

# **Powys County Council**

## **Proceeds of Crime Policy**

### **1. About this policy**

1.1. This policy explains how Powys County Council Trading Standards will approach Financial Investigations. This document is primarily aimed at those staff who investigate criminal offences and those who have been accredited by the National Crime Agency as Financial Investigators.

1.2. Powys Trading Standards recognises that the investigation of offences that are to the detriment of Powys consumers and businesses, and the utilisation of the powers given within the Proceeds of Crime Act 2002 (POCA), can make a significant contribution to the disruption of criminal enterprises through the use of money laundering investigation to complement and aid criminal investigations and through the recovery of criminal assets.

1.3. Powys Trading Standards is, therefore, committed to maintaining a fraud/financial investigation unit, incorporating money laundering and confiscation capability to tackle offenders at all levels of criminal activity.

### **2. General principles**

2.1. Powys Trading Standards, in considering the need for utilising the powers under POCA, has taken account of:

- i. Its contribution to local crime and disorder strategies and other corporate priorities;
- ii. The need to consider pre-conviction orders as part of the prosecution process in connection with money laundering investigations and the need to consider post-conviction orders as part of confiscation investigations;
- iii. Its role in tackling 'lifestyle criminals' such as counterfeiters, persistent rogue traders and loan-sharks;
- v. The need to ensure that crime doesn't pay and is seen not to pay;
- vi. Helping to meet the expectations of legitimate businesses and consumers;

2.2. Powys Trading Standards will promote the use of financial investigations as an integral part of criminal investigations which may lead to confiscation. Confiscation is not just for serious criminals but applies in every case of acquisitive crime.

2.3. Acquisitive crime describes offences where the perpetrator derives material gain from criminal activity. This encompasses crime types such as fraud, car clocking, rogue trading and counterfeiting.

2.4. When a person has benefited from their crime, the objective is to secure a criminal conviction and remove any benefit derived from criminal activity. A confiscation order made under POCA is an effective way of achieving this.

2.5. Our investigators are aware of the opportunities for money laundering and confiscation proceedings, which are normally undertaken by Financial Investigators, and any actions they can take to support the process.

2.6. Investigators will refer suitable cases for financial investigation and are reminded that failure to follow this policy, in referring acquisitive crimes to the Financial Investigation Unit (FIU) may result in the true extent of the criminal activity not being uncovered, the correct perpetrators being prosecuted and reduction of the amount of assets seized and thereby reduce the deterrent aspect which is required to assist in reducing crime.

2.7 Where it is prudent to do so Powys will conduct financial investigations for other local authorities or bodies.

### **3. Statement of policy**

3.1. Powys Trading Standards Financial Investigation Unit (FIU) will carry out a financial investigation for all cases where there are alleged or convicted offences of an acquisitive crime, with a view to making an application to court for a confiscation order to be made to the value of the benefit derived from crime.

3.2. Referrals to the FIU will be considered on merit by the FIU but will be prioritised with reference to one or more of the following factors;

- i. Propensity of the defendant(s) to commit offences nationally or
- ii. Where the victims are deemed to be particularly vulnerable or at risk from the defendant(s) criminality.

iii. Where the criminal investigation would struggle to deal with the defendant, or their offending effectively, without the FIU's parallel support.

iv. Where financial benefit from the defendant's criminality is clearly significant and realisable assets have already been identified.

v. Special circumstances, e.g. in appropriate cases where the benefit calculated is significant but assets cannot be found, it may be prudent to pursue confiscation proceedings in order to obtain a 'nominal order' of say £1.00. POCA allows cases to be revisited in the future so where assets subsequently come to light then the 'available amount' may be re-calculated in terms of satisfying the Order using the recently discovered assets. The use of nominal orders may also deter defendants from re offending.

3.3. Powys Trading Standards will seek to use the provisions of the Proceeds of Crime Act 2002 and seize cash of £1,000 and above if it is found whilst lawfully on premises, or whilst searching any person or vehicle. The seizure can only be carried out by Police officers and/or an accredited financial investigator. The FIU will investigate the origins of any cash so seized with a view to requesting its forfeiture at the Magistrates' Court.

3.4. Powys Trading Standards Financial Investigators are committed to applying for forfeiture under POCA; after confiscation under POCA has been considered.

## **4. Implications of the policy**

### **4.1 Financial Implications**

4.1.1. The full implementation of this policy involves a significant opportunity to have a proportion of the amounts confiscated under POCA returned to the Authority under the incentive scheme operated by the Home Office. Any funds received as a result of the "incentivisation" scheme must be used for the further prevention or reduction in crime or further asset recovery in areas related to Trading Standards.

### **4.2 Staffing and training**

4.2.1. All Financial Investigators receive training from the Proceeds of Crime Centre of the National Crime Agency and must receive this training before being accredited. Financial Investigation training should form part of Powys Trading Standards routine training and development programme for designated management and investigation personnel.

4.2.2. Managers do not necessarily require the level of training and awareness provided by financial investigation-specific courses but will meet the requirements of the FISS system. However, It is essential that a Senior Strategic Manager is familiar with the procedures relating to financial investigation and is designated a Senior Appropriate Officer, by National Crime Agency or equivalent accreditation and this role will be undertaken by Clive Jones Professional lead Trading Standards for Powys Council.

### **4.3 Existing Partnership Agreements**

4.3.1. There are many law enforcement agencies that conduct financial investigations. Powys Trading Standards will actively work with these agencies to ensure it maximises the amount of money and assets seized under POCA legislation.

4.3.2. Some of these organisations are:

- i. Dyfed Powys Police and the National Crime Agency (NCA)
- ii. Her Majesty's Revenue and Customs (HMRC)
- iii. The Consumer and Markets Authority (CMA)
- iv. Other local authorities (Benefit Fraud)
- v. The Financial Conduct Authority (FCA)
- vi. Department of Work and Pensions (DWP)
- vii. UK Border Agency
- viii. Post Office Investigation Unit

### **4.4 Risk assessments**

4.4.1. This policy is compliant with the requirements of health and safety legislation and internal health and safety procedures. The risk assessment for Investigating Officers applies and will be reviewed annually.

## **5. Consultation**

5.1. Consultation has taken place with key stakeholders, including:

- i. Trading Standards Service Manager
- ii. Strategic Manager for Financial Investigation Unit

5.2. It is in accordance with the service's Health and Safety; Diversity & Equality, Data Protection, and IT policies

## **6. Monitoring / review**

6.1. The Strategic Manager for the FIU will ensure that all referrals under POCA are fully investigated and where appropriate confiscation or forfeiture of assets is applied for.

6.2. The Strategic Manager for the FIU will ensure that this policy is reviewed annually and will consider any changes to legislation, legal challenges to Powys Trading Standards and any discrepancies raised with regard to the policy.

## **7. Related policies and information sources**

- i. ACPO Practice Advice on the Management and Use of Proceeds of Crime Legislation
- ii. ACPO Practice Advice on Financial Investigation.
- iii. LACORS LGR Regional Framework on Proceeds of Crime for Trading Standards Authorities

## **8. Legal basis**

8.1. The legal basis within which this policy is to operate can be found in:

- i. Criminal Justice Act 1993;
- ii. Proceeds of Crime Act 2002;
- iii. Terrorism Act 2000;
- iv. HMRC Gateway Procedure;
- v. The Police and Criminal Evidence Act 1984;
- vi. The Human Rights Act 1998;
- vii. The Criminal Procedure and Investigations Act 1996 (CPIA);
- viii. The Regulation of Investigatory Powers Act 2000 (RIPA);
- ix. The Data Protection Act 1998 (DPA);
- x. The Freedom of Information Act 2000.