and consider it to be “two bites” at the sentencing of criminal conduct.⁴⁴

This was confirmed by practising barristers on both the prosecution and defence side. Tim Owen QC admitted that he had only attended “a one-day seminar on it [...] in five or six years” and that “most judges do not enjoy or look forward to doing confiscation”.⁴⁵ Kennedy Talbot QC told us that he had sent an email to all his colleagues that he knew worked in the area of confiscation and that “overwhelmingly, the response was unenthusiastic reception at courts and, insofar as dealing with the opposition is concerned, practitioners who are not familiar with and do not want to do this and want to move on to the next jury trial”.⁴⁶

30. We also received evidence that a lack of interest and training had led to inconsistency in terms of the application of confiscation orders as well as a waste of resources as different judges and prosecution teams dealt with different elements of a prosecution (for example having to spend time getting up to speed with the elements of complicated cases). Martin Bentham of the *Evening Standard* explained the issue:

The problem is it is different people handling the same case on different occasions, and then of course they lose the background of that particular case. In my experience, which is focused on a particular court—generally speaking, most of the ones here in London are dealt with at Westminster Magistrates Court—it is more a problem of the people who do know about it not always following the same case through and, therefore, the loss of knowledge that way.⁴⁷

31. The issue of consistency in terms of the application of POCA is not a new one. In 2013, the NAO and the Committee of Public Accounts recommended that:

42 Pinsent Masons (POC0012) para 4.1

43 For example Mr Jeffrey Bryant (POC0016), NPCC Financial Investigation and Proceeds of Crime Portfolio (POC0011) and Royal United Services Institute (POC0004)

44 British Bankers' Association(POC0021)

45 Q70

46 Q70

47 Q83

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.⁴⁸

It is clear, however, that this has not been achieved yet. The British Bankers' Association told us that the perception was that, at a prosecutor level, the interest in POCA was still too low. It told us that it needed to be heightened "to ensure that professionalism and consistency is applied in the courts".⁴⁹

Specialism and Confiscation Courts

32. To combat this lack of consistency, and specifically to raise the profile of POCA, a number of witnesses argued for the creation of specialist 'confiscation courts'. Mr Jeffery Bryant, a barrister and prosecutor working within the CPS Proceeds of Crime Service (writing in a personal capacity) explained that "a specialist confiscation court would have the expertise and time available to hear and properly deal with restraint applications".⁵⁰ He went on to explain how it could work in practice:

The establishment of a specialist confiscation court, comprising of judges and support staff with a specialism in confiscation and ancillary law. [...] A specialist confiscation court could also have referred to it some confiscation cases where the Crown Court judge considered that the case was of sufficient complexity and where personal judicial knowledge of any trial was not necessary for the issues in dispute at the confiscation hearing; or once those issues had been resolved.⁵¹

33. Other expert witnesses supported this. Kennedy Talbot QC told us that "definitely we need confiscation courts so you have specialist judges dealing with it".⁵² Tim Owen QC said that he was "very strongly in favour of the idea of specialist judges assigned to deal with these cases from the beginning to the end". Richard Fisher QC also agreed.⁵³

34. We received strong evidence that the creation of a 'confiscation court' would combat the current lack of interest in confiscation orders among prosecutors and judges, which has led in turn to a lack of training and specialist skills. Specialist courts would enable complex confiscation hearings to be dealt with more efficiently and with much greater expertise, with the added bonus of leaving Crown Courts more time to focus on criminal trials. We recommend that the Government takes the necessary steps to establish confiscation courts to allow for serious and/or complex confiscation hearings. For example, we would expect these courts to hear those cases featuring cross-border financial transactions, use of corporate vehicles or very high value proceeds.

35. The creation of confiscation courts would encourage the specialisation of judges in the area of proceeds of crime. This would mean that one judge could deal with the financial aspect of a serious and/or complex case from cradle to grave. The confiscation

48 Committee of Public Accounts, Forty-Ninth Report of Session 2013–14, [Confiscation Orders](#), HC 942, p3

49 British Bankers' Association ([POC0021](#))

50 Mr Jeffery Bryant ([POC0016](#)) para 14

51 Mr Jeffery Bryant ([POC0016](#)) para 13

52 Q64

53 Q70

courts must therefore be properly resourced, with highly motivated and expertly trained judges and prosecutors, to ensure the highest standard of understanding and consistency in the application of this aspect of the law.

Enforcement

36. After the initial investigation, prosecution and conviction, the final stage in recovering proceeds of crime is the enforcement of that instruction to recover (often the enforcement of a confiscation order). The NAO summarised the main bodies involved in enforcing the recovery of proceeds of crime.

Box 3: Main bodies involved in administering confiscation orders (enforcing a confiscation order)

Enforcement agencies:

- HM Courts and Tribunals Service;
- Crown Prosecution Service; and
- Serious Fraud Office.

Other bodies involved:

- Asset Confiscation Enforcement teams;
- Magistrates; and
- National Offender Management Service.

Source: National Audit Office, *Confiscation Orders: progress review*, [HC 886](#), March 2016, p 7

Overall enforcement of confiscation orders under POCA is the responsibility of Her Majesty's Courts & Tribunal Service (HMCTS).⁵⁴

Incentivising effective enforcement of POCA

37. Agencies involved in POCA are directly incentivised to allocate time and resources to the recovery of criminal assets. This is implemented through the application of the Asset Recovery Incentivisation Scheme (ARIS). The National Audit Office explained how ARIS is currently set up:

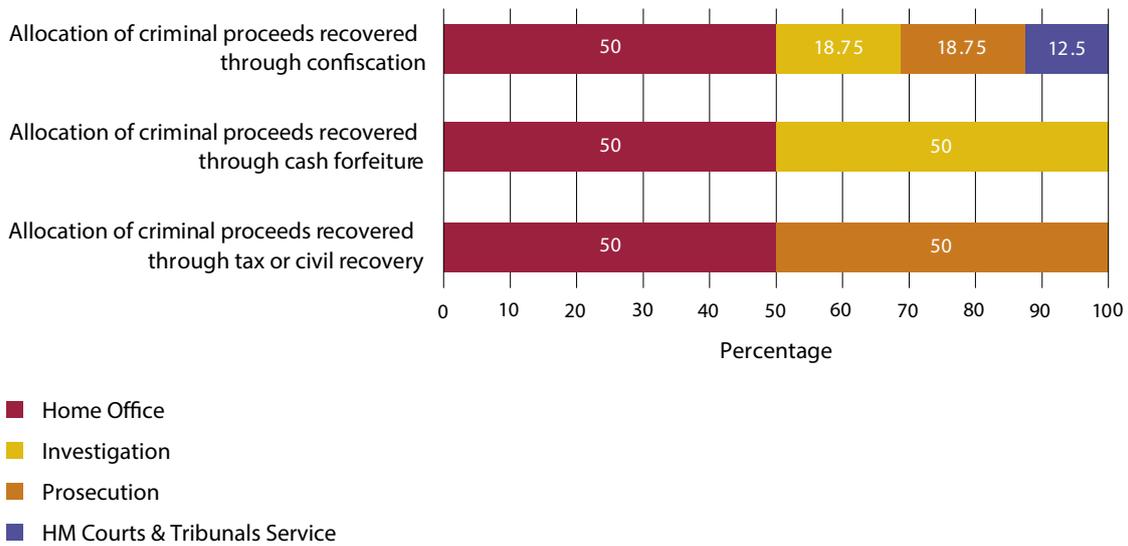
Since 2006, the Home Office has run the Asset Recovery Incentivisation Scheme (ARIS) which apportions all asset recovery monies collected each year at pre-determined rates. This amounted to nearly £170 million in 2014–15, half of which was paid out across the 163 bodies involved with confiscation order administration and the rest retained by the Home Office.⁵⁵

⁵⁴ Ministry of Justice and HM Courts and Tribunals Service ([POC0014](#)) para 2

⁵⁵ National Audit Office, *Confiscation Orders: progress review*, [HC 886](#), March 2016, p 38

Figure 3: Asset Recovery Incentivisation Scheme allocation rates

There are agreed rates for how ARIS monies are shared between the bodies involved



Source: National Audit Office, *Confiscation Orders: progress review*, [HC 886](#), March 2016, p 39

38. As shown in Figure 3, in all cases of confiscation the Home Office retains 50% of any proceeds recovered, while the remainder is split between either the relevant investigation agencies, prosecution agencies or the courts—depending on the nature of the recovery. In 2013 the National Audit Office described ARIS as a “flawed incentive scheme” because it was based on income confiscation only (rather than the contribution to wider policy goals, an issue we discuss in detail later in this Report).⁵⁶ The NAO was also critical of the fact that there was no clear link between activity and formal financial reporting.

39. The Home Office told us that ARIS had already been reformed for 2014–15:

The changes make the use of ARIS funds more transparent and boosts the operational response. A ‘top-slice’ of approximately £5 million has been set aside to fund key national asset recovery capabilities: improvements to the Joint Asset Recovery Database, the regional ACE Teams, new Crown Prosecution Service resources to revisit old orders, and additional intelligence resources for the NCA to bolster the national response to cash-based money laundering.⁵⁷

Despite this, when the NAO published its progress review in 2016, it was clear that the Government’s reforms had failed to satisfy the auditor. Specific criticisms included:

- The split of the monies through ARIS does not reflect bodies’ relative contribution to success;
- rates are not aligned with other asset recovery approaches such as cash seizure and civil recovery; and
- ARIS monies are delivered to participants on a quarterly basis when orders are paid and must be spent in-year, following government budgeting rules.⁵⁸

⁵⁶ National Audit Office, *Confiscation Orders*, [HC 738](#), December 2013

⁵⁷ Home Office ([POC0019](#)) para 14

⁵⁸ National Audit Office, *Confiscation Orders: progress review*, [HC 886](#), March 2016, p 40

40. The United Kingdom is not the only country to confiscate proceeds of crime. We heard from Dr Colin King, a senior Law Lecturer at the University of Sussex, who explained how some other countries incentivised the enforcement bodies involved in the recovery of criminal assets. Specifically he discussed the incentivisation model in Ireland where money that is recovered is “sent back to a central exchequer. All the money goes back to the Minister for Finance to spend at his discretion. It goes back to a central fund”.⁵⁹ We were interested to hear that, when it was suggested to the Irish agencies involved in recovery of these assets that they could adopt a system where they received a slice of the proceeds (similar to ARIS), “everyone there was completely against such a scheme”.⁶⁰ Dr King elaborated in his written submission that this was possibly to avoid the scenario in the United States where “there has been criticism about ‘policing for profit’ and abuse of police powers as a result of skewed priorities”.⁶¹

41. Helena Wood from RUSI pointed to the model in Scotland where some of the proceeds are used to “regenerate payback for the communities”.⁶² She noted that this was an incentive in itself because it raised awareness, public support and therefore the profile of the enforcement agencies: “The Scottish model really focuses on using the funds recouped to fund new schemes, so it is really visible to the community that that money has been taken away from a criminal”.⁶³ Ms Wood was referring to the Scottish ‘CashBack for Communities’ scheme. This is a Scottish Government programme which “takes funds recovered from the proceeds of crime and invests them into free activities and programmes for young people across Scotland”.⁶⁴ The scheme appears to have had a positive impact on those communities affected by crime and on the youth of Scotland more generally:

Since 2008, £75 million recovered under the Proceeds of Crime Act has been committed to the CashBack for Communities Programme and other community initiatives. The programme has funded 1.8 million activities and opportunities for young people.

This investment includes £24 million on sporting activities and facilities projects, £10 million on grant schemes that support youth work projects across all 32 local authority areas and over £3.5 million on cultural activities involving arts, music and dance.⁶⁵

42. Despite some reforms to the incentive system for recovering proceeds of crime, the Government has failed to satisfy the National Audit Office (NAO) or us that the system is fit for purpose. We agree with the NAO that there are significant weaknesses in the Asset Recovery Incentivisation Scheme (ARIS), specifically in that it rewards those who have not been affected or taken a role in the recovery of assets.

43. We recommend that the Government applies a new formula which ensures that at least 10% of the criminal assets recovered are returned or donated to the communities

59 Q20

60 Q20

61 Dr Colin King ([POC0007](#)) para 10

62 Q22

63 Q22

64 CashBack for Communities, ‘[About us](#),’ accessed 15 June 2016

65 CashBack for Communities, ‘[Life changing opportunities](#),’ accessed 15 June 2016

which have suffered at the hands of criminals, for example through charities. This must not disadvantage the agencies that have worked hard to recover the assets, but instead should be deducted from the 50% portion which the Home Office currently takes.

Practical enforcement

44. As we have already discussed, responsibility for enforcing confiscation orders lies with HM Courts and Tribunal Service. These orders are made after conviction when, in most cases, the criminal is within the criminal justice system—either as a serving prisoner or subject to some other supervisory order. Release does not mean that a criminal is beyond the reach of POCA. The City of London Police told us that police officers often dealt with suspects who owed money under POCA, but that there was no practical way for a police officer ‘on the ground’ to know about it:

Currently law enforcement has to log into the Joint Asset Recovery Database to check whether there is an outstanding confiscation order. Access to this system is currently restricted to financial investigators.⁶⁶

45. The City of London Police advocated merging the Joint Asset Recovery Database (JARD) with the Police National Computer (PNC) to ensure that the “information would be available to officers dealing with offenders”.⁶⁷ Detective Chief Superintendent Clark explained that his “greatest need” to improve collection rates, disrupt criminals and collect broader information was for different systems that hold information to inter-operate:

If we can record that a dog is at a premises when an officer visits, I’m sure we could have the ability to record the fact that a confiscation order is outstanding against an individual, which would be very helpful in the collection of intelligence information for recovering those orders.⁶⁸

46. We recommend that outstanding confiscation orders be put onto the Police National Computer by merging or connecting the Joint Asset Recovery Database with the Police National Computer so that the police on the front-line know that a suspect is in breach of a confiscation order and can act on it. It is ludicrous that the PNC can tell a police officer that a suspect owns a dog but not that they are evading payment of a criminal confiscation order.

47. Secondly, in terms of the practical enforcement of confiscation orders, several experts advocated a wider use of the private sector. Pinsent Masons LLP told us that “consideration should be given to potentially outsourcing the recovery and enforcement of confiscation orders to the private sector”.⁶⁹ It recommended using the private sector to assist in circumstances where confiscation orders have been obtained but there are difficulties in enforcement. This view was supported by Grant Thornton LLP, which stated that it was “convinced that there is more of a role for the private sector in this area because of its expertise and its ability to make resources available to handle a wide range of cases”.⁷⁰

66 City of London Police ([POC0024](#)) para 17

67 City of London Police ([POC0024](#)) para 17

68 Q314

69 Pinsent Masons LLP ([POC0012](#)) para 6.3

70 Grant Thornton UK LLP POCA Team ([POC0010](#)) para B (v)

48. Much of the evidence that we received agreed.⁷¹ The City of London Police supported such collaboration. It stated that data and intelligence sharing could benefit collection rates and disruption to criminals, arguing that:

An opportunity exists to deal with this through innovation and partnership. The Crown could retain control of the confiscation order but allow for private companies to pursue the order and, where successful, retain a proportion of the proceeds as a fee. This would create a market that allowed for funds to be pursued at a reduced cost to the public purse and reduce demand on limited police resources.⁷²

49. The Home Office appeared to agree and stated that it would “look to potential opportunities for enhanced cooperation with the private sector to improve asset recovery performance”.⁷³ Sharing information, evidence and intelligence between law enforcement and private prosecutors has the potential to increase effectiveness and efficiency of recovery.

50. Greater coordination and collaboration between public bodies involved in POCA and the private sector could result in more efficient collection of proceeds of crime and the denial of assets to criminals. We recommend that the Government creates a market for the private enforcement and collection of unpaid confiscation orders once they enter arrears, earning a fee from a portion of that order. The Home Office has already stated that it will look at enhancing cooperation with the private sector to improve asset recovery. We recommend that the Government acts upon this aspiration and shares information and evidence between law enforcement and the private sector to achieve this.

71 For example British Bankers’ Association ([POC0021](#)), NPCC Financial Investigation and Proceeds of Crime Portfolio ([POC0011](#)) and Grant Thornton UK LLP POCA Team ([POC0010](#))

72 City of London Police ([POC0024](#)) para 8

73 Home Office ([POC0019](#)) para 10

3 Money laundering

Money laundering and proceeds of crime

51. A number of witnesses pointed to the connections between money laundering in the UK and the ability of recovery agents to effectively deprive criminals of their assets. Transparency International UK provided a definition of money laundering:

Money laundering is the process of concealing the origin, ownership or destination of illegally or dishonestly-obtained money by hiding it within legitimate economic activities in order to make it appear legal. It can mask corruptly acquired wealth—such as bribes, kick-backs, illicit political contributions, embezzled funds and loans—as well as the proceeds of other crimes. It helps corrupt individuals to escape justice and, after the funds have been successfully laundered, they can enjoy their illicit wealth or move the money on for other purposes.⁷⁴

The successful prevention of money laundering is particularly pertinent to effective recovery of proceeds of crime because, if a criminal is able to successfully hide their criminal proceeds within legitimate financial transactions, it renders the investigators, prosecutors, courts and enforcement agencies powerless to seize or recover the illicit gains.

Money laundering in the UK

52. Robert Barrington, the Executive Director of Transparency International UK, told us that “it seems likely that in terms of money laundering going through the UK system every year, it is at least £100 billion”.⁷⁵ That is a staggering figure, equivalent to twice the size of Panama’s whole economy.⁷⁶ Mr Barrington went on to explain why the UK was such a target for money launderers:

Clearly one of the things that makes the UK attractive as a centre for money laundering is its historic links with the Overseas Territories and Crown Dependencies, because you can move money very quickly to jurisdictions that are very well-linked and for whom your bank of lawyers and accountants will have very close connections and can easily set up shell companies and so on.⁷⁷

Transparency International publishes its ‘Corruption Perceptions Index’ on an annual basis. According to the Centre for Global Development, any country scoring 60 or below on that index (shown in Figure 4) is considered to be a high risk country for money laundering by the Financial Conduct Authority.⁷⁸

74 Transparency International UK, [Paradise Lost: Ending the UK’s role as a safe haven for corrupt individuals, their allies and assets](#) (April 2016) p 4

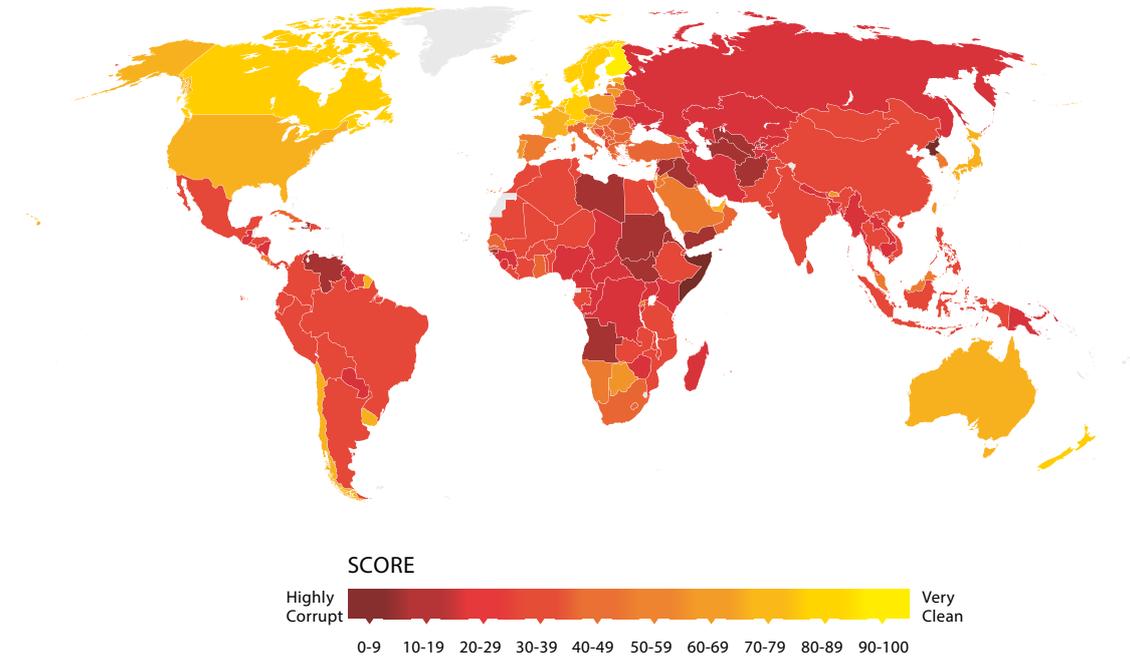
75 Q94

76 The World Bank, [‘GDP ranking data,’](#) accessed 10 June 2016 [NB: On that date 1 USD=1.44 GBP]

77 Q94

78 Center for global Development, [‘Why arbitrary measures of money-laundering risk are nonsensical and unfair,’](#) accessed 15 June 2016

Figure 4: Corruption Perceptions Index 2015



Source: Transparency International, [Corruption Perceptions Index 2015](#) (January 2016)

53. Jonathan Fisher QC told us that the UK (and London in particular) was particularly susceptible to money launderers, not just because it is a global financial centre, but because of the lifestyle and culture this wealth has brought with it. We asked him where the authorities should be looking:

It is going to be high value, easily portable assets. [...] I rather get the impression that sophisticated criminals are quite adept at using the financial system in London, so I would not necessarily exclude not simply property in the sense of real estate, but bonds on our financial markets.⁷⁹

54. Henry Pryor drew our attention to London’s property market. In his opinion it was ‘without question’ that the property market was a destination for laundered money.⁸⁰ Last year there were 1.2 million property transactions in the UK. According to the NCA those 2.4 million buyers and sellers generated just 355 Suspicious Activity Reports. Mr Pryor suggested that the “regulations and the rules and the penalties for breaking those rules are quite sufficient but it is woefully inadequately policed”.⁸¹ He continued:

I would say that if, for example, the buyer of a property was the second son of a world leader in a country in the middle of South America—how does he have £8 million to buy a flat in Mayfair—personally I would be suspicious. But it does not seem that my professional colleagues are as sceptical as I am, which is unfortunate.⁸²

79 Q29

80 Q227

81 Q227

82 Q227

55. Some of our witnesses encouraged caution and perspective. Donald Toon of the NCA agreed that the value of money laundered through the UK was likely to be “hundreds of millions of dollars” a year.⁸³ He went on to highlight, however, that this figure represented a tiny fraction of financial transactions going through the city every day:

It is critical to put that in context when we are talking about a financial system that, in some areas of trading, can involve £1.5 trillion to £2 trillion a day in terms of transactions. It sounds like a large figure, but it has to be put against a very large volume and value of transactions.⁸⁴

Nevertheless, Mr Toon believed that combatting money laundering remained crucial to the success and stability of the financial system. He stated that this was not an issue restricted to London, but was taking place in other UK cities as well:

We have to recognise that it is happening in the UK. It is overwhelmingly happening in the City of London, but quite a lot of financial work goes on elsewhere—Edinburgh would be a good example.⁸⁵

Henry Pryor and Laurence Sacker agreed that the UK would not suffer if it “cleaned up its act”. In Mr Sacker’s view “there is enough honest money floating around that the reputation would probably improve considerably”,⁸⁶ while Mr Pryor told us:

I don’t think that London property would suffer. I don’t think London’s reputation would suffer if we cleaned up our act. At the moment we do have the equivalent of a welcome mat out for anybody to come if you want to launder your money. I am afraid that school leavers would know how to do it.⁸⁷

The effectiveness of government policy

56. The Government has a variety of tools available to investigate, prevent and prosecute money launderers in the UK. The NCA described itself as the “lead enforcement agency for responding to this threat” and preventing and prosecuting money launderers.⁸⁸ The NCA works with its partners to:

- Share intelligence with major financial institutions to identify and interdict illicit financial flows and those who control them; and
- identify those professionals (lawyers, accountants, company formation agents) who enable laundering to take place and take appropriate action.⁸⁹

The Home Office also highlighted the work of the NCA, which it told us led “the Joint Money Laundering Intelligence Taskforce (JMLIT), which brings together banks and law enforcement agencies to share information to tackle money laundering”.⁹⁰

83 Q341

84 Q341

85 Q341

86 Q232

87 Q227

88 National Crime Agency ([POC0017](#)) para 4

89 National Crime Agency ([POC0017](#)) para 4

90 Home Office ([POC0019](#)) para 10

57. Despite this, Robert Barrington of Transparency International UK told us that the supervisory system of those responsible for monitoring and reporting money laundering was not fit for purpose:

When the system was put into place in the UK, it was unique in that there were 27 different supervisors for the anti-money laundering regime and it was largely contracted out to the private sector. Some of those supervisors are also trade bodies, so there is a huge conflict of interest between trying to regulate your members at the same time as promoting your members.⁹¹

Transparency International UK recommended that:

The UK Government should consolidate the patchwork of anti-money-laundering supervisors and consider introducing a single ‘super-supervisor’. It should also ensure supervisors meet the good practice standards of transparent enforcement, risk-based regulation, the separation of commercial and regulatory interests, and guaranteeing that the UK is effectively implementing the Financial Action Task Force standard regarding professional enablers.⁹²

58. Mark Thompson, the Head of the Proceeds of Crime Unit at the Serious Fraud Office, was sympathetic to that view, stating that “the regulatory landscape is fragmented” and should be “regulated more robustly”.⁹³ He concluded that “a unified supervisor [was] worth looking at”.⁹⁴

59. During the course of our inquiry, the Home Secretary made two announcements of note in this area. She described the first announcement, in April 2016, as the “biggest reforms to money laundering regime in over a decade”. That announcement launched the Government’s “action plan for anti-money laundering and counter-terrorist finance”, which set out three priorities:

- (1) An enhanced law enforcement response to the threats we face—that means building new capabilities in our law enforcement agencies and creating tough new legal powers to enable the relentless disruption of criminals and terrorists;
- (2) reform of the supervisory regime to ensure that it is consistent, effective and brings those few companies who facilitate or enable money laundering to task; and
- (3) increase the international reach of law enforcement agencies and international information sharing to tackle money laundering and terrorist financing threats.⁹⁵

Secondly, in May 2016, the Home Secretary addressed an audience at the Serious and Organised Crime Exchange 2016 in which she stated that she had:

Galvanised international commitments to support new public private partnerships to combat economic crime, establish an International Anti-

91 Q96

92 Transparency International UK ([POC0025](#))

93 Q99

94 Q100

95 Home Office, HM Treasury and the Rt Hon Theresa May MP, ‘[Biggest reforms to money laundering regime in over a decade](#),’ accessed 15 June 2016

Corruption Coordination Centre, hosted by the NCA, and introduce new powers to bring those gaining from corruption to justice and reclaim their ill-gotten gains.⁹⁶

60. Money laundering is undoubtedly a problem in the UK, as with any established and large financial centre. It is disgraceful that at least a hundred billion pounds is being laundered through the UK every year. If the UK is to remain the centre of global finance, this must be addressed. The evidence we have received leaves no doubt that the success of POCA, and indeed the standing of the UK as a global financial centre is dependent on proactively and effectively tackling it. The Government has recently announced some significant and wide-ranging policies towards improving its record in preventing and prosecuting money launderers. We expect the Government to provide a report on the impact of these policies by January 2017, before we return to this issue next spring.

61. We heard that money laundering takes many complicated forms. These range from complex financial vehicles and tax havens around the world through to property investments in London, to easily transportable and high value jewellery. It is astonishing that just 335 out of some 1.2 million property transactions last year were deemed to be suspicious. This suggests to us that supervision of the property market is totally inadequate, and that poor enforcement has laid out a welcome mat for money launderers. The recent policies announced by the Government must include enhanced supervision of the property market and both sides of the transaction—buyers and sellers—must be included.

62. At the moment it is far too easy for someone intent on laundering money to buy a property with their ill-gotten gains, and rent it out in a very buoyant and robust letting market, and take in clean money in perpetuity. We recommend that, as with estate agents and other professional services, letting agents must use the Suspicious Activity Reporting regime (SARS) system and undertake appropriate due diligence when taking on new clients.

96 Home Office and the Rt Hon Theresa May MP, [‘Home Secretary’s speech on the threat of serious organised crime,’](#) accessed 15 June 2016

4 Success and accountability

Measures of success: collection or disruption?

63. At the heart of this inquiry has been the question of what is the purpose of POCA. The Home Office has stated that its aim was “to deny criminals the use of their assets, recover the proceeds of crime, and deter and disrupt criminality”.⁹⁷ This final chapter will consider the Government’s performance and make recommendations against all three elements of that statement.

64. Dr Colin King asked whether POCA was intended to disrupt criminal activity or to raise money.⁹⁸ It is, of course, likely to include elements of both. However the majority of the ‘factual evidence’ we received focussed on statistics derived from the amount of money collected from criminals (see the Key Facts at the beginning of this report). There can be no doubt that, if one was only to consider the published statistics, collecting 26 pence out of every £100 criminal gain and having £1.61 billion debt outstanding while only collecting £155 million a year is an abysmal performance. The amount of money collected, however, is only half of the picture. There is an intrinsic value simply in pursuing criminal assets, and letting criminals know they will be pursued. This point was summarised by Helena Wood, from RUSI:

We need to have a fundamental shakeup of how we look at performance in this area. For too long, the two areas of focus have been the £1.6 billion unenforced, [...], and a balance sheet or revenue-raising model for assessing the value of these tools.⁹⁹

65. When it comes to holding the Government to account for the performance of POCA, despite the fact that there are no central targets¹⁰⁰ and recent scrutiny (for example from the NAO and PAC) focusing on collection rates, it is generally understood by wider stakeholders that collection rates tell only part of the story. For example the Crown Prosecution Service (CPS) told us that:

It is important [...] not to view performance simply in terms of the monetary value of assets recovered. Confiscation plays a critical part in the disruption of organised crime, both domestically and internationally.¹⁰¹

The CPS concluded that “more weight ought to be attached to the disruptive effect of confiscation activity”.¹⁰² Helena Wood agreed:

Although that is difficult, I think we need to start looking at the effect on crime reduction. We need to look at public perception, for example, and other areas that can help the Criminal Finances Board measure this area and drive it in a more meaningful way, rather than keeping on going back to the same figures that are not an accurate reflection of the system’s worth.¹⁰³

97 Home Office ([POC0019](#)) para 5

98 Dr Colin King ([POC0007](#)) para 14

99 Q13

100 Home Office ([POC0019](#)) para 12

101 Crown Prosecution Service ([POC0018](#)) para 16

102 Crown Prosecution Service ([POC0018](#)) para 16

103 Q3

This was supported by Dr Colin King who agreed that there was “too much emphasis on how much money is raised”.¹⁰⁴ This echoed a wealth of evidence received in response to our inquiry.¹⁰⁵

66. The benefits from POCA include both the efficient collection of criminal assets and the effective disruption to criminal activities. Although the disruption element is clearly more difficult to quantify, we believe that success should be measured against both. Collection rates are only one element by which the Government should be held to account but they are an important one. We recommend that the Home Office publishes annual statistics on the wider elements of its performance in depriving criminals of their gains. These should include measures against all three of the Home Office’s stated aims:

- to deny criminals the use of their assets;
- to recover the proceeds of crime; and
- to deter and disrupt criminality.

These publications should encompass a measure of how crime rates have been influenced by denying criminals their assets, as well as complete lists of all assets seized from criminals over the course of the year.

What to do with £1.6 billion debt and those who don’t pay

67. While we acknowledge that the reporting of debt outstanding and collection rates does not tell the whole story, the numbers are very large and undeniable. The NAO reported that, at September 2015, there was £1.61 billion debt outstanding from confiscation orders. Even more shocking to us was the admission that only £203 million of that debt could realistically ever be collected.¹⁰⁶ The reasons for this were explained by Helena Wood from RUSI:

The law deliberately draws as broad a definition of criminal benefit as possible, potentially for its deterrent effect against criminals. However, if you look at how that is drawn, [...] that money simply does not exist.¹⁰⁷

68. Furthermore, we heard that the £1.61 billion figure was likely to be inflated as a result of criminals refusing to engage with the court proceedings. Jonathan Fisher QC wrote that this has left judges with no choice but to issue a confiscation order for the full amount, rather than a considered and negotiated ‘collectable sum’:

In many cases, when quantifying the benefit figure, a court is required to assume that all a defendant’s income and expenditure in the past six years has been criminally obtained. A connection between this money and the commission of a particular criminal offence does not need to be established. Instead, the

104 Q14

105 For example Pinsent Masons LLP ([POC0012](#)), Ministry of Justice and HM Courts and Tribunals Service ([POC0014](#)) and National Crime Agency ([POC0017](#))

106 National Audit Office, *Confiscation Orders: progress review*, [HC 886](#), March 2016, p 4

107 Q3

burden rests with a defendant to show that the assumption is incorrect. Leaving aside moral arguments for and against making this assumption, the practical effect is to increase the benefit figure when quantifying the confiscation order.¹⁰⁸

69. Further evidence we received from legal practitioners agreed. Kennedy Talbot QC described the figure as “a complete fiction”.¹⁰⁹ Mark Thompson, Head of Proceeds of Crime Unit at the Serious Fraud Office, told us that using the £1.61 billion figure to measure success was “a fundamental thing that skews all discussion of this subject”.¹¹⁰ He explained that:

Those uncollected orders are uncollectable and I think if we do not deal with that and deal with that straightforwardly, we will be back—or my successor will be back—before you in two or three years’ time talking about a debt of £2 billion or so.¹¹¹

70. We received strong evidence that basing a view of the performance of POCA on the figure of uncollected debt was misleading, not least because approximately one third of the debt is actually made up of interest and penalties for non-payment. The NAO clarified that “the interest on all orders now stands at £471 million, 29 per cent of the total outstanding debt”.¹¹² Given that the vast majority of that debt will never be collected, but still accrues a mandatory 8% interest per annum, it is unlikely that debt will ever be cleared. To solve this, several witnesses suggested that the figure be essentially written off when it comes to measuring performance. To be clear, the evidence that we received did not advocate that criminals be absolved from owing the money, rather it suggested a practical way forward so that the agencies were not to be held back by the historic debt. Helena Wood and the Royal United Services Institute explained how this write-off could work in practice:

The Criminal Finances Board should reconsider the issue of orders which are deemed to be uncollectable. It should further examine whether there is evidence to support wider categories of orders being subject to mechanisms allowing them to be written-off. Alternatives, such as a system for ‘parking’ orders to prevent further accrual of interest, should also be examined. It should examine this issue in the widest sense, giving due consideration to issues of practicality, as well as the policy and political implications of such a decision.¹¹³

71. The Metropolitan Police Commissioner, Sir Bernard Hogan-Howe, wrote to our predecessor Committee in July 2013 and stated that “the enforcement of confiscation orders has become increasingly frustrating with many offenders appearing content to serve default sentences rather than pay back the proceeds of crime, rendering law enforcement powerless to enforce payment”.¹¹⁴ To counter this, Sir Bernard recommended that non-payment of a confiscation order should be a separate criminal offence with more serious ramifications. Martin Bentham of the *Evening Standard* and witness in this inquiry summarised Sir Bernard’s position at the time:

¹⁰⁸ The Times, [Time bomb of confiscating criminals’ assets](#) (23 August 2012)

¹⁰⁹ Q45

¹¹⁰ Q90

¹¹¹ Q90

¹¹² National Audit Office, *Confiscation Orders: progress review*, [HC 886](#), March 2016, p 22

¹¹³ Royal United Services Institute ([POC0004](#)) para 19

¹¹⁴ *Evening Standard*, [Exclusive: Keep Mr Bigs in jail until they pay up, says Met chief](#) (10 July 2013)

Sir Bernard said [...] that non-payment of a confiscation order should become a separate offence and that there “should be no limit on how many times an offender could be charged” so that criminals would remain “at risk” of prosecution until their debts were paid. Such a change would mean that the most serious offenders could be kept behind bars until their illegal profits were handed back.¹¹⁵

72. It appears that some criminals view paying back their proceeds of crime as an option rather than a requirement—essentially a choice between payment and prison. To counter this, the Home Office told us that changes in the law in 2015 had toughened the sentences for non-payment:

The Serious Crime Act 2015 included a number of provisions specifically designed to toughen sanctions for non-payment. These include increasing the maximum default sentence from 10 to 14 years for orders of more than £1 million, and removing the early release provisions for those orders over £10 million.¹¹⁶

Helena Wood from RUSI, was not convinced. She described in her report how “prison is seen as an ‘occupational hazard’ for many criminals” and so was not an incentive to pay their debt.¹¹⁷ Ms Wood then wrote to us to summarise her paper’s recommendations:

Furthermore, the paper points to the lack of understanding of what incentivises individuals to pay on time, particularly whether the default sentence has the intended impact following the recent increase in minimum sentence levels. The paper recommends further work to gather empirical evidence in this field.¹¹⁸

73. Finally, we heard that, due to the global nature of these crimes and the organised networks that many criminals deal in, collection of assets after a criminal has left prison is often hampered by the fact that they leave the country. This severely disrupts the police from enforcing confiscation orders. For example, Grant Thornton LLP’s Proceeds of Crime team explained that “it is a difficult and uncertain process for the Agencies to recover assets from abroad, relying on asset sharing agreements where available”.¹¹⁹ We have previously discussed the discretion of the Home Secretary to issue, withdraw and refuse a passport to criminals representing a flight risk.¹²⁰ In April 2013, the Home Secretary provided an update on how those powers were exercised. The guidance states that “passport facilities may be refused to or withdrawn from British nationals who may [...] engage in terrorism-related activity or other serious or organised criminal activity”.¹²¹ Specifically:

- a person for whose arrest a warrant had been issued in the United Kingdom, or
- a person who was wanted by the United Kingdom police on suspicion of a serious crime; or a person who is the subject of:

115 *Evening Standard*, [Exclusive: Keep Mr Bigs in jail until they pay up, says Met chief](#) (10 July 2013)

116 Home Office ([POC0019](#)) para 31

117 Royal United Services Institute, [Enforcing Criminal Confiscation Orders](#) (February 2016), p 1

118 Royal United Services Institute ([POC0004](#)) para 11

119 Grant Thornton LLP ([POC0010](#)) para E(v)

120 Home Affairs Committee, Seventeenth Report of Session 2013–14, *Counter-terrorism*, [HC 231](#), p 35

121 HC Deb 25 April 2013 [c68–70WS](#)

- a court order, made by a court in the United Kingdom, or any other order made pursuant to a statutory power, which imposes travel restrictions or restrictions on the possession of a valid United Kingdom passport; or
- bail conditions, imposed by a police officer or a court in the United Kingdom, which include travel restrictions or restrictions on the possession of a valid United Kingdom passport; or
- an order issued by the European Union or the United Nations which prevents a person travelling or entering a country other than the country in which they hold citizenship.¹²²

74. The NAO reported that, at September 2015, there was £1.61 billion total debt outstanding from confiscation orders. Given the organised nature of many of the criminals subject to large confiscation orders, it is likely that the majority of this money has now been hidden and is beyond the reach of the authorities. We also heard that that figure is so large because often a confiscation order is made for assets that may never have even existed. This is because, when a criminal refuses to engage with the POCA court proceeding, the judge is left with no option but to demand the full amount rather than the prosecution and defence agreeing the actual collectable amount. We therefore recommend that the courts be given a power to compel attendance at a confiscation hearing. Even after a confiscation order has been made, there are very few incentives for criminals to either engage with the courts or to pay the money back, with many choosing to extend their prison sentences and avoid paying.

75. We agree with the Metropolitan Police Commissioner, Sir Bernard Hogan-Howe, that non-payment of a confiscation order should be made a separate criminal offence. To enforce this, we recommend that no criminal be allowed to leave prison without either paying their confiscation order in full, or engaging with the courts to convince a judge that their debt to society is squared.

76. Given the global nature of many of these crimes, we recommend that the Government confiscates the passport of any criminal subject to a confiscation order. With non-payment of a confiscation order a separate criminal offence, the Home Secretary should use her discretion to deny criminals owing the state money under such an order the ability to evade payment by travelling abroad. These criminals will remain wanted for the crime of non-payment and travel restrictions are needed to ensure effective enforcement of the court order.

77. The £1.61 billion figure for uncollected debt is largely artificial as nearly a third of it represents interest and penalties for non-payment. Using a figure largely made up of uncollectable debt and interest to calculate the overall debt owed could therefore be construed as unhelpful. However, judges have determined that this money is owed to the state as a result of criminal activity and we believe that it should not just be written off. To ensure effective scrutiny and to avoid skewing confiscation rates, we recommend that, when collection rates are reported, they are now set in the context of ‘collectable’ and ‘uncollectable’ debts. We are clear that this is in no sense a recommendation to wipe the slate clean. Rather, this would allow the authorities to concentrate their time on debts which can be collected and when somebody with an outstanding debt comes

122 HC Deb 25 April 2013 [c68–70WS](#)

into significant funds the authorities would then be able to collect that debt. Criminals still owe this money, and will accrue interest on their debt to society. There is no expiry date on this debt because crime must never pay.

Accountability

A lead agency for POCA

78. In March 2016, the National Audit Office reported that there were at least 15 main bodies involved in administering confiscation orders.¹²³ While the Home Office is responsible for policy and legislation surrounding these orders, we were concerned that coherent strategy, responsibility and accountability are lacking as a result of the complicated landscape of—and relationships between—the different agencies tasked with the recovery of criminal assets. This concern was confirmed by the NAO, which found:

[...] weaknesses with the accountability framework for confiscation: that there was “insufficient coherence” in the system; and that there were “no clear lines of responsibility or authority through the delivery chain, and interdependencies between bodies were undefined”. The Committee [of Public Accounts] expected the Home Office, in conjunction with the other main bodies involved, to address these issues.¹²⁴

That was another expectation that was not met. In 2016, the NAO concluded that “this has not changed since 2013” and that there remained a “lack of clarity over responsibilities and interdependencies”.¹²⁵

79. The lack of clarity over responsibilities, priorities and accountability for the collection of criminal proceeds under POCA is sure to have a negative impact on the effective collection of such assets. This is not least because a fundamental factor in the effective collection of proceeds of crime is the priority such activities are given against other competing activities. A clear and actual example of this occurring was provided by the Crown Prosecution Service, which discussed how POCA was low on the list of the competing priorities police forces face:

Most police forces do not see asset recovery as a priority when compared to issues such as child abuse, modern slavery and cyber-crime. Re-direction of resources by police forces means that there are less trained and experienced financial investigators available to investigate cases, which has reduced the capacity needed to recover criminal funds.¹²⁶

80. There is a real risk that a culture which views the recovery of criminal proceeds as being ‘someone else’s job’ could emerge among the complex and opaque landscape of stakeholders involved in POCA. All of our recommendations in this Report are aimed at stopping that shift, and must culminate in having one agency accountable against the new performance measures mentioned in the previous section.

123 National Audit Office, *Confiscation Orders: progress review*, [HC 886](#), March 2016, p 7

124 National Audit Office, *Confiscation Orders: progress review*, [HC 886](#), March 2016, p34

125 National Audit Office, *Confiscation Orders: progress review*, [HC 886](#), March 2016, p 34

126 Crown Prosecution Service ([POC0018](#)) para 17

81. We have found that the number of agencies involved in the recovery of criminal assets is complicated and, at times, confusing. This is partially a symptom of the different methods necessary to deprive criminals of their gains and the different opportunities for those recoveries. We agree that enforcement of POCA must remain at a local level but the current system lacks a clear line of overall responsibility, strategy and accountability. We therefore recommend that the National Crime Agency be made the lead agency for the recovery of criminal proceeds.

82. Once the NCA is established as the lead agency and is accountable as such, it is only fair that it be given resources and tools to influence performance. We recommend that the NCA be enabled to incentivise other agencies as it sees fit to ensure effective collection regionally. Specifically, we recommend that the Asset Recovery Incentivisation Scheme (ARIS) be put under the control of the NCA to be used as a tool to resource and incentivise effective collection of criminal assets.

Coordination and data-sharing

83. Finally, we received evidence that the multitude of agencies were not able to work effectively together because of difficulties in communicating and coordinating data. Donald Toon from the NCA used the example of linking the Suspicious Activity Reports dataset with others (such as the National Fraud Intelligence Bureau dataset). He explained that the current system was manual and ineffective:

We can do data matches against the different datasets, but we cannot do so automatically, routinely and straightforwardly; we have to do it manually. Essentially, we have to do a process by which we download one dataset and then set it against the other.¹²⁷

84. Given the potential information in these datasets, this is unacceptable. There is little surprise that collection rates are so low if those charged with collecting do not have real-time access to all of the information needed. We agreed with Mr Toon when he concluded that there needed to be “an effective upgrade to the system and we were able to have the kind of online connectivity” of all the information linked to criminals and their assets to gain as full a picture as possible to enable effective recovery.¹²⁸

85. **There are several databases and sources of information relating to the various enforcement agencies involved in POCA. Indeed, each agency involved in POCA is likely to have its own database. We recommend that, once the NCA has been established as the lead agency, it takes steps to merge all of the sources of information and data used to pursue criminal assets (including the replacement to ELMER) into one ‘asset recovery database’. This database should be under the control of the NCA, but capable of being openly accessed and updated by all of the relevant agencies, with the necessary security systems in place.**

86. When we visited a Queen’s Warehouse, where confiscated assets are stored, Border Force staff informed us of a problem with their IT systems which did not allow them to trace confiscated assets from the point of their confiscation to their arrival at individual warehouses, and told us that this inhibited aspects of their work.

127 Q337

128 Q339

87. We were surprised to learn that confiscated assets, taken for use in court and other proceedings, cannot be traced from the point of seizure to their being deposited in a Queen's Warehouse. Amazon and the Royal Mail have offered "track and trace" services for many years. We fail to understand why the Home Office has not kept pace in the same way, given the value of the assets concerned and their importance in the evidence chain. We recommend that, in its review of all proceeds of crime databases, the Government overhaul and modernise the ageing systems currently used to track millions of pounds worth of confiscated assets. We expect this to have been completed by the time we revisit this issue in spring 2017.

Conclusions and recommendations

Early restraint and seizure

1. Criminals are becoming more sophisticated at concealing the proceeds of their crimes. Ensuring the efficient recovery of these proceeds should be one of the first issues an investigator tackles. Ideally, assets should be frozen simultaneously with the criminal becoming aware of the investigation for the first time (this will often be at the time of arrest, although not always). Waiting for a conviction is far too late. As part of their training police officers should be equipped to deal with these challenges. (Paragraph 14)
2. We recommend that, upon entry into the service, all police officers receive at least one full day of financial investigative training, accredited by the National Crime Agency (NCA), so that all officers are equipped to secure recovery at a much earlier stage and have a good understanding of the impact of charges, offences and pleas on asset recovery. Secondly, all detective officers should receive advanced financial investigation training on at least an annual basis so that appropriate evidence is gathered about financial gain, as well as criminal conduct in every investigation into a serious crime offering financial gain. We recommend that NCA training and accreditation of specialised financial investigators emphasises the importance of initiating asset freezing at the earliest stages of an investigation. Performance against this objective should be measured for all the agencies involved by recording whether assets are frozen and ready to be recovered as soon as a confiscation order is made. (Paragraph 15)

Specialist investigators

3. We heard in evidence that retention of investigators with necessary but scarce skills in financial investigation is a problem. Skilled staff are being “poached” from the public sector because it cannot match the remuneration incentives being offered by large financial firms—which may themselves be increasingly concerned about becoming the subject of financial investigations. We understand that a cross-Whitehall working group has been set up to try to address this issue. The Government should publish details of the working group’s membership terms of reference, remit and timetable for reporting its findings immediately. When the report is published, we expect it to include a clear timetable for action and targets for progress on recruitment and retention against which subsequent progress can be measured. (Paragraph 18)

SARs and ELMER

4. It is crucial that the financial services industry (and connected industries such as real estate and professional services) have confidence in the robustness and objectivity of reporting what they consider to be suspicious activity. Without the support of industry, investigation and enforcement agencies will be unable to target some criminals, nor spot patterns of wrongdoing. (Paragraph 20)

5. We have been deeply concerned for some time that the ELMER system for Suspicious Activity Reports (SARs) is heavily overloaded and therefore rendered completely ineffective. The ELMER system currently processes 381,882 SARs despite being designed to manage only 20,000 and, of this figure, only 15,000 looked at in detail. We have reminded the Government time and again that it must be replaced. The failure of ELMER has made the SARs system a futile and impotent weapon in the global fight against money laundering and corruption. We note that the Government has finally given a commitment to make the system work in this year's Queen's Speech, although we have yet to receive details of how this will be achieved. An effective regime to help organisations report suspicious financial activity must be introduced without further damaging delay. We recommend that the Government replaces ELMER with a robust system for handling Suspicious Activity Reports by 31 December 2016. (Paragraph 24)
6. To repair the damage to the reputation of the SARs regime caused by the failure of ELMER, we recommend that the Government involves those who actually use the SARs system to make reports—as well as those charged with investigating at the other end—in designing the replacement to ELMER. Only by doing so can the Government rebuild industry's trust in the regime and ensure that the next generation of SARs does not suffer the same fate. (Paragraph 25)

Confiscation courts

7. We received strong evidence that the creation of a 'confiscation court' would combat the current lack of interest in confiscation orders among prosecutors and judges, which has led in turn to a lack of training and specialist skills. Specialist courts would enable complex confiscation hearings to be dealt with more efficiently and with much greater expertise, with the added bonus of leaving Crown Courts more time to focus on criminal trials. We recommend that the Government takes the necessary steps to establish confiscation courts to allow for serious and/or complex confiscation hearings. For example, we would expect these courts to hear those cases featuring cross-border financial transactions, use of corporate vehicles or very high value proceeds. (Paragraph 34)
8. The creation of confiscation courts would encourage the specialisation of judges in the area of proceeds of crime. This would mean that one judge could deal with the financial aspect of a serious and/or complex case from cradle to grave. The confiscation courts must therefore be properly resourced, with highly motivated and expertly trained judges and prosecutors, to ensure the highest standard of understanding and consistency in the application of this aspect of the law. (Paragraph 35)

Enforcement and collection

9. Despite some reforms to the incentive system for recovering proceeds of crime, the Government has failed to satisfy the National Audit Office (NAO) or us that the system is fit for purpose. We agree with the NAO that there are significant weaknesses in the Asset Recovery Incentivisation Scheme (ARIS), specifically in that it rewards those who have not been affected or taken a role in the recovery of assets. (Paragraph 42)

10. We recommend that the Government applies a new formula which ensures that at least 10% of the criminal assets recovered are returned or donated to the communities which have suffered at the hands of criminals, for example through charities. This must not disadvantage the agencies that have worked hard to recover the assets, but instead should be deducted from the 50% portion which the Home Office currently takes. (Paragraph 43)
11. We recommend that outstanding confiscation orders be put onto the Police National Computer by merging or connecting the Joint Asset Recovery Database with the Police National Computer so that the police on the front-line know that a suspect is in breach of a confiscation order and can act on it. It is ludicrous that the PNC can tell a police officer that a suspect owns a dog but not that they are evading payment of a criminal confiscation order. (Paragraph 46)
12. Greater coordination and collaboration between public bodies involved in POCA and the private sector could result in more efficient collection of proceeds of crime and the denial of assets to criminals. We recommend that the Government creates a market for the private enforcement and collection of unpaid confiscation orders once they enter arrears, earning a fee from a portion of that order. The Home Office has already stated that it will look at enhancing cooperation with the private sector to improve asset recovery. We recommend that the Government acts upon this aspiration and shares information and evidence between law enforcement and the private sector to achieve this. (Paragraph 50)

Money laundering

13. Money laundering is undoubtedly a problem in the UK, as with any established and large financial centre. It is disgraceful that at least a hundred billion pounds is being laundered through the UK every year. If the UK is to remain the centre of global finance, this must be addressed. The evidence we have received leaves no doubt that the success of POCA, and indeed the standing of the UK as a global financial centre is dependent on proactively and effectively tackling it. The Government has recently announced some significant and wide-ranging policies towards improving its record in preventing and prosecuting money launderers. We expect the Government to provide a report on the impact of these policies by January 2017, before we return to this issue next spring. (Paragraph 60)
14. We heard that money laundering takes many complicated forms. These range from complex financial vehicles and tax havens around the world through to property investments in London, to easily transportable and high value jewellery. It is astonishing that just 335 out of some 1.2 million property transactions last year were deemed to be suspicious. This suggests to us that supervision of the property market is totally inadequate, and that poor enforcement has laid out a welcome mat for money launderers. The recent policies announced by the Government must include enhanced supervision of the property market and both sides of the transaction—buyers and sellers—must be included. (Paragraph 61)
15. At the moment it is far too easy for someone intent on laundering money to buy a property with their ill-gotten gains, and rent it out in a very buoyant and robust letting market, and take in clean money in perpetuity. We recommend that, as with

estate agents and other professional services, letting agents must use the Suspicious Activity Reporting regime (SARS) system and undertake appropriate due diligence when taking on new clients. (Paragraph 62)

Measuring success and accountability

16. The benefits from POCA include both the efficient collection of criminal assets and the effective disruption to criminal activities. Although the disruption element is clearly more difficult to quantify, we believe that success should be measured against both. Collection rates are only one element by which the Government should be held to account but they are an important one. We recommend that the Home Office publishes annual statistics on the wider elements of its performance in depriving criminals of their gains. These should include measures against all three of the Home Office's stated aims:
- to deny criminals the use of their assets;
 - to recover the proceeds of crime; and
 - to deter and disrupt criminality.

These publications should encompass a measure of how crime rates have been influenced by denying criminals their assets, as well as complete lists of all assets seized from criminals over the course of the year. (Paragraph 66)

Tackling non-payment

17. The NAO reported that, at September 2015, there was £1.61 billion total debt outstanding from confiscation orders. Given the organised nature of many of the criminals subject to large confiscation orders, it is likely that the majority of this money has now been hidden and is beyond the reach of the authorities. We also heard that that figure is so large because often a confiscation order is made for assets that may never have even existed. This is because, when a criminal refuses to engage with the POCA court proceeding, the judge is left with no option but to demand the full amount rather than the prosecution and defence agreeing the actual collectable amount. We therefore recommend that the courts be given a power to compel attendance at a confiscation hearing. Even after a confiscation order has been made, there are very few incentives for criminals to either engage with the courts or to pay the money back, with many choosing to extend their prison sentences and avoid paying. (Paragraph 74)
18. We agree with the Metropolitan Police Commissioner, Sir Bernard Hogan-Howe, that non-payment of a confiscation order should be made a separate criminal offence. To enforce this, we recommend that no criminal be allowed to leave prison without either paying their confiscation order in full, or engaging with the courts to convince a judge that their debt to society is squared. (Paragraph 75)
19. Given the global nature of many of these crimes, we recommend that the Government confiscates the passport of any criminal subject to a confiscation order. With non-payment of a confiscation order a separate criminal offence, the Home Secretary

should use her discretion to deny criminals owing the state money under such an order the ability to evade payment by travelling abroad. These criminals will remain wanted for the crime of non-payment and travel restrictions are needed to ensure effective enforcement of the court order. (Paragraph 76)

20. The £1.61 billion figure for uncollected debt is largely artificial as nearly a third of it represents interest and penalties for non-payment. Using a figure largely made up of uncollectable debt and interest to calculate the overall debt owed could therefore be construed as unhelpful. However, judges have determined that this money is owed to the state as a result of criminal activity and we believe that it should not just be written off. To ensure effective scrutiny and to avoid skewing confiscation rates, we recommend that, when collection rates are reported, they are now set in the context of 'collectable' and 'uncollectable' debts. We are clear that this is in no sense a recommendation to wipe the slate clean. Rather, this would allow the authorities to concentrate their time on debts which can be collected and when somebody with an outstanding debt comes into significant funds the authorities would then be able to collect that debt. Criminals still owe this money, and will accrue interest on their debt to society. There is no expiry date on this debt because crime must never pay. (Paragraph 77)

Establishing a lead agency

21. We have found that the number of agencies involved in the recovery of criminal assets is complicated and, at times, confusing. This is partially a symptom of the different methods necessary to deprive criminals of their gains and the different opportunities for those recoveries. We agree that enforcement of POCA must remain at a local level but the current system lacks a clear line of overall responsibility, strategy and accountability. We therefore recommend that the National Crime Agency be made the lead agency for the recovery of criminal proceeds. (Paragraph 81)
22. Once the NCA is established as the lead agency and is accountable as such, it is only fair that it be given resources and tools to influence performance. We recommend that the NCA be enabled to incentivise other agencies as it sees fit to ensure effective collection regionally. Specifically, we recommend that the Asset Recovery Incentivisation Scheme (ARIS) be put under the control of the NCA to be used as a tool to resource and incentivise effective collection of criminal assets. (Paragraph 82)

Coordination and data-sharing

23. There are several databases and sources of information relating to the various enforcement agencies involved in POCA. Indeed, each agency involved in POCA is likely to have its own database. We recommend that, once the NCA has been established as the lead agency, it takes steps to merge all of the sources of information and data used to pursue criminal assets (including the replacement to ELMER) into one 'asset recovery database'. This database should be under the control of the NCA, but capable of being openly accessed and updated by all of the relevant agencies, with the necessary security systems in place. (Paragraph 85)

24. We were surprised to learn that confiscated assets, taken for use in court and other proceedings, cannot be traced from the point of seizure to their being deposited in a Queen's Warehouse. Amazon and the Royal Mail have offered "track and trace" services for many years. We fail to understand why the Home Office has not kept pace in the same way, given the value of the assets concerned and their importance in the evidence chain. We recommend that, in its review of all proceeds of crime databases, the Government overhaul and modernise the ageing systems currently used to track millions of pounds worth of confiscated assets. We expect this to have been completed by the time we revisit this issue in spring 2017. (Paragraph 87)

Formal Minutes

Wednesday 29 June 2016

Members present:

Keith Vaz, in the Chair

Victoria Atkins

Stuart C McDonald

James Berry

Mr David Winnick

Mr Ranil Jayawardena

Draft Report (*Proceeds of Crime*), proposed by the Chair, brought up and read.

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

Paragraphs 1 to 87 read and agreed to.

Resolved, That the Report be the Fifth 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.

[Adjourned till Monday 4 July at 3.45 pm.]

Witnesses

The following witnesses gave evidence. Transcripts can be viewed on the [inquiry publications page](#) of the Committee's website.

Tuesday 8 March 2016

Question number

Jonathan Fisher QC, Visiting Professor in Practice, London School of Economics, and Barrister, Devereux Chambers, **Dr Colin King**, Senior Law Lecturer, University of Sussex, and **Helena Wood**, Associate Fellow, Royal United Services Institute [Q1–39](#)

Richard Fisher QC, Doughty Street Chambers, **Tim Owen QC**, Matrix Chambers, and **Kennedy Talbot QC**, 33 Chancery Lane Chambers [Q40–70](#)

Martin Bentham, Evening Standard [Q71–88](#)

Tuesday 3 May 2016

Robert Barrington, Executive Director, Transparency International UK, and **Mark Thompson**, Head of Proceeds of Crime Unit, Serious Fraud Office [Q89–142](#)

Bill Browder, Founder and Chief Executive, Hermitage Capital Management [Q143–198](#)

Henry Pryor, Buying Agent and Market Commentator, and **Laurence Sacker**, Partner, Corporate Finance and Money Laundering Reporting Officer, UHY Hacker Young LLP [Q199–279](#)

Tuesday 24 May 2016

Detective Chief Superintendent Dave Clark, Head of Economic Crime Directorate, City of London Police, and **Nick Price**, National Proceeds of Crime, Crown Prosecution Service [Q280–331](#)

Donald Toon, Director of Economic Crime, National Crime Agency [Q332–357](#)

Published written evidence

The following written evidence was received and can be viewed on the [inquiry publications page](#) of the Committee's website.

POC numbers are generated by the evidence processing system and so may not be complete.

- 1 Association of Chief Trading Standards Officers ([POC0009](#))
- 2 Bill Browder, Founder and Chief Executive, Hermitage Capital Management ([POC0026](#))
- 3 Bill Browder, Founder and Chief Executive, Hermitage Capital Management supplementary ([POC0027](#))
- 4 British Bankers' Association ([POC0021](#))
- 5 City of London Police ([POC0024](#))
- 6 City of London Police supplementary ([POC0029](#))
- 7 Crown Prosecution Service ([POC0018](#))
- 8 Dr Colin King ([POC0007](#))
- 9 Grant Thornton UK LLP POCA Team ([POC0010](#))
- 10 HMRC ([POC0015](#))
- 11 Home Office ([POC0019](#))
- 12 Merseyside Police ([POC0003](#))
- 13 Ministry of Justice and HM Courts and Tribunals Service ([POC0014](#))
- 14 Mr David Winch ([POC0022](#))
- 15 Mr Jeffrey Bryant ([POC0016](#))
- 16 Mr Tristram Hicks ([POC0002](#))
- 17 National Crime Agency ([POC0017](#))
- 18 NPCC Financial Investigation and Proceeds of Crime Portfolio ([POC0011](#))
- 19 Pinsent Masons LLP ([POC0012](#))
- 20 Professor Tsachi Keren-Paz, Keele University, School of Law ([POC0008](#))
- 21 Royal United Services Institute ([POC0004](#))
- 22 Serious Fraud Office ([POC0013](#))
- 23 Serious Fraud Office supplementary ([POC0028](#))
- 24 Transparency International UK ([POC0025](#))

List of Reports from the Committee during the current Parliament

All publications from the Committee are available on the [publications page](#) of the Committee's website.

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

Session 2016–17

First Report	Police diversity	HC 27
Second Report	The work of the Immigration Directorates (Q4 2015)	HC 22
Third Report	Prostitution	HC 26
Fourth Report	College of Policing	HC 23
First Special Report	The work of the Immigration Directorates (Q3 2015): Government Response to the Committee's Sixth Report of Session 2015–16	HC 213

Session 2015–16

First Report	Psychoactive substances	HC 361 (HC 755)
Second Report	The work of the Immigration Directorates (Q2 2015)	HC 512 (HC 693)
Third Report	Police investigations and the role of the Crown Prosecution Service	HC 534
Fourth Report	Reform of the Police Funding Formula	HC 476
Fifth Report	Immigration: skill shortages	HC 429 (HC 857)
Sixth Report	The work of the Immigration Directorates (Q3 2015)	HC 772 (HC 213)
Seventh Report	Police and Crime Commissioners: here to stay	HC 844
First Special Report	The work of the Immigration Directorates: Calais: Government Response to the Committee's Eighteenth Report of Session 2014–15	HC 380
Second Special Report	Out-of-court Disposals: Government Response to the Committee's Fourteenth Report of Session 2014–15	HC 379
Third Special Report	The work of the Immigration Directorates (Q2 2015): Government Response to the Committee's Second Report of Session 2015–16	HC 693
Fourth Special Report	Psychoactive substances: Government Response to the Committee's First Report of Session 2015–16	HC 755
Fifth Special Report	Immigration: skill shortages: Government Response to the Committee's Fifth Report of Session 2015–16	HC 857