

**Title of meeting:** Community Safety Portfolio Decision Meeting

**Date of meeting:** 28<sup>th</sup> January 2020

**Subject:** Financial Investigations & Asset Recovery  
'Taking the Cash out of Crime' 2019-2022

**Report by:** Director of Culture, Leisure and Regulatory Services

**Wards affected:** All

**Key decision:** No

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## **1. Purpose of the report**

1.1 This report seeks to inform the cabinet member for Community Safety of:

- the benefits of financial investigation and asset recovery; utilising the powers available to accredited officers (AFIs) under the Proceeds of Crime Act 2002 (POCA)
- how associated legislation contributes to the investigative functions of Regulatory Services, particularly the Trading Standards service, but also wider departments within Portsmouth City Council, and
- the successes of this work stream since the last report to cabinet which was published in March 2010 and our intentions to grow this work over the next three years.

## **2. Recommendations:**

**2.1 RECOMMENDED** that the Cabinet Member for Community Safety

- acknowledges the powers available to AFIs employed within Regulatory Services and authorises their inclusion within the council's enforcement policy
- acknowledges the benefits this work has yielded since its implementation, and approves the manner in which Regulatory Services seeks to deliver its financial investigation & asset recovery plan going forward
- approves the retention of the reserve account so recovered monies can be reinvested in keeping with the Home Office policy: Asset Recovery Incentivisation Scheme (ARIS).

### **3. Background**

- 3.1 Whether it be a simple theft from a shop till by an employee, the production of counterfeit goods, the flagrant planning infringements or a sophisticated fraud committed by an organised crime group, the vast majority of criminal acts have a financial motive at their heart. This makes the ability to investigate a suspect's finances an important weapon in the law enforcement armoury. It has long been the government's policy that attacking criminal's finances is as important, if not more so than the loss of liberty when it comes to deterring prospective offenders and repeat offenders. Maintaining and recovering the proceeds of crime; compensating victims and or reinvesting these funds back into the communities from which they were taken serves to improve and maintain societies' confidence in law enforcement, and the justice system as a whole.
- 3.2 The Proceeds of Crime Act 2002 came into force on 24<sup>th</sup> March 2003, succeeding the Drugs Trafficking Act 1994 and Criminal Justice Act 1988. The Act created a far more robust law enforcement mechanism, designed to prevent criminals from enjoying the proceeds of their criminal lifestyles.
- 3.3 One such example of how it was designed to achieve this was the creation of 'Money Laundering offences' which focused on the criminal property generated by the predicate criminality and in doing so strengthens the state's ability to identify, freeze and confiscate their ill-gotten assets.
- 3.4 POCA provides for a number of investigative powers for officers that have been appropriately trained and accredited by the National Crime Agency (NCA). These powers include search and seizure powers, and powers to apply for production orders and disclosure orders, and allows for the 'restraint' or 'freezing' of assets to prevent dissipation of assets prior to a confiscation order being made.

### **4. Confiscation**

- 4.1 Following the conviction of an acquisitive crime the AFI embarks on an investigation to determine the value of the criminality, 'the benefit', and also demonstrates the means by which the defendant can pay. A confiscation order does not provide for the confiscation of particular property, but rather orders the defendant to pay a set amount out of whatever resources are available to him or her. The defendant is given a set time to pay the order after which he or she is liable for interest and may be subject to a default sentence for failing to pay.

### **5. Restraint**

- 5.1 Restraint orders prevent a person subject to a criminal investigation or criminal proceedings from dealing with any realisable property to prevent the dissipation of assets that may be subject to a confiscation order. These powers also allow for the appointment of a receiver to manage restrained assets or to enforce a confiscation order.

## **6. Civil Recovery, including cash seizure**

- 6.1 POCA provides a scheme to reclaim the proceeds of crime through civil proceedings. It permits the recovery of criminal assets where no conviction has been possible, for example because individuals avoided conviction by remaining remote from the commission of the crimes from which they benefited or because they have fled abroad. Civil recovery applications are made in the High Court (cash seizure / forfeitures are made in the Magistrates court) against property that is or represents property obtained through unlawful conduct. The relevant enforcement authority (that is, the Director of Public Prosecutions, the Director of the Serious Fraud Office and the Director of the NCA) may make an application for a property freezing order to prohibit any person from dealing with the property.

## **7. Money Laundering**

- 7.1 POCA provides for various money laundering offences. A person commits an offence if he or she:
- conceals, disguises, converts or transfers criminal property or removes it from England and Wales, Scotland or Northern Ireland.
  - enters in to or becomes concerned in an arrangement which he or she knows or suspects facilitates the acquisition, retention, use or control of criminal property.
  - acquires, uses or has possession of criminal property.
- 7.2 POCA requires financial institutions and businesses in the regulated sector to report to the UK Financial Intelligence Unit, which is part of the NCA, any suspicions about criminal property or money laundering. Even if a person is not in the regulated sector they must report any suspicions if they come across any suspicious activity through their trade, business or profession.

## **8. Investigations**

- 8.1 POCA provides for an extensive suite of investigative powers to conduct investigations. Only specified officers may make applications for these investigative tools to a court.

## **9. Local Authorities join the fight against Financial Crime**

- 9.1 Since 1st April 2006, POCA has made it possible for other public bodies (other than just traditionally Police and Customs) to make use of the new powers, allowing for the provision of AFIs to create a network of 20 plus law enforcement agencies, including Local Authority Trading Standards.
- 9.2 To encourage other agencies to get involved in this specialist area of law enforcement, the Home Office introduced the 'Incentivisation Scheme' (ARIS), designed to reward institutions for their success and remunerate their investments in terms of the costs of training / employing staff and incorporating the necessary

infrastructure i.e. secure computer networks, work spaces and secure storage areas.

9.3 In 2006 the then 'Local Authority Co-ordination of Regulatory Services' (LACORS) published a document entitled 'Proceeds of Crime: A Vision For Local Authority Trading Standards'<sup>1</sup>. This document identified the benefits to Local Authorities of developing this capability and supporting the national asset recovery agenda including:

- contribution to local crime and disorder strategies and other corporate priorities.
- the need to consider post-conviction orders as part of the prosecution process.
- its role in tackling 'lifestyle criminals' such as counterfeiters, persistent rogue traders and loan-sharks.
- raising the profile of local trading standards services.
- ensuring that crime doesn't pay and is seen not to pay.
- helping to meet the expectations of legitimate businesses and consumers and
- enabling local authorities to reinvest confiscated funds back into services.

9.4 Since 2006 most local authority trading standards services have trained or appointed their own AFIs, with many examples of some authorities having two or even three AFIs such is the demand for their services. At the time of writing in the south east region of 19 local authorities there are currently 24 accredited officers all of which are embedded in their respective Trading Standards services.

9.5 Since their inclusion as a 'relevant agency' the courts have seen numerous cases brought before them where POCA has featured either in terms of money laundering offences or asset recovery. This has led to significant growth to the number of regulatory areas such as consumer protection, product safety, and planning whereby POCA is being applied, challenged and endorsed by the appeal courts.

9.6 This endorsement that regulatory offences are just as relevant as traditional crime is best summed up by Lord Justice Leveson judgement in the appeal case of ***R V Delbasso & Goodwin [2010] EWCA Crim 1119*** who echoed the final remarks by His Honour Justice Baker QC in the lower court that:

*'The law, however, is plain. Those who choose to run operations in disregard of planning enforcement requirements are at risk of having the gross receipts of their illegal businesses confiscated. This may greatly exceed their personal profits. In this respect they are in the same position as thieves, fraudsters and drug dealers.'*

## 10. Home Office Asset Recovery Scheme

10.1 The Home Office ARIS was launched in 2006. The objective of the Scheme is to provide operational partners with incentives to pursue asset recovery as a contribution to the overall aims of cutting crime and delivering justice. It divides net

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<sup>1</sup> <https://www.ihsti.com/lacors/NewsArticleDetails.aspx?id=14586&authCode=->

receipts from asset recovery between the Home Office and operational partners. ARIS funds are allocated to operational partners based on their relative contribution to delivering receipts into ARIS<sup>2</sup>.

- 10.2 For cash seizures, where a single agency can seize, detain and apply for forfeiture of the cash, that agency retains the 50% operational share in its entirety. In the case of confiscation receipts, 18.75% is allocated to each of the investigating (for example, the police or National Crime Agency) and prosecuting (usually the Crown Prosecution Service (CPS)) agencies, with the remaining 12.5% allocated to HM Courts and Tribunals Service (HMCTS) as the enforcement authority.
- 10.3 In civil recovery cases, funds are shared between the referring agency and the enforcement authority.
- 10.4 The Home Office expects incentivisation payments be used to 'further drive up performance on asset recovery and, where appropriate, to fund local crime fighting priorities for the benefit of the community'. It is important to stress however that the decision to investigate and subsequently to prosecute, is never based on possible financial investigations opportunities.
- 10.5 In the current year 2019-20, Home office statistics suggests that Local Authorities contribution to overall statistics circa 10% of the total UK asset recovery figures.

## **11. Portsmouth's Trading Standards**

- 11.1 This service has seen over 60% reductions in budget since 2010, which has limited the development of this work stream. Despite that the resource has been developed and deployed on a vast range of investigations borne both within the trading standards service, but also for other agencies.
- 11.2 It is estimated that the Portsmouth AFI has secured confiscation orders totalling £1.9million resulting in significant asset recovery and compensation for victims in those matters. It should be noted that many of these relate to external cases.
- 11.3 Since 2011/ 2012 incentivisation funds and other cost recovery (for provision of service) for the service are circa £270k which has been secured in the dedicated reserve and used to offset the costs of the function / service.
- 11.4 Over the next 3 years Regulatory services plan to, where possible, expand and grow the capability within the existing team by training additional AFIs. This will serve to increase the number of opportunities whereby the financial investigation and asset recovery work stream can positively impact on investigations, deprive perpetrators and compensate victims.

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<sup>2</sup> [http://data.parliament.uk/DepositedPapers/Files/DEP2015-0223/ARIS\\_Review\\_Report\\_unmarked.pdf](http://data.parliament.uk/DepositedPapers/Files/DEP2015-0223/ARIS_Review_Report_unmarked.pdf)

## **12. Statutory Function**

- 12.1 Whilst not a statutory function, it is fair to say that AFI skills and disciplines are now so fundamental to the investigative process that, in all but the most simplest of matters, their omission would significantly harm or limit the success of the investigation.

## **13. Integrated impact assessment**

- 13.1 A Integrated Impact Assessment is attached. The proposal has an association with the categories of 'Crime', 'Health', 'Income deprivation and poverty' and 'equality and diversity'.

## **14. City Solicitor's comments**

- 14.1 Legal Services have confirmed that it is within the Cabinet Members powers to approve the recommendations as set out within this report.

## **15. Head of Finance's comments**

- 15.1 The activities proposed within this report, will be funded from existing service budgets, as approved by Full Council.

## **16. Director's comments**

- 16.1 The contribution that financial investigation makes to tackling organised crime goes beyond simply a mechanism to recover assets. As demonstrated within this report this investigative approach has the potential to be successfully applied across the full extent of criminal investigations. In particular, it should be viewed as a tool that yields most value when it is used in collaboration with other investigative methods, rather than an approach that is used in isolation.
- 16.2 A confiscation order set at a realistic and achievable amount has been proved to have a marked effect on criminals and their activities, above and beyond any other type of sentence. This includes cases where defendants have accepted substantial prison sentences rather than confiscation orders, which they have fought as they found this a more severe and restricting punishment.
- 16.3 A significant amount of crime is committed simply to make money, and in every case there is a victim. For those who commit crime, traditionally the punishment was either a community sentence or a term of imprisonment. Despite this, criminals could still often profit from their criminal actions while victims were left feeling let down by the criminal justice system. POCA deals with the movement and use of criminal property.
- 16.4 POCA is not just for attacking high value International drug traffickers and fraudsters, but is equally as effective at disrupting and deterring those committing low value, high volume crime. The effective use of financial investigation and the

POCA sends a strong message to both criminals and the community that “crime will not pay”.

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Signed by: Stephen Baily, Director of Leisure, Culture and Regulatory Services

**Appendices:**  
**Appendix 1: Integrated Impact Assessment**

**Background list of documents: Section 100D of the Local Government Act 1972**

The following documents disclose facts or matters, which have been relied upon to a material extent by the author in preparing this report:

Title of document and location of document
<b>See footnotes</b>

The recommendation set out in 2.1 above were approved / approved as amended / deferred / rejected by the Cabinet Member for Community Safety on 28<sup>th</sup> January 2020.

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Signed by: Councillor Lee Hunt, Cabinet Member Community Safety