



REPORT of CHIEF EXECUTIVE

**to
COUNCIL
15 DECEMBER 2016**

PROCEEDS OF CRIME ACT 2002

1. PURPOSE OF THE REPORT

- 1.1 To provide the Council with an update on the Proceeds of Crime Act 2002 (POCA).

2. RECOMMENDATIONS

The Council is asked to:

- (i) endorse application of the Proceeds of Crime Act (POCA), including but not limited to the instigation of confiscation proceedings in appropriate cases in which a defendant has benefited from their criminal conduct or lifestyle; and
- (ii) approve a minor amendment to the current delegation to the Chief Executive contained at paragraph 6 of Section 9 (Terms of Reference – General and Procedural at page 7) as set out at paragraph 3.11 below.

3. SUMMARY OF KEY ISSUES

- 3.1 The POCA sets out the legislative scheme for the recovery of criminal assets with criminal confiscation being the most commonly used power. Confiscation occurs after a conviction has taken place. The aim of the asset recovery scheme in POCA is to deny criminals the use of their assets, recover the proceeds of crime and to deter criminality.
- 3.2 Confiscation orders under POCA are frequently used against fraudsters and drug-dealers to deprive criminals of the financial gain they have received from their criminal conduct. Less frequently used though, is the power to obtain confiscation orders against people who commit crimes under legislation ministered by local authorities.
- 3.3 For POCA to apply there must have been a successful prosecution for the offence and the prosecutor must have asked for the confiscation order during the proceedings, or the court otherwise believes it is appropriate to make it. The order will not be made unless the defendant has benefited from the criminal conduct.
- 3.4 The confiscation order must be made in the Crown Court. Before making the order the Court must consider, on the balance of probabilities, whether the defendant has a

criminal lifestyle or has benefited from the particular criminal conduct. The term 'criminal lifestyle' comes directly from the legislation. The key tests for deciding if an individual has a criminal lifestyle or has benefited from particular criminal conduct are found in section 75(2) and will frequently mean "an offence committed over a period of at least six months and the defendant has benefited from the conduct which constitutes the offence" (section 75(2)(c)). The confiscation order is in addition to any other penalty (e.g. fine) which may have been imposed by the Court.

- 3.5 If the Court decides that the defendant has benefited from general criminal conduct or particular criminal conduct, it must assess the recoverable amount. The recoverable amount is an amount equal to the defendant's benefit from the conduct concerned. The powers to confiscate are there as a crime fighting and prevention measure, it deters future crime, and reimburses the cost of the investigation to the public purse, where there is a prosecution.
- 3.6 In terms of recovery of the defendant's benefit, the Government receives 50% of all monies confiscated, whilst the Courts Service benefits by 12.5%. The remaining balance is split between the Collection Agency and the Council's Investigation Team; both of whom receive a payback of 18.75%. The Council made a successful bid to the Department of Communities and Local Government in 2014 for funding to allow for two members of staff to be trained in the use of POCA which allows the authority to be both the Collection Agency and the Investigating Team, and therefore able to recover 37.5%.
- 3.7 There are two key advantages to the Council seeking to make use of the POCA provisions. Firstly, the offender, by forfeiting the proceeds of the crime, does not benefit further from their actions which should assist with the prevention and reduction of crime. Secondly, the local authority, by being the Collection Agency and/or Investigating Team, can receive a share of those sums recovered for use towards further law enforcement activity.
- 3.8 Using careful judgement and thorough investigation, local authorities can use this tool to target known repeat offenders, as well as helping resolve large, complex and contentious individual cases, creating a real deterrent against breaking the law while at the same time recovering sums to cover the costs of any necessary remedial action.
- 3.9 Norwich City Council became the first local authority to use the Proceeds of Crime Act to reclaim £40,000 from a criminal landlord, who failed to comply with House of Multiple Occupancy license conditions in October 2012. Whilst Bedford Borough Council received £562,000 as its share of a confiscation order made under the Proceeds of Crime Act against a convicted fraudster. Also Hounslow Council, in February 2010, obtained a confiscation order for £180,000 for flat conversions. These examples show the broad range of services that are able to use the legislative powers and the potential financial benefits of doing so for the Council.
- 3.10 Maldon District Council has a number of services and areas that have the potential to take advantage of POCA. This could include, (not exclusively) dealing with rogue landlords, Council Tax and Business Rate fraud, non-compliance with an enforcement notice and individuals undertaking activities without appropriate licenses. Currently, with the exception of benefit fraud, the powers to authorise the taking of such action sit with the Chief Executive under the general delegation contained at paragraph 6 of

Section 9 (Terms of Reference – General and Procedural at page 7). This delegation provides that:

“The Chief Executive, in consultation with the appropriate Director, Legal and Democratic Services Manager, Chairman of the relevant Committee (or Vice-Chairman in his or her absence) and Leader of the Council, be authorised to institute or defend legal proceedings on any criminal offence or civil proceedings not otherwise provided for in Officer delegation arrangements elsewhere in this document, subject to subsequent report to the next meeting of the relevant Committee. The exercise of this authorisation shall, for the avoidance of any doubt, include responding to legal representations on behalf of the other party, any directions of the Court, and the pursuance and settlement of disputes by means other than litigation.”

- 3.11 It is proposed that there be a minor amendment to the above delegation so that instead of the words “Legal and Democratic Services Manager” the words “Legal Advisor” would be substituted. This is consistent with terminology elsewhere in the Constitution and is designed to enable consultation to be with the Legal and Democratic Services Manager, Senior Solicitor or other appointed external Legal Advisor.
- 3.12 In relation to benefit fraud a specific delegation has been given to the Director of Resources at paragraph 16 of Section 9 (Terms of Reference – General and Procedural at page 18). This is therefore outside of the delegation to the Chief Executive. In future other service areas may look to seek specific delegations to the appropriate Director in relation to particular crimes falling within their Directorate.
- 3.13 It is proposed that the Council makes greater use of the available POCA powers. At this time the use of POCA is not explicitly covered in any of the Council’s adopted policies, this does not however prevent the Council from making any applications as are provided for within the statutory framework. Members are asked to note that the Planning Enforcement Policy is currently being reviewed and that as part of this review it is envisaged that a section on POCA will be included. Any such content added will be consistent with the recommendation contained in this report.
- 3.14 The Government has made it clear that it expects monies gained as a result of a confiscation order should be spent on further criminal confiscation activity and law enforcement activity, for the further prevention or reduction of crime or further asset recovery. This means that they can be used to support a more effective enforcement services throughout the local authority.

4. CONCLUSION

- 4.1 POCA was introduced in 2002 and provides a legislative scheme for the recovery of criminal assets with criminal confiscation being the most commonly used power. Local Authorities are increasingly using these powers to greater effect in relation to the crimes under legislation ministered by local authorities.
- 4.2 The Chief Executive, in consultation with the applicable Members and Officers, will consider the appropriateness and expediency of authorising the use of POCA powers

including but not limited to the seeking of confiscation orders, in appropriate cases in which a defendant has benefited from criminal conduct or a criminal lifestyle.

- 4.3 The Council should approve the approach that the Chief Executive, in accordance with the current delegation to her, should consider use of the POCA powers including but not limited to instigating confiscation proceedings.

5. IMPACT ON CORPORATE GOALS

- 5.1 The use of POCA powers, including confiscation orders, is linked to the Corporate Goals of strengthening communities to be safe, active and healthy and aiming to be an organisation that delivers good quality cost effective and valued services in a transparent way.

6. IMPLICATIONS

- (i) **Impact on Customers** – Application of approved enforcement policies and associated legal action will help to ensure that our customers and residents are treated fairly and consistently.
- (ii) **Impact on Equalities** – None identified.
- (iii) **Impact on Risk** A risk assessment will be undertaken on a case by case basis prior to making use of the legislative power, it will not be appropriate in all cases.
- (iv) **Impact on Resources (financial)** – A proportion of the amounts confiscated under POCA will be returned to the Authority under the incentive scheme operated by the Home Office. Any funds received as a result of the “incentivisation” scheme must be used for the further prevention or reduction in crime or further asset recovery.
- (v) **Impact on Resources (human)** – Officer time associated with undertaking investigations.
- (vi) **Impact on the Environment** – Failure to deter individuals from breaking the law and failure to take effective enforcement action, particularly from a planning perspective, could result in an increase in illegal activities within the district. In turn this could lead to adverse impacts on the environment resulting in harm which might be difficult to remedy or mitigate.

Background Papers: None.

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