



The White Collar
Crime Centre

An ocean of fish but where's the rod? Exploring the £1.9bn outstanding on UK confiscation orders

Research Briefing

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This Research Briefing explores data recently obtained under the Freedom of Information Act 2000 from the Ministry of Justice on the £1.9 billion outstanding on confiscation orders, and queries whether the system is working. Analysis of the findings indicates that the government's commitment to uncovering criminal assets does not match the criminal's commitment to making sure that the proceeds of crime stay hidden, the government does not hold basic information on how the confiscation regime is being enforced, and better record keeping is required along with an urgent review of the confiscation enforcement process.

In 2013, Curtis Warren, one of the UK's most prolific drug traffickers, was ordered to comply with a £198m confiscation order within 28 days or face a further ten years in prison.¹ Mr Warren, who later failed to pay, was found to have generated this amount in assets through importing heroin on a massive scale. Although already deprived of his liberty, the attempt to reclaim Mr Warren's assets was part of a wider effort to, as Dame Margaret Hodge MP has stated, "hit criminals where it really hurts - their pockets."² Confiscation orders, therefore, are widely billed as having two positives: the benefit to the public purse when criminal assets are reclaimed and a deterrent value as, in some cases, confiscation can be a more powerful sanction than prison.

The state of confiscation

Confiscation orders, of course, vary greatly in terms of amount and the underlying category of criminal activity to which they relate. Recently, however, the Home Office made a startling revelation - namely that as at the end of March 2016 £1.9bn in confiscation orders is outstanding.³ It is accepted that a large proportion of the £1.9bn is tied up in a small number of high value cases involving so-called 'Big Fish'. From drug trafficking to tax evasion, these cases often involve complex networks designed to make retracing assets derived from illicit activity as hard as possible.

The genesis of confiscation orders in the UK stems from legislative provisions directed at drug trafficking proceeds, much of which has been largely repealed, and replaced by the more streamlined, *Proceeds of Crime Act 2002* ("PoCA"), relating to all manner of unlawful activity. The objective of the confiscation orders, however, has long remained the same - to deprive criminals of the benefits of illicit activity and, in so doing, disincentivise sophisticated criminals. However, fifteen years since PoCA was introduced, cases such as that involving Mr Warren remain outliers or exceptions to the rule that, for those at the top, crime pays. This is confirmed by data held by HM Courts and Tribunal Services recording that, for high value orders over £1m, the realistic enforcement rate is only 22%.⁴ It is also estimated that of the total £1.9bn that the government is

¹ Helen Pidd, 'Drug smuggler ordered to pay back £198m or face ten years', *The Guardian*, 5 November 2013 <<https://www.theguardian.com/uk-news/2013/nov/05/drug-smuggler-curtis-warren-ordered-pay-198m-pounds-jersey-court>>

² Commons Select Committee, 'Criminals choosing jail rather than pay confiscation orders' (21 March 2014) UK Parliament Website <<http://www.parliament.uk/business/committees/committees-a-z/commons-select/public-accounts-committee/news/confiscation-orders-report-publication-sub/>>.

³ House of Commons Committee of Public Accounts, 'Confiscation Orders: Progress Review' (27 June 2016) at 3 (Summary).

⁴ *Ibid*, 4.

owed, around 60% is over 5 years old with little no chance of recovery.⁵ Striking statistics and calls of injustice have made confiscation orders a topic of national headlines and parliamentary debates but, arguably, a greater spotlight is required.

Challenges

A lack of central leadership over confiscation orders remains one of the most common explanations for the system's underperformance.⁶ While the Home Office formally heads the effort to reclaim criminal assets, the CPS, National Crime Agency, HM Tax & Revenue, the Serious Fraud Office and local police are some of the bodies involved day-to-day. However, it is axiomatic that reclaiming criminal proceeds is far from their only responsibility. In the absence of a sufficiently clear and compelling vision capable of uniting such varied bodies, confiscation orders have fallen low on the list of priorities, with many involved but, arguably, none taking the reins. The bit-part reality of the system was highlighted by the CPS when it remarked, "Most police forces simply do not see asset recovery as a priority compared to child abuse or modern slavery." A gradual increase in this attitude had, according to the CPS, created a widespread culture that asset recovery is "someone else's job."⁷ Against this background, could it be said that the commitment to uncovering criminal assets is currently not matching the criminal's commitment to stay hidden?

In July of last year, the Public Accounts Committee published a review following their highly critical 2014 assessment of the confiscation system. The 2016 report concluded that criticisms of the system fell into three main areas. First, simply not enough confiscation orders were being executed. The 2014 report recorded a 9% fall in confiscation orders issued from 6,392 in 2012-2013 to 5,839 in 2015-2016.⁸ When viewed in the context of 640,000 convictions a year⁹, this equates to less than 1% of convictions resulting in a confiscation order, failing to reflect the reality that a substantial proportion of crimes have a financial motive.¹⁰ Secondly, in the already too rare instances when an order was imposed, the government were said to have been ineffective in collecting the amount owed. The report highlighted that in confiscation orders worth £1m or more, just over 1 in 5 criminals had paid the amount required. Thirdly, a possible explanation for such widespread lack of payment was the court's failure to impose sentences long enough to incentivise criminals give up their assets. In fact, Labour MP Meg Hillier argued that a perceived leniency when it came to deciding the length of default sentences had contributed to prison being seen nothing more than an "occupational hazard."¹¹

⁵ Ibid

⁶ National Audit Office, 'Confiscation Orders: Progress Review' (11 March 2016) at 35.

⁷ House of Commons Home Affairs Committee, 'Proceeds of Crime' (26 June 2016) at 35.

⁸ Above n 3, 9.

⁹ Ibid, 9.

¹⁰ Ibid.

¹¹ House of Commons Committee of Public Accounts, 'Confiscation Orders' (5 March 2014) at 23.

Following the money trail

In the hope of clarifying where the government were failing, The White Collar Crime Centre sent two freedom of information requests (“FOI”) to the Ministry of Justice (“MoJ”) which – after various exchanges – were responded to in full.

One of the requests centred around how the £1.9bn outstanding was divided among different categories of crime. Of the 21 categories specified by the MoJ ranging from arms trafficking to prostitution, the largest category was VAT fraud, accounting for over a quarter of the entire amount owed. When combined with the curiously titled “other fraud” category, the outstanding confiscation amount was over £900m. Somewhat surprisingly, a considerable distance was “drug trafficking” at £430m. Further analysis suggests that the value of confiscation amounts may be tied to the level of interest in investigating certain types of crimes and the greater complexity of certain types of investigations. For instance, outstanding confiscation orders in burglary and theft matters came in at £19.5m. Confiscation orders in bribery and corruption matters, on the other hand, accounted for barely 5% of the outstanding figure at £888,124. The former, a crime with both visible victims and usually tangible recoverable assets, often is a priority for law enforcement. Bribery, on the other hand, is characteristically more underhanded and, for that reason, can be difficult to investigate.¹²

Show me the data

The FOI process in regards to questions about confiscation is itself interesting. Certain questions had to be re-drafted and asked several times before a response was received. One issue that The White Collar Crime Centre was particularly interested in was the number of default sentences of imprisonment imposed, in a specific time period, where a person failed to pay a confiscation order. A question was formulated in these terms. What The White Collar Crime Centre learned, however, was that basic information on just how many people are currently serving default sentences for outstanding confiscation orders is very difficult to uncover. Data on default sentencing was not readily accessible and, it was said, required a manual file review.¹³ Arguably, as default sentences imposed for non-compliance with a confiscation order can run concurrently with the sentence imposed for the underlying crime, easily accessible definitive data was unavailable.

Some of the MoJ’s responses were astonishing on a number of levels. While they suggest that the MoJ would benefit from updated IT and data storage systems, they illustrate that drawing conclusions from data contained within arbitrary government categories can be difficult to rely on. For instance, when it came to the underlying crime categories, “other” makes up £250m of the outstanding confiscation amount. “Intellectual property” also appeared in two separate underlying

¹² Response to Freedom of Information Request 110637, 24 March 2017.

¹³ Response to Freedom of Information Request 111138, dated 21 April 2017: “In order to obtain the information requested we would need to manually search through individual prison files to identify offenders at all prisoners in England and Wales who served a default sentence in 2016 for failing to pay a confiscation order.” The White Collar Crime Centre subsequently refined the question posed on 16 May 2017 (“as at today’s date, 16 May 2017 or other convenient date in the last 12 months, how many people are in prison for defaulting on a confiscation order?”) but no response was received.

crime categories. The offence category “Pimps and Brothels / Prostitution / Pornography” is also somewhat peculiar since the word “pimp” is not exactly a legal term. Simply understanding what goes into setting these curious boundaries and how data on confiscation orders is collated and then used to inform policy change would be invaluable to a discussion on reforming the system.¹⁴

A question of calculation and resources

A further FOI question centred on how many confiscation orders of or over £10m had been issued and of those, how many had been satisfied. The answer to this question was easily obtained from the MoJ who confirmed that between 1st January 2016 - 1st December 2016 there had been 4 orders in a sum of £10m or more and that, so far, none had been satisfied.¹⁵

With forensic analysis, calculation, readjustments and appeals, getting a confiscation order made can be a very lengthy process, exceeding well beyond a year. A respondent in question must also be afforded time to pay. However, the fact that only 4 orders of or over £10m have been issued in 2016 is telling. With outstanding confiscation orders relating to VAT fraud totalling £550m, one might expect more than 4 cases over £10m in this alone. This begs the question – is the lack of high value confiscation orders due to a lack of high value confiscation investigations or the failure of such investigations to come to fruition?

For every successful prosecution which results in a confiscation order, investigative tracks are littered with unsuccessful efforts, each requiring great expenditure to reach a point where confiscation might be possible. The SFO are routinely criticized for their failure to collect meaningful amounts of the total owed whilst also reminded of their integral role in proving no criminal is too big to be caught. Of the two demands levied, it is perhaps understandable why a culture of self-preservation can arise within enforcement authorities and there are calls for better resourcing.

Reform?

How then to make the confiscation process more efficient? Certainly, more extensive and readily accessible records on confiscation orders and compliance would be a start. Then, at least the government could carefully track where the system is and is not working by reference to data. A dedicated review of the whole system is also required, extending to the calculation process and default sentencing mechanisms. A further idea is that a better response to non-compliance with a confiscation order could entail the creation of a new criminal offence for non-payment. Further, to stand any chance of holding criminals to financially account, it is imperative that the most skilled investigators are armed with appropriate and proportionate investigative powers, enabling them to act swiftly. The number of accredited investigators able to use such powers, known as ‘enforcers’, has dropped by 6% from 1,440 to 1,358.¹⁶ With the *Libor* case requiring numerous specialist investigators, there is also the battle of retaining investigators in the public sector, and

¹⁴ Response to Freedom of Information Request 110637, 24 March 2017.

¹⁵ Response to Freedom of Information Request 111144, 18 April 2017.

¹⁶ Above n3, 6, 10.

sufficiently supporting them so that they do not shift to the private sector in hope of better pay. If, following on from The White Collar Crime Centre's research, there are calls for more confiscation proceedings, a prerequisite would have to be increased resources to launch more asset investigations.

Ultimately, the confiscation efforts of the UK's enforcement authorities do not operate in a vacuum and greater dialogue about the way forward for the confiscation system is required. As well as stronger internal leadership, a genuine attempt to make use of stakeholders is necessary. For instance, the SFO recently took the initiative in establishing the Serious Fraud Forum¹⁷ in the hope of promoting dialogue between law enforcement and the City of London about financial crime and asset recovery. Casinos, hotbeds for money laundering, have also seen far more stringent rules in recent years as a result of increased dialogue between stakeholders. More dialogue, however, is just the beginning. Ultimately, finding it unacceptable that only 22% of confiscation orders over £1m are enforced is an easy point to start from however asking what figure represent success becomes a much harder question to answer.

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The White Collar Crime Centre is grateful to Daniel for his research and analysis. Daniel was awarded a LLB from the London School of Economics in 2016. Whilst at the LSE, Daniel's interests in law and gambling led him to host a debate exploring the unprecedented High Court battle between professional gambler Phil Ivey and Crockfords Casino. The central question of whether an 'honest cheat' could exist in the law remains unsettled, with the Supreme Court hearing the case in July 2017. Daniel currently works in the online gambling industry and is an Intern at The White Collar Crime Centre.

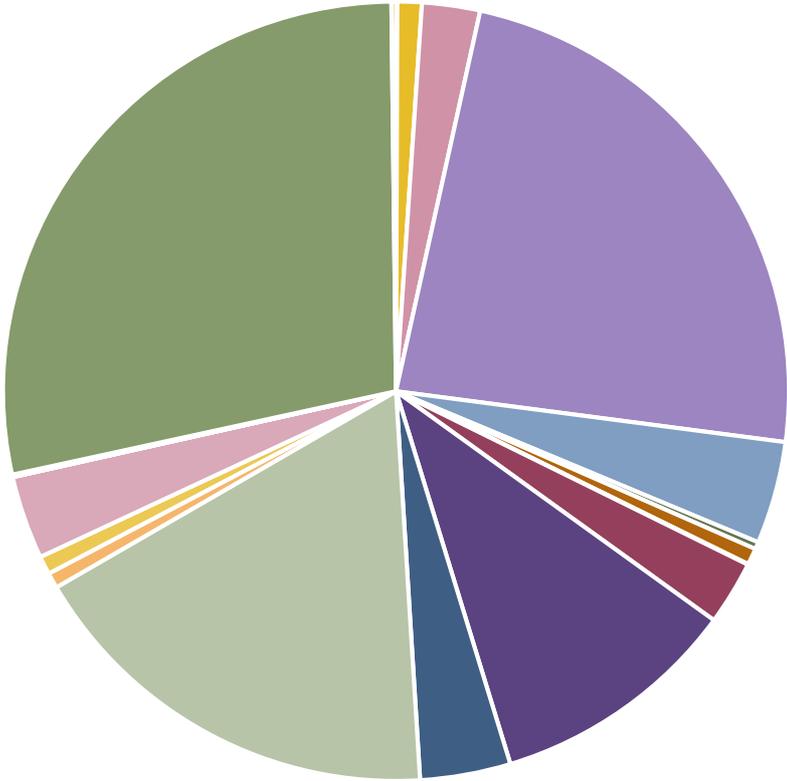
¹⁷ Serious Fraud Office, 'Ben Morgan at the Annual Anti Bribery & Corruption Forum' (25 October 2015) Serious Fraud Office <<https://www.sfo.gov.uk/2015/10/29/ben-morgan-at-the-annual-anti-bribery-corruption-forum/>>.

Total Amount Outstanding on Confiscation Orders as at end of March 2016
Underlying Offence Breakdown¹⁸

Primary Offence Type	Total
VAT Fraud	£ 550,648,206.70
Drug Trafficking	£ 430,867,969.68
Other Fraud / Embezzlement / Deception /Crimes of Dishonesty	£ 342,771,985.94
Money Laundering – Other	£ 200,773,110.97
Excise Duty Fraud	£ 82,828,918.15
Other Crime	£ 72,614,639.84
Tax and Benefit Fraud	£ 67,314,916.86
Money Laundering – Drugs	£ 51,722,002.24
Counterfeiting/ Intellectual Property /Forgery	£ 46,505,876.50
Burglary /Theft	£ 19,578,050.27
Robbery	£ 14,798,657.19
Human Trafficking	£ 13,281,372.73
Pimps and Brothels / Prostitution / Pornography	£ 12,554,963.05
Handling Stolen Goods	£ 5,824,479.23
Unknown	£ 3,754,013.65
Vehicle Offences	£ 3,613,307.91
Trading Standards Offences	£ 1,882,930.27
Bribery and Corruption	£ 888,124.20
Intellectual Property Crime	£ 553,524.37
Arms Trafficking	£ 120,746.36
Terrorism	£ 92, 230.35
Grand Total	£ 1,922,990,023.46

¹⁸ Data was obtained on 24 March 2017 in response to Freedom of Information Request 110637.

£1.9 billion outstanding as at end of March 2016
 Offence breakdown



- Arms Trafficking
- Bribery and Corruption
- Burglary/Theft
- Counterfeiting/Intellectual Property/ Forgery
- Drug Trafficking
- Excise Duty Fraud
- Handling Stolen Goods
- Human Trafficking
- Intellectual Property Crime
- Money Laundering - Drugs
- Money Laundering - Other
- Other Crime
- Other Fraud/Embezzlement/Deception/Crimes of Dishonesty
- Pimps and Brothels / Prostitution / Pornography
- Robbery
- Tax and Benefit Fraud
- Terrorism
- Trading Standard Offenes
- Unknown
- Vehicle Offences