

Examining attrition in confiscating the proceeds of crime

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Context

Recovering the proceeds of crime plays an increasingly important part in efforts to tackle the criminal economy and crime more generally. The principal tool for recovering crime proceeds is the confiscation order. Under the terms of the Proceeds of Crime Act (POCA) 2002, a convicted offender can be ordered by a court to repay a sum of money equivalent to the amount adjudged to have been made from crime – either from a specific offence, or, if deemed under POCA definitions to have a ‘criminal lifestyle’, from all criminal conduct in the past six years.

While the amount of criminal proceeds recovered in recent years has increased markedly – from approximately £25 million in 2001/02 to approximately £136 million in 2007/08 – concerns about the performance of the asset recovery system remain, particularly in relation to the level of attrition observed – defined as the amount lost during different stages of the confiscation process, from the initial assessment of offenders’ financial benefit from crime, through to the amount eventually recovered. This research was commissioned to examine that issue.

Approach

The principal aims of the research were:

- to identify the extent of attrition within the confiscation order process; and
- to provide an understanding of why attrition occurs.

To meet those aims the research involved:

- an analysis of 2006/07 confiscation data held on the central Joint Asset Recovery Database (JARD);
- an examination of a sample of 155 confiscation order cases from five police force areas;

- interviews with those involved at different stages of the confiscation order process.

Results

Extent of attrition

Analysis of the JARD data revealed a striking overall reduction between the value of criminal benefit initially assessed by Financial Investigators (FIs) and the amount eventually recovered – a total reduction of around 95 per cent. The attrition was particularly acute in high value cases, demonstrating the general point that attrition in overall financial terms is affected much more by a small number of high value cases than the large volume of low value ones. In contrast, only a minority of cases suffered attrition at different stages of the process. Overall, over two-thirds (68%) of 2006/07 confiscation order cases had neither their benefit figure nor available assets figure reduced at court.

There was also a considerable difference between the amount imposed in orders and the amount eventually recovered. While the case payment rate 10-14 months after imposition of orders made in 2006/07 was good (more than three-quarters of orders paid in full), the proportion of the total value paid off by this time was much lower (less than two-fifths). As with the imposition stages, the rate of attrition at enforcement became greater as the value of orders increased.

How and why does attrition occur?

Results from the detailed study of the sample of cases and interviews with practitioners suggested a number of reasons why attrition occurred at different stages in the process.

- (i) *Attrition during imposition of an order*
 - The latitude that the investigating authority is given by POCA when estimating the level of criminal benefit (especially for ‘criminal lifestyle’ cases)

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can create artificially high benefit figures which are unlikely to be recoverable. These are natural consequences of the process and do not necessarily represent failings by the investigating authorities.

- Negotiations between defence and prosecution reportedly feature in many confiscation order cases and provide an opportunity for reducing the value of both the initial assessment of criminal benefit and the value of recoverable assets held by an offender. There was some unease (on the part of police Financial Investigators especially) that the prosecution position was sometimes weakened by these negotiations.

(ii) *Attrition during enforcement of an order*

Attrition during the enforcement of orders is an area of greater concern as it represents a failure to recover the amount judged to be realisable from the offender. Reasons for this attrition included:

- shortfall between the expected value of assets when orders are made and the actual value they fetch when sold;
- difficulties faced by imprisoned offenders in selling assets to pay their orders;
- complications around the position of third parties in asset ownership, preventing the sale of property in particular;
- actions on part of some offenders to avoid recovery, e.g. hiding assets;
- offenders absconding, dying, or being deported.

Restraint orders (which enable the freezing of offenders' assets to prevent their dissipation) play an important part in enforcement but their use is complex. While the JARD data analysis showed some evidence that restraint was effective where applied, it often appeared to be used for smaller cases rather than the higher value cases where restraint might be expected. Certainly, respondents thought restraint a critical factor in ensuring recovery by preventing offenders covertly disposing of assets. However, they also stressed the need for careful use and, given the cost and effort of employing it, restraint was not seen as being cost-effective for smaller orders.

Conclusions

While the POCA legislation is viewed as a valuable and effective tool in the confiscation of criminal assets, a natural by-product of its provisions is that initial estimates of criminal benefit will often be subject to subsequent reduction. It is this fact that drives the large amounts of attrition observed in official figures. Narrowing the POCA assumptions might have the effect of reducing this procedural attrition but would be unlikely to result in more being recovered from criminals. It is the attrition resulting from the behaviour of offenders (in how they consume or hide crime proceeds) and inefficiencies in how the asset recovery process is administered that are key. This attrition is most tangible at the enforcement stage, as shortfalls in recovery at that stage represent the loss of proceeds that should be realisable.

The findings from this study suggest a number of steps that could be taken as part of an approach to improve the effectiveness of the confiscation process.

- *Greater clarity about the scope of POCA's use:* further consideration of how asset recovery resources are best used, and consideration should be given to the relative allocation of these to higher and lower value cases targeted for confiscation.
- *A promotion of a more systematic and strategic approach to the use of confiscation:* more methodical and systematic sifting of cases to ensure that potential confiscation opportunities are not being lost, and the adoption of strategies for revisiting cases where the sums recovered have fallen short of expectations.
- *Improving co-ordination:* ensuring that the asset recovery system is joined up and that all co-operation and communication opportunities between agencies are being taken.

Particular focus should therefore be placed on ensuring that enforcement opportunities are maximised, in particular for high value cases involving serious organised criminals. Making the best use of restraint should be a key part of this.