

**CYNGOR SIR POWYS COUNTY COUNCIL**

**Portfolio Holder Delegated Decision  
24<sup>th</sup> April 2013**

**REPORT FOR:** County Councillor Barry Thomas  
Portfolio Holder for Highways

**SUBJECT:** Proceeds of Crime Act 2002 : Proposal to Appoint an  
Accredited Financial Investigator

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**REPORT FOR:** Decision

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**1. Summary**

- 1.1 The Proceeds of Crime Act 2002 (POCA) confers on the police, local authorities and other enforcement agencies the power to seize and recover money and other assets owned by people engaged in criminal activity. Its purpose is to ensure that crime does not pay. When applied in tandem with a successful prosecution, the Act prevents convicted criminals benefitting from illicitly gained assets on completion of a sentence. In time POCA becomes a significant deterrent to reoffending and at the same time sends an important message to would-be offenders.
- 1.2 The purpose of this report is to consider a range of options available to the Authority in applying the provisions of POCA by those Council services engaged in regulatory activity, for example trading standards, environmental health, planning, revenues and benefits, etc., weighed against the pros and cons associated with each option, and to make a recommendation on a preferred way forward.

**2. Proposal**

- 2.1 The procedure for recovering assets is relatively straightforward. At the request of a prosecutor, a person may be committed to the Crown Court for confiscation proceedings following conviction in the Magistrates' Court of any offence, indictable or summary. Confiscation procedures then become mandatory, placing additional responsibilities on the enforcing agency. A similar arrangement prevails in the Crown Court when confiscation proceedings are requested following a successful prosecution.
- 2.2 Where assets derived through crime are recovered under the provisions of the Act, the Home Office Incentivisation Scheme determines the split between the relevant parties. The scheme can vary with circumstances, but generally the following applies:
- 50% of recovered assets go to the Home Office
  - The remaining 50% is split 3 ways between the prosecutor (18.75%), the Courts (12.5%) and the accredited financial investigator (AFI) (18.75%).
- 2.3 A Financial Investigator, accredited by the National Policing Improvement Agency, is recognised by the Act as having the power to trace and examine confidential financial records. Enforcement agencies directly employing their own AFI enjoy a greater proportion (37.5% as opposed to 18.5%) of any assets recovered through

the Home Office scheme. AFIs have the power also to seize cash over £1,000, if found in the possession of someone suspected of being involved in criminal activity. Prosecutors and AFIs each receive 25% of funds recovered from a cash seizure if it is found subsequently to be associated with criminal activity.

- 2.4 Currently, the County Council has an arrangement with Dyfed Powys Police to 'borrow' one of their AFIs to undertake asset recovery work on the Council's behalf. In return the police benefit from 9.25% or, in the case of a cash seizure, 25% of the assets determined by the court. However, this arrangement is reliant on the police having sufficient spare capacity to offer up and in practice this has proved to be frustratingly small. When it has been effective the authority has benefitted only from a smaller percentage of the proceeds, the rest being shared with the police. A far better arrangement would be for the Authority to employ its own AFI.
- 2.5 Clearly there is an expense in doing that, coupled with a risk that the assets recovered through POCA do not match or exceed the cost of employing an AFI. However, that risk can be managed first of all by using a fixed term contract of employment and secondly by offering the services of the AFI to other services within the Authority that have a regulatory role, for example, Planning, Private Sector Housing, Revenues and Benefits, Rights of Way, Waste Compliance etc. Looking beyond our boundaries there is an opportunity also to enter into a collaborative arrangement with other authorities in order to ensure that the AFI is kept busy and at the same time generating an income to Powys.
- 2.6 Over the last two years Trading Standards and Environmental Health have investigated criminal activity valued at £375,000 (estimated criminal gain by defendants). We have been unable to take POCA proceedings in all cases due to Dyfed Powys Police Finance Units` capacity to assist. Had Powys Council employed their own investigator and succeeded with these POCA applications, this could have provided some £140,000 of income for the Authority.

The Trading Standards Service currently has five `live` investigations valued at approx £150,000, but where a commitment from the Police Finance Unit to investigate the financial gain by defendants under POCA cannot be secured. Were a financial investigation pursued and funds or assets possessed successfully linked to criminal activity be proved, potentially £56,000 of income could come from these cases.

Projections for the next 3 years are difficult to determine but asset recovery and cash seizure powers could result in income that would cover the base salary of the investigator and provide additional income to the authority. This would include potential cases from other sections of the council including Benefit Fraud, Housing, Waste Management and other regulatory functions.

We would also offer the service of the AFI across the Dyfed Powys region, should capacity allow this, enabling other local authorities to potentially share the costs. We will explore this arrangement, creating Memorandums of Understanding (MOU`s), where required with those authorities. Pembrokeshire have already expressed an interest in such an arrangement.

Review procedures will be put in place to consider progress with this post but it should be noted that due to the lead in time needed to recover POCA awards, it is envisaged that the majority of monies will be received in year 2 and 3.

2.7 It would be wrong to look at this opportunity purely as a financial exercise though. There is no doubt that POCA is a powerful ally in tackling crime. Criminals falling foul of its provisions are unlikely to reoffend. The Act is a strong deterrent to anyone looking to make a living from criminal activity, particularly in relation to rogue trading and internet fraud where assets gained from criminal activity can be significant.

2.8 The Portfolio Holder may wish therefore to consider the range of options set out in tabular form below before considering the recommendation to employ an Accredited Financial Investigator. Appendix A and B of this report illustrate in more detail the process of cost recovery and set out some recent case studies where POCA has been used by local authorities and others.

### 3. Corporate Improvement Plan

3.1 This proposal is included within the Local and Environmental Services Business Plan 2013/16 and supports the Corporate Improvement Plan by helping to make Powys a safer place to live and by supporting economic development.

### 4. Options Considered/Available

Option and Explanation	Benefits	Disadvantages
<p><b>Option 1</b></p> <p><b>Status Quo - Continue the Memorandum of Understanding with Dyfed Powys Police</b></p>	<p>Limited risk to Powys County Council.</p> <p>Work undertaken by external qualified <b>AFIs</b>.</p> <p>No revenue investment required apart from management from Service Area.</p> <p>Partnership working is demonstrated.</p> <p>Employment issues avoided.</p>	<p>Police cuts may affect capability to undertake such work for PCC.</p> <p>Full financial potential not maximised (smaller proportion of award).</p> <p>Police likely to cherry pick cases and not pursue smaller cases.</p> <p>Limited control over cases by PCC Officers.</p> <p>Direction still needed for Powys Management of cases.</p>
<p><b>Option 2</b></p> <p><b>Train an existing enforcement officer as an Accredited Financial Investigator, (mentored by Dyfed Powys Police)</b></p>	<p>Staff opportunity as officer would be selected from existing staff.</p> <p>Greater accountability and control for cases / more responsive.</p> <p>Increase income by <b>9%</b>, and money from cash seizures.</p> <p>Increased potential to offer POCA assistance to other council services.</p>	<p>Time delay – it may take 18 months for them to become qualified and a further 12 months to realise monies and be effective.</p> <p>Less incentivisation monies in short term.</p> <p>Increased pressures on TS /other Service - no current capacity to free officer. Mentoring role needed (Dyfed Powys Police) – query on capacity.</p>
<p><b>Option 3</b></p> <p><b>Appoint a fully trained Accredited Financial Investigator within Powys</b></p>	<p>Increased deterrent factor.</p> <p>More responsive to cases within PCC, across foundations.</p>	<p>Added costs – employment of officer / Advertising.</p> <p>Risk to sustainability, should benefit figure not be realised</p>

<p><b>using the 'Spend to save' scheme</b></p>	<p>Better accountability and control over potential cases.</p> <p>Employment of experienced officer who can 'hit the ground running'</p> <p>In house expertise and support to investigating officers. Increase levels of income by <b>9%</b>, and monies from cash seizures.</p> <p>Increased capability /education across council functions.</p> <p>No mentoring role needed.</p>	<p>or sufficient assets identified.</p>
<p><b>Option 4</b></p> <p><b>Appoint a fully trained Accredited Financial Investigator but share this role with Ceredigion under 'Spend to Save' scheme</b></p>	<p>Increased deterrent factor.</p> <p>More responsive. PCC as an authority benefits from officer who can work from day one albeit in shared role.</p> <p>Increase levels of income by <b>9%</b>, and monies from cash seizures.</p> <p>Dedicated officer – likely to realise more funds and under your direction than under Police protocol / targets.</p> <p>Increased capability across council functions.</p> <p>Shared risks and costs with another authority.</p>	<p>Joint management of resource.</p> <p>Must have clearly defined shared resource.</p> <p>Loss of PCC control.</p> <p>Prioritisation of cases within each county.</p> <p>Employing authority to be decided and agreed – potential conflict.</p>
<p><b>Option 5</b></p> <p><b>Engage with external financial investigation services i.e. from local authorities or Trading Standards Services elsewhere</b></p>	<p>Low financial risk to PCC.</p> <p>Greater Incentive for AFI to secure POCA funds if paid on results.</p> <p>No mentoring role required / Management elsewhere.</p> <p>Immediate start on cases.</p>	<p>Time spent on Powys matters may not be sufficient to serve our needs / cherry picking of cases.</p> <p>Lose potential of wider selling role in Council of financial work.</p> <p>Direction still needed for Powys Management control.</p> <p>Availability of AFI's unknown. Need to produce and review new MOU.</p>
<p><b>Option 6</b></p> <p><b>Appoint a fully trained Accredited financial investigator part time and have them housed in an existing Police AFI Unit (Option could go also with Option 4 on Spend to Save)</b></p>	<p>Increased deterrent factor.</p> <p>More responsive to cases within PCC, across foundations.</p> <p>Better accountability and control over potential cases.</p> <p>Employment of experienced officer who can hit the ground running</p>	<p>Added costs – employment of officer / Advertising.</p> <p>High risk to sustainability, should benefit figure not be realised or sufficient assets identified.</p>

	<p>In house expertise and support to investigating officers. Increase levels of income by <b>9%</b>, and monies from cash seizures.</p> <p>Increased capability /education across council functions.</p> <p>No mentoring role needed.</p> <p>Benefit of still being housed in</p> <p>More attractive to serving Police Officers</p> <p>Risk reduced due to part time post. Officer retains suits within AFI Unit.</p>	
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### **Preferred Choice and Reasons**

Option 3 is preferred. This would provide full control over the selection of local authority cases going forward and maximise income through the Incentivisation Scheme. An initial contract of three years would enable the project to be evaluated fully before entering into a longer term commitment.

The annual cost of employing an AFI would be in the region of £45,000 - £50,000 including overheads. The aim would be to recoup at least this figure and possibly significantly more on an annual basis from the assets of criminal activity. The amount recovered would contribute to Public Protection achieving the income target contained in the MTFP.

### **Sustainability and Environmental Issues/Equalities/Crime and Disorder,/Welsh Language/Other Policies etc**

There is a positive impact on Crime and Disorder through the deterrent effect. The proposal supports the sustainability of the local economy by protecting the honest trader and the public by tackling those who choose to make a living from the proceeds of criminal activity. Environmental crime falls within the remit of POCA, which has been used by other agencies to recover significant sums of money and assets acquired by this form of criminal activity.

### **Children and Young People's Impact Statement - Safeguarding and Wellbeing**

No obvious impact

### **Local Member(s)**

Proposal applies with equal force across the whole County

### **Other Front Line Services**

A seminar held in Carmarthen in December 2011 by the National Police Improvement Agency (administrators of Proceeds of Crime work in the UK), for local authorities in the Dyfed Powys Police area recommended strongly that local authorities challenge themselves to untap the potential of proceeds of crime and be bold to employ experienced officers 'in house' .A delegate from Powys County Council finance service attended this seminar as well as representatives of Powys Trading Standards and Environmental Health. It was also suggested that Council's needed to 'release' the proceeds of crime

opportunities across the wider span of council enforcement functions and an information exercise has already been led by Public Protection with discussions conducted with managers in Revenues and Benefits, Housing Management, Waste Management, Building Control, Planning and Countryside Services. Genuine interest and potential was shown at these meetings by all involved. It would not take much more effort with the representatives of the Council's regulatory functions to develop this work to the point where more widespread use was made of an AFI.

### **Support Services (Legal, Finance, HR, ICT, BPU)**

BPU - have noted the content of this report and would want to clarify the administrative support requirements of an AFI, should the recommendation be adopted.

Finance - Clearly there is a risk in financial terms to the Authority of employing the AFI although this can be mitigated somewhat by using their skills in other areas already mentioned in the report. The actual income generated is difficult to predict and it is therefore suggested that the financing be achieved via the Invest to Save Reserves over the fixed term contract period.

HR – content with the proposal.

Legal - concerns that the cost of recovering sums secured under POCA may impact adversely on the Legal Service. Concerned also that the proposal may be of benefit only in the prosecution of crime where fraudulent profit from criminal trading has resulted. Support the proposal provided that consideration is given in the longer term to offering the service to other Welsh authorities.

ICT – not affected by proposal

### **Local Service Board/Partnerships/Stakeholders etc**

The proposal underpins the aims and objectives of the Community Safety Partnership.

### **Communications**

A press release highlighting the increased capability of the Council in tackling crime would have a positive impact on the Council's reputation and image.

### **Statutory Officers**

Strategic Director, Finance & Infrastructure (Section 151 Officer): I note the comment of the Principal Accountant and her suggestion for the use of Invest to Save funding.

Strategic Director, Law & Governance (Monitoring Officer): I note the legal comments and have nothing further to add.

### **Members' Interests**

The Monitoring Officer is not aware of any specific interests that may arise in relation to this report. If Members have an interest they should declare it at the start of the meeting and complete the relevant notification form.

<b>Recommendation:</b>	<b>Reason for Recommendation:</b>
<p>That a fully trained Financial Investigator, accredited (AFI) by the National Police Improvement Agency, be appointed by Public Protection.</p> <p>That the initial contract of employment be for a term of 3 years from the date of commencement of employment</p> <p>That the services of the AFI be made available to all Council Services with an enforcement role.</p>	<p>To assist with cost recovery from criminal activity, to provide a deterrent to would-be criminals and to support the local economy by tackling dishonesty.</p>

<b>Relevant Policy (ies):</b>			
<b>Within Policy:</b>	<b>Y / N</b>	<b>Within Budget:</b>	<b>Y / N</b>

<b>Relevant Local Member(s):</b>	<b>None</b>
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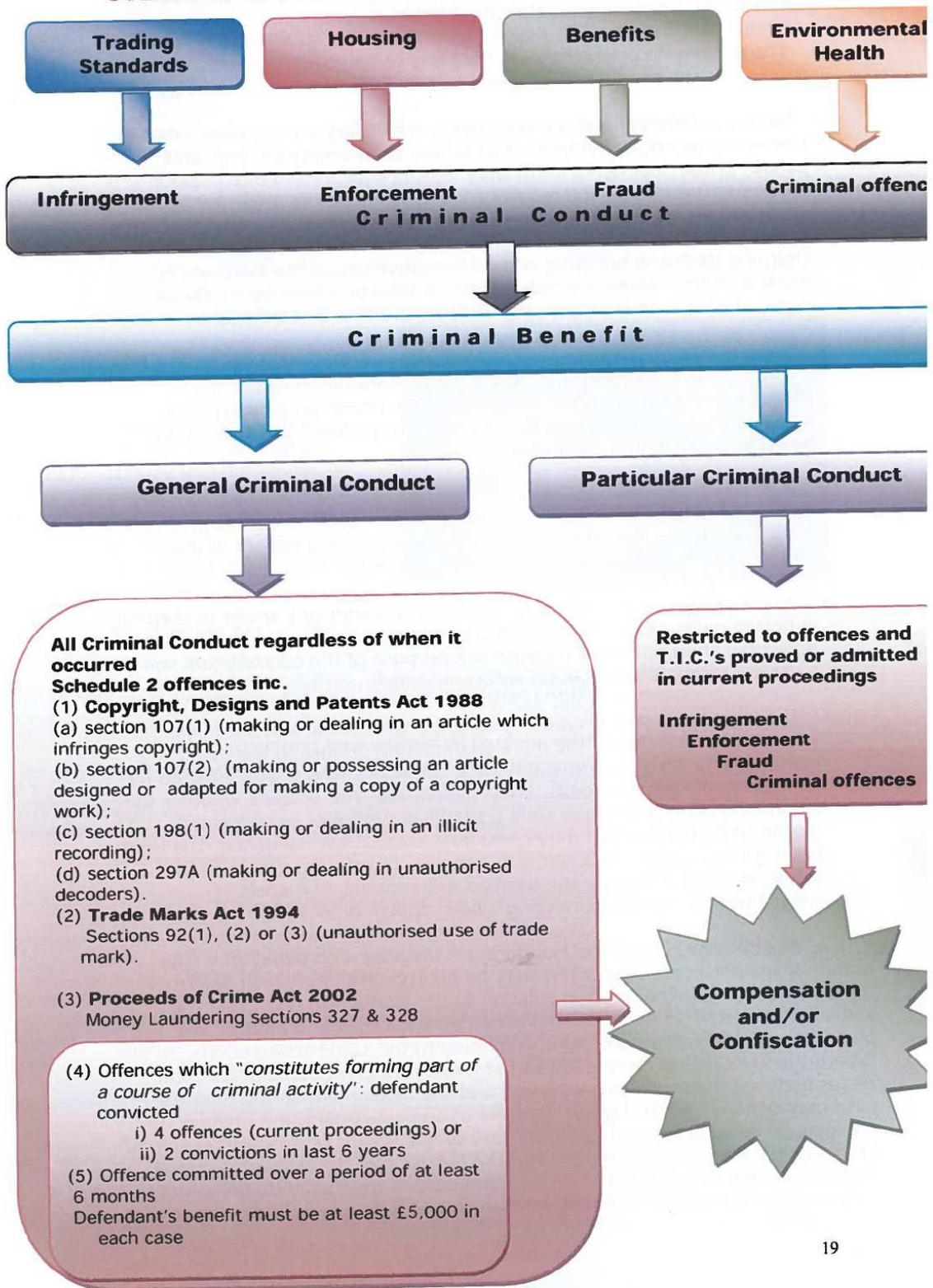
<b>Person(s) To Implement Decision:</b>	
<b>Date By When Decision To Be Implemented:</b>	

<b>Contact Officer Name:</b>	<b>Tel:</b>	<b>Fax:</b>	<b>Email:</b>
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**Background Papers used to prepare Report:**

Appendix A: Flow Chart on Proceeds of Crime Process

OVERVIEW OF PROCEEDS OF CRIME ACT 2002 PROCESS



## Appendix B: Case Studies of POCA in Council Services

1. **Trading Standards:** The full scope of Trading Standards offences could substantiate actions with vast sums of monies made from criminal activity in cases such as:-

- Product Counterfeiting
- Rogue Trader works

### Case Study 1

A Carmarthenshire based rogue trader duped extremely vulnerable victims in 2009 receiving **£160,000** from his activities. He is currently the subject of a Powys Trading Standards Proceeds of Crime Action for this sum in Merthyr Crown Court after being convicted of Trading Standards offences for his crimes, his main asset being his home. (**Operation Diamond**),

### Case Study 2

In 2012 a Hay on Wye male and a Hereford company were convicted of selling counterfeit films and clothing over the internet making large profits and were ordered to pay **£44,000** as a proceeds of crime order, the one defendant having assets in a time share which will have to be sold (**Operation Mask**).

2. **Environmental Health:** A wide span of offences could allow actions including illegal slaughter activity and environmental crime.

### Case Study 3

A Llandrindod Wells trader was the subject of a cash seizure of **£5000** in an action taken by Environmental Health and Trading Standards in December 2011 involving the illegal slaughter of livestock and this case is pending court decision.

3. **Revenues and Benefits**

### Case Study 4

A fraudster who illegally claimed nearly £50,000 in state benefits could lose her home after being ordered to pay the money back. Dorothy Hodkinson from Longridge failed to report a change in circumstances and received nearly £50,000 in income support, housing and council tax benefit. The 42-year-old appeared at Preston Crown Court for a Proceeds of Crime Act hearing after being overpaid £49,281.

Judge Russell ordered Hodkinson to pay back **£41,635** within six months or face a prison sentence and the seizure of her home. The defendant has already paid back £7,646. The court heard that Hodkinson had assets worth more than £131,500 and that she would have to sell or remortgage her home in order to settle the debt to the state.

4. **Waste Management:** Breaches of waste management at a local authority level including trade waste matters could be achieved and a waste management POCA conducted by the Environment Agency is shown:

#### **Case Study 4**

In May 2012 a crime boss who was given the longest ever prison sentence for waste crime offences has been ordered to repay more than **£917,000** under the Proceeds of Crime Act – and warned he faces four and half years in jail if he doesn't pay up.

This is the largest Proceeds of Crime Act (POCA) ruling the Environment Agency has secured against any individual to date. The Environment Agency working with financial investigators from New Scotland Yard in a three-year investigation have shown that Hugh O'Donnell laundered millions of pounds in illegal profits.

O'Donnell was jailed for four years in June for running a massive illegal waste site at Aldermaston near Reading, spread over land the size of five football pitches, and was also imprisoned for firearms offences.

When the Environment Agency and Thames Valley Police raided the site, evidence was seized of illegal waste activity, an unlicensed handgun and ammunition, other weapons, stolen vehicles, plant equipment and almost £50,000 in cash.

### **5. Planning**

#### **Case Study 5**

In May 2010 the Court of Appeal upheld a confiscation order under the Proceeds of Crime Act 2002 for failure to comply with planning enforcement notices, rejecting an argument that a judge should look at the "net profit" earned from the unlawful activity rather than the total turnover.

Luigi Del Basso and Bradley Goodwin had run a park and ride business at Bishop's Stortford Football Club, taking passengers to Stansted Airport.

The local authority warned them and the football club that planning permission was needed to operate the parking business. However, despite numerous letters and meeting between the club and the local authority, the business continued to operate.

The council then served an enforcement notice on 28 January 2003. Mr Basso's company, Timelast, and the football club appealed to the Planning Inspector. During the nine month period before the hearing, which dismissed the appeal, the parking operation was expanded. Permission to appeal to the High Court was subsequently refused.

Officers visited the site again and found that the business was still running. A prosecution was brought against Timelast, the football club and Mr Goodwin (trading as the Bishop's Stortford Football Club Members' Parking Association). All three were convicted on 10 November 2005 after a trial and each defendant fined £20,000.

Ownership arrangements for the park and ride business changed but the operation carried on despite the convictions. The council then brought a second prosecution, which culminated on 8 June 2007 with Mr Del Basso and Mr Goodwin pleading

guilty at St Albans Crown Court to failure to comply with an enforcement notice contrary to s. 179(1) and (2) of the Town and Country Planning Act 1990.

A hearing was then initiated under POCA by the Assets Recovery Agency and later the Serious Organised Crime Agency. Judge Michael Baker QC then delivered judgements on 28 July 2008 and 10 July 2009, ruling that the two men had enjoyed a criminal lifestyle within the meaning of POCA as they had committed offences over a period of at least six months and had received some benefit from their offending. He was also adjudged to have received a benefit of £1.8m. The judge determined that **£760,000** was available and made a confiscation order under POCA for that amount. He imposed a prison term of 18 months consecutive to the six months in the event of non-payment.

## 6. **Housing:**

### **Case Study 6**

A council in the East of England is understood to have become the first local authority to use the Proceeds of Crime Act against a landlord who failed to comply with Houses in Multiple Occupation (HMO) licence conditions.

Joseph Howman, of Grosvenor Road, Norwich, pleaded guilty at Norwich Magistrates' Court last week to nine offences under the Houses in Multiple Occupation (England) Regulations 2006 and did not meet the standards required of a landlord in the Licence Conditions (part 2, Housing Act 2004).

The defendant was ordered to pay more than **£53,000**, comprising £40,000 under POCA, £5,000 in fines, a £135 victim surcharge and £8,500 in costs. Howman had let a house as 10 bedsits with shared bathrooms. The property was licensed as an HMO under the Housing Act 2004.

Officers from Norwich City Council inspected the property in November 2010 and found numerous problems. According to the local authority, "the rooms had no heating, the main bathroom had no hot water, the communal bathrooms were dirty, the fire doors were in poor condition with many not working, and there were electrical hazards, including hanging wires and defective lighting".