

REPORT TO: Executive Board Sub Committee

DATE: 21 December 2006

REPORTING OFFICER: Strategic Director, Health and Community

SUBJECT: The use of the Proceeds of Crime Act 2002 by the Consumer Protection Service

WARDS: Boroughwide

1.0 PURPOSE OF THE REPORT

- 1.1 To seek the Board's support for the use of the full 'confiscation regime' and 'offences' under the Proceeds of Crime Act 2002 by the Consumer Protection Service.

2.0 RECOMMENDATION: That

- (1) the use of the full 'confiscation regime' and 'offences' under the Proceeds of Crime Act 2002 by the Consumer Protection Service, as outlined below be, agreed; and**
- (2) Council be requested to agree the necessary Scheme of Delegation changes, as outlined in Section 4.1 below, in support of Recommendation (1) above.**

3.0 SUPPORTING INFORMATION

- 3.1 The Proceeds of Crime Act 2002 (POCA) was introduced by the Government because it recognised that leaving illicitly obtained assets in the hands of criminals was damaging to society in that such assets:
- provided the working capital for further crime, leading to a vicious circle of criminality,
 - enabled those criminals that were jailed to enjoy a life of luxury on their release, and often to run their criminal empires from behind bars, and
 - provided a lavish lifestyle for many criminals, and in doing so sent the wrong message that crime pays, particularly to young people.
- 3.2 In recent years, there has been concern within the Trading Standards profession that courts often imposed low financial penalties on defendants in trading standards prosecutions. In some instances defendants were able to pay immediately as fines were so low. This did nothing to deter future offending, was demoralising for investigators and such low penalties did not remove the financial means from offenders to

prevent them from continuing their criminality. Nor did it send a strong message to other would be offenders that 'crime does not pay'.

- 3.3 To address this concern, some consumer protection/trading standards services have worked in partnership with the Asset Recovery Agency to pursue asset recovery in appropriate cases. Nationally, this year, this arrangement has secured confiscation orders of nearly £1 million, linked to trading standards offences. The confiscation regime under the Proceeds of Crime Act has been successfully used in doorstep crime cases; car clocking cases and against rogue traders and counterfeiters. In recent weeks in the North West, three market traders have been ordered to pay over nearly £850,000 in assets following convictions of selling counterfeit goods and benefit fraud.
- 3.4 The Local Authority Coordinators of Regulatory Services (LACoRS) recognised that this was a powerful enforcement tool that supported the normal prosecution process, but was aware that the Asset Recovery Agency, the Regional Asset Recovery Teams and police forces could not provide all of the support that Trading Standards would need. It therefore secured funding from the Home Office for the training of a number of Trading Standards Officers in each region as "Accredited Financial Investigators" under Parts 2 and 8 of the POCA.
- 3.5 The Council's Consumer Protection Service now has an officer fully trained and accredited under the above provisions of the POCA, one of only 27 officers in local government as a whole, trained to undertake this work. This officer is now capable of using the provisions of the Act in certain criminal investigations where the person under investigation has benefited by over £5,000 from their criminal conduct.
- 3.6 An analysis of criminal investigations undertaken by the Consumer Protection Service has revealed that since the introduction of the legislation, 13 local cases could have utilised the confiscation regime under the Act. Currently there are four cases under investigation that would merit financial investigation, one of which represents potential criminally acquired assets in excess of £200,000. However, LACoRS always intended that those local authority financial investigators trained in this way would offer their services within the region, and that requirement can be delivered via the Council permitting this officer to act for other local authority services on a chargeable, consultancy basis.
- 3.7 A "Recovered Assets Incentivisation Fund" (RAIF) has been developed by the Home Office to allow a percentage of confiscated assets to be returned to the agency undertaking the criminal investigation and/or confiscation work. This means that:
 - in confiscation cases where the Council were both the prosecutors of the criminal matter and the financial investigators under the terms of the scheme, there is potential for one third of the recovered assets to be handed back to the Council.

- where the Council’s investigator undertakes financial investigation work for another local authority, the potential return would be one sixth of the recovered assets.
- 3.8 However, the Home Office has ring-fenced the use of what it calls “incentive monies” and has advised that it will monitor the use of such monies to assess issues of propriety and regularity. Annually, we will be expected to account for any use of incentive payments received by providing details of:
- how funds have been used
 - how much has been allocated to each initiative / project
 - how this has contributed to improving asset recovery performance or tackling crime
 - what are the particular asset recovery outcomes?
- 3.9 There will of course be no shortage of legitimate ideas for the use of such monies, including:
- recouping legitimate officer costs that are not covered by a specific agreement with a third party, and ploughing these costs back into the Consumer Protection Budget so that Halton’s consumers do not lose out from our involvement in this work
 - directing some of the monies back into assets recovery work
 - directing some of the monies to support consumer protection criminal enforcement functions, including funding intelligence resources
- 3.10 The Safer Halton Policy and Performance Board received a similar agenda item to this on 14 November and fully supported the use of the provisions of the Proceeds of Crime Act, as detailed above.

4.0 POLICY IMPLICATIONS

- 4.1 The Council’s scheme of delegation of officer powers requires amendment to include the Proceeds of Crime Act 2002. The Borough Solicitor should be the delegated person for instituting legal proceeds for the Council, whilst Trading Standards Officers / Consumer Protection Officers should be delegated as the investigating officers.
- 4.2 In agreeing to the above, the Council would be committing to undertake confiscation cases at Crown Court in consumer protection prosecutions where it can be shown that assets are available for confiscation.
- 4.3 The Council is being asked to permit the financial investigator to act on a chargeable consultative basis for other Local Authority services requiring the use of an Accredited Financial Investigator in appropriate cases.

5.0 OTHER IMPLICATIONS

- 5.1 There are positive financial implications associated with this work, which will support the Consumer Protection Service’s move to an “external funding first” culture. However, receipt of incentive monies is likely to be

piecemeal and unpredictable and there are risks (see below). It will probably take up to three years to get a better idea of potential incentive funding streams. The Service will therefore undertake an annual review of incentive money received, and report the findings to this Board.

6.0 RISK ANALYSIS

- 6.1 If assets recovery work does prove to be an effective enforcement tool, more authorities may consider training their own officers as financial investigators. This may reduce the number of external referrals we receive over time. In addition, obtaining a confiscation order is one thing, obtaining the money is quite another as incentivisation monies will only be distributed when the order is satisfied.
- 6.2 There are risks for any criminal enforcer/investigator especially when dealing with the more unsavoury characters of society. The risks to the financial investigator will therefore be assessed in the usual way, though for the most part the financial investigation is a desktop exercise.

7.0 EQUALITY AND DIVERSITY ISSUES

- 7.1 There are no equality or diversity issues flowing from this report.

8.0 LIST OF BACKGROUND PAPERS UNDER SECTION 100D OF THE LOCAL GOVERNMENT ACT 1972

- 8.1 There are no background papers under the meaning of the Act.