



Strategic Policing and Crime Board

18 February 2020

Police and Crime Plan Priority: *Reducing Crime and Harm*

Title: *Proceeds of Crime Act*

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Purpose of paper

1. The purpose of this paper is to provide information and assurance as to West Midlands Police's use of the Proceeds of Crime Act (POCA) (2002) and other measures to take profit away from criminality. This paper is for discussion.
2. The paper will provide POCA related performance information, an update on the performance of, and work undertaken by, the new proactive financial investigation team as well as providing an understanding of how the assets recovered are allocated within the West Midlands area.
3. Finally the paper will explore current partnership working arrangements along with national and future landscape for financial investigation.

Background

4. This is an update to the previous paper on POCA presented to the Strategic Policing and Crime Board in February 2019.
5. POCA makes provision for the confiscation or civil recovery of the proceeds from crime and contains the principal money laundering legislation in the United Kingdom.
6. 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).

7. The Financial Investigation Team (FIT) within the Economic Crime Unit (ECU) are a dedicated team of detectives and police staff Financial Investigators (FIs) who are charged with the responsibility of conducting POCA investigations.
8. In July 2019, the unit gained a new financial investigation team consisting of three police staff financial investigators and one intelligence analyst. The team are funded for two years at a total cost of £333,393 by the Office of the Police and Crime Commissioner (OPCC), via the assets recovered under POCA, in order to fulfil recommendation eight from the West Midlands Drug Policy¹; taking money from organised criminals to improve drug services. The team, badged under the name Operation Pound, proactively investigate serious and organised criminal groups and individuals with a view to disruption and increasing asset recovery.

Introduction

9. 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
10. 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 specific criminal offence of which they have been convicted or their general criminal conduct or lifestyle. If the defendant is found to have benefitted from the general criminal conduct, the court will consider all of their income and expenditure over the last six years, as well as the assessed value of any property they currently hold, as criminal benefit. 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.
11. If the defendant does not have sufficient assets to pay the full criminal benefit amount, the initial order will be made against the value of the assets the defendant owns. The outstanding amount will remain against the defendant for their lifetime and, should authorities become aware that they have new assets in the future, these too can be recovered to pay off the outstanding amount of the full criminal benefit. For example, if a drug dealer is found to have a criminal benefit of £500,000 but only has assets of £100,000, they will pay the £100,000 and have £400,000 left to pay that can be recovered or “uplifted²” at any time after the initial payment is made.

¹ OPCC Reducing Crime and Preventing Harm: West Midlands Drug Policy Recommendations, February 2018

² Under S22 of POCA

12. POCA also 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.
13. 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
14. 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. However as a standalone money laundering investigation (where this activity is not connected to any other provable criminality) can take many years to complete and the accompanying custodial sentences can be relatively light³, they are not generally undertaken if there are other options available to investigation such as the use of other POCA powers or other types of criminal investigation.
15. The Criminal Finances Act (2017) provides an extension to the powers conferred on FIs. The Act allows for two new civil processes: Unexplained Wealth Orders (UWOs) and Account Freezing and Forfeiture Orders (AFFOs).
16. A UWO is a High Court order issued against an individual whose wealth (“property”) cannot be accounted for in terms of legitimate sources of income and is therefore suspected of being acquired unlawfully. The property to which a UWO applies can ultimately be confiscated under existing civil recovery powers, if the proprietor cannot (or will not) provide evidence to demonstrate the legitimacy of its origins. The orders do not require criminal or civil proceedings to have been initiated beforehand and place the burden of proof on the respondent.
17. UWOs have been extremely difficult for Police Forces to obtain due to the inability of officers and FIs to use Her Majesty’s Revenue and Customs (HMRC) data in civil proceedings.
18. AFFOs allow authorised law enforcement agencies to seek the freezing, and subsequent forfeiture, of monies or funds held in bank and building society accounts that is recoverable property or is intended by any person for use in unlawful conduct (as defined in POCA). The process is very similar to that of cash seizure.

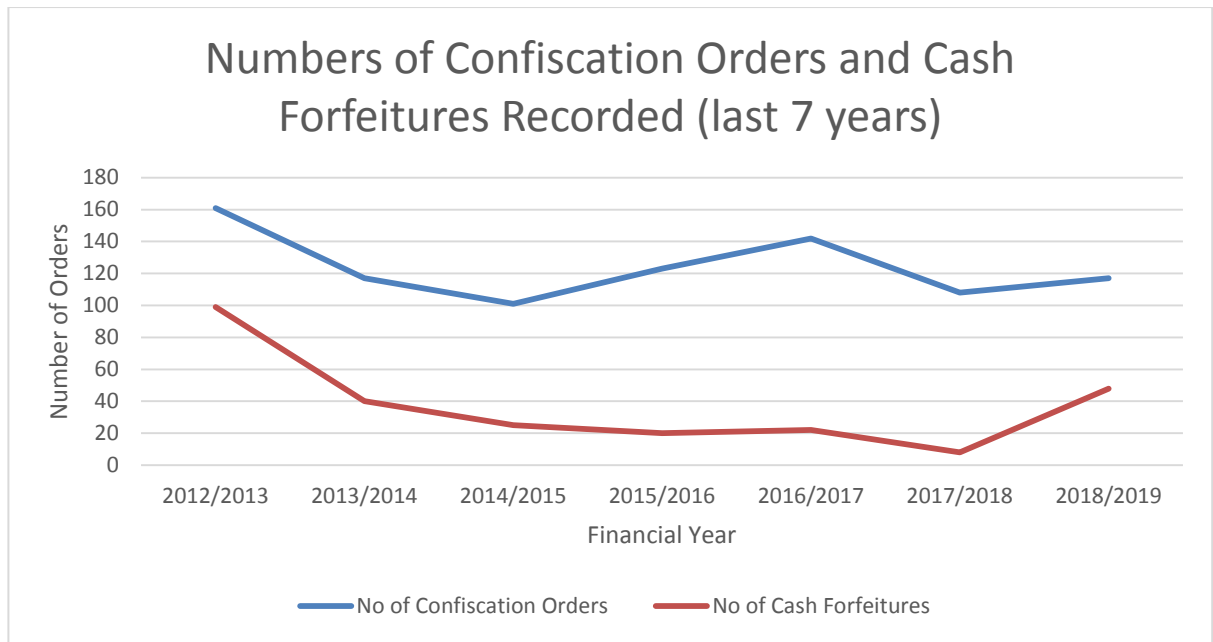
³ Up to a maximum of 14 years or a large fine

Local Landscape

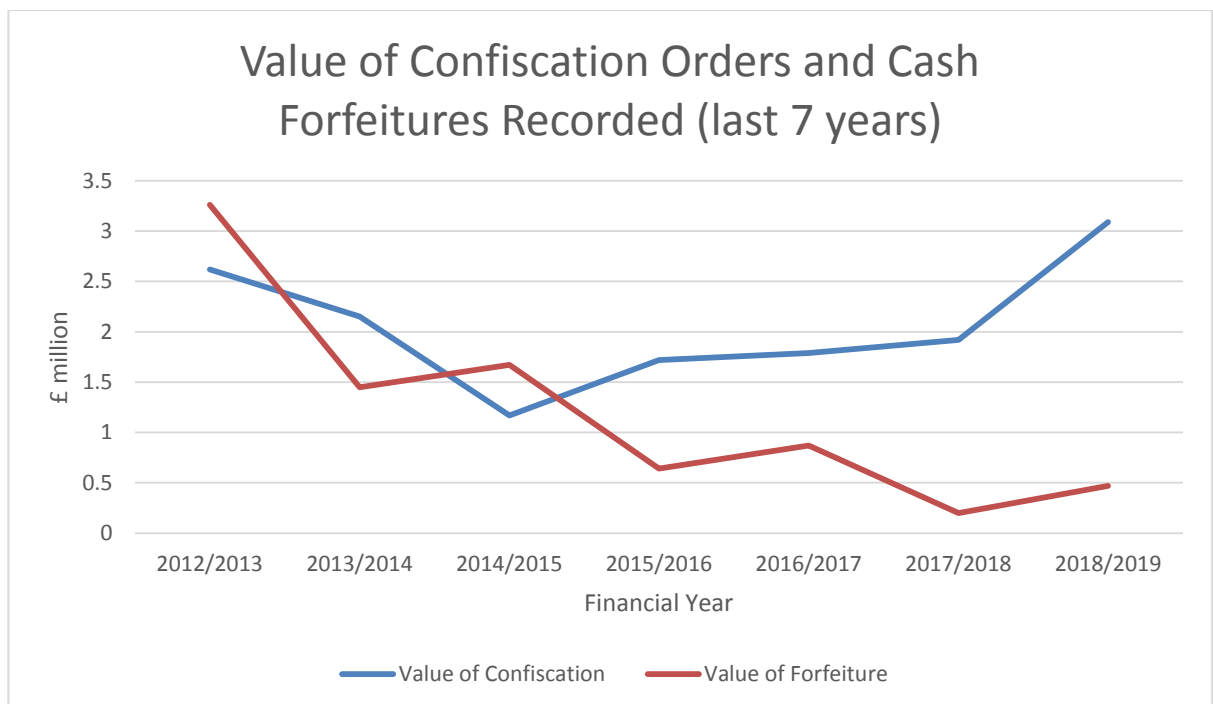
19. As noted in paragraph 7 above, FIT are responsible for conducting financial investigations and confiscations under POCA and the Criminal Finances Act (2017).
20. The drive to increase the number and value of confiscations and forfeitures on behalf of the force is one of the key deliverables for the ECU. In order to achieve this, FIT continue to concentrate on improving asset recovery by:
- i. Continuing with a rolling programme of training and continuous professional development for officers and staff from across the force to improve their understanding of POCA and financial investigation, and to encourage liaison with the ECU to increase the number of referrals made to the unit
 - ii. Provision of a three-tiered approach to financial investigation support:
 - i. Tier 1 – provision of general advice and guidance to locally based investigators
 - ii. Tier 2 – allocation of an FI to analyse received financial information to assist locally based investigators and will seize assets as appropriate following this investigations
 - iii. Tier 3 – ECU will assume responsibility for financial investigative aspects of a reactive or proactive investigation and will seize assets as appropriate following these investigations
 - iii. Increased engagement with local Lead Responsible Officers, responsible for organised crime group management, in order to generate serious and organised crime related referrals to the unit
 - iv. Proactively review uplift opportunities for confiscation orders already obtained in conjunction with the Regional Organised Crime Unit (ROCU) Asset Confiscation Enforcement (ACE) team
 - v. Proactively review detained property to ensure that any cash seizures that are lodged within the system are considered for confiscation or forfeiture proceedings at the earliest opportunity
 - vi. Increase the use of cash forfeiture as an alternative to protracted confiscation enquiries where appropriate

Asset Recovery Performance

21. The graph below illustrates the ECU performance relating to the *number* of confiscation orders and cash forfeitures granted over the last seven years.



22. The graph below illustrates the ECU Performance relating to the *value* of confiscation orders and cash forfeitures granted over the last seven years:



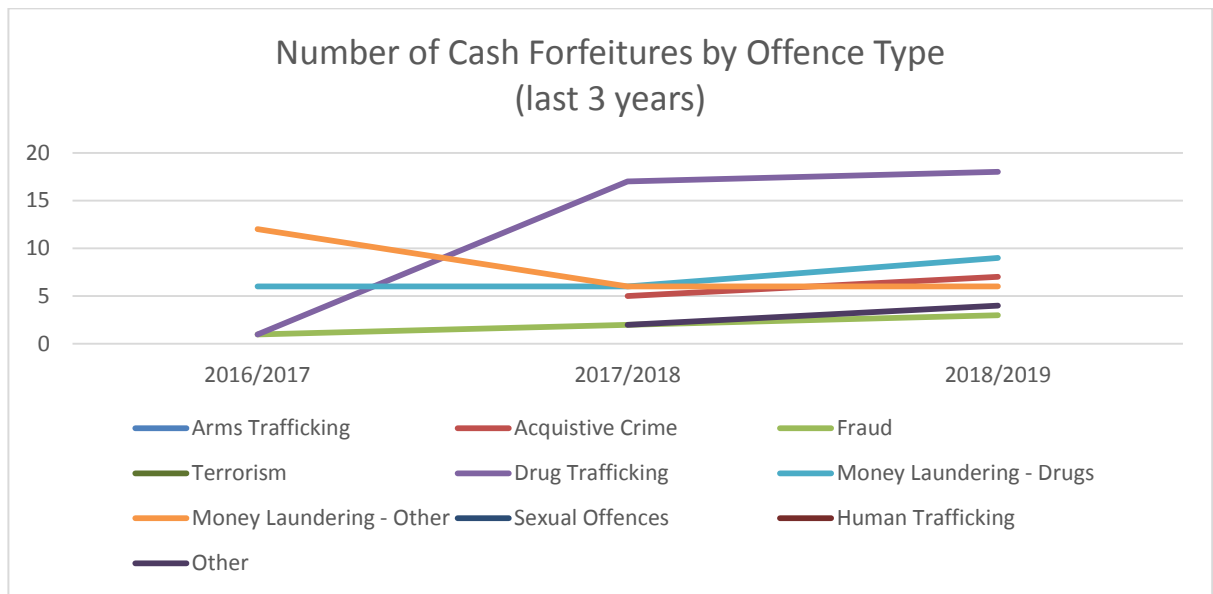
23. The figures show an improvement in both the numbers and value of confiscation orders and cash forfeitures in 2018/2019. Please note the cash forfeiture figures include the money obtained via AFFOs as well as physical money detained during police activity.

24. Year to date⁴ both the number and value of cash forfeitures has increased with 43 orders obtained to the value of £1.4M. Conversely there has been a slight reduction in the number and value of confiscation orders obtained (70 orders to the

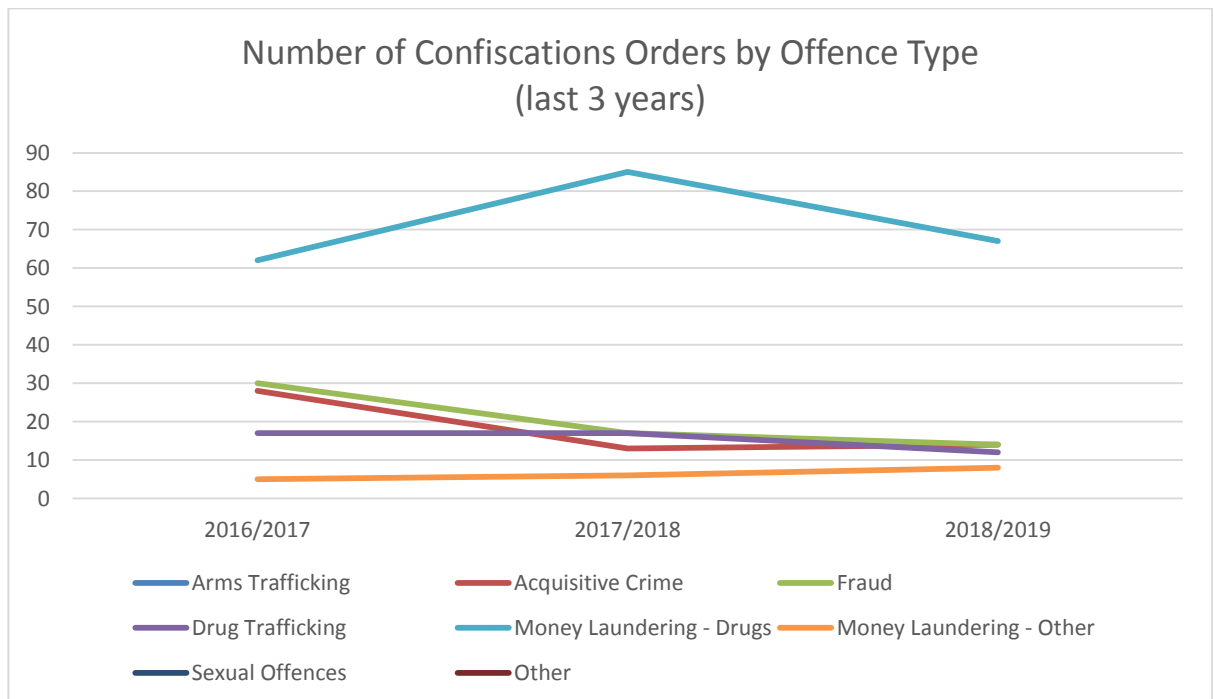
⁴ As at 16 January 2020

value of £1.63M). This is in part due to a change of focus in FIT to make earlier decisions as to whether money should be considered under civil legislation (where a greater proportion of the seized money would be returned to WMP) or whether it is more appropriate to pursue the post-conviction confiscation orders (if general criminal benefit might apply for instance).

25. The bar chart below illustrates the number of cash forfeitures granted over the last seven years and year to date⁵ broken down by offence type.



26. The bar chart below illustrates the number of confiscation orders granted over the last seven years and year to date⁶ broken down by offence type.



⁵ As at 16 January 2020

⁶ As at 16 January 2020

27. Money laundering, drug trafficking or drug related money laundering still remain the highest generator of assets suitable for confiscation or forfeiture.
28. Acquisitive crime has seen another increase in cash forfeitures in 2018/2019. It is likely that the increased and continuing force and departmental focus on burglary residential and robbery is a contributing factor to this success.

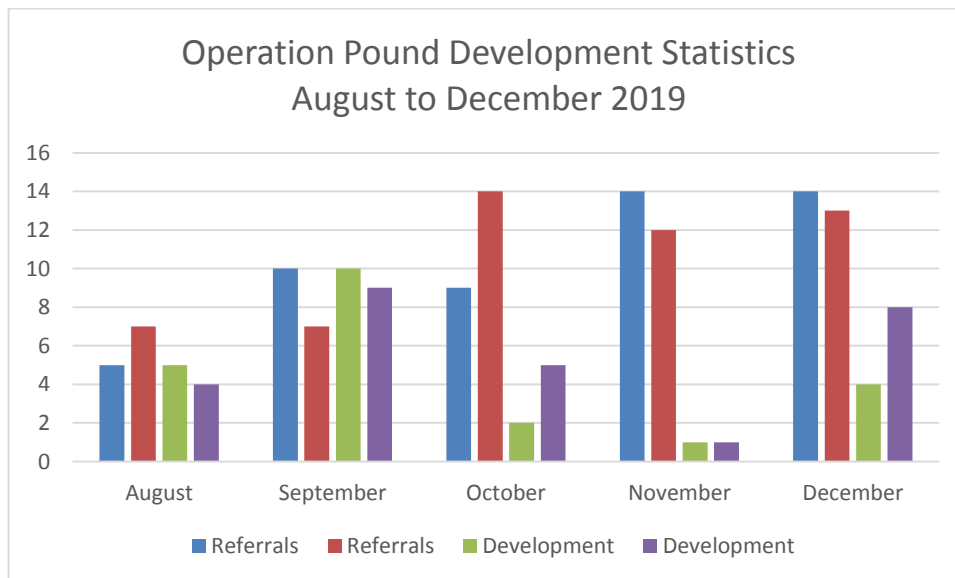
Operation Pound Development and Performance

29. As referenced in paragraph 8 above, the Operation Pound team were formed in July 2019. The team are dedicated to the proactive pursuit of asset enforcement opportunities against serious and organised crime offenders with a specific emphasis on drug dealing and trafficking. The ambition of the team is to be self-funding and to recoup assets between £1.1M and £4M over two years.
30. Traditional financial investigation can take many years to come to fruition. For example confiscation following conviction, which itself can take time to be achieved, can take up to two years before an order is issued. Due to the time constraints of the funding for the team, the focus is very much on what short or medium term financial investigation options are suitable for each case under consideration, i.e. the use of civil processes (cash forfeiture or AFFOs) to seize assets rather than longer term considerations.
31. The team originated from outside of WMP, the three FIs were recruited from the banking sector and HMRC and the intelligence analyst transferred from another force area. The team have spent the first six months acquainting themselves with WMP policy and practice and have been teamed with experienced FI trained proactive detectives to assist in their development. In addition, the FIs in the team are working towards their full accreditation with the NCA in a series of courses running from September 2019 to May 2020.
32. These factors have limited the revenue collected by the team to date but the ambition remains very much in line with the original set objectives.
33. The team are involved in daily scanning to identify opportunities for intervention and action, such as the scanning of:
 - i. SARs
 - ii. Intelligence
 - iii. Cash seizures via review of the property system and the ECU referral portal in conjunction with FIT
 - iv. Joint Asset Recovery Database to identify S22 POCA uplift opportunities specifically around organised crime group or urban street gang members
34. The team have also liaised extensively with teams across the force in order to increase awareness of the team and to encourage referrals into Operation Pound

via the ECU referral portal. These referrals are then assessed for suitability for Operation Pound tactics and then are either accepted or referred back to the originator with an action plan to assist the author in progressing their enquiries and increasing suitability for Operation Pound in the future.

35. A diagram illustrating the Operation Pound process is contained in Appendix A.

36. The table below details the referral and development statistics the team have been involved in over the last five months.



37. The figures show an encouraging uplift in external referrals to the unit and a high number of internally generated referrals in the last three months. These referrals will not all yield asset recovery opportunities but will help to develop and improve relationships between Operation Pound and other teams across the Force; and improve the intelligence picture around serious and organised crime.

38. The team have been engaged in various publicity drives to further increase their work and profile including internal Newsbeat articles and engagement with the national media and Midlands Today.

39. Operation Pound currently has five active AFFOs totalling £607,383.71 if these are successful £303,691.85 will be returned to WMP.

40. The team also have three active cash forfeiture investigations totalling a further £69,840 with half due to return to WMP.

41. Regular evaluations of the team's performance will be undertaken by the team analyst with independent oversight from a member of the OPCC. The terms of reference for this evaluation regime has been agreed with the OPCC and the first evaluation report is due to be completed by March 2019.

POCA Fund Allocation

42. The Asset Recovery Incentivisation Scheme (ARIS) determines the percentage distribution of any monies that are recouped under POCA.

43. The breakdown of percentages is as follows:

- i. Confiscation
 - i. Home Office 50%
 - ii. Investigation 18.75%
 - iii. Prosecution 18.75%
 - iv. Enforcement 12.5%.
- ii. Cash forfeiture/AFFOs
 - i. Home Office 50%
 - ii. Relevant Agency 50%

44. It should be noted that for 2019/2020, Ministers agreed to a continuation of the scheme to top-slice up to £7.5m of recovered assets for investment in key national capabilities to benefit the entire asset recovery community. A review of ARIS funding and allocation is ongoing.

45. The money obtained under POCA that is allocated back to WMP is shared between the internal Asset Recovery Fund and the OPCC administered Active Citizen Fund and distributed to various projects run by the communities of the West Midlands⁷.

46. In line with the Drugs Policy referenced in paragraph 8, it is the intention of the OPCC to use the funds raised by the Operation Pound team to commission drug services for users to remove the market for illegal drug dealing.

47. The internal Asset Recovery Fund is managed within the Strategy and Direction department and allows the force to bid in to access the funds, on the proviso that this money is re-invested to support asset recovery in the future.

48. £400,000 was identified and allocated to the Asset Recovery Fund for 2019/20. Members of WMP were invited to bid for up to £20,000 of the fund in May 2019. The bids were assessed and a panel, chaired by ACC Security, was convened to agree which would receive the funding. 17 bids were approved plus a number of bids for support to covert policing and the entire fund was allocated. The bids include two from the ECU for funding for cryptocurrency training and call blockers to assist in crime prevention for vulnerable victims of fraud and cybercrime.

Partnership Working

49. The NCA are the regulatory authority for financial investigation and provide training and accreditation for FIs. The ECU funds and provides a tutoring capability, in conjunction with the NCA, for these training courses to any member of WMP who

⁷ <https://www.westmidlands-pcc.gov.uk/active-citizens-fund/>

requires this type of training. For example, in 2020 the Intelligence department are seeking to train three financial intelligence officers whose support to the development of serious and organised crime arena would benefit from an uplift in financial intelligence.

50. The NCA are also the lead agency for the receipt of Suspicious Activity Reports (SARs). POCA requires financial institutions and businesses in the regulated sector to report, to the UK Financial Intelligence Unit (UKFIU, 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 SARs and are communicated to WMP via an electronic system.

51. There are three types of SARs:

- i. Those that are submitted for intelligence purposes
- ii. Those that pertain to defence against money laundering (DAML) and
- iii. 'Vulnerability' related SARs that relates to reports of the suspected financial exploitation of vulnerable people, including exploitation in relation to modern slavery and human trafficking.

52. DAML SARs are disseminated to WMP for consideration as to whether to allow the suspicious transaction to continue. Each DAML is considered against the following criteria for refusal:

- i. To prevent criminal property being moved out of the UK and commence restraint proceedings
- ii. Where the funds are positively identified as the Proceeds of Crime
- iii. If the criminal property is subject to existing restraint/confiscation proceedings
- iv. If there is insufficient information to grant consent i.e. funds to be returned to subject but no client confirmation has been carried out.

53. All DAML SARs that are recorded are allocated to WMP via the NCA. The reports are then assessed against any known intelligence or information around the subject, which will reveal if there are any historical links to criminality, organised crime groups or anything that would suggest refusal of the request may be appropriate. This assessment is conducted within the seven day moratorium period and NCA advised of the initial decision.

54. Once a DAML SAR is refused, then a 31 day period commences in order to progress an investigation and take positive action. The ECU have utilised DAML SARs to identify opportunities to obtain AFFOs.

55. The ECU have recently been developing its relationship with the NCA DAML and SARs enquiry teams and UKFIU. This is in an effort to improve working relationships and also to improve performance in response to SARs by sharing

knowledge and experience and providing feedback. For example, the ECU has provided positive feedback to the UKFIU engagement team who look for good news stories to feed back into the financial sector in order to improve quality of SAR reporting.

56. In addition, the ECU have worked with the operational NCA teams to assist in a number of seizures of both cash and assets that are then either subject of confiscation or forfeiture led by FIT – a relationship the ECU are continuing.
57. The ECU work closely both with CPS and CPS Proceeds of Crime (CPS POC). CPS POC are specialist caseworkers who are responsible for obtaining restraints and prosecuting confiscation proceedings.
58. FIT are responsible for completing the investigation, obtaining relevant financial records, the preparation of confiscation statements and attendance at court. CPS POC are responsible for the review of the case as presented by the FI, the provision of legal advice and instructing counsel.
59. Whilst the ECU continues to work closely with a range of law enforcement colleagues and partners, these agencies typically have their own financial investigative support.
60. However, the unit have recently supported Trading Standards in relation to a local group of people trading fraudulent vehicle log books online. Trading Standards have limited FI capacity and the ECU Proactive Investigation Team conducted financial checks and communications data work on their behalf. A package was then completed and was actioned by colleagues in ROCU.
61. The unit also participates in a regional Economic Crime Threat board, chaired by ROCU, that brings together colleagues involved in economic crime and financial investigations to share best practice and work together to achieve shared objectives.

National and Future Landscape

Confiscation Reform

62. The Law Commission are currently conducting a review of confiscation which commenced Autumn 2018 and is due to report Autumn 2020. For the terms of reference for this review, please see Appendix B.
63. The Commission are considering some quite significant changes such as the introduction of automatic restraints in certain cases and putting the risk of dissipation in statute. These reforms will have a significant impact on the work of FIT and the ECU and the unit is following the progress of the review with interest.
64. The Commission are also considering the effectiveness of POCA to deal with digital or cryptocurrencies in terms of restraint, valuation and realisation. The ECU are currently working the ROCU to agree a force policy on seizure and confiscation of

cryptocurrency and have recently received funds from the National Cybercrime Project to purchase the relevant equipment to assist in this endeavour.

SARs Reform

65. In June 2019, the Law Commission published its report, *Anti-Money Laundering: the SARs regime*⁸, that made a number of recommendations following its review:

- i. Creation of an advisory board to ensure the effectiveness of the regime
- ii. Standardised electronic form for the submissions of SARs to make reporting easier to navigate and promote greater consistency
- iii. Production of statutory guidance on key concepts underpinning the regime to reduce confusion and uncertainty and ensure reporters understand their legal obligations to report suspicious activity

66. The ECU have been involved in consultation regarding the new electronic system for the management of SARs (which will replace the current provisions, Arena and MoneyWeb), which should be released in Spring/Summer 2020.

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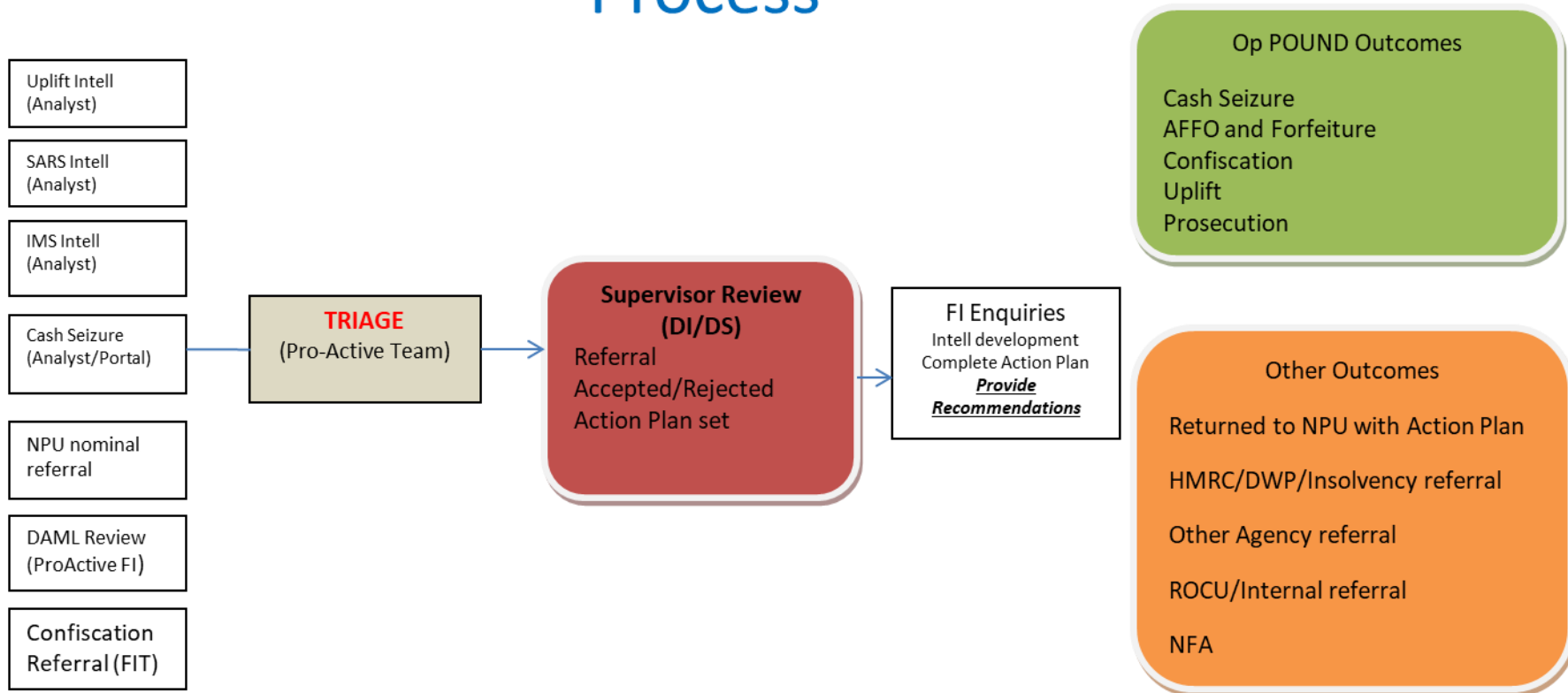
Job Title: Head of the Economic Crime Unit, Force CID

⁸ <https://www.lawcom.gov.uk/new-guidance-needed-to-improve-anti-money-laundering-regime/>

APPENDIX A

Operation Pound Process Summary

Process



APPENDIX B

Law Commission Review of Confiscation

Terms of Reference

- ❖ **To improve the process by which confiscation orders are made, ensure the fairness of the regime, and optimise enforcement of confiscation orders.**
- ❖ **To analyse and address the most pressing problems with the law**
- ❖ **The review will also explore and assess a range of solutions to these problems:**
 - Alternatives to the current value-based regime?
 - Options for a specialist forum for confiscation proceedings?
 - New ways of preventing the dissipation of assets.
- ❖ **Seek to simplify, clarify and modernise the law on confiscation.**
- ❖ **Make recommendations for:**
 - amendment of the current legislative regime
 - creation of a new confiscation regime through legislation
 - Non-legislative avenues for reform.