



National Audit Office

Report

by the Comptroller
and Auditor General

Criminal Justice System

Confiscation orders: progress review

Key facts

£155m

collected by enforcement agencies from confiscation orders in 2014-15 (£133 million in 2012-13)

£1.61bn

total debt outstanding from confiscation orders at September 2015 (£1.46 billion at September 2013)

£203m

HM Courts & Tribunals Service estimate of realistically collectable debt – 2014-15 Trust Statement (£177 million in 2012-13)

2014-15	change from 2012-13	
5,924	-468 (7% fall)	confiscation orders imposed
1,203	-165 (12% fall)	number of restraint orders used to freeze offenders' assets
At September 2015	change from September 2013	
45%	+4 percentage points increase	overall enforcement rate of all confiscation orders imposed
22%	+4 percentage points increase	enforcement rate for confiscation orders of £1 million or more
1,358	-84 (6% fall)	number of accredited financial investigators training or trained to use the full range of confiscation order powers
5%	the proportion of debt outstanding of the top 10 orders by value that enforcement agencies estimate is collectable (£15.5 million out of £285 million) as at September 2015	
£300 million	HM Courts & Tribunals Service's estimate of the value of assets belonging to offenders with confiscation orders which are overseas	
£100 million	our estimate of the cost of administering the end-to-end confiscation order process	

Note

1 Figures from 2012-13 as reported in our previous study: Comptroller and Auditor General, *Criminal Justice System: Confiscation Orders*, Session 2013-14, HC 738, National Audit Office, December 2013.

Summary

1 In December 2013 we reported in *Criminal Justice System: Confiscation Orders* on the government's administration of confiscation orders, concluding that the process was not working well enough and did not provide value for money.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.

2 In January 2014 the Committee of Public Accounts (the Committee) held a hearing into confiscation orders based on our report and then published a critical report of its own in March 2014.² The Committee's report similarly concluded that the various bodies involved in confiscation orders had failed to put an effective system in place, that not enough confiscation orders were being imposed, and that not enough was being done to enforce orders once they had been imposed.

3 This report reviews the progress that the criminal justice bodies have made in reforming the confiscation orders system since early 2014. It considers the barriers that are still preventing further and faster progress, and how they can be overcome. It reviews specifically progress made in:

- identifying and investigating orders (Part One);
- enforcing orders (Part Two); and
- strengthening governance and strategic coherence (Part Three).

Background

4 Courts impose confiscation orders only on convicted offenders, with the amount of the order based on 'criminal benefit'. The 2002 Proceeds of Crime Act (the 2002 Act), which is the main legislation underpinning confiscation,³ defines criminal benefit 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 6 years can be included in an order, and the burden is on the offender to prove the authorities' estimates are wrong. This tough legislation underscores successive governments' ambitious goals over the past 15 years to deprive criminals of their proceeds of crime.

¹ Comptroller and Auditor General, *Criminal Justice System: Confiscation Orders*, Session 2013-14, HC 738, National Audit Office, December 2013.

² HC Committee of Public Accounts, *Confiscation orders*, Forty-ninth Report of Session 2013-14, HC 942, March 2014.

³ The 2002 Act also introduced other means of asset recovery including civil recovery, cash forfeitures and tax recovery on criminal proceeds.

5 The Home Office is responsible for the government's confiscation policy, but operationally a number of other bodies across the criminal justice system are responsible for investigating, prosecuting and enforcing confiscation orders (**Figure 1**). These bodies coordinate their work through various formal and informal agreements in conjunction with a joint 'best practice guide' on implementing the 2002 Act. The overall system is governed by the multi-agency Criminal Finances Board (the Board). This is made up of representatives from many of the bodies involved and is chaired by a Home Office minister. We estimate that the bodies involved together spend about £100 million on administering confiscation orders each year.

Previous report findings and recommendations

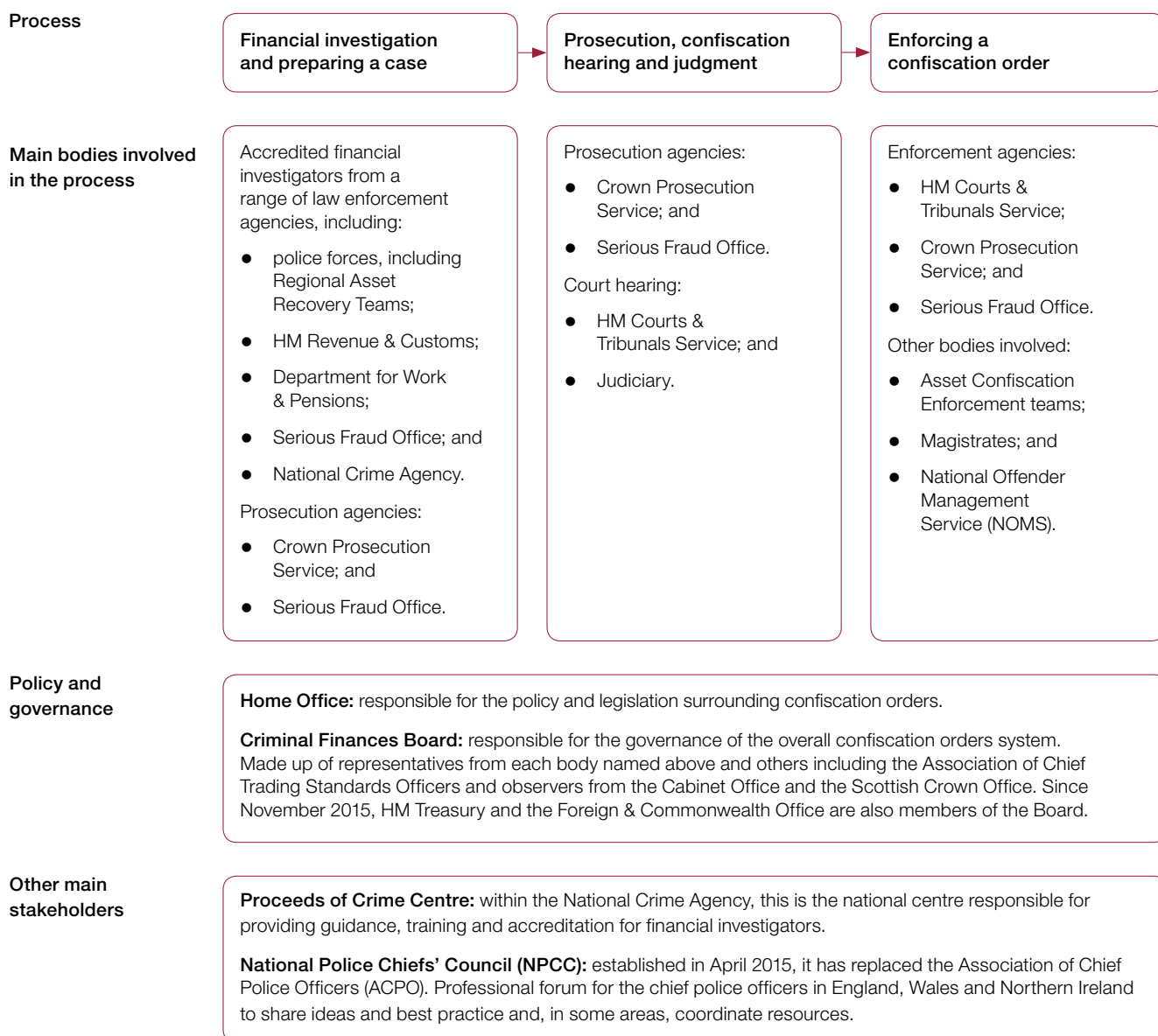
6 In practical terms only a very small proportion of criminal gains can ever be confiscated. This is because much crime is not reported, criminal gains are often disposed of quickly or transferred out of reach, and many criminals are determined to keep as much as they can regardless of the sanctions made against them. In practice, therefore, confiscating assets often requires law enforcement officers to show skill, determination and persistence.

7 Nevertheless, in our 2013 report, we found that the actual amount confiscated in 2012-13 amounted to an estimated 26p in every £100 of criminal gains generated. We concluded that this was too small, given the tough legal framework, ambitious government goals and weaknesses in a number of areas across the confiscation order process. In particular we identified:

- no coherent overall strategy for confiscation orders with no agreed success measures;
- a flawed incentive scheme and weak accountability;
- a lack of good performance data or benchmarks to support decision-making;
- insufficient awareness of proceeds of crime and its potential impact;
- operational issues such as inaccurate and incomplete data, outdated ICT systems and poor joint working between the different bodies; and
- ineffective sanctions for non-payment.

Figure 1

Main bodies involved in administering confiscation orders

**Notes**

- 1 Further details on the bodies involved can be found in Appendix Three.
- 2 Financial investigators are also expected to provide support during the confiscation hearings and to help with enforcement.
- 3 Other bodies include the **Legal Aid Agency**, which manages legal aid for offenders subject to confiscation proceedings.

Source: National Audit Office analysis

8 The Committee identified similar issues in its report of March 2014, finding overall that “poor implementation of the confiscation order scheme has severely hampered its effectiveness”. In both its January hearing and its subsequent report the Committee expressed its expectation that the administration of confiscation orders would be urgently transformed, so that bodies would make much more use of orders, and their enforcement rates would be considerably higher. The Committee’s recommendations were similar to those in our report, covering six areas across the system:

- better governance and strategy;
- more use and awareness of orders;
- better enforcement operations;
- more effective sanctions;
- better performance and cost information; and
- a more effective incentive scheme.

Appendix Four sets out both the Committee’s and our recommendations in full.

9 The government accepted all the Committee’s recommendations in June 2014, stating that necessary changes would be made in 2014 and 2015.⁴ The main vehicle for change was to be a new Criminal Finances Improvement Plan, published in June 2014. This plan set out 11 objectives covering the whole administrative process, and the government set a target of March 2015 for its implementation (see Appendix Five). The bodies making up the Board took collective responsibility to achieve this, with different bodies taking ownership for implementing individual sub-objectives. The Board has since revised this plan in June 2015 with additional objectives and revised milestones.

Key findings

Overall progress against recommendations

10 The criminal justice bodies involved have made some progress against most of the Committee’s recommendations, but in only one have they made the progress the Committee expected, and the system has not been transformed.

Despite agreeing to implement all the Committee’s six recommendations by the end of 2015, we consider that the criminal justice bodies have only fully addressed one of them: strengthening the sanctions for non-payment. The remaining areas are at best only addressed partially. Against their own timetable, the bodies on the Board have not met the target date of March 2015 for implementing the original Criminal Finances Improvement Plan, which acted as the main vehicle for change.

The rest of the key findings, along with Appendix Four, gives more detail on the individual recommendation areas.

4 HM Treasury, *Treasury Minutes*, Cm 8871, June 2014.

Governance and strategy

11 The Criminal Finances Improvement Plan has helped galvanise efforts to improve the enforcement of orders since its launch in 2014, but it does not set out agreed success measures or make clear the priority of the government's objectives for confiscation. We found in 2013 that bodies pursued different objectives for confiscation, for example maximising income or disrupting crime, leading to negative consequences such as inconsistency in the crimes or orders pursued. We and the Committee therefore recommended a new strategy should prioritise objectives to make the best use of scarce resources. The Home Office has decided, however, that central direction on such matters would distort operational decision-making and that decisions on the use of confiscation orders should be left to local law enforcement agencies (paragraphs 3.8 to 3.12).

12 Some improvements have been made to governance and accountability of confiscation orders, but structures are still not strong enough to bring about the significant change that the system requires. The ability to use published financial statements to hold individual bodies to account has improved since 2013, with more detail in individual bodies' accounts about their activity and areas of enforcement responsibility. Following also our recommendation for more effective governance, a Home Office minister now chairs the Board, which itself now has a wider membership, amounting to more than 20 representatives from across government. But the Board reports to a more senior board and has an oversight-only role, which does not allow it to make strategic changes. Additionally, financial statements still do not contain information on confiscation order cost and performance, which could further help transparency and therefore accountability (paragraphs 3.3 to 3.7).

Use and awareness of orders

13 The Board has not met its commitment to increase the profile of confiscation orders among law enforcement agencies, particularly police forces. Despite being an objective in the Criminal Finances Improvement Plan, the Board recognises that it has made little progress in raising awareness of confiscation orders. For example, the Board finally agreed its communications framework in June 2015, 10 months after the Home Office had planned. The Board has also not issued guidance on confiscation order selection criteria to help bodies identify all potential confiscation order cases. It had promised to do this by the end of 2014 in response to the Committee's recommendation. Greater awareness would encourage more use of confiscation orders, but use has decreased: in 2014-15, 5,924 orders were imposed compared with 6,392 in 2012-13, a 7% reduction (paragraphs 1.2 to 1.4 and 1.8 to 1.13).

14 Competing priorities have also affected the push to increase confiscation

order use. More widely, the government's aspiration for law enforcement agencies to treat confiscation orders as a priority has become increasingly difficult to achieve for many bodies. For example, most police forces do not consider asset recovery a priority compared to other areas of law enforcement, such as tackling child abuse and countering extremism. The Board is concerned that fewer convictions for financially motivated crimes may affect the number and value of future confiscation orders. The Home Office has also stopped protecting the funding for the police's regional asset recovery teams (paragraphs 1.6 and 1.7).

Enforcement operations

15 The criminal justice bodies have met the Committee's recommendation to focus on better enforcement of existing orders, particularly on priority cases.

The bodies' improved understanding of the reasons for poor enforcement of orders, and better multi-agency joint working with new dedicated enforcement teams, have together helped bodies improve overall enforcement rates over the past 2 years. Between them the bodies collected £155 million in 2014-15, the highest amount collected to date, continuing the trend of year-on-year increases. This compares with £133 million in 2012-13, which is an increase of more than 16% (£22 million) in 2 years (11% after inflation). The enforcement rate against all orders has also increased from 41% to 45% in the same period (paragraphs 2.3, 2.4 and 2.6 to 2.8).

16 Law enforcement and prosecution agencies, however, have not increased their use of early action, with fewer restraint orders used and fewer financial investigators available than 2 years ago.

In our previous report we identified the link between early action and successful enforcement, and the Committee recommended that law enforcement agencies should work together to ensure early use of both financial investigators and restraint orders. But there are now 6% fewer confiscators (fully accredited financial investigators) than there were 2 years ago, which has reduced the capacity needed to help recover high-value orders. The use of restraint orders to freeze an offender's assets has also fallen by 12% over the same period and 36% since 2010-11, although in 2015-16 this trend has started to reverse (paragraphs 1.15 and 2.21).

17 More could be done to reduce existing confiscation order debt, which has risen by £158 million (11%) to £1.61 billion in the past 2 years.

Much of the debt now relates to orders at least 5 years old and enforcement agencies have low expectations of recovery. Overall, in summer 2015, HM Courts & Tribunals Service assessed that only £203 million (12%) of the total debt was realistically collectable. The criminal justice bodies are putting in place changes that may assist in higher recovery of both new and existing orders, including greater engagement with the financial services sector and increased focus on overseas assets. There is, however, potential for even more recovery if there is further overseas action and changes in other parts of the law, and also better judicial training (paragraphs 2.5, 2.11 to 2.16, 2.20 and 2.21).

Sanctions

18 The Home Office, working with the Ministry of Justice and others, has strengthened the sanctions regime for non-payers of confiscation orders. In its 2014 report the Committee concluded that the prevailing sanctions regime did not work and should be reformed. The Home Office has subsequently introduced new legislation, the 2015 Serious Crime Act, which contains longer default prison sentences for non-payers as well as stronger discretionary powers for judges, such as the ability to impose travel bans. With the legislation enacted in summer 2015, it is still too early to conclude whether these changes will be successful. The mandatory application of 8% penalty interest on unpaid order amounts, which we concluded in 2013 was ineffective, has not changed. Total accrued penalty interest on all orders now stands at £471 million, 29% of the total outstanding debt (paragraphs 2.9 and 2.10).

Performance information

19 The criminal justice bodies have made limited progress improving performance and cost information, although basic data now contain fewer errors. Despite the Committee's identification of the weaknesses two years ago, criminal justice bodies still lack the information required to demonstrate the impact of confiscation orders on criminal justice outcomes, such as disrupting crime. Individual bodies have made some progress but without good performance and cost information they cannot make cost-effective assessments on what actions to take in each case. Ongoing improvements to ICT systems, including in particular the Joint Asset Recovery Database, have ensured that basic data on confiscation order activity are more accurate (paragraphs 2.15 and 3.13 to 3.16).

Incentive scheme

20 The Home Office has not properly reformed the Asset Recovery Incentivisation Scheme (ARIS), which remains ineffective. The Home Office has made changes following a consultation of all recipients, including using ARIS funds to invest in specific asset recovery projects, and it considers that it has achieved its objective of reforming the scheme. There is also now better disclosure of how bodies spend incentive scheme monies. The scheme, however, continues to reward bodies based only on the confiscation order income achieved, rather than the level of crime disrupted or other objectives. Other weaknesses, including not linking effort to reward, also remain although the Home Office is looking at increasing the funding allocations to police forces from 2016-17 (paragraphs 3.19 to 3.23).

Conclusion

21 Since 2014 the criminal justice bodies have improved how they administer confiscation orders, with greater focus on enforcement and better joint working across bodies. This has led to a £22 million (16%) increase in confiscated income in 2 years and the highest amount collected to date. Other changes, such as stronger sanctions, that could potentially improve performance, have also been introduced.

22 But the Committee of Public Accounts expected the confiscation order system as a whole to have been transformed by the end of 2015, and this has not happened. The criminal justice bodies have not met five of the Committee's six recommendations, despite agreeing to do so by the end of 2015, and they have not met their ambitious targets for implementing the Criminal Finances Improvement Plan. As a result, many of the fundamental weaknesses in the system identified two years ago remain. The number of orders imposed has fallen by 7% and remains a tiny fraction of total crimes. There are also fewer financial investigators and fewer restraint orders used, both crucial to successful enforcement.

23 This is a disappointing result. All of the criminal justice bodies involved will need to show more determination and urgency to implement the Committee's recommendations, and address the deeper systemic problems surrounding the management of confiscation orders. Only by doing this will the full potential of confiscation orders be realised, and value for money achieved for the significant resources invested in the system.

Recommendations

- a Working with other bodies, the Home Office should clarify the objectives of confiscation orders and their relative priorities.** These objectives should be supported by agreed success measures and an incentive scheme that aligns with them. They should also cover all crime types and not just serious and organised crime.
- b All bodies involved should, as a priority, develop a strong evidence base to help develop agreed success measures and improve their knowledge of what works.** Bodies should build on the recent improvements in information and ICT systems to develop the data they collect on confiscation orders, for example to measure their disruptive effect on crime.
- c The Home Office, in conjunction with the other bodies, should review the effectiveness of the confiscation orders accountability framework, including strengthening governance structures and improving disclosure of responsibilities and costs.** The review should include the role of the Criminal Finances Board, given its increasing remit and membership. It should also consider how Parliament and the taxpayer can be provided with more information on who is responsible for what within the confiscation orders system, and what each body involved spends on administration.

- d The Criminal Finances Board should implement its communications plan to raise the profile of proceeds of crime within law enforcement agencies with urgency.** In its revised improvement plan, the Board has already recognised that it needs to do more in this area given the poor progress so far. The Board should align its core messages with the agreed priorities and success measures. It should also agree and publish standard criteria to help law enforcement officers decide which criminal cases should be considered for confiscation proceedings.
- e The criminal justice bodies should take a concerted approach to tackling the enforcement areas where there is potential for higher recovery.**
This should include:
- using more restraint orders as early as possible in criminal cases;
 - developing the skills and capacity needed by the judiciary and law enforcement agencies to investigate and assess the more complex legal and financial arrangements that sophisticated offenders use to hide their assets;
 - using the Foreign & Commonwealth Office more to better engage other countries on offenders' assets held overseas, particularly with the department now part of the Criminal Finances Board; and
 - considering changes in the law to stop offenders hiding illicit assets under other peoples' names, so that these assets can be recovered by law enforcement agencies.