

BIRMINGHAM CITY COUNCIL

**REPORT OF THE ACTING DIRECTOR OF REGULATION AND ENFORCEMENT
TO THE LICENSING AND PUBLIC PROTECTION COMMITTEE**

13 SEPTEMBER 2017
ALL WARDS

**USING THE PROCEEDS OF CRIME TO FURTHER PROTECT CITIZENS
AND SUPPORT COMMUNITIES**

1. Summary
 - 1.1 To advise Committee of how the Trading Standards Service pursue and obtain proceeds of crime through their investigations.
 - 1.2 To share information about how proceeds of crime obtained through Trading Standards investigations has been used.
 - 1.3 To inform Committee on how the Trading Standards Service will use proceeds of crime in the future.
2. Recommendations
 - 2.1 That the report be noted.
 - 2.2 That Committee approves the proposed method for spending money derived from proceeds of crime cases in the future, as outlined in paragraph 7 of this report.

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3. Background

- 3.1 The Proceeds of Crime Act 2002 (c.29) (POCA) provides for the confiscation or civil recovery of the proceeds from crime and contains the principal money laundering legislation in the UK.
- 3.2 The Proceeds of Crime Act deters and discourages criminal behaviour and crime motivated by greed, as money is the motivating factor of all organised crime.
- 3.3 Just as legitimate businesses need funding to stay afloat, so do organised criminals. Without cash flow, deals cannot be made and people cannot be paid. For both these reasons, many organised criminals fear attacks on their finances and lifestyle more than prison.
- 3.4 Confiscation is an essential tool that Trading Standards use to deprive offenders of the proceeds of their criminal conduct; to deter the commission of further offences; and to reduce the profits available to fund further criminal enterprises.
- 3.5 Trading Standards carry out financial investigations in appropriate cases. A court can only make a Confiscation Order if, following conviction of an offence:
- the defendant pleaded guilty or was convicted at the Crown Court; or
 - the defendant was committed to the Crown Court with a view to a confiscation order being considered, under Section 70 POCA 2002.

The first bullet point means that summary only offences cannot be considered. The second bullet point determines whether the defendant had a 'criminal lifestyle' as defined in Section 75(1) POCA 2002 and benefitted from his particular lifestyle. The standard of proof is on the balance of probabilities.

- 3.6 Trading Standards employs 2 Accredited Financial Investigators and the Head of Service is a Senior Authorised Officer for the purposes of POCA. It is important to note that the ability of our Financial Investigators to recover assets depends on the ability of Trading Standards to achieve convictions in respect of serious indictable offences. Often these offences relate to counterfeiting.
- 3.7 There are 2 ways that the proceeds of crime can be reclaimed:
- Via Confiscation Orders made by the courts. The court will calculate the benefit accrued by the defendant through his criminal activity and the 'available amount', defined under Section 9(1) POCA 2002. An Order of the Court becomes payable immediately unless the Court allows a period of time, which can be up to six months. Extensions can be requested by the defendant. Failure to pay will result in a prison sentence which is attached to the Order at the time it is made. The fact

that the defendant might serve a prison sentence for non-payment does not discharge the Order.

- Secondly, Accredited Financial Advisers can seize £1,000 or more cash on the spot if they have reason to think someone might have acquired it through illegal activity. No criminal conviction is required.

4. Asset Recovery Incentivisation Scheme (ARIS)

- 4.1 ARIS is operated and monitored by the Home Office Organised Financial Crime Unit. ARIS incentivises all law enforcement agencies. The Scheme is a mechanism for returning to law enforcement agencies, a proportion of the assets they recover. The objective of the incentive scheme is to provide law enforcement agencies with incentives to boost asset recovery as a contribution to reducing crime and delivering justice by giving them a direct stake in the proceeds they generate from that work.
- 4.2 Although primarily aimed at driving up asset recovery performance, the money returned is not ring-fenced and can be used for a number of purposes in the context of reducing harm; including community project funding
- 4.3 The Home Office retains 50% of assets recovered from Confiscation Orders. The remaining 50% is shared as follows:
 - Investigation (Local Authority) – 18.75%;
 - Prosecution (Local Authority) – 18.75%; and
 - Enforcement (Her Majesty's Court Service) – 12.5%.

Where the prosecutor and investigator are the same organisation (as is normally the case when Trading Standards conducts a case), we are entitled to receive 37.5% of the total amount.

5. POCA Balances

- 5.1 The table below shows the POCA income and expenditure for Trading Standards over the last 3 full years and part 2017/2018.

	Opening Balance	Expenditure	Income	Closing Balance
	£	£	£	£
2014/2015	(286,446)	133,606	(130,552)	(283,393)
2015/2016	(283,393)	178,263	(232,653)	(337,783)
2016/2017	(337,783)	158,705	(262,902)	(441,980)
2017/2018 (Apr/Jul)	(441,980)	56,642	(56,314)	(441,652)

5.2 POCA is dependent on:

- the investigations carried out by Trading Standards;
- the amount of criminal benefit by the defendants;
- the confiscation orders awarded by the court; and
- the payment of those confiscation orders.

This means that there is no guaranteed income from POCA and hence decisions relating to how much is available to spend can only be made on a yearly basis. This also drives the need to maintain a specific earmarked balance at any given time to enable the salaries of the AFIs to be guaranteed (£100,000 a year for 2 staff including on costs).

6. Permitted Uses of POCA Funds

6.1 Money obtained under POCA should primarily be re-invested into further investigations of a similar nature, which is why we use the money to support the employment of our Financial Investigators, however, it is possible to use the money for 'community purposes', especially where those purposes have the effect of reducing crime or harm. Our two Financial Investigators were originally from the Trading Standards service and hence we have supported both their development and our own potential to maximize asset recovery by having AFI's who understand the work of Trading Standards.

6.2 Trading Standards has historically used POCA money to support the professional development of its officers and to purchase items or services that have helped to maintain the ability of the service to conduct investigations into serious criminal offences. Examples of that use are:

- Improving security at the trading standards exhibits store.
- Expanding the trading standards exhibits store.
- Purchasing specific software that enables serious organised crime groups to be mapped.
- Providing vulnerable and intimidated witness training to officers.
- Providing investigation training to officers to improve and maintain competencies.
- Purchase of licences for the corporate intelligence data warehouse across the council.
- Purchasing pool vehicles that will be used in investigations and surveillance.
- Purchase of leaflets and materials to support anti scams work.

7. Future Use of Trading Standards Proceeds of Crime

7.1 As mentioned in paragraphs 4.2 and 6.1 it is possible for POCA to be used for community purpose although a balance must be struck between that and the need to reinvest some of the money into further criminal investigations.

- 7.2 In order to use money for community purposes it is important to ensure that money is spent appropriately, legally and that it is auditable. The cost of the administration required to manage what might be relatively small amounts can outweigh the benefit, which has tended to discourage money being used for these purposes. However, in order to be able to make POCA funds more widely accessible for the greater good of local communities it is proposed to use an already existing structure within the Council to facilitate and manage the way in which money can be used.
- 7.3 The Neighbourhood Development and Support Unit in the Place Directorate provides the following services: voluntary and community sector support; community and neighbourhood governance; investment in neighbourhoods and communities (including administering grants); internal support and coordination (including whole council approach to grant funding); and training and development. It is, therefore, familiar with deciding on the merits of grant applications, awarding funds to community groups and most importantly ensuring that money is accounted for and spent in accordance with the terms of the award. This ability to audit expenditure is important to ensure that money is not wasted.
- 7.4 Trading Standards propose providing POCA funds to the Neighbourhood Development Support Unit for voluntary organisations and community groups to make bids for. The criteria for making applications for these funds will reflect those of the Local Innovation Fund shown in appendix 1.
- 7.5 The Birmingham Community Safety Partnership (BCSP) has four partnership aims. These are: continuous scoping and partnership development; deterrence and prevention; supporting the vulnerable; and crime and the community. These aims are delivered at a local level by the 4 (north, south, east and west) Local Community Safety Partnerships (LCSPs) who bring together partners from Birmingham City Council, West Midlands Police, West Midlands Fire Service, NHS etc. to identify action plans for the locality. They also currently administer a community grant fund of £60,000 for each locality. This grant aid will cease to be administered by the LCSPs in 2018/2019 as all grant funding will be allocated centrally from the West Midlands Police and Crime Commissioners office from April 2018.
- 7.6 Officers believe that these Local Community Safety Partnerships are equally as equipped as the Neighbourhood Development Support Unit to make POCA awards given their proximity to local communities. The criteria used in allocation of the POCA funds would reflect the priorities of the BCSP. The priorities for 2017/2018 are shown in appendix 2 and 2a, however, these may change in 2018/2019 after the BCSP Strategic Assessment is completed later in this financial year.
- 7.7 If Members agreed to the framework for awarding money outlined above, officers propose to allocate the following amounts for each organisation to make available for the remainder of this year and 2018/2019.

	2017/2018	2018/2019
Neighbourhood Development & Support Unit	£10,000	£20,000
Local Community Safety Partnerships	Nil	4 x £10,000 Total £40,000

7.8 Further reports would be presented to Committee detailing the use of POCA monies in 2017/2018 and 2018/2019.

8. Consultation

8.1 There is no statutory requirement to consult associated with the use of POCA. However, the Council must make an annual return to the Home Office confirm how it has used POCA monies. This return may then be subject to audit.

9. Implications for Resources

9.1 The use of POCA monies support the employment of the 2 Trading Standards AFIs.

9.2 It is recommended that a financial reserve of at least £200,000 needs to be maintained at any given time to enable the salaries of the AFIs to be guaranteed (£100,000 a year for 2 staff including on costs). This provides 2 years' certainty that we can continue to carry out financial investigations.

10. Implications for Policy Priorities

10.1 The work carried out by the Trading Standards AFI's make a significant contribution to recovering assets from criminals gained as a consequence of their crimes. Their work supports the Regulation and Enforcement Mission Statement: Locally accountable and responsive fair regulation for all - achieving a safe, clean, green and fair trading city for residents, business and visitors. The investigation of offences under POCA 2002 is consistent with the Enforcement Policy approved by this Committee for Regulation and Enforcement.

11. Public Sector Equality Duty

11.1 By adhering to our Enforcement Policy for the investigation and prosecution of criminal offences we ensure that the recovery of proceeds of crime is undertaken with appropriate regard to Equalities legislation and the duties placed upon the Local Authority.

ACTING DIRECTOR OF REGULATION AND ENFORCEMENT

Background Papers: nil

LOCAL INNOVATION FUND – CORE CRITERIA AND GUIDANCE

MUSTS

1. Improving collaboration is a key aim of the Fund. Therefore ward councillors **MUST** work with residents and known constituted community groups to prepare proposals.
2. **Key Priorities of Every Place Matters and Better Deal for Neighbourhoods** with emphasis on local innovation – doing things differently from an asset based approach i.e. enabling different people to do different things in different ways to make better places to live.
3. Local Innovation Fund must be used with a local neighbourhood take on at least one of the overarching council vision themes and priorities as well as must meeting at least one of the LIF basket of priorities below.
4. Overarching **Council Vision**

For LIF this vision means we will prioritise a Better Deal for Neighbourhoods and Every Place Matters along with strengthening communities with 4 additional priorities

- Supporting **citizens’ independence and well-being**
- **New approaches to investment** e.g. time banking, different ways of managing public assets
- Supporting **Active Citizenship** and communities stepping up to the challenge and encourage and stimulate innovative asset based approaches in neighbourhoods
- **Clean Streets**
- **Improving local centres**

Adding value to the overriding city wide priorities

- **Children** – A great city to grow up in
 - **Jobs and Skills** – A great city to succeed in
 - **Housing** – A great city to live in
 - **Health** – A great city to lead a healthy and active life
5. These priorities and innovative ways forward may already be outlined in Neighbourhood Challenges, Community Plans, Ward Plans and local needs profiles and are ready to go.
 6. It is vital that local ward councillors continue to develop their local leadership role and that ward meetings / forums are used for talking and listening with local citizens and community groups in developing collaborative local proposals of innovation for action.
 7. LIF is to invest and experiment in new, innovative and catalytic approaches at the local level – LIF is not a replacement for lost revenue budgets or core funding.
 8. Accountability – Discussions with active citizens and community groups at Ward Meetings with all 3 Ward Councillors needing to be engaged in the process and agree to the proposals taken forward to Cabinet Committee – Local Leadership for approval.

BIRMINGHAM COMMUNITY SAFETY PARTNERSHIP (BCSP) PRIORITIES 2016/18

Continuous Scoping and Partnership Development

- Developing Partner Links
- Horizon Scanning & Tension Monitoring
- CSP Governance Consolidation
- Developing Corporate Memory
- City to Local Links

Deterrence and Prevention

- Reducing Youth Offending
- Supporting Integrated Offender Management (IOM)
- Reducing Gang Violence
- Protecting Young People from Violence
- Domestic Abuse (DA) Perpetrator Management

Supporting the Vulnerable

- Cohesive Multi-Cultural Birmingham
- Multiple and Complex Needs (MCN)
- Vulnerabilities in Young People
- Domestic Abuse
- Hidden Crime (Elder Abuse, Modern Slavery)

Crime and the Community

- Victim Support
- Violence in Public
- Reducing Scale and Impact of Anti-Social Behaviour
- Building Trust with Business
- Business Environment
- Community Engagement
- Counter-Terrorism