

Police Foundation Conference

Money Laundering to Reduce
Organised Crime

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It is worrying that so many gaps exist in our knowledge of organised criminal enterprises and markets. Without detailed, sophisticated analysis of this tier of criminality forces cannot target effectively those who pose the greatest risk to communities and the economy

Dennis O' Connor HMIC 2005, Para. 1.19

Terminology

- Definitions of Money Laundering
- Confiscation
- Forfeiture/deprivation (Non POCA powers)
- Cash Seizure/Forfeiture
- ‘Criminal Lifestyle’ – Schedule Two
- Restraint

Key things to remember 'Money Laundering'

- No mention in law of terms 'money' and 'laundering'
- Don't close your minds to this just being about cash
- It is similar to handling stolen goods but the burden of proof is lower – 'knowing or suspecting' as opposed to 'knowing or believing'
- The legislation is designed to operate at all levels of criminality – this is not just for complex criminality
- UK law is excellent – you can build a 'stand alone' money laundering case without proving the predicate offence.
- CPS guidance states that this legislation can be used for anything above what they describe as 'De Minimis' – that is for anything except the most minor offending
- Two of the offences (327 & 328) also for the finding of 'criminal lifestyle' – therefore just one offence can allow the FI's to confiscate everything the individual has had over the last 6 years (the same does not apply to one offence of handling)

'Criminal Property' Offences (Money Laundering)

- S327 - Conceals, Disguises, Converts, Transfers or Removes criminal property
- S328 – Being concerned in an arrangement to facilitate acquisition, retention, use or control of criminal property by or on behalf of another
- S329 Uses, Acquires or Possesses criminal property

What is 'Criminal Property' ?

Section 340(3)

Property is 'criminal property' if:-

- (a) it constitutes a person's benefit from criminal conduct or it represents such a benefit (in whole or part and whether directly or indirectly), and
(b) the alleged offender knows or suspects that it constitutes or represents such a benefit.

Section 340(2)

Criminal conduct is conduct which:-

- (a) constitutes an offence in any part of the United Kingdom, or
(b) would constitute an offence in any part of the United Kingdom if it occurred there.

Case Study – S327

- Offender (A) asks his girlfriend (B) to hide the proceeds of his drug dealing
- She hides it under the sink at her home
- When the amount becomes significant he asks her to exchange the sterling cash for Euros
- He then uses it to go to Holland to buy more drugs
- On his return he exchanges some of the drugs for a vehicle

- A transfers ‘criminal property’ by giving girlfriend the money
- B conceals ‘criminal property’ (Sec 327)
- B converts ‘criminal property’ sterling to Euros (Sec 327)
- A then takes cash (criminal property) to Holland and buys drugs – removes from England and Wales
- By exchanging drugs for the vehicle - A commits the offence of converting ‘criminal property’ – no money involved!!

Case Study – S328

- Husband and Wife are dentists
- Wife defrauds NHS of £400,000
- Thinking the amount in her account will raise suspicion and with the knowledge of her husband she transfers £200,000 electronically to her husband account
- Husbands liability
 - Can be prosecuted for an offence under S328 – Arrangement
 - Cannot be prosecuted for Handling Stolen Goods – no physical property
 - Conviction for the one offence allows for finding of ‘criminal lifestyle’ – court can use assumptions for the purposes of confiscation
 - Likely outcome is that court will only confiscate the £200,000 unless there is indication of other offending

Building a 'stand alone' money laundering case

Building a ‘Stand alone’ Money Laundering Case

“Irresistible Inference”

- Previous convictions/bad character
- Covert meetings
- Anti – surveillance tactics
- Unexplained cash lodged in accounts
- Legitimate income?
- Evidence of Expenditure/Wealth
- If expenditure more than income – what is the source of the rest?
- Provable lies
- False records
- Use of third parties
- No legitimate explanation for ownership of property

BUT!! – do not confuse with ‘assumptions’ for confiscation

Restraint

Restraint

- This is critical in protecting assets from dissipation
- Restraint can also act as a valuable disruption tool in its own right
- Can be obtained at the local Crown Court
- Can be obtained at the ‘instigation of the investigation’ – be careful about timing
- Responsibility for management lies with the CPS
- Restraint should only be used where there is a clear anticipation of future confiscation
- The orders are international

‘Criminal Lifestyle’ and impact on Confiscation

‘Criminal Lifestyle’ and the assumptions – Schedule Two and Sec 75 POCA

- One drug supply offence
- One money laundering offence (Sections 327 & 328)
- One offence of directing terrorism
- One offences of people trafficking
- One offence of arms trafficking
- One offence of counterfeiting
- One offence involving intellectual property crime
- Prostitution and child sex offences
- One offence of blackmail
- Offence committed over a period of 6 months and over £5000 benefit
- Proceedings in which convicted 3 or more other offences from which there is benefit or;
- In the period of 6 years prior to start of current proceedings he has been convicted of at least 2 other offences from which there is benefit

Additional Powers - Forfeiture/deprivation

- In basic terms this relates to the seizing and forfeiture of items used in the commission of crime.
- Sec 27 Misuse of Drugs Act 1971
- Sec 143 Powers of Criminal Courts (Sentencing) Act 2000
- Sec 60A Sexual Offences Act 2003

- Useful legislation that is complimentary to the confiscation regime and can have significant impact

Case Studies

Case Study – ‘Untouchable’

- Johnny Daniels – subject of numerous failed investigations
- Intelligence identified over £100,000 in a bank account
- Daniels was providing ‘security’ to building sites
- RART lawyer identified that Daniels was not registered under SIA so all funds derived from this work were ‘criminal property’
- Restraint would have made the investigation overt at a delicate time
- Good relationship with bank to monitor assets
- Notice that Daniels was going to remove his assets
- Decision made to arrest
- Subsequent investigation into money laundering identified evidence of connection to murder
- Convicted of conspiracy to murder and money laundering
- Sentence 14.5 Years
- Confiscation order – nearly £500,000
- If he doesn’t pay he will receive an additional 3.5 years in prison

“Its not just guns and powder!”

- Criminal (O’ Donnell) was so called ‘businessman’ who ran a waste company
- Company illegally dumped tons of dangerous waste in an illegal landfill
- Environment Agency and London RART prosecuted for EA offences and money laundering
- Money laundering attracted the longer prison sentence – 4.5 years
- Confiscation was £917,000

- Is this organised crime?
- Huge illegal profits
- Significant danger to the public
- Potential for poisoned water – potential future impact
- Legitimate companies forced out of business
- Money Laundering powers provided more robust response and simplified confiscation process

Organised Crime Group Mapping

Ready Reckoner – Criminal Activity

Controlled drugs	Fraud & financial crime	Specialist money laundering	Organised theft	Commodity importation or supply	Sexual offences	Organised immigration crime	Environmental crime	Violent crime
importation, manufacture or supply of multi-kilo (class A) per transaction	fraud / financial crime activity nets > £5 million over six months			importation or supply of firearms, ammunition or counterfeit medicines	human trafficking for sexual exploitation or production of non consensual pornography	human trafficking or large scale multi-enterprise involvement		violence resulting in fatal or permanent injuries, rape, torture or kidnap
importation, manufacture or supply of single kilo (class A) deals			single theft of more than £30k or £120k over six months				environmental damage that threatens human life or extinction of CITES species	
importation, manufacture or supply of sub-kilo (class A) deals or large scale class B				importation or supply of high revenue or potentially dangerous substances		facilitation or small scale or single enterprise involvement		violence resulting in serious injuries or threats backed up with a reputation for violence
low level manufacture or supply of class B or large scale class C / cutting agents	fraud / financial crime activity nets between £500k & £5 million over six months	specialist money laundering in excess of £250k over six months	single theft of more than £10k or £40k over six months		high risk prostitution or distribution of non consensual pornography		environmental damage resulting in threat to human health or trafficking of CITES species	
low level involvement in class C / cutting agents. Subsistence street dealing	fraud / financial crime activity nets < £500k over six months	specialist money laundering less than £250k over six months	single theft of less than £10k or £40k over six months	importation or supply of mass market or low value / low revenue items	prostitution or distribution of unlicensed pornography	indirect involvement in process, production of documentation etc.	damage confined to local area with no direct threat to human health	violence resulting in minor injuries or where fear / threat of violence is used

Ready Reckoner – Intent and Capability

Violent intent	Corruption / subversion	Growth strategy	Cash flow	Multiple enterprises	Links to other OCGs	Geographic scope	Cohesion	Infiltration	Expertise	Tactical awareness
pre-meditated lethal discharge of firearms	politician senior officer in their pocket	set to gain / maintain major market share	lavish lifestyle quasi legit >£75k ready cash	multiple legit AND elicit enterprises	established long term successful cooperative partnership	operates at international level or majority UK	bonds of blood multi-generation	control over external organisations	specialist group members	have compromised sensitive tactics
spontaneous non-lethal offensive	cop or similar in their pocket	expanding criminal enterprise	good lifestyle £15-75k ready cash	multiple legit OR elicit enterprises	overlap with core group members	multiple force or control across large force	stable group membership	infiltration but not control	regular access to specialists	anti-surveillance suspected compromise
Unplanned non-lethal defensive	little interest outside of bribery	maintains criminal enterprise	profitable <£15k ready cash	might dabble in other things	peripheral links only no cooperation	one force or jurisdiction	fluid or chaotic group membership	attempted infiltration	limited use of external specialists	awareness gleaned from watching movies

Quality of OCGM data

- Concept is excellent
- Indications are that the data are not quality checked effectively – how good are the data?
- Used to produce all kinds of reports for Ministers – reliability?
- For money laundering the ‘tracker’ is becoming ever more complicated
- It has now become an analysts ‘toy’ instead of an effective prioritisation tool
- Currently a review is taking place – no idea as to findings

How much do we know?



What can we do about the intelligence gap?

- Accept that analysis suggests that our knowledge is not what it should be
- Stop and check the OCGM data and look at the source data
- Train ‘inputters’ more effectively – it’s not their fault – we haven’t taught them properly
- Accept that it is better to have smaller amounts of quality data than a lot of questionable data
- Analyse how much of the intelligence actually creates meaningful operational activity
- Have a better strategic focus on money laundering data – how much is available at a national level and what is the quality?

Trying to identify 'enablers' to disrupt a number of OGC's at the same time



Performance

What is 'performance'?

- Traditionally so called performance has been measured purely on 'asset recovery' outputs, namely value of assets recovered
- Although a concrete measure it represents the end of a very long process
- What does it tell you about what is happening today?
- Does it tell you anything about the use of the money laundering legislation?
- Does it tell you how good we are at investigating and prosecuting such offences?
- Does it allow you to measure the impact of the use of the legislation?
- If the answer to any of these questions is 'no' then should we make a change?

**MONEY LAUNDERING S327 – S329
POCA
OFFENCES RECORDED v PERSONS CONVICTED**

	Offences recorded by police	CPS convictions
2007/2008	1773	3820
2008/2009	2009	4551
2009/2010	2229	5180

Police Force data for ML offences compared to 'stealing' offences

Force	Total Arrests	ML	%	Total Crimes	ML	%
A	1467	16	1.09	6,447	14	0.22
B	756	13	1.72	2,480	3	0.12
C	2136	65	3.04	11,408	21	0.18
D	2412	23	0.95	14,103	5	0.04
TOTAL	6771	117	1.73	34,438	43	0.12

CRIME RECORDING

- System confused – one code for drug related ML and another for everything else
- Data was hard to get hold of and registrars had to ‘cleanse’ data
- Small number of forces could not report figures at all
- Initial analysis highlighted a few forces for further research on the basis of the data
- No correlation between CR data and CPS conviction data
- It appears that only a third of offences convicted are recorded
- There was little correlation between money laundering and handling offences
- There appeared to be little understanding of money laundering and the data was telling us little about the scale of offending
- Confusing counting rules

Counting Rules – Reasons for problems

- Lack of knowledge of offences
- Offences are hard to find within the system
- Secondary to other recorded offences – system ‘carries’ them through to conviction without need for recording
- Some agencies simply do not comply with counting rules
- Data points do not ‘talk’ to the next part of the process

- Is this important?

- What data is reported to the UN FATF?
- How is the UK judged as a viable economic centre?
- And these are just the cases we have actually detected!
- How good are we at prosecuting cases effectively and how good are we at turning such cases into confiscation?

Common Themes

BENEFITS OF FI WORK

- Potentially reduced investigation costs, time savings, revenue generation opportunities, and providing alternative ways of generating evidence

‘Surveillance teams are very expensive. One FI looking at that work would be cheaper. It saves resources and gives the option to prosecute without further investigation because you can pursue a standalone money laundering offence.’ (Financial Investigator)

- Officers were generally unaware of these benefits
- Creating revenue in itself was not considered a suitable motivation for using financial techniques, however confiscating criminal assets was thought to be important

‘The confiscation is what gets people to buy in to it.’ (Police Officer)

MONEY LAUNDERING LOW PRIORITY

- There was no pressure on front line to tackle money laundering

‘There are no targets for money laundering. That sends a message that it’s not as important for example as burglary or auto crime.’ (Financial Investigator)

- Not a priority because there are no ‘undetected’ money laundering cases
- Police officers consulted had rarely been involved in money laundering cases and as such it was not something they were made aware of

‘What we know about it is only stuff we pick up in everyday life e.g. films.’ (Police Officer)

- Involvement in handling of stolen goods offences was much more commonplace

MISCONCEPTIONS

- Relevant only when offences are serious, complex, of high value, involving overseas transaction and/or mafia type activity

‘There is a stigma attached to money laundering that offenders have a big flash house, off shore accounts but in reality it’s not. It’s simple.’ (Financial Investigator)

- Typically associated with money/cash rather than goods and assets
- Not ‘significant’ or ‘separate’ offence just a derivative of priority offences such as burglary or drug dealing
- The terminology ‘money laundering’ was felt to be misleading, particularly the reference to ‘money’

‘The terminology is wrong; if it was called criminal asset recovery we would have a greater understanding of it.’ (Police Officer)

NOT INVESTIGATED

- Other priorities, lack of knowledge or lack of resources, a secondary offence.

‘We encourage divisional staff to adopt the investigations but there is a lot of reticence. It’s more resource friendly to deal with other forms of crime.’ (Financial Investigator)

- Time consuming: obtaining documentation such as production orders and accessing information from organisations such as banks, DWP and HMRC difficult

‘The nature of investigating money laundering can be time consuming. Reading through bank statements, requesting information. It’s a big deal for an officer on a division to undertake that.’ (Financial Investigator)

- Seen as cumbersome and complex

‘There is a process for getting all the information and sending out the letters, it’s incredibly finicky.’ (Financial Investigator)

Incentivisation

Can incentivisation get in the way?

“With cash dangled like an apple on a stick to motivate a mule, some agencies go after cases that produce big cash rewards instead of pursuing more difficult and often more important cases where the prize is nothing but a conviction.”

Jeffrey Robinson, ‘The Laundrymen’ – commenting on the American experience in the 1990’s

Can incentivisation get in the way?

“The minute a Police agency begins to retain seized money their political masters will start slashing their budgets...the Police department had become a profit centre, another source of revenue...policing is...about serving and protecting the public.”

Chris Mathers, RCMP

“In the hands of the enlightened...”

- Targeted use of ARIS funds can have a positive effect if used to focus on specific elements of performance
- The provision of specialists at key places to assist local law enforcement is well evidenced
- With competing priorities financial investigator posts may shrink but not on the basis of the value of assets recovered
- There could be more use of specialists at a regional level – Regional Asset Recovery Teams?
- They have succeeded in using money laundering legislation and recovering available assets but government has cut budgets by @25% since 2010
- This is despite the RARTs being a cost neutral attack on organised crime
- All involved in the project want to do more and are ready with ideas
- Regional law enforcement (NCA/RART) supported by regional CPS specialist teams and specialist courts? Model for the future?
- Also use some more funds for crime prevention/diversion?

How targeted is the use of the ARIS funds?

- The Home Office do not prescribe the use of the funds
- How can the impact of the use of funds be measured?
- Can we focus deployment of funds at specific parts of the investigative/prosecution process for best effect?
- Do we know how the Home Office use their 50% share except on the RARTs and now the ROCUs?
- In difficult financial times the lure of cash is great!!
- Are we focussing on the asset rich instead of those who cause the greatest harm?
- If we do want to confiscate more cash isn't it time to focus more on quality investigation and the early deployment of 'financial investigation'?
- In order to confiscate assets you need a conviction first!!

Home Office research – Impact of financial investigation on organised crime

Conclusions

The findings suggest that:

- Financial investigation can have an indirect impact on organised crime at the intelligence gathering / evidence gathering stage.
- In some cases it can lead to more people being convicted for longer sentences for more offences.
- There are grounds for the emphasis of financial investigation to be on achieving prosecution, in addition to asset recovery.
- Particularly suitable for cases where:
 - The criminal activity generates a significant flow of financial transactions.
 - There is a degree of complexity and / or secrecy around the OCG, which means that conventional methods of investigation find it difficult to identify the extent of the criminality involved.
 - There may be only initial intelligence that criminality exists, but where the lifestyle led by those concerned does not appear to be derived from any legitimate income source.

Threats

Threats?

- Intelligence staff across law enforcement have not been provided with sufficient knowledge and skill to allow them to provide high grade intelligence that can lead to action
- Investigators (other than specialists) have not been given sufficient education about the subject to recognise opportunities to utilise the legislation to disrupt criminality
- Prosecutors have not been given sufficient training to provide a consistent service across the UK to allow for the proper application of the ML legislation (with a number of notable exceptions)
- Data is of insufficient quality in terms of intelligence and criminal justice processing to allow for an informed assessment as to whether key launderers associated with organised crime can be readily identified, nor does it allow for the identification of failings in the criminal justice process to allow for targeted improvements

Key Messages

- ‘Financial Investigation’ is about far more than the recovery of assets
- There are significant opportunities to add value to intelligence development and investigations by early consideration of ‘financial investigation’
- If you want to confiscate more then there is a need for quality investigation first – you cannot trigger confiscation without conviction
- ALL law enforcement staff need to have a basic understanding of the legislation and techniques – this is not the preserve of the specialists
- Financial investigation can be cost effective and save time – it is not the answer to all problems but should be used alongside other tactical options
- It is something that should be considered from the start of any investigation, not as an afterthought or for something “..after the real Police work is done”
- The money laundering element of POCA has not been fully utilised as a problem solving tool and there is a lack of understanding of the legislation