

From: Matthew Scott, Kent Police and Crime Commissioner
To: Kent and Medway Police and Crime Panel
Subject: Making Offenders Pay – progress update
Date: 28 September 2017



INTRODUCTION:

1. In the '[Safer in Kent](#)' Plan the Police and Crime Commissioner (PCC) committed to making offenders pay for the harm that they cause, stating 'an important principle of criminal justice is to ensure that those who cause harm give back to victims and the community they have hurt'.
2. This paper provides an overview of some of the activities, led by the Chief Constable and the PCC, that support this commitment.

PROCEEDS OF CRIME ACT 2002:

3. Simply put, the primary aim of the Proceeds of Crime Act 2002 (POCA) is to close loop-holes and deprive criminals of the use of their assets, recover the proceeds of crime and to show that crime doesn't pay. It also contains the principal money laundering legislation in the UK.

Confiscation

4. Confiscation Orders are available where a defendant has been:
 - convicted of an offence in Crown Court; or
 - committed to Crown Court for sentence; or
 - committed to Crown Court under S.70 of POCA for specific consideration of a Confiscation Order.However, POCA will only be applied if it is requested by the prosecuting counsel or the court itself considers it appropriate to proceed.
5. The prosecution need to identify how much benefit the defendant has obtained from their criminality and what assets they now have available to repay it. Once this is ascertained the court can make a Confiscation Order setting the amount to be repaid. As well as a Confiscation Order the court can make a Compensation Order to ensure that the compensation for any victims is paid from the confiscated funds.

Cash seizure

6. POCA also introduced new powers and procedures to seize cash which is suspected to be 'recoverable property'. Recoverable property refers to property that has been obtained from unlawful conduct or it is suspected that the cash is intended for use in unlawful conduct. The power to seize cash under POCA is a civil power; however cases are heard in the Magistrates Court.
7. Once cash has been seized, a separate cash detention investigation is run parallel to the criminal investigation to ascertain the provenance of the money. If the defendant can provide evidence that the provenance is legitimate then the money can be returned. However, if no such evidence is provided or evidence is provided but believed to be inaccurate, then a forfeiture hearing can be scheduled at the Magistrates Court who can make a Forfeiture Order.

Home Office Asset Recovery Incentivisation Scheme

8. Where recovered funds belong to an identified victim then the money is returned to the victim via a Compensation Order. Where there is no victim (e.g. in a drug supply investigation) then the recovered funds from Confiscation Orders are disseminated to frontline agencies via the Home Office Incentivisation Scheme.
9. The Home Office retain 50% of the funds and the remaining 50% is split three ways, with 18.75% going to the relevant police force, 18.75% to the Crown Prosecution Service (CPS) and 12.5% to pay for the enforcement of POCA orders via enforcement courts.

10. Cash seizures are also disseminated through the same scheme, however in the case of Forfeiture Orders the split is 50% to the Home Office and 50% to the relevant police force. The reason for this is that there is no CPS involvement as it is a civil process and there is no enforcement required as the cash is already in the possession of the court. The police also have to pay court costs in relation to cash detention hearings.
11. Kent Police has always been extremely proactive in relation to the implementation of POCA and for the past 2 years has been in the top 10 forces. Those regularly above Kent are predominantly the large urban forces including the Metropolitan Police, Greater Manchester Police, West Midlands and Merseyside.
12. The requirement of the Incentivisation Scheme is that all money obtained must be used to fund either a force Asset Recovery team, crime reduction initiatives aimed at economic crime, or community projects (e.g. youth groups, community safety literature). Since 2016 Kent Police have used the funds obtained from the Incentivisation Scheme to fund their Financial Investigation Unit. This unit not only deals with confiscations and forfeitures under POCA but completes vital work to assist all officers and staff with financial enquiries required for investigations, high risk missing person enquiries and the restraint of victim's money pending Compensation Orders.
13. In order to ensure the Force is able to continue to fund the unit going forward, it has put aside sufficient revenue to fund the unit for two years should it be unable to achieve the required cost via the Incentivisation Scheme. The Force is now in the position that any funds obtained over and above the cost of the unit can be used to fund other initiatives within the criteria set by the Home Office. This year Kent Police has £59,059.44 to fund such initiatives. At this time no decision has been made as to how this money will be utilised, but options are being explored.
14. Over the past five years, Kent Police has received £4,127,838.76 from the Incentivisation Scheme; the result of taking over £12,900,000 from criminals committing offences in Kent.

OPERATION MORRIS:

15. Operation Morris is the Force scheme aimed at lawfully depriving offenders of their proceeds of crime and also as a means of disrupting criminal activity. It centres on the criminal use of vehicles and it takes the form of two processes:
 16. Deprivation: Where a vehicle has been used for a criminal purpose, such as drug dealing, it can be subject of a Deprivation Order which can be granted under Section 143 of the Powers of Criminal Courts (Sentencing) Act 2000. Deprivation Orders solely apply to vehicles and if granted by the court means that the vehicle becomes the property of the police to be disposed of through the usual police property processes e.g. auction, scrapping or put to other use.
 17. Due to the costs incurred from vehicle recovery and storage it is preferable to seek Deprivation Orders as soon as possible in order to maximise the value of a vehicle and to reduce costs.
 18. Confiscation: If the criteria are met for a confiscation under POCA (see above) then the vehicle is included as an asset. This can take up to 3 years for the process to be completed and therefore, where the only asset is the vehicle, a Deprivation Order is the preferred option.
19. The PCC is keen to re-invest Operation Morris money into local communities that offenders have potentially harmed, and to date has committed £65k as follows:
 - £25,000 one-off grant for Kent Police to fund training and capital costs for organisations which volunteer with the Force. Without the extensive support of groups like South East 4x4 Response and a great number of other charities and volunteers, who do not formally wear a police logo, there would be extra costs and resources that Kent Police would need to find.
 - £25,000 one-off grant to Speedwatch, specifically to fund new equipment for their volunteers, who do fantastic work monitoring the roads.
 - Set aside £15,000 to be awarded to projects under his [Communities Together Fund](#). The maximum grant available per project is £750 and the fund is open to local volunteer, community and charity groups, as well as social enterprises. Previous recipients include:

- Young Lives Foundation – Children in Care Council's football equipment;
- Bridge Parish Council – Bridge Country Fayre;
- Cobham Community Stores – Stock and overhead costs for volunteer run community shop;
- St Mary the Virgin Parish Church, Swanley – Gift and Games day;
- Bekesbourne Recreation Ground Charity – Venue heating for coffee mornings attended by isolated residents.

RESTORATIVE JUSTICE:

20. When a crime has been committed or an incident has occurred, Restorative Justice (RJ) offers an opportunity for the victim, the offender and sometimes members of the community to come together to discuss how to repair the harm caused.
21. RJ can be a very powerful tool. It puts victims at the heart of the justice process by giving them the chance to meet or communicate with the offender to explain the real impact of their crime, get answers and possibly receive an apology. However, it also gives offenders the chance to understand what they have done, take responsibility for their actions and consider ways to make amends for their behaviour.
22. Participation is always voluntary and RJ can take the form of victim-offender mediation, either through direct contact between the offender and victim or indirect communication involving third parties.
23. RJ is used by Kent Police in certain circumstances; it can be used on its own or along with other criminal justice processes (e.g. a court appearance, sanction upon a caution). It can also be used at any point during the criminal justice process, provided both the victim(s) and offender(s) are willing.
24. PCCs are responsible for commissioning RJ schemes in their force area. In Kent, the PCC has recently commissioned Restorative Solutions to provide the service, in partnership with SALUS, from 1 October 2017. The intention is that the new service will:
- reduce the harm caused to individuals and communities as a result of crime;
 - support victims' long term recovery;
 - support offenders to understand the effect of their actions; and
 - restore confidence in the criminal justice system.
25. In the long term it is hoped the scheme will reduce crime rates. Evidence shows that offenders who have to face up to their victims are less likely to commit more crimes.