

## The Contribution of Financial Investigation to Tackling Organised Crime: A Qualitative Study

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Sylvia Chenery, Brian Gresty and Mike Jones

This report examines the use of financial investigation techniques to tackle organised crime. The research is based on semi-structured interviews with individuals involved in the investigation and prosecution of 60 organised crime cases.

The research has a number of findings that have implications for operational staff involved in the pursuit of organised criminals. In particular, the research suggests that:

- financial investigation techniques have the potential to add value to all stages of investigations into organised crime; and

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- investigating officers should routinely assess whether to employ financial investigation techniques in all organised crime cases.

Findings include the following.

- Financial investigations were rarely used to identify organised criminality in the first instance. Financial investigation techniques were applied in more than one-half of the cases studied during the pre- and post-arrest investigation and the case-building phase.
- Where used, financial investigation contributed to investigation and case building through:
  - identifying organised criminality;
  - identifying the extent of an organised crime group;
  - locating assets;
  - identifying ownership and use of properties;
  - evidencing offenders' lifestyles;
  - tracking movements;
  - placing people at particular places at particular times, linking them to criminality; and
  - identifying additional offences and offenders.

### Keywords

Organised crime  
Financial investigation  
Confiscation  
Restraint  
Asset recovery  
Cash seizure

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- In one-half of the cases examined, evidence from the financial investigation was considered to have influenced the prosecution's case. It was seen as forming the basis of the conviction in a minority of cases, but elsewhere contributed to clarifying the offender's role in the case, linking suspects to the main offender or linking other crimes to the substantive offence.
- The research also suggests that the Proceeds of Crime Act 2002 (POCA) offers potential powers to disrupt organised crime in instances where full enforcement investigations may not be possible, for example, by making greater use of cash seizures where appropriate. Cash seizure should not take the place of full investigations, but its additional use can bring benefits.
- Areas of challenge were also identified and the research suggests that the enforcement of restraint and confiscation orders, and overseas enquiries present some frustrations for investigators, and further work could be done to strengthen these areas.

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### Context

Financial investigation is one of many specialist investigative approaches employed by law enforcement when tackling organised crime, and it is an increasingly well-established discipline. Financial investigators typically operate within the legal framework of the Proceeds of Crime Act 2002 (POCA), which introduced a number of asset recovery powers, including the use of restraint orders<sup>1</sup> and post-conviction confiscation orders and cash seizure and civil forfeiture/recovery.<sup>2</sup> Related policies include the Asset Recovery Incentivisation Scheme, which allows frontline agencies to keep a proportion of assets recovered.<sup>3</sup>

Knowledge about, and understanding of, the role that financial investigation can play in tackling organised crime has been identified as a key evidence gap. The current research therefore explores the contribution of financial investigation as one of the specialist investigation approaches used by law enforcement agencies to tackle organised crime. The report sets out its use and benefits, as well as the barriers and implications, for policy and practice.

### Approach

The research explored 60 cases where financial investigation was used to tackle organised crime. Methods were qualitative; 149 semi-structured interviews were carried out with practitioners including financial investigators, investigating officers and Crown Prosecution Service (CPS) representatives. An additional eight interviews were completed with practitioners working in a confiscation order enforcement role.

### Key findings

Financial investigation was used across all aspects of organised crime cases, from identifying criminality, developing intelligence and case building, through to prosecution and confiscation order enforcement.

Financial investigations were rarely used to identify organised criminality in the first instance. Financial investigation techniques were applied in more than one-half of the cases studied during the pre- and post-arrest investigation and case-building phase. Where used, financial investigation contributed to the process of case building through:

- identifying organised criminality in the first instance;
- identifying the extent of an organised crime group;
- locating assets owned or used by organised crime group members;
- identifying ownership and use of properties;
- uncovering evidence of the lifestyle led by those targeted;
- tracking the movements of individuals;
- placing people at particular places at particular times, thereby linking them to criminality or particular criminal groups; and
- identifying additional offences and offenders.

1 Available at: <http://www.legislation.gov.uk/ukpga/2002/29/contents>. See Parts 2, 3 and 4 of the Act, which apply to England and Wales, Scotland and Northern Ireland respectively.

2 Available at: <http://www.legislation.gov.uk/ukpga/2002/29/contents>. See Part 5 of the Act, which applies to the UK.

3 This scheme was introduced in 2004/05 for police and extended in 2006 to all law enforcement agencies; 50 per cent of recovered assets are retained by law enforcement, this proportion is divided across investigators, prosecutors and enforcement agencies.

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In one-half of the cases examined, evidence from the financial investigation was considered to have influenced the prosecution's case.

- In 12 cases, a conviction would not have been possible without the financial investigation (these were mainly money laundering or fraud cases).
- In 14 cases the financial investigation was able to demonstrate the greater involvement of the accused in the criminal activity.
- In five cases the financial investigation revealed additional members of the organised crime group who could be brought into the prosecution.
- In seven cases additional offences (particularly money laundering) were brought into the prosecution.

Interviewees also suggested that greater collaboration between enforcement and prosecution teams, or even co-location, could improve enforcement understanding of the criminality of organised crime groups.

## Challenges to the effective use of financial investigations

The research was able to identify a range of challenges for practitioners and policy makers to consider.

During intelligence and case-building stages, key challenges included:

- investigations that extended to overseas jurisdictions could be time-consuming and sometimes posed language and cultural barriers;
- when imposing restraint orders, interviewees reported difficulties in preventing individuals subject to a restraint order from selling assets, or from opening accounts with alternative banks.

At the prosecution stage:

- accessing evidence from financial institutions could be time-consuming;
- presenting complex financial evidence to juries could be challenging.

At the confiscation order enforcement stage:

- offenders were often seen as acting to frustrate the process of confiscation –tactics included delaying filing defence statements, repeatedly changing legal representatives and concealing assets;

- applications for variation and Certificates of Inadequacy,<sup>4</sup> and the absence of Follow-up of nominal orders<sup>5</sup> were also seen as frustrating.

## Conclusions

The research findings highlight the clear potential for financial investigation to be used at different stages of investigations to achieve a range of benefits when tackling organised crime, and suggest that organised crime cases should routinely assess whether to employ financial investigation techniques.

The potential benefits of greater use of financial investigation as one of the range of tools available to investigators include enhancement of intelligence gathering and prosecution, as well as the more traditional benefits of financial investigation in disrupting organised criminality through recovering assets.

Findings suggest that there is potential benefit in use of the Proceeds of Crime Act 2002 (POCA) for the disruption of organised crime. Cash seizure may offer a useful, resource-light disruption tactic where alternatives to full enforcement investigations are not possible, as well as providing increased disruptive effort alongside full investigations.

Finally, the findings suggest that there are aspects of the asset recovery regime, including the enforcement of confiscation and restraint orders, and procedures for overseas enquiries, which could benefit from further attention in order to enhance the effectiveness of financial investigation.

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<sup>4</sup> Where the court agrees that the defendant has insufficient assets to pay a confiscation order.

<sup>5</sup> A nominal order is where there are few or no realisable assets available and so a very small confiscation order is made (such as £1).

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### I. Introduction

There is a growing evidence base on the way in which crimes are detected, and how the investigative process works. This has generally focused on either the general approach to the investigation of volume crimes (see for instance Burrows et al., 2005, and Jansson, 2005) or, at the other end of the spectrum, very serious violent crimes (Innes, 2003). Some investigative techniques, particularly those involving scientific methods (the recovery and use of DNA or fingerprints) have also been the subject of research and evaluation (see Bradbury and Feist, 2005 and, for a more recent assessment of effectiveness, Wilson et al 2010). Research on the nature and contribution of other specialist investigative approaches, including financial investigation, is rare. Among the research that has been undertaken, Levi and Osofsky (1995) provided the most comprehensive assessment of the use of financial investigation by police forces in England and Wales, although this was conducted prior to the changes in legislation. Subsequent studies have focused on asset recovery, rather than on financial investigation per se, and have largely drawn on secondary data sources (Kennedy, 2007; Sproat, 2007; Sproat, 2009).

Financial investigation is an increasingly well-organised discipline. Financial investigators employed by law enforcement agencies are trained, accredited and monitored by the National Policing Improvement Agency (NPIA) and, as of June 2011, there were 2,622 such financial investigators registered with NPIA.<sup>6</sup>

Financial investigators typically operate within the legal framework of the Proceeds of Crime Act 2002 (POCA).<sup>7</sup> This Act built upon and strengthened earlier legislation (for example, the Drug Trafficking Offences Act 1986<sup>8</sup> and the

Criminal Justice Act 1988<sup>9</sup>) that allowed asset recovery under more limited circumstances. POCA introduced a number of asset recovery powers, including the use of restraint orders and post-conviction confiscation orders<sup>10</sup> and cash seizure and civil forfeiture/recovery.<sup>11</sup> More recently, the potential value of financial investigation in tackling crime has been acknowledged by the Government; the organised crime strategy Local to Global, noted that it would "mainstream the use of financial investigation as a cost effective and efficient way of combating organised crime" (HM Government, 2011).

The development of financial investigation in England and Wales has been supported by other policies, such as the Asset Recovery Incentivisation Scheme. This scheme allows frontline agencies involved in the investigation of organised crime to keep a proportion of the assets recovered.<sup>12</sup> An important source of support for local law enforcement use of financial investigation and asset recovery is provided by Regional Asset Recovery Teams (RARTs).<sup>13</sup> These teams are largely multi-agency and provide specialist support in all aspects of financial investigation. RARTs aim to:

"... utilize financial investigation skills, techniques and legislation in order to enhance the quality of investigations into organised crime, disrupt organised criminality, remove criminals' assets, protect communities and build public trust and confidence in the criminal justice system".<sup>14</sup>

<sup>6</sup> Available at: <http://www.legislation.gov.uk/ukpga/1988/33/contents>

<sup>7</sup> See Parts 2, 3 and 4 of the Act, which apply to England and Wales, Scotland and Northern Ireland respectively.

<sup>8</sup> See Part 5 of the Act, which applies to the UK.

<sup>12</sup> This scheme was introduced in 2004/05 for police and extended in 2006 to all law enforcement agencies; 50 per cent of recovered assets are retained by law enforcement, this proportion is divided across investigators, prosecutors and enforcement agencies.

<sup>13</sup> Starting with a pilot project in the West Midlands in 2003 and subsequently being rolled out to additional regions.

<sup>14</sup> Text taken from newsletter issued on 20 April 2010 by Detective Superintendent Ian Davidson, National Co-ordinator for the Association of Chief Police Officers (ACPO) Financial Investigation and Proceeds of Crime Portfolio.

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## Aim

The aim of the research was to describe the contribution of financial investigation and asset recovery when used by law enforcement agencies to tackle organised crime. The intention was to focus on identifying the additional benefits that may derive from financial investigation, over and above other methods of investigation targeted

at organised crime groups. The research was designed to examine the role of financial investigation across the whole enforcement process (including targeting, initial investigation, securing a conviction and the recovery of proceeds).<sup>15</sup> The research examines implications for policy and practice of how financial investigation sits alongside the broader toolkit of investigative techniques and approaches when tackling organised crime.

### Box I Terminology

A glossary of useful terms is provided at the end of this report. However, a number of key terms are also explained here. The term **financial investigation** refers here to the collection, analysis and use of 'financial' information (in its broadest sense) by law enforcement organisations. The main organisations undertaking this work are police forces, Her Majesty's Revenue and Customs (HMRC) and the Serious Organised Crime Agency (SOCA), although it should be noted that there are many other public sector organisations with an enforcement responsibility that undertake financial investigations.

A **financial investigator** is someone who has been accredited to undertake financial investigation by the National Policing Improvement Agency (NPIA), following a course of study. These investigators have access to a range of financial data sources, including credit reference agency data, tax/benefit records and (after obtaining a production order from court) records held by financial institutions, such as banks, building societies, insurance companies and loan companies. Information may also be obtained from merchant service providers, such as mobile phone companies, utility companies and companies that process debit/credit card payments. This information is typically used to produce a profile of economic activity associated with the target of the investigation.

**Asset recovery** refers to the process of depriving an individual of assets that have derived from criminal activity. This can include the following.

- **Cash seizure** under Section 294 of the Proceeds of Crime Act (2002) (POCA), which is a civil process that allows for the seizure of cash if it is considered to be recoverable property generated from the proceeds of crime or if it is intended to be used for unlawful conduct. Section 295 of POCA allows for seized cash to be subsequently detained by the law enforcement organisation.
- **Cash forfeiture** under Section 298 of POCA, which is a civil process that allows a court to forfeit to the State cash that has been seized and detained by a law enforcement organisation if it can be shown to have been generated from the proceeds of crime or used in criminal activity.
- **Confiscation orders** under Part 2 of POCA, which are court orders made within two years of a conviction to recover the proceeds of crime up to the value of the financial benefit derived from the criminal involvement. These orders require the offender to repay the amount of the order within a specified timescale. If the amount is not repaid then the court can impose a default sentence that runs consecutively with any other sentence given and the confiscation order amount will remain outstanding.
- **Organised crime** is defined in the organised crime strategy as activity that 'involves individuals, normally working with others, with the capacity and capability to commit serious crime on a continuing basis, which includes elements of planning, control and coordination, and benefits those involved. A significant proportion of organised criminals are motivated, principally, by the desire to make money. Others, such as the perpetrators of organised child sexual exploitation, have different motivations.' (HM Government, 2011, p 5).<sup>16</sup>

<sup>15</sup> Note that the current research does not focus on the use of civil recovery provisions of POCA,[in previous instances, the abbreviate 'POCA' seems to incorporate the date] as these were not widely employed. This area is now increasing in prominence and further information and guidance on civil recovery is available at: <http://www.attorneygeneral.gov.uk/Publications/Pages/AttorneyGeneralissuedguidancetoprosecutingbodiesontheirassetrecoverypowersunder.aspx>

<sup>16</sup> Note that the definition of organised crime published in the 2011 strategy is wider than the one used previous to this, in that it includes motivations other than purely financial. The earlier definition was in place when this research was started: "Any enterprise or group of persons engaged in continuing illegal activities in which one of its primary purposes is the generation of profit, irrespective of national boundaries." The focus of the current research is therefore on organised crime that will have been primarily motivated by profit.

## 2. Approach

### Research design

The study design involved semi-structured interviews with professionals working on specific cases in which financial investigations were used. A total of 60 cases were selected for inclusion in the study; 54 of these were selected from the Joint Asset Recovery Database (JARD), which collects centrally information on all confiscation orders made in England and Wales. The other six cases were taken directly from a force that was under-represented on JARD. For each of the 60 cases the intention was to interview three practitioners involved, namely the financial investigator involved in the case, an investigating officer (usually the Officer in Charge of the investigation) and a Crown Prosecution Service (CPS) representative. Face-to-face interviews were conducted using similar interview schedules<sup>17</sup> for the three groups; this allowed a degree of triangulation of the data for each case.

The case-specific approach had a number of advantages. It focused attention on the key issues associated with a particular case and, as such, was grounded in the facts of the case and helped to avoid interviewees talking about the generalities of financial investigation. It also allowed additional information to be collected about the cases, such as the type of organised crime involved and the value of the confiscation orders involved.

The disadvantage of the case-specific design was that it paid less attention to the more general, contextual factors associated with the organisation or the criminal justice system that may affect the success of financial investigation in tackling organised crime. Instead, these wider issues were expected to emerge within the context of the particular cases examined.

Using JARD to select cases does lead to a number of biases in the study. First it only contains cases where there was a degree of successful outcome; a prosecution had resulted in a conviction and a subsequent confiscation order. As such, JARD excludes cases where financial investigation was used but where a conviction and associated confiscation order was not achieved. This may increase the likelihood that interviewees will be positive about the contribution made by financial investigation.

<sup>17</sup> Interview schedules were developed from two workshops held with financial investigators.

Secondly, JARD may tend to focus on asset-rich organised criminals. It is likely to exclude so-called 'lifestyle' organised crime groups where proceeds from crime are used solely for a conspicuously consuming lifestyle, leaving no assets available for confiscation.

Cases were selected for the period from January 2008 to December 2009 (based on date of conviction) in order to allow time for the confiscation order hearings to be concluded by the time that fieldwork commenced (in January 2011);<sup>18</sup> despite this time lag there were a number of cases in which confiscation orders had not been finalised by the time fieldwork started. Cases that had a confiscation order assessed benefit value<sup>19</sup> of less than £100,000 were excluded to allow the research to focus on the more serious cases, which were also considered most likely to relate to organised criminality. This generated a list of 153 cases.<sup>20</sup>

Cases were drawn from 20 of the 27 police forces with cases on JARD valued at over £100,000 during this period, all 7 of the Regional Asset Recovery Teams (RARTs)<sup>21</sup> on the database and 7 of the 9<sup>22</sup> Her Majesty's Revenue and Customs (HMRC) Enforcement Units. Any cases that were deemed not to involve organised crime were excluded at this stage and substituted with others from the list of 153. Of these, approximately one in three were selected.

The intention was to conduct 3 interviews for each of the final 60 cases selected. In practice this did not prove possible due to a range of difficulties in arranging interviews.<sup>23</sup> Nonetheless at least 1 interview was conducted for each of the 60 cases, with an average of 2.5 interviews per case.

<sup>18</sup> The Proceeds of Crime Act 2002 (POCA) stipulates that confiscation orders should be made no longer than two years after the original conviction to which they relate.

<sup>19</sup> This is the monetary sum, calculated by a financial investigator, that relates to the financial gain made from criminality. See also Glossary.

<sup>20</sup> There were 545 cases of all values on JARD during this time period that belonged to the agencies included in this research. The sample of 153 cases with assessed benefit values exceeding £100,000 therefore constituted 28 per cent [style is to spell out in text, use symbol in parentheses] of the confiscation order cases during this period.

<sup>21</sup> Although only five RARTs existed in 2008/09, a small number of cases were identified on JARD as being led by two more recently established RARTs.

<sup>22</sup> The remaining two each had only one case on JARD with an assessed benefit value in excess of £100,000.

<sup>23</sup> A number of interviewees had retired or changed jobs in the intervening years.

Table 1 shows the breakdown of interviews completed by organisation type and by interviewee role.

Table 2 shows the types of organised criminal activity under investigation (note that each case could involve multiple types of organised crime). The offence types listed are based on the nature of criminality described by interviewees during the interviews. They do not necessarily reflect the offences for which the defendants were prosecuted and are not based on a review of the actual case files.

All interviews followed a similar interview schedule, but the extent to which they explored emerging topics in detail varied according to the specifics of each case. Interviews were conducted under an agreement of anonymity and the

majority were recorded. No attempt has been made to verify the interview material against the other recorded ‘facts’ of the cases concerned. As such, the findings are subject to the usual limitations associated with qualitative interviews:

- they are perceptual in nature, informed by the opinions and preferences of those interviewed; and
- they are necessarily limited by the ability of interviewees to recall the detail of past cases.

Recorded interviews were transcribed and entered into QSR NVivo<sup>24</sup> for analysis. Initial descriptive coding was undertaken using pre-defined themes, which broadly followed the structure of the interview schedule. Further analysis was then undertaken to identify general themes in the data.

**Table 1: Breakdown of interviews completed by interviewee role and lead organisation**

Role	Police cases	RART cases	HMRC cases	Total
Financial investigator	37	12	7	56
Investigating officer	32	10	6	48
Financial investigator/investigating officer	3	1	1	5
CPS/barrister	33	5	2	40
Total	105	28	16	149

**Table 2: Types of organised crime addressed by the 60 cases**

Type of organised crime	Number	Per cent <sup>a</sup>
Money laundering <sup>b</sup>	34	57
Drug supply/trafficking	32	53
Fraud	16	27
Acquisitive crime	10	17
Drugs cultivation	5	8
Firearms offences	5	8
Immigration	4	7
Other <sup>c</sup>	4	7
Prostitution	3	5
Excise duty evasion	3	5
Other drugs	2	3

a Note that percentages will add up to more than 100% because a case often involved more than one type of organised crime.

b Money laundering included cases where the substantive offence was money laundering and cases where the money laundering was prosecuted on the basis of the offender being in possession of the proceeds of crimes they had committed, as specified under Section 329 of the Proceeds of Crime Act 2002 (POCA).

c Those falling into the ‘Other’ category included:

- offences under the Environmental Protection Act (running an unlicensed scrap yard);
- dealing in counterfeit high-value outdoor clothing and stolen foreign currency;
- labour exploitation, kidnap and extortion; and
- failure to pay funds under confiscation order and conspiracy to pervert the course of justice.

24 QSR NVivo is a specialist software package that supports management and analysis of qualitative data.

### 3. Results

#### Use of financial investigation techniques by stage of investigation

Other studies on the crime investigation process have shown that the use of different investigative techniques can vary across different stages of an investigation. The public may, for instance, play an important role in alerting the police to the fact that a crime has taken place and in providing initial leads, but the prosecution case may ultimately depend on forensic evidence. A central question for the current study was therefore to assess at what points within the investigative process financial investigation techniques were being used.

For each of the cases studied the points at which financial investigation was used was mapped. The research identified five main stages at which financial investigation was reported to be used, and these are shown in Table 3.<sup>25</sup>

#### Identifying criminality, intelligence and case building

This section focuses on the first three phases:

- identifying criminality;
- pre-arrest case building; and
- post-arrest case building.

**Table 3: Stages of investigation process at which financial investigation is used**

Stages of a case	Number of cases
1. Identifying criminality	5
2. Pre-arrest intelligence and case building	35
3. Post-arrest intelligence and case building	40
4. Prosecution	60
5. Confiscation order process	58

<sup>25</sup> This should not be taken as representative of the way in which financial investigation is used nationally because of the limitations in the sampling procedure, as already outlined.

Stage 1 (identifying criminality) indicates those cases where financial investigation was used to identify the organised criminality in the first instance. Five cases were found to involve financial investigation at this stage; two were generated by Her Majesty's Revenue and Customs (HMRC), two by a Regional Asset Recovery Team (RART) and one by a police force. In two of these cases the investigation was initiated as a result of Suspicious Activity Reports (SARs) issued by a bank. Both of these revealed extensive networks of organised criminality (one involving international fraud and the other human trafficking).

In two cases the use of financial investigations changed the direction of an investigation by revealing more serious forms of criminality; in one of these cases an investigation started with intelligence that a family was involved in drug trafficking. Financial investigations uncovered a much more complex case in which the family was alleged to be making money from a company not declaring the employee tax, national insurance or VAT generated by the business. In the second of these cases an investigation that started out as a tax credit fraud case ended up developing into a money laundering case.

In the fifth case, intelligence from an earlier investigation was used to develop a new enquiry into VAT fraud.

One of the key challenges experienced by those who had used financial investigation techniques to develop new enquiries was the difficulty in securing resources to support these. New cases that were initiated through financial investigations were sometimes difficult to justify when crime managers were faced with competing demands and needed to address 'known' crime problems.

In Stage 2 of the investigation (pre-arrest intelligence and case building) financial investigation was generally used to gain an understanding of the nature and extent of an organised crime group that had already been identified (usually through other means). At the pre-arrest stage, investigative work was largely covert and the activities associated with the financial investigation would not be obvious to those being targeted. The emphasis was on understanding the nature of the criminality and determining the extent to which a case could be brought against individuals.

This investigative work was largely 'retrospective' in that it used historical records of financial transactions to build up a picture of, for example, assets owned by an organised crime group, the extent of capital flows and who was involved in a criminal network. However, there

were also several examples of ‘prospective’ work (where information gathered is used to inform future activities and decisions), with financial investigation being used, for example, to identify the current location of individuals subject to a surveillance operation.

The interviews showed that financial investigations were used to achieve a range of different investigative goals at Stage 2:

- identifying the extent of an organised crime group, and the individuals involved;
- assessing the scale and locating the whereabouts of assets held by criminal groups;
- identifying the ownership and use of properties;
- documenting a suspect’s lifestyle; and
- tracking the movements of suspects.

#### **Identifying the extent of an organised crime group.**

This took place in around one-half of cases examined. In some cases this involved identifying additional individuals who had not previously been linked to the group (often family members, but also other criminal associates and business partners).

Financial investigations usually expanded the group of potential suspects, but were also used on occasion to narrow the focus of investigations onto a core group of individuals who were most heavily involved in handling financial transactions.

As well as revealing connections between individuals, financial investigation also helped to demonstrate the full geographical coverage of an organised crime group. By tracing cash flows it was possible to show links with other force areas and regions, as well as international links.

#### **Assessing the scale and locating the whereabouts of assets held by criminal groups.**

Financial investigations were also used to assess the scale and locate the whereabouts of assets; this usually involved identifying cash in accounts, property owned (at home and abroad), vehicles, shares in businesses and valuables in safe-deposit boxes. This type of information provided an indication of the scale of criminal enterprise concerned as well as providing information for use in subsequent confiscation order hearings.

#### **Identifying the ownership and use of properties.**

Financial investigations identified the ownership and use of properties. Although this was often simply an extension of the process of estimating the value of the criminal enterprise, information gleaned through the investigation

of transactions could help to direct aspects of an enquiry. For example, in one case the financial investigation had identified that an organised crime group was renting a luxury apartment as a safe-house, which the operational team had not previously identified.

**Documenting a suspect’s lifestyle.** The interviews also highlighted the use of financial investigations to provide a means of documenting the lifestyle led by members of an organised crime group. This was considered important as it helped to show to a jury the financial benefit from criminal activity. Information could be presented alongside the absence of legitimate earnings. Defendants were often unable to explain how they legitimately funded their lifestyle.

Analysis of lifestyle was achieved by examining bank records to show expenditure and to identify major items purchased (such as cars and holidays). Many organised crime groups were reported by interviewees to have limited assets, instead leading conspicuously consuming lifestyles in which earnings were quickly spent and replenished. In these cases, the financial investigations were able to demonstrate the scale of spending by those concerned. This information was frequently used to build money laundering cases against members of organised crime groups.

**Tracking the movements of suspects.** Several interviewees highlighted that information gleaned through financial investigations could help to track, or even anticipate, the movements of those being targeted. By examining the use of cash machines and identifying shops where purchases had been made, it was possible to build up a picture of a suspect’s movements. In one case, this approach was used to work out which flights an individual was taking to and from Dubai. This started with a credit card entry showing that a particular travel agency had been used. That agency was contacted to find out which airline had been used, the airline was then contacted to find out which flights the individual was on. In another case, financial investigation techniques established which station was being used to buy the train tickets to transport drugs. This provided a surveillance opportunity for the operational team.

In a handful of cases, financial investigation was used to identify people in particular locations, in a way that contributed to the overall investigation. Financial investigation was used in conjunction with other information, such as closed-circuit television (CCTV) images. In one case, financial investigation was used

to identify who had paid money into a bank, by first identifying the times at which money was paid into a particular bank branch and then reviewing the bank's CCTV footage to identify the individual. In a similar case mobile phone vouchers for a particular number were bought with a credit card from a particular shop. The shop's CCTV footage was subsequently used to identify who had bought the top-up vouchers and established a link between the individual and the phone usage.

At Stage 3 (post-arrest intelligence and case building) the use of financial investigations was similar to the pre-arrest stage in that it was generally retrospective, involving the historical analysis of financial records. However, at this stage investigators were often more open about their enquiries with the financial institutions and related professions, such as solicitors and accountants. The post-arrest stage was also characterised by a greater shift towards evidence gathering, with a view to preparing a prosecution case.

There were also a number of additional approaches that were used at this stage. For example, financial investigators would often participate in post-arrest searches of properties to identify relevant financial information. This was beneficial because they were more aware of the kind of financial information that was valuable than other officers working on the case. Where they were not actively involved in the searches financial investigators would often nevertheless benefit from the material seized.

At this post-arrest stage, financial investigation often led to the identification of new bank accounts for further investigation. It also led to receipts that showed expenditure and identified assets on site that were available for restraint (such as vehicles, antiques and jewellery) prior to later confiscation order hearings. Indeed, as one investigating officer explained:

"...it was invaluable to have the financial investigators come out with us on the strike day ... because, very much from a practical point of view, they can physically identify documentation or bits of ID that are going to benefit the financial investigation ... there is a lot of things that they can point out and say 'that is valuable', so I think they should be involved from a very early start and it was important that they did that."

**Restraint orders (made by a judge)** prevent an individual subject to the order from using known bank accounts and otherwise disposing of restrained assets. They

were typically executed at the post-arrest stage. This prevented assets from being quickly dissipated once the organised crime group was aware of the police interest in them. Restraint orders were also placed on items other than bank accounts, including restrictions on the sale of personal property (including buildings and land) and business assets. Once a restraint order was issued, the individual subject to the restraint was required to agree expenditure from the relevant bank accounts and the disposal of assets with the law enforcement agency involved.

### **Collaborative working between financial investigation and other aspects of an investigation**

Those interviewed emphasised that financial investigation typically worked best in close alignment with other parts of the investigation, with each element supporting the other. There were various terms used by investigating officers to describe this collaborative working relationship, including having "embedded" financial investigators who were "integral" to the investigation. Similarly, the financial investigation was described as a "golden thread" that ran through the whole operation. The following quote from an investigating officer was typical:

"In the job that we do it is as important as the forensics, as the surveillance team. It is just part of the team ... But you know they [the financial investigators] are present in all the briefings so that they are picking up from us what is going on with kind of operationally what's developing, and suddenly they will then chip in and say well we have identified this, we have identified that, you know, we will raise actions from it ..."

A number of those interviewed felt that financial investigation could be a cost-effective means of gathering intelligence and evidence building in a case. In some cases it was felt to be more cost effective than other methods of investigation. As one investigating officer put it:

"Well you know it is remarkably cheap when you think about it, you know for three months I had two or three FIs [financial investigators] dedicated to that work ... what I can say is that it was done within normal budget, there wasn't any need for significant external funding and it was done within the normal budget of the division, and that in itself tells a story ... I know how much was spent on the surveillance on them beforehand and it didn't produce anything, but it was very expensive, because it is. So it

[the financial investigation] demonstrated that not only was it effective in the right circumstance, it is not the only way of doing it but as a lead tool, it is cost effective in the right circumstances and it has impact."

### Challenges for financial investigation in pre- and post-arrest intelligence and case building

There were a number of perceived challenges for financial investigation in the intelligence and case-building process that were raised specifically by financial investigators. The first related to investigations that led to overseas enquiries. These were considered to be particularly time consuming. While some countries were very co-operative (Norway was singled out by one financial investigator as particularly efficient) other countries were less so. In some cases this was thought to be due to the volume of work created by UK law enforcement agencies, whilst in other cases language and cultural differences made overseas enquiries difficult. Interviewees claimed that many of the financial investigations that led overseas were often not completed by the time of a trial or confiscation order hearing. This meant that investigators often had to draw a line under those aspects of the investigations.

Second, financial investigators identified a number of challenges to the way that restraint orders operate that were considered to potentially limit the impact of confiscation orders. If members of an organised crime group possessed material assets (other than cash) it could be difficult to prevent them from being sold, especially if those concerned were expecting to receive long custodial sentences. An additional tariff on the sentence for breaching the restraint order was not thought to be a sufficient deterrent by some financial investigators.

Interviewees also claimed that it could be difficult to stop individuals subject to a restraint order from opening another account with a different bank. The absence of a central register for restraint orders in the banking system could, it was argued, make it possible for organised crime groups to open new bank accounts and continue to trade despite a restraint order being made. In one case a financial investigator explained how an organised crime group went through a legal process to place a company subject to a restraint order in administration and then opened a new company (having transferred assets from the old company). This allowed it to continue in business. In another case it was explained how an organised crime group continued to use funds held on account with a solicitor to purchase property.

The final, relatively minor, issue raised was the time it took banks to produce bank statements once a financial investigator had obtained a production order from court. Financial investigators noted that this varied considerably from one bank to another. It was noted by one respondent that this had got worse as the demands placed on banks by financial investigators had increased while the number of bank staff had been reduced.

### The role of financial investigation in supporting a prosecution

All of the cases in the sample drew on material gathered from financial investigations to support prosecution to a greater or lesser extent. This often involved producing material of an evidential nature (including signed statements) from financial institutions. The financial evidence was, predictably, not necessarily the sole reason for the conviction; more commonly, financial evidence was used in combination with other forms of evidence to build a case against the offender. There were 29 cases that resulted in a guilty plea (the remaining 31 cases proceeded to trial).

Given the multi-faceted nature of the investigations, these convictions may have been achieved regardless of whether financial investigation took place. Undertaking analysis to identify what investigative activity (or piece of evidence) is central to the prosecution case is not straightforward. Quantitative studies of crime investigations can seek to isolate which case characteristics or pieces of evidence best predict successful outcomes (for example, Bond and Hammond, 2008), although these approaches have their limitations, particularly in more complex criminal cases. This qualitative study, which only analysed successful cases (those that resulted in a conviction), applied a different approach to assess the perceived value of financial investigations.

To build a picture of the contribution that financial investigation was perceived to have made to these cases, all interviewees was asked to assess whether they believed evidence gathered from the financial investigation had influenced the prosecution's case. These are of course only interviewees' perceptions.

The research considers financial investigation to have influenced the prosecution's case when at least two of those interviewed about the same case stated independently that they felt that it had.<sup>26</sup> On this basis, the research found that

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<sup>26</sup> This was important given that the financial investigators interviewed as part of the study might be inclined to have a more positive assessment of the value of financial investigations.

in one-half of the cases that resulted in a trial, evidence from the financial investigation was considered to have influenced the prosecution's case. The same proportion was found for cases that resulted in a guilty plea.

### How financial investigations contributed to case outcomes

There were four main ways in which financial investigation was perceived to have contributed to case outcomes (here too the assessment was based on at least two interviewees involved in the same case identifying the particular contribution of financial investigation):

- the financial investigation formed the basis of the conviction (reported in 12 cases);
- the financial investigation identified the nature of an offender's role in a case (14 cases);
- the financial investigation identified other suspects involved in the case (five cases); and
- the financial investigation identified other offences in addition to the substantive offences (seven cases).

Each of these categories is dealt with in turn. It should be noted that a single case can feature in more than one of the categories.

**Financial investigation formed the basis of the conviction.** In 12 cases<sup>27</sup> the financial investigation formed the basis of the conviction itself. Without the contribution of the financial investigation, interviewees doubted whether there would have been a conviction at all. In the main, these were cases where the offences in question related to money laundering or fraud. They were, therefore, the sorts of offences that tended only to be uncovered or truly understood through the use of financial investigation.

**Financial investigation identified the nature of an offender's role.** There were 14 cases where interviewees assessed that financial investigation had generated evidence that clarified the nature of an offender's role in the case. In these cases the financial investigation helped to inform the case brought against the suspects, providing a more accurate and detailed account of how they were involved in the operation of an organised crime group. This often involved providing evidence of 'conspicuous consumption' by the suspect, which could not be supported on legitimate incomes. This could be used as evidence to demonstrate the scale of the suspect's involvement in criminality.

<sup>27</sup> Of which six were police cases, four RART and two HMRC.

In the main these related to drugs cases where suspects claimed to have played only a minor role in the pattern of offending (for example, only being a courier for a larger organisation or a user/dealer, dealing only to fund their personal habit). It was evidence generated from financial investigations that showed the true level of their involvement, for example, by providing details of transactions relating to the production or supply of drugs, or uncovering evidence of a lifestyle that needed a much larger income to support. In a number of other cases the financial investigation was able to establish a suspect's involvement in other ways (for example, proving ownership of a business or asset used by the organised crime group or the hierarchy of an organised crime group).

**Financial investigation identified other suspects involved.** In a small number of cases, the financial investigation was perceived to have drawn additional suspects into an initial enquiry, and this in turn had successfully resulted in a greater number of convictions (five cases).<sup>28</sup> In the main, these were drugs cases where the financial investigation was able to identify others operating, often on the fringes of an organised crime group. These additional suspects were convicted solely of money laundering offences.

**Financial investigation identified additional offences.** Finally, in seven cases<sup>29</sup> interviewees perceived that financial investigations enabled further charges to be brought against suspects already charged with other offences. In most cases, these were money laundering offences brought against those primarily investigated for drugs offences. However, there were also examples of charges for offences related to mortgage and benefit fraud.

### Challenges for financial investigation in supporting a prosecution

Financial investigators raised a number of issues relating to the potential challenges in using financial investigation to support a prosecution. These related to the process of financial investigation and the judicial process, as well as to resources.

Challenges to the use of the evidence derived from financial investigations were largely procedural and were

<sup>28</sup> Of which three were police cases and two RART cases.

<sup>29</sup> Of which five were police cases, one a RART case and one a HMRC case.

usually resolved after a period of time. Gathering evidence (in the form of statements) from financial institutions through the use of production orders was one issue highlighted by interviewees. As this was a common line of enquiry, some banks had started to ask for a court date to work to before providing any data to avoid generating evidence for cases that did not proceed to court. In addition, the time taken for some cases to reach court meant that those working in financial institutions had sometimes moved on (and so could be difficult to call as witnesses).

A second potential challenge, albeit one that appeared to have been addressed by financial investigators, was around the presentation of evidence in court. Many interviewees stated that a financial investigation often generated large amounts of paperwork. That type of information risked being confusing, boring and difficult to explain to juries. Financial investigators pointed out that this often meant streamlining evidence for court, to ensure that it was not presented in a way that risked alienating the jury. This often involved the use of graphs to summarise findings.

The resourcing of financial investigation was considered to carry high opportunity costs; preparing a case for court and attending a trial took staff time that was not subsequently available for developing other cases. In a small number of cases it was noted that the level of detail required from the financial evidence was unknown until the trial unfolded. This created demands on financial investigators during the trial.

## **The role of financial investigation in the confiscation order process**

Following a conviction, the prosecuting authorities applied for a confiscation order to be imposed on offenders in all but 2 of the 60 cases. This was to recover the ‘benefit’ made from the proceeds of crime. This section of the report draws largely on the interviews with financial investigators, who were considered to be in the best position to explain the role of financial investigation in the confiscation order process.

Financial investigators described their involvement in a wide range of activities to support the confiscation order process. These included:

- identifying assets for restraint;
- calculating the ‘benefit’ associated with criminal activity;
- arranging the valuation of assets;
- preparing confiscation statements and papers;
- suggesting timetables for barristers/court and following the entire process through; and
- ensuring that papers were served on the defence.

Financial investigators also described how they served notices on offenders and associates, warning them that the dissipation of assets that had been identified or restrained might constitute a further offence. They kept a watch on assets, for example, maintaining contact with mortgage companies, financial institutions and conveyancing solicitors to ensure that they were notified of any actions that might indicate a plan to sell a house, such as a request for a redemption statement. Finally, they liaised with local councils to monitor for evidence of continued activity, such as applications to open up local business premises.

Calculating the ‘benefit’ associated with the criminal activity included a review of items seized from premises – such as receipts for purchased goods and services, passport visa stamps and travel documents, and photographs of assets (such as cars).

The confiscation order process was perceived to work best when investigators were included at an early stage in the case, even when their role was confined to supporting the confiscation process. They sometimes gave instructions to those executing the warrant to identify items of high value. They had to be able to anticipate avoidance activities, such as the use of aliases, or the transfer of assets into other names. In these circumstances it was necessary to identify and secure restraints on those individuals as well.

Involving the financial investigator in the early part of an investigation could, however, also yield information that might be of use in the original trial. As one HMRC financial investigator observed:

“... we had a man who operated a lot of businesses, he had a lot of bank accounts and we’d have picked up quite early on, if there had been financial investigation involved, that his tax affairs were in complete disarray, because he was using his business bank accounts for personal purposes and vice versa. And it was impossible to tell what was money from smuggling, what was tax evasion and what was legitimate business. If there had been a financial investigator involved much earlier on you could have introduced evidence to say that why is all this money going through his businesses?”

In some investigations, a critical part of the decision-making process around confiscation orders and larger organised criminal groups was deciding which individuals to prioritise. Some individuals would naturally have more assets than others and pursuing a confiscation order against those with the most assets would naturally maximise the return from the financial investigation. Indeed, typically in a case involving drug dealing (accounting for over one-half of the cases examined) there was far less to be gained from pursuing confiscation orders against street-level dealers. This was because their likely hand-to-mouth existence made it difficult to quantify the benefit they accrued from their criminal activity. They were in any case likely to have minimal assets.

Furthermore, financial investigators reported that they were sometimes required to undertake financial profiling of family members and associates, in order to take a broader view on where assets might be held. It was reported that suspects sometimes tried to move money into different names, so that financial investigators needed to pursue those assets in order to achieve a successful and worthwhile confiscation order.

#### **Challenges for financial investigation in the confiscation order process**

Interviewees identified several challenges to the operation of confiscation orders. In essence, these issues were perceived by interviewees to limit the value of the funds that could be recovered from a confiscation order by reducing the realisable asset figure presented in the final confiscation order. Issues were identified in relation to:

- locating assets;
- court processes; and,
- offender strategies to delay proceedings.

**Locating assets.** The tendency for organised crime groups to trade in cash only was reported to make the job of the financial investigator difficult, both at the investigation and the confiscation stage. Even with financial investigator involvement it was sometimes difficult to find assets. There were common complaints around problems of recovering assets from foreign nationals with contacts abroad, who dealt mostly in cash (even where high benefit figures were concerned). The movement of assets abroad was also identified by many financial investigators as creating a significant barrier. Financial investigations that stretched overseas brought added problems over understanding the infrastructure and political sensitivities. Poor reciprocal arrangements

with many jurisdictions made it difficult to realise assets requiring, for instance, the sale of property abroad.

Finally, while financial investigation of an organised crime group might be effective at identifying assets held by, or distributed among, associates, there was also a recognised risk that the investigation of one person might trigger dissipation or transfer of assets and other avoidance tactics on the part of other associates.

**Court processes.** Respondents did not necessarily agree with all of the processes at court, at times perceiving them as running counter to their own perceived aims of identifying and ensuring confiscation of the largest possible amount of assets.

Areas of frustration included interviewees feeling that the significant investment of investigative effort was 'lost' where the courts had decided not to pursue matters, or where courts accepted the details on benefit or recoverable amounts. Similarly, financial investigators found the discussions between prosecution and defence advocates regarding the amount of the confiscation (a usual procedure to consider evidence ahead of the hearing) frustrating.

Respondents occasionally felt that the processes led to a reduction in the amounts actually seized, although this may reflect a tendency for the process to inflate recoverable amounts at the front end.

**Offender strategies to delay proceedings.** The most common issue reported by interviewees was that offenders (or lawyers) were thought to use 'tactical manoeuvres' to delay proceedings. This was considered to be a particular issue when defendants were in custody. Interviewees described a range of activities that were in their view used to delay proceedings, and that in turn had the potential to reduce the value of confiscated assets.

One Crown Prosecution Service (CPS) representative summed this up as follows:

"Delays from defence in filing their statements, almost invariable in cases like this, where defendants are in custody. Usual arguments put forward are difficulties for solicitors to track their clients down, solicitors not being paid properly by Legal Aid to cover this sort of work, defendants not being able to obtain their paperwork because they are in prison and not at home, and so on. So those are the standard things that you see and the defendants in this case are putting forward."

Another perceived 'delaying tactic' identified by interviewees involved defendants changing their legal representatives on a regular basis, thereby generating a request to a judge from newly appointed counsel for more time to prepare the case. As one financial investigator explained:

"I've got no doubt in my mind that that is a ploy ... [to] suddenly drop solicitors, change them over. Then the solicitors, the counsel stands up and says 'I'm afraid I can't deal with this today because I haven't had sight of the papers, I don't know what it is, I need an extra, you know, three months, six months' and invariably the courts will allow that."

The perceived use of such tactics was considered to delay the confiscation process and tie up court and law enforcement resource.

Interviewees commonly asserted that creating delays to the confiscation order process was also a deliberate ploy to reduce the value realisable assets. Money was permitted to be drawn from restrained accounts to fund reasonable living expenses. The impact on the value of restrained assets could be considerable, particularly if the 'reasonable amount' involved substantial sums (such as those to cover a defendant's living expenses). One CPS representative described this process as follows:

"Early restraint, good financial statements, into court, crunch, that's when it starts to go wrong ... Some of it is apocryphal, stories. But if you go round you will have heard the same stories from everybody about delay, defence tactics, court putting off, next hearing is nine months down the line. Now in that nine months, if there's a restraint order, for example, they could be bleeding the restraint monies to live on, because they are entitled obviously to reasonable living expenses. So the longer you go along, the more money is being released from restrained funds to pay for that, so there could be a lot less."

The factors outlined here were thought to result in the realisable asset figure presented in the final confiscation order being lower than would otherwise have been the case.

## The enforcement of confiscation orders

This section examines in more detail issues around the enforcement of confiscation orders, and is based largely on interviews with eight individuals working in a confiscation order enforcement role. These interviews were not case specific; they covered general issues arising from the enforcement of confiscation orders.

Enforcement of confiscation orders was viewed as a complex area. The task was undertaken by a range of disciplines within a variety of agencies. HM Court Service was reported to lead on lower value cases where no restraint was in place. There were eight regional enforcement teams; each of which covered a number of police force areas. Some of these teams were standalone and others were co-located within other units, such as the RART. HMRC had its own Restraint and Confiscation Teams that contributed to enforcement. Larger complex cases were generally dealt with by the CPS Proceeds of Crime Unit.

While some offenders were reported to satisfy the confiscation order within the time limits, others went to some lengths to avoid payment. As noted, tactics to protect assets may well have taken place before the confiscation order had been made and may have a knock-on effect at the enforcement stage. Organised crime groups, particularly the more sophisticated ones, were likely to have access to lawyers and accountants who could assist with the hiding or disposing of assets.

### Barriers and challenges

Interviewees reported a number of difficulties associated with this area of work.

- **Problems in locating offenders** (including rare cases where offenders had absconded from prison).
- **Attempts to conceal or transfer assets.** These included placing funds in off-shore trusts, declarations of bankruptcy and the use of corporate structures to house assets. There were particular issues around offenders moving money overseas (offenders were reported to be able to move money across jurisdictions more quickly than the authorities were able to chase it).
- **Delays to the process or the speed at which confiscated assets could be realised.** Delays could occur as a result of adjournments and applications for variation and Certificates of Inadequacy<sup>30</sup> as well as delays such as marketing houses at unrealistically high prices.

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<sup>30</sup> Under Section 23 of the Proceeds of Crime Act 2002 (POCA) a defendant can submit a Certificate of Inadequacy to the court to request a variation to the confiscation order in line with available funds. Section 24 of the Act allows for the order to be discharged on the grounds of inadequate funds.

- **Third-party claims on assets.** This included the repossession of property and vehicles by preferential creditors due to cessation of mortgage and loan payments, and claims on assets by family/friends/business partners, etc.
- **The high costs of recovery.** In larger, more complex cases that were likely to involve organised criminals, the use of enforcement receivers to recover the outstanding amounts was very expensive and the costs of these services could equal or exceed the recoverable assets.
- **A lack of follow up of nominal orders,** and absence of specific plans and resources to revisit the offender's circumstances, was experienced as frustrating by many respondents.

The key tool for the enforcement of confiscation orders was reported to be the default sentence for unpaid orders that, in the case of higher amounts, could be for a substantial period of time. A default sentence is a custodial sentence that can be imposed by a judge for failure to pay a confiscation order within the specified time. The length of sentence depends on the scale of unpaid funds, up to a maximum of 10 years for sums of over £1 million. Importantly, a default sentence can only be imposed once for an unpaid confiscation order, although the confiscation order amount will remain owing once the sentence has been served. For some, this was reported to be an effective way of motivating offenders to pay the order.

However, difficulties were reported with enforcing confiscation orders at the post-default sentence stage. Once the default sentence had been served, the court could not issue another warrant without bail, because the default sentence could only be served once. It was reported to be possible to summons for a full means enquiry, but if there was no formal means of employment, this was felt to be ineffective. Indeed, it was felt to be quite likely that minimal payment terms would be agreed, which would make little inroad into an order of significant value with hidden assets. In effect, once a default sentence had been served, there were reported to be fewer options available to recover the outstanding value of the confiscation order.

In these cases, it was noted that the only option was for the CPS to ask for a further sentence to be imposed on the amount of interest accruing – but interviewees felt this was rarely done. Overall, there was felt to be no proper mechanism for dealing with the interest that accrued on a daily basis after a certain point.

Confiscation orders are monetary orders in the sense that they require the offender to repay a sum of money equal to the value of the order. The legislation does not allow for enforcement authorities to sell assets, or to specify which assets should be sold to realise the confiscation order amount. Offenders are also not obliged to sign consent forms for their assets that were seized during a criminal investigation (which could be proven to be the proceeds of crime) to be sold by enforcement authorities to realise the value of the confiscation order. These were viewed as key frustrations among those interviewed. Enforcement teams were therefore reported to have insufficient control over the realisation of assets. It was felt that there should be greater onus on the defendant to demonstrate that they were taking active steps to realise assets, and the ability for enforcement teams to sell assets on the offender's behalf was identified as a preferred option.

### Structure and process

The structure and location of the enforcement team was perceived by some to be a problem in some areas. Standalone enforcement teams were reported to sometimes lack access to wider information about the criminal enterprise, which was material in the pursuit of assets. They were not always aware of an offender's status as a member of an organised crime group or of the associates in a case. Fragmentation of the process across different agencies was considered to reduce effectiveness, with a lack of understanding between different parties around their contributions and obligations.

Some of those interviewed were strongly in favour of a 'cradle-to-grave' multi-agency approach to maximise the impact of recovery and enforcement. Co-location of agencies, or the embedding of staff from across the process within overarching structures (such as with RARTs or Economic Crime Units) were considered possible ways to achieve this. Access to further specialist services, such as tax investigation, was also highlighted as important.

It was argued that there were benefits to ensuring that those involved at the end of the process (that is, with confiscation order enforcement) were also involved at the beginning of the process. This was because it was the final order enforcement stage that would be hampered by any mistakes earlier in the process. It was generally felt that the tighter the background work early on in the process, the less scope there was for defendants to contest the amount. Those involved in order enforcement felt that

they could advise on which assets to secure in specific cases, and could have a broader role in educating financial investigators about the end process. It was unclear why those involved in confiscation order enforcement had not historically been involved earlier in the financial investigation process.

#### Measures to address non-payment

Interviewees identified several examples of successful countermeasures to the non-payment of confiscation orders. In one force, a small confiscation order enforcement unit was employed to assist with the recovery of assets. Where possible, members of this unit would be at court when an order was given to explain to the offender their role in recovering the assets and to address any misconceptions. This team also visited those subject to an order in prison to discuss how they could help with the realisation of the assets – for example, this included assisting them with placing properties on the market. The team was felt to be able to address problems with payment of confiscation orders before they arose.

The use of civil enforcement powers were also felt to be an effective means of enforcement of confiscation orders that had not been satisfied through the standard enforcement process. Apart from recovering the outstanding amount, civil enforcement powers (such as charging orders<sup>31</sup> against the home) are considered to send out a powerful message to the community. Although civil enforcement powers could be effective they could require additional expertise and be expensive to pursue. In one area, a focus on civil enforcement conducted by a specialist lawyer was underwritten by the RART, which recognised the potential for organised crime group disruption and improved community confidence.

In another operation, a RART followed up ten of the court team's most intransigent orders. By undertaking some basic checks, the team was able to identify the problems that were resulting in non-payment. In one case, an offender had left the country but by working with the UK Borders Agency (UKBA) the RART was able to gain intelligence regarding his return to the UK (he was subsequently arrested and convicted).

Going beyond the non-payment of the original confiscation orders, one unit set up a specific operation under Section 22 of the Proceeds of Crime Act 2002 (POCA); this provides a facility to revisit existing confiscation orders where there is a disparity between the assessed benefit figure and the realisable asset value repayable by the offender. A list of confiscations where the disparity between the two values was greater than £5,000 was generated. These were revisited, resourced by paid overtime. For £2,000 of overtime an additional £300,000 was recovered. The process was relatively simple, relying on police systems to identify current addresses and credit reference checks to identify new bank accounts, loans and mortgages, and so on. A dedicated CPS lawyer was used to restrain the additional assets.

#### Opportunities for improvement

There were many examples of successful confiscation orders and enforcement of those orders within all of the participating agencies. However, respondents felt that there was still room for improvement. For example, opportunities for further investigation were often not pursued when confiscation orders were apparently satisfied without the realisation of identified assets. In one case, a £30,000 confiscation order had been paid in cash to the court offices from a briefcase and yet there was no protocol or impetus to follow-up the provenance of this money. It was felt that, had the confiscation order enforcement team been co-located with financial investigators, there would have been more opportunity to follow this up. This is because financial investigators would have the skills and tools to examine these cases in greater detail.

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<sup>31</sup> Under the Charging Orders Act 1979 a creditor can apply to the court to make a charging order on a property, thereby allowing a creditor to reclaim an outstanding amount from the sale of a property.

## 4. Conclusions

This study examined 60 cases in which financial investigation was used, based on qualitative interviews with those involved. The aim of the research was to describe the contribution of financial investigation and asset recovery when used by law enforcement agencies to tackle organised crime.

The analysis describes the way that financial investigation contributes to tackling organised crime. The benefits of financial investigation are not solely in terms of asset recovery. The Proceeds of Crime Act 2002 (POCA) provided a legal framework for asset recovery and this has been utilised by law enforcement agencies throughout England and Wales to seize, restrain and subsequently confiscate assets from those convicted of organised crime.

There are a number of other ways in which financial investigation has been identified as contributing to the disruption of organised crime. First, it can have an indirect effect by providing intelligence to an operational team regarding the nature and extent of criminal activity. This report has described a number of ways in which financial investigation provided intelligence to support an enforcement operation. These included:

- using financial investigations to identify organised criminality in the first instance;
- identifying the extent of an organised crime group;
- locating assets owned or used by organised crime group members;
- identifying ownership and use of properties;
- uncovering evidence of the lifestyle led by those targeted;
- tracking movements of individuals; and
- placing people at particular places at particular times, thereby linking them to criminality or particular criminal groups.

Secondly, financial investigation was found to play an important role in supporting convictions of those involved in organised crime. In one-half of the cases examined for this study, the evidence provided by financial investigation supported a prosecution. In a minority of cases, interviewees believed that a conviction would not have been possible at all without the financial investigation, while in others the financial investigation was able to show the greater involvement of the accused in the criminal activity, the full extent of the organised crime group that could be brought into the prosecution,

or the full range of offences that could be prosecuted (particularly money laundering).

Challenges in conducting financial investigation and asset recovery were identified at a number of stages, from initial identification of criminality, through to the process of enforcing confiscation orders.

## Implications

This study has illustrated the way that information gleaned from financial investigations has contributed to the investigation, prosecution and confiscation of a number of successful cases.

The contribution that financial investigation makes to tackling organised crime goes beyond simply a mechanism to recover assets. This investigative approach has the potential to be successfully applied across the full extent of criminal investigations. In particular, it should be viewed as a tool that yields most value when it is used in collaboration with other investigative methods, rather than an approach that is used in isolation.

There were suggestions made by number of those interviewed that financial investigation could be more cost effective than other investigation techniques, which may mean that the same outcomes could be achieved at lower cost. Assessing the cost effectiveness of different investigative techniques is, however, difficult to establish with confidence and this study was not designed to explicitly address this question.

There may also be implications for practice in relation to how disruption of organised crime groups is achieved through the use of POCA. With limited resources to prioritise against a considerable number of organised crime groups,<sup>32</sup> alternatives to full enforcement investigations can be helpful as a means of disruption. Cash seizures can offer an effective means of placing pressure on an organised crime group without necessarily expending the resources required to achieve a prosecution and subsequent confiscation order. However, cash seizures do not generate the same volume of recovered assets for redistribution as full investigation and confiscation, and do not represent a standalone alternative to full criminal investigation. Rather, cash seizures offer an additional, effective disruptive tool.

<sup>32</sup> Law enforcement estimates (HM Government, 2011, p 5) suggest that there are around 38,000 organised criminals impacting on the UK, involving around 6,000 criminal groups.

Where the enforcement of confiscation orders is concerned, the study identified some frustration among respondents. The most common concerns centred on how offenders often used tactics to delay or hinder the process of confiscation, as well as problems with locating hidden assets. Financial investigators also expressed frustration about some of the confiscation order processes at court, which in their view reduced the amounts actually seized, although this may reflect the tendency for the process to inflate recoverable amounts at the front end.

Findings indicate that there may be a benefit in closer working between asset recovery enforcement teams and wider investigation teams, and that in some cases co-location might be appropriate.

Finally, the findings suggest that there are aspects of the asset recovery regime, including the enforcement of confiscation and restraint orders, and procedures for overseas enquiries, that could benefit from further attention to enhance the effectiveness of financial investigation.

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## Glossary

Term	Definition
Acquisitive crime	Any criminal offence where the offender has obtained or sought to obtain a benefit (money or property).
Advance fee fraud	Where a person is offered the opportunity to make a significant financial gain in return for a small outlay (at first). The victim will then be asked to invest more as they are drawn into the fraud. Examples of this can be for bogus lottery winnings or for help with releasing money from dormant bank accounts in a developing country. These are often known as '419 frauds', named after the relevant section in the Nigerian Criminal Code.
Assessed benefit value	This is the monetary sum, calculated by a financial investigator, that relates to the financial gain made from criminality. This can be calculated on the basis of gains from particular criminal conduct, or the basis of a general criminal lifestyle (that can go back six years). The assessed benefit value may include a calculation based on money/assets received, money/assets held (for example, savings and investments) and money/assets expended. This figure is used in the confiscation order process to agree the value of the benefit derived from the criminality.
Asset recovery	Any financial investigation to recover criminally obtained assets through cash forfeiture, confiscation, forfeiture/deprivation or by utilising the civil/tax provisions contained in the Proceeds of Crime Act 2002.
BCU	Basic Command Unit. Largest geographical administrative police unit below a police force area. Typically managed by a Chief Superintendent, responsible for delivering police services in the area.
Civil recovery	Under Section 2A of the Proceeds of Crime Act 2002 non-conviction based asset recovery powers are made available where: <ul style="list-style-type: none"> <li>● it is not feasible to secure a conviction;</li> <li>● a conviction is obtained but a confiscation order is not made; or</li> <li>● a relevant authority is of the view that the public interest will be better served by using those powers rather than by seeking a criminal disposal.</li> </ul>
Certificate of Inadequacy	Under Section 23 of the Proceeds of Crime Act 2002 those subject to a confiscation order can apply to the court for variation in the amount payable on the grounds that there are inadequate funds to repay the order. Section 24 allows for the confiscation order to be discharged on the grounds of inadequacy. However, orders can only be varied/discharged on the grounds of inadequacy for specified reasons.
Confiscation order	A process by which a court orders the payment of a sum equivalent to the value of assets obtained by a criminal following conviction of an acquisitive crime.
CPS	Crown Prosecution Service. The organisation responsible for prosecuting criminal cases investigated by the police in England and Wales.
Financial intelligence	Any intelligence that is of a financial nature that can add value to an investigation.
Financial investigation	Any investigation into a person's financial matters. It may involve some element of asset recovery, but may be for other reasons, such as a criminal money laundering investigation, or other purposes, such as tracing missing persons, tracing witnesses and assisting in enhancing the quality of other investigations, for example, murder, robbery, burglary, kidnap, or rape.
HMRC	Her Majesty's Revenue and Customs. Non-ministerial government department responsible for administering and collecting taxation and administering some benefits in the UK.
Intelligence	Information that has been subject to a defined evaluation and risk assessment process in order to assist with law enforcement decision making.
JARD	Joint Asset Recovery Database. Used by law enforcement agencies to record details of confiscation orders and proceedings.

Term	Definition
Money laundering	<p>Defined in Sections 327, 328 and 329 of Proceeds of Crime Act 2002 as where a person either:</p> <ul style="list-style-type: none"> <li>● conceals, disguises, converts, transfers or removes criminal property; or</li> <li>● arranges the acquisition, retention, use or control of criminal property; or</li> <li>● acquires, uses or has possession of criminal property.</li> </ul>
Nominal order	A confiscation order where there are few or no realisable assets available and so a very small order is made (such as £1).
Organised crime group	Defined as any enterprise or group of persons engaged in continuing illegal activities in which one of its primary purposes is the generation of profit, irrespective of national boundaries.
Organised crime	Defined as an activity that 'involves individuals, normally working with others, with the capacity and capability to commit serious crime on a continuing basis, which includes elements of planning, control and co-ordination, and benefits those involved. The motivation is often, but not always, financial gain. Some types of organised crime, such as organised child sexual exploitation, have other motivations.' HM Government (2011)
POCA	Proceeds of Crime Act 2002. This introduced a number of asset recovery powers, including the use of restraint orders and post-conviction confiscation orders and cash seizure and civil forfeiture/recovery.
Restraint order	A court order that freezes a defendant's assets so that they may be used to satisfy a confiscation order, and prohibits a specified person(s) from dealing with any realisable property held by them. These specified persons can include third parties.
RART	Regional Asset Recovery Team. Multi-agency law enforcement teams that operate across police force boundaries within the region concerned, using financial investigation as a means of recovering assets. There are currently five RARTs operating in England and Wales.
SAR(s)	Suspicious Activity Report(s). These reports are submitted by banks and other financial institutions where the activity of customers is in some way suspicious and might indicate money laundering or terrorist financing.
Section 17	Section 17 of the Proceeds of Crime Act 2002 refers to the statements prepared by offenders in response to those drawn up by a financial investigator, outlining their available assets. A Section 17 statement is the response, prepared on behalf of the offender, to the financial investigator's statement.
UKBA	UK Border Agency. An agency of the Home Office responsible for border control, including matters associated with immigration, asylum and citizenship.