



National Audit Office

Report

by the Comptroller
and Auditor General

Criminal Justice System

Confiscation orders

Key facts

26p

estimated amount confiscated for every £100 of criminal proceeds in 2012-13

£133m

collected by enforcement agencies from confiscation orders in 2012-13

£102m

our estimated annual cost of the end-to-end confiscation order process

6,392

confiscation orders made by the courts in 2012-13.

£52 billion

National Fraud Authority's estimated loss to the UK economy from fraud in 2012-13.

£1 billion

collected by enforcement agencies from confiscation orders since 1987.

£1.46 billion

confiscation order debt outstanding at September 2013.

£177 million

debt HM Courts & Tribunals Service estimate to be collectable in its 2012-13 trust statement.

2 per cent

outstanding confiscation order debt paid off in full after courts imposed a default sentence in 2012.

**45 hours
(1.25 full time
equivalent)**

our estimate of the time spent each week by HM Courts & Tribunals Service regional confiscation units – in opening, saving and downloading data into the Confiscation Order Tracking System.

Summary

1 Confiscation orders are the main way through which the government carries out its policy to deprive criminals of the proceeds of their crimes. The government's intention is to deny criminals the use of their assets and to disrupt and deter criminality, thereby reassuring the public that crime does not pay. Many bodies across the criminal justice system are involved in its administration, including for example the police, the Crown Prosecution Service and HM Courts & Tribunals Service. We estimate spending between these bodies on administration is about £100 million a year.

2 The Proceeds of Crime Act 2002 (the 2002 Act) is the main legislation underpinning confiscation, defining the 'criminal benefit' obtained by an offender either in terms of a specific crime, or based on a judgment that the offender has lived a criminal lifestyle. In the latter case, assets and expenditure over the previous six years can be included in the benefit assessment. Courts must impose order values based on the amount of criminal benefit unless the offender does not have the assets, in which case the order value is reduced to the level of assets assessed to be available.

3 In 2012-13, courts in England and Wales set 6,392 confiscation orders, which together encompassed £1.6 billion of criminal benefit, and had a total imposition value of £318 million based on the assets deemed available. During that year, enforcement agencies confiscated £133 million. There is no definitive estimate of the total criminal economy in England and Wales, but in 2012-13 the National Fraud Authority estimated total fraud alone was £52 billion. If the fraud figure is used as a proxy for total crime, only 26 pence in every £100 of criminal proceeds was confiscated in 2012-13. This figure increases to 35 pence in every £100 if all other asset recovery measures are included, which means that overall at least £99.65 of every £100 generated by the criminal economy during the year was kept by the perpetrators.

4 A number of factors significantly reduce the proportion of the total criminal economy that, in practical terms, is available for confiscation. Not all crimes committed are reported to law enforcement agencies, relatively few go to court, and fewer still result in a conviction, which in most cases is needed for a confiscation order. Even where orders are imposed, confiscating criminal proceeds is inherently difficult as sophisticated criminals can transfer or dispose of assets quickly across the world, and do not need to cooperate with law enforcement agencies.

5 Despite these practical barriers, the amounts that are actually confiscated are small, especially when set against successive governments' tough approach and ambitious goals, and the powerful supporting legal framework. This report looks at why this is so, specifically examining:

- the background (**Part One**);
- governance and accountability (**Part Two**);
- identification, investigation and imposition (**Part Three**); and
- enforcement (**Part Four**).

Key findings

6 There is no coherent overall strategy for confiscation orders. Without knowing what constitutes success overall or in individual cases, the bodies involved have no way of knowing which criminals, court cases, or uncompleted orders should be prioritised for confiscation activity and resources. Many criminal cases do not end up with a confiscation order which is a missed opportunity, and for those that do, law enforcement agencies have not systematically revisited cases to find new evidence on criminal proceeds. In 2012-13, 673,000 offenders were convicted of a crime, many of which had a financial element, yet only 6,392 confiscation orders were set. While there are a number of individual crime strategies owned by individual bodies, decision-makers across the criminal justice system, such as senior police officers, have often not prioritised confiscation. The government's recently published organised crime strategy, led by the Home Office, recognises the need for more collaboration and a more targeted approach, which is encouraging (paragraphs 2.13 to 2.16).

7 A flawed incentive scheme and weak accountability compounds the problem. The Home Office's Asset Recovery Incentivisation Scheme is based on income confiscation only and not contribution to wider policy goals such as asset denial or crime disruption. Its impact is further limited because poor records and reporting often mean staff are unclear how scheme monies are spent. There is also no clear link between activity and formal financial reporting. All confiscation order impositions, receipts and assets are reported solely in HM Courts & Tribunals Service's annual trust statement, even though HM Courts & Tribunals Service has no direct influence on what other bodies do (paragraphs 2.7 to 2.9 and 2.11 to 2.12).

8 The absence of good performance data or benchmarks across the system weakens decision-making.

HM Courts & Tribunals Service, the Crown Prosecution Service and the Serious Fraud Office work hard to enforce confiscation orders. HM Courts & Tribunals Service, for example, collects successfully 90 per cent of their orders under £1,000. But for all three bodies there is a lack of cost and time data, and information about what is collectable. When combined with not having clear success criteria, this makes meaningful cost–benefit assessments on enforcing different orders impossible. It is not clear, for example, if HM Courts & Tribunals Service’s activity on lower-value orders is cost-effective in terms of wider criminal justice outcomes and whether those resources should be redirected to enforcing higher-value orders (Figure 4, paragraphs 2.10 and 4.6).

9 Throughout the criminal justice system there is insufficient awareness of proceeds of crime and its potential impact.

Within law enforcement and prosecution agencies, few officers and staff have good understanding about proceeds of crime legislation. In many cases effective powers, such as restraint orders, are applied late or not used at all, and specialist financial investigators are introduced to cases when audit trails have already run cold. There is also varying judicial expertise on proceeds of crime, hampering enforceability of some orders (paragraphs 3.5 to 3.7 and 3.15 to 3.16).

10 Enforcement efficiency and effectiveness are hampered by outdated, slow ICT systems, data errors and poor joint working.

The systems are not interoperable and there is too much manual rekeying of information. For example, HM Courts & Tribunals Service regional confiscation units’ manual keying takes 45 hours a week for their tracker system alone. There are also numerous data errors, especially in inputting information after court hearings. Within bodies we found many dedicated and committed staff, but there was too little joint working between their respective organisations to make the most of their efforts (paragraphs 4.4, 4.14 to 4.16 and Figure 19).

11 The main sanctions for not paying orders, default prison sentences of up to ten years and additional 8 per cent interest on the amount owed, do not work.

HM Courts & Tribunals Service found that only 2 per cent of offenders paid in full once the sentence was imposed in 2012. Furthermore, most stakeholders expressed concerns about the effectiveness and power of current sanctions. The Home Office has recognised some of these weaknesses and is proposing to introduce a more effective sanctions regime in 2014 (paragraphs 2.15 and 4.17 to 4.18).

Conclusion on value for money

12 The government intends to deny criminals the proceeds of their crimes, and thereby reassure the public that crime does not pay. However, the process for confiscating criminals' assets is not working well enough. While the government has not specified a target, only about 26p in an estimated £100 of criminal proceeds was actually confiscated in 2012-13.

13 The lack of coherent strategic direction and agreed success measures, compounded by weak accountability and a flawed incentive scheme, is the fundamental problem. This is combined with poor performance and cost information, lack of knowledge, outdated ICT systems, data errors and ineffective sanctions. Overall such problems mean that the confiscation order process, which we estimate costs more than £100 million a year, is not value for money.

Recommendations

- a** **The Home Office, the Ministry of Justice and the Attorney General's Office and their bodies, working with law enforcement agencies, should develop a coherent and joined-up cross-government strategy for confiscation orders, including more effective governance.** The strategy should:
- define clear objectives and success measures that are aligned with other asset recovery measures, such as civil recovery and cash forfeited from criminals;
 - reform the existing Asset Recovery Incentivisation Scheme, including tightening controls and introducing incentives for contributing to the new strategy's objectives; and
 - outline how orders should be prioritised for enforcement, including the use of specialist multi-agency teams.
- b** **HM Treasury should review the existing accountability arrangements, currently provided through the HM Courts & Tribunals Service trust statement, to reflect other bodies' activity in imposing and enforcing orders.** The current trust statement has increased accountability for confiscation orders. However, this could be further improved with joint accountability by the bodies involved, including greater disclosure, for example on the number and value of cases enforced by bodies and transferred to HM Courts & Tribunals Service.

- c All bodies involved in confiscation should work with the Cabinet Office to review their process management, by doing the following:**
- Address information gaps through data cleansing and establish how to most cost-effectively develop more sophisticated time, cost and performance data. This should also include conducting a 'debt gap' exercise to more thoroughly understand their debt, including what is realistically collectable, and how to prioritise resources.
 - Consider the cost–benefit ratio of modernising case management, performance reporting and ICT systems so they are fully integrated to improve data sharing and reduce manual data entry.
- d Increase skills and knowledge in proceeds of crime by doing the following:**
- Strengthen current training for law enforcement and the judiciary. This should include considering whether confiscation hearings should be heard by judges with specific expertise in this field.
 - Identify resource gaps, for example in analytical skills and the capacity of prosecutors to handle caseloads.
- e Enforcement agencies, working with the Home Office, should review the effectiveness of current penalties, as part of strengthening enforcement powers and sanctions.** They should also consider introducing wider criminal justice sanctions and powers, such as charging orders to seize property and community sentences.