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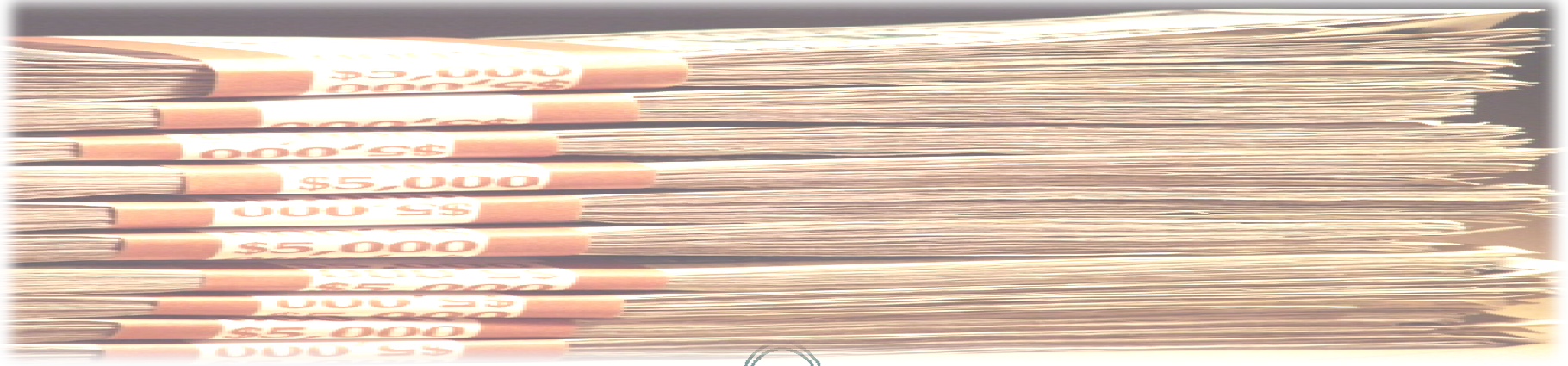


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# **ASSET RECOVERY: SUBSTANTIVE OR SYMBOLIC?**

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# Asset Recovery: Media Portrayal



Source: images sourced from Google searching key word: asset recovery



# Agency Creation



- *“before 1986 money laundering was not a crime anywhere in the world, currently....170 states have criminalised money laundering, and most...have set up specialist agencies to combat it”* (Sharman, 2008, p 635)
- 40 separate global entities include AML within their remit
- In addition to the FATF there are 16 government and private sector agencies whose sole rationale and focus is AML



# Policy Making



- Laws used to achieve specified ends but based on an *ex ante* presumption of a predicted response
- Presumed rationality on the part of criminal actors  
*“rational cost benefit calculators”* (Blickman, 2008, p 10 also Naylor 2003)
  - *“seizing criminals’ assets . . . is a key tool of law enforcement. It reduces crime, . . . and ensures (and shows) that crime does not pay”* (Home Office, 2008, p 36)
  - *“The confiscation of criminal assets by the Courts forms a key part of efforts to tackle the criminal economy and crime more generally”* (Gottschalk, 2010, p 1)
  - Purpose was to *“change the economics of crime by increasing both the costs and risks of laundering”* (HM Treasury, 2001 para. 48)



# Proceeds of Crime Act 2002



- It provided *“powers that were so extensive it could even seize assets from people who had not been convicted of any crime”*(BBC News 11/10/2007)
- *“Put simply, POCA makes it possible to seize cash from a suspected criminal and places the onus on that individual to prove that the money has been acquired legitimately. ...The Act also creates an all-encompassing web to catch anyone who moves, hides, converts or otherwise has possession of cash or property that represent the proceeds of crime.”*(HMICA, 2004, p 8)



# Agency Bias



- Apparently new or increasingly complex criminal methodologies provide justification for regulatory tightening ...wider and more invasive legislation is implicitly better irrespective of efficiency
  - It is not possible to increase the legislative framework in the absence of incurring positive transaction costs via agency creation (Hantke-Domas, 2003)
  - Rational agency response is to justify and extend power base
    - ✦ *“police creating increased demand for their services by inventing new crimes”* (Chong and López-de-Silanes, 2007 p 5)



# Agency Bias



- Broadening the definition (van Duyne 2003 and Alldridge, 2008) magnifies the problem
- Belief in ever increasing amounts of crime money as an *'article of faith'* (Van Duyne *et al* 2005)
- Righteous believers do not question its existence but look for and repeat anything that reinforces its existence. (Harvey and Lau, 2008)
- *“the articulation of the threat of organised crime interacts with ....'knowledge based policy making' much of which seems to be the restructuring of the 'facts' to fit with the articulated fear”* Spencer and Broad (2010, p 263)



# Legitimacy Theory



- *“Legitimacy is a generalised perception or assumption that the actions of an entity are desirable, proper, or appropriate within some socially constructed system of norms, values, beliefs, and definitions” (Suchman, 1995, p. 574)*



# Fact 'Restructuring'



- *“the value of additional criminal assets theoretically available for seizure is about £2bn per year in the UK, with more than £3bn of revenue sent overseas annually”* (Dubourg and Prichard, 2010, p 57)
- *“criminal ‘capital formation’ – that is assets invested in a possible seizable form of about £5 billion, £3 billion of which is exported overseas”* (HM Treasury, 2007, p 8)
- targets were set for law enforcement agencies to recover £250m by 2009-10 with, more significantly, a longer term goal of up to £1 billion (Home Office, 2008, p 36).



# Scattered Evidence



- Unrealistic expectations for performance with improbably high targets
- *“The Agency commented at the start that the law enforcement agencies referred old cases which had either been ‘thrown out’ by the criminal courts or for which there was insufficient evidence to bring a criminal prosecution. They were handed over to the ARA to pursue a new civil case but are often so old that effectively the ARA had to re-start the investigation.”* (Harvey and Lau pp 298-299)
- *“ARA had cost £65m over four years but seized assets worth £23m”* (BBC News, 2007)



# Costs of the FIU



Total net expenditure £ million	2004/5	2005/6	2006/7	2007/8	2008/9
SOCA			419.4	456.5	465.3
Total for other agencies*	279.5	282.8			

\*Other agencies refers to ARA, NCS, NCIS and part of Customs and Excise. It was not possible to determine which of the costs and associated budget for HMRC were also transferred

That SOCA was the product of a merger between NCIS, Customs and Excise and NCS (and subsequently ARA) it was *“three poor organisations creating one big one”* (Harvey and Lau, 2009, p193)

*“SOCA has seized only £1 from organised crime for every £15 in its budget”* (Rider, 2009, pi)



# Asset Recovery



	2006/7	2007/8	2008/9
	£	£	£
Cash seizure	3.3m	8.0m	9.2m
Restraint orders	27.2m	46.8m	128.8m
Confiscation orders	14.5m	11.6m	29.7m
Civil recovery	n/a	n/a	16.7m

Source: SOCA 2009

Restraints (estimates) can be placed for any hypothetical value on assets 'frozen' in advance of investigation – key is confiscation orders imposed by court  
But not all of these are recovered although it is higher than at the inception of POCA



# Asset Recovery Pre-SOCA



Source Agency	Cash seizure and cash forfeiture £m		Confiscation orders £m	
	2004/5	2005/6	2004/5	2005/6
Assets Recovery Agency (including RARTS)	0.91	0.21	1.84	4.06
HMRC enforcement and compliance	14.33	18.46	29.39	15.06
National Crime Squad	0.11	1.50	4.82	6.25
NCIS	0.0	0.0	0.0	0.0
SOCA	0.0	0.0	0.28	0.14
TOTAL	15.35	20.17	36.33	25.51

Source: unpublished Home Office data supplied to author



# A Peek Through the Door



- Extreme caution within SOCA in opening itself up compromises its integrity (Rider, 2009)
- A request for information that started in 2008 took two years to yield generic data *“We cannot provide this information. If you require further information on asset recovery performance (in general) you will need to submit a FOI request to the Home Office”* (e-mail correspondence with author 31/3/2009)
- Later willingness to assist but issues in respect to data protection – data release requiring permission from all users of the JARD database



# Volume of Cash Forfeiture by NIM and Offence Type 2008/9

	Drug Trafficking	ML Drugs	ML Other	Fraud / Tax Evasion	Counterfe it and Handling Stolen Goods	Burglary/ Robbery	Terroris m/ Arms	Prostitution and People Trafficking	Others	Total
NIM Level 1	707	315	243	109	63	95	6	39	161	1,738
NIM Level 2	172	69	78	25	13	40	4	14	33	448
NIM Level 3	37	47	103	7	4	4	2	18	11	233
Others	203	73	223	67	30	35	2	14	157	804
Total	1,119	504	647	208	110	174	14	85	362	3,223

Source data supplied by SOCA



# Volume of Confiscation Orders by NIM and Offence Type 2008/9

	Drug Trafficking	ML Drugs	ML Other	Fraud / Tax Evasion	Counterfe it and Handling Stolen Goods	Burglary/ Robbery	Terroris m/ Arms	Prostitution and People Trafficking	Others	Total
NIM Level 1	1979	71	74	494	115	403	2	25	34	3,197
NIM Level 2	485	57	102	172	51	112	4	39	27	1,049
NIM Level 3	420	26	27	150	14	24	1	20	50	732
Others	357	17	53	196	38	97	1	11	42	812
Total	3,241	171	256	1,012	218	636	8	95	153	5,790

Source data supplied by SOCA



# Discussion



- No one enquires over the “*vast annual gap between estimated proceeds of crime (both stocks and flows) and asset forfeitures/taxes on crime*” (Levi 2007 p 177)
- Argument over signalling effect of asset recovery regime but mixed evidence of degree of criminal sophistication
- Are facts being reconstructed as some elaborate demonstration of legitimacy?
- Is recovery substantive or merely symbolic?