



National Audit Office

Report

by the Comptroller
and Auditor General

Criminal Justice System

Confiscation orders

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National Audit Office

Criminal Justice System

Confiscation orders

Report by the Comptroller and Auditor General

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Amyas Morse
Comptroller and Auditor General
National Audit Office

16 December 2013

This study assessed the value for money of the administration of confiscation orders, which are the main way through which the government carries out its policy to deprive criminals of the proceeds of their crimes.

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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.

Part One

Background

1.1 Confiscation orders are the main way the government carries out its policy to deprive criminals of the proceeds of their crimes.¹ The benefit that a criminal has obtained from their crime is defined either in terms of a specific crime, or based on a judgment that the offender has lived a criminal lifestyle.² In the case of a 'criminal lifestyle' case assets and expenditure over the previous six years can be included in the benefit calculation, even if no criminal conviction relates to them.

1.2 The 2002 Proceeds of Crime Act (the 2002 Act) is the main legislation that sets out how confiscation orders, and other asset recovery powers, can be used.³ The 2002 Act requires that, for confiscation orders, the court must impose an order based on the amount of criminal benefit unless the offender does not have sufficient assets available to pay this in full. In this case, the judge will make the order at the value of assets they deem available. If an order is unpaid within a set date, the offender faces a prison sentence and interest on the amount unpaid.

1.3 Further to confiscating the proceeds of crime, the government's wider policy aims for confiscation are to:

- reassure the public that crime does not pay;
- disrupt and deter criminality;
- reduce harm caused to communities by criminality; and
- remove criminal role models.

1.4 Identifying, preparing (for court) and enforcing confiscation orders is a complicated process, involving many bodies spanning the criminal justice system (**Figure 1**).

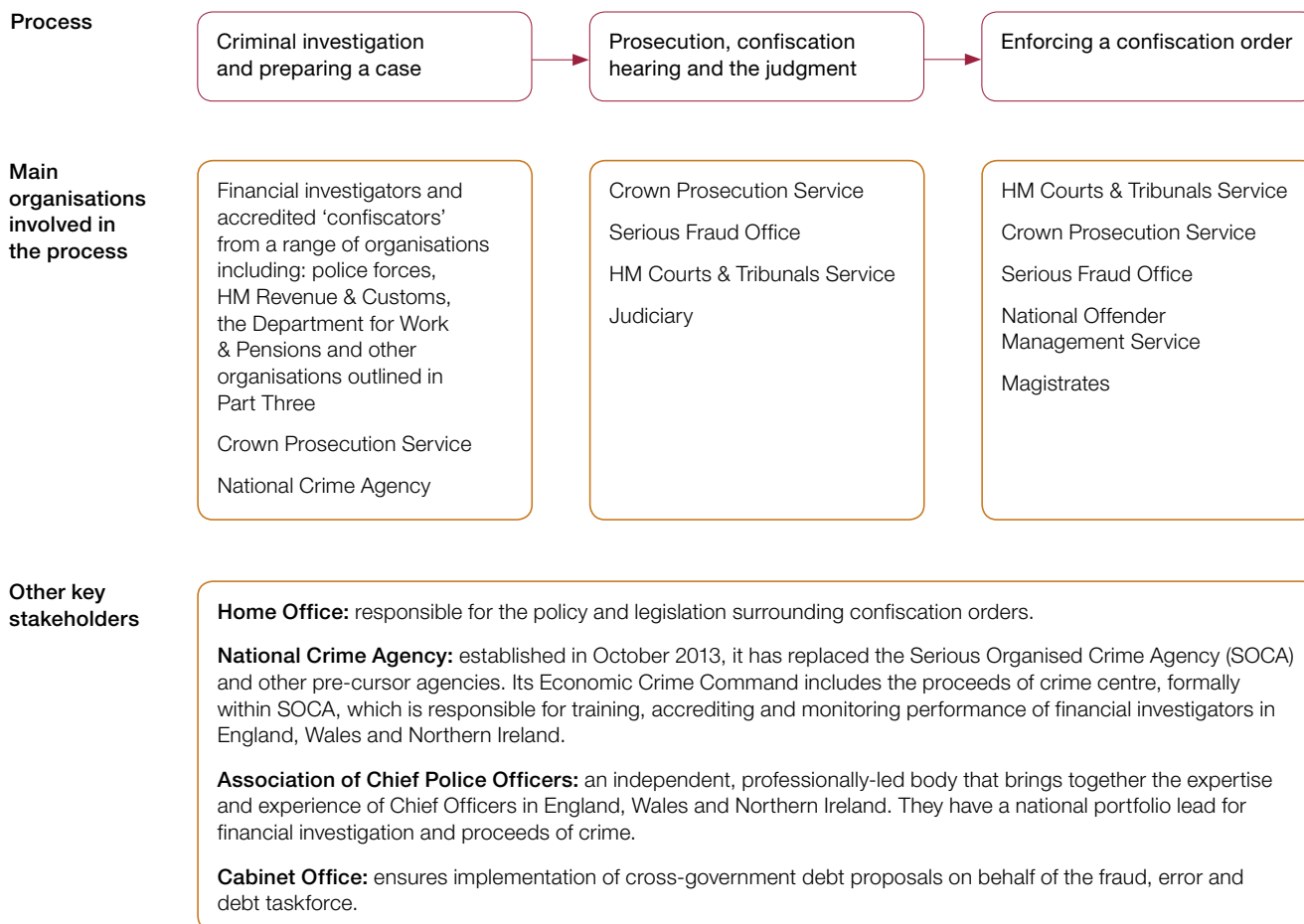
1 Other means include civil recovery, cash forfeitures and tax recovery on criminal proceeds, from which in total £48 million was collected in 2012-13.

2 An offender is judged to have led a criminal lifestyle if they have committed certain offences (such as arms or drugs trafficking), or multiple offences. Criminal lifestyle cases can include offences going back further than six years.

3 HM Government, *Proceeds of Crime Act 2002*, 24 July 2002.

Figure 1

Main organisations involved with confiscation orders

**Notes**

- 1 Further details on stakeholders can be seen in Figure 6 and Appendix Three.
- 2 Financial investigators and 'confiscators' are also expected to provide support during the confiscation hearings and to assist in the enforcement. 'Confiscators' are financial investigators who undergo additional training to enable them to use the full powers of the 2002 Act (see Part Three).
- 3 Other bodies involved include the Legal Aid Agency who manage the legal aid for offenders subject to confiscation proceedings, including its recovery where appropriate.

Source: National Audit Office analysis

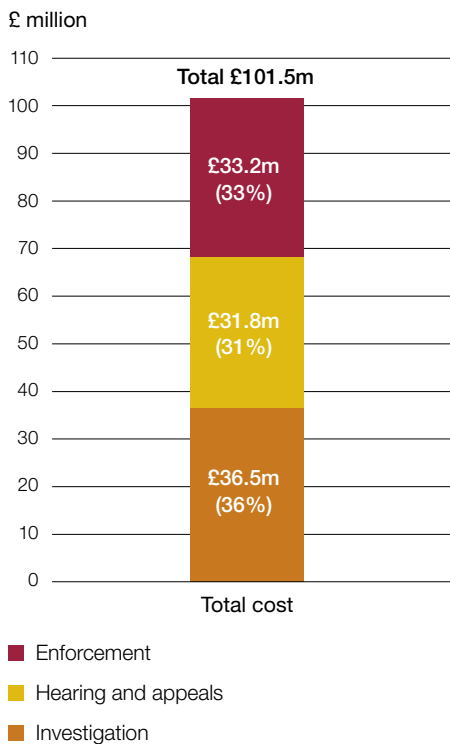
Cost of administering confiscation orders

1.5 There is limited cost data within the bodies involved in the confiscation order process. However, we undertook a detailed costing exercise and estimate that the annual cost of administering confiscation orders in England and Wales is £102 million. Of this, £36.5 million relates to investigation, £33.2 million is for enforcement, and £31.8 million for court hearings and appeals (**Figure 2** overleaf).

Figure 2

Estimated annual cost of administering confiscation orders in England and Wales

We estimate the annual cost is £102 million



Notes

- 1 The investigation stage relates predominantly to the costs of financial investigators working on confiscation orders in the main law enforcement agencies (see Part Three). We do not include the cost of the criminal investigation in this estimate.
- 2 The cost of hearings and appeals includes an estimated £20.8 million of legal aid costs, with the remainder covering judicial time and costs of the courts.
- 3 The cost of enforcement includes £18.5 million for keeping offenders in prison for non-payment; with the remainder covering the cost of administration and collection by the enforcement agencies (see Part Four).

Source: National Audit Office analysis (see Appendix Two)

‘Attrition’ in confiscation orders

1.6 The legal principles underlying current legislation were established in 1986 in the Drug Trafficking Offences Act. They are that the wider proceeds of criminal activity could be confiscated and that the burden should shift to the defendant to prove they do not have the assets to pay back criminal gains. Despite subsequent legislation extending and strengthening these new powers,⁴ criminal assets have always been very difficult to identify and confiscate, especially for sophisticated criminal enterprises. Criminals can hide or transfer assets across the world quickly using opaque legal structures and refuse to cooperate, making the tracing of assets and expenditure often extremely difficult (**Case study 1**).

4 Mainly through the Criminal Justice Act 1988, the Drug Trafficking Act 1994 and the Proceeds of Crime Acts 1995 and 2002.

Case study 1

An example of a complex case

An offender was convicted in September 2008 for a complex fraud relating to precious metals trading. The confiscation case was heard in August 2010, with the judge ruling that the offender had benefited by over £1 billion. However, the actual order made was for £20 million, much of which was considered hidden overseas.

There were significant complications to this case including monies being transferred through multiple trust funds, bankruptcy imposition on the various companies set up for the crime, and the offender's wife claiming ownership of assets.

The offender has paid just £200,000 as of September 2013 and is currently serving a seven-year default sentence for non-payment.

Source: National Audit Office review of case files

1.7 With such difficulties there is inevitably a considerable 'attrition' rate in confiscation – the gap between the criminal benefit assessed and the value of confiscation orders imposed. In 2012-13 courts in England and Wales set 6,392 orders encompassing criminal benefit of £1.6 billion. Because of a lack of identifiable assets and expenditure, the courts made order amounts totalling a fifth of benefit, at £318 million (**Figure 3** overleaf). During the year enforcement agencies confiscated £58.7 million of the orders imposed in-year, with a further £74.8 million from previous years' orders, making total confiscations of £133 million. This attrition rate for 2012-13 is fairly typical: since 1987 courts have made 52,000 orders, containing £15.8 billion identified proceeds but only £2.1 billion of actual order amounts (after variation), of which only £1 billion has been confiscated.

1.8 All these amounts are nevertheless small when compared to the scale of crime in the wider economy. 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.⁵ Of course, 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 (Figure 3). But nevertheless 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 £100⁶ generated by the criminal economy was kept by the perpetrators in 2012-13.

1.9 It is difficult to compare performance with other countries, as there is very little data available. For example, in response to a 2007 European Commission census on confiscated assets within the 27 member states,⁷ only three states (including the UK) provided information on confiscated amounts.⁸ International best practice reviews have reflected the need for wider collaboration as organised crime becomes more sophisticated.⁹

⁵ National Fraud Authority, *Annual Fraud Indicator 2013*, June 2013.

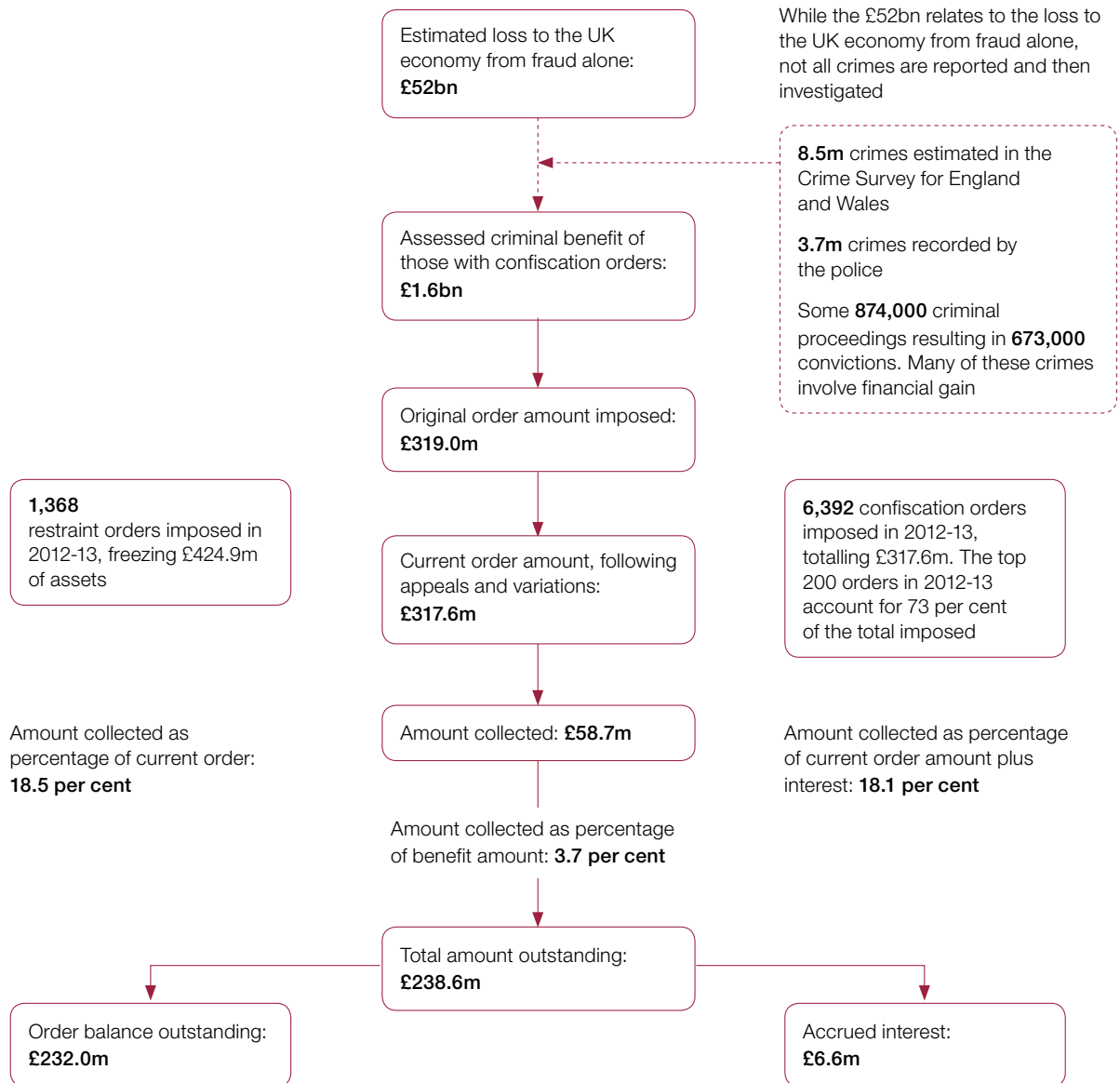
⁶ Based on £133 million collected from confiscation orders and £48 million from other asset recovery means.

⁷ European Commission, *Assessing the effectiveness of EU Member States' practices in the identification, tracing, freezing and confiscation of criminal assets: final report*, 5 November 2008, Table 8, pp. 73–74.

⁸ Cyprus claimed to have confiscated assets worth €7.4 million, and Hungary €0.3 million, in 2007.

⁹ Financial Action Task Force, *International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation – the FATF Recommendations*, 16 February 2012.

Figure 3
Confiscation order attrition for cases imposed in 2012-13



Notes

- 1 The imposition and collection figures above do not reconcile with those presented in Note 4 of the HM Courts & Tribunals Service trust statement 2012-13. The imposition figure above does not include interest and the collection figure only includes the amount collected for orders imposed in 2012-13.
- 2 The total amount collected from confiscation orders is £133 million which is split between £58.7 million from the orders imposed in 2012-13 (as stated above), with a further £74.8 million collected from previous years' orders.
- 3 Crime data is from: Office for National Statistics, *Crime in England and Wales, Year Ending June 2013*, October 2013. Conviction data is from: Ministry of Justice, *Criminal justice statistics quarterly update to March 2013*, August 2013.
- 4 The value of assets frozen through restraint orders does not account for deductions agreed with the courts, such as for day-to-day living expenses.

Source: National Audit Office analysis of Joint Asset Recovery Database, National Crime Agency and National Fraud Authority data

Size of orders

1.10 Since 1987, order size has varied widely, with over 80 per cent £25,000 or under. Broadly speaking, the lower-value orders are easier to enforce, with orders under £1,000 having nearly 90 per cent success rates. However, most value is in the fewer high-value orders where success rates are much lower, at 18 per cent for orders over £1 million (**Figure 4**).

Increase in annual confiscated amounts and outstanding debt

1.11 Enforcement agencies, through confiscation orders, have together collected £1 billion since 1987. They have collected most of this since the 2002 Act's implementation: annual confiscated income quadrupled in five years from £25 million in 2002-03 to £104 million in 2007-08. In the last five years, however, recovery has increased by only 13 per cent in real terms (**Figure 5** overleaf), which partly reflects wider economic difficulties. Total debt outstanding has also increased steadily to £1.46 billion at September 2013, of which £866 million relates to the 200 highest value orders imposed. HM Courts & Tribunals Service estimated in its 2012-13 trust statement that, as at end of March 2013, only £177 million is likely to be collected by enforcement agencies.¹⁰

Figure 4

Confiscation orders imposed since 1987, by order size

Order size	Orders	Benefit assessed (£m)	Current order amount (£m)	Amount confiscated (£m)	Accrued interest (£m)	Collection rate (including interest) (%)
£0 or less	611	473.7	-3.1	-3.1	0.7	N/A
£0.01–£1,000	23,400	1,721.2	6.5	6.3	0.5	89
£1,000.01–£25,000	19,202	1,991.9	135.8	118.7	6.4	84
£25,000.01–£100,000	5,631	2,303.3	285.8	219.5	20.1	72
£100,000.01–£500,000	2,566	4,138.3	544.7	356.1	59.8	59
£500,000.01–£1,000,000	358	1,026.6	252.4	124.1	47.0	41
£1,000,000.01–£50,000,000	261	4,151.0	911.6	207.3	215.9	18
Total	52,029	15,806.1	2,133.6	1,029.0	350.3	41

Notes

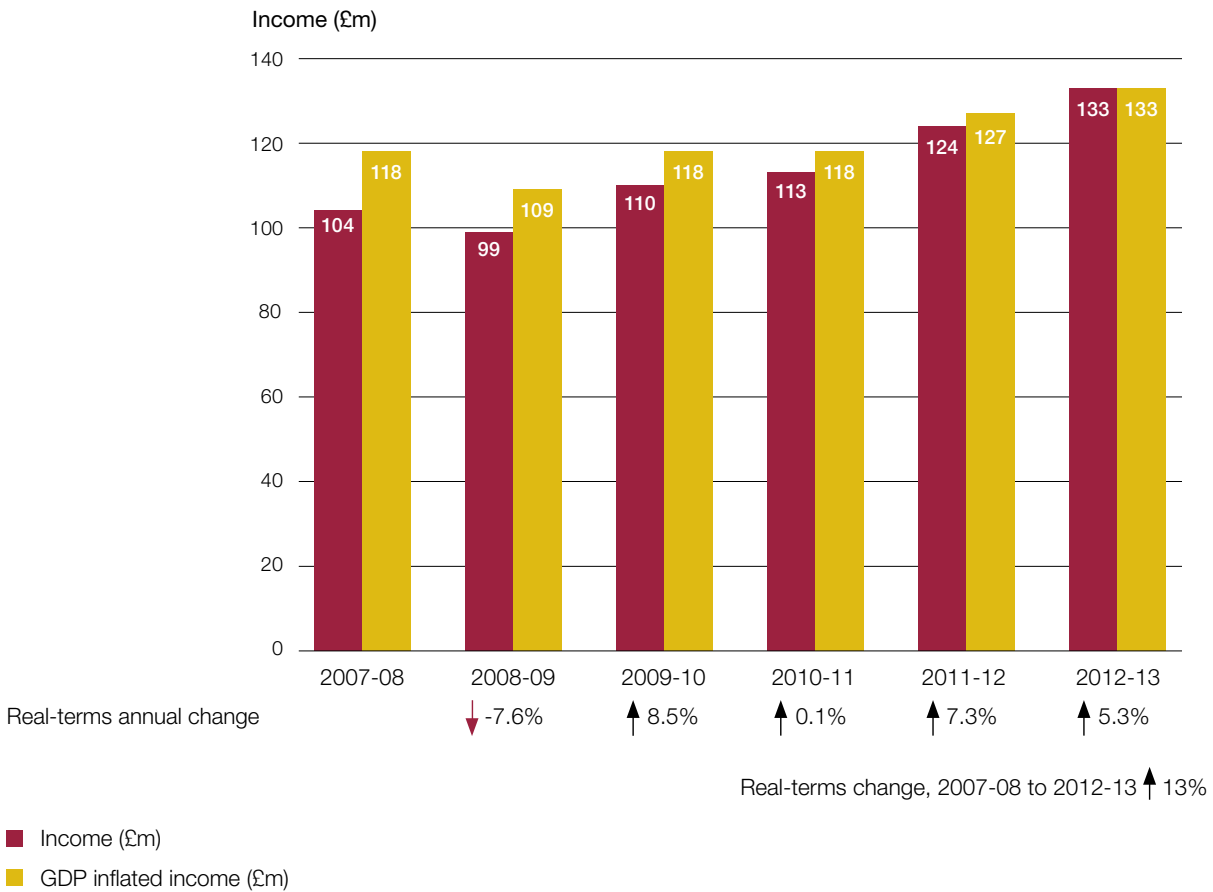
1 158 orders have negative amounts to correct accrued interest reporting. 453 orders are for £0.

2 Figure includes more recent orders where there has been less time to collect monies.

Source: National Audit Office analysis. Data taken from Joint Asset Recovery Database in September 2013

Figure 5
Confiscation order income, 2007-08 to 2012-13

The income collected from confiscation orders between 2007-08 and 2012-13 has increased by 13 per cent in real terms



Notes

- 1 Income includes money collected and distributed as compensation to victims of crime. In 2012-13, £25.9 million was paid as compensation.
- 2 Inflation adjustment uses the HM Treasury gross domestic product (GDP) deflators at 2012-13 price base.

Source: National Audit Office analysis of Joint Asset Recovery Database

Part Two

Governance and accountability

2.1 To coordinate the activity of the many organisations involved, so resources are allocated efficiently and effectiveness maximised, the government needs to:

- establish governance structures with clear accountability, including appropriate incentives, to ensure stakeholders work together to achieve common goals; and
- set out clear objectives and defined measures of success in a coherent cross-government strategy, so that people can make appropriate decisions and prioritise activity.

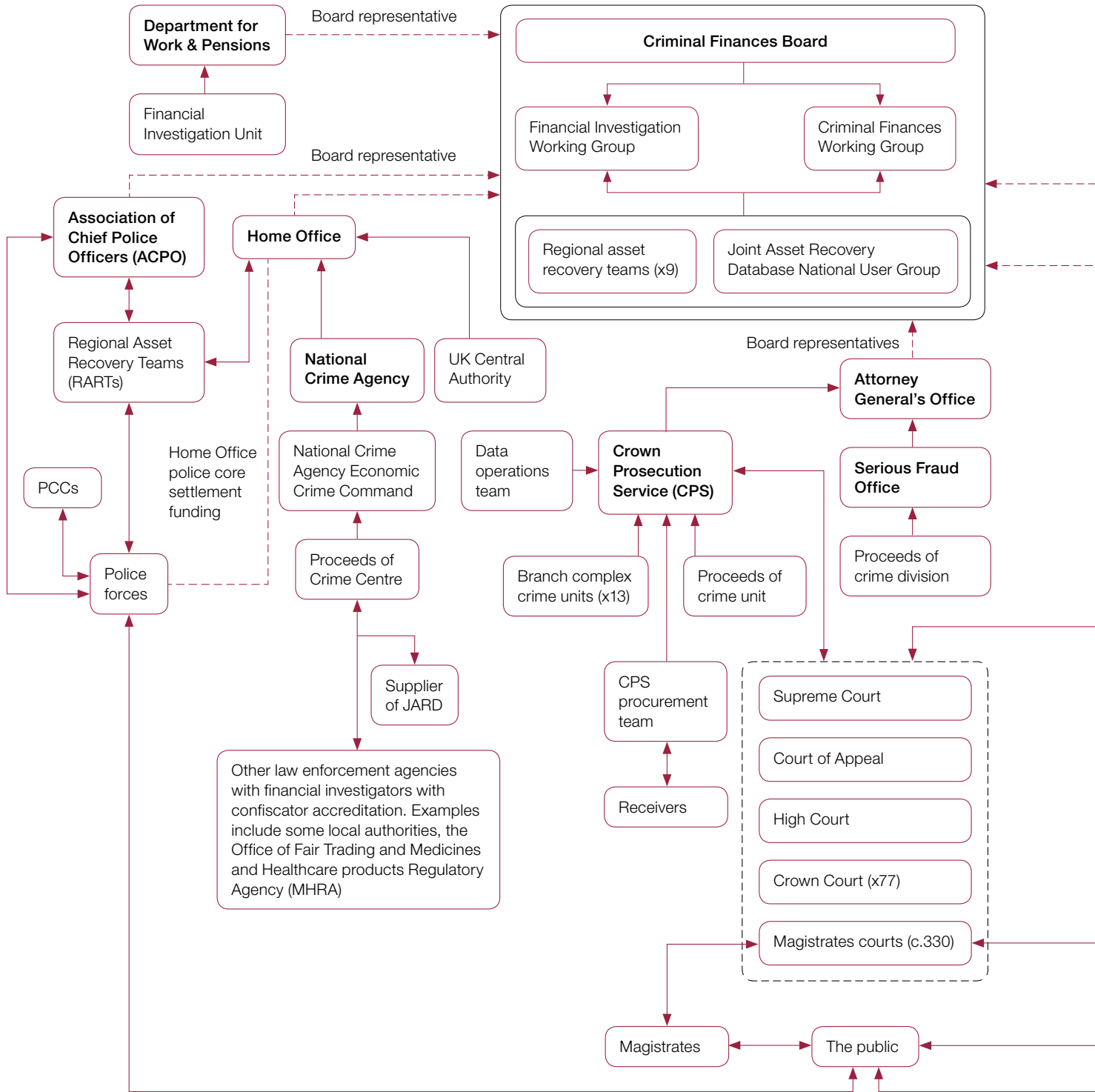
2.2 Our past reports across government have shown problems with major programmes and administrative processes often arise from unclear objectives, inadequate governance and weak controls. Our recent report on Universal Credit, for example, found problems in these areas contributed significantly to the programme not achieving value for money in its early stages.¹¹

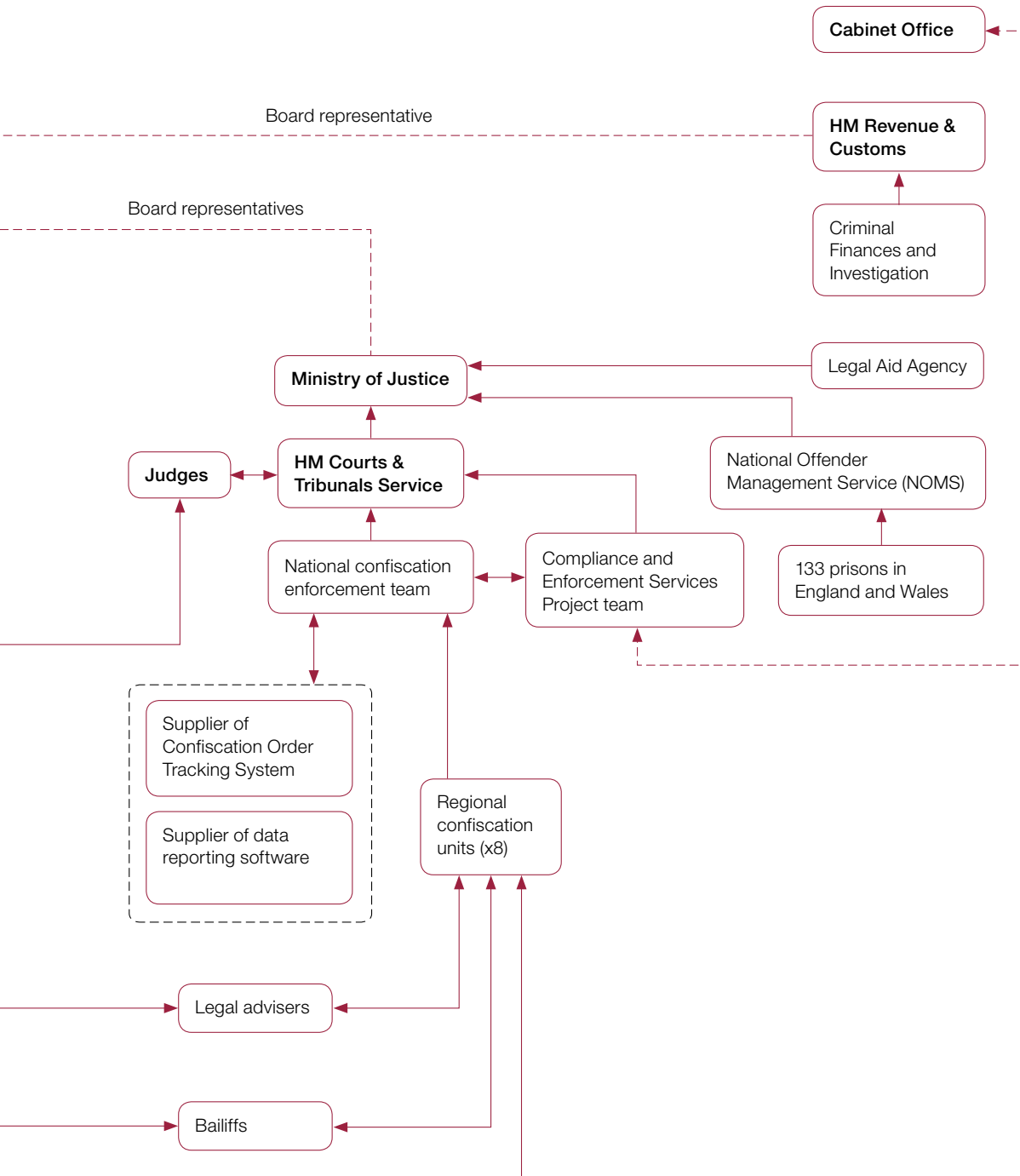
2.3 The bodies involved with confiscation orders each have their own internal processes and lines of reporting, but have together developed a joint 'best practice guide' setting out how to implement the requirements of the 2002 Proceeds of Crime Act (the 2002 Act). This work is underpinned by various formal service level agreements, memoranda of understanding or informal agreements between individual bodies. To provide overarching oversight for confiscation orders, the government set up a number of cross-government groups, starting in 2003. The most recent of these is the Criminal Finance Board, set up in 2011 along with a number of sub-groups, where many bodies involved with asset recovery are represented (**Figure 6** on pages 18 and 19).

2.4 While these arrangements enable the system to operate day-to-day, there is insufficient coherence to maximise effectiveness. Our interviews, including those of board members, found that, the Criminal Finances Board made many good proposals on legislative and administrative details. However, it did not coordinate activity properly and its ineffectiveness causes a wide sense of frustration among our interviewees.

¹¹ Comptroller and Auditor General, *Universal Credit: early progress*, Session 2013-14, HC 621, National Audit Office, September 2013.

Figure 6
Confiscation order landscape





2.5 This lack of coherence has been a long-standing problem. In 2000 the Cabinet Office recommended establishing a national confiscation body.¹² In response, the Home Office created the Assets Recovery Agency in 2003, which became the first agency to make use of the 2002 Act. However, we reported in 2007 that it had limited powers and struggled to persuade other bodies to pass over cases and the Home Office closed it in 2008, transferring most of its functions to the Serious Organised Crime Agency.¹³ Since then, the Committee of Public Accounts has expressed concerns that no one department is in charge of confiscation orders and has urged more collaboration.¹⁴

2.6 Confiscation order governance is an example of wider systemic problems of integration and complexity within the criminal justice system. Our 2010 criminal justice landscape review highlighted the difficulty of joint working in a complex system with many stakeholders depending on each other's performance and yet continuing to work in silos.¹⁵ Many of our reports have identified consequences for value for money. For example, our police procurement study found that blurred lines of accountability and a complex landscape contributed to delays in decision-making and implementation of wider initiatives.¹⁶

Accountability is weak

2.7 An important measure of governance is the effectiveness of its underpinning accountability framework. This is needed to safeguard public funds and incentivise value for money across individual bodies. In measuring confiscation orders against the five fundamental accountability principles identified by the Committee of Public Accounts,¹⁷ we found various gaps and problems (**Figure 7**).

2.8 A particular weakness is there is no clear link between activity and formal financial reporting. All confiscation order impositions, receipts and debts are solely reported in HM Courts & Tribunals Service's annual trust statement. It is useful to have this information in one place, and the statement complies with HM Treasury accounting requirements. However, it means that only HM Courts & Tribunals Service is being held accountable for all enforcement activity. This is unsatisfactory as HM Courts & Tribunals Service has no direct influence on the other agencies, who have no formal financial reporting requirement, and therefore no clear accountability.

2.9 For the 2012-13 statement, HM Courts & Tribunals Service has included more information on other agencies' work. This is welcome and improves transparency, but does not address the main weakness.

¹² Cabinet Office, *Recovering the proceeds of crime*, June 2000.

¹³ Comptroller and Auditor General, *The Assets Recovery Agency*, Session 2006-07, HC 253, National Audit Office, February 2007.

¹⁴ HC Committee of Public Accounts, *Ministry of Justice Financial Management*, Sixteenth Report of Session 2010-11, HC 574, January 2011.

¹⁵ Comptroller and Auditor General, *Criminal Justice System Landscape Review*, National Audit Office, November 2010.

¹⁶ Comptroller and Auditor General, *Police procurement*, Session 2012-13, HC 1046, National Audit Office, March 2013.

¹⁷ HC Committee of Public Accounts, *Accountability for public money*, Twenty-eighth Report of Session 2010-11, HC 740, March 2011.

2.10 Performance reporting is also limited and inconsistent. Not only does each organisation have its own reporting mechanisms, but the majority focus on basic information such as order amounts imposed and collected. No organisation has a balanced or detailed set of information needed to track delivery properly and inform the targeting of resources and areas for improvement. This would include regular reporting on what is realistically collectable, cost of collection, impact of sanctions, and process timings (paragraphs 4.6 and 4.7).

Figure 7

Principles of accountability

Principles

- 1** The accounting officer is responsible to Parliament for the spending of taxpayers' money and must be unhindered discharging these responsibilities.
- 2** Where a department funds other bodies, the accounting officer is responsible for ensuring there is an appropriate framework in place to provide the necessary assurances and controls.
- 3** Responsibilities and authority for policy and operational decisions are clear throughout the process.
- 4** There is a clear process for measuring outcomes, evaluating performance and demonstrating value for money, which allows organisations to be held to account.
- 5** All bodies that receive public funds are well governed and have robust financial management arrangements.

Confiscation order situation

There is no single department responsible for confiscation orders. The Criminal Finances Board includes representatives from across government but they themselves report to their own accounting officers and equivalents.

Funds are provided to bodies in part by the Asset Recovery Incentivisation Scheme, but the Scheme has various problems (paragraph 2.11).

The Home Office sets overall policy, but operational policy is set by many other bodies and is uncoordinated. No clear lines of responsibility or authority through the delivery chain, and interdependencies between bodies are undefined.

No success criteria defined in confiscation order objectives. Limited benchmarking measures, comparable data or other management information to hold all organisations to account.

Organisations have limited cost and performance data available on confiscation orders.

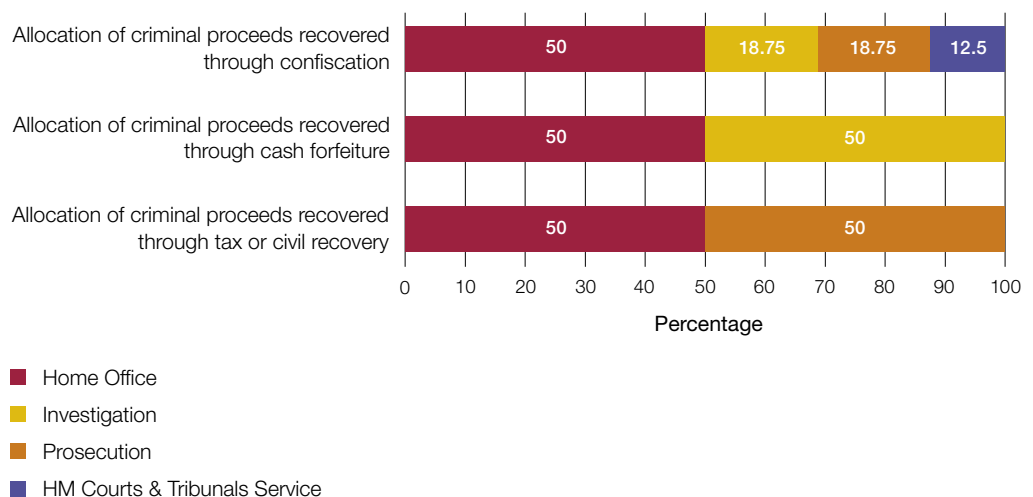
Source: National Audit Office analysis

Limited incentives

2.11 With so many bodies involved, incentives are vital. To work effectively they must be transparent, well-controlled, and encourage behaviours that will best meet common objectives. Since 2006 the Home Office has run the Asset Recovery Incentivisation Scheme (ARIS), which apports all asset recovery monies collected each year at pre-determined rates (**Figure 8**). Most confiscation order stakeholders work within the scheme and have agreed to the arrangements, including the need to report to the Home Office on how they have used the funds. These returns show ARIS monies funds areas such as financial investigators and other specialist teams and community projects to help the public directly (**Case study 2**).

Figure 8
Asset Recovery Incentivisation Scheme (ARIS) funding proportions

There are agreed rates for how ARIS monies are shared between the bodies involved with asset recovery



Source: National Audit Office analysis

Case study 2

Example of using incentivisation scheme monies: loan drop-in service in Birmingham

Assets confiscated from illegal money lenders are being used to fund a new loan drop-in service in Birmingham. The Birmingham Fair Money Cabin, together with advisers and contacts has been provided with confiscated funds channelled through the Asset Recovery Incentivisation Scheme. The aim of the service is to provide affordable loans to the local community and as a result help to disrupt the impact of illegal money lenders.

Source: National Audit Office analysis

2.12 However, we found that the scheme had a number of weaknesses:

- **Lack of transparency and effective compliance with scheme controls.** Many stakeholders told us the scheme had little direct impact on them as they often do not know what happens to incentivisation scheme money. Although many individual bodies do report on how ARIS monies are used, this is not consistent or well publicised, and some stakeholders keep scheme money as cash balances for long periods. There is also limited evidence on how much stakeholders reinvest the funds in asset recovery. Only 86 out of 139 (62 per cent) of organisations involved provided returns to the Home Office in 2012-13, and none of the returns were validated.
- **Apportionment rates are low and inconsistent.** The investigating authority (usually police forces) can keep just 18.75 per cent of receipts achieved through enforcement of orders they initiate, but they can keep 50 per cent of any cash seizures (Figure 8).
- **Rates do not reflect contribution.** The Home Office retains 50 per cent of all monies received although they have no operational role. HM Courts & Tribunals Service receives 12.5 per cent from all cases regardless of whether it is the lead enforcement agency.

Strategy and objectives

2.13 While all stakeholders have their own strategies on crime, there is no overarching strategy or agreed and measurable objectives for confiscation orders. No cross-government strategy has ever been produced, despite a series of reports over many years concluding that more strategic coherence was needed.¹⁸

2.14 The absence of an overarching joined-up strategy has meant unclear objectives and no agreed measures of success, especially for asset denial, criminal deterrence, and crime and harm disruption. Therefore stakeholders have pursued different objectives, prioritising resources in ways that may not maximise their effectiveness on confiscation. For example, the police naturally focus on crime disruption, whereas HM Courts & Tribunals Service is more focused on income collection. Negative impacts include:

- The lack of agreed measures has meant that many practitioner actions, which contribute towards wider policy goals, are not sufficiently measured and rewarded. For example, improvements in how financial investigation is used to disrupt criminals and detect crime.
- Bodies have not known what level of resources to allocate as overall success is not specified, and many decision-makers, such as senior police officers, have not prioritised confiscation.
- The lack of aligned objectives acts against value for money through not targeting and coordinating effort and resources, risking missed opportunities for confiscation and asset recovery; and the risk that bodies may work against each other.

¹⁸ For example: Cabinet Office, *Recovering the proceeds of crime*, June 2000.

The new Serious and Organised Crime Strategy and wider government's push for better debt collection both offer new impetus for more coherence and focus

2.15 In October 2013 the Home Office established the National Crime Agency and published the government's new *Serious and Organised Crime Strategy*.¹⁹ The strategy sets out plans to renew the attack on criminal finances by making it harder to move, hide and use the proceeds of crime by improving asset recovery in the following ways:

- Amending legislative powers.
- Improving recovery of assets hidden overseas.
- Improving and implementing strengthened money laundering regulations.
- Improving data analysis and cross-checking of information with other government departments.

2.16 One of the key elements within the new strategy is to improve organisational collaboration. As it develops, this work could form the basis of a more coherent approach for the confiscation order process as a whole, especially for larger orders.

2.17 In parallel to this work, wider government's push for better financial management is translating into increasing pressure to improve debt collection rates. Many departments are responding, for example through improved use of analytics, greater use of private debt collection agencies, targeted collection methods and developing a more professional workforce.²⁰ However, progress is slow: our previous reports on debt management show, in our view, that no government organisation currently demonstrates market-leading practices.²¹

2.18 The Cabinet Office has also identified considerable room for improvement. It is currently exploring options to improve debt collection at a lower cost across government using private sector expertise, including a possible proposal to consolidate some government debt. HM Courts and Tribunals Service has already introduced plans to outsource its enforcement activity in 2014, including those from confiscation orders, to the private sector under its Compliance and Enforcement Services Project and is retaining the option to integrate into the wider cross-government programme in the future.

¹⁹ HM Government, *Serious and Organised Crime Strategy*, Cm 8715, October 2013.

²⁰ HM Government, *Tackling fraud and error in government: a report by the fraud, error and debt taskforce*, February 2012.

²¹ For example, Comptroller and Auditor General, *HM Revenue and Customs: Management of Tax Debt*, HC 1152, Session 2007-08, National Audit Office, November 2008.

Part Three

Identifying, investigating and imposing confiscation orders

3.1 In this part of the report, we look at how orders are imposed. We estimate that £68 million is spent in total each year on the processes involved, and we examine how efficiently and effectively this money is spent, and how well the work helps the chance of successful enforcement.

3.2 The 2002 Proceeds of Crime Act (the 2002 Act) broadly outlines the process for imposing a confiscation order, which is then set out in more detail in the national best practice guide.²² These identify three main stages involved in imposing an order (**Figure 9** overleaf):

- Identify and refer criminal cases appropriate for a confiscation order (an order).
- Develop case evidence by specialist financial investigators.
- Hearings where the judge imposes the order.

Identifying and prioritising cases

Case identification

3.3 The 2002 Act sets no restrictions on the types or numbers of crime confiscation orders can be applied to, and they could in theory be applied to any crime. They could have, therefore, been raised on a large proportion of the 673,000 offenders convicted of a crime in 2012-13,²³ as many of these would have involved financial gain. For example, over 179,000 offenders were convicted of theft and handling stolen goods alone. In practice, only a small fraction of offenders have orders imposed, remaining fairly constant at around 6,000 a year (**Figure 10** on page 27).

3.4 Nearly 90 per cent of orders are initiated by the police. The remainder tend to be higher in value and are initiated by separate specialist law enforcement agencies including the National Crime Agency, Serious Fraud Office, HM Revenue & Customs and the Department for Work & Pensions (**Figure 11** on page 27).

²² This guide has been developed jointly by the bodies involved with confiscation, with the most recent update in November 2013.

²³ This only includes notifiable offences, which are ones that could or must be tried by a jury. See Figure 3.

Figure 9
Stages to imposing an order



Notes

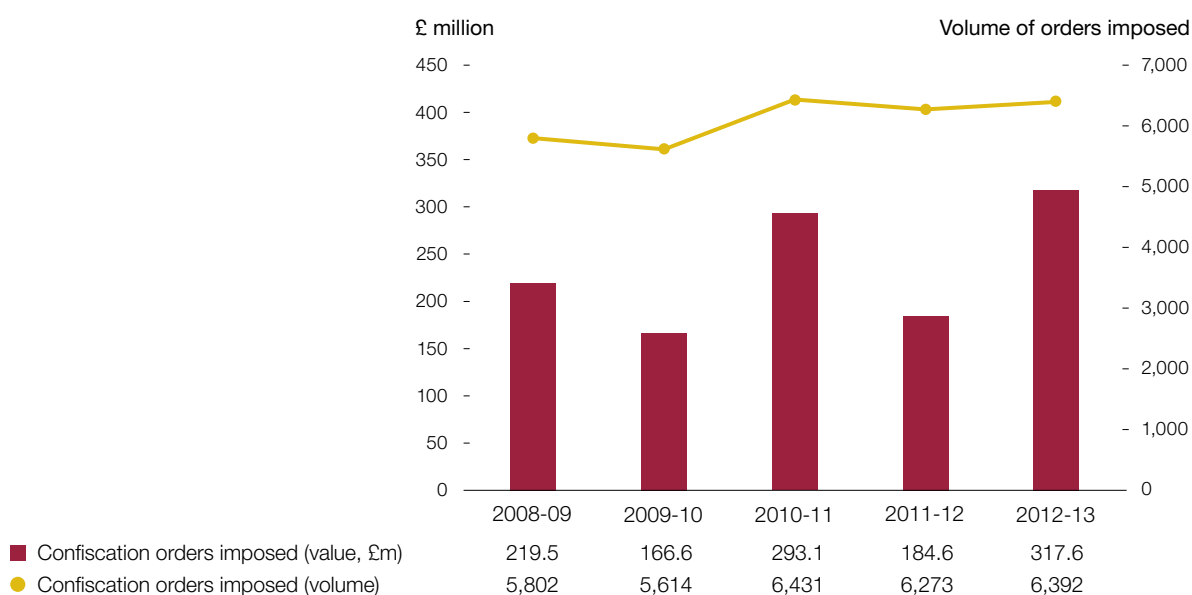
- 1 The confiscation investigation can start at any point after the criminal investigation has begun, including after conviction.
- 2 Confiscation orders are usually imposed after conviction but can be imposed earlier, for example if the offender has absconded.

Source: National Audit Office analysis

Figure 10

Confiscation orders imposed, 2008-09 to 2012-13

Around 6,000 confiscation orders are imposed each year

**Note**

1 The values stated are the current order amounts at September 2013.

Source: National Audit Office analysis of Joint Asset Recovery Database

Figure 11

Confiscation orders imposed by law enforcement agencies since 1987

Law enforcement agency	Number of orders	Assessed benefit (£m)	Current order amount (£m)	Confiscators
Territorial police forces	41,523	5,015	868	900
HM Revenue & Customs	2,623	5,783	571	75
Home Office funded regional asset recovery teams	2,005	1,291	253	68
Department for Work & Pensions	1,421	86	45	38
National Crime Agency	1,361	1,412	207	104
Serious Fraud Office	108	1,678	86	12
Other	2,988	541	104	243
Total	52,029	15,806	2,134	1,440

Notes

1 Regional asset recovery teams are multi-agency units set up to investigate money laundering and confiscation cases.

2 Other law enforcement agencies include local authorities and Scottish and Northern Irish constabularies.

3 Confiscators are specially trained financial investigators, who may also assist or lead on criminal investigation cases, in addition to confiscation work.

Source: National Audit Office analysis of Joint Asset Recovery Database and National Crime Agency data at September 2013

Case progression

3.5 According to best practice guidance, during every criminal investigation law enforcement officers and prosecutors should assess whether a confiscation investigation is appropriate. This will involve making a judgment as to whether there has been criminal benefit from the offence or whether the defendant can be considered to have lived a criminal lifestyle. If so, the case should be referred to specialist financial investigators ('confiscators') to decide whether to build evidence for a confiscation case, with all law enforcement agencies having their own confiscators (Figure 11). Despite this apparently straightforward referral process, we found there are various reasons why so few potential cases end up with orders:

- Prosecution and law enforcement agencies lack knowledge of proceeds of crime legislation. Awareness of financial legislation outside specialist teams is often low, which results in many cases not being considered for confiscation. Stakeholders told us that confiscation remains an after-thought for many criminal investigators unless it is an obvious fraud or money laundering case.
- Confiscation orders have a low profile within law enforcement agencies. As noted in Part Two, the lack of strong governance has meant many law enforcement authorities may put a lower priority on identifying potential orders, and are not properly incentivised to prepare them proactively.
- Developing cases for confiscation and then bringing the case to court can be lengthy and resource intensive. The work involved in preparing orders is often laborious and difficult. A 2010 joint inspectorate review reported that it took an average of 36 weeks for an order to be imposed after a criminal conviction, and much longer for more complex cases.²⁴ For example, the average time taken for our sample of very complex cases was 105 weeks.

Link between appropriate early activity and enforceability

3.6 Once the confiscation route is chosen, quick action is vital to help successful enforcement, especially for high-value orders. However, bodies throughout the whole process are often not taking appropriate action early enough to prevent offenders hiding or disposing of assets once they realise they are under suspicion. For example, financial investigators and confiscators are not being brought in early enough to gather evidence alongside the criminal case or to progress more cases through the use of money laundering investigations. Furthermore, many criminals are sophisticated and act quickly, leaving the authorities limited time to impose 'restraint' orders that freeze their assets. Enforcement agencies estimate that at least £285 million of total debt outstanding relates to assets that are hidden or overseas (see Figure 14 in Part Four).

²⁴ Criminal Justice Joint Inspection, *Joint Thematic Review of Asset Recovery: Restraint and Confiscation Casework*, CP001:1024, March 2010, p. 38.

3.7 However, we found that restraint orders are reducing in number: only 1,368 restraint orders were imposed in 2012-13, down 27 per cent from 1,878 in 2010-11. Many stakeholders believe opportunities for successful restraints are being missed and that the Crown Prosecution Service is too cautious in applying for restraint orders.

Prioritising activity

3.8 Law enforcement agencies select inconsistently the 6,000 cases that annually end up as orders. There is a lack of agreed measures of success or standard selection criteria across law enforcement and prosecution agencies. This is a factor in why potential confiscation cases are not being prioritised consistently. Therefore, there is no consistent judgment being made between the cost of investigating and imposing a case and its importance in crime disruption or wider policy goals.

3.9 Law enforcement agencies do not have a common and systematic approach in place to deal with cases where new assets are found, or indeed to identify cases where further action may be appropriate. The result is that law enforcement agencies are only rarely revisiting completed cases to see whether they could recover more assets (where the order amount is less than the benefit). To date, only 917 cases have had original order amounts increased, resulting in another £12 million being imposed.

3.10 A particular area of concern is the lack of activity in revisiting the nearly 7,000 'nominal' orders (where the judge has found criminal benefit but no currently available assets so imposes an order of less than £5). These orders have a total assessed benefit of £1 billion, but the total order value imposed is less than £10,000.

Building case evidence

3.11 Except for appropriate early action, much of the groundwork for successful enforcement is laid during case development, when confiscators prepare an evidence file for the court hearing. The 2002 Act requires that judges must decide how much the offender has benefited from their crime based on the evidence, and therefore much depends on its quality.

3.12 Past reviews²⁵ found quality problems, for example with some confiscators and prosecutors overestimating the value of an offender's assets leading to excessive order amounts, partly because the old public service agreement income targets²⁶ incentivised high-value order imposition. Also expertise in confiscation investigation was poor. Our 2007 report on the Assets Recovery Agency found there was no effective monitoring of financial investigators' continued professional development or whether their skills were being used.²⁷

3.13 Despite a lack of robust performance or benchmark data, our interviews and case study visits suggested that quality has improved in recent years. Most stakeholders, including the judges we spoke to, consider that the quality of evidence is better now, and our small complex case sample showed figures were well-evidenced. This may be partly due to improved financial investigator and confiscator training and monitoring programmes: since our 2007 report, the National Crime Agency's proceeds of crime centre (previously within the Serious Organised Crime Agency) has developed robust systems for training, continued professional development and performance monitoring. Nevertheless, quality is still inherently compromised by factors including:

- obtaining evidence overseas can be difficult and prolonged as it requires assistance from other countries; and
- criminals' increasing sophistication in hiding assets is making it difficult for confiscators to trace assets.

Judicial expertise and legislative challenges

3.14 Judges need to set order values at the right level to increase chances of successful enforcement and reduce the chances of successful offender appeals. In order to do this, judges need to be able to properly assess criminal benefit and available assets in complex situations often with absent or disruptive offenders (see **Case study 3**).

3.15 This requires them to have experience and understanding of confiscation law, which is challenging as the law keeps developing. For example, in *R v Waya* in December 2012, the Supreme Court, as part of their judgment, ruled that confiscation orders should be proportionate for the offender (and in that case the order value was reduced from £1.11 million to £392,400 as a result). But senior officials from prosecuting authorities and senior judges familiar with proceeds of crime cases told us that some judges' lack of expertise and experience in cases adversely impacted on enforceability through setting order amounts at the wrong level.

²⁵ For example: Home Office, *Research Report 17: examining attrition in confiscating proceeds of crime*, July 2009, p. 14.

²⁶ The target was to recover £200 million in 2008-09 and £250 million in 2009-10, but neither were ultimately achieved.

²⁷ Comptroller and Auditor General, *The Assets Recovery Agency*, Session 2006-07, HC 253, National Audit Office, February 2007.

3.16 Judges hearing confiscation order cases are advised to go on a dedicated two-hour training course that forms part of the required three days of national training each year, but although the course is widely praised, it is optional. By comparison, judges seeking to develop expertise in other fields, such as serious sexual offences, undertake more in-depth and mandatory training, typically lasting between two and five days. Most judges believe that proceeds of crime legislation is very complicated, and some interviewees suggested this complexity warrants dedicated proceeds of crime judges, or more extensive training if the resources were available.

Case study 3

Case problems

Case type	Details
1 Complex VAT fraud	The confiscation order was passed in the offender's absence, as he had absconded while on bail. As the offender could not contest the value of benefit or available assets, the confiscation order amount was set at the benefit value of £28.6 million as required by the 2002 Act.
2 Complex VAT fraud cases with two offenders	<p>Throughout the case, the offenders sought to be very obstructive with frequent delays, changes of lawyers and appeals. There have also been a range of claims on the offenders' assets from family members. The 2002 Act prevents a third party from contesting ownership of an asset until the order has been imposed.</p> <p>The original orders were £92.3 million each, but the offenders successfully appealed and reduced this to £16.1 million in total. The offenders are now awaiting a Supreme Court hearing on whether the £16.1 million should be split between them.</p>

Source: National Audit Office review of case files

Part Four

Enforcing confiscation orders

4.1 HM Courts & Tribunals Service, the Crown Prosecution Service and the Serious Fraud Office are the main bodies that enforce confiscation orders in England and Wales once they have been imposed. In this part we examine these bodies' performance and whether they are enforcing confiscation orders effectively and efficiently, focusing on the widely recognised key process management²⁸ areas of:

- strategy;
- capacity and capability; and
- information collection and use.

Introduction

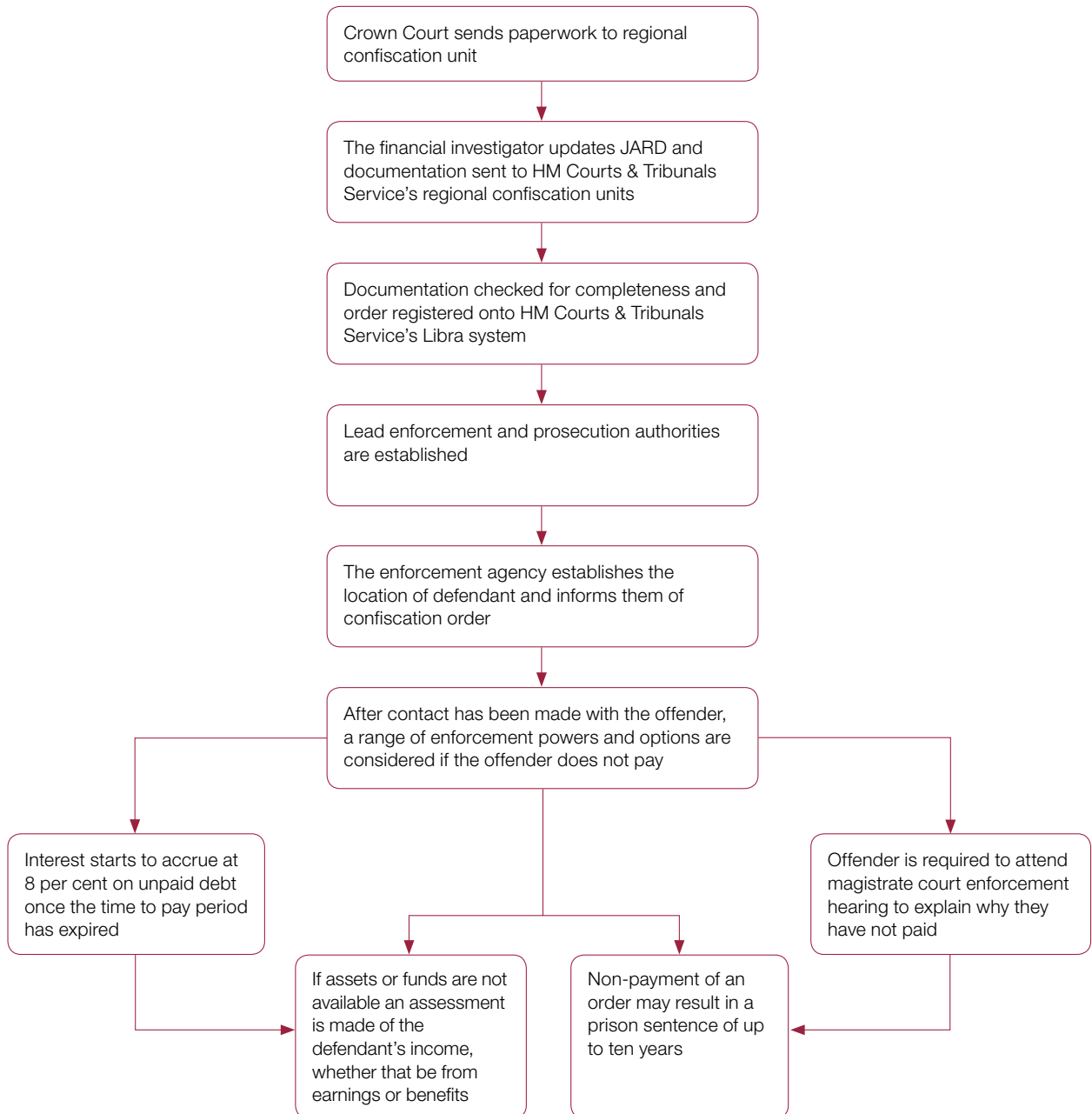
4.2 Following court hearings, a standard enforcement process is followed (**Figure 12**), including one to assign cases to enforcement bodies. As for order impositions, this process is outlined in the national best practice guide.

4.3 In terms of powers, the 2002 Proceeds of Crime Act (the 2002 Act) and other legislation allows for enforcement techniques including:

- seizing money from restrained bank accounts;
- using treaties with other countries to seize overseas assets;
- taking regular payments from offenders' income or benefits; and
- charging orders allowing seizure and forced sale of property.

²⁸ Comptroller and Auditor General, *Maturity of process management in central government: cross-government findings*, National Audit Office, December 2010.

Figure 12
Enforcement process



Source: National Audit Office analysis

4.4 Despite these powers, enforcement bodies often face tough challenges to collect orders, particularly those higher-value orders that involve hidden and overseas assets, as well as other complications (**Case study 4**). We found enforcement practitioners are passionate and committed, but often lack analytical and specialist debt management skills. There is also a lack of understanding and data regarding resource requirements. For example, during field visits, HM Courts & Tribunals Service units told us they were under-staffed. However, without an up-to-date resource model, based on understanding demand and what effort this equates to, this could not be validated.

Enforcement strategy

4.5 A clear enforcement strategy is necessary to ensure that everyone allocates resources to achieve the best results for the overall process and responsibilities are clear. However, no clear enforcement strategy exists. In practice, HM Courts & Tribunals Service take the lead on low-value cases and the Serious Fraud Office and Crown Prosecution Service generally lead on the more complex, and often high-value, ones. Once the latter two bodies' progress is no longer possible, they pass their cases to HM Courts & Tribunals Service to progress. In the first quarter of 2013, for example, the Crown Prosecution Service passed over 185 cases. At September 2013 the three enforcement agencies had around 20,000 outstanding cases between them (**Figure 13**).

Case study 4

Examples of enforcement challenges

Case	Details
1 VAT carousel fraud	<p>The benefit value in this case was £53 million and all assets are considered to be hidden. The current order amount is £40 million, of which none has been paid.</p> <p>France extradited the offender to the UK to stand trial. After five years he returned to France to serve his sentence but France does not recognise sentences greater than five years for this crime so released him.</p>
2 Complex mortgage fraud	<p>The benefit amount was £60.8 million with the order set at £29.3 million. Much of the assets are hidden in Pakistan. This case also involved disputed third party assets and a management receiver was used to oversee the offender's finances.</p> <p>The Serious Fraud Office and HM Courts & Tribunals Service have disagreed on how this case should be best enforced and this highlights a lack of clarity as to where enforcement responsibility really sits.</p>

Source: National Audit Office review of case files

Figure 13

Total cases outstanding by enforcement agency at September 2013

Enforcement agency (units involved)	Uncompleted cases	Uncompleted cases (%)	Current order amount (£m)	Total outstanding (£m)	Total outstanding (%)
CPS (13 branches and its proceeds of crime unit)	2,765	13.6	788.2	701.5	48.2
HM Courts & Tribunals Service (eight regional units)	17,096	84.1	605.1	607.5	41.7
Serious Fraud Office	42	0.2	117.5	130.7	9.0
Other	435	2.1	25.5	16.2	1.1
Total	20,338	100	1,536.3	1,455.8	100

Notes

1 Total amounts include accrued interest.

2 Other includes legacy Assets Recovery Agency, Northern Irish and unknown lead enforcement agency cases.

Source: National Audit Office analysis. Data taken from Joint Asset Recovery Database in September 2013

Cost–benefit information

4.6 An effective enforcement strategy requires accurate and detailed data on the cost, time and benefits of individual orders to prioritise resources effectively. The current lack of such information, including about what is collectable and a clear success criteria, makes meaningful cost–benefit assessments extremely difficult (paragraph 2.10). The Serious Fraud Office and the Crown Prosecution Service recently conducted separate exercises to assess what is realistically collectable from their uncompleted orders.

4.7 Using the little information available, we estimate the annual overall enforcement cost to be £33 million. Of this, approximately £13 million relates to collection administration; £2 million for enforcement hearings at magistrates courts²⁹ (to assess the progress of order payments); and £18 million for offenders serving default prison sentences for not paying orders. The standard basis for ‘cost of collection’ across government would exclude the cost of an offender serving a default sentence, and so matching to annual income gives a figure of £9 recovered for every £1 spent in 2012-13.

Enforcement performance

4.8 In theory, the enforcement agencies’ workload includes all 20,000 uncompleted cases, many of which are several years old, and together contain £1.46 billion debt. However, the bodies only classify 8,400 cases as ‘current’ (£892 million debt). The remainder are considered more difficult to collect because assets are either entirely ‘hidden’, or relate to offenders who are deceased, disappeared, deported or cases on hold where offenders are appealing against their order (**Figure 14** overleaf).

²⁹ The cost of appeals heard at the Crown Court and Court of Appeal are included as part of imposing a confiscation order (see Figure 2).

Figure 14

Uncompleted cases: total outstanding by 'enforcement status'

Case status	Volume	Volume (%)	Amount outstanding (£m)	Total outstanding (%)
Current	8,442	86	892	62
Hidden	545	6	273	19
Subject deported	404	4	83	6
On hold pending appeal	49	0	77	5
Unable to locate subject	214	2	62	4
Subject deceased	136	1	35	2
Overseas	45	0	12	1
On hold pending application for variation or a third party claim	22	0	2	0
Total¹	9,857	100	£1,436	100

Notes

- 1 The total outstanding of £1,436 million is less than the £1,456 million (or £1.46 billion) reported in other figures as this excludes interest accrued when law enforcement agencies held onto assets beyond the payment period (7,715 cases). It also excludes 2,400 cases that are interest only and 366 cases where the enforcement status has been left blank on JARD. The total outstanding from all these cases is £20 million. More detail on JARD is included in Figure 17.
- 2 Total outstanding includes accrued interest.
- 3 Figures include some legacy Assets Recovery Agency and 'other' cases included in Figure 13.
- 4 Hidden assets are those that have been demonstrated to exist but which the offender has failed to provide evidence to the court that they are no longer available.
- 5 Cases where the subject is deported or deceased can still be pursued but enforcement is very difficult.

Source: National Audit Office analysis. Data taken from Joint Asset Recovery Database in September 2013

4.9 Cases are classed as 'current' as long as at least some of their assets are collectable so Figure 14 overestimates the amount that is collectable and underestimates the other categories. We found around £671 million (46 per cent) of the total outstanding relates to orders over five years old (**Figure 15**). HM Courts & Tribunals Service's national confiscation team, reporting on the last three years of cases, estimate that in practice only £282 million³⁰ is collectable, while the Service's 2012-13 trust statement provides an even lower estimate of £177 million across all cases.³¹

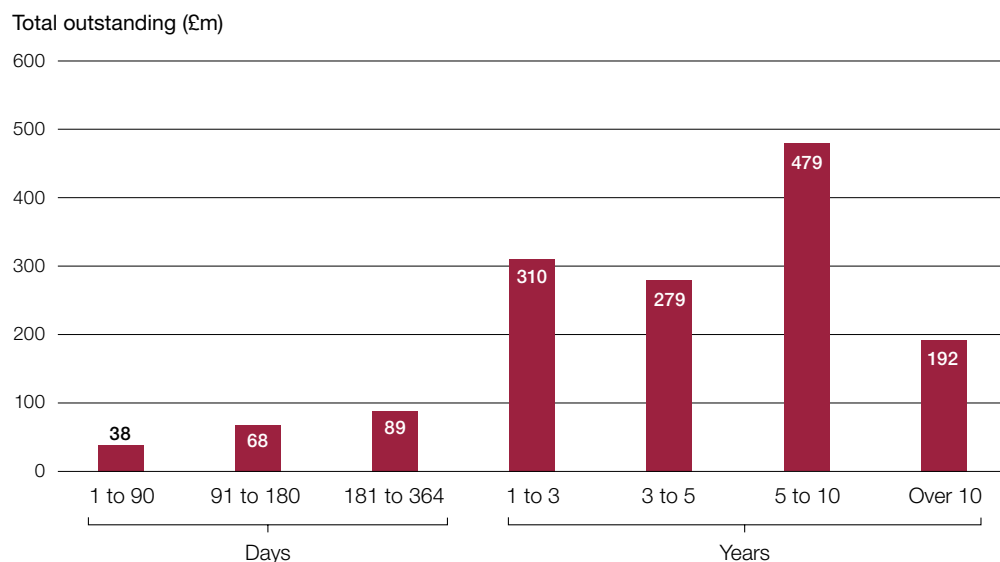
4.10 As noted in Part One, the overall enforcement (collection) rate for all cases ever imposed is 41 per cent including interest.³² However, this hides a much higher rate for smaller orders and lower for higher-value ones (Figure 4, and Figure 16 on page 38).

30 Based on Joint Asset Recovery Database analysis and not on a review on individual cases.

31 Note 4 of the 2012-13 HM Courts & Tribunals Service Trust Statement states a value of £177 million is collectable, after an impairment of £1.2 billion. The impairment estimate is based on the probability of collection using historical payment data as the primary evidence source.

32 This is 48 per cent excluding interest.

Figure 15
Outstanding confiscation order amounts by age



Notes

- 1 Age relates to gap between the date of imposition and September 2013.
- 2 The average time given to an offender to pay their order ('time to pay' date) is 128 days after the day the order is imposed. Many of the orders imposed in the last 180 days will therefore not yet be overdue.
- 3 Amounts outstanding includes interest.

Source: National Audit Office analysis of Joint Asset Recovery Database

4.11 The Crown Prosecution Service and the Serious Fraud Office, have a higher success rate than HM Courts & Tribunals Service at enforcing orders over £25,000 (**Figure 16** overleaf). For example, for orders between £500,000 and £1 million HM Courts & Tribunals Service's enforcement rate was 35 per cent compared with 64 per cent for the Crown Prosecution Service's proceeds of crime unit. However, HM Courts & Tribunals Service deal with mostly lower-value orders and are often passed hard cases by the other bodies once their progress has been halted (paragraph 4.5).

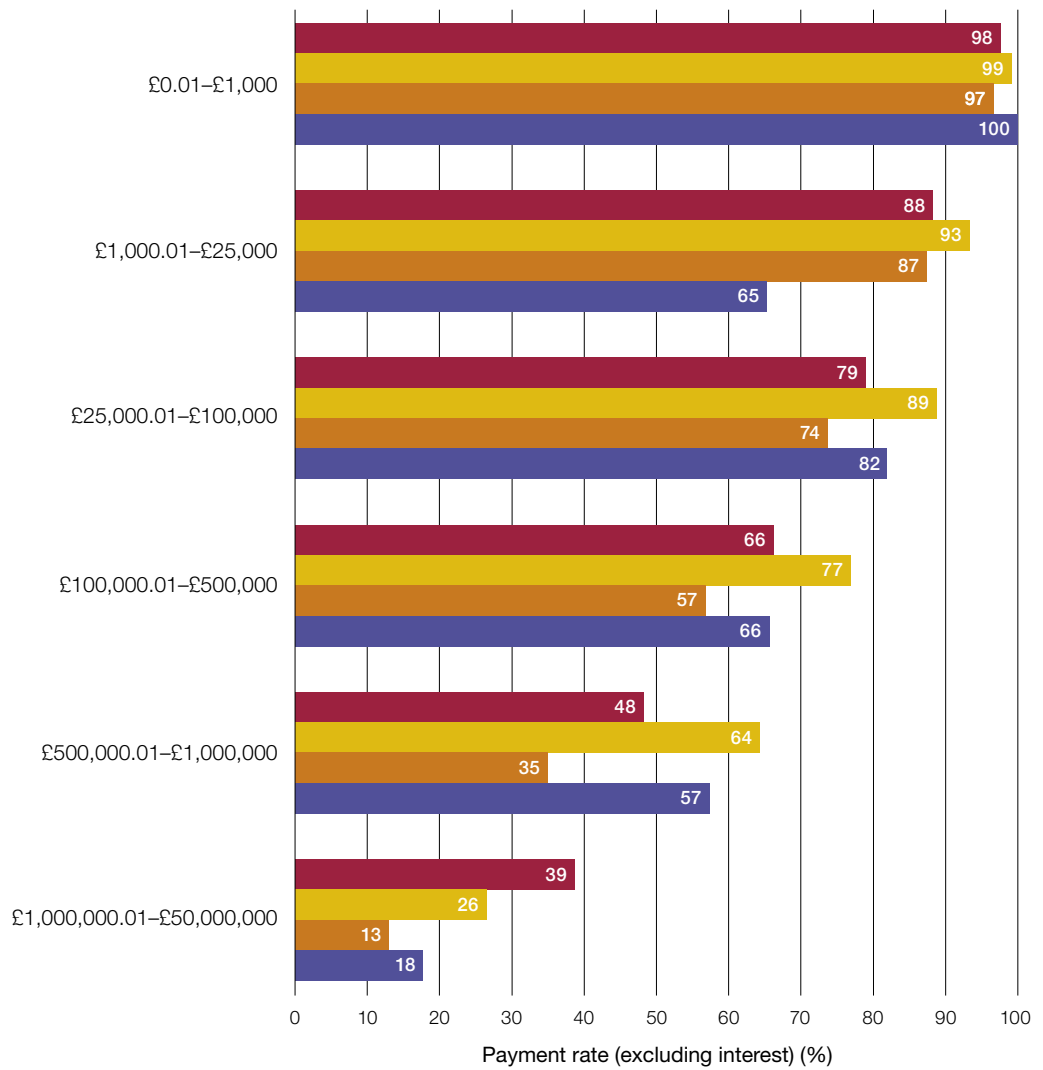
Receivers

4.12 The Crown Prosecution Service and Serious Fraud Office procure 'receivers' (private firms that can be used to manage or collect offenders' assets),³³ and manage their performance, with the Crown Prosecution Service owning the national procurement framework. We found, however, no explicit strategy for their use and that these bodies have not collated national performance or cost data. Therefore making cost-effectiveness assessments of receivers' performance and their potential capacity is difficult.

³³ In some cases, the Crown Prosecution Service or Serious Fraud Office may have the skills and capacity in-house to act as the receiver. There are also a very small number of cases where other bodies may enforce confiscation orders using receivers.

Figure 16

Enforcement rates by size of order and lead enforcement agency, excluding interest



- Crown Prosecution Service branches payment rate
- Crown Prosecution Service proceeds of crime unit payment rate
- HM Courts & Tribunals Service payment rate
- Serious Fraud Office payment rate

Notes

- 1 Includes all orders imposed since 1987.
- 2 Figure includes more recent orders where there has been less time to collect monies.

Source: National Audit Office analysis. Data taken from Joint Asset Recovery Database in September 2013

4.13 In 2012-13 receivers were used on 112 cases,³⁴ collecting £15.1 million and costing £3.2 million for their services. Since 1997-98, there have been 299 receiver cases, with £18 million fees. But no data is reported nationally to show whether this performance has been cost-effective.

ICT systems

4.14 Efficiency is hampered because the main confiscation ICT systems are outdated and none of the systems are interoperable (**Figure 17**). For example, HM Courts & Tribunals Service units have to enter information manually into multiple systems, which we estimate takes 45 hours a week (equivalent to 1.25 full-time equivalent staff) for their Confiscation Order Tracking System (COTS) alone.

Figure 17
ICT systems issues

System	Description	Issue
Libra	Used by HM Courts & Tribunals Service staff to record and process payments. It also has a case management function, used for collecting court fines and fees.	Old system with limited reporting capability. It is difficult to reconcile Libra and JARD data for dates in the past, primarily due to timing differences.
JARD	Main database for asset recovery, including tax cases, since 2004. Owned by the Home Office, and now managed by the National Crime Agency.	Reliant on manual data entry, which leads to errors (Figure 19). Mandatory fields would improve the completeness of entries. Some of these could also include validation checks, for example to prevent the input of incorrect dates. Improvements would cost relatively little, for example the multi-agency JARD change group identified 31 improvements to JARD costing just £270,000.
Confiscation Order Tracking System (COTS)	Excel spreadsheets that pull information from JARD for use in case management. It was created as a temporary solution in 2007.	Very dated and slow system, which can only be manually updated by one person at a time. Some spreadsheets are now highly unstable.
Other systems	Every agency has its own different case management system, primarily Excel-based. There are also electronic files and note sheets to update.	Significant amount of manual re-keying of information across these systems.

Note

1 JARD was managed previously by the Serious Organised Crime Agency.

Source: National Audit Office analysis

34 The Crown Prosecution Service leads on 83 per cent of these cases.

Information sharing and data quality

4.15 Having timely and accurate information available to all parties is vital to an efficient and effective process. The government's Fraud, Error and Debt Taskforce has identified the huge potential of both data cleansing and matching in improving debt collection rates.³⁵ In recent reports we have also shown the necessity of good information in efficient and effective process management.³⁶

4.16 Our work found pockets of good practice (**Figure 18**) but also many gaps in information sharing and data errors, which cause delays and problems (**Figure 19**). Many of the gaps stem from work not being joined up (paragraph 2.6). Many practitioners are unaware of the importance of giving others timely information as they do not see the consequences of delays, errors or not sharing information as a matter of course.

Figure 18 Examples of good joint working

Regional asset recovery teams have been set up as multi-agency units with police, civilian financial investigators, a seconded Crown Prosecution Service lawyer and a HM Revenue & Customs officer. In the north-east and Wales, the units are also co-located with HM Courts & Tribunals Service, enabling good information sharing.

HM Revenue & Customs and Metropolitan Police enforcement units provide financial investigation support to the Dover and Westminster Magistrates Courts respectively during enforcement hearings, enabling judges and magistrates to validate offender appeals during hearings.

Source: National Audit Office analysis

Figure 19 Information and data: examples of gaps and poor practice

Area	Problem
Incomplete data from courts and investigators	Information provided by financial investigators and Crown Courts can be incomplete and inaccurate, although error rates are recorded infrequently. Data from the north-east region showed error rates of 6 per cent and 15 per cent respectively. ¹
Delays in investigators setting up orders on JARD	This should be done within five days of a hearing. In practice it takes on average eight days, and can take over a year or even not be entered at all. The impact is delays to enforcement work.
Lack of information sharing	Support from financial investigators is often dependent on informal relationships.
Data in JARD	Only 96 per cent of confiscation orders in JARD have data on the associated benefit amount as ruled by the judge. Also only 83 per cent of cases contained all dates within a sample we tested, and there are errors among those completed.

Note

1 Based on data between July and August 2013. The south-west regional confiscation unit also recorded over 100 Crown Court errors between June 2012 and July 2013.

Source: National Audit Office analysis

35 HM Government, *Tackling Fraud and Error in Government*, February 2012.

36 Comptroller and Auditor General, *Maturity of process management in central government: cross-government findings*, National Audit Office, December 2010.

Sanctions

4.17 Our stakeholder interviews found almost unanimous agreement that current enforcement sanctions are ineffective. The 2002 Act imposes two main sanctions for not paying confiscation orders: 8 per cent interest and prison sentences with set tariffs depending on order size, with a maximum sentence of ten years. Orders remain payable once a prison sentence has been served.

4.18 Insufficient data on the effectiveness of sanctions is analysed and reported on, which makes it impossible to know what works best and when.

- £350 million interest has accrued on orders, representing 24 per cent of the total outstanding, increasing at over £225,000 a day. No one we interviewed felt this penalty acted as an incentive for payment.
- The approximate £18.4 million spent annually on offenders serving their default sentence plays an important role in detaining criminals to disrupt crime, reduce harm and aid income collection. However, around £490 million is outstanding for offenders who have served or are currently serving default sentences (**Figure 20**). HM Courts & Tribunals Service found that, in 2012, just 2 per cent of offenders paid in full (including interest) once the sentence was imposed. Stakeholders did report that the threat of imprisonment leads to payment in some cases, but this is rare for high-value orders. In addition, a sentence can only be imposed once and early release rules also apply.

Figure 20

Default sentence status and outstanding debt

	All cases	Total outstanding (£m)	Total outstanding (%)
Not served	50,177	967	66
Serving	879	363	25
Served	973	126	9
Total	52,029	1,456	100

Notes

- 1 According to the National Offender Management Service (NOMS) a further 583 prisoners with confiscation orders are still serving their sentence for their original criminal offence. Historically, NOMS had limited data on prisoners with confiscation orders but this has improved with data matching between their data system and JARD every two months.
- 2 Total outstanding amount includes accrued interest.

Source: National Audit Office analysis. Data taken from Joint Asset Recovery Database (September 2013)

Appendix One

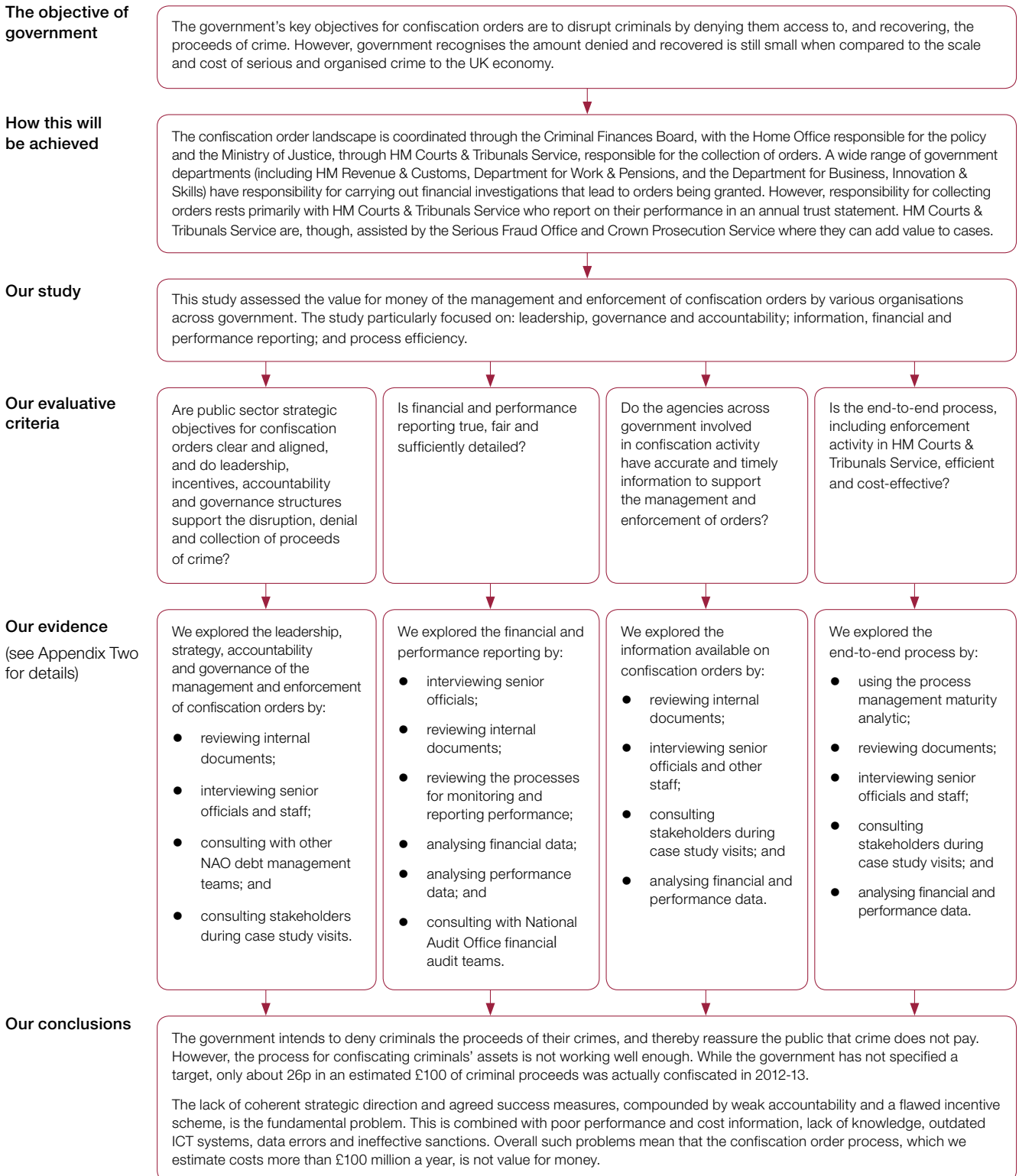
Our audit approach

1 This study assessed the value for money of managing and enforcing confiscation orders by various organisations across the criminal justice system. We reviewed:

- the leadership, incentives, accountability and governance structures in place and whether these support the objectives of confiscating proceeds of crime from criminals;
- whether the agencies involved in confiscation activity have accurate and timely information to help to manage and enforce orders;
- whether the end-to-end process, from investigation through to enforcement, is efficient and cost-effective; and
- whether financial and performance reporting is sufficiently detailed and clear.

2 Our audit approach is summarised in **Figure 21**. Our evidence base is described in Appendix Two.

Figure 21
Our audit approach



Appendix Two

Our evidence base

1 We reached our independent conclusions on the administration of confiscation orders following our analysis of evidence collected between June and October 2013. Our audit approach is outlined in Appendix One.

2 We examined the leadership, strategy, accountability and governance structures in place to assess whether these support the objectives of confiscating proceeds of crime from criminals:

- We reviewed around 170 internal and published documents, such as board minutes and strategy documents. These included the national confiscation order enforcement best practice guide, the government's *Serious and Organised Crime Strategy*, and management information from a range of bodies. We also reviewed reports by other bodies, such as the Cabinet Office and the criminal justice inspectorates, on confiscation order performance across government.
- We interviewed senior officials and other staff across a range of organisations, as outlined in Appendix Three.
- We worked closely with our teams involved in debt management to assess the cross-government coordination and sharing of best practice in debt management.

3 We also assessed the information available on confiscation orders by carrying out additional analysis of financial and performance data:

- We calculated the full, direct cost of the end-to-end confiscation order process (from issue to collection) by collating data from all the key stakeholders in England and Wales. This data was collected through a series of interviews, document review, and financial analysis of both internal and published quantitative sources.
- Given the limited cost data that was available, our assumptions included time-apportioning confiscator salaries to direct work on confiscation, judges' preparation time and the average sentences served by offenders for not paying the confiscation order. We provide more details in our online methodology appendix.

- We carried out a wide range of analysis of data held in the key databases utilised in order to assess the quality, timeliness and availability of data. In particular, we analysed data from the Joint Asset Recovery Database (JARd) on impositions, collections, process timings and sanctions. We also carried out a time-recording exercise to measure the inefficiencies of HM Courts & Tribunals Service's Confiscation Order Tracking System (COTS).
 - We also tested a small sample of 11 orders (totalling an order amount of £192 million) by reviewing case files evidence and performance information to determine the accuracy of order documentation and the quality of evidence held. We supplemented this with analysis of JARd data on the top 200 cases, both by order size and total amount outstanding.
- 4 We explored the efficiency and cost-effectiveness of the end-to-end process of managing and enforcing confiscation orders. We used the principles from our cross-government process management maturity analytic for all interviews and case study visits:
- We carried out case study visits at four of the eight HM Courts & Tribunals Service regional confiscation units, two of the nine regional asset recovery teams, as well as the Serious Fraud Office, Crown Prosecution Service and Serious Organised Crime Agency (now National Crime Agency). Visits involved a series of semi-structured interviews, a review of performance information and ICT systems, and a review of confiscation and restraint order cases.
 - We analysed all of our client and case study interview data using specialist qualitative data analysis software.
 - A member of our process management team also attended two visits to regional confiscation units and provided an assessment within the analytics' five main areas: strategy, information, people, process and continuous improvement.
- 5 We explored the appropriateness of financial and performance reporting compared to good practice and by working with our financial audit teams. We also interviewed senior officials and other staff on these issues, reviewed a range of related documents, and analysed relevant financial and performance data, primarily from JARd and Libra.

Appendix Three

Our stakeholders

Organisation	Type of stakeholder
Home Office	Policy owner.
UK Central Authority	Deal with international requests, including on confiscation and restraint.
Serious Organised Crime Agency	Now subsumed within the National Crime Agency and responsible for training and accreditation.
Ministry of Justice	Responsible for government policy on the criminal, civil and family justice systems for England and Wales.
HM Courts & Tribunals Service	Overall responsibility for enforcing orders and reporting on them in the annual trust statement.
National Offender Management Service	Responsible for prisoners, including those with confiscation orders.
Legal Aid Agency	Provide legal aid to those subject to confiscation proceedings, including the administration of the means testing system used for legal aid.
Crown Prosecution Service	Responsible for prosecuting cases, as well as some enforcement.
Serious Fraud Office	Responsible for investigating, prosecuting and enforcing some complex, high-value cases.
HM Revenue & Customs	Carry out investigations and assist HM Courts & Tribunals Service with some enforcement.
Department for Work & Pensions	Carry out confiscation investigations.
Association of Chief Police Officers (ACPO)	Brings together the expertise and experience of chief police officers from the United Kingdom, including on organised crime and asset recovery.
Regional asset recovery teams (RARTs)	Home Office funded and responsible for investigating and enforcing some complex cases.
Police forces	Carry out criminal and financial investigations on a wide range of crimes and criminals.
High Court judges	Mainly deal with confiscation and restraint appeals.
Crown Court judges	Make judgments to grant confiscation orders.
Magistrates	Make judgments on enforcement processes, including imposing default sentences.
Receivers	Appointed by government agencies to either manage or collect criminal assets.
HM Inspectorate of Constabulary	Independently assess police forces and policing activity, including some work on confiscation and restraint orders.
HM Crown Prosecution Service Inspectorate	Independently assess the Crown Prosecution Service, including some work on confiscation and restraint orders.
Debt professionals	Private sector experts in collecting debt.



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