
Meeting of the Executive Member For Neighbourhood Services and Advisory Panel

5th June 2008

Report of the Director of Neighbourhood Services

Developments in Proceeds of Crime Legislation

Summary

1. The purpose of this report is to inform members of developments in the law aimed at the recovery of criminal assets and the disruption of crime.

Background

2. The Proceeds of Crime Act 2002 (the Act) simplified the law enabling the police and other enforcement bodies, like trading standards, to recover the criminal assets of those people living off the proceeds of crime. The object being to help ensure that 'crime doesn't pay'.
3. When a person is convicted of certain offences, he/she is assumed to have a 'criminal lifestyle' and either the prosecution or the court can ask for confiscation proceedings (proceedings in the crown court that can lead to the confiscation of their criminal assets) to begin. The offences that trigger the assumption the offender has a 'criminal lifestyle' are listed in Annex 1, and include the counterfeiting offences enforced by trading standards officers. These counterfeiting offences are included because of the links this type of offender often has with other crimes. It is of course possible for an offender to rebut the assumption that he/she has a criminal lifestyle and show that they have earned the money through legitimate means.
4. Financial investigators (accredited by the Serious Organised Crime Agency – previously the Assets Recovery Agency) have received specialist training and are given specific powers to conduct investigations into the origin of an offenders assets. The City of York Council's trading standards team have two members of staff who have been trained as accredited financial investigators. Financial investigators are responsible for preparing cases for confiscation proceedings, and giving evidence in the course of those proceedings. They also have powers to investigate specific money laundering offences contained within the Act, to tackle for example those people who help to handle and hide criminal property, usually cash.
5. The City of York Council's trading standards service have commenced confiscation proceedings against three offenders. The final hearings are listed

in York Crown Court over the next few months, and as such no specific no details can be disclosed.

6. Where, following confiscation proceedings, the offender's assets are found to be the proceeds of criminal activity, the courts can make an order - known as a 'confiscation order' - requiring the defendant pay an amount of money (equal to the defendant's benefit from crime) back to the government. Clearly if the offender can show they have earned the money through legitimate means no such order will be made by the court.
7. A system of 'incentivisation' exists whereby half of any money recovered (and repaid) is retained by the government, and the remaining half is divided equally between the court, the prosecuting body, and the investigating body. Where the prosecution and investigation is brought by the same body, for example in cases brought by the City of York Council, then they receive both of the prosecuting and investigating share of the 'incentivisation'. This scheme is designed to encourage more financial investigations, and recover more proceeds of crime. It is important to note however, that there can be considerable time between commencing an investigation and receiving incentivisation money where it is awarded. One case that is due to be heard in June 2008 began in 2005, if there is an award in our favour, the defendant is likely to be given time to pay and this is typically up to one year. The financial award is required to 'incentivise enforcing authorities to re-invest the amount received into further support further confiscation activity and criminal investigations. The Home office has issued guidance relating to use of the monies seized. The guidance states :

Use of Incentive Payments

- This is a matter for each agency but at least a portion of incentive payments should be used to further drive up performance on asset recovery and, where appropriate, to fund local crime fighting priorities for the benefit of the community.
- **The Home Office will monitor the use of incentive monies to assess issues of propriety and regularity The Home Office will ask all asset recovery agencies (including all police forces) at the end of the financial year to account for their use of incentive payments. Information will be required as follows:**
 - details of how have funds been used
 - for each initiative/project how much has been allocated
 - how has this contributed to improving asset recovery performance, or tackling crime
 - what are the particular asset recovery outcomes.

Cash Seizures

8. In a development of the proceeds of crime legislation, accredited financial investigators will soon be authorised to undertake 'cash seizures' from criminals in possession of over £1000 of cash. It is anticipated that these

powers will become law by July 2008. There is a presumption that if an individual is undertaking a criminal activity, then the cash in the individuals possession is as a result of that activity, unless the defendant later proves otherwise. The two accredited financial investigators in trading standards will be able to make use of these to disrupt counterfeiting activity (it is not unusual for example for counterfeiters at car boot sales to be in possession of over £1000 in cash as a result of their illegal sales). The court proceedings that follow a cash seizure can result in the court awarding 'forfeiture' of the money whereby the 'incentivisation scheme' will enable the City of York Council to retain half of the amount seized.

Consultation

9. There is no consultation associated with this report.

Options

10. There are no options associated with this report.

Analysis

11. Analysis of options is not appropriate to this report

Corporate Priorities

12. The use of proceeds of crime legislation to combat criminal activity directly supports the corporate priority to reduce the actual and perceived impact of violent, aggressive and nuisance behaviour on people in York.

Implications

13. **Financial:** There are no financial implications associated with this report. Investigations are funded from existing budgets. Any financial award will be allocated in accordance with Home Office guidance as described in para 7 above.
14. **Human Resources (HR):** There are no human resources implications associated with this report.
15. **Equalities:** There are no equalities implications associated with this report.
16. **Legal:** The Council is under a legal duty to enforce the Trade Marks Act 1994 and The Copyright Design and Patents Act 1988 (as amended). This legislation is aimed at protecting intellectual property rights.
17. **Crime and Disorder:** This legislation is aimed at deterring crime and disorder.
18. **Information Technology (IT):** There are no IT implications associated with this report.

19. **Property:** There are no property implications associated with this report.
20. **Other:** There are no other implications associated with this report.

Risk Management

21. In accordance with the council's risk management strategy. There are no risks with the recommendations associated with this report.

Recommendations

22. That the Advisory Panel advise the Executive Members to note the content of this report and approve the use of any monies received in accordance with the Home Office Guidance

Reason: To ensure the executive member and advisory panel are informed of developments in proceeds of crime legislation, and that monies received are allocated in accordance with Home Office guidance.

Contact Details

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Specialist Implications Officer(s) *None*

Wards Affected:

All

Background Papers: There are no background papers associated with this report.

Annexes:

Annex 1 - List of 'lifestyle' offences which may commence confiscation proceedings.