Criminal benefit, the confiscation order and the post-conviction confiscation regime

Abstract

Governments and law enforcement agencies around the world seek to identify and confiscate the 'proceeds of crime' on the assertion that doing so will deter offending and symbolise to citizens and communities that 'crime does not pay'. In the UK such assertions have underpinned the enactment of legislation, the investment in law enforcement agents and the development of wide ranging new technologies to facilitate the identification of assets and their recovery. This paper critically considers two key concepts which fundamentally drive the post-conviction confiscation recovery regime in the UK. First, 'criminal benefit' which is the amount that a defendant is adjudged to have made from criminal conduct. Second, the 'available amount' which is the amount that the state hopes to recover from a defendant via the court ordered 'confiscation order'. In so doing, this paper explores the assumptions at the heart of the 2002 Proceeds of Crime Act and their application in practice, concentrating on the nature of the powers accorded to financial investigators and how these powers have been interpreted and applied. Far from representing the 'profit' generated from crime these values are constructs founded in the relationship between legislation, the discretionary practice of police officers and financial investigators, organisational restrictions and constraints and informal negotiation and compromise between the defence and prosecution. This has implications for both conceptualising the nature of the post-confiscation confiscation regime as well as for shaping what the state might expect to recover from defendants.

Criminal benefit, the confiscation order and the post-conviction confiscation regime

Introduction

Background

Post-conviction confiscation has become a feature of criminal justice systems in modern liberal democracies. The establishment of mechanisms to identify and recover the proceeds of crime has been justified on moral and symbolic grounds. Confiscation, as Bullock and Lister (2014) note, engenders a powerful rhetoric of control over acquisitive crime and, in symbolically embodying and reinforcing the assertion that ‘crime should not pay,’ injects a moral authority into the state’s response to crime and criminality. Post-conviction confiscation as a strategy of crime control has also been rationalised and defended on the grounds of introducing greater efficiency and effectiveness into the criminal justice system. In particular, it has been held that the confiscation of assets will have an instrumental, regulatory effect on behaviour and so control crime. Indeed, there has developed something of a consensus that the seizure of illegal assets is a powerful tool with which to control crime (Naylor, 2007: 27).

The mechanisms through which confiscation might be expected to impact on crime and offending are varied (see Naylor, 2007 or Bullock and Lister, 2014). However, at the heart of the promulgation of post-conviction confiscation strategies is the view that ‘most crime is motivated by profit’ and accordingly can be prevented if that financial incentive is eliminated (Cabinet Office, 2000: 5). Indeed, in developing and justifying the post-conviction confiscation regime the UK government posited that strategies of crime control had thus far failed to ‘take full account of the profit motive’ and in so doing overlooked ‘a powerful lever in the fight against crime’ (Cabinet Office, 2000: 16). Such an interpretation of the causes of crime and the implications for crime control is firmly embedded in contemporary modes of criminal justice governance. As Western governments have become increasingly ‘managerial’ in the governance of social problems crime has been seen less as an outcome of conditions embedded in the structure of societies and more of an outcome of citizens’ rational cost-benefit calculations (O’Malley, 1992). Under this logic the decision to commit a criminal act is determined to be the rational outcome of an assessment of the risks and rewards associated with doing so. Indeed, for the UK government:

Although criminals do not always make decisions in a fully rational way, many financially-motivated crimes result from a relatively rational risk/reward analysis. In these circumstances, crimes are committed when there is a combination of opportunity and the motivation that results from concluding that the expected overall benefit from the crime is higher than the perceived total risks and costs. The costs of securing the desired benefit from crime must also appear lower than those involved in acquiring the benefit through legitimate means (Cabinet Office, 2000: 20)

The expectation is that the threat or the reality of confiscation will push the risks higher than the rewards, alter the ‘relatively rational risk/reward analysis’ of a potential offender and reduce the motivation to offend.

To push home the potential of post-conviction confiscation as a technology of crime control governments have drawn heavily on estimates of the size of the criminal economy and the

profits that ‘career’ criminals have generated from crime. To illustrate, the Cabinet Office (2000) reported that the value of illegal drug transactions could be as much as 1 per cent of GDP, up to £8.5 billion a year and that estimates of the cost of fraud vary between £5 billion and £16 billion per year. Similarly, in rolling out figures to justify the establishment of the post-conviction confiscation regime, the police inspectorate stated that ‘the most-often quoted figure is the equivalent of 2% of the national gross domestic product – around £18 billion’ (HMIC, 2004: 19). They go on to stress that ‘crime represents a multi-billion pound industry, at the top end of the scale, individual crime ‘barons’ accrue literally millions of pounds’ (HMIC, 2004: 19). Whilst many of these estimates, as Naylor (2007: 28) wryly observes, are based on ‘hype and hysteria’, one aim of the post-conviction confiscation regime has quite clearly been to recover the proceeds of what appears – on the face of it at least – to be a highly lucrative business. Indeed, the contemporary regime in the UK was founded on the optimistic view that recovering the proceeds of crime would generate ‘significant revenue flows’ for the Treasury, would reduce the net costs to the criminal justice system and be ‘relatively cost-effective’ to operate (Cabinet Office, 2000: 6) (and see Sproat, 2007).

This paper

This paper is concerned with unpicking the central concepts and assumptions utilised in the post-conviction confiscation regime. It starts from the position that the ‘proceeds of crime’ is a ‘slippery concept’ – one which is capable of multiple meanings (Naylor, 2007: 27). The concept is indeed capable of multiple meanings and in turn it is interpreted and used in multiple ways. Government discourse – with its focus on symbolically driving away the Porsches, Ferrari’s and BMWs purchased with the proceeds of crime – is certainly drawing attention to recovering the profit generated from crime. Most citizens would no doubt assume that the regime seeks to recover the profits of crime or goods acquired with them. However, we would all be wrong to make this assumption since, whilst the concept of the proceeds of crime may mean many things, the one thing it most certainly does not mean is profit. This paper then explores what it does mean to recover the proceeds of crime in the UK post-conviction confiscation landscape.

The confiscation order is the primary tool through which the state seeks to recover the proceeds of crime. Under the 2002 Proceeds of Crime Act the value of the confiscation order should represent a figure equal to a defendant’s ‘benefit’ from criminal conduct or a figure equal to a defendant’s available assets, if these can be shown (by the defendant) to be less. However, this somewhat straightforward definition of criminal benefit and the available amount masks a great deal of complexity, the nature of which forms the basis of this paper. This paper then seeks to unravel the construction of the values of these two key concepts which drive the application of the post-conviction confiscation regime. In seeking to understand the operation and impacts of the regime conceptual clarity is obviously important. However, this is not simply an academic exercise and it is suggested that greater clarity is needed for a number of reasons. First, understanding the concepts at the heart of the regime is important in light of the extravagant claims, examples of which are given above, that have been made for what might be recovered. Whilst the argument that the regime would be (at least) cost-neutral drove the enactment of the 2002 Proceeds of Crime Act, writing at a time of financial constraint and state retrenchment, these claims take on new significance. Recovering the proceeds of crime has been mooted by some as a way of financing the operation of wider criminal justice practices. Such aspirations, it is suggested, are based on a misunderstanding of the nature of the proceeds of crime regime and what is likely to be recoverable. Second, it is contended that unpicking the central concepts that

drive the regime help us to understand how the processes of asset recovery actually operate in practice. This is especially important in light of the problems that have bedevilled the operation of the regime as it has been put into action. The courts do not sanction confiscation orders routinely, where they do the orders tend to be of low value (although there certainly are examples of large value orders) and there are entrenched problems with enforcement of the orders (Bullock and Lister, 2014) (see also Bullock, 2010a). It is suggested that the slippery concepts at the heart of the post-conviction confiscation regime – as well as the ways that the regime has been interpreted and applied – help us to explain this position as well.

This paper considers the 2002 Proceeds of Crime Act and how its central provisions have implications for how criminal benefit and the available amount should be understood. Drawing on empirical data, it considers the day-to-day practices of financial investigators who interpret and apply the legislation and in so doing navigate administrative and organisational constraints in determining criminal benefit and the available amount. Lastly, it examines the ‘contested’ nature of criminal benefit and the available amount. It reveals how defence and prosecution lawyers negotiate with the aim of reaching a compromise about the values of criminal benefit and the confiscation order as well as the nature of that negotiation, which largely occurs in informal settings away from scrutiny. Empirical data are derived from a series of interviews conducted with some one hundred financial investigators in six UK regional police services (Greater Manchester Police, Merseyside, Kent, Surrey, South Yorkshire and Lancashire) and with the north-west regional asset recovery team (see Bullock et al 2009 for more details). These interviews examined the process of obtaining confiscation orders from start to finish. They considered in detail the ways that financial investigators set about estimating the criminal benefit and the confiscation order. They also explored related issues such as the relationship between the investigation, imposition and enforcement of the confiscation order and, the perceived barriers to the successful financial investigation, imposition and enforcement of the order.

The construction of criminal benefit and the available amount

The general confiscation framework and the confiscation investigation

The legislative basis for confiscating the proceeds of crime in the UK is the 2002 Proceeds of Crime Act. This legislation governs the post-conviction confiscation regime and shapes how estimates of criminal benefit and the confiscation order are derived. This is an obvious point but an important one because the framework sanctions considerable scope to estimate values of criminal benefit and the available amount in ways that may have little to do with the criminal activities of defendants or the nature and extent of revenue acquired from them. Let us consider in more detail how the framework shapes how we should understand criminal benefit and the available amount before coming back to how it is applied.

As we have seen, the value of a confiscation order should reflect the benefit that a defendant has generated from criminal conduct or the value of his or her available assets if these can be demonstrated by the defence to be less. In determining how criminal benefit is constructed the 2002 Proceeds of Crime Act distinguishes between two types of cases (Section 76 of the Act). First, in so called ‘particular criminal conduct’ cases the value of criminal benefit is confined to the monetary value of the crime (and any taken into consideration) for which a defendant has been convicted. For example, if a defendant is found guilty of stealing a car worth £5,000 they have ‘benefited’ to that amount. Whilst this may appear to be a relatively straightforward calculation of benefit, in practice there is still

complexity here as this benefit will in many cases be unrecoverable, for reasons we will shortly consider. Second, in general criminal conduct cases ('criminal lifestyle') financial investigators are empowered to apply very broad assumptions in estimating the value of defendant's benefit from crime (as defined in section ten of the Act). For those convicted of certain crime types – comprising those crime types that might popularly be considered to be 'organised' or 'professional' including drug, arms and people trafficking, money laundering, terrorism offenses, counterfeiting and intellectual property right crimes, pimping and brothel keeping and blackmail – a criminal lifestyle can be assumed. Criminal lifestyle cases can also be generated where sets of circumstances are decreed to form a 'course of criminal activity' (Section 75 of the Act). This can apply where a defendant is convicted three or more offences in the same proceedings, or has been convicted on two occasions in the previous six years from which he or she has benefitted by at least £5,000 or was committed over a period of at least six months and from which the defendant has benefitted by at least £5,000. The distinction between particular criminal conduct and criminal life style is a very important one since characterising cases as lifestyle cases represents the gateway into the general confiscation scheme (Rees et al, 2008). In criminal life style cases very broad assumptions in estimating the value of defendants' benefit from crime are applied. The benefit arising from criminal conduct is considered over the six-year period previous to the start of proceedings, on the basis that: any property transferred to the defendant at any time after the relevant day (the first day of the period of six years before proceedings were started) was obtained by criminal conduct; that any property held by the defendant at any time after the date of conviction was obtained as a result of his general criminal conduct; that any expenditure incurred by the defendant at any time after the relevant day was met from property obtained by him as a result of his general criminal conduct; and that, for the purpose of valuing any property obtained (or assumed to have been obtained) by the defendant, he obtained it free of any other interests in it (Section 10 and Schedule 2 of the Act).

Whilst the value of criminal benefit and the confiscation order is ultimately agreed in court, it is the responsibility of financial investigators (specialist police officers or civilian staff) to determine whether a person has benefited from criminal conduct, the extent and whereabouts of his that benefit (see Bullock, 2010b). The process of doing so can be likened to a book keeping exercise. However, as should be becoming clear the rules applied by financial investigators in constructing criminal benefit in lifestyle cases would not be recognised by a bookkeeper. As well as applying the highly speculative assumptions about the nature of criminal benefit they have wide ranging powers, tools and techniques to help them trace and recover assets. In fact, financial investigators have the scope to make almost unbounded investigations into the financial affairs of defendants. Information about the financial affairs of defendants can be generated from a number of sources. In addition to information obtained in the course of routine police investigations, financial investigators have specific powers set out in Part 8 of the 2002 Proceeds of Crime Act which include Production Orders, Search and Seizure Warrants, Customer Information Orders, Account Monitoring Orders and Disclosure Orders. These tools help financial investigators reveal information about the financial affairs of defendants, which would otherwise be difficult to access. For example, Account Monitoring Orders allow financial investigators to monitor the transactions in an account for up to 90 days at a time. Customer Information Orders instruct institutions to give details of whether a person holds an account at a specific financial institution in the first place. Such tools are potentially quite powerful for unlocking the financial affairs of defendants – though not fool-proof as we will see.

In conducting a historical investigation into the financial affairs of a defendant the financial investigator is not burdened with verifying the origins of assets. The confiscation regime overturns the normal burden of proof and the defendant is expected to demonstrate that the assumptions have been applied incorrectly or unjustly and that he or she cannot pay an amount equal to the benefit figure. Of course, demonstrating the provenance of assets may be difficult to do. As Nicol (1988: 77) notes, justifying ones expenditure, especially over a long period of time, represents 'a daunting task for even the most scrupulous record keeper and honest citizen' (see also Lawrence, 2008). The process of calculating benefit and available amount concludes with the production of a written statement, which sets out how financial investigators have calculated both figures (Section 16). This states the position of the Crown. The defendant should consider this statement, setting out areas of dispute and, as appropriate, provide the evidence to rebut the financial investigators calculations (Section 17). There is no right of silence. If a defendant does not reply to the prosecutor's statement and indicate the extent to which he or she accepts the allegations, all allegations should be treated as accurate (Section 17). The court should make a confiscation order in the sum of the benefit amount or the available amount only if it is demonstrated that the assumptions are incorrectly applied or there would be a 'serious risk of injustice' if they stood. 'Serious risk of injustice' refers only to possible injustice arising from the processes through which the assumptions are applied and not to the possibility of hardship being suffered by the defendant if a confiscation order were to be imposed. We turn now to the construction of benefit in practice.

Constructing benefit figures

Benefit figures are, for all practical intents and purposes, hypothetical ones. This statement from a financial investigator gets to the nub of the issue:

It's a difficult one really, isn't it, because really you've got to consider we are given poetic license really with the legislation. We can make, as a financial investigator, a vast amount of assumptions, and we want to get a benefit figure over and above what the realisable assets are, obviously. Although you attempt to be as fair as you can be, there may be occasions when actually the benefit figure is somewhat more inflated, you know, and you can't help that because the legislation says you can do it, you can make the assumptions. You always know that once they send their response to you there is going to be a reduction because they're actually going to be able to come forward and say, well, actually I have been working and that's from that, and that's from my mother, or whatever. So it's very rare, the actual benefit figure that we put down, ever represents the true value of the order, you know, and I don't know how you can get over that.

This financial investigator is drawing attention to how, founded in the legislation, they have 'poetic licence' to construct benefit figures in lifestyle cases but that ultimately these values are unlikely to be translated into realisable assets. Indeed, financial investigators routinely described the highly speculative nature of criminal benefit which they certainly do not expect to recover in full. Let us consider the primary features that shape why not.

The estimates are likely to include assets which have been legitimately acquired, as the statement from the financial investigator above indicates. As we have seen, financial investigators are empowered to make assumptions about the origins of assets which the defendant is obliged to rebut. Whilst guidance suggests that financial investigators shouldn't include assets which *clearly* come from a legitimate source in their estimates of

criminal benefit individual practice varies widely. Some financial investigators demonstrate caution, others prefer to apply the assumptions widely to maximise what they might realise. Either way, as the quote above indicates in many cases defendants will be able to overturn the speculative assumptions, show that assets were legitimately obtained and they will be removed from calculations of criminal benefit. Consider this statement from a financial investigator who is explaining the difference between his estimate of criminal benefit and that agreed in court. As way of background, the case centred on stolen vehicles which had been recovered from the business of the defendant which was a commercial garage:

There was an argument over the actual values of the cars, which reduced the benefit somewhat, and then secondly he brought quite a lot of documentation to court, [...] explaining some of the sources, because obviously we lay out in general terms, this is unexplained cash, credits, and he was able to produce quite a lot of documentation to show – albeit I've got a couple of stolen cars in my garage – I do have a business, and I have quite a lot of money going through my accounts.

In this case the financial investigator set out what he judged to be the defendant's criminal benefit in 'general terms' drawing on the assumptions, as he is empowered to do. The criminal benefit – constructed from the value of the stolen cars and unexplained cash receipts in his bank account – was originally estimated by the financial investigator to be about £30,000. However, this defendant was able to rebut the application of the assumptions. He was able to legitimise the 'unexplained' (and so 'suspicious') cash and credits on the basis of the cash-rich nature of his business and crucially he was able to provide documentation to verify this. He was ordered to pay a confiscation order of just under £8,000 which represented the value of the stolen cars. Arguably this defendant was lucky. As we saw in the introduction, demonstrating the origins of assets is not always straightforward and the 2002 Proceeds of Crime Act requires that the assumptions are applied in the absence of evidence to rebut them. Indeed, had he not been able to provide documentation to prove that the unexplained credits in his bank accounts were legitimately acquired he most likely would have been liable to pay the full benefit figure estimated by the financial investigator. That said, whilst the theory of post-conviction confiscation seems quite clear cut in practice it may be that defendants are sometimes given the benefit of any doubt. Financial investigators sometimes expressed frustrations that defendants did not have to provide much evidence to demonstrate that assets were legitimately derived. Consider then this statement:

Generally a lot of them try and do it on assertion, which isn't good enough. It has to be evidence on oath, and the judge is looking at it, and he hasn't got rosy tinted glasses on. He will take them to task on it, but some people can do it. They can bring the benefit figure down, and to be honest with you, we can agree a lot of the benefit figure coming down to the confiscation order amount, quite legitimately, because really the key to this, as we said, the benefit figure is an airy fairy...it is up in the air, it is Peter Pan. It doesn't exist. Forget it, let's talk about what he's got.

This financial investigator is suggesting that defendants will try and get away with producing minimal evidence about the origins of assets and that they are sometimes (although by no means always) successful in adjusting the benefit figure downwards. This statement also draws attention to what financial investigators see as the notional nature of criminal benefit which, as we have seen, they do not expect to recover. Therefore some negotiation around the *precise* value of criminal benefit may not unduly bother them.

However, as the extract also suggests when it comes to ‘talk about what he’s got’ financial investigators may become more bothered, we return shortly to matters related to the available amount. Let us consider other factors which shape the construction of criminal benefit.

Benefit figures include assets which are not legitimately realisable. The impact of incorporating assets that are not legitimately realisable is clearest in cases involving drugs and stolen property; we will focus on drugs cases as there is a strong relationship between drugs cases and the post-conviction confiscation regime (see Bullock et al, 2009 for example). Drugs have no legitimate market value. Thus a defendant caught in possession of drugs would – one might imagine – avoid the value of those drugs being incorporated into an estimation of criminal benefit. However, they are relevant to the calculation of criminal benefit under the 2002 Proceeds of Crime Act since if there is evidence that a defendant must have paid for the drugs in his or her possession, such expenditure may trigger the assumptions (Rees et al, 2008). Indeed, financial investigator accounts indicated the central role that drugs play in the calculation of criminal benefit. Confiscation orders derived from estimates of expenditure on drugs have been viewed as some of the most Draconian as benefit values can become very high, as this statement illustrates:

I think the benefit figure for each of these would have been somewhere in the region of half a million pounds, because we would take the purchase price of the drugs that were taken, but in reality, [the defendant] has got nothing. The car he was using was sold for £5,132. Similarly with his assets, no property at all, a bit of money in the bank account, and although he had had a large benefit figure on him, the actual realisable, I think it was £1,161.48.

Drawing on the price that the defendant paid for drugs the criminal benefit of this defendant was estimated to be in the order of £500,000. However, as the extract indicates, ‘in reality’ benefit figures are in many such cases meaningless for the purposes of the value of the confiscation order because they cannot be legitimately realised, even if the drugs were still available.

Values of criminal benefit in some drugs cases have been compounded by the way that the assumptions are applied in practice. Indeed, commentators have observed that benefit figures in cases involving drugs have been artificially inflated by extravagant and widely speculative calculations (which have not always reflected the purchase price of drugs but instead the amount obtained by previous criminal conduct out of which the expenditure was met) and double counting of income derived from and expenditure on drugs (Rees et al, 2008). Double counting in this way was evident in the accounts of the financial investigators who participated in this study. However, more significant perhaps were accounts which drew attention to variance in the estimates of benefit derived from drugs. In valuing drugs for the purposes of the confiscation regime financial investigators reported that they draw on estimates of wholesale prices derived from local test purchasing exercises or centrally determined figures. Both sets of information are generally provided in ranges. To maximise the revenue that might be recovered some financial investigators will value drugs at the higher end of these ranges but others act cautiously and go for the lower end. This leads to inflated estimates in some cases and deflated ones in other cases. If upper estimates are used they also become a site of conflict between the defence and prosecution as they seek to negotiate a value of criminal benefit. This statement illustrates:

‘I worked out something at £3 a tablet, and it looks like they were perhaps saying they were only worth £2.50 a tablet, so well to be honest with you, if it is something like that, you wouldn’t necessarily put it before the judge. If it was reasonable, you’d perhaps say, yeah. Then fair enough, there would have been some negotiation [about the value of the drugs]’.

This statement demonstrates the expedience that financial investigators often show in these negotiations. Recognising that benefit figures were often hypothetical and that the value of drugs somewhat speculative financial investigator accounts demonstrated that they would be prepared to consider reasonable compromise. We return to the issue of negotiation and compromise throughout this paper.

In estimating criminal benefit it does not matter whether property is permanently or temporarily retained by a defendant. Under the 2002 Proceeds of Crime Act criminal benefit should represent the full value of that property. Consider this example, which has been truncated for brevity, of confiscation orders generated following convictions of four defendants in a cash-in-transit robbery case:

To sum up, on the day that this robbery happened, [the defendants] were under surveillance so they’d been watching the [security] van deliver to the bank. They’d been under surveillance, they got out of the thing and they attacked the driver as he got halfway across the pavement. They grabbed the bag off him that had the money in and then got into the getaway car and made off. Because they were under surveillance they were followed and they pulled up outside a terraced house and ran in, quickly followed by the police, with the cash box. They’d gone upstairs but they had submerged it in the van in a bath of water to stop the red dye going out. There was £25,000 in the cash box. Two offenders were arrested in the house and one was arrested in the getaway car. To cut a long story short, they recovered the money within about seven minutes of the robbery with the four offenders. [...]. It went to court, they were all found guilty of robbery and I did a confiscation on the basis that it was a particular criminal conduct and that it had the benefit of £25,000.

In this case, the court agreed that the defendants involved in the robbery benefited to the tune of £25,000, albeit for ten minutes or so. This extract also draws attention to the issue of how to apportion criminal benefit in cases where there are multiple defendants. This has been something of a sticky issue for the regime. A series of (post-fieldwork) judgements have held that jointly-acting offenders can be treated as if they acted individually and so be held responsible for the whole criminal benefit. At the time that the field work was conducted there appeared to be very variable practice. Financial investigators indicated that benefit might be apportioned between defendants in some cases but in others it was attributed in full to individual defendants. Indeed, in the above robbery example all the defendants were held individually responsible and accountable for the full benefit: *‘So actually, what you’ve got in that case is they stole it, had it for seven minutes and you’ve got effectively orders for £100,000, even though it was £25,000 that was actually stolen’*. Quite.

To summarise, the post-conviction confiscation regime systematically constructs criminal benefit from legally acquired assets, assets that cannot be legally realized and does not account for either how long they were in the hands of the defendant or necessarily how many defendants ‘benefited’ from the same crime. Compounding this, as is starting to

become evident from the above discussion, different financial investigators, confronted with similar information and sets of circumstances, estimate benefit differently. As one financial investigator put it:

You can always work out a benefit figure in different ways – if you give the same set of facts to different investigators they will work it out differently. It's just the nature of the work. Some people would perhaps build in a compromise.

As the statement suggests, one concern here is that the actors within the system work out benefit figures more or less cautiously. Some financial investigators will incorporate practically anything in their statements: *'Like some people in our office, if you have a drug dealer, a 16-year-old, 17-year-old lad on a BMX bike with two Staffordshire bull terriers at his side, will actually put on their statement the price of the BMX bike and the price of two Staffordshire bull terriers.'* As we have seen, financial investigators don't expect to recover the full value of criminal benefit. However, there are reasons to try to generate high values of criminal benefit. The regime allows the state to recover the original benefit figure should a defendant acquire assets in the future. Although it should be noted that in practice it seems that they do not revisit cases often, the outcome of a combination of resource and administrative problems (see Bullock 2010a and CCJI, 2010). Financial investigators are also building in room to negotiate in the sorts of ways that we saw above, something we come back to when we discuss the construction of the available amount. Starting with upper estimates would seem to give financial investigators more room to manoeuvre. Where caution is shown it is generally in the name of expediency – rather than fairness to the defendant – as applying the assumptions widely means the process of obtaining a confiscation order will most likely be prolonged. It also reflects an acknowledgement that criminal benefit is a somewhat tenuous concept which, as seen, financial investigators would not expect to recover in full. A further reason for generating high benefit figures is that the defendant might own property that is legitimately recoverable with which the benefit figure might be realised. Indeed, the regime quite deliberately does not require that value of criminal benefit is available to seek to realise it – the benefit can be realised from defendants' assets however they are derived. To illustrate, let us return to the aforementioned 'lucky' garage owner. As seen, his £8,000 confiscation order reflected the value of the stolen cars found in his garage. Clearly, the garage owner was not going to be able to sell the stolen cars to realise the order. The confiscation order would have to be paid out of his legitimately acquired assets, if he had any. This defendant did legitimately own assets. The largest of these was his commercial garage which valued at £45,000 was well above value of the stolen property. Whilst financial investigators certainly endeavour to generate benefit figures which are larger than the realisable assets – note the phrase 'we want to get a benefit figure over and above what the realisable assets are, obviously' in one of the statements above – the state cannot seek to recover property over the value of the benefit derived from criminal conduct. Thus in this case, the value of benefit agreed in court and the value of the confiscation order were equal. But this is uncommon. Let us turn our attention to what defendants might have available for confiscation.

The confiscation order

Although the benefit figures do loom over the horizon for defendants who may be required to pay them should they acquire assets in the future, the functionality of the post-conviction confiscation regime stems not from estimates of criminal benefit per se but from the hope that tangible assets, however derived, will be available for confiscation. Strictly, financial investigators need not concern themselves with calculating the defendant's available

amount although interviews with financial investigators suggested that they do, as this extract indicates.

What you usually find is if we've done our job right, the defence barrister's got no arguments, because you've gone through procedure, you've given him a questionnaire to say, what's your assets? They're either truthful, and they tell you about something that you don't know about, or they hide something that you already know about, but either way you get to know everything you want to know anyway.

Financial investigators concern themselves with establishing the available amount since, as this statement indicates, defendants are not viewed to be likely to reveal the extent of their assets for rather obvious reasons. Having conducted their own enquiries also helps them enter into meaningful negotiations about the extent of defendants' available assets, the nature of which we will shortly see. However, the statement 'you get to know everything you want to know anyway' in the above account masks complexity as a number of themes related to the construction of available amount revealed themselves within financial investigator accounts the nature of which we consider now.

Though financial investigators are empowered with wide-ranging tools to trace assets there are even so limits to what they can achieve. Financial investigators reported that it can be difficult to trace assets for the purpose of confiscation. Financial investigators drew attention to cases where they had reason to believe that defendants must have had assets (perhaps from intelligence sources or accounts of witnesses), but it was by no means clear where there were. This reportedly occurs for a number of reasons – property may be given or lent to friends and family, offenders may deal only in cash, assets may become 'lost' within more complex financial transactions, where assets are abroad they can be very difficult to trace and (especially) recover and some defendants are becoming wise to the regime. Points noted in this statement:

All my defendants seem to have done quite a good job of never putting anything in their name anyway. I find it very, very frustrating, that you know people have had the benefit of £200,000 but you just can't find it, and you know it's somewhere, but it won't be in their name. It's really hard. Some jobs are just so frustrating. I think a good criminal now is getting switched on to the fact, pay cash and don't leave an audit trail. I'm finding it more frustrating in the last 12 months to find stuff when I know it's there. But we are getting better and there're more tools, but you're never going to find something if somebody's never put anything in their name. Even down to cars, because I've got a few jobs with really, really high benefit figures but nothing.

This financial investigator ended up acknowledging that although financial investigators were increasingly well trained, experienced and blessed with wide-ranging powers and tools, there was limits to what they could achieve in the face of a defendant who had taken significant steps to cover his tracks.

Whilst the financial investigator who gave the above account is drawing attention to cases where defendants are thought to have assets that could be realised, it is clear that many defendants incorporated into the post-conviction confiscation regime do not have much that could reasonably be recovered. This is generally because their criminal endeavour was not that profitable to begin with or because any earnings from crime had been frittered away

over time rather than invested in ways that might render them recoverable. Indeed, that defendants incorporated into the post-conviction confiscation regime tend to fritter away the proceeds of crime, often supporting drug and gambling habits, has been noted by others who have examined it (CCJI, 2010). This might derive from the way that the regime is operated and especially its targeting practices. If relatively ‘low level’ offenders routinely are drawn into the system – and there has been plenty of official encouragement for such an approach (e.g. HMIC, 2004; ACPO/NCPE, 2008) – then it should be anticipated that relatively little will be recoverable (see also Bullock and Lister, 2014). It might also derive from a misunderstanding of the nature of ‘professional’ offending. As Naylor (1999: 11) notes, ‘most professional criminals seem to be profligate spenders’ (and see Adler, 1993). It may well be that there is not much left to confiscate even where defendants have engaged in profitable criminal careers.

Of course, some tangible and legally available assets will be available in many cases. Even so, the value of such assets may well be unrecoverable. Some assets are clearly easier to deal with than are others. Financial investigators drew attention to how cash that has been seized from a defendant, held in bank accounts and properties were fairly straightforward – at least from the point of view of valuations (and see Levi and Osofsky, L, 1995 or Bullock 2010a for matters related to dealing with properties). However, incorporating assets as diverse as cars, jewellery, items of furniture, children’s clothes and pet dogs into calculations of available amount, financial investigators could be looking to realise the value of almost anything. For the purposes of the regime, valuing such an assortment of goods and belongings can be problematic. Strictly, under the 2002 Proceeds of Crime Act property must be valued as what it was worth at the time it was obtained (Section 79 and 80). In practice, as readers will no doubt foresee, it will often be difficult to achieve that value. A great deal depends on the nature of the property, its age and condition. There is likely to be variance between what was originally paid for goods and what might be realised when they are sold as second hand property. Financial investigators drew attention to how it is quite common for property to be sold under the value determined in court, often because of depreciation but also because of the vagaries associated with selling second hand property. A practical outcome is that this leaves a shortfall in the payment of the order, which generally is written off.

Some types of property feature more or less regularly in the regime. Financial investigators accounts of the operation of the confiscation regime often made reference to vehicles. Symbolically vehicles have featured heavily in the discourse of the confiscation regime. Indeed, in drawing attention to how *‘they can show on television you driving off with someone’s car, taking someone’s Porsche away’* financial investigators also pointed to the importance of symbolism. However, valuing cars is not a straightforward process – *‘It’s like everything. It’s only worth as much as someone is prepared to pay for the car. Cars are very difficult unless they’re high value or particularly luxurious or rare cars’* – and the cars brought to the attention of financial investigators tend not to be rare and luxurious ones. In these circumstances, value depreciates very quickly especially where they have been impounded by the police: *‘these vehicles were a pain for me as well, because we’d seized them and had them in storage, so they’d depreciated even more than they would have done if they were out and about, so we had to concede that really’*. In these sets of circumstances, financial investigators generally were forced accept that they would not realise the value of vehicles (as strictly determined by the Act), as the account suggests. Indeed, financial investigators tended to see vehicles as a bit of a nuisance, especially in long running cases. Given these circumstances, financial investigators argued that they

would like to be able to sell cars early on in the process (before a defendant was convicted even) in order to realise their maximum value.

In generating estimates of the available amount, financial investigators vary in respect to both what assets they will include and where they pitch their value, much reflecting the situation that we saw with valuing drugs above. Some will look to include pretty much everything whereas others are much more circumspect. A similar position is evident with valuing them. Property is in many cases valued on internet valuation sites with the intention that it will be sold at auction and estimates are usually provided in ranges. To paraphrase one financial investigator, some (usually the more experienced ones) 'go wide' in their estimates, while others 'go narrow'. Whilst many financial investigators seek to see what they can get away with in the hope of maximising what might be recovered, others were critical of the all-encompassing approach and applied caution in their practices:

Well, maybe because I'm not controversial, or stupid, as I put it. As I say, there are people in our office who will put down stupid things, and to me I can't see the sense in it, because you're just going to waste time arguing over things and you probably won't get anywhere, but a lot of people will.

In noting that she did not want to '*waste time arguing*' this interviewee was drawing attention to how financial investigators expect to be challenged about their calculations where valuations appear to be inflated. One financial investigator noted '*When they get valued online, sometimes defence will say something like, well, I reckon it's not ten grand, I think it's more like six. You get that kind of thing*'. Much reflecting the situation with benefit figures some financial investigators put down the lower estimates to minimise subsequent argument: '*if you put down the lowest valuation that you can put, there's not going to be very many defence barristers that will argue with you*'. As this statement indicates, the point of doing so is generally for expedience rather than concern for the defendant. Either way, again in a position reflecting their views on the values of criminal benefit, investigators tended to acknowledge that the process of determining the available amount is not an exact science. Indeed, calculations of the defendant's property can be quite rough and ready. One financial investigator drew attention to her practice of simply adding a ballpark estimate of the value of a defendant's household goods to her statements of the available amount: '*with household furnishings, I'll always add it on, either £500, £1,000, £2,000 worth of furnishings, depending what they are*'. She adds that she is '*not particularly bothered*' about the value of these sorts of goods since, in the general scheme of the regime, they do not represent all that much money.

A final issue that we will consider in respect to constructing the available amount and realising benefit values is that of third party interests. As we have seen, financial investigators can assume that property incorporated into values of criminal are free from third party interests. Needless-to-say, financial investigators drew attention to how in many cases this would not be so. Banks, mortgage and credit providers may well all have an interest in defendants' property. In constructing values all this needs to be unravelled and it would seem that this occurs early on in the process. Of course, creditors are unlikely to be the only ones with interests in a defendant's property. Family members may well have an interest in a defendants' property and especially in the family home. Rees et al (2008) describe how the potential hardship of innocent parties is irrelevant to the calculation of the available amount and that the provisions of the 2002 Proceeds of Crime Act have been shown to be compatible with the European Convention on Human Rights (ECHR). Strictly

speaking then calculations of both benefit and available amount *should* include a family home, where relevant. As guidance points out, the court has no discretion to mitigate – if the defendant has an interest in the family home, its value must be calculated – even if the effect of the confiscation order is to render the defendant and dependent relatives homeless (CPS, 2009). The rationale here seems to be that the available amount is simply a computation of the value of defendants’ assets. He or she is not required to sell that home to realise the order. Of course a defendant might well have to do so. But that is a different matter and, in principle at least, an issue for the enforcement of the confiscation order rather than for the construction of its value. At the point of enforcing the order the court is obliged to hear representation from affected third parties. If there is an application to realise the value of a confiscation order through selling the family home then Article 8 of the 1998 Human Rights Act – right to private and family life, home and correspondence – is engaged and the issue of whether loss of the home is proportionate would be considered (Rees et al, 2008). Financial investigators did describe cases where there unresolved third party interests arose at the time of enforcement – which leads of delays and may mean that the full value of the confiscation order is ultimately not realised. However, it is clear that this is an area of significant contention well before efforts are made to enforce an order, to which we will now turn.

Many interviewees pointed to the tension between generating confiscation orders, accounting for the interests of partners and ultimately protecting the home of a defendant’s family. Although the regime has been criticised for its potentially punitive impact on third parties it appears that this has been somewhat mitigated by the practices of some financial investigators and judges. It would perhaps be surprising if financial investigators felt much compunction about the idea of confiscating the family home and the hardship this would inevitably bring for family members, as this quote illustrates.

The issue gets a bit more cloudy if you’ve got a wife and kids [...]. It’s a nice idea to be able to think well, actually, the legislation allows you to do this, but the actual effect is: you’re putting people out on the streets. I haven’t got a problem with that otherwise I wouldn’t be in the job, but judges do. There is still quite a variance in the rulings that we’ll get.

As the quote indicates, financial investigators certainly highlighted that the issue is more complex than the legislation and guidance would have us believe. Reflecting the points made above regarding the sorts of property that might be included in their estimates of available amount, financial investigators show variability in how they deal with the issue of third party interests. Some financial investigators would choose to include the whole value of house in their statement, others will guess at defendant’s share of the value, play it safe, and estimate accordingly. Moreover perhaps, in so doing financial investigators sometimes are considering the impact that the confiscation of a home would have on third parties rather than simply displaying the sorts of expediency we have seen above. The extract below describes how a financial investigator sought to apply ‘fairness’ in the matter:

One of the problems I think sometimes is when you’ve got a husband and wife scenario and they want to split equity in properties and things like that. We go along the lines of, well, if they haven’t worked and haven’t contributed to that property in any way, shape or form, why are they eligible for half the equity in it, but if you’ve got the other way and they can come forward and show, right, well,

they have actually been paying the gas and electric, it's a different matter. There has to be fairness in this.

This suggests that if tangible evidence that a partner's had legitimately contributed towards jointly held assets was present then financial investigators might well account for that in estimates. As readers might imagine, the idea of 'fairness' can become bound up in debates about the 'innocence' or otherwise of third parties. Of course, it is not the role of the financial investigator to explore any role that any third party might have played in the defendants offending or, and perhaps more pertinently, to formally consider the extent to which third parties were aware of the origin of the property that the state is seeking to recover. However, financial investigators certainly do think about this issue. Many argued that third parties, presented as unaware and innocent, may have been very well aware of the illegal endeavour of defendants and the true origin of assets. In these sets of circumstances they tended to express frustration when what they saw as leniency was shown.

Financial investigators are more or less willing to consider third parties but, as should be clear from the above statements, judges will tackle it head on and as indicated there is variance in views. Certainly it was not uncommon to hear examples of financial investigators recounting cases where available amount figures were adjusted '*due to the wife laying claim to the house and the judge ruled that she should have some claim*'. Financial investigators also described what they saw as reluctance on the part of some judges to make partners and children of defendants homeless. As such they sometimes refused to allow the sale of the family home and on occasions placed tight restrictions on any sale to protect the interests of a partner and children. Consider this statement:

£72,424 from the sale of the house but of course won't be that now will be half that when she has the equity out of it but I can't remember the figures exactly. But actually this is not going to be realised for some time. Receivers can sell the property but not till the child leaves education. So we cannot enforce until the property can be sold or it would not be fair. Basically [it] won't ever be enforced. Can't give a default sentence because it's not the case that he doesn't want to pay as such.

The financial investigator is describing a case where the available amount was derived from the value of a family home. In this case the judge accepted a wife's claim for the value of half a property. Even so, the judge accounted for what he saw as a need not to disrupt the education of one of the defendants' children and held that the property should not be sold until that education was complete. In these circumstances, it was the view of the financial investigator that the asset would never be realised. This discussion of the role of third parties in the post-conviction confiscation regime is out of necessity brief. It should be stressed that determining and accounting for the interests of third parties innocent or otherwise is not at all straightforward. Doing so can be an exceedingly long process; especially in the larger complex cases.

Ultimately the value of benefit and the confiscation order should be agreed in court. However, it should be clear from the above that it is common for the values to be agreed outside of court, often long before a hearing. As we have seen, negotiation might occur during the exchange of statements under sections 16 and 17 of the 2002 Proceeds of Crime Act. Consider this extract in which a financial investigator is describing the process:

You'll then submit your statement to them, and they've got to move to reply. [...] If they disagree with anything, you usually get it back, and at that stage, you reassess something so by the time it gets to the hearing stage, whatever is going to be argued or whatever, you've already done it. Are you with me?

The above extract indicates, the financial investigators might 'reassess something' on the basis of information provided by the defence in their statement. For example, when confronted with 'reasonable' evidence or argument that property was worth less than the financial investigators estimates, they might well be prepared to agree a reduced value. This negotiation may occur a bit later on in the process. Consider the following extract:

What we find is when we've got to court, the defence and prosecution barristers are often in the same chambers, and they've often discussed the case, and I'd like to think that every time I go to Crown Court, everything is up for grabs, and the decisions are made on that day. In reality that doesn't happen. In reality the barristers have often discussed it and sorted it out. Carved it up, as I like to call it, and you get there, and sometimes you are told, this is what's happening, and sometimes you've got to take a pragmatic approach to these things, especially with the benefit versus asset figure. That if he hasn't got the assets, the benefit figure is often incidental, it's an academic figure, it's like a notional figure that, if he had it, well, you could take it, but he hasn't got it.

This financial investigator is also drawing attention to how the values of criminal benefit and the available amount are often negotiated by barristers immediately in advance of a confiscation hearing. Sometimes this practice was the result of explicit requests of the judges whilst other times it occurred implicitly. Either way, interviewees reported that this negotiation would usually be conducted informally, as the quote indicates. The process of negotiating outside of a full confiscation hearing was generally considered by financial investigators to be legitimate in terms of saving time and money. Indeed, as we have seen throughout this paper, financial investigators often take a 'pragmatic approach' to this negotiation of the values, again founded in the understanding that the value of criminal benefit (especially) is somewhat notional. That said, sometimes financial investigators did raise concerns about the informal nature of this negotiation which tends to force a compromise, the basis for which is not always clear.

Conclusion

In the name of controlling crime, reinforcing the message that crime should not pay and to generate as much revenue as possible, the UK government, reflecting jurisdictions around the world, has developed a powerful regime through which to identify and recover the 'proceeds of crime'. At the heart of the regime are two central concepts – criminal benefit and the available amount – which shape how the post-conviction confiscation regime in the UK should be understood. These concepts are intangible and elusive ones. The one thing they most clearly are not is one they might most reasonably be expected to be: assets derived from crime and criminal enterprise. Instead, it is contended that criminal benefit and the available amount are perhaps best categorised as *constructs* derived from legislation, the discretionary practice of police officers and financial investigators, organisational restrictions and constraints and informal negotiation and compromise between defence and prosecution lawyers.

The foundations of the concepts is the 2002 Proceeds of Crime Act which accords financial investigators considerable scope to estimate values of both criminal benefit and the available amount. In constructing criminal benefit in lifestyle cases financial investigators have almost limitless freedom to make forays into the historical financial affairs of defendants, to postulate upon the origins of assets and in so doing to, for example, conflate legitimately and illegitimately derived assets, incorporate assets to which third parties may stake a claim and fail to apportion benefit between defendants. The grossly lax framework, designed to maximise what might possibly be recovered (in the short or long term), facilitates the inflation and distortion of values of criminal benefit. The framework interacts further with the discretion of the practitioners who apply it. Whilst some financial investigators are cautious, it is more common for them to seek to exploit the legislation pushing its application to its upper limits, making extravagant estimations of benefit to make the most of what *might* be recoverable. That said financial investigators do not generally expect to recover these criminal benefit figures in full. They tend to view them as somewhat vague and notional, not least because they do not anticipate that defendants will have the assets available to realise them.

The available amount is more ‘meaningful’ than the benefit figure – at least from the immediate point of view of the defendant and for generating revenue – as this is the value that is reflected in the confiscation order and will have to be paid. Again, this does not represent the proceeds of crime but instead the combined value of the available property of a defendant (however derived). On the face of it the value of the confiscation order should be the outcome of a relatively straightforward exercise in arithmetic. However, the process is more complex than that. In some circumstances, estimates are inflated as (reflecting values of criminal benefit) financial investigators seek to exploit what might be recovered. In so doing they make wide ranging assumptions about, for example, what defendants’ assets might be worth and who has a legitimate stake in them. In other circumstances, estimates are deflated, influenced by organisational and administrative constraints as it is not always possible to identify and recover assets.

The post-conviction confiscation regime does not appear to facilitate much in the way of discretion or compromise in either the construction of criminal benefit or the value of the confiscation order. Noting that in the UK criminal justice system judges have nearly always had discretion to use ‘common sense’ Lawrence (2008: 23) argued that in confiscation cases ‘judicial discretion has been stripped away so that, apart from where abuse of process can be found, it is practically non-existent’. However, this certainly does not mean that discretion is absent from the process of securing confiscation orders. Indeed, in the context of organisational constraints and the need for administrative expediency final values of criminal benefit and the confiscation order are, in many cases, the product of negotiation and compromise between the prosecution and the defence. Financial investigators have discretion in how they apply the assumptions and it is this discretion that, ultimately, gives rise to negotiation and compromise in valuing criminal benefit and the available amount. Financial investigators are well aware that that the unfettered application of the ‘poetic licence’ accorded to them under the legislation renders their estimates of criminal benefit (especially) and the available amount liable to challenge. In these sets of circumstances, they seem to accept that many estimates are products of compromise and negotiation.

It may be based on the notion of the rational, calculative and profit driven offender but the post-conviction confiscation landscape is a highly turbulent one. The process of generating a confiscation order is far from a neutral counting exercise. Estimates of criminal benefit

and the available amount – themselves understood to be somewhat tenuous by those who generate them – are highly contestable and indeed are contested. Generally conducted in private settings, the prosecution and defence negotiate compromises in the interests of judicial expediency in respect to the former and to whittle down what has to be paid – or might have to be paid in the future – in respect to the latter. The post-conviction confiscation regime in England and Wales has been built on extravagant claims regarding what can be achieved. Yet this paper has demonstrated that the values of criminal benefit and available amount paint a deeply misleading picture of the nature of the criminal economy, the amount that defendants have derived from crime and what might be recovered from them. Investment in post-conviction confiscation has been fuelled by the hope that the regime will fund itself (at the very least) and that monies recovered can be reinvested into funding the operation of the criminal justice system (at the very best). However, in many ways the foundations of the post-conviction confiscation regime are built on sand. Rather than representing tangible values that the state might hope to recover the concepts of criminal benefit and the available amount are constructs – the product of the interaction of wide ranging legislative powers, organisational constraint, discretionary practices, compromise and negotiation. The practical implication is that criminal benefit will not be recoverable in many cases.

References

- ACPO/NCPE (2008) Practice advice on management and use of proceeds of crime legislation. Wyboston: ACPO/NCPE. Available at: <http://www.acpo.police.uk/documents/crime/2008/200809CRIPOC01.pdf> [17/6/13]
- Adler, P. (1993) *Wheeling and Dealing: An Ethnography of an Upper-level Drug Dealing and Smuggling Community*. New York: Columbia University Press.
- Bullock, K. (2010a) Enforcing financial penalties: The case of confiscation orders. *The Howard Journal*. 49 (4) 328-339.
- Bullock, K. (2010b) The Confiscation Investigation. *Policing: An International Journal of Policy and Practice*. 4 (1) 7-14.
- Bullock, K., Mann, D., Street, R., and Coxon, C. (2009) Examining Attrition in Confiscating the Proceeds of Crime. Home Office Research Report 17. Home Office: London. <http://rds.homeoffice.gov.uk/rds/pdfs09/horr17c.pdf> [17/6/13]
- Bullock, K. and Lister, S. (2014) in C. King and C. Walker (eds). Post-conviction Confiscation of Assets in England and Wales: Rhetoric and Reality in *Dirty Assets: New Issues in the Regulation of Criminal and Terrorism Assets*. Farnham: Ashgate.
- Cabinet Office (2000) Recovering the proceeds of crime. London: Cabinet Office. <http://webarchive.nationalarchives.gov.uk/+http://www.cabinetoffice.gov.uk/media/cabinetoffice/strategy/assets/crime.pdf> [17/6/13]
- HMIC (2004) Payback Time: Joint review of asset recovery since the proceeds of crime act 2002. London: HMIC. Available at: http://www.CCJI.gov.uk/documents/reports/CJJI_THM/BOTJ/PaybackTime_Rep_Nov04.pdf [17/6/13]
- CCJI (2010) joint thematic review of asset recovery: restraint and confiscation casework. London: CCJI. Available at http://www.CCJI.gov.uk/documents/services/reports/THM/CJJI_AssetRec_Mar10_rpt.pdf
- Crown Prosecution Service (CPS) (2009) Confiscation and Ancillary Orders pre-POCA: Proceeds of Crime Guidance. CPS: London. Available at: http://www.cps.gov.uk/legal/a_to_c/confiscation_and_ancillary_orders/ [17/6/13]

- Lawrence, I (2008) Draconian and manifestly unjust: how the confiscation regime has developed, *Amicus Curiae* Issue 76 Winter, 22-24.
- Lea, J. (2004) Hitting Criminals Where it Hurts: Organised Crime and Due Process. *Cambrian Law Review* 35 81-96.
- Levi, M. and Osofsky, L. (1995) *Investigating, Seizing and Confiscating the Proceeds of Crime*, Police Research Group Crime, Detection and Prevention Series Paper 61. London: Home Office.
- Naylor, R. (2007) Criminal Profits, Terror Dollars, and Nonsense *Crime & Justice International* 23 (101) 27-33.
- Naylor, R. (1999) Wash-out: A critique of follow-the-money methods in crime control policy. *Crime Law and Social Change* 32 (1) 1-57
- Nicol, A. (1988) Confiscation of the Profits of Crime. *Journal of Criminal Law* 52 (1) 75-83
- O'Malley, P. (1992) 'Risk, Power and Crime Prevention' *Economy and Society* 21 (3) 252-275.
- Rees, E. Fisher, R. and Bogan, P. (2008) *The Blackstones Guide to the Proceeds of Crime Act 2002*. Oxford University Press: Oxford.
- Sproat, P. (2007) 'The new policing of assets and the new assets of policing: A tentative financial cost-benefit analysis of the UK's anti-money laundering and asset recovery regime', *Journal of Money Laundering Control* 10 (3) 277-299