



House of Commons
Home Affairs Committee

**Proceeds of crime:
Government response
to the Committee's
Fifth Report of Session
2016–17**

**Fifth Special Report of Session
2016–17**

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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), Andy Boyd (Senior Committee Assistant), Mandy Sullivan (Committee Assistant) and Jessica Bridges-Palmer (Committee Media Officer).

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Fifth Special Report

The Home Affairs Committee published its Fifth Report of Session 2016–17, *Proceeds of crime* (HC 25), on 15 July 2016. The Government's response was received on 7 November 2016 and is appended to this report.

In the Government response the Committee's recommendations are shown in **bold type**; the Government's response is shown in plain type.

Appendix: Government Response

Introduction

The Government's Serious and Organised Crime Strategy, published in October 2013, included a commitment to attack criminal finances by making it harder for criminals to move, use and hide the proceeds of crime.

Improving performance on asset recovery was central to the Strategy commitments on criminal finances. The recovery of criminal proceeds is a key tactic to tackle serious and organised crime.

£1.2bn has been taken off criminals between April 2010, and March 2016, and hundreds of millions more has been frozen and put beyond the reach of criminals. £153m was returned to victims in the same period. In 2015–16, more assets were recovered than ever before: some £255m, which is an increase of 28% on the previous year. This figure includes the recovery and repatriation to Macau of £30m of proceeds of corruption.

The Government however recognises that there is more to do. These sums remain relatively small when compared with estimates of the scale of serious and organised crime in the UK.

The Strategy said that there should be a renewed focus on enforcement and multi-agency activity against uncollected orders; it also set out a number of proposals to strengthen the legislation, which were given effect by the Serious Crime Act 2015. It strengthened the sanctions for non-payment of orders, made it easier for courts to take monies from bank accounts, reduced the time that criminals have for payment of their orders, and introduced a new compliance order to ensure that a confiscation order is effective. Some of these measures have only come into force relatively recently and their impact will not be immediate.

Legislative change has only been one part of the picture. The Home Office has led a multi-agency criminal finances improvement plan to deliver the Government's Serious and Organised Crime Strategy commitments, and address the recommendations made by the Public Accounts Committee in 2014. The plan was refreshed for 2015–16. Progress is monitored and assessed by the Criminal Finances Board, which is chaired by a Home Office and Treasury Minister.

An important part of the implementation of the improvement plan has been the creation of new asset recovery operational capabilities since 2014—for example, a cross agency group, led by the National Crime Agency, which focusses on identifying priority cases for

enforcement. NCA and regional Asset Confiscation Enforcement (ACE) Teams have also been established to assist in the enforcement of confiscation orders. The ACE teams work with defendants to encourage compliance with confiscation orders at an earlier stage, and where defendants are not cooperative, will proactively enforce the order. The regional ACE teams are funded by additional monies from the Asset Recovery Incentivisation Scheme, and as at April 2016, had collected over £22m.

The 2013 Serious and Organised Crime Strategy, the Strategic Defence and Security Review 2015, and the recent Anti Corruption Summit, made clear the Government's objective: to work in partnership with the private sector to make the UK a more hostile place for those seeking to move, hide, or use the proceeds of crime or corruption.

In October 2015, the Government published the National Risk Assessment for Money Laundering and Terrorist Financing (NRA), identifying a number of risks and areas where these regimes could be strengthened. The Action Plan for Anti-Money Laundering and Counter-Terrorist Finance, published in April 2016, set out a range of measures to strengthen the UK's response to these threats.

The Criminal Finances Bill was first announced in the Queen's Speech on 18 May 2016. The Bill will facilitate a stronger public-private partnership; enhance the law enforcement response; significantly improve our capability to recover the proceeds of crime; and combat the financing of terrorism.

The Government will publish, in 2017, an Action Plan on asset recovery, which will set out, amongst other actions, how it is tackling the stock of unenforced orders.

The Committee's specific conclusions and recommendations are addressed in turn below.

Early restraint and seizure

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)

Taken with:

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)

The Government agrees that assets should be frozen as early as possible in cases where it is operationally appropriate to do, and that waiting for a conviction in a criminal case is too late to protect the movement of assets. Restraint at an early stage, or indeed at all, will not be appropriate in every case, but the early consideration of restraint for each case is key.

The Proceeds of Crime Act provides that a restraint order can be applied for from the moment that a criminal investigation has commenced. The Government lowered the test for restraint in the Serious Crime Act 2015 to make it easier for an order to be obtained. This was a direct response to representations from operational partners.

The Proceeds of Crime Centre at the NCA has a statutory role for the accreditation, training and monitoring of specialist financial investigators. This is done through a set of compulsory training courses and mandatory professional development and monitoring.

The current financial investigation training for specialised financial investigators already emphasises the importance of early restraint of assets.

The training of front line police officers is only one part of the Government's approach to ensuring that restraint orders are used appropriately. The Crown Prosecution Service has put in place a system of restraint "clinics" so that prosecutors can liaise directly with front line law enforcement officers on individual cases. The CPS has also issued guidance to all prosecutors on the use of confiscation and restraint provisions, as part of their establishment of a dedicated Proceeds of Crime national function in 2014.

The Government assesses the use of restraint orders through the number and value of restraint orders obtained on a quarterly basis and this information is reported to the Criminal Finances Board. The Government will publish those statistics annually. Whilst such figures will illustrate overall volume and value they do not provide the complete picture. Restraint is not appropriate in all cases and whilst increased use of restraint orders at an early stage is clearly desirable, use of such statistics as a measure of performance or a target will not necessarily be helpful. The Government will continue to assess the use of restraint orders to ensure they are being used in the most effective way.

Financial investigation is a complex specialist investigative field and it requires a significant investment of time and resource to reach accreditation status. As part of the police officer probationary training the College of Policing will ensure that all new police officers receive financial investigation awareness training in order to identify and report on prosecution and asset recovery opportunities to appropriate specialists.

Whilst all officers will deal with crimes where asset recovery should be considered, the Government considers that it is more appropriate for the curriculum to focus on the protection of people, particularly vulnerable people from abuse and exploitation and for frontline officers to be able to access specialist financial investigation expertise where necessary.

Enhanced financial investigation awareness training is to be included in the "Professionalising Investigation Programme" (PIP). This level of training will enable detectives to recognise financial offences in order to search for and secure appropriate evidence of offending and criminal benefit to assist specialist financial investigation. This has already been addressed for Senior Investigative Officers. There will be a new learning programme, to be piloted in early 2017, that will extend this to other officers.

Specialist investigators

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)

The Government recognises the need to make better use of the current cohort of financial investigators and to deliver plans for longer term financial investigation capability building. The Criminal Finances Board has been exploring issues relating to financial investigation capability and the Committee’s findings will help inform the next stage of this work. The Government will update the Committee in due course on how this is being taken forward.

SARs and ELMER

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)

Taken with:

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)

Taken with:

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)

The SARs regime is a vital part of the Government's response to money laundering and terrorist financing. It both provides opportunities for law enforcement action, and adds to the Government's intelligence picture around individuals, organisations and methods of interest.

All SARs are automatically checked against key words, and, depending on the purpose of that search, reports are identified and subject to further review. Urgent SARs are disseminated to the appropriate law enforcement partner to assess for action and all appropriate SARs are subsequently made available to partners for intelligence purposes.

In 2014/15, over 380,000 SARs were received. Over 14,000 of those SARs required the NCA to make a consent decision. Those SARs lead to nearly £45m being restrained.

In the National Risk Assessment (NRA) of Money Laundering and Terrorist Financing, published on 15 October 2015, the Government was clear that the SARs IT system is coming to the end of its life and will need to be replaced. The Government has committed to replacing the SARs IT system, and considers that those who will benefit from the new IT system should share the costs for developing it. The Government is working with partners to establish a SARs reform programme.

The Government also agrees with the Committee's recommendation that those who use the system to report suspicious activity—as well as those charged with the investigation of criminal activity—should be involved in designing the replacement to the SARs IT system.

This will take time: the complexity and scale of the current system—and the need to integrate its replacement with wider reform of the SARs regime—creates considerable challenges and the work will take a number of years to complete. In the interim, some technical improvements have already been made to the SARs IT system (and others are planned) by the NCA which will help improve matters in the short to medium term.

Confiscation courts

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)

Taken with:

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)

The Government does not believe that the provision of specialist confiscation courts would assist in enabling confiscation hearings to be dealt with more efficiently, and there are likely to be unintended adverse consequences. Restricting the available venues to a few specialist centres is likely to lead to far greater waiting times because of the limited number of court rooms, judges and staff. Additionally, these courts are likely to prove expensive to set up and run, even if they do not involve any new, separate premises, because they would require separate administration and listing arrangements.

Requiring cases to be listed before specialist judges in a specialist court will result in a lack of listing flexibility which will result in unnecessary delay. It will also involve duplication of work: where there has been a trial, the trial judge is better equipped than anyone else to deal expeditiously with the issues arising in relation to confiscation, because he or she has heard all the evidence at trial. If the confiscation proceedings are transferred to a specialist court, the judge there will have no prior knowledge of the evidence at trial, and will have to start from scratch. This duplication of work also introduces the undesirable risk that the confiscation judge's assessment of the limited evidence they hear may differ from that taken by the judge who had the advantage of hearing all the evidence at trial.

Training of the judiciary is a matter for the judiciary through the Judicial College and the Lord Chief Justice. The Government will work with the Lord Chief Justice to assess whether additional capabilities are required, and whether any additional measures can be put into place to encourage increased knowledge of POCA.

Enforcement and collection

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)

Taken with:

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)

Under the ARIS, the Government invests 50% of the receipts from all four asset recovery mechanisms in the agencies involved in the recovery of criminal assets in order to incentivise further asset recovery work and enable them to reinvest the proceeds of crime in local community activities. This ensures that funding can be best targeted according to

local understanding of need and impact. The police have used ARIS funds for community safety projects, such as the provision of attack alarms, youth diversionary programmes, and victim support projects for elderly victims of fraud.

The Government, following the recommendations of the Criminal Finances Board, reformed ARIS in 2014–15. The changes make the use of funds more transparent and boosts the operational response. A 'top-slice' of approximately £5 million has been invested in 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.

The Home Office will introduce further reform to ARIS to implement a Manifesto commitment to return a greater percentage of recovered assets to policing. This reform will result in additional incentivisation funds being invested in the multi-agency Regional Asset Recovery teams, which will allow for due consideration to be given to supporting prosecutorial functions.

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)

The Police National Computer already has the facility to allow officers to place an information marker to identify that a confiscation order has been made against a defendant. The marker is placed on the nominal record and carries a free text field which includes a point of contact for a front line officer to contact the financial investigator. Such markers are placed on a case by case basis. The ability to place a marker in this way has been part of the education of front line officers for over 15 years.

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)

The Government agrees that further information should be shared between the private sector and law enforcement. As set out in the Strategic Defence and Security Review, the Government will continue to look to potential opportunities for enhanced cooperation with the private sector to make the UK a more hostile environment for those who seek to move, use and hide the proceeds of crime.

In 2014 the Home Office established the Serious and Organised Crime Financial Sector Forum, an initiative to bring together Government, law enforcement agencies, regulators and the financial sector in a public-private partnership to tackle crime. Under its auspices,

the NCA has trialled sharing data on some uncollected confiscation orders across 17 banks. The Government is now exploring how it can share confiscation order data on a larger scale and whether doing so would lead to better enforcement outcomes.

The Government has also established the Joint Money Laundering Intelligence Taskforce, led by the NCA, and including representatives from the financial sector, the Financial Conduct Authority, HMRC and the Home Office. The JMLIT has enhanced anti-money laundering detection capability and generated increased prevention and disruption opportunities through the sharing of intelligence.

Prosecution agencies already make use of private sector firms as receivers to enable the management and recovery of property subject to a confiscation order, where such firms can add value to enforcement proceedings. The issue of whether to appoint a receiver will depend on the facts of the case, cost effectiveness, and legal and practical issues, such as the location of the assets in question.

In 2014, the CPS launched a new receiver panel in response to previous criticism that value for money was not being achieved in receivership appointments. Appointments are now based on value for money and quality.

The Government will continue to explore how the private sector role in the enforcement of outstanding confiscation orders might be expanded. The Government will explore how a market for private sector interest in the enforcement of unenforced orders might be established.

Money laundering

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)

Taken with:

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)

Taken with:

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)

The Government published the Action Plan for Anti-Money Laundering and Counter Terrorist Finance in April 2016. The Action Plan sets out the most significant changes to the UK's domestic anti-money laundering regime in over a decade. It focuses on three priorities, all underpinned by an enhanced public-private partnership: an improved law enforcement response; reform of the supervisory regime, and an increase in our international reach in order to tackle upstream threats.

In line with the Action Plan, HM Treasury is undertaking a review of the UK's supervisory regime which will address the findings in the National Risk Assessment that there is a risk of inconsistency between supervisors.

As well as looking at consistency of supervision, this review will aim to strengthen the government's ability to hold the supervisors themselves to account, helping to build a more effective supervisory regime that tackles bad practice and protects the reputation of the UK's financial sector.

HMRC supervises estate agents for anti money laundering and counter terrorist finance purposes and takes a robust, intelligence-led approach to testing and challenging compliance with the regulations through interventions and visits. HMRC reviews risks across all of the sectors it supervises, to ensure its compliance responses are targeted and tailored appropriately.

All estate agency businesses must put in place policies and procedures that reflect the degree of risk associated with a property transaction. Where HMRC have reason to believe this is not being done, they will carry out a range of compliance checks which include unannounced visits. Where they find that a business has not met its obligations, they will use a range of sanctions such as civil penalties or referring the most serious cases for criminal prosecution.

In 2014–15 HMRC issued 677 penalties worth £768,214 across all of its supervised sectors. Thirty successful prosecutions were secured last year for money laundering, or related offences and two for criminal breaches of the regulations.

HMRC actively tracks down unregistered businesses across all the sectors it supervises. Since taking over the supervision of estate agency businesses from the Office of Fair Trading in 2014, HMRC has successfully increased the number of businesses registered by 20%.

All businesses, regardless of whether they are subject to the money laundering regulations, are under an obligation not to launder money. Letting agents can already use the SARs system should they suspect money laundering or terrorist financing.

The Government is aware of concerns that estate agents may not carry out anti money laundering or counter terrorism finance checks on a contracting party to a transaction who is not a client. Estate agents should, of course, be acutely aware of the need to report suspicious activity in accordance with the applicable money laundering and terrorist financing offences.

The Government will consult later this year on the transposition of the Fourth Money Laundering Directive, including the Directive's provisions regarding estate agents.

Measuring success and accountability

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:

- a) to deny criminals the use of their assets;
- b) to recover the proceeds of crime; and
- c) 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)

The Government agrees with the Committee that the benefits of the use of the tools in POCA are not just about the value and volume of asset recovered. Starting in 2017, the Home Office will publish annual asset recovery statistics. This publication will include collection rates, progress on priority confiscation orders, and the amount that can realistically be collected from the total value of uncollected confiscation orders.

The Government has also been working to establish a way of measuring the disruptive effect of confiscation orders. Policing and the National Crime Agency have agreed a disruption measurement framework for action against serious and organised crime by the NCA and Regional Organised Crime Units. The expansion of this framework to cover wider action against crime is currently under consideration. The Government will consider whether the outcomes of this work can be published as part of the annual statistics.

Tackling non payment

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)

A confiscation order is made after representations to the court about the benefit gained from the criminal conduct, and the assets available to the defendant to pay that order. An order can be made in the absence of a defendant being present at the court proceedings, or indeed if a defendant who is present refuses to cooperate during the proceedings.

The Government considers that there are already sufficient powers in place to ensure that a defendant attends at their confiscation hearing.

The provisions of POCA provide for the enforcement of a confiscation order as if it were a fine. Those provisions, together with the provisions of the Magistrates Court Act 1980 set out the process for securing the presence of an offender for the purposes of enforcing a fine. Therefore, where the enforcement of an order is being considered, sufficient powers already exist.

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)

Non-payment of a confiscation order is already subject to a period of default sentence in prison. The period of default is communicated to the defendant at the time that the order is made, and is designed to act as an incentive to payment of the order.

The Serious Crime Act 2015 significantly increased all of the default sentences for those who are unwilling to pay their orders, at the most serious end from 10 to 14 years, and amended the legislative provisions to ensure that those who did not pay the largest orders (over £10m) were not released until their full default sentence had been served.

The Government is not convinced that the possibility of being charged with a new criminal offence would act as an incentive to pay an order to serious and organised criminals. In addition, there would be significant time and cost implications for police, prosecutors and the prison service if offenders were to be repeatedly charged with new offences of failure to pay a confiscation order, thus detracting from the enforcement effort to tackle existing confiscation orders. The Government also anticipates that there would be significant challenges if an individual were to be repeatedly convicted and imprisoned for non-payment of the same confiscation order.

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)

The Government is satisfied that sufficient powers already exist to enable the confiscation of a passport of a criminal subject to a confiscation order. The Serious Crime Act 2015 inserted new provisions in POCA to require the Crown Court to consider making a compliance order. The court must consider whether to make a restriction or prohibition on the defendant's overseas travel in order to prevent disposal of assets beyond the reach of the confiscation order. A travel restriction may include the surrender of a defendant's passport.

The court is now at liberty to impose any restrictions, prohibitions or requirements that it considers appropriate to ensure that a confiscation order is effective. It is also open to the court to impose a prohibition or restriction on a third party if it considers it appropriate to do so.

These provisions came into force on 1 June 2015, and additional guidance has since been issued to operational partners on their use.

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)

The Government welcomes the Committee's recognition that the figure for uncollected confiscation orders is largely artificial.

The Government will publish annual asset recovery statistics, starting in 2017, which will include collection rates, progress on priority orders, and the amount that can realistically be collected from the nominal total value of uncollected confiscation orders. It is right that the Government is held to account for performance on the collection of confiscation orders, but the operational agencies involved can only be expected to collect what is reasonably collectable.

Establishing a lead agency

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)

Taken with:

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)

The Government agrees that a co-ordinated multi-agency effort is essential to tackle the enforcement of confiscation orders in a systematic way. To that end, since 2014, the NCA has chaired a national multi-agency enforcement group (comprised of regional ACE teams, HMRC, NCA, CPS, SFO and HMCTS) to prioritise unpaid confiscation orders for collection, and coordinate action against them. Orders linked to the most serious criminals, and those of the highest monetary value, are priorities. The work of this group has led to a substantial improvement in performance. From the inception of the Multi Agency Enforcement Group in January 2014 to June 2016 the group has collected £105m.

Each operational agency that uses the POCA powers has different lines of accountability, and quite rightly, uses the POCA powers in different ways according to its own expert professional judgement.

The Government therefore does not agree that the NCA should be the lead agency for the recovery of criminal proceeds. The benefits that could be derived beyond the existing strategic and operational coordination that already exists are not clear and the Government has also noted the history of the Assets Recovery Agency, the now-defunct body created to lead on asset recovery under a previous administration.

The Government can see the value of increased co-ordination, particularly at the enforcement stage, and will work with operational partners to explore options to develop greater co-ordination on enforcement.

Coordination and data-sharing

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)

The Joint Asset Recovery Database (JARD) is the main central database where information on confiscation orders is maintained. JARD is managed by the Proceeds of Crime Centre at the National Crime Agency. HMCTS uses software called LIBRA which is used for case

management and financial accounting for all of its criminal debt management. LIBRA records the imposition of a confiscation order in court, and is the primary record used to provide the data used for HMCTS' annual trust statement.

From April 2014 to March 2016, the Home Office invested £2.74 million in the Joint Asset Recovery Database (JARD), including through a three year improvement plan to ensure that it can provide a modern platform for current and future enhancements and also improving the data quality across agencies. The work by HM Courts and Tribunal Service, with the support of the NCA, to cleanse outstanding confiscation order records was completed by March 2015. 5,000 records were cleansed, improving the accuracy of the information available to operational agencies and reducing the notional value of outstanding confiscation orders by £13 million. The improvement plan delivered immediate technical improvements to JARD by June 2015, and further work to complete the enhancements to the confiscation orders section of JARD will continue until the end of 2017.

As development work continues to JARD, further enhancements are being identified beyond the original planned programme, which will mean work may continue on an on-going basis after 2017.

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)

The confiscation provisions in the Proceeds of Crime Act do not focus on the confiscation of particular assets—rather the confiscation order is made for a specific sum of money. Any assets that are identified by investigators or the police as being available for the purposes of making or satisfying a confiscation order are recorded on JARD.

Property may be seized by a law enforcement agency in advance of a confiscation order being made. The law enforcement agency is under an obligation to store, manage and insure this property, and the facility exists to record this property on JARD.

Queen's Warehouses store or detain items that are seized under the Customs Excise Management Act and the Immigration Acts. They are not primarily used for the storage of items confiscated under the provisions of POCA.

Queen's Warehouses are currently in the process of a transformation programme which will address the deficiencies in the IT system for the handling of items once they arrive into Queen's Warehouses. This will not be a track and trace system from point of seizure to disposal, it will only come into effect once goods arrive into the Queen's Warehouse system. This system is forecast to be in place by the end of 2017/18.