

CRIMINAL ASSETS BUREAU **Annual Report**

2016

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Letter forwarding report from the Garda Commissioner to the Minister for Justice and Equality

Dear Minister

In accordance with the provisions of Section 21 of the Criminal Assets Bureau Act 1996, I am pleased to present to you, the 2016 Annual Report of the Criminal Assets Bureau.

The report outlines the activities of the Bureau during 2016, in the pursuit of its statutory remit, detailing actions brought by the Bureau under proceeds of crime, revenue and social welfare legislation in successfully targeting the suspected proceeds of criminal conduct. The report demonstrates that the Bureau remains an integral part of the law enforcement response to criminal conduct in Ireland.

The Bureau, during 2016, devoted considerable efforts at tackling criminal proceeds which are generated from a broad range of criminal activity, focussing on all forms of property related crime. In this regard, the Bureau has engaged in extensive cooperation with law enforcement agencies in Northern Ireland, including the PSNI, HMRC and the National Crime Agency. This remains an important focus of the Bureau's efforts in circumstances where the international aspects of investigations have become more pronounced.

Internationally, the Bureau continues to liaise and conduct investigations with law enforcement and judicial authorities throughout Europe and worldwide in pursuit of assets deriving from criminal conduct.

The Bureau continues to be an active member of the Camden Asset Recovery Inter-Agency Network (CARIN) and to maintain its effectiveness at an international level as the designated Asset Recovery Office (ARO) in Ireland, utilising these networks to achieve its objectives.

In pursuing its objectives, the Bureau liaises closely with An Garda Síochána, the Office of the Revenue Commissioners, the Department of Social Protection, the Department of Justice and Equality and all law enforcement agencies in the State in developing a coherent strategy to target assets and profits deriving from criminal conduct, and in particular, organised crime.

In this regard, the Bureau continues to make significant inroads in tackling serious criminals including those involved in trafficking and the sale of drugs which cause extensive problems within our community. Of particular interest this year is the focus placed by the Bureau on organised travelling criminal groups primarily engaged in burglary and robbery.

The Bureau has developed its links with local communities through supporting local Garda Management in enhancing the role of the Divisional Asset Profilers Network.

This initiative is particularly effective in tackling individuals involved in criminal activity at a local and community level which has been an area of concern for some time.

Letter forwarding report from Garda Commissioner to the Minister for Justice and Equality

I am pleased to note the Bureau has provided training to additional Divisional Asset Profilers and commits to further training during 2017.

I note that the Programme for Government 2016 "*A Programme for Partnership Government*" committed to reviewing the Proceeds of Crime legislation and to ensuring that the Bureau has adequate resources to support its work.

Yours sincerely



NÓIRÍN O'SULLIVAN
COMMISSIONER OF
AN GARDA SÍOCHÁNA

Letter forwarding report from Chief Bureau Officer to the Commissioner of An Garda Síochána

Dear Commissioner

It is my pleasure to present to you the 21st Annual Report of the Criminal Assets Bureau for the calendar year 2016. This report is submitted for presentation to the Minister for Justice and Equality, pursuant to the provisions of Section 21 of the Criminal Assets Bureau Act, 1996. In compliance with its statutory obligations, the report sets out the activities of the Bureau throughout the year in targeting the proceeds of crime.

During the year, the Bureau has invested a great deal of effort in developing the Divisional Asset Profiler Network. Whilst in the short term, this may not yield immediate results, the Bureau is confident that it lays the foundation for proceeds of crime, revenue and social welfare actions which will lead to increased enforcement actions in future years. The proceeds of crime actions, together with actions under the Revenue and Social Protection provisions yielded in excess of €3.8 million to the Exchequer in 2016.

During 2016, thirteen new applications were brought before the High Court under the Proceeds of Crime legislation. Once again, the majority of these actions were taken arising from the proceeds of drug trafficking. In addition, actions were taken against persons suspected of involvement in a wide variety of criminal conduct, most notably in respect of criminal proceeds arising from organised crime groups engaged primarily in burglary crime and crime groups operating in rural areas of the country.

In August 2016, the Proceeds of Crime (Amendment) Act 2016 was commenced. At 31st December 2016, the power under Section 1(A) Proceeds of Crime Act 1996, as amended was used effectively on two occasions by Bureau Officers.

Similarly, the threshold for invoking the Proceeds of Crime Act reduced from €13,000 to €5,000. This will facilitate the Bureau in targeting a wider range of assets demonstrating a committed response by the State to tackle crime at all levels.

The Criminal Assets Bureau, using the appropriate Proceeds of Crime legislation forwarded in excess of €1.4 million to the Exchequer, under Revenue provisions, forwarded in excess of €2 million and also recovered in excess of €297,430 in respect of overpayments under Social Welfare provisions.

The strategy of the Bureau to co-ordinate its activities in a manner which takes cognisance of the Policing Plans of An Garda Síochána and the strategies of the Revenue Commissioners and the Department of Social Protection has been continued in 2016.

This report refers to a number of criminal investigations and prosecutions before the Criminal Courts. The prosecutions in question related to criminal offences under Revenue legislation together with an offence under the Criminal Assets Bureau Act.

Letter forwarding report from Chief Bureau Officer to Commissioner of An Garda Síochána

One such case, the DPP v Thomas Murphy, which concluded before the Special Criminal Court through sentencing.

The Bureau's ongoing commitment in recent years towards raising the level of expertise at its disposal through the provision of appropriate training for all personnel was accelerated during 2016.

In addition, during the year, in conjunction with the Garda College, The Asset Confiscation and Tracing Investigators Course (TACTIC) was progressed to a conclusion. This course is specifically designed to meet the needs of the Bureau in future years and especially to enhance its ability to meet the investigative challenges which lie ahead in the context of tracing criminal assets.

The Bureau continues to develop its relationships with Interpol, Europol and the Camden Assets Recovery Inter-Agency Network (CARIN). The report details some major developments by way of international cooperation in investigations undertaken by the Bureau. A number of cases are outlined in considerable detail which demonstrates the level of co-operation engaged in and the success achieved as a result. In addition, on the international level, the Bureau continues to represent Ireland at the platform of the Asset Recovery Offices. During 2016, the Bureau along with the Department of Finance, An Garda Síochána and other Agencies supported the examination of Ireland from a money laundering and terrorist financing perspective by the Financial

Action Task Force (FATF).

From the beginning, the Bureau has received excellent support from legislators, members of the public and the media. This is further demonstrated through professional working relationships with the Financial Institutions, Accountancy Bodies and other regulatory agencies within the country as well as from direct liaison with the public.

The Bureau has enhanced its communications capacity through the use of social media.

Over the past number of years, the Bureau has had to adapt and change in response to the changing patterns of criminal behaviour. The requirement for international cooperation between law enforcement agencies has increased to the point where virtually every investigation currently underway has some international aspect to it.

Nonetheless, the Bureau has demonstrated its effectiveness and its ability to meet the challenges posed by these developments and facing into its twenty first year, to remain central to the overall law enforcement response to serious and organised crime in this jurisdiction. In particular, through its actions, the Bureau has played its part in responding to the threat posed to Irish Society by a major criminal feud between the Kinahan and Hutch Organised Crime Gangs.

Letter forwarding report from Chief Bureau Officer to Commissioner of An Garda Síochána

In recognising the valiant effort towards responding to serious and organised crime played by officers of the Criminal Assets Bureau, past and present, a private event was held at Dublin Castle on Friday 14th October 2016 (almost twenty years to the day since the establishment of the Bureau) which was attended by the then Tánaiste and Minister for Justice and Equality, Deputy Frances Fitzgerald, T.D.

I wish to acknowledge with gratitude the support and co-operation afforded to the Bureau throughout the year by An Garda Síochána, the Revenue Commissioners, the Department of Social Protection, the Department of Justice and Equality, the Department of Finance, the Department of Public Expenditure and Reform, the Office of the Attorney General and the Office of the Director of Public Prosecutions.

I would also like to particularly acknowledge the expertise and commitment of the solicitors and staff allocated by the Chief State Solicitor to the work of the Bureau. The value of inhouse independent legal advice and support cannot be over emphasised towards contributing to the success of the Bureau. In addition, I want to acknowledge the contribution of Legal Counsel engaged by the Bureau.

During the year, there were many personnel changes within the Bureau arising from the departure of a number of personnel on promotion, retirement, and transfer. This is an inevitable reality given the structure of the Bureau and as a result it has given rise to the emphasis

on maintaining a strong and very resourced system for staff training which has been put in place in recent years.

I wish to acknowledge the dedication and hard work of all personnel attached to the Bureau past and present. The nature of the work is such that, in many instances, it cannot be publicly acknowledged due to the requirement for anonymity and security requirements for the personnel concerned relating to their work. I would also like to take the opportunity to welcome new personnel who have joined the Bureau during the year and wish them well in the future.

Finally, as this is my first report as Chief Bureau Officer, I wish to acknowledge the high level of professionalism, dedication and commitment demonstrated by all Bureau officers and staff of the Bureau. I wish the former Chief Bureau Officer, Assistant Commissioner Eugene Corcoran every success for the future.

Yours sincerely



PATRICK CLAVIN
DETECTIVE CHIEF SUPERINTENDENT
CHIEF BUREAU OFFICER

23 June 2017

Letter forwarding report from Chief Bureau Officer to Commissioner of An Garda
Síochána

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Foreword

Section 21 Report

This is the 21st Annual Report of the activities of the Criminal Assets Bureau (hereinafter referred to as “the Bureau”) and covers the period from 1st January 2016 to 31st December 2016 inclusive.

The Criminal Assets Bureau Act 1996 and the Proceeds of Crime Act 1996 have both been amended on a number of occasions but most substantially by way of the Proceeds of Crime (Amendment) Act, 2005.

For the purpose of this report, the Criminal Assets Bureau Act 1996 and 2005 will hereinafter be referred to as “the Act” and the Proceeds of Crime Act 1996 and 2016 will hereinafter be referred to as “the PoC Act”. The 1996 Act, together with the 2005 and 2016 Acts, provide a collective title of amendments governing the powers and functions of the Bureau.

This report is prepared pursuant to Section 21 of the Act which requires the Bureau to present a report, through the Commissioner of An Garda Síochána, to the Minister for Justice and Equality outlining its activities during the year 2016.

Foreword

View of the Four Courts, Dublin



Part One

Overview of the Criminal Assets Bureau, its Officers and Staff

The Bureau

On the 15th October 1996, the Bureau was formally established by the enactment of the Act. The Act provides for (among other matters):

- the objectives of the Bureau;
- the functions of the Bureau;
- the Chief Bureau Officer;
- Bureau Officers;
- staff of the Bureau;
- the Bureau Legal Officer;
- anonymity of staff of the Bureau;
- offences and penalties for identifying staff of the Bureau and their families;
- offences and penalties for obstruction and intimidation;
- CAB search warrants; and
- CAB production orders.

Finance

During the course of the year, the Bureau expended monies provided to it through the Oireachtas by the Minister for Justice and Equality in order to carry out its statutory functions and to achieve its statutory objectives.

All monies provided by the Oireachtas as outlined in the table are audited by the Comptroller and Auditor General, as is provided for by Statute.

The Department of Justice and Equality's Internal Audit Unit provides support to

the Bureau in monitoring and reviewing the effectiveness of the Bureau's arrangements for governance, risk management and internal controls.

The Internal Audit Unit conducts an independent audit of the Bureau's procedures and processes on an annual basis.

Comparison of Accounts for years 2015 / 2016

Year	Description	Amount €	
		Budget Provision	Total Spent
2015	Pay	5,372,000	5,681,000
	Non-Pay	1,701,000	997,000
	Total	7,073,000	6,678,000
2016	Pay	5,341,000	5,418,000
	Non-pay	1,701,000	1,268,000
	Total	7,042,000	6,686,000

Objectives and functions

The objectives and functions of the Bureau are respectively set out in Sections 4 and 5 of the Act. These statutory objectives and functions are set out in full at Appendix (see page 75 & 76) and may be summarised as:

1. identifying and investigating the proceeds of criminal conduct;
2. taking actions under the law to deny and deprive people of the benefits of assets that are the proceeds of criminal conduct by freezing, preserving and confiscating these assets;
3. the taking of actions under the Revenue Acts to ensure that the proceeds of criminal activity are subjected to tax; and

Part One

Overview of the Criminal Assets Bureau, its Officers and Staff

4. investigating and determining claims under the Social Welfare Acts.

Chief Bureau Officer

The Bureau is headed by the Chief Bureau Officer, appointed by the Commissioner of An Garda Síochána from among its members of the rank of Chief Superintendent. The current Chief Bureau Officer is Detective Chief Superintendent Patrick Clavin who took up his appointment on 4th August 2016 following the departure of Eugene Corcoran who was promoted to the rank of Assistant Commissioner within An Garda Síochána.

The Chief Bureau Officer has overall responsibility, under Section 7 of the Act, for the management, control and the general administration of the Bureau. The Chief Bureau Officer is responsible to the Commissioner for the performance of the functions of the Bureau.

This Section also provides for the appointment of an Acting Chief Bureau Officer to fulfil the functions of the Chief Bureau Officer in the event of incapacity through illness, absence or otherwise.

Bureau Legal Officer

The Bureau Legal Officer reports directly to the Chief Bureau Officer and is charged under Section 9 of the Act with assisting the Bureau in the pursuit of its objectives and functions.

A body corporate

The Bureau exists as an independent corporate body as provided for under Section 3 of the Act. The status of the Bureau was first considered in 1999 by the High Court in the case of *Murphy -v- Flood* ([1999] IEHC 9).

Mr Justice McCracken delivered the judgement of the High Court on the 1st of July 1999. This judgement is pivotal to understanding the nature of the Bureau.

The Court set out:

"The CAB is established as a body corporate with perpetual succession. While the Chief Bureau Officer must be appointed from members of An Garda Síochána of the rank of Chief Superintendent, nevertheless the CAB is independent of An Garda Síochána, although it has many of the powers normally given to that body.

...

The CAB is a creature of Statute, it is not a branch of An Garda Síochána. It was set up by the Oireachtas as a body corporate primary for the purpose of ensuring that persons should not benefit from any assets acquired by them from any criminal activity. It is given power to take all necessary actions in relation to seizing and securing assets derived from criminal activity, certain powers to ensure that the proceeds of such activity are subject to tax, and also in relation to the Social Welfare Acts. However, it is not a prosecuting body, and is not a police authority. It is an investigating authority which, having investigated and used its not inconsiderable powers of investigation, then applies to the Court

for assistance in enforcing its functions.

The Oireachtas, in setting up the CAB, clearly believed that it was necessary in the public interest to establish a body which was independent of An Garda Síochána, and which would act in an investigative manner. However, I do not think it is the same as An Garda Síochána, which investigates with an aim to prosecuting persons for offences. The CAB investigates for the purpose of securing assets which have been acquired as a result of criminal activities and indeed ultimately paying those assets over [to] the State."

Bureau officers and staff

Section 8 of the Act provides for the appointment of officers of the Bureau. Members of staff of the Bureau are appointed under Section 9 of the Act.

Officers of the Bureau are:

- A. members of An Garda Síochána;
- B. officers of the Revenue Commissioners; and
- C. officers of the Department of Social Protection.

Officers are seconded from their parent agencies.




Staff of the Bureau consist of:

- I. the Bureau Legal Officer;
- II. professional members of staff of the Bureau;
- III. administrative and technical members of staff of the Bureau.

Officers of the Bureau continue to be vested with their powers and duties notwithstanding their appointment as Bureau Officers.

Authorised Staffing Levels

Multi-agency authorised levels

	37
	6
	16
	12

The authorised staffing level at the Bureau comprising Bureau Officers and other staff stands at seventy one.

Following promotions and retirements during 2015 and 2016, seven staff vacancies remain at the Bureau at year

Part One

Overview of the Criminal Assets Bureau, its Officers and Staff

end 2016. These vacancies include one D/Inspector, one D/Sergeant, two D/Gardai, one Forensic Accountant, one Financial Crime Analyst and one Executive Officer.

A competition was advertised in November 2016 to fill the existing Garda and Sergeant vacancies and it is expected that staff will be appointed from this Competition in the first half of 2017.

In addition, approval was given by the Commissioner of An Garda Síochána for the appointment to the Bureau of one additional Sergeant and one additional Garda to support the Bureau in its statutory remit. These two new posts have also been included in the aforementioned competition.

A competition to fill the two vacancies in the Bureau Analysis Unit is expected to be advertised by the Public Appointments Service in February 2017.

A Social Welfare Bureau Officer was appointed in December 2016. As reported in the 2015 Annual Report, one Executive Officer vacancy exists and is expected to be filled during the first half of 2017.

The Office of the Revenue Commissioners gave commitment to provide the Bureau with three additional Officers who are expected to be appointed to the Bureau during 2017.

Special Crime Task Force

During 2016, the Garda Commissioner established a Special Task Force to target a number of organised crime gangs based in the Dublin area with particular emphasis on the second and third level criminals. As part of the setting up of this unit, which is under the control of the Garda National Drugs and Organised Crime Bureau, six Gardaí and one Sergeant were seconded to the Bureau to assist in the investigations into the persons identified to trace and target any assets which have been generated through their criminal conduct.

During 2016, sixty three targets were identified and investigations were undertaken by the staff attached to the Special Task Force within the Bureau.

Anonymity

In order to ensure the safety of certain Bureau Officers and staff, anonymity for those members is set out under Section 10 of the Act. Under this Section, officers and staff of the Bureau execute their duties in the name of the Bureau.

Section 11 of the Act provides for criminal offences relating to the identification of certain Bureau Officers, staff and their families.

The prohibition of identification does not extend to the Chief Bureau Officer, an Acting Chief Bureau Officer, the Bureau Legal Officer or the Bureau Officers who are members of An Garda Síochána.

Structure of the Bureau

The multi-agency structure of the Bureau, which draws together various skill sets from the personnel involved, has the benefit of enhancing investigative capabilities in pursuit of the Bureau's statutory remit. This is possible under Section 5 of the Act detailing the functions of the Bureau.

Chief State Solicitor's Office

The Criminal Assets Section of the Chief State Solicitor's Office (hereinafter referred to as "the CSSO") provides legal advice and solicitor services to the Bureau.

The CSSO represents the Bureau in both instituting and defending litigation in all court jurisdictions primarily but not exclusively with the assistance of Counsel. In addition, the CSSO provides representation for all tax and social welfare matters both before the respective appeal bodies and in the Circuit and Superior Courts.

Also, the CSSO provides general legal advices and solicitor services at all stages of case progression from investigation to disposal including the provision of both contract drafting and conveyancing services.

During 2016, the CSSO was staffed as follows:

- 2 solicitors;
- 2 legal executives; and
- 2 clerical officers.

Divisional Asset Profilers

In 2016, the Bureau continued its programme of engagement with Divisional Asset Profilers. During the year, the Bureau trained an additional nineteen Garda Divisional Asset Profilers to fill vacancies within various Garda Divisions, which arose from retirements and promotions. At year end, the total number of Divisional Asset Profilers stood at two hundred and eight, which included

- 190 Gardaí;
- 15 Officers of the Revenue Commissioners engaged in Customs and Excise duties; and
- 3 Officers of the Department of Social Protection

During 2016, the role of the Divisional Asset Profilers was enhanced from intelligence gathering to a more proactive investigative role. As part of this new development, Senior Bureau Officers briefed all Divisional and Regional Detective Superintendents who are responsible for the tasking of the Divisional Asset Profilers Network in targeting local Tier 2 and Tier 3 criminals. This engagement with Divisional and Regional management was followed up by a number of refresher training courses throughout the country.

In 2017, it is envisaged that the Divisional Asset Profiler Network will be developed further with the training of an additional 110 Divisional Asset Profilers.

Throughout 2016 Divisional Asset Profilers from the various Regions have

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Overview of the Criminal Assets Bureau, its Officers and Staff

continued to engage with the Bureau to develop and progress investigations that have significant financial impact on local criminals and, in turn, provide positive feedback within local communities that suffer from the activities of these criminals.

Examples of cases dealt with in 2016 by the Bureau, that originated with Divisional Asset Profilers are as follows:

1. Audi A3 Motor Car valued at €8,500.
2. Audi A4 Motor Car valued at €10,000
3. 2 x Rolex Watches valued at €9,000 (total)
4. €37,000 in cash

In addition, actions were taken by the Bureau under Revenue and Social Protection powers, where taxes were demanded and overpayments raised in respect of Social Protection matters. These matters are currently ongoing and the Bureau is actively engaged in the recovery of outstanding sums owed to the Exchequer.

Case 1

Target engaged in the sale and supply of controlled drugs in Dublin's south inner city. This case was reported to the Bureau by a trained Divisional Asset Profiler who is assigned to a local drugs unit. Resulting from his interaction with the drug dealer, the Divisional Asset Profiler commenced the preparation of an asset profile which was forwarded to the Bureau where it was assigned to an Investigation Team. The Bureau Team liaised closely with the Divisional Asset Profiler in the further development of the asset profile. This resulted in a search operation being conducted by the Bureau, supported by local Gardaí. In the course of the search operation, cash in the sum of €37,000 was seized in addition to two Rolex watches. The target of this operation and his partner were not engaged in any declared employment and were in receipt of payments from the Department of Social Protection.

Actions in this investigation resulted in the Bureau obtaining Orders pursuant to Section 4A of the PoC Act, as amended, in respect of the following assets:

Case 2

Target engaged in the sale and supply of controlled drugs in Dublin's North West. This case was reported to the Bureau by a trained Divisional Asset Profiler who is assigned to a local Detective Unit. Resulting from his observations that the subject was amassing substantial assets, the Divisional Asset Profiler commenced the preparation of an asset profile which was forwarded to the Bureau where it was assigned to an Investigation Team.

The Bureau Team liaised closely with the Divisional Asset Profiler in the further development of the asset profile. This resulted in a search operation being conducted by the Bureau supported by local Gardaí. In the course of the search operation, cash in the sum of IR£74,500 was seized in addition to an Audi A7 motor vehicle. The Audi A7 was seized

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Overview of the Criminal Assets Bureau, its Officers and Staff

using the new powers under Section 3 of the PoC Acts 1996-2016 as inserted by Section 1A of the PoC Act 2016. The target of this operation was not engaged in any declared employment and was in receipt of payments from the Department of Social Protection.

Actions in this investigation resulted in the Bureau obtaining Orders pursuant to Section 4A of the PoC Act, as amended, in respect of the following asset:

1. Audi A7 Motor Car valued at €35,000.

In addition, actions were taken by the Bureau under Revenue and Social Protection powers, where taxes were demanded and overpayments raised in respect of Social Protection matters. As a result of the target utilising close family members in the purchase of particular assets, overpayments in respect of Social Protection payments were raised against two additional family members. These matters are currently ongoing and the Bureau is actively engaged in the recovery of outstanding sums owed to the Exchequer.

Case 3

Target engaged in the sale and supply of controlled drugs in the Mid West Region. This case was reported to the Bureau by a trained Divisional Asset Profiler, who through local investigations, ascertained that the target had purchased a rural residential property with stables and 18.3 acres of land attached.

The Divisional Asset Profiler submitted an asset profile to the Bureau where it was assigned to an Investigation Team. The Bureau Team liaised closely with the Divisional Asset Profilers in the further development of the asset profile and in the subsequent search operation conducted by the Bureau.

Actions in the investigation resulted in the Bureau obtaining Orders pursuant to Section 3 of the PoC Act, as amended in respect of the following assets:

- House
- Stables
- 18.3 acres of land in Bodyke, Co. Clare valued at approximately €250,000.

In addition, actions were taken by the Bureau under Revenue powers, where tax assessments were made. These matters are currently ongoing and the Bureau is actively engaged in the recovery of outstanding sums owed to the Exchequer.

FATF Evaluation

The Financial Action Task Force (FATF) is an inter-governmental body established in 1989 by the Ministers of its Members jurisdictions. The objectives of the FATF are to set standards and promote effective implementation of legal, regulatory and operational measures for combating money laundering, terrorist financing and other related threats to the integrity of the international financial system. The FATF is therefore a "policy-

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Overview of the Criminal Assets Bureau, its Officers and Staff

making body" which works to generate the necessary political will to bring about national legislative and regulatory reforms in these areas.

The FATF has developed a series of recommendations that are recognised as the international standard for the combating of money laundering and the financing of terrorism and proliferation of weapons of mass destruction. They form the basis for a co-ordinated response to these threats, to the integrity of the financial system and help ensure a level playing field. First issued in 1990, the FATF recommendations were revised in 1996, 2001, 2003 and most recently in 2012 to ensure that they remain up to date and relevant, and they are intended to be of universal application.

The FATF monitors the progress of its members in implementing necessary measures, reviews money laundering and terrorist financing techniques and counter-measures, and promotes the adoption and implementation of appropriate measures globally. In collaboration with other international stakeholders, the FATF works to identify national-level vulnerabilities with the aim of protecting the international financial system from misuse.

The FATF regularly monitors the progress of its members in implementing its recommendations through the Mutual Evaluation process. This process consists of a peer review of each member, which provides a detailed description and analysis of their anti-money laundering and countering the financing of terrorism (AML/CFT)

framework present in their legislative, regulatory and supervisory apparatus. The findings of the examiners are then discussed at the next plenary and adopted in a Mutual Evaluation Report (MER).

The Fourth Round of MERs commenced in 2014. A review of Ireland under the Fourth Round took place in 2016 and will conclude in 2017. A national risk assessment was prepared and a national steering committee chaired by the Department of Finance comprised of representatives of relevant competent authorities and state bodies, including input from the Bureau.

The Bureau put significant work into the preparation of this MER.

Training and Development

TACTIC

(The Asset Confiscation and Tracing Investigator's Course)

A training needs analysis was carried out by the Bureau to identify critical training requirements for Bureau members. As a result, the Asset Confiscation and Tracing Investigators Course (TACTIC) was developed by the Bureau to provide specific training in Asset Tracing / Confiscation and Financial Investigations to staff of the Bureau.

TACTIC is conducted in conjunction with the Garda Training College in

Part One
Overview of the Criminal Assets Bureau, its Officers and Staff

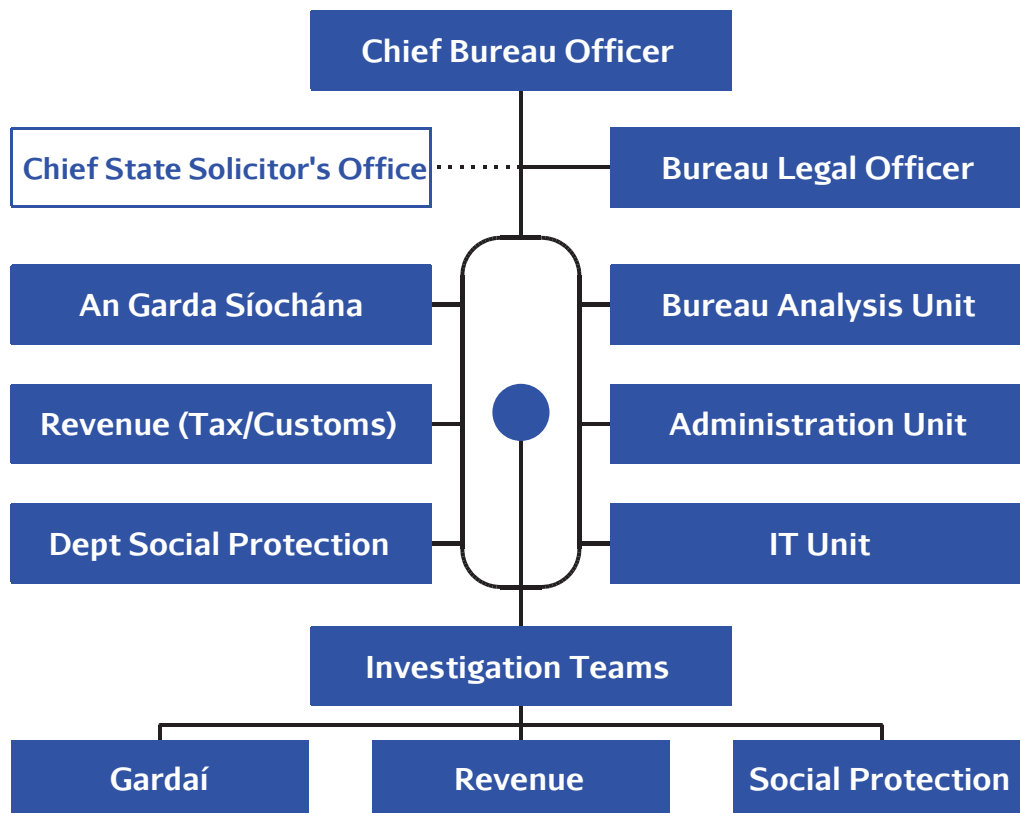
Templemore, Co. Tipperary and covers many subjects including:

- Asset Identification / Proceeds of Crime Procedures
- Financial Profiling & Analysis
- Money Laundering (Cross Border / Terrorism)
- Profiling and Net Worth Techniques
- Digital Forensics / Cyber Currencies
- White Collar Crime / Bribery & Corruption

The course is presented over four weekly Modules at the Garda Training College. To date twelve staff members of the Bureau have completed the course and a further twelve have completed the first three Modules, who are due to complete TACTIC training in May 2017. The Bureau and the Garda College are currently progressing the course to full accreditation with a third level institution to give a professional qualification to investigators.

Part One
Overview of the Criminal Assets Bureau, its Officers and Staff

Diagram: Organisation of the Bureau



Part Two

Criminal Assets Bureau Investigations

Investigations

During 2016, Bureau Officers continued to exercise the powers and duties vested in them under Section 8 of the Act.

It is important to note that this Section vests in the Bureau Officers the duties and powers conferred on them by virtue of membership of their respective parent organisations.

In addition to these powers, the Bureau has particular powers available to it, namely:

1. CAB search warrants; and
2. Orders to make material available to CAB.

These powers are contained within Section 14 and Section 14A of the Act and the PoC Act, respectively.

The Bureau conducted its investigations throughout 2016 with the cooperation and assistance of Garda personnel from Garda Divisions and also from Garda national units such as the Garda National Economic Crime Bureau (GNECB), the Garda National Drugs and Organised Crime Bureau (GNDOCB), the Garda National Bureau of Criminal Investigation (GNBCI), the Special Detective Unit (SDU) and the Security and Intelligence Section, Garda Headquarters.

Investigations were also supported by personnel from the Office of the Revenue Commissioners from each of the regions: Dublin Region (Port & Airport); Borders,

Midlands and West Region; South-West Region and East, South-East Region and also from the Investigations and Prosecutions Division.

The Bureau continued to cooperate with the Special Investigation Units of the Department of Social Protection in respect of their investigations in 2016.

This continued assistance has been critical to the success in targeting the proceeds of criminal conduct during 2016.

Section 14

Section 14 of the Act provides for CAB search warrants. Under Section 14(1), an application may be made by a Bureau Officer, who is a member of An Garda Síochána, to the District Court for a warrant to search for evidence relating to assets or proceeds deriving from criminal conduct.

Section 14(2) & (3) provides for the issue of a similar search warrant in circumstances involving urgency whereby the making of the application to the District Court is rendered impracticable and the warrant may be issued by a member of An Garda Síochána not below the rank of Superintendent.

During 2016, all applications under Section 14 were made to the District Court and no warrants were issued pursuant to Section 14(2).

Part Two

Criminal Assets Bureau Investigations

A Section 14 search warrant operates by allowing a named Bureau Officer who is a member of An Garda Síochána, accompanied by other such persons as the Bureau Officer deems necessary, to search, seize and retain material at the location named.

This is noteworthy in that it allows the member of An Garda Síochána to be accompanied by such other persons as the Bureau Officer deems necessary including persons who are technically and/or professionally qualified people to assist him/her in the search.

These warrants are seen as an important tool which allows the Bureau to carry out its investigations pursuant to its statutory remit. During 2016, the Bureau executed a number of these warrants in targeting a number of organised crime groups. In particular, the Bureau targeted a known organised crime group who are linked to a major transnational drugs organisation who were suspected to be in possession of assets which represented their illegal drug trafficking operation. The Section 14 warrants were used to search a large number of private residences as well as professional offices and other businesses. This led to the seizure of large amounts of cash, vehicles and the restraint of properties. This case is currently before the court.

In another case, the Bureau targeted a number of individuals who were suspected of being involved in frauds and deception throughout Europe and are based in the South of the country. A number of Section 14 warrants were

used to search private residences as well as professional offices. This led to the seizure of a large amount of evidence and material linking these people to assets and wealth. Also during the course of these searches, large amounts of cash and valuable items were seized. The Bureau was, in a number of instances, able to make tax assessments which were served on these individuals.

Section 14A

Section 14A was inserted by the PoC Act and provides for applications to be made by a Bureau Officer who is a member of An Garda Síochána to apply to the District Court for an order directed to a named person, to make material available to the Bureau Officer.

The Section 14A Production Orders have been used primarily in uplifting evidence from a number of financial institutions within the State. The material obtained relates to banking details and in many instances, the transfer of large amounts of money between accounts.

As a result of the information gleaned, the Bureau has been able to use this evidence as part of its cases in on-going investigations into a number of individuals which were believed to have possession of assets which represent, directly or indirectly, the proceeds of crime.

Applications made during 2016

During 2016, the following number of applications were made under Section 14 and 14A of the Act and the PoC Act, respectively:

Applications under Section 14 & 14A CAB Act, 1996 & 2005

Description	Number	
	2015	2016
Search warrants under Section 14 CAB Act, 1996 & 2005	80	153
Orders to make material available under Section 14A of the CAB Act, 1996 & 2005	173	241

During 2016, the Bureau has used this order on one hundred and twelve occasions.

Such orders remain in force for a period of four weeks which allows time for the Investigating Member to carry out its investigations to establish if this money is in fact being used in respect of any money laundering or terrorist financing offences. After such time, that order will either lapse or can be renewed by the Investigating Member in the District Court.

These orders were obtained in respect of seventeen separate targets currently under investigation by the Bureau.

The total amount of funds restrained is in excess of €4 million. However, one of the cases accounts for approximately €3.6 million. As stated, these cases are currently under investigation.

Section 17

Criminal Justice (Money Laundering and Terrorist Financing) Act, 2010

Section 17(2) of the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 allows for members of An Garda Síochána to obtain orders through the District Court to restrain the movement of money held in bank accounts.

Part Two
Criminal Assets Bureau Investigations

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Part Three

Actions under the Proceeds of Crime Act 1996 & 2016

Introduction

The Proceeds of Crime Act, 1996 & 2016 ("PoC Act") provides the mechanism under which the Bureau can apply to the High Court seeking to freeze or restrain a person / entities dealing with a specific asset.

It further allows for the High Court to determine, on the civil burden of proof, whether that asset represents, directly or indirectly, the proceeds of criminal conduct.

The PoC Act was amended in 2005 to allow the proceedings to be brought in the name of the Bureau instead of its Chief Bureau Officer. Since then all applications by the Bureau have been brought in the name of the Bureau.

The Court proceedings are commenced by way of an application to the High Court supported by sworn affidavits of relevant witnesses including, members of An Garda Síochána, other Bureau Officers and in relevant cases, staff from law enforcement agencies in other jurisdictions.

Section 2 of the PoC Act provides that the application may be brought on an *ex-parte* basis. This means that the Bureau makes its application in the absence of a requirement to notify the person affected (the respondent) by the application at that stage. The Section 2 order lasts for 21 days unless an application under Section 3 of the PoC Act is brought. The person affected by the order is notified during this time.

In 2016, Section 3 proceedings were commenced in all cases brought by the Bureau during 2016 in which a Section 2(1) order was made. Section 3 allows for the longer term freezing of assets.

While Section 3 cases must commence within 21 days of the making of a Section 2 order, it may take some considerable time for the hearing of the Section 3 to come before the High Court. Section 3 hearings are heard with the respondent present during which the respondent has the opportunity to challenge the case being put forward in respect of the property in question.

In cases where the respondent has insufficient means to pay for legal representation, the respondent may apply to the court for a grant of legal aid under a Legal Aid Scheme in place for this purpose. This ensures that the rights of the respondent are fully represented to the highest standards.

If it is ultimately shown to the satisfaction of the High Court following a Section 3 hearing that the asset represents, directly or indirectly, the proceeds of criminal conduct then the court will make an order freezing the asset. This order lasts a minimum of seven years during which the respondent or any other party claiming ownership in respect of the property can make applications to have the court order varied in respect of the property.

Part Three

Actions under the Proceeds of Crime Act, 1996 & 2016

At the expiration of the period of seven years, the Bureau may then commence proceedings to transfer the asset to the Minister for Public Expenditure and Reform or other such persons as the court determines under Section 4 of the Act. During these proceedings, all relevant parties are again notified and may make applications to the court.

Where the period of seven years has not expired, a consent disposal order under Section 4A of the Act may be effected with the consent of the respondent and the court.

value of the property is not less than €5,000,

(c) is satisfied that the Bureau is carrying out an investigation into whether or not there are sufficient grounds to make an application to the court for an interim order or an interlocutory order in respect of the property, and

(d) has reasonable grounds for believing that the property, in whole or in part, may in the absence of an authorisation, be disposed of or otherwise dealt with, or have its value diminished, before such an application may be made.

Amendment to PoC Act

Section 1A

The PoC Act was amended by the PoC (Amendment) Act, 2016. This amendment provides that where a Bureau Officer is in a public place, or in another place where he is authorised or invited, or is carrying out a search, and finds property that he believes to be the proceeds of crime with a value not less than €5,000, then that Officer may seize the property for a period not exceeding 24 hours.

The Chief Bureau Officer may, during the 24 hour period, authorise the detention of the property for a period of up to 21 days, provided he:

- (a) is satisfied that there are reasonable grounds for suspecting that the property, in whole or in part, directly or indirectly, constitutes the proceeds of crime,
- (b) is satisfied that there are grounds for suspecting that the total

During 2016, the Bureau invoked its powers under Section 1A of the PoC Act as outlined above.

Case 1

The Bureau took possession of a car which belonged to a member of an Organised Crime Group based in the West of Dublin. During the 21 day period, the Bureau was in a position to carry out enquiries in respect of the purchase of the vehicle and the Bureau was able to successfully bring an application under Sections 2 & 7 of the PoC Act within the 21 day period.

At a hearing of the case, the Bureau obtained an order under Section 3 of the Act, which was a final determination that the vehicle was in fact, the proceeds of crime.

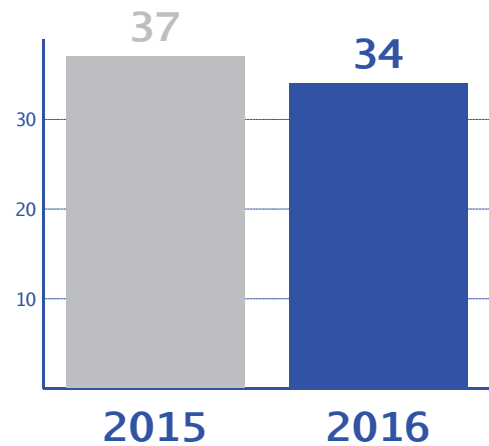
Case 2

The Bureau also took possession of a vehicle which was in possession of a person believed to be involved in criminal conduct in the North Dublin area.

The Bureau successfully brought an application under Sections 2 & 7 of the PoC Act within the 21 day period.

As at 31st December 2016, this case is before the court and an application has been made for an order under Section 3 of the PoC Act.

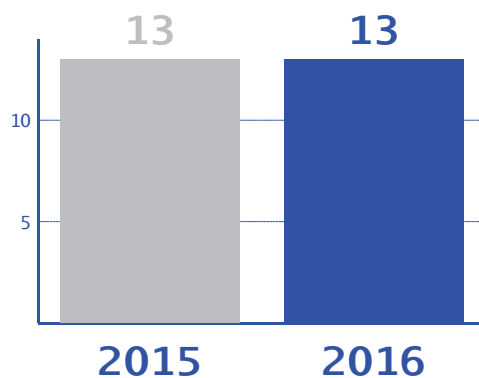
Assets over which Section 2(1) Orders made



Section 2(1) Review

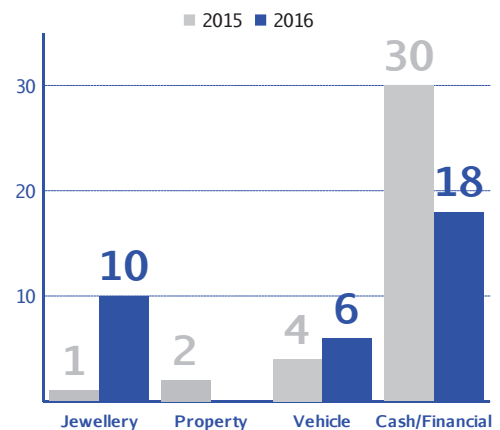
Thirteen new cases were brought before the High Court during 2016. This figure is the same figure for the year 2015.

New POC cases brought before the High Court



During 2016, the Bureau took proceedings in respect of a variety of asset types. For profiling purposes, the assets are broken down into jewellery, property, vehicles, and cash/financial matters.

Assets over which Section 2(1) Orders made
 Breakdown of assets by asset type



When analysed, the number of assets over which an order was obtained under Section 2(1) decreased in comparison to 2015 from thirty seven assets to thirty-four assets.

Part Three

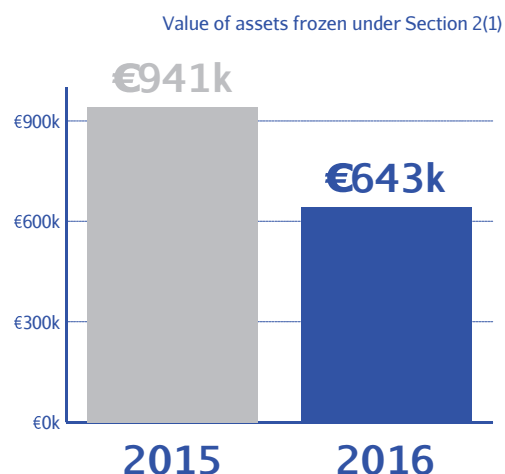
Actions under the Proceeds of Crime Act, 1996 & 2016

Valuation Breakdown

The value of the thirty four assets frozen under Section 2 of the PoC Act during the year 2016 was €643,063.07 This figure may be broken down in the table below.

Analysis of Section 2 Order by asset type	
Description	€
Jewellery	38,350.00
Vehicle	106,345.00
Cash/Financial	498,368.07
Total	643,063.07

The figures in respect of jewellery and vehicles are based on the estimated value placed by the Bureau on the asset at the time of making the application under Section 2(1) of the PoC Act.

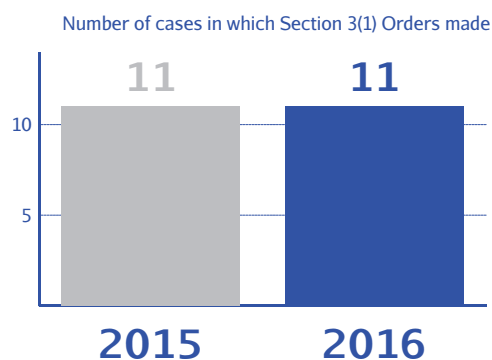


The results for 2016 compared to 2015 show the value of assets frozen under Section 2(1) has decreased from the previous year where the value was €0.941 million. The value of assets fluctuates depending on assets targeted in each case which can vary from high ranging assets to low ranging assets.

Section 3 Review

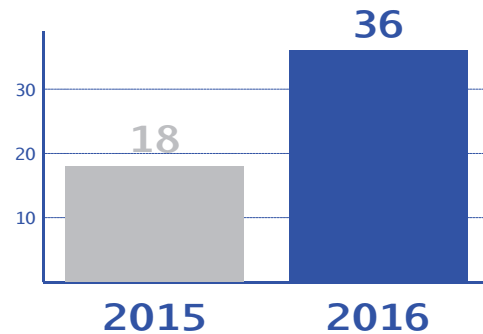
Section 3(1) orders are made at the conclusion of the hearing into whether an asset represents or not, the proceeds of criminal conduct. As such, the date and duration of the hearing of the matter is a matter outside of the Bureau's control.

During 2016, eleven cases before the High Court had orders made under Section 3(1) to the value of €1,919,261.54. The number of cases commenced in 2016 is the same number of cases commenced in 2015.

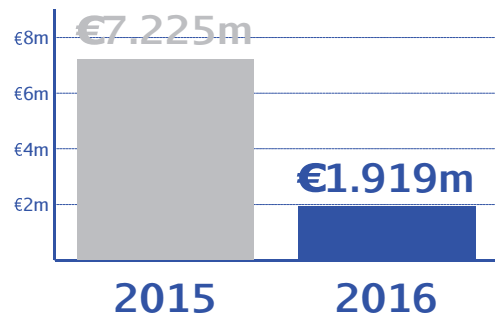


The number of assets over which orders were made by the High Court pursuant to Section 3(1) increased from eighteen assets in 2015 to thirty six in 2016.

Assets over which Section 3(1) Orders made



Value of assets frozen under Section 3(1)



Whilst there was an increase in assets over which a Section 3(1) order was made in 2016, there was a substantial decrease in the value of the orders made. The value of such orders decreased from €7.225 million in 2015 to €1.919 million in 2016. This significant drop in value can be explained by reference to two large cases in 2015; namely Abacha and Siriwan. Those cases were related to foreign bribery and corruption which had a combined value of approximately, €5.3 million. The value of assets over which a Section 3(1) order was made in 2014 was €1.564 million and accordingly the value for 2016 has returned in line with projections.

A significant number of cases were heard before the High Court and for which judgment is outstanding for a specific period. The Bureau is liaising closely with the courts to obtain judgment in these cases which are expected to be delivered in early 2017.

Section 3(3)

Section 3(3) of the PoC Act provides for an application to be made to the court while a Section 3(1) order is in force to vary or discharge the order. The application can be made by the respondent in a case taken by the Bureau or by any other person claiming ownership in the property. While Section 3(3) largely contemplates the bringing of an application by a respondent in a case, it also provides that victims of crime who can demonstrate a proprietary interest in the property frozen can make an application for the return of same.

Section 3(3) also provides for a person to make a claim in regard to an asset over which a Section 3(1) order has been made whereby that person can seek the variation or discharge of the freezing

Analysis of Section 3 Order by asset type

Description	€
Property	230,000.00
Jewellery	34,450.00
Vehicle	51,745.00
Cash/Financial	1,603,066.54
Total	1,919,261.54

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Actions under the Proceeds of Crime Act, 1996 & 2016

order if it can be shown to the satisfaction of the court the asset in question is not the proceeds of criminal conduct. No order was made under Section 3(3) of the PoC Act during 2016.

property is the proceeds of criminal conduct, the statutory provision whereby an individual enjoying the benefit of those proceeds may be deprived or denied that benefit, includes that he/she should be divested of the property.

Geographical Breakdown

The Bureau's remit covers investigation of proceeds of crime cases irrespective of the location of the assets.

This policy of the Bureau may require pursuing properties, notwithstanding the fact that in some cases the property remains in negative equity.

During 2016, the Bureau obtained orders over assets in respect of proceeds of crime in all of the large urban areas, rural communities and foreign jurisdictions.

This is designed to ensure that those involved in serious organised crime are not put in the advantageous position by being able to remain in the property and thereby benefit from the proceeds of crime.

The Bureau remains committed to actively targeting assets which are the proceeds of criminal conduct and indeed wherever they are situated to the fullest extent under the PoC Act.

Vehicles

The Bureau is further developing its national coverage through the Commissioner of An Garda Síochána's revised policy on the Tasking of Divisional Asset Profilers. This will ensure that there is a focus on local criminal targets throughout the State for action by the Bureau.

The Bureau continues to note the interest of those involved in serious organised crime in high value vehicles. However, during 2016 the Bureau targeted a number of mid-range to upper-range valued vehicles. This is, in part, a response to actions being taken by those involved in crime to purchase lower valued vehicles in an attempt to avoid detection.

Property

The statutory aims and objectives of the Bureau require that the Bureau take appropriate action to prevent individuals, who are engaged in serious organised crime, benefit from such crime.

The vehicles seized by the Bureau under Section 2(1) of the PoC Act during the year 2016 were:

- BMW X5
- Audi A7
- Audi A4

In cases where it is shown that the

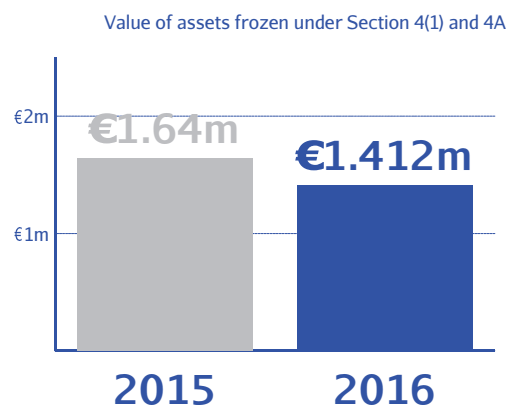
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Actions under the Proceeds of Crime Act, 1996 & 2016

- Audi A3
- Volkswagen Golf TDI
- Volkswagen Golf TDI (5 door)

Eleven cases were finalised and concluded under Section 4(1) and 4A in 2016.

Under Section 3(1) of the PoC Act, the Bureau obtained orders against five vehicles being:

1. Volkswagen Golf TDI
2. Volkswagen Passat
3. Audi A4
4. Audi A3
5. Volkswagen Golf TDI



Section 4(1) and 4A

Section 4(1) provides for the transfer of property to the Minister for Public Expenditure and Reform. This Section refers to assets which have been deemed to be the proceeds of criminal conduct, for a period of not less than seven years, and over which no valid claim has been made under Section 3(3) of the PoC Act.

During the year 2016, a total of €1,412,920.41 was transferred to the Minister for Public Expenditure and Reform under the PoC Act arising from Section 4(1) and 4A disposals.

Whilst the figure for 2016 was down on 2015, it remains higher than that in 2014 which was €467,152 and €1,038,680 in 2013.



Section 4(1) & 4A Breakdown

Type	No. of Cases	€
Section 4(1)	4	289,075.35
Section 4A	7	1,123,845.06
Total	11	1,412,920.41

Section 4A allows for a consent disposal order to be made by the respondent in a CAB case, thus allowing the property to be transferred to the Minister for Public Expenditure and Reform in a period shorter than seven years. This was introduced in the 2005 PoC Act.

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Actions under the Proceeds of Crime Act, 1996 & 2016

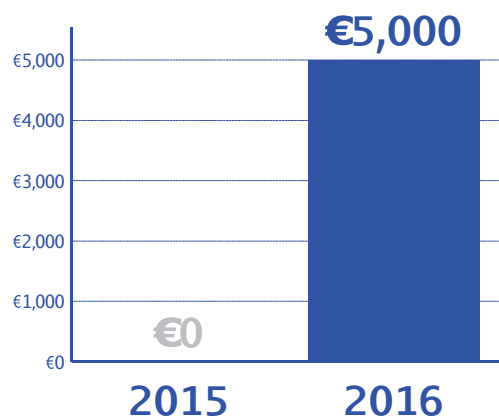
Section 6

Section 6 provides for the making of an order by the court during the period whilst a Section 2(1) or 3(1) order is in force to vary the order for the purpose of allowing the respondent or any other party:

1. a discharge of reasonable living or other necessary expenses; or
2. carry on a business, trade, profession or other occupation relating to the property.

During 2016 one such order was made to the value of €5,000.

Value of assets orders under Section 6



This compares to 2015 where no such orders were made.

Section 7

Section 7 provides for the appointment, by the court, of a Receiver whose duties include either to preserve the value of, or dispose of, property which is already frozen under Section 2 or Section 3 orders.

In 2016, the Bureau obtained receivership orders in regard to thirty nine assets. In every case the Receiver appointed by the court was the Bureau Legal Officer. These cases involved properties, cash, money in bank accounts, motor vehicles and watches. In some receivership cases, the High Court made orders for possession and sale by the Receiver. A receivership order cannot be made unless a Section 2 or Section 3 order is already in place.

Part Three
Actions under the Proceeds of Crime Act, 1996 & 2016

Statement of Receivership Accounts

	Amount €	STG£	US\$
Opening balance receivership accounts 01/01/2016	11,765,193.45	470,954.23	651,759.60
Amounts realised, inclusive of interest and operational advances	1,489,067.96	47.86	480.27
Payments out, inclusive of payments to Exchequer and operational receivership expenditure	1,686,453.12	0.00	114.21
Closing balance receivership accounts 31/12/2016	11,567,808.29	471,002.09	652,125.66

Part Three
Actions under the Proceeds of Crime Act, 1996 & 2016

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Part Four

Revenue actions by the Bureau

Overview

The role of the Revenue Bureau Officers attached to the Bureau is to perform duties in accordance with all Revenue Acts and Regulations to ensure that the proceeds of crime or suspected crime, are subject to tax. This involves the gathering of all available information from the agencies which comprise the Bureau. This includes the Office of the Revenue Commissioners and information from this Office can be obtained in accordance with the Disclosures of Certain Information for Taxation and Other Purposes Act 1996.

In addition, during 2016, the Office of the Revenue Commissioners referred twenty six cases to the Bureau to be considered as suitable for investigation. Each case was comprehensively profiled.

On consideration of all the cases, it was decided that nineteen cases came within the statutory remit of the Bureau and are now the subject of a full investigation.

Tax Functions

The following is a summary of actions taken by the Bureau during 2016 and an update of the status of appeals taken.

Tax Assessments

Revenue Bureau Officers are empowered to make assessments to tax under Section 58 of the Taxes Consolidation Act 1997 (hereinafter referred to as the TCA 1997) - the charging section.

As part of any Bureau investigation, the Revenue Bureau Officer will investigate the tax position of all those linked with that investigation with a view to assessing their tax liability, where appropriate. Investigations vary in terms of size and complexity.

During 2016, a total of twenty six individuals were assessed to tax resulting in a total tax assessed figure under various taxheads of €11.148m.

Tax Appeals

Budget 2013 provided for the commencement of a consultation process for the reform of the tax appeal process and various stakeholders including Revenue, made submissions by January 2014.

The consultation process led to the enactment of the Finance (Tax Appeals) Act 2015. This Act came into effect on 21st March 2016 and substantially changed the Office of the Appeal Commissioners and the appeals process. This Act established the Tax Appeals Commission (TAC) and sets out its duties, functions and responsibilities.

In relation to the appeal process itself, this Act inserts Part 40A to the TCA 1997. It makes significant changes to the appeal process and it establishes a clear independent role for the TAC. It also places greater responsibility upon the Commissioners, for example, the acceptance or rejection of an appeal, communicating directly with the appellant, the preparation of a "case stated" in respect of High Court

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Revenue actions of the Bureau

proceedings and the publication of an anonymised version of all determinations.

As at 21st March 2016, there were fifteen open appeals and these were passed to the TAC.

The introduction of this legislation provided for transitional arrangements to deal with appeals which were already with the Inspector of Taxes but not yet referred to the Appeal Commissioners and appeals which had been referred to the Appeal Commissioners but as at 21st March 2016 had not been heard.

In the period from 21st March 2016 to 31st December 2016, appeal applications in respect of seventeen cases were submitted to the TAC. The Commissioners have accepted the appeal in respect of one case and a decision regarding the status of the remaining sixteen cases was awaited, at year end 2016.

Prior to the introduction of the Finance (Tax Appeals) Act 2015, the appeal process was governed in accordance with the provisions as set out in Part 40 TCA 1997.

As at 31st December 2016, there were a total of thirty two cases awaiting hearing / decision.

Appeals to the Appeal Commissioners

As at 1st January 2016, appeals in respect of nineteen cases were pending before the Appeal Commissioners.

Refusal Appeals:

As at 1st January 2016, appeals in respect of three cases were pending. Prior to 21st March 2016, the appeal in respect of one case was withdrawn and the remaining two appeals were passed to the TAC.

In the period to 21st March 2016, four applications for appeals were received, two of which were correctly invoked. The remaining two were refused in accordance with Section 933 of the TCA 1997.

In the period from 21st March 2016 to 31st December 2016, appeals in respect of two cases which had been refused by the Inspector immediately prior to 21st March 2016 were further appealed to the TAC.

Also in this period, three appeals were withdrawn and determinations were made by the Appeal Commissioners in respect of three cases. As there was no attendance by or on behalf of the appellant, the assessments were confirmed.

As at 31st December 2016, there were four cases awaiting hearing.

Appeals to the Circuit Court

As at 1st January 2016, there were three cases awaiting hearing before the Circuit Court. During the year, the appeal hearing which had commenced in 2015 in

respect of one case was finalised and the decision of the Appeal Commissioner was upheld.

As at 31st December 2016, there were two cases awaiting hearing.

A significant change with the introduction of the Finance (Tax Appeals) Act 2015 is the ending of an appellant's right to appeal the decision of the Appeal Commissioner to the Circuit Court. The only appeal which can take place other than that to the TAC is to the High Court on a point of Law.

Collections

Revenue Bureau Officers are empowered to take all necessary actions for the purpose of collecting tax liabilities as assessed and which have become final and conclusive. Revenue Bureau Officers hold the powers of the Collector General and will pursue tax debts through all available routes. Collection methods include:

- the issue of demands – Section 961 TCA 1997;
- power of attachment – Section 1002 TCA 1997;
- Sheriff action – Section 960(L) TCA 1997; and
- High Court proceedings – Section 960(I) TCA 1997.

Recoveries

Tax recovered by the Bureau during 2016 amounted to €2.106m from thirty eight individuals / entities.

Demands

During 2016, tax demands (inclusive of interest) served in accordance with Section 961 TCA 1997 in respect of eighteen individuals / entities amounted to €5.023m.

Circuit Court:

Circuit Court proceedings were initiated in the Circuit Court in respect of three cases in the sum of €131k.

High Court:

High Court proceedings for the recovery of tax and also interest in the sum of €2.144m were initiated in twelve cases.

Judgements:

High Court Judgements were obtained against twelve individuals for tax liabilities totalling €10.578m.

Judgement mortgage affidavits were received in four cases with sixteen properties.

One well charging proceeding commenced in 2016. Two cases were found to be well charged during 2016.

Prosecutions

Thomas Murphy

In October 2015, following a lengthy trial, Mr. Thomas Murphy, Ballybinaby, Hackballscross, Dundalk, Co. Louth was found guilty of tax offences in respect of

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Revenue actions of the Bureau

the years 1995 to 2004. The sentence hearing was held on 12th February 2016 and on 26th February 2016, Mr. Murphy was sentenced to eighteen months imprisonment.

Following his trial, Mr. Murphy appealed the decision to the Court of Appeal. This appeal was heard in 2016 with the decision of the court to be delivered in 2017.

crime result in significant loss to the Exchequer while providing significant gains to those crime gangs.

Throughout 2016, the Bureau continued to monitor the activities of criminal organisations involved in the illicit trade in mineral oils, in conjunction with the Revenue Customs Service and An Garda Síochána, as a means of sustaining the collective successes of recent years in interrupting that particular criminal activity.

Customs & Excise functions

The Customs & Excise (C&E) functions in the Bureau support all investigations by identifying any issues of Customs relevance within the broad range of C&E related legislation, regulations, information and intelligence.

Serious and organised crime groups in every jurisdiction attempt to breach both Customs regulations and Excise regulations in their attempts to make substantial profits while depriving the Exchequer of funds and having a negative impact on society in general. The Customs functions at ports and airports, in particular, support the Bureau's investigations into the cross-jurisdictional aspects of crime and criminal profits.

In Ireland, as in many countries, the existence of a land border with another jurisdiction, where tax rates on various commodities are different, has provided an incentive for serious organised crime groups to engage in smuggling and associated activities. These types of

In 2016, the Bureau continued to carry out investigations in the area of VRT authorisations granted to car dealers (Section 136 Finance Act, 1992). The Bureau monitored, reviewed and refused such authorisations in cases where organised crime groups had, or were attempting to infiltrate and impact on legitimate trade, with consequential potential loss of VRT to the exchequer.

The Bureau also continued to deprive specific individuals of valuable vehicles which were in their possession and contravened VRT regulations (Section 141, Finance Act 2001). In one example, under "Operation Croft", a joint initiative in conjunction with the Garda National Drugs & Organised Crime Bureau, the Bureau detained over sixty vehicles from one organised crime group alone, with the Bureau seizing and depriving those involved of over €¾ million worth of stock for VRT offences, under the provisions of Section 141(1) Finance Act 2001, and initiating a further €70,000 in fines and penalties.

Fighting organised crime groups operating across borders requires cooperation among competent authorities on both sides of the border. Such cooperation extends beyond intelligence sharing and includes the planning and implementation of specific joint operations on an international multi-agency and multi-disciplinary platform. In such cases, every aspect of mutual assistance legislation, whether it be Customs to Customs, or Police to Police, is utilised by the Bureau.

Customs Officers attached to the Bureau take every opportunity to liaise and work with colleagues in other Customs services internationally to improve effectiveness against organised crime groups. Similarly, the Bureau works closely in this jurisdiction with Revenue's Customs Service, in order to use all the State's resources in the most efficient way in tackling criminal activity.

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Revenue actions of the Bureau

Revenue tables

Table 1: Outcome of Appeals at Appeal Commissioner Stage

Description	No. of cases
Opening Appeals as at 01/01/2016	19
Appeals lodged	4
Appeals refused	2
Appeals determined by Appeal Commissioner	3
Appeals Withdrawn	3
Open Appeals as at 21/03/16 & referred to the TAC	15
Appeal Applications to the TAC	17
Appeals Admitted by TAC	1
Admission Decision from TAC awaited	16
Appeals determined by TAC	0
Open Appeals as at 31/12/2016	32

Table 2: Outcome of Appeals refused by the Bureau

Description	No. of cases
Opening Appeals as at 01/01/2016	3
Appeals Withdrawn	1
Open Appeals as at 21/03/16 & referred to the TAC	2
Appeals Refused	2
Refusals Appealed	2
Open Appeals as at 31/12/2016	4

Table 3: Outcome of Circuit Court Appeals

Description	No. of cases
Opening Appeals as at 01/01/2016	3
Appeals determined by Circuit Court	1
Open Appeals as at 31/12/2016	2

Part Four
Revenue actions of the Bureau

Table 4: Tax Assessments

Taxhead	Tax €M 2015	Tax €M 2016	No of assessments 2015	No of assessments 2016
Income Tax	4.655	10.403	138	190
Capital Gains Tax	0.037	0.254	1	5
Value Added Tax	0.678	0.241	28	4
PAYE/PRSI	0.431	0.165	1	1
RCT	-	0.085	-	3
CAT	0.206	-	4	-
Excise	0.273	-	1	-
Totals	6.280	11.148	173	203

Table 5: Tax and Interest Collected

Taxhead	Amount €M 2015	Amount €M 2016	No of cases 2015	No of cases 2016
Income Tax	1.520	1.914	38	35
Value Added Tax	0.361	0.192	4	3
VRT	0.051	-	1	-
Capital Gains Tax	0.106	-	2	-
Totals	2.038	2.106	45	38

Table 6: Tax and Interest demanded

Taxhead	Tax €M		Interest €M		Total €M		No. of cases	
	2015	2016	2015	2016	2015	2016	2015	2016
Income Tax	3.226	3.079	2.025	1.489	5.251	4.568	16	12
CGT	0.215	0.063	0.106	0.057	0.321	0.120	1	2
VAT	0.869	0.224	0.250	0.103	1.119	0.327	5	3
PAYE/PRSI	-	0.006	-	0.002	-	0.008	-	1
Totals	4.310	3.372	2.381	1.651	6.691	5.023	22	18

Part Four
Revenue actions of the Bureau

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Part Five

Social Welfare actions by the Bureau

Overview

The Bureau takes action under the Social Welfare Consolidation Act 2005, pursuant to its functions as set out in Section 5.1(c) and 5.1(d) of the Act. Social Welfare Bureau Officers investigate and determine entitlement to social welfare payments. Arising from an examination of cases by Bureau Officers, actions pursuant to the Social Welfare remit of the Bureau was initiated against seventy persons in 2016.

Savings

As a direct result of investigations conducted by Social Welfare Bureau Officers in 2016, a number of persons had their payments either terminated or reduced. These actions resulted in a total saving to the Exchequer of €269,981.60. The various headings under which these savings were achieved are listed on page 36.

Overpayments

The investigations conducted also resulted in the identification and assessment of overpayments against individuals. An overpayment is described as a payment received by an individual over a period(s) for which that person had no entitlement to make the claim. Accordingly the payments received in respect of the claim created a debt to the Department of Social Protection. As a result, demands were issued against a number of persons for the repayment of the Social Welfare debts ranging in individual value from €436.50 to €135,554.20.

During 2016, Overpayments Assessed and Demanded amounted to €1,054,161.27, a breakdown of which are listed on page 36.

Recoveries

The Bureau utilises a number of means by which to recover Social Welfare debts from individuals.

The methods include payments by way of lump sum and/or instalment standing order. Deductions of up to 15% of a person's current social welfare payments can be made to recover debts. This is a new provision for debt recovery and was enacted by Section 13 of the Social Welfare Act 2012.

The Bureau was instrumental in the introduction of additional powers for the recovery of social welfare debts by way of Notice of Attachment proceedings. This new legislative power is provided for in Section 15 of the Social Welfare and Pensions (Miscellaneous Provisions) Act of 2014.

As a result of these actions, the total sum returned to the Exchequer amounted to €297,430.12, a breakdown of which are listed on page 36.

Appeals

There is an independent agency, the Social Welfare Appeals Office (SWAO), who provide a service to persons who are not satisfied with determinations made by Officers of the Department of Social Protection on questions relating to their entitlement to Social Welfare payments. This agency is headed by a Chief Appeals Officer (CAO).

In 2016, there were three appeals initiated against determinations made by

Part Five

Social Welfare actions by the Bureau

Social Welfare Officers attached to the Bureau.

recovered with further monies expected in 2017.

The CAO certified that the ordinary appeals procedure was inadequate to secure the effective processing of these appeals and directed that the appellants submit their appeals to the Circuit Civil Court.

Case 2

Another organised crime family was dealt with in the South Eastern Region. This investigation related to five individuals. Savings as a result of the closing of existing Social Welfare claims amounted to €54,000.

Two cases have lodged appeals in the Circuit Civil Court. In another case, a Judicial Review of the CAO's decision to refer to the Circuit Court was lost.

Overpayments in relation to this family amounted to in excess of €350,000 of which monies are being recovered at present.

Section 5.1(c) of the Act

Case 1

A well known family engaged in drug trafficking for many years in the Southern Region. An investigation into drug trafficking and the money laundering of the profits derived from that criminal activity was conducted by Gardaí from the Anglesea Street Garda Station, Cork, led by Detective Superintendent John Healy.

Following an investigation and review of the material uplifted, interviews were conducted by Social Welfare Bureau Officers. In total, eleven members of this family had their Social Welfare claims reviewed, resulting in decisions to terminate payments and assess overpayments.

In total, in excess of €426,000 was raised in overpayments, and a further €270,000 in savings was achieved due to reductions and cessations in payments. To date, over €23,000 has been

Section 5.1(d) of the Act

Case 3

An individual, who is currently the subject of an ongoing investigation by the Bureau, made a claim for State Non Contributory Pension in 2016. This was dealt with by the Bureau under Section 5(1)(d) of the Act, 1996. His claim for a Non Contributory Old Age Pension was unsuccessful and was subsequently disallowed by a Deciding Officer on the grounds that he had failed to produce the required and requested documentation to substantiate his viewpoint that he had no means to support himself. While no saving was achieved, he was denied a payment on the basis that he could not establish his entitlement.

Case 4

Another individual from the Northern Region was also referred to the Bureau under Section 5(1)(d). He failed to engage with the Social Welfare Inspector who reviewed his means based on the information obtained from searches of

the individuals home and other business premises. A Natural Justice letter was sent to him and at this point he engaged a solicitor. While the case is ongoing, he is not currently in receipt of a Social Welfare payment.

Part Five
Social Welfare actions by the Bureau

Social Welfare Savings

Scheme type	2015 Saving €	2016 Saving €
Carers Allowance	39,535.20	47,695.20
Disability Allowance	194,180.80	25,568.00
Jobseeker's Allowance	50,208.00	106,577.60
One-parent family payment	167,472.40	90,140.80
*BASI	31,725.00	0.00
Totals	483,121.40	269,981.60

Social Welfare Overpayments

Scheme type	2015 Over- payment €	2016 Over- payment €
Carers Allowance	143,677.20	161,258.40
Disability Allowance	131,841.90	149,606.10
Jobseeker's Allowance	524,987.65	660,542.99
One-parent family payment	249,166.47	81,378.78
Other	-	1375.00
*BASI	136,313.67	-
Totals	1,185,986.89	1,054,161.27

Social Welfare Recovered

Scheme type	2015 Recovered €	2016 Recovered €
Carer's allowance	55,122.00	41,665.36
Disability Allowance	30,737.17	50,486.88
Jobseeker's Allowance	62,388.45	153,424.90
One-parent family payment	37,106.70	50,852.98
Other	-	1,000.00
Totals	185,354.32	297,430.12

* A Basic Supplementary Welfare Allowance (commonly referred to as BASI) provides a basic weekly allowance to eligible people who have little or no income.

Part Six

Criminal prosecutions arising from investigations of the Bureau

Introduction

Arising from investigations conducted by the Bureau, pursuant to its statutory remit, evidence of suspected breaches of criminal offences was uncovered and, as a result, a person was charged on the direction of the Director of Public Prosecutions (hereinafter referred to as "the DPP") with suspected offences under the TCA, 1997;

application was made in the High Court under the PoC Act to restrain all the assets seized as well as a number of private residences. It is the belief of the Bureau that these items represent the proceeds of their criminal conduct.

Since the order was received, the Bureau has gone back to seek permission to sell these vehicles in order to preserve their value. The court has granted this order and has appointed a Receiver over the property with a view to selling them.

Tax related offences

Case 1

This investigation commenced in 2007 and the hearing of the trial was held at the Special Criminal Court in 2015. Following a full hearing of the case, the person was found guilty of nine such offences and the case was adjourned to 2016 for sentencing.

During the course of the investigation, a number of people were arrested for suspected offences of money laundering and files are being prepared for the DPP.

In 2016 before the Special Criminal Court, the person was sentenced to eighteen months imprisonment. An appeal was lodged by the person against the severity of the sentence and the conviction. The appeal was heard in 2016.

Operation Griffin

In February 2016, fourteen members of an organised crime gang known as the "Rathkeale Rovers" were convicted in the UK of a museum theft plot. This OCG had masterminded a series of raids on museums and auction houses across the UK.

Operation Lamp

This is an investigation into members of an organised crime gang (OCG) which are based primarily in Spain with a number of associates based in Ireland. During 2016, the Bureau carried out a number of searches on professional premises and private residences targeting this group in and around the Dublin Metropolitan area. During the course of the searches, a large number of vehicles and high value goods were seized. As a result of this, an

Between November 2011 and April 2012, Chinese artefacts and rhinoceros horns worth millions of pounds were targeted in a number of incidents. These comprised of two thefts and an attempted theft from Durham University Oriental Museum, a robbery at Norwich Castle Museum in Norfolk, another robbery at Gorrings Auction House in East Sussex and a burglary at Fitzwilliam Museum in Cambridge.

Part Six

Criminal prosecutions arising from investigations of the Bureau

Investigations were launched by local police forces in the UK and a number of people convicted for their parts in carrying out the thefts. The Bureau was carrying out parallel investigations into this OCG and had uncovered evidence linking members of this gang to the UK crimes.



'Operation Griffin', an investigation led by Durham Constabulary and Cambridgeshire Police and supported by the National Crime Agency and the National Police Chief's Council, was therefore launched in June 2012 to bring those behind the conspiracy to justice. This investigation was also supported by the Bureau, and in early 2016 an officer of the Bureau gave evidence in Birmingham Crown Court.

Senior Investigating Officer for the operation, Detective Superintendent Adrian Green from Durham Constabulary, said:

Daniel 'Turkey' O'Brien, 45; John 'Kerry' O'Brien, 26; Michael Hegarty, 43; and Richard 'Kerry' O'Brien Junior, 31, all from Cambridgeshire but with links to Rathkeale, Limerick were found guilty of conspiracy to steal, following a lengthy trial at Birmingham Crown Court.

"I am extremely pleased with the verdicts passed today and over the previous year.

Because of the variations which can be given by auction houses, the total value of the items targeted comes to anywhere between £18m and £57m. This illustrates just how massively profitable this trade was viewed by the gang.

Eight other men, aged between 33 and 68, from Cambridgeshire, London, Southend-on-Sea and Wolverhampton, were found guilty at three previous trials, all at Birmingham Crown Court. Two others, one aged 28 from Kent, and the other aged 46 from Belfast, pleaded guilty to the charges in March 2016 and January 2017. All 14 men were charged in connection with all the incidents.

All the hard work put in by everyone involved has paid off. Firstly, those that carried out the burglaries were caught and convicted by local officers.

What followed was a very long and complex investigation to capture and bring to justice those who commissioned and planned the jobs.

I hope this sends out a message that nobody is untouchable."

Part Six

Criminal prosecutions arising from investigations of the Bureau

Chief Constable Mick Creedon, the National Policing Lead for Organised Crime said:

"This complex and lengthy operation resulted from initial work done by the Durham and Cambridgeshire forces who uncovered the offending of a sophisticated criminal network responsible for a series of high value offences across the country."

The Bureau Officer involved in this investigation received a commendation from the UK National Police Chiefs' Council in September 2016 for his professionalism and personal commitment to Operation Griffin which supported the successful conviction and disruption of the OCG.

The Bureau continues to investigate this OCG.

Part Six

Criminal prosecutions arising from investigations of the Bureau



Part Seven

Significant Court Judgments during 2016

During 2016, written judgments were delivered by the courts in the following cases:

1. CAB v. Michael Murphy Junior and Michael Murphy Senior (18th February 2016, [2016] IECA 40) Court of Appeal.
2. CAB v. Marvis Okungbowa & Another (11th April 2016).
3. CAB v. SR & Christopher Russell (7th June 2016), High Court.
4. CAB v. Niall O'Donoghue (otherwise Simon Gold, Anglo Irish Global Ltd & Kurt Lauridsen) (9th June 2016), High Court.

For brevity, the full text of the judgments at 3 and 4 are included. The judgments at 1 and 2 may be obtained from the Courts Service.

CAB v. SR & Christopher Russell

7th June 2016, High Court: Fullam J, High Court Record No. 2013/009/CAB (Approved)

Proceeds of crime – Proceeds of Crime Act, 1996 & 2005 – Family Home – Section 7 Receivership

JUDGMENT OF MR. JUSTICE FULLAM
DELIVERED ON THE 7TH DAY OF JUNE 2016

Introduction

1. The applicant seeks an order pursuant to Section 7(1)(b) of the PoC

Act appointing Declan O'Reilly receiver with power of sale over the scheduled property the subject of a Section 3 order made by this court (Birmingham J.) on the 16th July 2014. The application is grounded on the affidavit of Mr O'Reilly of 6th February 2015.

2. Section 7 (1)(b) of the POC Act provides:

(1) *Where an interim order or an interlocutory order is in force, the court may at any time appoint a receiver—*

(b) in accordance with the court's directions, to manage keep possession or dispose of or otherwise deal with any property in respect of which he or she is appointed, subject to such exceptions and conditions (if any) as may be specified by the court, and may require any person having possession or control of property in respect of which the receiver is appointed to give possession of it to the receiver.

Background

3. The respondents are husband and wife. They have two school-going children aged fourteen and seven. The property is registered in the maiden name of the first respondent. The second respondent did not contest the Section 3 application.

4. On the 16th July 2014, Birmingham J. further ordered, in the interest of

Part Seven

Significant court judgments during 2016

justice, that, should a disposal order pursuant to Section 4 be made, the first respondent was entitled to benefit from the net proceeds to the value of 12.5 %. The learned judge also gave the applicant liberty to notify the mortgagee (Ulster Bank) and the insurers (Aviva) of the making of the Section 3 order. The learned judge adjourned the part of the applicant's motion relating to the appointment of a receiver to the following 13th of October for mention.

5. By affidavit of 9th October 2014, Mr. O'Reilly informed the court of information which he averred was relevant to the adjourned application for the appointment of a receiver. He stated that the purpose of a receivership was to preserve the property the subject of the receivership for the benefit of the party ultimately entitled and that a vital aspect of preservation was the requirement that the scheduled property be validly and properly insured.

He informed the court that, on 2nd October 2014, the applicant was made aware by Aviva Insurance Limited that the household insurance on the property had lapsed on the 18th August 2013. The Ulster Bank, as an interested party on the policy, had been notified of the lapse and were requested to furnish an up to date position on mortgage repayments. By letter dated 6th October, 2014, the applicant informed the solicitors for the first respondent that the applicant had become aware of the lapse of the

insurance policy and sought confirmation by return that alternative insurance was in place.

The Bureau had also requested details of the up to date position in relation to repayments on the mortgage. By email dated 8th October, 2014, Ulster Bank advised that the *"responsibility for buildings insurance lies solely with the customer"*. In relation to mortgage repayments, the Bank advised that repayments for September and October had been made, but the August payment had been missed.

6. In her replying affidavit made on 10th November 2014, the first respondent stated that it was the purpose of the legislation to preserve the property rather than dispossess her. She said that she had taken all reasonable steps to ensure that insurance was in place. She had obtained insurance with 123.ie (underwritten by RSA) in respect of which she paid a premium of €327.78 on 8th October and had forwarded a copy of the insurance policy by email to the Bureau on 10th October. She concluded by saying that she was now aware of the necessity to keep insurance up to date.
7. The application to appoint the receiver was adjourned on a number of occasions. On the morning of 8th December 2014, the court was informed that 123.ie / RSA was discontinuing cover. Later in the afternoon, the court was informed that the first respondent had secured

insurance with Chill Insurance which was part of the Zurich Group.

The court requested confirmation from counsel for the first respondent that the Section 3 Order had been disclosed to Chill. On 9th December the first respondent provided a copy of the Chill policy to the Bureau by email. Following further adjournment the court was informed on 30th January 2015 that Chill was withdrawing cover.

8. In his affidavit dated 6th February 2015, Mr. O'Reilly asked the court, on behalf of the Bureau, to have himself appointed receiver of the property with power of sale.

9. At para. 7 of his affidavit, Mr. O'Reilly stated:

As at the date of swearing hereof, the property is uninsured. Two separate providers of insurance have discontinued insurance cover for the property. It is a source of great concern that the property remains uninsured, particularly in circumstances where the first respondent gave evidence during the Section 3 hearing on 5th June 2014 that the windows at the property were smashed and bullet proof glass was installed at the property in or around February 2013. It is my belief that against that background of damage having been done to the property in the past and the property being uninsured at present, the property is potentially at risk if an order is not made pursuant to Section 7 of the Act.

10. In her replying affidavit of 12th February, the first respondent said that the property constituted her family home and if the order sought is made there would be a significant impact on her two children, then aged 13 and 6 years. She said her eldest child had been diagnosed as dyslexic. He receives learning support and has been assigned a Special Needs Assistant who assists him in his daily classroom tasks at school.

She repeated that she agreed that the purpose of Section 7 of the PoC Act was to preserve the property rather than to dispossess herself and her family. At para. 13 she says that insurance is just one factor in the determination as to whether a receiver should be appointed under Section 7. She says that the court in making the Section 3 order clearly envisaged that she would remain in the property during the seven year period and that the onus to show that a receiver was necessary rested with the Bureau.

She says that no good reason has been set forward to suggest there is any real risk to the property. She says she has kept the property in good repair. The windows that were smashed have been subsequently repaired by herself and the property has remained in good condition ever since. She said there is no apprehended risk that she would dispose of the property either by sale or destruction. In the circumstances, she says the appropriate safeguard in this

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Significant court judgments during 2016

respect was for her to give an undertaking not to deliberately cause the property to be devalued. A breach of such undertaking would amount to a contempt of court and she understood the consequences of same.

Finally she states at para. 16, that the application to appoint a receiver with power of sale is an attempt by the applicant to circumvent the operation of the statutory scheme.

In this regard, she states that she has a right to apply within the seven year period for an order under Section 3(3). She states-

"Put another way, should this safeguard not be available the constitutionality of the legislation as found by the Supreme Court in M. v. Ireland may be called into question"

11. In his supplemental affidavit of 19th February 2015, Mr. O'Reilly states at para. 9:-

"I say that best international practice for the preservation of property where a property has been found to be the proceeds of crime following a full hearing is for the property to be sold and the net proceeds placed in an interest bearing account. The appointment of a receiver where the respondents in the proceedings continue to reside in the property without insurance on the property is regarded as the worst manner of protection. It is the highest risk as it exposes the receiver to proceedings

being taken against him/her, but also on the ground that it offers no protection to the property."

12. Mr. O'Reilly states that the only insurers who have been able to provide insurance for properties over which a receiver has been appointed with a power of sale is AON, which had recently been acquired by RSA. He said that in the interest of pursuing all avenues he submitted a proposal form to AON on which he noted that the first respondent had been refused insurance on the very property by RSA. He said that on 19th February he was advised that insurance on the property was declined.
13. Mr. O'Reilly said that the first respondent had informed the applicant that there were mortgage arrears of €8,622.22 on the property.

The first respondent had given no indication as to how those arrears would be dealt with, whether she proposed to discharge same or whether future payments would be made. Mr. O'Reilly states that by withholding some of the mortgage payments, the first respondent would be reducing the remaining equity in the property and that in default on payment of a mortgage there would be sufficient grounds for a mortgagee to seek sale of the property. The costs of sale would further reduce the equity in the property.

14. In conclusion, Mr. O'Reilly suggests that it may be appropriate to appoint a receiver immediately but with directions that he shall not take possession until the expiration of limited time.

An alternative to appointing a receiver would be for the first respondent to pay the value of the property into court in the absence of insurance. He submits that any other form of arrangement would be unworkable.

15. In her affidavit of 27th February 2015, the first respondent contends that international comparisons of best practice are neither relevant, nor necessarily a guide, in dealing with Irish legislation. She points to the fact that Mr. O'Reilly did not mention what happens in a situation where a property is found to be partially, or indeed, mostly the proceeds of crime.

In relation to Mr. O' Reilly's argument that there would be a risk of proceedings being taken against a receiver, if a respondent were allowed to continue to reside in the property without insurance, the first respondent offers to give an undertaking not to take proceedings against the receiver. She says she will discharge all necessary expenses involved in the day to day running of the property, as she had been doing up to the intervention of the insurance issue and states that she is in a position to discharge the insurance payments as well.

She alleges that no real effort has been made by the receiver to obtain insurance. As regards mortgage arrears, she says that while the bank has sought repayment of arrears, she has been discharging the mortgage payments of approximately €620 per month and states that *"this arrangement seems to satisfy the bank as they have made no efforts to seek to repossess the property"*.

She points out that the application to court was initially based on insurance but that the applicant has now sought to open up a secondary line of attack in relation to the mortgage arrears which is not a matter of genuine concern.

As regards Mr. O' Reilly's suggestion that the first respondent pay the value of the property into court, she says she does not have any funds remotely equivalent to the value of the property.

She says she is not involved in criminal conduct. She is the mother of two children and it is not clear whether, in the current housing crisis, she will be able to secure alternative accommodation either privately or by means of local authority housing.

Finally, she says that she is willing to engage insofar as is possible to obtain insurance but cannot do so because, she alleges, the applicant has made false statements to the insurance companies. In the

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Significant court judgments during 2016

circumstances, she asks the court to refuse to make any order in respect of the Section 7 application.

because it seems to me that quite different considerations would apply if one was looking at so called trophy homes”.

Discussion

The judgment of Birmingham J.

16. At para. 21 of his judgment delivered on the 16th July 2014, having concluded that the entirety of the evidence before the court supported the conclusion that the property in question represented the proceeds of crime, the learned judge went on to consider the issue of a serious risk of injustice. He said:

21. *“It is therefore necessary to consider whether making the order sought would give rise to a serious risk of injustice. In that regard, there are a number of factors that require consideration. First of all, it is necessary to recall that the s. 3 order under the Act of 1996 is a freezing order and that there will be a further opportunity to address the issue at the disposal stage, that is the s. 4 stage under the same Act. However, at this stage, I accept that Ms. R. may have made some degree of contribution through whatever very limited earnings she had as a hairdresser and through her child benefit payments. I am also prepared to accept that Ms. R. as a stay at home mother, or a largely stay-at- home mother, would have contributed to the upkeep of the household indirectly. I also cannot ignore the fact that the property is a modest one in what would once have been described as a local authority area. I make that observation*

22. “Having regard to all these factors, I believe that there is substance in the argument that it would be disproportionate and somewhat oppressive, if in seven years time the property was to be sold at a time when her younger son would still be only twelve years old, and if Ms. R. were to be totally excluded from any entitlement whatever to benefit. In a situation where I have not had reliable evidence as to the extent of the contribution made by Ms. R., I find it extremely difficult to construct a just response. Doing the best I can, I have decided that the interest of justice would be served if she was to benefit to the extent of 12.5 % of the equity that exists in the property in C. Road at the time of disposal. I will discuss with counsel what orders would best give effect to what I have in mind”.

17. It is clear that as of the date of judgment, 16th July 2014, Birmingham J. was not aware that that the property was uninsured or the extent of mortgage arrears. When the learned judge was made aware on 13th October 2014 that cover had been provided by 123.ie, he adjourned the matter to see whether the insurance cover would in effect be continued following the disclosure to 123.ie of the making of the Section 3 order. As stated previously the learned judge was

elevated to the Court of Appeal and did not retain seisin of the case.

18. The present position is that the property is uninsured and there are significant mortgage arrears irrespective of which the first respondent has not provided the court with any indication as to how she proposes to discharge same. In the circumstances, the value of the property is at risk of devaluation on two grounds, accidental or deliberate damage on the one hand and diminution or destruction of the equity by continued non payment of mortgage arrears on the other.

The family home

19. In *F. McK v. TH and JH, Feeney J.* considered the issue of making a Section 4 disposal order in respect of the family home;

"The fact that the notice party and her family need a home cannot of itself operate to defeat the public interest requirement identified in the legislation of depriving a person of property representing the proceeds of crime. There is no basis for treating a person in a position such as the notice party and her family on a more favourable basis than a family who lose their home as a result of a possession order following inability to discharge mortgage repayments or as a result of an inability to pay rent. The notice party and her family have no entitlement to the use of a particular premises. If it were not for the use of the premises obtained from the proceeds of crime[,] the notice party

would have to have provided for herself[,] or have provided for her alternative accommodation. The fact that the notice party and her family will be placed in a position if a disposal order is made following confirmation of a Section 3 order where she would have to seek alternative accommodation is of itself not a basis for discharging Section 3 or 7 orders or refusing the relief sought by the plaintiff herein. A person in possession of premises representing the proceeds of crime has no constitutional grievance if deprived of their use ..."

20. In *Criminal Assets Bureau v. John Kelly and T. T.* [2012] IESC 64 delivered on 29th November 2012, MacMenamin J. referred to the decision of Feeney J. in *CAB v H.*

24. In 2011 this court delivered judgment in an appeal entitled CAB v. H [2011] IESC 10. The judgment was delivered by Denham J. speaking for the court. The court expressly concluded that the High Court judge (Feeney J.) in that case "had not erred" in his reasoning on the issues before him. That judgment was upheld in its entirety. In order to establish the impact of that judgment on this appeal, it is necessary to consider the facts and the principles laid down in CAB v. H.

21. 25. The respondents were a husband and his wife, Ms. H, who was resident in the family home and who had four children aged between five and twelve, together with a step

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daughter. Together with her husband, they were living in a house owned by Mrs. H's father-in-law who was the registered owner. In separate proceedings, the High Court has made a declaration that Mrs. H had an interest in the family home valued in the sum of €6,348.69 or £5,000.

In Para 29 He (Feeney J.) added

"The two essential points raised by the notice party are that she needs a home and she will be "homeless" if the receiver is given an order for possession and that the premises in question are particularly suitable for social, domestic and educational requirements of herself and her family."

At para. 30 MacMenamin J noted the finding of the judgment by Feeney J set out in para 18 above.

At para 31 he said:

31. *The judge pointed out that any delays had favoured the notice party. He concluded that the court should make an order for possession, despite the fact that there might be disruption to the notice party and her children in the event that they had to vacate the premises. Such inconvenience was not to be seen as an "injustice" for the purposes of s. 3(3) or s. 4 of the Proceeds of Crime Act. He did, however, carefully structure the order to minimise the disruption involved.*

At paras 32-34, MacMenamin J set out the principles applicable in an application for a disposal order pursuant to Section 4 of the PoC Act:

32. *In each case, the courts must be sensitive to the actual property and other rights of citizens which arise. But, as has been pointed out, repeatedly, a person directly or indirectly in possession of the proceeds of crime can have no constitutional grievance if deprived of their use. The Proceeds of Crime Acts 1996-2005 are identified as being legislation "to enable the High Court, as respects the proceeds of crime, to make orders for the preservation and, where appropriate, the disposal of property concerned and to provide for related matters". There is a strong public policy dimension to this legislation. That policy is to ensure that persons do not benefit from assets which were obtained with the proceeds of crime irrespective of whether the person benefiting actually knew how such property was obtained with the proceeds of crime but subject to whether or not such person may have been a bona fide purchaser for value, where different considerations may arise.*

33. *The Act provides for fair procedures to be observed. It cannot be seen as arbitrary. It is designed to achieve a desirable social objective and be proportionate. It cannot be said to impinge on a right to private property, as the property was acquired unlawfully. One of the facts to be borne in mind is the*

extent to which, as a result of the commission of crime, persons may directly or indirectly benefit in a way not open to other members of the community, such as living without the requirements of payments of tax, mortgage repayments or rent. These activities are profoundly anti social and contrary to the common good. The interference with the rights of private property embodied in Article 40.3.2 and Article 43 of the Constitution and Article 8 of the European Convention on Human Rights are, therefore, proportionate and in accordance with law.

At para. 34 MacMenamin J summarises the factors to be weighed in the balance in assessing the risk of injustice in this case as follows:-

(a) *When it is established that property is the proceeds of crime, the interference with property rights in restraining disposal and ordering disposal of such property is to be seen as being in the pursuit of a legitimate aim for the prevention of crime and for the protection of the rights and freedom of others. In such circumstances, these orders may be necessary in a democratic society where the objective pursued in the legislation is to ensure that individuals do not benefit from assets obtained from the proceeds of crime and are divested of such assets. Such a consideration must be seen as a weighty factor, although not determinative.*

(b) *A court must, however, take into*

account the circumstances of each case and will therefore ensure that (especially in the case of a family home) proportionate means are adopted in the making of an order, and so as to take into account how, in what manner, and within what period orders will take effect.

(c) *The constitutional protection of women in the home (Article 41.2 of the Constitution), although a consideration, will not be a bar to the making of an order (CAB v. H.).*

(d) *The rights to private property identified in Article 40.3.2 and Article 43 of the Constitution, and the respect for privacy, family life, and the home in Article 8 ECHR do not prevent the making of an order, even in the case of a family home. In Gilligan v Criminal Assets Bureau [1998] 3 I.R. 185, the question as to the plaintiffs right to private property under Article 40.3.2 and Article 43 of the Constitution also arose. McGuinness J. at p.237 discussed the safeguards provided for in the Act and the purpose of the disposal powers as follows:*

"...the State has a legitimate interest in the forfeiture of the proceeds of crime....

While the proceeds provisions of the Act may, indeed, affect the property rights of the respondent it does not appear to this court that they constitute an "unjust attack" under Article 40.3.2 given

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the fact that the State must in the first place show to the satisfaction of the court that the property in question is the proceeds of crime and thus, prima facie, the respondent has no good title to it, and also given the balancing provisions built into 3 and 4 as set out above.

This court would also accept that the exigencies of the common good would certainly include measures designed to prevent the accumulation and use of assets which directly or indirectly derive from criminal activities. The right to private ownership cannot hold a place so high in the hierarchy of rights that it protects the position of assets illegally acquired and held."

- (e) *A court will have regard to the extent of a person's knowledge or notice (either express or implied) that property was acquired by or through the proceeds of crime. Actual knowledge of criminal wrongdoing will be a substantial factor in the balance. Evidence of bona fides must also be assessed. A court may decline to make an order, if it is shown, in accordance with the evidential onus necessary, that a person in possession or control of the property is in a position to establish that he or she had purchased the property in good faith, or for valuable consideration. (See Murphy v*

G.M., per Keane C.J.)

- (f) *A court may have due regard to whether there has been a legal determination as to the legal or beneficial rights in a home. A court may also give due weight to evidence as to contributions to the value, or the enhancement in value of property. The circumstances of such a determination are relevant however.*
- (g) *The legal and evidential onus of proof falls upon a party seeking to contend that the making of an order would render an injustice. The onus falls on such party to prove their case as a matter of probability on the evidence adduced.*
- (h) *The fact that a party was not personally involved in the commission of crime will not, in itself, be a bar to the making of an order adverse to that party.*
- (i) *The fact that an applicant was allegedly unaware of the source of funds for the acquisition of property does not act as a bar to the making of an order under the Act.*

MacMenamin J further noted that "The weight to be given to each factor will be dependent on the circumstances of each case".

These principles can be applied, with modification, in an application to appoint a receiver with power of sale. Given that the application to appoint a receiver may be made at any time, and in this instance it is being made within the 7 year period, there is an onus on the applicant to satisfy the court that the appointment of a receiver is warranted in the circumstances.

Insurance

22. In *F. McK v. T.H. and J.H.* [2006] IESC 63 Hardiman J. stated

"A vital aspect of this preservation, in the case of a building, is to ensure that the premises are at all times properly and validly insured. In my view the evidence before the trial judge to the effect that the policy of insurance was likely to be or to become void, which was not contradicted, was quite sufficient in itself to justify the appointment of a receiver with the power of sale."

23. Mortgage Payments

Bermingham J was not persuaded as of July 2014 that, given the evidence as to her acquisition of the property by way of gift in 2004, the first respondent had made a significant contribution to the value of the property which was €130,000 as at 2004, or to the subsequent extension costing €38,000, €28,000 of which, was paid in cash. The learned judge concluded that the vast bulk of the finance for the property together with Gift Tax of €22,000 was provided by the second respondent from the proceeds of crime. There is nothing

in the evidence before me to conclude otherwise in relation to the mortgage payments which the first respondent claims to be making.

Conclusion

Mr Justice Bermingham was clearly concerned on 13th October 2014 that the cover obtained from Chill Insurance would prove permanent. That has not turned out to be the case. The property remains uninsured and on the evidence tendered by the applicant is uninsurable. Furthermore, there are significant mortgage arrears. The applicant's interest in the property is at risk of erosion on two fronts, from accidental or wilful destruction on the one hand and loss of equity by non-payment of arrears or foreclosure on the other.

The first respondent has not stated how she proposes to discharge the arrears and the current outgoings on the property including insurance. The preservation of the Applicant's interest in the property, in this regard, is dependant on the indulgence of the bank or, alternatively, on the first respondent finding funds from another source, most likely from the second respondent, leaving open the possibility that such funds might also be derived from the proceeds of crime. Such a situation, were it to arise, would defeat the purpose of the legislation.

It seems to the court, having regard to the policy of the legislation regarding property held to represent the proceeds of crime and the strong statement of Hardiman J in *FMCK v H* on the consequence for uninsured property,

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that the order under Section 7 should be made.

The appointment of a receiver under Section 7 may be made at any time. The first respondent will be allowed a reasonable time to acquire alternative accommodation either privately or through applying to get on the public housing list. In accordance with the course approved by MacMenamin J at para 31 of *Criminal Assets Bureau v. John Kelly and T. T.* [2012] IESC 64 the court will allow the period of fifteen months to minimise the disruption involved.

Key Cases Cited

- *Criminal Assets Bureau v. John Kelly and T. T.* [2012] IESC 64
- *CAB v. H* [2011] IESC 10
- *McK v. TH and J.H.* [2006] IESC 63

CAB v. Niall O' Donoghue (otherwise Simon Gold, Anglo Irish Global Ltd, & Kurt Lauridsen)

9th June 2016, High Court: Fullam, J,
High Court Record No.
2014/001/CAB, APPROVED

*Proceeds of crime – Proceeds of Crime
Act, 1996 & 2005 – Section 8 Belief
evidence*

JUDGMENT OF MR. JUSTICE FULLAM
DELIVERED ON THE 9TH DAY OF JUNE,
2016.

Introduction

1. This is an application by the Bureau for an order pursuant to Section 3 of the PoC Act for freezing orders in respect of monies held in two bank accounts:
 - (i) The sum of €927,000.60 held in account number 13818810 at Ulster Bank, College Green, Dublin 2 in the name of Anglo Irish Global Limited (AIG);
 - (ii) The sum of €27,365 held in account number 50729014 at Allied Irish Bank, Navan, Co. Meath in the name of Niall O'Donoghue.

On the 17th February, 2014, the applicant obtained an interim freezing order under Section 2 of the PoC Act. Initially, on 22nd October, the Bureau obtained a

freezing order in the District Court pursuant to Section 17(2) of the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010. On 30th October a solicitor on behalf of the third respondent informed the applicant that he had instructions to apply to the District Court for a revocation order pursuant to Section 19 and for that purpose requested a copy of the order made. No such application was subsequently made. The Section 17(2) orders were renewed on a monthly basis until the making of the Section 2 order.

2. Section 6 of the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 states that "criminal conduct" means
 - (a) conduct that constitutes an offence, or
 - (b) conduct occurring in a place outside the State that constitutes an offence under the law of the place and would constitute an offence if it were to occur in the State; "*proceeds of criminal conduct*" means any property that is derived from or obtained through criminal conduct, whether directly or indirectly, or in whole or in part..."
3. Section 7(1) of the Criminal Justice (Money Laundering & Terrorist Financing) Act of 2010 states:

"A person commits an offence if—

 - (a) the person engages in any of the following acts in relation to

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- property that is the proceeds of criminal conduct:*
- (i) *concealing or disguising the true nature, source, location, disposition, movement or ownership of the property, or any rights relating to the property;*
 - (ii) *converting, transferring, handling, acquiring, possessing or using the property;*
 - (iii) *removing the property from, or bringing the property into the State, and*
- (b) *the person knows or believes (or is reckless as to whether or not) the property is the proceeds of criminal conduct."*
4. The correct procedure to be followed in an application for an order under Section 3 of the PoC Act has been set out by the Supreme Court (Mc Cracken J) in *FMcK v GWD* [2004] 2IR 470 at pp 491-2.

Position under Section 8 of the PoC Act: Belief evidence

5. At para. 4 of his grounding affidavit sworn on the 14th February, 2014, the Chief Bureau Officer, Eugene Corcoran, states that it is his belief that the said property is in the possession or control of the respondents and that the property constitutes, directly or indirectly, the proceeds of crime.
6. He states that the grounds for his

belief are based on information, documents and other material obtained by Bureau officers and members of An Garda Síochána as are listed therein. In essence it is the Bureau's case that the nature of the crime, both within and outside of this jurisdiction, involves fraud and money laundering.

7. The affidavit evidence can be summarised as follows.

On the 15th and 19th October 2012, two amounts of €800,000 each were lodged to the Ulster Bank account by a German lawyer Dr. Bobo Baars. The monies appeared to be the property of the fourth respondent, Mr. Kurt Lauridsen, a native of Denmark. Mr Lauridsen voluntarily agreed to be interviewed under caution at Irishtown Garda Station on 26th August 2013, at which he furnished documentation to officers of the applicant. He said he had entrusted the €1.6m to Dr. Baars to place in an investment which offered a return of 25% on capital per month for 12 months, that is €400,000 per month totalling €4.8m.

An examination of the aforesaid bank accounts showed withdrawals from the Ulster Bank account and transfers from that account to entities associated with the first respondent and to the AIB Navan account in the first respondent's name. The applicant's analysis indicates that the Ulster Bank account was used as a conduit for the first respondent's personal bank

account in AIB Navan. The balances at the date of the Section 2 order were €927,000.60 in the Ulster Bank account and €27,365.00 in the AIB account.

8. The fourth respondent said he believed that the Ulster Bank account was a custodial account under his control through his agent Dr. Baars and that Dr. Baars and the first respondent were joint signatories in respect of withdrawals from that account. However, he was informed at the interview that the first respondent was the sole signatory on the Ulster Bank account.

He said he was shocked at this information. He was asked what he knew about AIG. He said he knew nothing other than it was an Irish bank. On being told that AIG was not a bank, he said he was shocked to hear that. He said that up to then he had presumed that Simon Gold was Director of Investments with the bank, Anglo Irish Global Limited. He had never met Simon Gold. He said his contract was with Dr Baars and that he only became aware when problems regarding the monthly repayments emerged, that PML Ltd. was the company dealing with the trading platform regarding his investment. He said he believed he was the victim of a crime.

9. The applicant carried out a number of searches of premises associated with the first respondent and AIG. As a result of these searches, the

applicant obtained financial information in hard copy form as well as information downloaded from computers seized in the course of the searches. In addition, the applicant obtained bank statements for accounts held in the Ulster Bank, Belfast, as a result of Mutual Assistance requests to the U.K. authorities pursuant to Section 105(g) of the Criminal Justice (Mutual Assistance) Act 2008.

10. At para. 33 of her affidavit, the lead investigator, Detective Garda Ennis, avers that from confidential information gathered by the investigating members during the investigation to date, Niall O'Donoghue has a close association with an international criminal gang who are suspected of being involved in serious fraud including so-called "bank guarantee fraud", advance fee fraud and blocked funds fraud. She says and believes that Niall O'Donoghue is generating substantial profits from this criminal conduct and this organised criminal gang are laundering the funds of their criminal conduct through bank accounts that have been identified in this jurisdiction.

11. At para. 41, Detective Garda Ennis refers to minutes of a meeting on 23rd October 2012, in Belfast with executives of Ulster Bank at which Simon Gold was asked about the two lodgements of €800,000. He stated that the funds were from Dr Bobo Baars and Mr Kurt Lauridsen, that Dr Baars was a German lawyer and Mr Lauridsen was a Danish

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entrepreneur. He said that the funds were for a low cost renewable energy project and that the funds came from Volksbank in Lichtenstein and that Mr Lauridsen was the financial backer.

12. The applicant carried out the following searches:

22nd October 2012

A search of business premises took place at Westside Centre, Leixlip, pursuant to Section 10 of the Criminal Justice (Miscellaneous Provisions) Act 1997 as substituted by Section 6(1) (a) of the Criminal Justice Act 2006. These premises were empty and nothing was seized. On the same date, a search was carried out on a rented dwelling at Esker View, Ballinacorney, Delvin, Co. Westmeath the home of Simon Gold. The items seized included a Lenovo computer.

26th October 2012

13. A search of a residential property at Druids Rest, Mount Druid, Ballinacorney, Co. Roscommon was carried out. This property was formerly owned by Simon Gold. The items seized included a Dell computer.

21st May 2013

14. Two searches were carried out on this date:

- (1) A search of residential property,

Windy Ridge, Cartrontroy, Athlone, Co. Westmeath. This is the home of Emmet O'Donoghue, uncle of Niall O'Donoghue/Simon Gold.

Documents seized in this search are said to link Niall O'Donoghue/Simon Gold to the Elite Bank Group and Irish Nationwide Bank.

- (2) A search of 21 Carra Vale, Mullingar, Co. Westmeath, the home of Elaine Erskine the former partner of Niall O' Donoghue. Twenty three items were seized in this search the majority of which relate to Irish Nationwide Bank.

15. At paras. 84 to 95 of her affidavit, Detective Garda Ennis relates that interrogation of computers seized in the searches identified communications with a number of apparent of injured parties, who were subsequently interviewed by officers of the applicant. Two individuals claimed to be victims of advanced fee frauds. A Mr Gleeson lost €20,000 of a deposit of €30,000 for a €300,000 bridging loan. He has provided a statement setting out the details. Another who lost £20,000 sterling declined to make a statement.

16. The grounds for the belief of the Chief Bureau Officer.

The grounds for the applicant's belief that the monies, in whole or in part, constitute the proceeds of crime are set out at para. 6 of the affidavit of the Chief Bureau Officer and can be summarised as follows:

- (a) the first respondent (Niall O'

- Donoghue) uses multiple identities (names, address, email address and website) to perpetuate various frauds.
- (b) the first respondent is connected with multiple entities which are suspected to have the sole function of carrying out fraudulent activities, which are subject to international warnings by regulatory agencies across the world.
 - (c) the first respondent is implicated, in Ireland and abroad, in the production of fraudulent documentation, such as driving licences, passports and banking documentation, for clients in return for a fee.
 - (d) the third respondent (Anglo Irish Global Limited) has not engaged in lawful or normal commercial transactions.
 - (e) the manner of the transfers of monies into the two accounts the subject of this Section 3 application is consistent with money laundering.
 - (f) the AIB (Navan) account was opened by the first respondent using fraudulent documentation believed to be a false UK driving licence.
 - (g) the first respondent has a high number of previous convictions in the UK and in Ireland which have involved theft and deception.
 - (h) the level of funds available to the first respondent is not consistent with Revenue and Social Welfare records relating to him.
 - (i) the alleged investment of €1.6 million by the fourth respondent on terms which included a return of 25% per month on capital for twelve months is not consistent with normal investment practice.
- Finding**
- 17. Issues under the proceeds of crime legislation are determined on the civil standard of proof. Section 3 of the PoC Act does not require an applicant to establish that the assets sought to be frozen are the proceeds of a specific crime.
 - 18. I am satisfied that the conduct of the respondents in relation to the offence of money laundering comes within the scope Sections 6 and 7 of the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010.
 - 19. I am satisfied, that on the evidence, the Chief Bureau Officer had reasonable grounds for his belief that the sums referred to in the notice of motion are the proceeds of crime.
 - 20. I find that the belief of the Chief Bureau Officer is evidence.
 - 21. Before considering the position under Section 3, it is appropriate to list the significant developments in the case subsequent to the Section 2

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Order of Birmingham J. on the 17th February 2014.

On 20th February 2014, Garda Bureau of Fraud Investigation officers searched the home of Simon Gold at Augharan, Aughavas, Co. Leitrim and interviewed him at Carrick-on-Shannon Garda Station.

On 14th April, 2014, Messrs. Holmes O' Malley Sexton solicitors entered an appearance on behalf of Mr. Lauridsen.

On 9th June 2014, the first respondent issued a notice of motion grounded on his affidavit of the 30th May, 2014 seeking legal aid for himself and AIG. On 19th June, 2014 Ms. Jean Ennis filed a replying affidavit disputing the first respondent's entitlement to legal aid.

On 27th June 2014 the first respondent filed a supplemental affidavit on the legal aid issue.

On 8th July 2014 Mr. Lauridsen filed an affidavit dealing with the substantive case. The affidavit amplified the account given to officers of the applicant at interview and included a report of a forensic accountant detailing the sale of his business for €14m and the application of the proceeds.

On 4th September 2014, Mr. Palle Kroeis, an associate of Mr. Lauridsen filed an affidavit.

On 5th September 2014, Birmingham J. made an order in relation to legal aid. The application for legal aid had initially been refused by Birmingham J. He directed that the first, second, and third respondents file an affidavit but when this was not forthcoming there was a considerable delay. The first and third respondent solicitors provided a letter purportedly from the H.S.E. suggesting he had been hospitalised and could not appear in court. When it transpired that this document was fraudulent, Birmingham J. refused to extend legal aid owing to the failure to satisfy the obligation of candour.

On 24th November 2014 Claus Bredvig, an associate of Mr. Lauridsen, filed an affidavit.

On 5th December 2014, the first respondent filed an affidavit dealing with the substantive issues in the case.

On 30th January 2015, solicitors for the first respondent issued a notice of motion seeking discovery.

On 9th November 2015, the court made its order relating to discovery. The Section 3 hearing was fixed for the 9th February 2016.

On 11th January 2016, the applicant served a notice to cross examine the first respondent.

On 3rd February 2016, Messrs. Flynn and McMorro solicitors issued a motion to

come off record grounded on the affidavit of Michael Keane.

On 5th February 2016, the court acceded to the application to come off record.

The Hearing on 9th February 2016

22. On 9th February 2016, the applicant was represented by solicitor and counsel as was Mr. Lauridsen. There was no appearance on behalf of Niall O' Donoghue / Simon Gold or AIG. Counsel for the applicant informed the court that the applicant had received an email from Mr. Gold seeking an adjournment for a number of months because of health problems and also, due to late notice from his solicitors, he was unable to secure alternative representation.

Having heard counsel for the applicant, the court was satisfied, on the basis of emails from his solicitors exhibited in Mr. Keane's affidavit, that Mr. Gold had adequate warning of the course ultimately taken by his solicitors.

Furthermore, the court was satisfied having regard to Mr Gold's lack of candour on a previous application for an adjournment due to ill health in respect of which Mr. Gold admitted altering the dates on a H.S.E. certificate, his credibility in the instant application for an adjournment was an issue. The court refused Mr. Gold's request for an adjournment. The Section 3 hearing proceeded.

23. At the outset, counsel for the applicant informed the court that by agreement, Mr. Lauridsen would be treated for the purpose of the Section 3 application as a notice party. The import of this agreement, was that if the court were to hold that the monies in the bank accounts were attributable to the proceeds of crime, Mr. Lauridsen would subsequently bring an application under Section 3(3) for an order declaring that he was the person entitled to the monies. Counsel for the applicant stated that the Bureau's position was that it would be contesting any such application brought by Mr. Lauridsen.

The position under Section 3

24. Additional evidence on behalf of the Bureau comprised the affidavits of Detective Garda Ennis and Detective Garda Thomas O'Connor filed on the 19th June 2014, in reply to the legal aid application. In her affidavit, Detective Garda Ennis outlined the search of the property in Aughavas, Co Leitrim and the interview of the first respondent on the 20th February, 2014.

The property was rented by the first respondent in the name of Simon Gould [Gold]. A utility bill with that name was also discovered in the search. The first respondent admitted at interview that he used that alias to stop the applicant tracking him down. Other items discovered included:

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- a U.K. national insurance number in the name of Simon Gold with a date of birth of the 22nd November 1964,
- two U.K. P.P.S. numbers for Niall O' Donoghue and Simon Gold each having a date of birth of the 6th June 1968;
- minutes of a directors' meeting of AIG listing two directors Simon Gold and Claudio Tamburrini;
- an Irish driving licence in the name of Savi Khan with a date of birth of the 22nd November 1972, with an address at Westside Centre Main Street, Lucan, Co. Dublin and a photograph of the first respondent; a U.K. driving licence for Mr Khan has similar details except the address given is 5 Hartlepool Court, Docklands, London, E162RL;
- and a U.K. driving licence for Simon Gold with a date of birth of the 26th June 1969, and an address at 145-157 St John Street, London, ECV1V4PY.

respondents contest the application on the following basis:

- (a) the property originated through the ordinary course of business dealings;
- (b) all such business dealings and transactions were carried out within the laws of the state;
- (c) the first respondent has not been involved in complex frauds;
- (d) the second respondent (AIG) is trading and its accounts are exhibited;
- (e) the images on the computer seized by the applicant are not actually passports and further, the first respondent has not been convicted nor is he under any criminal investigation for the possession of false instruments;
- (f) all associated companies have or had proper corporate structures in various jurisdictions and were not in breach of any laws in the said jurisdiction;
- (g) the first respondent never knowingly became involved with any international criminal gang and all his efforts to be compliant with paperwork and due diligence documentation proves this to be the case;
- (h) the business of the respondents is to negotiate the lease or purchase of bank investments;
- (i) the funds in the Ulster Bank account are legitimate funds;
- (j) the drafts relied on by the Bureau were for novelty purposes; and

Detective Garda O'Connor's affidavit which exhibits a statement from a H.S.E. official, confirms that the respondent had submitted a falsified H.S.E. document to the court for the purpose of obtaining the adjournment.

Evidence on behalf of the first and second respondents

25. The evidence submitted by the respondents comprises, in essence, the affidavit of Simon Gold of the 5th December 2014. In summary, the

- (k) the Irish Nationwide Bank was a virtual internet base.

banking activities and encouraging people to invest monies.

26. There were no exhibits of any kind to support Mr. Gold's contentions.

Submissions on behalf of the applicant

Counsel submitted that notwithstanding the significant lodgement of €927,000.60 into the Ulster Bank account in the name of Anglo Irish Global Ltd., that company had a dormant status, had not filed any returns and to the knowledge of the Bureau it had not engaged in any legitimate trading.

27. Counsel submitted that €27,000 was withdrawn from that bank account and lodged into an Allied Irish Bank account in the name of Niall O'Donoghue. Mr O'Donoghue argued that this sum was a commission he received in respect of an investment. Counsel stated that originally €1.6 million was lodged in the Ulster Bank account, funds were dissipated leaving the balance of €927, 000.

28. Counsel said that Niall O' Donoghue and Simon Gold were the same person and it had been admitted by the first respondent that he had used various names to avoid being tracked down by An Garda Síochána. Counsel stated it was the Bureau's belief that he used multiple identities to perpetuate various acts of fraud in particular, creating the impression of being engaged in legitimate

29. In the affidavit of Detective Garda Jean Ennis it was stated that different purported banking entities: Elite Bank Group, Irish Nationwide Group and Anglo Irish Global could all be connected to the first respondent. Counsel stated that none of these purported financial institutions held banking licences though the names bore a striking similarity with established and well known banks.

30. Counsel said that the first respondent had seventeen previous convictions for fraud offences in both the United Kingdom and Ireland. Counsel also stated that he had not registered with the Revenue in Ireland and, therefore, he was not paying tax.

31. Counsel submitted that the first respondent had failed to exhibit any credible supporting evidence. The first named respondent claimed to be engaged in a legitimate business in which he acted as an introducer for persons looking to raise capital but had difficulty raising it through traditional banking sources. It was the Bureau's belief that this was a fraud as the money which people provided in the hope of obtaining credit disappeared.

32. The first named respondent at para. 4 of his affidavit claimed the affidavit of Detective Garda Jean Ennis does

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not establish that the properties concerned were acquired from the proceeds of crime. Counsel submitted that this defence should be rejected in circumstances where Anglo Irish Global Ltd was dormant and there was no revenue record for Simon Gold in this jurisdiction. It was, counsel stated, the Bureau's case that these were in fact the proceeds of fraud with money laundered by Simon Gold within Section 7 of the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010.

33. The first named respondent claimed on affidavit that Anglo Irish Global had been and still was trading. However, counsel said that he had failed to exhibit any evidence supporting this averment.

34. Counsel stated that no evidence had been provided to the court in relation to the day-to-day affairs of the companies; there were no minutes of directors' meetings, accounting information, or an affidavit from an accountant. It was also claimed by the first named respondent that he was compliant with all paper work and due diligence documentation though nothing was exhibited to support this contention nor was any documentation exhibited supporting the argument that all due diligence was carried out in relation to the funds lodged in the Ulster Bank account. The Bureau was of the view that he was part of an international network of criminal gangs.

35. Counsel said that it was the Bureau's position that there was no risk of injustice to the respondents if the court was to make an order pursuant to Section 3.

36. There is no requirement to identify the proceeds as being the result of a specific crime. Finnegan P stated in *McK. v F and F* (Unreported, High Court, 24th February, 2003):

"The Plaintiff in this action does not make the case that the property the subject matter thereof is the proceeds of a specific crime or crimes.

These proceedings are civil proceedings and the onus rests upon the Plaintiff. In order to discharge that onus the Plaintiff may rely upon opinion evidence pursuant to the provisions of Section 8 of the Act. As noted by the Supreme Court the Defendant should be in a position to give evidence to the court as to the provenance of any property sought to be attached.

However the Act applies not alone to the person alleged to have been involved in the crime but to a person in possession or control of the property. This may make more difficult the task of the defendant. However it is provided in Section 3 of the Act that the court shall not make an order under that section if it is satisfied that there would be a serious risk of injustice and this provision represents an appropriate and sufficient protection for such a defendant.

Having regard to this circumstance and to the decision of the Supreme Court in Michael Murphy v G.M. PB., P.C. Limited, G.H. I am satisfied that it is unnecessary for the Plaintiff to rely upon specific crimes or to relate items of property sought to be attached by an order under Section 3 of the Proceeds of Crime Act 1996 to the commission of specific crimes and that the Plaintiff can make a sufficient case by relying on opinion evidence that the property in question constitutes directly or indirectly the proceeds of crime or that the property was acquired in whole or in part with or in connection with property that directly or indirectly constitutes the proceeds of crime pursuant to Section 8(1) of the Proceeds of Crime Act 1996. The Act in Sections 2, 3 and 8 refers to "proceeds of crime": the word "crime" is not preceded by a definite or indefinite article and this clearly indicates that it is the legislative intention that the Act should have application in circumstances where the Plaintiff is unable to show a relationship between the property alleged to be the proceeds of crime and a particular crime or crimes."

Conclusion

37. Notwithstanding that part of the applicant's case is based on hearsay evidence,(as in para 10 above), the court is satisfied that the entirety of the evidence adduced on behalf of the applicant establishes a prima facie case that the monies in the scheduled bank accounts represent the proceeds of crime. This finding shifts the onus to the respondents to prove otherwise.

38. The respondents' dealings are best

known to themselves; they are in the best position to establish the provenance of the monies in the bank accounts. One would have expected, at the very least, that the first respondent, in his personal capacity and in his capacity of director of AIG, should be able to furnish independent evidence confirming that a legitimate business was being conducted in compliance with the relevant requirements of corporate governance. That evidence would include statutory returns, minutes of meetings, audited annual accounts and tax returns. In the circumstances, it is extraordinary that no documents were exhibited in the first respondent's affidavit of 5th December 2014. It renders the first respondent's assertions and denials all the more incredible. In the circumstances the court is satisfied that the respondents have not discharged the onus of disproving the applicant's case.

Balance of Justice

39. The property sought to be made subject to a Section 3 order in this case comprises monies held in bank accounts. The respondents did not challenge the freezing order pursuant to Section 17(2) of the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 at any stage.

40. The first respondent is not challenging the order relating to the AIB, Navan account.

Part Seven

Significant court judgments during 2016

41. The court concludes that there are no factors which would require the court to refrain from making the orders sought based on a serious risk of injustice.

Decision

42. The Court will make the orders sought pursuant to Sections 3 and 7 of the PoC Act and Section 10(1) and 10(7) of the Act.

Key Cases Cited

- McK. v F and F (Unreported, High Court, 24th February, 2003)

Part Eight

International Developments

The International Perspective

As a front line agency in the fight against criminality, the Bureau's capacity to carry out this function, together with its success to date is, to a large degree, based on its multi-agency and multi-disciplinary approach, supported by a unique set of legal principles. The Bureau continues to play an important role in the context of law enforcement at an international level.

Asset Recovery Office (ARO)

As stated in previous reports, the Bureau is the designated Asset Recovery Office (ARO) in Ireland. Following a European Council Decision in 2007, the Asset Recovery Offices were established throughout the European Union to allow for the exchange of intelligence between law enforcement agencies involved in the investigation, identification and confiscation of assets deemed to be the proceeds of criminal conduct.

As part of its commitment as an Asset Recovery Office, the Bureau has attended three meetings held in Europe to discuss the work and cooperation of the Asset Recovery Offices. These meetings were held in Brussels.

During 2016, the Bureau received twenty four requests for assistance. The Bureau was able to provide information in respect of these requests. The requests were received from twelve different countries within the European Union. The Bureau itself sent four requests to three different countries from which it has received replies.

International Operations

From an operational perspective, the Bureau continues to be involved in a number of international operations. The Bureau's engagement in such operations can vary depending on the circumstances of the case. It may include providing ongoing intelligence in order to assist an investigation in another jurisdiction. More frequently, it will entail taking an active role in tracking and tracing individual criminal targets and their assets in conjunction with similar agencies in other jurisdictions.

Europol

The Bureau continues in its role as the lead Irish law enforcement agency in a number of ongoing international operations which are being managed by Europol. These operations are targeting the activities of organised crime gangs who recognise no borders and who attempt to exploit the opportunities presented by freedom of movement across international frontiers in their criminal activity or to facilitate such activity.

Interpol

Interpol is an agency comprising of the membership of police organisations in one hundred and ninety countries worldwide. The agency's primary function is to facilitate domestic investigations which transcend national and international borders. The Bureau has utilised this agency in a number of investigations conducted in 2016.

Part Eight International Developments

CARIN

In 2002, the Bureau and Europol co-hosted a conference in Dublin at the Camden Court Hotel. The participants were drawn from law enforcement and judicial practitioners.

Logo of CARIN



The objective of the conference was to present recommendations dealing with the subject of identifying, tracing and seizing the profits of crime. One of the recommendations arising in the workshops was to look at the establishment of an informal network of contacts and a co-operative group in the area of criminal asset identification and recovery. The Camden Assets Recovery Inter-agency Network (CARIN) was established as a result.

The aim of the CARIN is to enhance the effectiveness of efforts in depriving criminals of their illicit profits.

The official launch of the CARIN Network of Asset Recovery agencies took place during the CARIN Establishment Congress in The Hague, in September 2004.

The CARIN permanent secretariat is based in Europol headquarters at The

Hague. The organisation is governed by a Steering Committee of nine members and a rotating Presidency.

During 2016, the Bureau remained as a member of the Steering Group and attended the Annual General Meeting which was held in Rotterdam on the 25th-26th May 2016.

ALEFA (Association of Law Enforcement Forensic Accountants)

The ALEFA Network is a European funded project which has been established to develop the quality and reach of forensic accountancy throughout law enforcement agencies so as to better assist the courts, victims, witnesses, suspects, defendants and their legal representatives in relation to the investigation of alleged fraud, fiscal, financial and serious organised crime.

During 2016, the Bureau attended a training and development event on money laundering at Europol on 15th-17th November 2016.

Logo of ALEFA



The Freezing, Confiscation and Recovery of Assets Conference

The Bureau spoke at the ERA (Academy of European Law) on the conference entitled “The Freezing, Confiscation and Recovery of Assets” in Trier on the 19th-20th May 2016.

Logo of ERA



This conference analysed the rules for the freezing, confiscation and recovery of assets in the EU, focusing on Directive 2014/42/EU and the state of play in relation to its provisions half a year since its transposition. It highlighted recent national experiences, how to enhance cross-border cooperation, as well as the role and responsibilities of the private sector in this area. In light of the developments, planned actions to strengthen the tracking and freezing of terrorist financing were also addressed.

Key Topics:

- Recent EU policy on freezing, confiscation and recovery of criminal assets.
- State of play and use of Directive 2014/427/EU's provisions and tools since transposition.
- Major international, European and national initiatives in the freezing, confiscation and asset recovery in EU Member States.
- Legal challenges and the involvement of the private sector and
- Planned actions to enhance the tracking and freezing of terrorist financing.

ICOFI Training

The Bureau provided an instructor on the ICOFI course entitled “Recovering of Damages of MTIC Fraud”. The International College of Financial Investigations is based in Budapest and is located in the International Training Centre which also hosts the CEPOL National Unit, the International Law Enforcement Academy, and the Central European Police Academy National Unit.

The course had participants from across the EU with the CAB instructor focusing the Bureau's experience in tackling MTIC fraud and also its skills in virtual currencies.

Part Eight International Developments

Logo of ICOFI



Relationship with External Law Enforcement Agencies

The Bureau has a unique relationship with the authorities in the UK, given the fact that it is the only country with which Ireland have a land frontier and the relationship has developed between the two jurisdictions over the years.

Cross Border Organised Crime Conference

The Cross Border Organised Crime Conference provides an opportunity for all law enforcement agencies from both sides of the border to get together and review activities that have taken place in the previous year as well as plan for the forthcoming year. It also provides the opportunity to exchange knowledge and experience and identify best practice in any particular area of collaboration.

Cross Border Fuel Group and Cross Border Excise Group

The Bureau continues to participate in the Cross Border Fuel Group and the Cross Border Excise Group.

Visits to the Bureau

The success of the Bureau continues to attract international attention. During 2016, the Bureau facilitated visits by foreign delegations covering a range of disciplines, both national and international.

The Bureau's continued involvement in investigations having an international dimension presents an opportunity to both contribute to and inform the international law enforcement response to the ongoing threat from transnational organised criminal activity. In addition, this engagement provides an opportunity for the Bureau to share its experience with its international partner agencies.

Agreement signed between HMRC and CAB on 10th August 2016

In recognition of the specific and individual powers of the Bureau, the United Kingdom government has included the Bureau under the provisions of the UK Serious Crime Act 2007 (Section 85). This legislative change strengthens the provision of evidence from HMRC when UK property, assets or nationals are involved in the Bureau's investigations.

In 2016, a joint agreement was signed, in Dublin, between Her Majesty's Revenue and Customs (HMRC) and the Bureau to underpin this important assistance and acknowledgement of the Bureau's international investigative functions.

Part Eight International Developments



Above:
Detective Chief Superintendent Patrick Clavin, Chief Bureau Officer with Ms. Alison Sommerville, Assistant Director (HMRC
- Fiscal Crime Liaison Network)

Part Eight
International Developments

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Part Nine

Protected Disclosures Annual Report

Protected Disclosures Act 2014

Section 22 of the Protected Disclosures Act 2014 requires of every public body to prepare and publish not later than the 30th June in each year a report in relation to the immediately preceding year information relating to protected disclosures.

No protected disclosures were received by the Criminal Assets Bureau in the reporting period up to the 31st December 2016.

Part Nine
Protected Disclosures Annual Report,

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Part Ten

Conclusions

Throughout 2016, the Criminal Assets Bureau has exercised its independent statutory remit to pursue the proceeds of criminal conduct in appropriate cases. In order to do this, the Bureau has, in addition to exercising powers under the criminal code, drawn on the provisions of the Proceeds of Crime Act 1996 as amended, together with Revenue and Social Protection legislation. The Bureau welcomes the additional powers and changes given effect by the commencement of the Proceeds of Crime (Amendment) Act, 2016. The provisions of the Criminal Assets Bureau Act, 1996 as amended, provide for the exercise of the Bureau's functions using a multi-agency and multi-disciplinary approach.

The Bureau continued to target assets deriving from a variety of suspected criminal conduct including drug trafficking, fraud, theft, the laundering and smuggling of fuel and the illegal tobacco trade as well as some new emerging trends such as the use of the motor trade to conceal criminal assets, the use of crypto currency for asset transfer and international fraud. Throughout 2016, the Bureau placed particular emphasis on targeting the organised criminal gangs engaged in serious and organised crime, as well as property crime, such as burglaries. A particular focus of the Bureau's activities centres upon rural crime.

The investigations conducted by the Bureau and the consequential proceedings and actions resulted in sums in excess of €1.4 million being forwarded to the Exchequer under the Proceeds of Crime legislation. In addition, in excess

of €2.1 million was collected in Revenue and in excess of €297,000 in Social Welfare overpayments was recovered.

At an international level, the Bureau has maintained strong links and has continued to liaise with law enforcement and judicial authorities throughout Europe and worldwide in targeting assets deriving from suspected criminal conduct. In a number of cases, joint investigations were undertaken mainly concentrated in the area of drug trafficking.

The Bureau continued to develop its relationship with a number of law enforcement agencies with cross-jurisdictional links, most notably, Interpol, Europol, the National Crime Agency in the UK and the CARIN Network. As the designated Asset Recovery Office (ARO) in Ireland, the Bureau continues to further develop enhanced law enforcement links with other EU Member States.

International liaison is not solely confined to agencies in the area of law enforcement. In this regard, the Bureau has continued its efforts to develop strategies whereby assets are targeted, in liaison with financial institutions offering financial products internationally, so that suspected criminals are deprived of or denied the benefits of assets or gains from criminal conduct.

In pursuing its objectives, the Bureau continues to liaise closely with An Garda Síochána, the Revenue Commissioners,

Part Nine

Conclusions

the Department of Social Protection and the Department of Justice and Equality in developing a coherent strategy to target the assets and profits deriving from criminal conduct. This strategy is considered an effective tool in the overall fight against organised crime.

During 2016, in excess of €3.8 million was forwarded to the Central Fund as a result of the actions of the Criminal Assets Bureau.

Appendix

objectives & functions of the Bureau

Objectives of the Bureau: Section 4 of the Criminal Assets Bureau Act 1996 & 2005

4.—Subject to the provisions of this Act , the objectives of the Bureau shall be—

- (a) the identification of the assets, wherever situated, of persons which derive or are suspected to derive, directly or indirectly, from criminal conduct,
- (b) the taking of appropriate action under the law to deprive or to deny those persons of the assets or the benefit of such assets, in whole or in part, as may be appropriate, and
- (c) the pursuit of any investigation or the doing of any other preparatory work in relation to any proceedings arising from the objectives mentioned in paragraphs (a) and (b).

Functions of the Bureau: Section 5 of the Criminal Assets Bureau Act 1996 & 2005

5.—(1) Without prejudice to the generality of Section 4, the functions of the Bureau, operating through its Bureau Officers, shall be the taking of all necessary actions—

- (a) in accordance with Garda functions, for the purposes of, the confiscation, restraint of use, freezing, preservation or seizure of assets identified as deriving, or suspected to derive, directly or indirectly, from criminal conduct,

(b) under the Revenue Acts or any provision of any other enactment, whether passed before or after the passing of this Act, which relates to revenue, to ensure that the proceeds of criminal conduct or suspected criminal conduct are subjected to tax and that the Revenue Acts, where appropriate, are fully applied in relation to such proceeds or conduct, as the case may be,

(c) under the Social Welfare Acts for the investigation and determination, as appropriate, of any claim for or in respect of benefit (within the meaning of Section 204 of the Social Welfare (Consolidation) Act, 1993) by any person engaged in criminal conduct, and

(d) at the request of the Minister for Social Welfare, to investigate and determine, as appropriate, any claim for or in respect of a benefit, within the meaning of Section 204 of the Social Welfare (Consolidation) Act, 1993, where the Minister for Social Welfare certifies that there are reasonable grounds for believing that, in the case of a particular investigation, Officers of the Minister for Social Welfare may be subject to threats or other forms of intimidation,

and such actions include, where appropriate, subject to any international agreement, co-operation with any police force, or any authority, being an authority with functions related to the recovery of proceeds of crime, a tax authority or social security authority, of a

Appendix
objectives & functions of the Bureau

territory or state other than the State.

(2) In relation to the matters referred to in subsection (1), nothing in this Act shall be construed as affecting or restricting in any way—

(a) the powers or duties of the Garda Síochána, the Revenue Commissioners or the Minister for Social Welfare, or

(b) the functions of the Attorney General, the Director of Public Prosecutions or the Chief State Solicitor.

Notes

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Ireland