

**Title of meeting:** Cabinet Meeting

**Date of meeting:** 10<sup>th</sup> March 2020

**Subject:** Mainstreaming Proceeds of Crime

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

**Wards affected:** All

**Key decision:** No

**Full Council decision:** No

---

## **1. Introduction**

- 1.1 This document aims to provide a strategic overview of how the Local Authority through Regulatory Services shall implement a framework designed to deliver, embed, and review the implications of the acquisition of the powers contained within the Proceeds of Crime Act 2002 (POCA).
- 1.2 It is envisaged that wherever criminality enables those falling foul of laws governed by Portsmouth City Council (PCC) to benefit from their actions, POCA actions will be considered and where appropriate utilised to recover the full and true monetary value of their wrongdoings.

## **2. Recommendation**

- 2.1 It is **RECOMMENDED** that the Cabinet **approves** the actions as set out within Section 8 namely the:
- development of Council wide processes, guidance and templates for the comprehensive implementation of POCA frameworks across all PCC services;
  - use of risk assessed POCA interventions wherever possible;
  - setting up of a £50,000 reserve to offset against costs incurred during the process of pursuing actions via the Courts in respect to criminal proceedings and POCA activities.

## **3. Background**

- 3.1 The objective of POCA is to introduce accredited financial investigators (AFIs) working for various public sector law enforcement and investigation bodies and enable them to exercise powers in relation to restraint,

confiscation, cash recovery and investigation. The Act facilitates autonomy to organisations, such as PCC, to operate flexibly and independently of the police, and other law enforcement collaborations in pursuit of the proceeds of crime.

- 3.2 The Home Office encourage the mainstreaming of the POCA into every law enforcement and investigation body.

#### **4. The Legislation**

- 4.1 The use of POCA is conferred upon the Local Authorities by virtue of the enactment of The Proceeds of Crime Act 2002 (References to Financial Investigators) (Amendment) Order Statutory Instrument No. 2707 / 2009 on 2<sup>nd</sup> November 2009].
- 4.2 POCA enables a number of powers to be exercised by an AFI<sup>1</sup> namely the:
- power to apply to the court for a restraint order to effectively freeze property which may become subject to a confiscation order following a conviction;
  - ability to seize property subject to a restraint order to prevent its removal from the country;
  - powers of searching for, seizing, detaining and seeking the forfeiture of cash suspected of being the proceeds of crime or intended for use as such;
  - ability to apply to the court for investigation orders and warrants in financial investigations, namely confiscation investigations, money laundering investigations and detained cash investigations; and
  - the power to execute search warrants in financial investigations.
- 4.3 POCA legislative tools can be applied to any acquisitive crime, meaning any offence where the offender has obtained or sought to obtain a benefit. This may be either a benefit consisting of monetary, property or pecuniary advantage arising from the criminal conduct of the offender.
- 4.4 The general definition of criminal conduct is contained in section 76(1) of POCA and is simply conduct which constitutes an offence in England and Wales. PCC has been using POCA since 2009 however there are a growing number of areas where POCA can be applied to local authority functions and therefore we now wish to mainstream and use our powers more widely. The areas where POCA could be deployed include, for

---

<sup>1</sup> Financial Investigators who have been trained to a certain standard achieve accreditation by The National Crime Agency (NCA). NCA took over this role from the Assets Recovery Agency following its abolition on 1st April 2008. NCA also closely monitor the use of such powers by virtue of an online Continuous Professional Development (CPD) programme.

example, rogue landlords, chronic fly-tippers, parking fraud, significant food standards failings, counterfeiting, intellectual property deceptions, rogue traders, adult social care dishonesties and planning issues such as illegal subletting, business use fraud and breach of enforcement notices.

## **5. Asset recovery**

- 5.1 An asset recovery incentive scheme exists for all recovered assets. This scheme is managed by the Home Office. Under this scheme agencies will receive 50% of the amount of money recovered. There are various permutations regarding the distribution of the 50% dependent upon the type of order obtained. The funds are distributed between the activities of the investigation, prosecution and enforcement work stream areas<sup>2</sup>. It is expected that at least a portion of incentive payments will be used to further drive up performance in the area of asset recovery.

## **6. Why should PCC mandate a mainstream use of POCA?**

- 6.1 Offenders should expect to be subject to the most appropriate legislative measures available, this includes powers provided by virtue of the POCA.
- 6.2 When executed proportionately and tactically POCA powers can act as an effective deterrent and an educational tool in respect of achieving a satisfactory level of compliance, whilst punishing those who breach the regulatory framework of the authority. This can be achieved while at the same time recovering sums to cover costs of any necessary remedial action.
- 6.3 The proportionate use of Financial Investigation tools are also likely to:
- Underwrite partnership working through integrated policing
  - Maximise the impact of effort against threats posed to the Authority's business and the community as a whole
  - Improve public and stakeholder confidence in the ability of PCC to investigate and prosecute offenders fairly and appropriately
  - Assist detection and identify, through the use of financial intelligence, areas of the authority's business where POCA tools are likely to have the greatest impact
  - Disrupt activities of offenders at the earliest and strategically most effective point
  - Deprive offenders of the ability to fund further criminal activity
  - Increase the risk and decrease the reward for criminals

---

<sup>2</sup> Agencies with cash seizure powers under the Act will be entitled to a 50% share of the forfeited amount. Receipts from confiscation orders will be split three ways as follows: 18.75% Investigation, 18.75% Prosecution and 12.5% Enforcement. Local authorities receive 37.50% as investigator/prosecutor

- Raise PCC's reputation and economic impact in support of community confidence.

6.4 Effective use of the POCA powers will also assist in the authority achieving its main objectives and functions regarding its statutory functions, including that under the Crime & Disorder Act 1998.

## **7. Risks**

- 7.1 There are no certainties that pursuing criminal cases will achieve a successful prosecution. It is conceivable that a case could be lost or suspended and that PCC will incur significant costs as a result. Whilst Regulatory Services currently has an unblemished success rate and carefully risk assesses all cases it is highly improbable that this will continue indefinitely. Therefore the costs of such actions need to be mitigated against.
- 7.2 Furthermore in pursuing convictions, Regulatory Services will incur significant costs such as those incurred by employing expert opinions. All litigation comes with a risk that cost recovery (all or in part) might be unattainable. This might be as the defendant may not be able to pay (no funds available) or following a custodial sentence have no ability to pay. Whilst POCA actions will be pursued not all defendants will have a recoverable asset and therefore POCA actions will be unavailable. Even where present it may take time to recover such assets. As Regulatory Services pursues more cases it will be practical to consider these costs and take precautionary measures, as necessary, to fund these.

## **8. What needs to happen next?**

- 8.1 Regulatory Services will become the lead agency in respect to implementing actions under POCA.
- 8.2 POCA actions will be embedded into all enforcement processes within PCC and considered in every case deemed suitable following criminal proceedings.
- 8.3 POCA process maps, supporting guidance, templates and awareness training will be presented to all relevant staff and mandated through the existing learning and development protocols.
- 8.4 Following the authorisation of a criminal investigation and a risk based intelligence led assessment of the appropriate use of POCA, a decision will be made regarding the suitability of cases for financial investigation.
- 8.5 All cases will be assessed on their own merits by accredited and responsible officers authorised via the National Crime Agency (NCA) to ensure that prior to commencing a financial investigation the strategic

impact, its harm reduction potential and resource implications will be considered. It will not be appropriate to conduct a financial investigation in all criminal cases.

- 8.6 Regulatory Services will increase its existing risk matrix to escalate case management risks. This will include referral to Head of Service *and* Head of Legal Services where the financial risks of implementing criminal activities exceed £20,000.
- 8.7 The first call on any net gain realised from proceeds of crime actions delivered by Regulatory Services will be set towards the funding of a new Regulatory Services legal advocate whose responsibilities will include POCA activities. This position, will sit within the structure of Legal Services and, in the first 2 years, be funded from POCA monies already recovered by Regulatory Services. Funding past this point will be met by Legal Services, and any future surplus will be used to fund other staffing activities, and further develop the capabilities of the service to restrain assets or realisable property where there is evidence to show that a defendant in criminal proceedings has benefited from their conduct.
- 8.8 To mitigate against potential costs of instigating legal proceedings, a £50,000 financial reserve funded from the Leaders Portfolio Reserve will be set up and drawn against, as necessary, to cover court costs should they occur.

## **9. Integrated impact assessment**

- 9.1 An Integrated Impact Assessment is attached as Appendix 1. The proposal has an association with the assessment category of 'Crime'.

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

- 10.1 Legal Services have confirmed that:
  - it supports the actions as set out within Section 8 and confirmed that the recommendations are within the Cabinet's powers to approve.
  - POCA provides a credible potent tool to make the enforcement of local authority controlled functions more sustainable in the long term.
  - the use of POCA shall not override or unduly influence other enforcement decisions.

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

- 11.1 The £50,000 funding for the new reserve relating to unrecoverable court costs will be taken from the Leader Portfolio Reserve.

- 11.2 The cost of the legal advocate post for the initial two years will be met from the existing POCA Reserve. The ongoing position after this period will be subject to future funding availability.

## **12. Director's comments**

- 12.1 As demonstrated within this report the investigative approaches available through POCA has the potential to be successfully applied across the full extent of criminal investigations enforced across the Council. The POCA if used effectively will have a marked effect on criminals and their activities, above and beyond any other type of sentence.
- 12.2 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. The effective use of financial investigation and POCA sends a strong message to both criminals and the community that "crime will not pay".

.....  
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
See footnotes

The recommendation set out in 2.1 above were approved / approved as amended / deferred / rejected by the Cabinet on 10<sup>th</sup> March 2020.

.....  
Signed by: Councillor Gerald Vernon-Jackson, The Leader of Portsmouth City Council