

Home Office Police Research Group Briefing Note



INVESTIGATING, SEIZING AND CONFISCATING THE PROCEEDS OF CRIME

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Summary of findings

The report begins by marshalling the available evidence to show that confiscation orders constitute a small proportion of the estimated proceeds of drugs trafficking and other major crimes, and that, in many instances, the amounts recovered where orders are imposed is very modest. The research estimates that there is likely to be as much as £460 million of proceeds from property crimes (excluding fraud) and £100 million from drugs trafficking crimes available for confiscation per annum in the UK. Yet confiscation orders were only made to a total value of £14 million during 1993, and only around a quarter of the total amount ordered to be confiscated during the six preceding years has actually been taken from offenders.

The report identifies a number of difficulties which explain why this situation has arisen:

- Relatively few 'Mr Bigs' have been convicted in the courts and consequently, few are available to have their assets confiscated. Indeed, few have been charged, and therefore have not even had their assets frozen.
- The confiscation order cannot 'reclaim' the past 'entertainment' expenditures of proceeds of crime by people - whether drugs traffickers, fraudsters or other offenders - who have no apparent assets. Often, if the offender is not caught very soon after the offence, there are unlikely to be sufficient funds remaining even to compensate victims, let alone to yield any surplus to the Treasury.
- It is only the recent provisions of the Criminal Justice Act 1993 which make it easier to come back to the court if assets are discovered subsequent to the making of a confiscation order, and this may generate greater sums confiscated in the future.
- There is generally no *organisational* incentive for anyone to deal vigorously with confiscation matters. Any rewards are based around the satisfaction that the police and prosecutors may get from competently completing a challenging job against wily 'opponents', and/or causing stress to and temporarily incapacitating traffickers by removing from them their 'working capital'. The high-level political concerns surrounding confiscation are not translated into performance indicators which measure the effectiveness of the working practices of police, prosecutors, and courts.
- Perhaps because confiscation cases are dispersed among so many counsel and judges, and because the issues are essentially civil in nature and consequently are alien grafts upon the criminal justice system, few people are able to gain any real expertise and many still appear to find the process of deciding on benefit and realisable assets confusing and unattractive. Consequently, the implementation of the

confiscation process is erratic.

- Once an order is imposed, there is little reason for prosecutors or court staff to spend money on enforcing it unless the sums likely to be recovered are estimated obviously (at the time) to exceed the costs of enforcement.
- There is no provision in UK law for courts to officially 'write off' confiscation orders. In the past there has, however, been no clear incentive for magistrates' courts to enforce the orders by collecting the maximum amounts ordered to be confiscated, since it has been just as easy in practice (in performance indicator terms) to treat funds as irrecoverable as to recover them.
- Until the coming into force of the Criminal Justice Act 1993 (and even after, in the case of non-drug offenders), the only sanction for defendants' non-co-operation in liquidating assets held overseas to repay confiscation orders was imprisonment, either in lieu of payment or as contempt of court. The extent to which offenders would be prepared to suffer a prison sentence in lieu of payment may have been underestimated by those drafting the early legislation.
- The downward trend in the property market since 1989, and the reluctance of police financial investigators to set a realisable benefit that might be lower than the offender's benefit from crime and his assets mean that some confiscation orders are therefore made in over-optimistically large sums, and certificates of inadequacy may have to be obtained later, which recognise that there is no prospect of the order being satisfied.

Points for action

The report identifies a number of ways forward:

- Detectives should inform the Force Financial Investigation Unit (FIU) at an early stage of the investigation and keep them informed.
- Crown prosecutors, the police and counsel must all communicate closely.
- Policy makers and legislation drafters must continue to communicate with those responsible for implementing the legislation on a day to day basis.
- Consideration should be given to removing Magistrates Courts from the process of enforcing Confiscation Orders and leaving enforcement to the police service, who would be funded accordingly.
- Accurate, uniform statistics are essential to any proper assessment of police work in the area of confiscation.
- Documents submitted to the courts vary between forces, and should be standardised. This would assist CPS branch prosecutors, CCU lawyers, Judges and Magistrates.
- Training for all officers in the techniques and value of financial investigations with a focus on confiscation would be desirable.
- A high turnover of experienced, competent staff in FIUs is undesirable.
- Consideration could be given to allowing a percentage of all assets confiscated being returned to the Units for further use in combatting drugs trafficking.

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