



**Police and Crime Plan Priority:** *Protecting from Harm*

**Title:** *Proceeds of Crime Act*

**Presented by:** *Jenny Birch*

**Purpose of paper**

1. The purpose of this paper is to describe the performance of West Midlands Police (WMP) against the Police and Crime Plan priority, 'Protecting from Harm', specifically the commitments around the use of the Proceeds of Crime Act 2002 (POCA). This paper is for discussion.
2. This paper will explain POCA, how it is used within WMP and some of the difficulties that the police face with financial investigation. The paper also provides regional and local performance information, as well as an understanding of the national picture and future direction for financial investigation.

**Background**

3. POCA provides for the confiscation or civil recovery of the proceeds from crime and contains the principal money laundering legislation in the United Kingdom.
4. The Police and Crime Plan identifies that to reduce crime, WMP should do all it can to take profit away from criminality, working in partnership with other agencies such as the National Crime Agency (NCA) and the Crown Prosecution Service (CPS).
5. WMP Economic Crime Unit (ECU) manage force level serious and organised crime financial investigations, whilst the Regional Asset Recovery Team (RART) based within the Regional Organised Crime Unit (ROCU) focus on complex or high value cases, cross jurisdictional asset recovery and complex money laundering investigations in support of regional priorities.

6. As a result of the paper 'Financial Investigation, A Baseline Report'<sup>1</sup>, a task and finish group is to be convened in order to map the capability for financial investigation across the region, in addition to understanding the pathway for such investigations from a local to regional level and to what extent financial investigation is used to disrupt criminal activity.

## **Introduction**

7. POCA sets out the legislative scheme for the recovery of criminal assets with three key provisions around:
  - a) Confiscation
  - b) Cash Forfeiture
  - c) Money Laundering

## Confiscation

8. A confiscation order is a post-conviction court order, which is value based rather than asset based. It does not confiscate property, but is an order to repay the value of the benefit the criminal has obtained as a result of the criminal offence or lifestyle. This negates the need for the prosecution to link a particular asset to specific criminality.
9. The starting point of any confiscation hearing is for the court to decide whether the defendant has benefited from 'general criminal conduct' (where it can be demonstrated that they meet 'criminal lifestyle' provisions) or 'particular criminal conduct' (from an individual offence).
10. If the defendant has benefited from 'general criminal conduct', the court is bound to consider that all of their income and expenditure over the previous six years, as well as the assessed value of any property they currently hold, is criminal benefit. Therefore, where these provisions are invoked, there is no need for the prosecution to prove that income, expenditure or assets are linked to a specific offence.
11. The defendant is given a set time to pay the order after which they are liable for interest and may be subject to a default custodial sentence for failing to pay.
12. In WMP, all applications for confiscation orders are made via the ECU which is part of the Force Criminal Investigation Department (FCID). Applications are made following referrals from investigators for cases where confiscation may be suitable or where cash is seized as part of investigation or other policing activity.
13. A recent example of a confiscation proceeding led by the ECU, is a case of mortgage fraud, instigated following a complaint from a bank and the Land Registry. The post prosecution confiscation investigation determined that the value of the criminality amounted to £630,215 and in December 2017, Leicester Crown Court issued two confiscation orders to the defendants, who were directed to pay the full sum or face a prison sentence of up to three years.

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<sup>1</sup> Internal paper by Megan Jones, Regional Policy Officer, Office of the PCC.

14. POCA also provides for restraint orders, which prevent a person subject to a criminal investigation or criminal proceedings, dealing with any realisable property to prevent the dissipation of assets that may be subject to a confiscation order.

#### Cash Forfeiture

15. POCA has provision to reclaim the proceeds of crime through civil cash forfeiture proceedings. It permits the recovery of criminal assets where no conviction has been possible, for example because individuals avoided conviction by remaining remote from the commission of the crimes from which they benefited or because they have fled abroad.

16. If the police find £1,000 or more in any type of currency, cheques or bonds, and suspect that it has come from or is intended to be used to commit crime, they can seize and detain the funds and apply for a forfeiture order.

17. A recent example of a cash forfeiture was following the seizure of a vehicle for not having a valid tax certificate. On a search of the Mercedes vehicle £4,010 was discovered in the glovebox. The driver of the vehicle stated that he had borrowed the car from a friend and did not know the cash was there. Enquiries identified the driver had been subject of a recent investigation into the supply of class A and B drugs by another force. No-one came forward to claim ownership of the cash and the driver did not attend court to contest the forfeiture application. The order was granted in his absence.

18. The case demonstrates how the burden of proof in such cases enables cash to be forfeited on the pretext that it is either from criminal activity or that it was intended to be used in criminal activity as it is based on the civil rather than criminal standard (balance of probabilities versus beyond reasonable doubt).

19. Once a confiscation order or civil recovery (cash forfeiture) has been granted, there is no further involvement in the enforcement of that order by WMP ECU. This is typically managed by Her Majesty's Court and Tribunal Service (HMCTS).

#### Money Laundering

20. A person commits a money laundering offence if they:

- conceal, disguise, convert or transfer criminal property or remove it from England and Wales or Scotland or Northern Ireland;
- enter into or become concerned in an arrangement which he or she knows or suspects facilitates the acquisition, retention, use or control of criminal property;
- acquire, use or have possession of criminal property.

21. Money laundering investigations are typically carried out against serious and organised criminals and may run in conjunction with other reactive and proactive investigations as part of a coordinated approach to tackle these criminals.

22. An example of a money laundering investigation led by the ECU is a case involving two defendants who were seen to engage in the exchange of a large quantity of cash (in excess of £100,000). After investigation the defendants were charged with Money Laundering and found guilty at Birmingham Crown Court two years later. A confiscation investigation was ordered by the Court and an order for forfeiture of £103,270 was made.
23. POCA also requires financial institutions and businesses in the regulated sector to report to the UK Financial Intelligence Unit (part of the NCA), any suspicions about criminal property or money laundering. Even if a person is not in the regulated sector they must report any suspicions if they come across suspicious activity through their trade, business or profession. These reports are termed Suspicious Activity Reports (SARs) and are communicated to WMP via an electronic system.
24. There are three types of SARs. Those that are submitted for intelligence purposes, those that pertain to disclosure in relation to money laundering (DAML) and 'vulnerability' related SARs. The latter type relates to reports of the suspected financial exploitation of vulnerable people, including exploitation in relation to modern slavery and human trafficking.
25. The National Police Chiefs Council (NPCC) has submitted a Police Innovation Fund bid to fund a Financial Intelligence Development Team that will review SARs in order to identify opportunities for police and partner intervention. If successful the team will be based within the RART.

#### Difficulties in relation to Proceeds of Crime Investigations

26. Typically confiscations and cash forfeiture investigations tend to run smoothly in line with judicial timescales.
27. Money laundering investigations can be prolonged due to the nature of the enquiries that may be required with financial institutions, identifying accounts or products that the defendant has used either in their name or others (for example they may have used a spouses accounts/phones) and reliance on external agencies (such as Her Majesty's Revenue and Customs) or expert witnesses.
28. Standalone money laundering investigations have the added complication that the investigator must prove the underlying criminality to the criminal standard. The investigator will often rely on an inference that the 'money' is derived from crime, which can be challenging to prove. Where it is a drugs case the underlying criminality is obvious, where it is standalone money laundering it is not.
29. Due to the scale and complexity of money laundering investigations, the required disclosure is necessarily time consuming and requires dedicated resources to ensure effective delivery.
30. The ECU are currently investigating a number of complex frauds that involve money laundering. For two of these cases, WMP have had two officers dedicated purely to disclosure for the last 12 months, working closely with the CPS. These

two officers represent 11% of the ECU investigative capacity. Therefore the greater number of complex investigations run by the ECU, the greater the disclosure demands and the reduced overall investigative capacity to progress new cases. However, the process of disclosure of complex economic investigations will hopefully be improved via suggested changes that will form part of the Efficiency and Effectiveness Review (EER).

31. WMP are investigating several possible IT solutions that would provide more appropriate document cataloguing and disclosure scheduling capabilities that will make it much easier for investigators to keep a track of the case and allows for a more efficient disclosure process in a similar way to how HOLMES2 is used to support homicide investigations.

### **NATIONAL PICTURE**

32. The Asset Recovery Incentivisation Scheme (ARIS) determines the percentage distribution of any monies that are recouped following the above described activity.

33. The breakdown of percentages is as follows:

a. Confiscation – Home Office 50%, Investigation 18.75%, Prosecution 18.75% and Enforcement 12.5%.

In the case of WMP led investigations, WMP is identified as the 'Investigation' agency and will receive 18.75% of the associated confiscation order receipts with CPS (Prosecution) receiving 18.75% and HMCTS (Enforcement) receiving 12.5%.

b. Cash forfeiture – Home Office 50%, Relevant Agency 50%

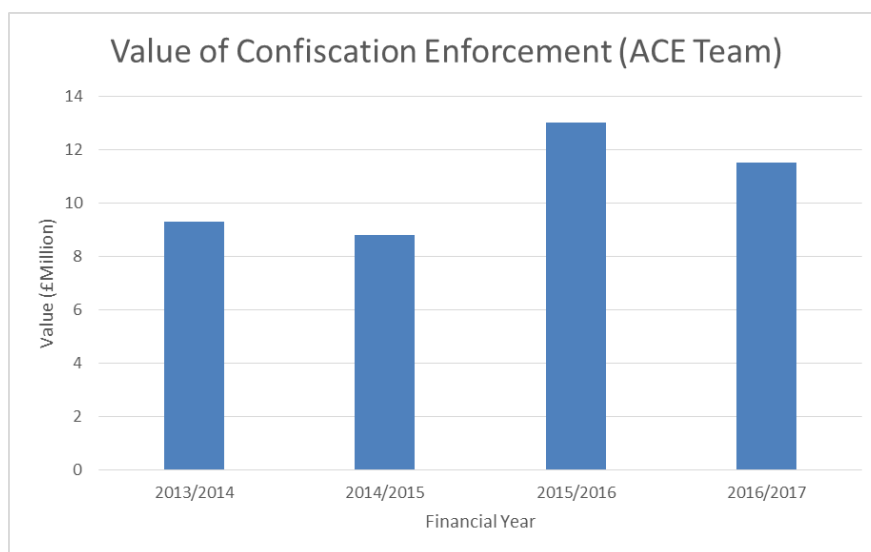
34. It should be noted that for 2017-18, Ministers agreed a continuation of the scheme to top-slice £5m of recovered assets for investment in key national capabilities, which should benefit the entire asset recovery community.

35. Furthermore, Ministers agreed that when ARIS receipts exceed the 2015/16 baseline figure of £184m, any Home Office shares above this figure will be returned to the Regional Asset Recovery Teams (RARTs).

36. As previously stated, WMP ECU does not enforce compliance with any granted confiscation order. However, the regional Asset Confiscation Enforcement Team (ACE) was created to ensure that confiscation orders are effectively enforced in addition to the work undertaken by HMCTS.

37. ACE is made up of Regional Organised Crime Unit (ROCU) staff (a police staff manager, two financial investigators and an intelligence officer) and CPS Proceeds of Crime staff (10 people in total including lawyers, caseworkers and administrators who service West and East Midlands and the Eastern region). Close partnership arrangements are in place with HMCTS but there are no officers embedded to ACE.

38. It is estimated that the work of the West Midlands ACE team has resulted in a 30-50% uplift in the successful enforcement of seizures for the region.
39. The team also invest heavily in revisiting already issued orders where there is an outstanding balance. It is estimated that 66% of their current workload is in this area.
40. The ACE project nationally demonstrates a very strong return on investment (£15 per £1 invested) and WM ACE contributes effectively to this. Asset recovery enforcement (which means how much actual money we get from criminals as opposed to value of orders) is now steady across the region at around £12 million per year compared to around £8/9 million pre-ACE.
41. ACE has achieved this by providing effective enforcement financial investigation to support CPS and HMCTS in enforcement proceedings. Prior to this, financial investigation support to enforcement was very sparse, tending to halt when the confiscation order was achieved.
42. Additionally, ACE are increasingly using POCA revisits to identify new assets for offenders with pre-existing orders which is both highly efficient, lucrative, and provides excellent offender management options.
43. The bar chart below sets out the amount of money resulting from ACE team enforcement activity from 1 April 2013 to 31 March 2017.



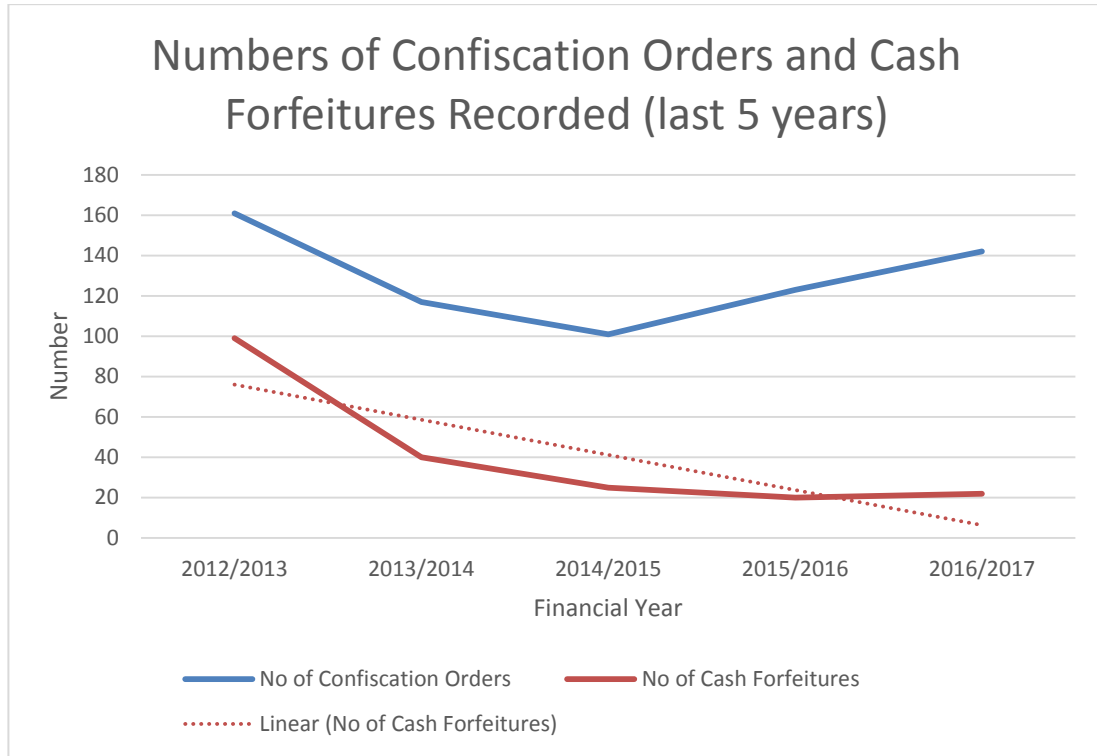
44. There are no current set thresholds to define which POCA investigations should be carried out at a local, regional or national level. However local, regional and national tactical tasking processes can be used to pass investigations between levels should this be necessary. Each tasking body will assess the request against their own competing priorities.

## LOCAL PERFORMANCE

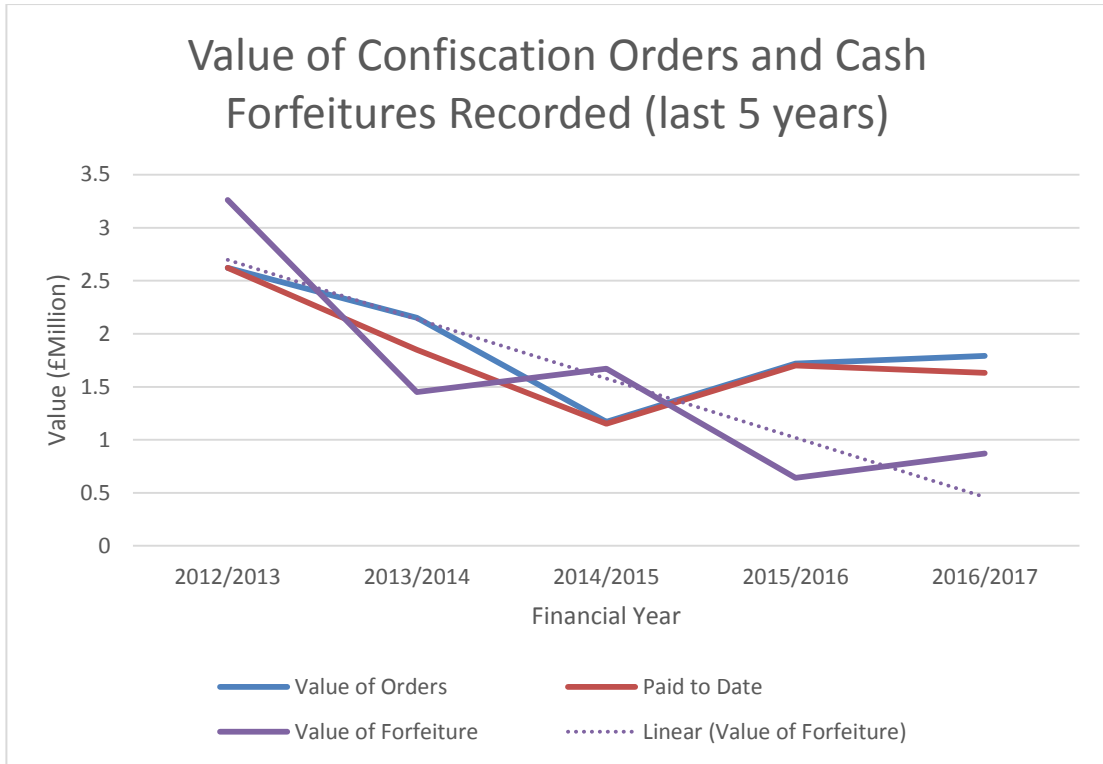
45. The majority of orders over the last five years have been generated by drug offences or money laundering offences connected with drug trafficking. 2012/2013

saw a substantial amount of work targeting drug related criminality. Now with extra emphasis on violence and vulnerability (such as child sexual exploitation), this has reduced the opportunities for confiscations and forfeitures or the high value headlines.

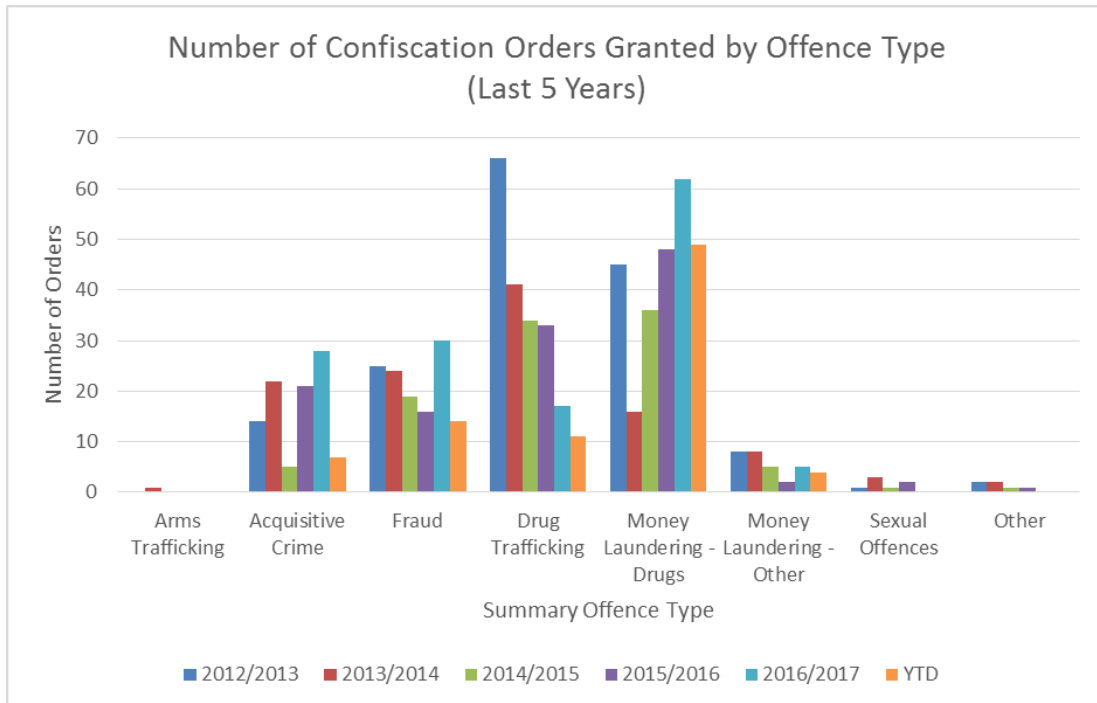
46. WMP Performance for confiscation orders and cash forfeitures granted over the last five years is outlined in the graphs below:



47. WMP Performance for the value of confiscation orders and cash forfeitures granted over the last five years is outlined in the graphs below:

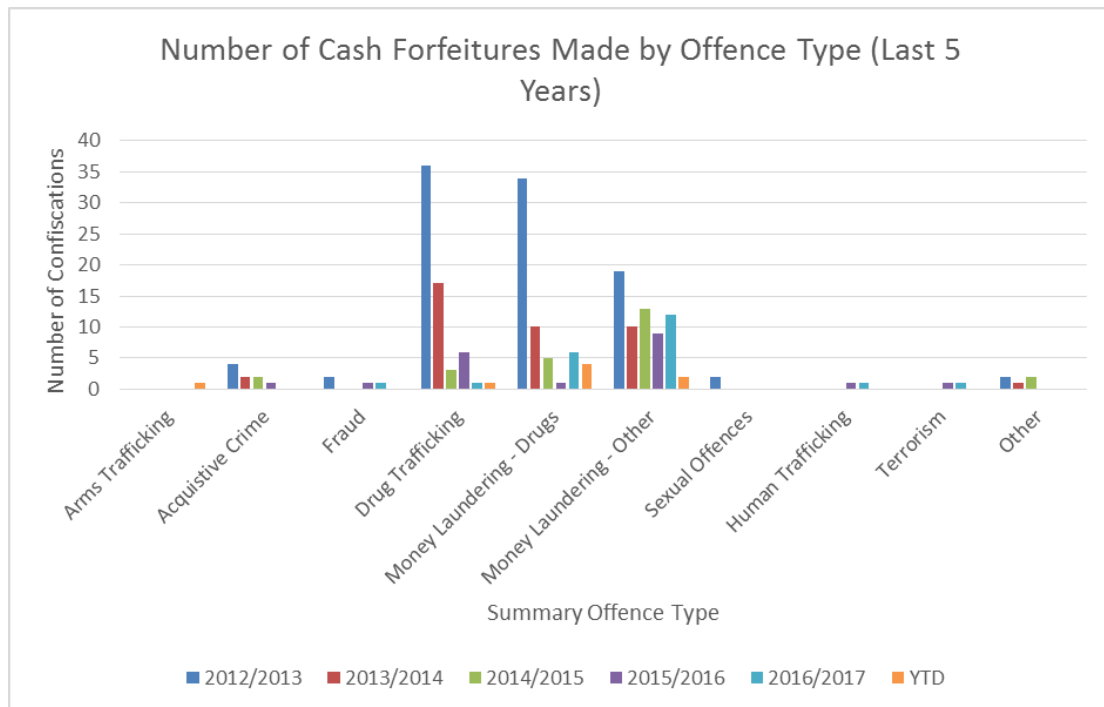


48. The bar chart below illustrates the same information broken down by offence type for confiscation orders granted over the last 5 years.



49. The bar chart below illustrates similar offence type information for cash forfeitures granted over the last 5 years.





50. Due to the often complex and prolonged nature of investigations where confiscation or forfeitures are possible, there can be a two to three year gap between the start of an investigation and a successful conviction/application to seize money. It is likely the current lower levels of confiscations have resulted from a reduction in the number of POCA appropriate investigations some time ago. Therefore delayed investigations can cause peaks and troughs to occur in terms of results which are reflected annually.

51. In line with other force departments, there has been approximately a 20% reduction in ECU staff over the last five years. This is due to a mixture of redeploying resources to tackle offenders exploiting the most vulnerable and the national reductions in police funding.

52. Changes in how WMP allocate crime recording/investigation have also changed due to force restructures and the introduction of Action Fraud (the UK national fraud reporting centre). Low level fraud used to be investigated by local teams, with dedicated teams concentrating on high level and more complex fraud investigations, but all fraud related reports are now directed to the ECU.

53. A recent focussed approach on serious acquisitive crime (SAC) directed by Force Tactical Tasking, is likely to increase the number of acquisitive crime confiscations over the next few months.

54. It is also the ambition to increase the value of confiscation orders and cash forfeitures in the forthcoming financial year, through an extensive internal education and communications programme, led by the ECU. This will equip investigators with the knowledge and confidence to use financial legislation more effectively with the appropriate support from the ECU.

55. The Regional Tactical Tasking and Coordination process has seen RART become involved in ROCU business noticeably more upstream, providing critical support to Firearms Trafficking, Human Trafficking and Modern Slavery investigations where sustained RART deployments have contributed strongly to the evidential chain, helping keep victims from harm.
56. An example of a RART led investigation into serious and organised crime is Operation Globe, which targeted the threat from the MSK Organised Crime Group (OCG), which was considered one of the most dangerous OCGs in the West Midlands. Previous criminal investigations had not been able to break down the OCG, so a new investigation strategy was created to look into the criminal finances of the OCG. Operation Globe 1 saw the principal member of this OCG convicted of tax evasion in 2013 and jailed for four years with a confiscation order valued at £2.2M. He remains in jail for a further 10 years for failing to pay this order as a result of the work carried out by the ACE team.
57. Operation Globe 2 resulted in further convictions in 2016 for conspiracy to defraud, concerning a huge family property portfolio which included the conviction of three further family members, plus a mortgage broker. They received a nineteen year jail sentence between them and confiscation orders valued at £13.5M.
58. This operation took almost seven years to complete (and enforcement is still ongoing) but the OCG is now dismantled and control measures are in place to manage the individuals in the future.

#### Allocation of funding

59. Once the assets have been recovered, POCA allows these assets to be reinvested in community based activity and/or to fund infrastructure which is intended to increase POCA recoveries. Each year WMP and the Police and Crime Commissioner agree how much POCA funding will be used for communities and infrastructure reinvestment.
60. In April 2017, £400,000 POCA funding was identified and allocated to the Asset Recovery fund (AR Fund). This fund is used to further drive up performance on asset recovery and, where appropriate, to fund local crime fighting priorities for the benefit of the community. The bidding process was open to all Neighbourhood Policing Units (NPU) and departments resulting in bids to the value of £446,211.35.
61. A sum of £59,000 was carried over for three projects to ensure the conclusion of work that had already been initiated and therefore effective use of monies and tactics. The three projects that were committed to were:
- a. £24K to an initiative centred around County Lines
  - b. £9K to an initiative centred around the use of drones

- c. £26K to an initiative centred around TECSOS. This project has been part funded by the Asset Recovery fund and part funded by the force this year.
62. In addition, £50,000 has been allocated to crime prevention and £10,000 has been allocated to a Crimestoppers initiative aimed at reducing burglary and vehicle crime in the Birmingham and Solihull Areas. The remainder of the budget (£290,932.56) has been used to fund infrastructure bids which are of a covert nature.
63. The funding allocated to communities is managed by the Office of the Police and Crime Commissioner (the Active Citizens Fund). For the financial year, 2016/2017, the Active Citizens budget was apportioned across the NPU based on the typology model used by WMP. £740,000 was allocated for grant funding and £100,000 was allocated for start-up costs.
64. Each NPU was given direct access to a start-up fund of £10,000. The Birmingham NPUs had a start-up fund of £20,000 each. This was intended to give a strong start to the Fund and could be spent on events and publicity. The main body of the Fund could be spent on local projects, with the NPU Commander giving approval to successful bids. The budget was held by the Police and Crime Commissioner and the Chief Executive authorised release of funds.
65. NPUs were encouraged to use events such as participatory budgeting and World Cafés to generate greater community participation, and the Force invested in training, provided by Mutual Gain. In 2017 the Force has again invested in more training from Mutual Gain, this time being provided to PCSOs.

## **FUTURE**

66. WMP is committed to increasing the amount of confiscations from criminals, recognising this is one of the best ways to frustrate their aims and break down OCGs. POCA seizures will also continue to fund crime prevention activities and increase our capability to tackle the ever increasingly complex digital world.
67. The advent of crypto- or digital currency, such as Bitcoin, and its use by criminals has led to new challenges in the way that seizures, confiscations and forfeitures need to be made.
68. Training will be provided to officers to make them aware of what to look for in relation to cryptocurrencies. Police forces and partner agencies need the ability to be able to seize and hold that currency within their own digital infrastructure. The ECU are currently working with RART and the Regional Cybercrime Unit to ensure that WMP are equipped to deal with these new challenges.
69. The Criminal Finances Act (2017) makes legislative changes to give law enforcement and partner agencies new capabilities and powers to recover the proceeds of crime and to tackle money laundering, corruption and terrorist financing.

70. As this is new legislation, law enforcement agencies, CPS and the courts are working through the implications of these new powers on resourcing and current structures.
71. One such power is the advent of Unexplained Wealth Orders (UWO), which is a powerful new investigative tool and a gateway into civil non-conviction based asset recovery. Similar to cash forfeiture, this is a civil order where the burden of proof is on the balance of probabilities rather than the criminal standard of beyond reasonable doubt, therefore this lower level of evidential standard makes it easier for an order to be obtained.
72. This has created a significant potential to target individuals or companies who law enforcement have not been able to address through the traditional prosecution or confiscation route. The respondent must hold property to a value greater than £50,000 and there must be reasonable grounds to suspect that the known sources of the respondent's lawfully obtained income would have been insufficient to obtain that property.
73. RART are in the process of applying for four such orders, one of which relates to West Midlands based criminals, as a trial to assess the investigative and resource requirements and practical mechanism for obtaining and enforcing these orders.
74. Following the result of this trial, WMP ECU will look to see how the legislation can be applied to daily business for WMP with an emphasis on the disruption of serious and organised crime.
75. Internally, the ECU are currently subject of EER that provides a structured framework for evaluation of the current and future service of the ECU that will ultimately recommend fast paced, quick time efficiency and performance improvements to the service delivered by the unit.
76. This will improve the performance of the unit by rationalising the current service provision and setting clear objectives for the future ensuring the focus of the ECU is in the right areas of business as determined by EER panel chaired by a member of the Force Executive Team.
77. ROCU are currently recruiting a financial investigator to operate within a newly created Organised Crime Disruption Team. The role of this financial investigator will be to offer tactical advice for the use of financial intelligence in combating organised crime, recommending the most effective disruption options to Lead Responsible Officers (whose role it is to coordinate law enforcement and partner agency activity in response to identified organised crime groups).
78. The ECU EER will take into account these regional and national developments to ensure that the next iteration of the ECU is operating at the highest level possible.

Author: Jenny Birch 51587

Job Title: Head of the Economic Crime Unit, FCID