



Home Affairs Committee

Oral evidence: Proceeds of crime, HC 771

Tuesday 8 March 2016

Ordered by the House of Commons to be published on 8 March 2016

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Members present: Mr Keith Vaz (Chair); Victoria Atkins; James Berry; Mr David Burrowes; Nusrat Ghani; Mr Ranil Jayawardena; Tim Loughton; Stuart C. McDonald; Naz Shah; Mr Chuka Umunna and Mr David Winnick

Questions 1 - 88

Witnesses: **Jonathan Fisher QC**, Visiting Professor in Practice, London School of Economics, and Barrister, Devereux Chambers, **Dr Colin King**, Senior Law Lecturer, University of Sussex, and **Helena Wood**, Associate Fellow, Royal United Services Institute, gave evidence.

Examination of Witnesses

Q1 Chair: Can I start by bringing the Committee to order and refer all those present to the Register of Members' Interests, where the interests of members of this Committee are noted? You should note the fact that quite a number of members of the Committee are former lawyers, some of whom may in the past have taken up cases of this kind. Are there any other interests that need to be declared?

This is the first panel. Can I welcome our witnesses, Jonathan Fisher, Helena Wood and Dr Colin King, our first panel looking at our inquiry into the proceeds of crime? We hope to be able to assess whether current legislation is working, is the system fit for purpose, and the changes that we need to make in view of evidence that we have acquired over the last few years in terms of different inquiries. We hope to publish our report by summer of this year. You are the first and thank you very much for coming in.

Jonathan Fisher, I want to start with you. You wrote recently in the Lloyd's law review, and I hope this is an accurate quote, "Let's face it, part 2 of the Proceeds of Crime Act is a lamentable failure. In short, the UK's confiscation regime does not work". What brought you to write these very harsh words about legislation that people were quite pleased with when it was put on the statute book?

Jonathan Fisher: I think you only have to look at the figures that have come out over the years, which show the level of confiscation orders that are unfulfilled, to realise in a moment that the system is not working. One then has to drill down into that and look at the

figures and ask, “Are they realistic figures?” and then go on to say, “If they are, why has this happened? Why is there so much uncollected money?”

Chair: Thank you for that answer. I have to tell you that we are expecting a vote very shortly. I think the Division bell is about to go. *[Interruption.]* This is not a reflection on Mr Fisher’s answer; we will have to go and vote. We will return and continue with questioning.

Sitting suspended for a Division in the House.

On resuming—

Q2 Chair: We are quorate so we will resume the session.

James Berry: Before you do, can I just add as a declaration that I am a barrister and I have represented a number of police forces in POCA applications?

Chair: Thank you, Mr Berry.

Victoria Atkins: Can I declare that I know the various witnesses socially?

Chair: That is all noted. I gave a blanket declaration in view of the large number of lawyers on the Committee, but that is very helpful. Thank you very much. Helena Wood, can I go through some of the figures with you and see whether they are figures that you recognise?

Helena Wood: Sure.

Q3 Chair: The amount of money that is outstanding in respect of confiscation fines is about £1.6 billion. Evidence given to us by Keith Bristow, when he was head of the NCA, talked about for every £100 of criminal proceeds—sorry, not from him, from the National Audit Office—only 26 pence was confiscated, which sounds like a very small amount of money. The NCA seized £100 million in its two years of operation in respect of the proceeds of crime, even though during this period the Agency’s budget was around £900 million. Do you recognise those figures? Are those working figures for the Committee because they sound pretty stark?

Helena Wood: They do sound stark. The point I made in the recent publication that I made was that some of those figures are misleading and misconstrue both yourselves and the public as to the true achievements and potential of the system. I think £1.6 billion, if you look to the framing of the law and if you look to an asset base to support that, is unenforceable in practice. The law deliberately draws as broad a definition of criminal benefit as possible, potentially for its deterrent effect against criminals. However, if you look at how that is drawn, my legal colleague to the right will also point to how if you try to enforce any of that, it puts the enforcement authorities in a very difficult position. That money simply does not exist. The second point I would make around—

Q4 Chair: That is very helpful, but what are your figures? What figures can you give this Committee as at the start of this inquiry that are going to be helpful?

Helena Wood: When I looked into this—and I am drawing on publicly available figures: those published by the Government, so you do have to take some of those with a pinch of salt, I would say—the figures I have seen, only around £200 million of that £1.6 billion is actually based on assets that are known to exist and are deemed to be enforceable. A lot of that, if you look at the reasons behind that—

Chair: £200 million?

Helena Wood: £200 million.

Chair: That's all?

Helena Wood: That is all we can really expect to enforce.

Q5 Chair: What happened to the £1.6 billion? Where has that gone?

Helena Wood: That is where you look at the drawing of the law. They look at such a broad base of benefit—so, the way that criminal benefit is defined by the law allows them to draw a lot of assumptions that are then put upon the criminal defendant to rebut. If they are either unable to do so or choose not to do so, then the court is bound to make a figure to the full benefit figure, which does not accurately reflect the assets that are available to enforce.

Q6 Chair: Dr King, first of all, do you agree with Jonathan Fisher's assessment about part 2 of the Act, and do you also agree that we are talking about figures that really are not enforceable? It sounds like a lot of money, but we are not going to get any of it, so we might as well pare down our expectations from £1.6 billion to £200 million?

Dr King: At the outset, I should say that my expertise is on the Irish model and on civil recovery more so. From what I have looked at in the UK model, I completely agree. The operation of the legislation here at times has been fundamentally flawed. How it operated at the start, the emphasis on priorities and targets, which has now changed, which was a positive move, I think that that has influenced the development of the law and possibly continues to do so. It probably is in need of a shift in attitudes. Looking at the figures, they are not correct—well, they are correct, but in reality you do not have £1.6 billion available to collect. A lot of that stems from how the courts have interpreted the legislation, how it has been applied.

Q7 Chair: Mr Fisher, we are going to hear from the lawyers in the next panel, but do you think when the Mr Bigs and the Mrs Bigs—let's be fair between Mr and Mrs Bigs—are caught or even before they are caught, once they are arrested or once they feel that they are under suspicion, they begin the process of hiding away their proceeds very swiftly?

Jonathan Fisher: Yes. It seems to me that one important thing that needs to happen—and effectively there needs to be a culture change—is that we must start making better use of restraint orders. Before Mr and Mrs Bigs even think, even before they have any suggestion of awareness that the police might be looking at them, they are struck by a restraint order.

Unless and until we start freezing assets, we are not going to have assets against which to confiscate.

Q8 Chair: Is that not happening now?

Jonathan Fisher: No, I don't think it is happening now and I think there are a number of reasons why it is not happening. I also think, as part of that answer, you need to look at the figures because my understanding is that about a third of the uncollected orders relate to some 150-odd criminals. Therefore, we are talking about the larger cases. No, those cases are not being subject to freezing orders. They need to be. One of the reasons is that, frankly, the prosecuting authorities have almost a disincentive, in a way, to apply for a restraint order. The moment you go for a restraint order, you are into civil process. You step into civil process and you are at risk of costs being ordered against you—costs are at large. So if a prosecutor decides to go for a restraint order and the court comes to the view, at the end of the day, that the order has to be discharged, the prosecutor is going to end up paying quite a lot of money. With budgets as tight as they are, very often they do not want to take that sort of litigation risk. We need to look at the thing holistically here, but unless and until we sort this, we are not going to see an improvement in the figures.

Q9 Chair: Helena, I think in another one of your articles you talk about using aid money that we currently spend presumably on helping the poor. You suggest that we should use some of that aid money in order to trace criminal assets abroad. What is the thinking behind that? That is quite a radical approach.

Helena Wood: It is not as radical as you would think. There is already precedent for using the aid budget in that way, especially in the Caribbean. When we look to where these criminal proceeds are being hidden away, a lot of that money—even before a criminal investigation is started, during the kind of criminal business model—is being taken away to jurisdictions that have very limited land registry, asset-tracing powers and law enforcement skill sets in this area. People have applied their knowledge of the law in the last 12 years and are applying that to their criminal business model and taking those assets to jurisdictions where, when law enforcement catches up with them, they are unable to make a request overseas because there is no one there to receive it and, if they do receive it, there is very limited ability to trace those assets in that jurisdiction.

If we look to where this has been successfully used by DfID funding, I think we could expand that and it would have a benefit both for the host nations, who repeatedly ask for asset recovery assistance, and for the UK. It would be using the aid budget in a reasonably smart way to benefit both those ailing jurisdictions who do not want the reputation of being a haven of proceeds of crime, which then damages their financial growth, but also aids the UK in their ability to trace criminal proceeds, so a double win.

Q10 Chair: Mr Fisher, have you come across concerns about the super computer, ELMER—which is supposed to be looking at the reports that have been made, the suspicious activity reports—that appeared to have been built to handle 20,000 SARs, but now is supposed to handle 300,000 a year and is simply incapable of dealing with those numbers of complaints? Have you come across this? Do you think that this is an efficient way to try to deal with these reports?

Jonathan Fisher: No. It is about 350,000 a year and—

Chair: Oh, it's gone up?

Jonathan Fisher: I think if you look at the last figures published, yes, it is about 357,000, I think. It is impossible, frankly, for anybody to analyse all of those reports. To some extent there is an information deficit here. Sitting here, we do not know how many of those reports are repeat suspicious activity reports. Some of them may relate to the same individual. We know that 80% of the reports are coming in from banks and it may be that the banks are reporting the same person over and over again. We do not know.

What I would say to you is this: in order to have an effective criminal intelligence regime, we need to be focusing on a smaller number of good quality, criminal intelligence reports coming into the National Crime Agency. Unless and until you have that, you are going to find that the Agency is swamped. That is why the Agency is turning around now and saying, "Hold on a minute. Before you put this in and you ask for consent to proceed, just make sure this is a case that is worthy of our attention." What is really happening here is that they are being swamped by the number of reports coming in.

Q11 Chair: Helena Wood, finally from me, the *Evening Standard* published photographs recently, in association with the National Crime Agency, of 15 convicted—they were all men so I will call them Mr Bigs—who had failed to repay £46 million of illicit gains. Nigel Kirby, the Deputy Director, said this: "We use every legal process available to us to realise assets, but in these cases we don't know whether there is money, or where it might be, so we are seeking the public's help". A kind of Neighbourhood Watch for Mr Bigs; that is what he was suggesting. Do you think that it shows that the authorities have lost control of this area that they are actually asking the public to help them find out where the money of the Mr Bigs has gone?

Helena Wood: I think it is quite a pragmatic way forward and in publicising these orders more fully, you could get a lot more gain. For example, you could use the financial sector much more broadly to try to identify assets, although—

Q12 Chair: In what practical way? Give me one example where we should use it that we are not using it?

Helena Wood: For example, where they are looking to revisit orders under section 22 of POCA, to look at whether there are any newly identified assets against which action could be taken. Now, under the new changes in the law, they can make a court order to apply for those to be sent directly to the Court Service to satisfy the confiscation order. If you publicised in a more centralised form a register of criminal confiscation orders, then it would allow both the public but also, importantly, the financial sector, who want to make some good progress in partnership with the public sector on this issue, to search that information more easily. It is publicly available information through the courts. However, it is not easily searchable because it is published on a court-by-court basis.

I don't think it is a sign of losing control. I think law enforcement has to use every form of intelligence they possibly can, including the public, but I would probably say, going further, they need to do more on public/private partnership with the banks to help the banks identify assets either in the names of the individuals or those closely linked to them.

I think that is where initiatives like the JIMLIT, are taking steps forward there. However, I would say that there is more that law enforcement could do here.

Q13 Mr Jayawardena: If I may pick up on something that the Chairman raised before I ask my substantive question, cases in which proceeds of crime are repatriated to other countries are not currently counted in performance evaluation figures. What is your assessment of the way Britain's asset recovery regime is evaluated in that context? Is it fair to say that these missing sums, coupled with a rising rate of interest accrued on the older confiscation orders, are skewing performance statistics in an artificially negative way?

Helena Wood: I agree completely. I think we need to have a fundamental shakeup of how we look at performance in this area. For too long, the two areas of focus have been the £1.6 billion unenforced, which frankly is not a particularly fair measurement for those enforcing it, and it has also focused on—shall we call it—a balance sheet or revenue-raising model for assessing the value of these tools. Even going more broadly than the area you pick up on, which is not counting the repatriation of assets, I think we need to fundamentally start looking at the system from a different angle. Although that is difficult, I think we need to start looking at the effect on crime reduction. We need to look at public perception, for example, and other areas that can help the Criminal Finances Board measure this area and drive it in a more meaningful way, rather than keeping on going back to the same figures that are not an accurate reflection of the system's worth.

Q14 Mr Jayawardena: Are there any other contributions?

Dr King: I completely agree that the current system of assessing it, again, is flawed. There is too much emphasis on how much money is raised. We have to step back and ask: what is the purpose of POCA? Is it to raise revenue or is it really there to disrupt crime? If you look back at the debates in the build-up to POCA, there was a lot of emphasis on Mr Bigs. We hear about Mr Bigs and Mrs Bigs again here today, but when you came to the National Audit Office report and you had the Public Accounts Committee, again, the same debates are being reinforced, but the emphasis is on how much money has been raised—are we covering our costs? I don't think that is the right mentality to adopt. I think the focus should be on: is this legislation successfully disrupting criminal activity?

Q15 Mr Jayawardena: The two need not be mutually exclusive of course, but, Mr Fisher, do you—

Jonathan Fisher: I can only add this, I think. We have to be a little careful. When one looks at the international conventions, they focus very much on the confiscation of the proceeds of crime. There is a link between the money that is being taken away from the criminal and the money that that criminal got through his criminal activity. The UK regime took a slightly different view. It detached the money from the criminality, so you can have a situation where the benefit is much broader than the money that has actually been obtained from the crime that is in front of the court. We see exactly the same thing when you come to assess the recoverable amount. The recoverable amount can, in certain circumstances, be found from legitimately earned income. Therefore, what the UK system does is it treats the confiscation order as effectively a personal obligation on the part of the defendant to pay an assessed sum to the state, which is not necessarily the same as the amount of money that is obtained from the crime.

When you go back to the international conventions, you will see a much closer linkage between the proceeds of crime. The international conventions talk about instrumentality. That is not something we really focus on. We are much more interested in assessing the amount and the moment you start assessing you get into notional territory, so your benefit figure gets hyped, your recoverable amount figure gets hyped, and that is how you end up with these massive amounts, which Helena has just been speaking about, and saying that they are not reflective of the reality of the position.

Q16 Mr Jayawardena: This is to all of you. How would you assess this country's collaboration with overseas law enforcement agencies in chasing the proceeds of crime abroad? How do you think we could encourage greater co-operation with foreign agencies in the context of that international regime to avoid the creation of black spots or safe havens for criminal proceeds?

Jonathan Fisher: I can help you with that to this extent. I was recently instructed in a case that is public knowledge. That is a case involving the Nigerian oil well; 88 million-odd has been frozen in London. The Government of Italy has been chasing it and we have frozen it and we are going to give it back to them in the fullness of time. The answer from my experience is that the authorities in this country will do their level best to accommodate foreign authorities coming to us and saying they want help. I don't think there is any doubt about that at all.

One of the issues you do have to think about, though, I have to tell you, is the financial position, because it comes out of—again we are back to the budget—the budget of the CPS, to be absolutely crude about it. If that goes wrong, the CPS is going to end up paying for it. The CPS has to then decide in its allocation of resources quite where the money is going. You can see how it ends up with a tough judgment call to make. I rather think that there is the will to deliver for other countries, I don't have a shred of doubt about that, but I do think that one has to be careful and has to understand where our authorities are coming from.

Q17 Mr Jayawardena: Thank you. Turning to a different matter, there used to be one agency clearly in charge of proceeds of crime, the Assets Recovery Agency. In your view, why do you think it merged into the NCA and what advantages and disadvantages, in your view, did that merger bring?

Jonathan Fisher: I am only hesitating because I was on the steering group of ARA for the first three years, but Helena—

Helena Wood: I am happy to make a comment there. I think unfortunately the Assets Recovery Agency set itself an unrealistic target, being self-financing within, I think it is, three to five years, which it did not achieve. I think that was perhaps an honourable, however naive, expectation of an agency operating extremely new legislation. I would not suggest setting up a one-stop-shop again. I think that would be to create bureaucracy that is unneeded and would not reflect the fact that there is such a diverse range of different agencies using the powers to different effect. Having one body above that would be a mistake. I think we have been there and done that.

What we could see more of is a stronger Criminal Finances Board that holds the system to account and, as we have discussed, better performance metrics, which at the moment are

not there. I think this Committee is very well placed to challenge the Government to come up with those performance metrics in a meaningful way.

Q18 Mr Jayawardena: That answer is very helpful, regardless of what is happening behind you. Dr King?

Dr King: This has been an interesting aspect of POCA for me since I have moved here to the UK. I am comparing it to the Irish approach. Since POCA was set up here in 2002 we have had the Assets Recovery Agency. That was then subsumed into SOCA and now we have the NCA. Even before that time, in 1996 the Irish Criminal Assets Bureau was established. That still continues to operate today, so in the same time that you have had three agencies here in the UK you have had one multiagency body in Ireland. The general consensus is that that does seem to work. You are bringing together a multidisciplinary approach: police officers, revenue officials and tax officials.

One of the things that has been said to me specifically when comparing the NCA to the Irish CAB is that when a police officer, for example, is seconded to the Criminal Assets Bureau, he or she remains a police officer. At any point that person, that guard or police officer, can be transferred back to An Garda Síochána and go off into other areas, whether it be fraud squad, drug squad, et cetera. Here I do not think it is the same. If someone moves to the NCA they are separating from their normal role. I am not sure how that operates, whether a person can shift back, for example, from the NCA into other aspects of normal policing. That is something that might be worth considering.

Helena Wood: Can I make a very brief comment? I think it is worthwhile noting that the CAB is a very successful model; however, the NCA has a much broader remit, as you will be aware.

Q19 Mr Burrowes: First, if I could go a little bit off-piste, we were in Europol and hearing about the money laundering operations. I asked a question in terms of the issue of the assets that they are focusing on, and where there is information about assets being hidden or, indeed, part of a money laundering chain that were not the usual money assets, what other assets we are talking about. Could it involve, for example, arts and antiquities? There are suggestions of a trafficking line that is particularly increasing. Have you come across any evidence that sees that this is a particular field in which criminals are seeking to either carry on the chain of trafficking of ill-gotten gains but also particularly hiding their assets?

Helena Wood: Not personally, I am afraid, no.

Dr King: I can say a very, very small bit about the arts and antiquities market. Specifically with money laundering, traditionally you have money being laundered through banks. As there was more and more regulation put on the banking sector, criminals moved towards, let's say, the legal profession, for example. Again, as there is more and more emphasis on the regulated sector there, the criminals are looking for alternative options to launder money. The art world was not normally thought about in that realm when it comes to policy-making but, in reality, on the ground criminals were using it because it is a lower risk, high-value opportunity from the perspective of criminals. The figures for I think 2014 for the value of the art market is 51 billion, so you can see how much opportunity there is there for laundering the proceeds of crime. The art market itself, so art dealers, is known to

be a mixed bunch in relation to compliance with money laundering regulations. There has been a recent FATF report on this. That is where my figures are—

Mr Burrowes: If you have any information to send through that would be helpful.

Dr King: I am happy to do so.

Q20 Mr Burrowes: Going back to the issue of how we scrutinise and measure success, the National Audit Office, the Public Accounts Committee, indeed Parliament last year—myself included—were looking at the issue of the incentive scheme. Perhaps you could draw out what you think the merits are of the incentive scheme, its linkage or not in respect of effort and reward and, allied to that, whether there is an impact of the Home Office being able to give 50% of the confiscated assets and whether that does not provide best incentives for the operative agencies.

Helena Wood: Personally, I would like to make a comment, if I may. I think the system is at best opaque. I do not think a number of forces are held fully to account for how they use the money, from my experience, and unfortunately in a time where police budgets are shrinking you are seeing a number of forces—I do not have particular names—using that money to back up their core budget. That is the risk with not having a system that is really—they have a broad context of how you can use the funds.

A very personal view: I think it should be directly linked to investing back in financial investigators, of which there are not enough in my view, and a dwindling number given that front-line policing has been protected but civilian staff cuts in the police forces have been swingeing, which has had a particularly detrimental effect on this particular area. I would like to see a stronger link between the incentivisation monies going back and investment in actual investigation capacity or other means of increasing asset recovery work.

Dr King: Can I add in on the incentivisation scheme? Some of this information is in the submission that I made to the Committee. I conducted a study recently on the Irish model of asset confiscation and I deliberately asked every participant in my study there. I set out the ARIS scheme here, the Assets Recovery Incentivisation Scheme in the UK, and I asked them their view on the operation of this. Would they like to see something similar adopted in Ireland? Everyone there was completely against such a scheme. How it operates in Ireland is that if the Criminal Assets Bureau realises money—when the court grants a section 4 order that allows the money to be transferred to CAB—the money is then sent back to a central exchequer. All the money goes back to the Minister for Finance to spend at his discretion. It goes back to a central fund. That is not to say that the money is completely detached from policing or financial investigation and so on.

I will give one example. The bureau seized two jeeps. The jeeps had been upgraded—so, they had been made bullet proof, bomb proof and so on. There was no real value at all to be made by selling those two jeeps to the private market. The jeeps were sent back to the Minister for Finance by the standard route and the Minister for Finance then allowed those jeeps to be transferred to the ownership of An Garda Síochána. Those jeeps were then used for protecting foreign visiting dignitaries. The assets recovered can be used for other purposes related to policing, but by sending the money back to the central exchequer for the Minister for Finance to decide what to do, it takes a step back from what is happening with the money.

It does not have the potential to distort policing priorities. It removes this potential for policing for profit.

Q21 Mr Burrowes: Isn't part of the problem that the Home Office themselves receive 50% of the confiscated assets without themselves having a direct operational role? Is that part of the problem?

Helena Wood: It is perhaps part of it and I think we need to look at another model here. The Scottish model is quite interesting in that they use a lot of money to regenerate payback for the communities. It is very, very visible to the public.

Q22 Chair: Briefly describe. I know we have Mr McDonald on the Committee and he can tell us more, but briefly describe the Scottish model compared to ours.

Helena Wood: I am not an expert, unfortunately, and Mr McDonald will no doubt correct me if I am wrong. However, the Scottish model really focuses on using the funds recouped to fund new schemes, so it is really visible to the community that that money has been taken away from a criminal.

Chair: Thank you.

Q23 Mr Burrowes: Community payback. Very quickly, Mr Fisher, the impact of early release provisions, the Government are removing those in relation to—

Jonathan Fisher: £10 million plus.

Mr Burrowes—£10 million-plus confiscation orders. What is the real impact of that and should the Government look at that scheme again?

Jonathan Fisher: Again, I would say that there is a little bit of an information deficit because I do not think we have the figures that actually show who is in prison in terms of confiscation and for what. How many defaulters do we have in prison? Of those, how many actually are £1 million, £2 million, £5 million, £10 million? Without that information it is very difficult to know how many are going to be affected.

One does wonder, as with any cut-off, that there is a certain artificiality about it, but all I can say is—from empirical experience from representing defendants in this position—now that we have increased the maximum level to £40 million and you are not going to have parole and remission on £10 million plus, I rather think that will cause some of these offenders to think again before deciding not to disclose where their monies are.

Q24 Mr Winnick: All forms of serious criminality are to be deplored. That goes without saying. In the sort of league tables, insofar as there can be a league table as such of serious criminality, where would you put this issue of the proceeds of crime with the criminals getting away with it?

Jonathan Fisher: I will answer you in a different way, forgive me. I think it is very difficult to start drawing lines. Effectively, we are talking about moral values, but let me answer you in this way. It is said that 16 investors in the Barlow Clowes fraud—that was some years ago, but I am sure we will remember it: a major Ponzi-type fraud that a

number of pensioners were wrapped up in—committed suicide as a result of losing their funds. I rather think we can underestimate at our peril the societal impact that fraud has and of victims not recovering their losses. Therefore, although it is not for me, and I would not dream of seeking to answer your question in a way that draws any distinction between any particular type of serious crime, I can only say this to you: please do not underestimate the societal damage that is done by serious fraud.

Q25 Mr Winnick: That would be the view presumably of both of you?

Helena Wood: Again, I will answer it in a slightly different way. This particular tool should be seen against all acquisitive crime of any type that is harmful. You could look across drug trafficking, human trafficking, corruption and fraud. I think it is a tool that should be seen as a standard tool in the law enforcement toolbox against all types of acquisitive crime. At the moment, I do not think it is being considered in as wide a range of cases as it should be. I would not name one crime. I would say it should be a mainstream law enforcement tool. At the moment, I do not think it is being used to its full potential.

Q26 Mr Winnick: When it comes to trying to ensure that the money that has been taken by illegal and criminal means should be returned, what do you say to the view that when sentences are passed, once defendants are found guilty of criminality that has involved large sums of money—I am not talking about a few thousand, but millions, tens of millions perhaps—that to some extent, and apparently it is allowed by law, although I am not a lawyer, the sentence should be determined by whether the defendant, having been found guilty, will ensure that the money that is estimated to have been taken is returned? Do you see the link between the judge sentencing and the defendant's willingness to return money?

Jonathan Fisher: There is a very obvious link, in the sense that the defendant's credibility is shot through and, therefore, whatever he says in evidence, he is going to struggle to get a judge to believe him when that is the same judge who has presided over his trial, seen him convicted and is sentencing him. In that sense, of course, there is an issue.

There is, of course, also an issue in relation to the application of fundamental liberties and, as you alluded to, the reversal of the burden of proof, how that operates and whether you can square that with human rights under the European Convention. The short answer is you can and the courts have done that because they have taken the view that in this situation the defendant has already had his criminal trial and, therefore, at this point the confiscation process becomes much more akin to a civil process and, therefore, the traditional safeguards can fall away. That is how the law squares it. There is plainly a relationship that you allude to, but it is one that has seen a legal response. I certainly, for my part, do not have any difficulty with the legal response.

Helena Wood: I think I would agree fully with Jonathan there. I do not think I have anything to add.

Dr King: I have nothing to add.

Q27 Mr Winnick: If I had a criminal mind, heaven forbid, I would say, “All right, I will do, if there is no alternative, 10 to 15 years, if that is going to be the sentence”—hope for some remission, but do 10 to 15 years—“but there’s £10 million somewhere that I’ll be able to live on for the rest of my life.” There is every incentive for the criminal to ensure that the money is not returned.

The last question I want to put, Chair, if I may, is that we are talking about the domestic circumstances. What about those who bring money into this country that clearly has been acquired illegally? We learn of properties being bought in the poshest parts of London—Kensington, Chelsea and the rest of it—by those coming from abroad, who clearly have acquired money by criminal means. Should the British authorities take the view that proceeds should be pursued in those circumstances?

Helena Wood: Absolutely. That is where this Committee is very well placed to look at the use of civil recovery powers, particularly in corruption cases where you are unlikely to have a criminal conviction in the host country where the actual predicted crime has taken place. However, the UK law under the civil recovery regime would allow the UK to pursue those assets as it is against the asset rather than the person.

Q28 Chair: Dr King, you are the expert on civil recovery. Where should we be looking? Is it the Cayman Islands? Is it the Crown dependencies? Where is this money that Mr Winnick has referred to?

Dr King: I would say look closer to home. A lot of money is being held in London and in relation to—

Chair: In London where?

Dr King: London generally, wherever people invest, whether it is in the property market—for example, there has been recent research by Transparency International UK on the use of the London property market to launder proceeds of corrupt activity from abroad. I have read the report, but I would not be an expert on the specific boroughs, for example, where it has been invested.

In relation to civil recovery, it is a power that I have been very critical about in relation to both the Irish regime and here in the UK. I am aware that the focus of the Committee’s analysis is on confiscation orders, but I would encourage the Committee to expand its remit beyond confiscation powers to look at civil recovery powers and also taxation powers. Taxation powers have been virtually ignored here in the UK, same in Ireland, in terms of discussion, whereas if you look at the money being recovered in Ireland, and potentially here as well in the UK, taxation powers are much more radical. They offer much more scope to the authorities to target proceeds of criminal activity. I think everyone agrees if someone commits a crime, they should not benefit from that crime.

Mr Winnick: Of course, I had in mind the Russian mafia, which have become so notorious in the last 10, 20 years, and I need not tell you the number of articles and other

things that have appeared that assume that such money being used to purchase property, companies and the rest of it has been acquired by outright criminal means, with or without the consent of Mr Putin.

Chair: Anyway, we are not proposing to call him as a witness, I have to tell you.

Mr Winnick: If we did, it would be on other charges.

Q29 Chair: Mr Fisher, if you were looking at the top three things that proceeds of crime manifest themselves with, property is obviously one of them. What would the other two be? Is it cars? Is it Maseratis? What is it, other than property?

Jonathan Fisher: Property, of course, embraces it all. What type of property?

Chair: Yes, houses I mean when I talk about property. Jewellery?

Jonathan Fisher: Certainly jewellery, absolutely. It is going to be high value, easily portable assets. I think one can go further. From what I have seen—and I appreciate that I only see one part in my practice—I rather get the impression that sophisticated criminals are quite adept at using the financial system in London, so I would not necessarily exclude not simply property in the sense of real estate, but bonds on our financial markets.

Q30 Chair: Helena Wood: real estate, cars, jewellery—what else is there?

Helena Wood: It is diverse. It depends on the criminal, it depends on the type of crime, and obviously you would have to look at where people are investing their money overseas and how that is happening. We do not know enough about how the money that is moving out of the country is being placed in those jurisdictions.

Q31 Chair: Do you agree with Dr King that we should be looking closer to home, rather than looking at the Cayman Islands or some of the dependent territories?

Helena Wood: I would say both ends. We need to look at those criminals who are committing the crime overseas and placing those assets in the UK, but we also need to look at those criminals who are committing criminality that affects the UK and then transporting that overseas.

Q32 Stuart C. McDonald: A lot of what I was going to ask you about has already been covered about incentives, and we have heard a little bit about the schemes in Ireland and also in Scotland, where there is this CashBack for Communities, I think it is called. Just to clarify, then, do you think the use of incentives does in any way change the way organisations go about trying to recover the proceeds of crime? Have they altered their behaviour because of these incentives? If they do, is that healthy and, if they do not, what is the point of them?

Dr King: It is a bugbear of mine, incentivisation. I think the Scottish approach has been much better. Here in England and Wales, there has been more focus on getting money for the tin box—that is a quote from an article I co-authored with a member of the Scottish Civil Recovery Unit. The Scottish approach to putting money back into communities is much preferred. There is significant potential for priorities to be skewed to go after criminals who have more assets available. We can see a clear example of priorities being skewed in the US. I am happy to go into more detail about it.

Stuart C. McDonald: Would you agree, Ms Wood?

Helena Wood: Yes, I agree there is greater potential now with the pressure on budgets that it could skew future behaviour. I do not have any data to back that up, but it is a risk.

Stuart C. McDonald: Mr Fisher, do you have anything to add?

Jonathan Fisher: Nothing to add on that.

Q33 James Berry: Given that the NAO reports an average 41% collection rate, do you think there should be harsher penalties for those who do not pay, or do not pay as much as they are meant to, and if so, what would those penalties be?

Jonathan Fisher: I am not sure we can improve our penal approach, frankly. I think we have to approach it at the other end. I really think we have to be getting hold of those assets at the outset. We need restraint orders and when we get restraint orders we need orders that compel disclosure of the whereabouts of assets, and when we find out where the assets are we need to have orders that compel repatriation if the money is abroad. I rather think that that is the way forward.

Helena Wood: I agree, but I also think we need to understand what incentivises people to pay or not. There is a lack of understanding there, but restraint is very key.

Q34 James Berry: Finally, we all want a system that takes as much as is reasonable and appropriate from criminals and preferably in a system that washes its face financially, although I agree with you that that is very much a secondary objective. If you could change one thing about the current approach, I have Mr Fisher's answer on that, but your answer, Ms Wood, and your answer, Dr King?

Helena Wood: It would be very difficult to pick one thing, but I would like to see greater mainstreaming of the powers and stopping viewing them as a specialism. They should be seen as part of the main law enforcement toolkit, rather than something that people in a corner do as a specialism.

James Berry: If they were not so complicated, maybe they would be a bit more mainstream.

Helena Wood: Perhaps.

James Berry: Dr King?

Dr King: In terms of consistency in the application of the law, expert judges on these, so judges specialising on the Proceeds of Crime Act would be—

James Berry: You want more specialism?

Dr King: Specifically because you could have a judge being faced with a very complex proceeds of crime case and that judge would never have dealt with a POCA case before, whereas if you had a judge who was specifically dealing with POCA cases the whole week, that judge would be much more adept at dealing with the issues.

Q35 Victoria Atkins: Focusing on the training that financial officers receive, I have some knowledge of this from my career before and it is fair to say that the emphasis was not always placed on confiscation, because everybody wants to get the conviction before we can get the confiscation. What more can be done, do you think, to improve the training of financial officers so that they are absolutely geared up to start looking in the right places from the beginning of an investigation?

Dr King: I think you have very, very good financial investigators across the board here. One of the issues I would say, going beyond the training, is retention. If a financial investigator spends a couple of years in the public sector, builds up their training, their expertise, there is only so much money, in terms of salary, that they can get in the public sector and the private sector offers a much better deal. At times, you are haemorrhaging the best people, so they are moving to the private sector to make more money.

Helena Wood: I fully agree with that, and again I would go back to the comment that it is great that front-line policing has been protected in the cuts that have come so far; however, that has meant a huge reduction in civilian staff, a lot of whom are the very experienced financial investigators you need to keep on board to drive this agenda forward.

Jonathan Fisher: I agree with all of that. Part A to the Proceeds of Crime Act contains various investigative orders that can be obtained at a very early stage. The financial investigators should be working alongside the criminal investigators and they should be using the power that they have to discover the whereabouts of assets and then sweeping in at an early stage simultaneously with the execution of search warrants. There has to be a culture shift. They have to understand that just as it is important to get the evidence to prove the criminal case, they also need at the very same time the evidence to prove the existence of the assets and their whereabouts.

Q36 Victoria Atkins: On a global level, there are particular frauds where, when the tracing has been done—and this can be multi-defendant cases nationally, let alone in one or

two court centres—the money is going to a particular country or even a particular city. There are one or two cities I am sure we can all think of that have been built on the proceeds of crime. Is there anything that can be done internationally to help the UK work with those states to try to stop the money getting to them in the first place?

Jonathan Fisher: A lot of that is being done to the best of their ability. Obviously, in certain countries there are political dynamics that it is very hard to cross over. Again, I would say that from the UK perspective we need to be making use of the powers in part 2 of the Act. Where there is a freezing order, you can actually compel disclosure of assets and compel the repatriation of them. We should be doing that and that would go a long way to meeting the objective you are describing.

Helena Wood: I would completely agree and add that there is an element of reciprocity as well. Anecdotally, I have picked up that some jurisdictions are slow in executing our tracing orders because they perceive the UK to be slow in executing theirs. We could look at whether our system could be more responsive there.

Dr King: In the studies that I have taken, that is one of the issues that has come up quite regularly in terms of co-operation with other jurisdictions. You have the formal channels, which can be slow and cumbersome, whereas if you do have personal contacts you can pick up the phone, ring a person in another jurisdiction, say, “Here is an issue I have. Can you help me or, if not, can you point me in the right direction?” and you skip a lot of the formal delays.

Q37 Chair: Three very quick questions to end this session, so yes/no answers. Do any of you, or either of you, or each of you, disagree or agree with the commissioner when he says that non-payment of a confiscation order should be made a criminal offence?

Jonathan Fisher: I will agree with that.

Helena Wood: That is perhaps a step that I would need to consider. I would probably say no on this occasion.

Dr King: It is much more complex than a yes/no answer.

Q38 Chair: Okay, you will have to write to us on that. Do you think that passports should be seized from those who committed crimes? A confiscation order has been issued against them, they come out of prison after serving their sentence, and the view is that they just flee, they just leave the country without paying the fines that have been imposed on them. Do you think passports should be seized as part of that process, Dr King?

Dr King: I think it is back more to the operation of the enforcement stages, which again is more complex than a yes/no answer, but you need to look at a wider—

Chair: You are speaking like an academic here, Dr King.

Dr King: I will go into more detail afterwards.

Helena Wood: I would say where it has been sanctioned by a compliance order by the courts as part of the new powers.

Jonathan Fisher: Each case on its merits.

Q39 Chair: Okay, good. Finally, do you believe that it would be beneficial in respect of the Act if we merged the Serious Fraud Office with the National Crime Agency? Are there two agencies basically dealing with the same issue?

Jonathan Fisher: No. It would be a grave error.

Helena Wood: No, I think keep the specialism.

Dr King: No, a significant error again.

Chair: Excellent, we have agreement. Can I thank all three of you for coming in to give evidence? If we have missed anything and you would like to add anything to this inquiry, please write to us. It is open for a while, so we would be looking forward to your comments. Thank you very much for coming.

Examination of Witnesses

Witnesses: **Richard Fisher QC**, Doughty Street Chambers, **Tim Owen QC**, Matrix Chambers, and **Kennedy Talbot QC**, 33 Chancery Lane Chambers, gave evidence.

Q40 Chair: Mr Fisher, Mr Talbot, Mr Owen, welcome to the Committee. We have all declared our interests at the start of the session, but they are all on the record. This is not quite a health warning: we now have nine lawyers, three giving evidence and six asking questions. This is not the start of a bad joke, but I hope that we will all be as brief as we can with our questions and answers, starting with me. Do you think the law on proceeds of crime is broken? Do you think it is achieving its purpose and do you think it should be changed?

Tim Owen: The law took, in my view, a fundamentally wrong turn right at the beginning. The origin of the confiscation procedure was the Hodgson Committee report in the 1980s, which I am sure the Committee is already familiar with. The fundamental objective was stated to be as follows in that report: “We think the objective should be to restore the status quo before the offence. This would require confiscation of only the net proceeds of offending. If drug traffickers have paid their suppliers, confiscation of gross proceeds would go further than would be necessary to put them in the same position as if they had not offended.” What happened in the DTOA, the Drug Trafficking Offences Act, and then the

1988 Criminal Justice Act, is that a gross receipts approach was taken. The courts then developed the principle so that, as Jonathan Fisher and others have already said—and I agree with almost everything that was said by, in particular, Jonathan on this—you start in the completely wrong place at the beginning by requiring the courts to identify benefit sum that nobody believes in any courtroom reflects the reality.

Q41 Chair: It is a big overestimate?

Tim Owen: It is absurd.

Chair: The £1.6 billion that everyone is talking about?

Tim Owen: Yes, it is utterly absurd.

Chair: There is no way we can get to it?

Tim Owen: It is no good saying, as I think one of the earlier witnesses—

Q42 Chair: That is the estimate being wrong. Does the law need changing?

Tim Owen: Yes, the law needs changing. This Act, this 321-page Act, is an abomination, in my view, together with the Data Protection Act and the Regulation of Investigatory Powers Act. They are the triumvirate of appalling parliamentary drafting. I am afraid you need to—I am sure the prospects of this happening are small—start again, in my view, and introduce a much simpler system, because the problem is, if I can just finish—

Q43 Chair: Very helpful. We will come to each of the points. Kennedy, do you agree with that? I think Mr Winnick, myself and Mr Burrowes were in Parliament when it was passed, so we have now been told it is an abomination and it is all our fault. What needs to change? Why is it not fit for purpose?

Kennedy Talbot: Tim has been arguing that point about gross receipts as against net profit in the Supreme Court for about 10 years and he has not got anywhere. I am pleased he is still trying to make the argument.

Q44 Chair: You do not think it is an abomination?

Kennedy Talbot: The law is certainly rigorous enough. There is no need to make it more draconian. The changes that were brought about by the Serious Crime Act last year, which did make it more draconian, were ridiculous and just tinkered with the law at the edges. Basically, the law is too technical and overcomplicated for the people who are implementing it and, as a result of that, the application of it is poor. It is an implementation problem, not a real problem with the legislation itself.

Q45 Chair: What you are saying is when the *Evening Standard* publishes, with the agreement of the National Crime Agency, the photographs of 15 Mr Bigs because they cannot get the £46 million off them, it is the way it is enforced rather than the way it is written? That is your concern, is it?

Kennedy Talbot: I am concerned about enforcement—

Chair: You are mainly a prosecutor, is that right?

Kennedy Talbot: No, I have a mixed practice of prosecuting and representing anybody who is caught up in Proceeds of Crime legislation. I am using the word “enforcement” in a much broader way than you are, Mr Chairman. What I mean by enforcement is implementing the whole of the legislation from beginning to end, not just the enforcement of confiscation orders at the end. I do not agree that the authorities are doing very little in relation to enforcement, and I certainly agree with everything that was said, particularly by Mr Fisher and Ms Wood, in relation to the artificiality of the £1.5 billion figure. Those assets do not exist and they will never be recovered, and they are sitting on the books—well, at the moment, *ad infinitum* because—

Tim Owen: But the law says they do exist.

Kennedy Talbot: I totally agree with Tim that it is a complete fiction.

Q46 Chair: We will come back to you in a second. Richard Fisher, we have two views here. What is your view? You do both prosecution and defence work, like Mr Talbot.

Richard Fisher: I don’t, actually. I am predominantly defending.

Chair: You are defending. You defend the Mr Bigs, do you?

Richard Fisher: I have dealt with one case on behalf of the Crown so I am probably not the best person to ask from that perspective, but I certainly would draw from elements of what both Mr Owen and Mr Talbot have said.

Q47 Chair: Let me put this to you: do you think the law is fit for purpose at the moment?

Richard Fisher: It is because we are stuck with it, but I would certainly recommend some root and branch rethink, were that possible, although to stop now and to wholly reconsider the system is going to be a very, very difficult thing to do. It has been done before, of course, in various legislation: the Criminal Justice Act of 1988, the Drug Trafficking Act 1994, the Proceeds of Crime Act 1995 thereafter, but 2003 was clearly a significant piece of legislation. To do the same would take some time, but it is certainly worth some

consideration because, to put it in the terms that you did, is it broken, looking at it in the headline figures and certainly those headline-grabbing type of—

Q48 Chair: Do you agree that this is an overestimate, the £1.6 billion that people are talking about?

Richard Fisher: For practical purposes, I agree it is an overestimate.

Q49 Chair: Helena Wood has put the figure much lower to us in evidence today. She has talked about £200 million.

Richard Fisher: £200 million is a figure that Her Majesty's Courts and Tribunals Service has put forward in various reports for being the actual, for practical purposes, amount that can be recovered. If they say that is right, it must be based upon something; I am afraid I do not know what that may be. That £1.6 billion figure, and it is a point that was touched on before, is going to be made up of what might be termed identified or tangible assets and then assets that the court has found the defendant to have but found the defendant to have those by the defendant's own failure to persuade the court that he does not have them. He is in that position of having that burden of proof to prove the negative. It was a point that Jonathan Fisher made earlier—the credibility of the defendant being shot through—so when it comes around for confiscation and he or she says, "It has passed through my hands but I do not have it any longer," the chances, perhaps, of them being believed on that point are limited. That is what may then result in a higher order being made.

Q50 Chair: Thank you. Kennedy Talbot, I am sure you have not had the chance to see all the evidence that has been sent to us because you have other things to do, but this is a quote from the British Bankers Association in their written evidence to this Committee that we have published. It says that the arrangements for confiscation orders are "Dysfunctional and confusing", and that, "Many people involved in the process, as well as external commentators, view the system negatively." Do you view it negatively?

Kennedy Talbot: I view the implementation of it negatively. I would pick up particularly, if you are looking for remedy, on the points that have been made—and I fully agree with—that early and comprehensive restraint powers are absolutely essential. What is happening is that this money is slipping through the net at the beginning and that is why it is not available at the end. The crime is committed, and we know that the benefit figure is calculated by reference to that. Then there is this massive chasm of inactivity where the assets are free to be disposed of, and then at the end you get saddled with the benefit figure where the defendants have had an opportunity to dissipate the assets in the meantime. That is why you have these enormous figures that are incapable of being realised and it is why the system is not achieving the objective of depriving people of their benefits.

Q51 Chair: Mr Owen, you would agree with that, that a restraining order at the very first opportunity is the best way to stop these assets disappearing?

Tim Owen: Absolutely. I agree with Jonathan Fisher's analysis that if you use the part 8 powers effectively as part of the investigation of the offence and prioritise restraint of the assets, before the criminal is even aware that they are under investigation often, that is the answer. The problem later is that the benefit sum is calculated, as I say, on an unrealistic basis, which creates an expectation and a system that is geared up in the wrong way.

Q52 Chair: Sure, absolutely. We get that point. I am going to bring in Victoria Atkins in a moment, but quick answers to these questions. The Metropolitan Police Commissioner has said that non-payment of a confiscation order ought to be made a criminal offence. Once you get the order, you go to jail, you come out, and if you still have not paid, then you go back again. Richard Fisher, do you agree with that or not?

Richard Fisher: I do not.

Chair: You do not?

Richard Fisher: No. Through enforcement proceedings, the defaulting offender who has not paid the order will be, if they are not already in custody, either returned to custody for what as you know are now strengthened and increased terms of up to 14 years, and if the order is over £10 million, then they can lose any remission, so they could end up theoretically serving all of that term. It does not need to be created as a separate criminal offence.

Kennedy Talbot: I totally agree with what Richard has said. Sanctions of imprisonment on default or creating further offences are completely wrong. One has to look at the assets, identify the assets, freeze them early, and then better methods of realising them—nothing to do with sanctions for non-payment.

Tim Owen: I totally agree. You would have to create a strict liability offence unless you were then going to have to go through the entire process of investigating whether the person actually has the money, and we are not going to create a strict liability offence of non-payment of a confiscation order and send someone to jail for 10 years, so you achieve nothing.

Q53 Chair: In respect of where people put their money, is real estate still top of the list, followed by—

Tim Owen: I could not possibly answer that question.

Chair: Can anyone help the Committee with where it goes?

Richard Fisher: There are a number of options. Yes, again, headline-grabbing stuff is that the London property market is favoured. I do not know whether that is necessarily accurate. One can imagine that that could be an option, particularly when ownership of

properties can be obscured, particularly if it is placed in company ownership and there is beneficial ownership of that company that may be difficult to understand. Cash is obviously going to be substantial, particularly in different types of crime. It may not be great for those involved in fraud or cybercrime, that sort of offending, but drug dealing, prostitution, some of what might be termed the old style of criminal activity, still operate in cash. There are measures, of course, under the Proceeds of Crime Act that can target that cash seizure, cash forfeiture, and so on.

Q54 Victoria Atkins: There are two areas I would like to look at, please: first of all, restraint and, secondly, the benefits and realisable assets test. In terms of restraint, we heard from Jonathan Fisher that the potential costs to the Crown if they fail, for whatever reason, in their initial restraint proceedings are so huge that they often put the Crown off from asking for those applications. How do we avoid that? I am particularly mindful that we have two very eminent defence silks here.

Richard Fisher: I was just about to look behind me. In some of the cases that I have been dealing with recently, there seems to be an inconsistent approach of the prosecuting agency, cases where they have applied for and obtained a restraint order and cases where no such application has been made and perhaps it should have been. Those applications are ordinarily made ex parte and it is more common also now for those applications to be made on the papers, so a judge is not even having an application made orally in court before them; they are looking at the papers. There is a lack of consistency of approach. Whether that is because of funding or concern over costs or not, I do not know.

There may be a way around that, which would be to set costs limits in restraint proceedings, whether that be hourly rates or block rates or something like that. If one looks at civil recovery under POCA in the High Court, similar to confiscation but that is targeting property rather than making an in personam order, there are on the cost side of things set rates. It leads on to another matter about assets being released out of the frozen assets in those proceedings to allow for lawyers, et cetera, to be paid for, but they are agreed rates. That could be transposed over into restraint proceedings on the criminal context, which would give some certainty, perhaps, of what the cost elements are going to be.

My own personal view is that I imagine the public interest would be best served and the public at large would most probably be concerned if the authorities are not pursuing important and potentially effective orders, such as restraint orders, by being put off by the prospect of costs orders being made against them. If it is a decent case and it meets the test—and the test has been lowered under the Serious Crime Act to that of reasonable suspicion as opposed to belief, so arguably easier for the applicant to get a restraint order—then why should it not be applied for?

Tim Owen: I am not aware—and maybe Kennedy is in a better position because he prosecutes more than I do—that that is the reason why restraint orders are not being used. Certainly, the threshold test is a relatively low one to obtain a restraint order. To the extent

that part 8 powers have been abused or costs orders have been made, it is in those cases where there have been fundamental errors in the execution or application for search warrants through, for example, non-disclosure to the judge. The Tchenguiz case is a particularly notorious example involving the SFO. I am simply unable to comment on whether the fear of a costs order is the reason why these powers are not being used when, on the face of it, the legislation is very enabling to a prosecutor and the court is not going to make a costs order against the prosecuting authority if the application has been made in good faith and there is an acquittal.

Victoria Atkins: Kennedy Talbot, please, on that as well given his experience.

Chair: Could we have a quick response, Mr Talbot?

Kennedy Talbot: The fear of getting costs ordered against the Crown is a fundamental disincentive to early and comprehensive restraint orders, and the answer is that there should be a system whereby rather than it come out of the Crown Prosecution Service's budget, if there is a successful application to discharge or vary an order it should come out of some form of central funds or ideally ARIS, the seized asset fund, should support that kind of costs order against to ensure that we get early and comprehensive restraint orders.

Q55 Victoria Atkins: Very quickly, can I just get a sense of your support or lack of support for the tests in the Act itself—i.e. benefit and realisable assets? Are you saying that those are wrong tests, we should be looking at other tests, or are you happy with the way it is set out, we just need to apply it earlier and apply for restraint orders, et cetera?

Kennedy Talbot: From my perspective, the thing that I would change is this hidden assets finding that has attracted so much observation this afternoon and in the written evidence that you have had. It would be much better if we just look at provable assets and start focusing on the property and recovering property that we can identify as existing. That needs to be changed.

Richard Fisher: I agree with that. There may, of course, be some cases where large sums of money have passed through a particular offender's hands, and in those cases there may be good justification for finding that they have failed to disprove or failed to prove that they do not have it or have access to it, even though it cannot be identified.

Tim Owen: The problem is not the available asset test, it is the benefit test. The Committee might want to look at Hong Kong. I was over there recently in a seminar on confiscation and money laundering. Hong Kong has very strict money laundering laws—stricter than we have—but their confiscation regime is more liberal, if you want to use that word, by which I mean they only confiscate that which is restrained, identified, frozen. They do not make hidden assets findings. They do not have endless weeks of court litigation, arguing about hidden assets. They get, as a result, almost 100% recovery.

Chair: At the risk of really annoying Mr Winnick, you have to be very quick.

Q56 Victoria Atkins: Sorry. In that case, how on earth do we get around the criminals that are very good at hiding their assets as they go along, way before the police have become involved? How do we get to them if we do not have hidden assets orders?

Tim Owen: The answer is you will not seize that money, but you are not seizing it now anyway, and you are gearing up an entire court system; you are making courts make orders that nobody believes, in the vast majority of cases, are fair or real orders.

Chair: Mr Talbot, do you agree?

Kennedy Talbot: Yes, ideally you could have the benefit figure, which is still up there, if you want, but just make the order in relation to identified assets. When they come above the radar later, then go and get them.

Chair: Mr Fisher, do you agree?

Richard Fisher: I agree with that.

Q57 Mr Winnick: One or two questions, as I was saying a moment ago, that perhaps Joe Public rather than lawyers may ask, since the lawyers probably already know the answers. I do not know whether this would be a legitimate question to put to you, but if clients are charged and obviously seek as much professional advice as possible, what advice would you give over assets? Mr Fisher, you defend, so perhaps you are the most appropriate person. Would it be legitimate to ask you what sort of advice you would give?

Richard Fisher: If I am being asked to advise somebody on what to do with assets from the perspective of the, if we imagine, potential suspect who is being pursued, I would probably be in very great difficulty if I did give them that advice. I may well be committing criminal offences of entering into an arrangement possibly in relation to money laundering.

Chair: Mr Fisher, I am going to stop you there. I am afraid we have another vote, so we will adjourn the Committee until we vote. We will come back as soon as we are quorate. I am sorry about this; this is out of our hands.

Sitting suspended for Divisions in the House.

On resuming—

Chair: I think we are almost quorate. If Naz Shah stays for two minutes, we will be quorate and then others will come, I am sure. I apologise for that. We had two votes called at the same time.

Q58 James Berry: Thank you very much for coming. In terms of the objective behind the Proceeds of Crime Act, there seemed to be in the previous panel of witnesses an implicit criticism of the intention of recovering the amount of money it costs to set up and run the system. What do you think the underlying purpose of the Proceeds of Crime Act should be?

Richard Fisher: It is stated to be to deprive criminals of their, to use the vernacular, ill-gotten gains. That is a positive aim. That, though, is a fairly broad statement conceptually. There are bound to be and there are, no doubt, other considerations, part of which may be one of the phrases that was used by the earlier witnesses, that the system is able to wash its face—not a phrase I am that familiar with, but it seemed to be appropriate when it was made.

Kennedy Talbot: Yes, the Supreme Court says that that is the intention of the legislation—to remove criminal proceeds—that its deterrent objectives are ancillary to that, and it is certainly not penal. That is how the Supreme Court has interpreted the legislation as it stands. What should it aim to do? It should aim to do all three of those things, it seems to me.

Tim Owen: Restoring the status quo, removing to the extent that it is available and identifiable the actual product of the crime.

Q59 James Berry: Thank you, and I agreed with your identification of the three abominable pieces of legislation I have had to deal with as well at the Bar. Sticking with the abomination and assuming there is not the will, or at least not the parliamentary time, to have root and branch reform of POCA, which particular provisions would you look to significantly amend to improve the situation that you describe? I would prefer to go for root and branch reform, but I am just dealing with the Act.

Tim Owen: Yes, sure.

Chair: We do not need the entire amendments to the Bill, just very quickly—

James Berry: That would be very helpful, but just the top few would be great.

Chair: Or the top one.

Tim Owen: I think it would require legislative amendment to reverse the effect of court decisions identifying how you would calculate benefit. So you would need a legislative amendment to the Act to achieve what I have suggested should be the legislative provision, which is to remove the net proceeds of crime. I think I would also remove the criminal lifestyle provisions. I would remove the assumptions that flow from that, because that is a further route to massively inflating the benefit figure.

Chair: Thank you. Mr Talbot, top change?

Kennedy Talbot: The top change is early and comprehensive restraint. I have already mentioned that, but I would also mention expansion of civil forfeiture. You may know in America last year, and I am not saying we should follow the American model root and branch, \$4.5 billion worth of assets were subject to civil forfeiture without conviction. With five times our population, that comes down to about \$900 million or £600 million worth of assets that are out there in this country that are capable of being forfeited. Expand civil forfeiture.

Chair: Mr Fisher, top change?

Richard Fisher: Change of the law; I would agree with the comments that Tim Owen has made about benefit. I may not go as far as the assumptions. They certainly need revisiting. As far as a change in approach or practice is concerned, then there is certainly far more room for opportunity there for the way that the Act is being applied. Kennedy Talbot mentions civil elements. I agree with that. You have heard already a number of comments made about the early use of restraint orders notwithstanding what may be perceived to be the cost concern by the CPS.

Q60 James Berry: That is more operational, though, isn't it, than a change in legislation?

Richard Fisher: I agree. I was not sure whether the question was broadly as far as change. If it is legislation, then benefit figures certainly. If it is operational, then there is more to be done there.

Chair: Thank you. We will go back to Mr Winnick who was questioning you before the Division.

Q61 Mr Winnick: Mr Fisher, presumably the question I asked you, what advice you could give, was somewhat unfair. Whatever advice you would give to a particular client, and it would apply to your two colleagues, would obviously be confidential, so I do not think much purpose would be served by my pursuing that particular question.

Can I move on to the techniques used in the main, to your knowledge, by criminals to keep their proceeds intact? Are there certain ways more common than others that these criminals with very, very substantial sums—we are talking presumably in millions—use to try to make sure that, however much such money was acquired by criminal means, they keep them in the family?

Richard Fisher: It is said in many of the cases that I have dealt with, so looking at the practical side of what is said by the prosecution if I am representing somebody, distance, either geographical distance, which may be bank balances being moved around the globe, perhaps to jurisdictions where there is less scrutiny than with others—this is what is being said by the prosecution—or distance in terms of putting legal steps or layers between them and an asset, such as ownership of property being put in a company name—I mentioned that earlier on—or a third party's name, other arrangements between individuals to hide the true ownership, the beneficial ownership of property. That is said to be prolific and that can have a significant bearing upon the effectiveness of enforcing confiscation orders, which has recently been amended by legislation, perhaps in a positive way. Those are some examples of what has been said in cases I have dealt with.

Q62 Mr Winnick: Perhaps this is more an impression from the cinema, but it is said that the mafia would use a good deal of their proceeds as much as is possible into what is described as legitimate means and obscuring the origin of their sums. Would you say that this sort of practice as so known in the States is being translated and has been into this country in recent years?

Richard Fisher: It is said that the phrase “money laundering” came from the fact that the mafia tried to put their money into legitimate business, which was often laundromats; hence it coined the phrase. I have read that somewhere. Certainly, again, it is said by prosecuting agencies that offenders try to launder the proceeds of their crime into a legitimate business. There are various phrases given for transposing or layering or inserting criminal proceeds into the legitimate economy to reduce the transparency that there might be.

Mr Winnick: It is becoming increasingly common in Britain?

Richard Fisher: It is said that it is. Again, a lot of this is very difficult to know. From the perspective that I come into contact with it, then I may be representing an individual who says, “I don’t accept that and there’s absolutely nothing wrong with that business and what the prosecutor says about it being funded from money from drugs”—or fraud, or whatever it may be—“is wrong”. Then it becomes obviously a factual issue that has to be determined, perhaps by a judge. I am not coming into contact with necessarily very, very clear examples of it, but certainly many examples of that being alleged, so in that sense it is on the increase.

Kennedy Talbot: Laundered into legitimate businesses is fairly rare. Trusted associates and moved across the world to Middle Eastern countries like Dubai, United Arab Emirates and so on, not through what you might regard as first grade banks, but money service agents and bureaux de change, the sort of people who are taking cash—I think that is what happens to it. Certainly, what is not the position is that it is left in the names of close members of the family, because that is so transparent it is seen through immediately. It does not work and we already have effective measures to ensure that it does not.

Tim Owen: It will not surprise you, Mr Winnick, that clients do not normally tell their lawyers what they have done with the money when they are pleading not guilty, and the crime itself or the method of proving the crime will itself usually reveal where the money has been distributed. I do not disagree with what Kennedy has said, but I think the true answer is there is no limit on the ingenuity of people as to what methods they may find to disguise money.

Mr Winnick: Can I ask—sorry.

Chair: No, final question, Mr Winnick.

Q63 Mr Winnick: It is up to you. Can I ask the question that I asked previous witnesses, namely about the ability of a judge or the wish of the judges in such cases to determine sentence when a defendant has been found guilty on the basis of whether the defendant is willing to give information about the proceeds that have been acquired by criminal means?

Tim Owen: The answer is that, like any effort to co-operate, to plead guilty early, to provide assistance, that will and should be reflected in the sentence by an appropriate reduction. As to a particular form of mitigation linked to providing information about assets, I am not aware of that as a particular feature of sentencing law. I do not know if anybody else is.

Kennedy Talbot: I agree with Tim.

Richard Fisher: I agree. It may be a matter that is specified in the Sentencing Council guidelines, certainly in relation to fraud cases, of a recognised mitigating factor of having either recompensed a victim or a clear intention to do so.

Q64 Stuart C. McDonald: I think most of the ground I wanted to cover already has been covered. Just building on what you all said in response to Ms Atkins' questions talking about the importance of freeze orders or restraint orders, are you saying then that, in order to try to avoid ill-gotten gains being squirreled away, it is really just better exercise of these powers that has to happen? There are no new powers that you would suggest we need to look at introducing?

Tim Owen: Yes, I think the powers are there in part 8 of the Act. They are very exhaustive and I do not think anyone is seriously suggesting that there is a gap there.

Kennedy Talbot: New implementation powers to sort out this business relating to the CPS having to pay costs against—that will improve things. A confiscation court was mentioned by the previous panel. Definitely we need confiscation courts so you have specialist judges dealing with it. Better training in investigation to find the assets early. Here is a novel idea: why don't you have the position whereby the police can impose a restraint order at the point of charging and that would be the automatic default position whenever anyone was charged with an acquisitive offence but adjourn that straight into the confiscation court so there is immediate judicial oversight, so it becomes part of the everyday fare of police business?

Stuart C. McDonald: Quite a radical idea. Mr Fisher?

Richard Fisher: That is a novel idea, certainly. One thing that I thought about mentioning earlier on, in the context of restraint orders and this issue about costs, is that costs can go either way. If a restraint order is made against my client and we seek to discharge it or vary it but our application is refused, then we will bear the costs or the defendant would bear the costs and have to pay the costs of the Crown. It is not simply that costs are only going to go in one direction. From the perspective from which I speak, certainly the increased use and earlier use of restraint orders is undoubtedly an opportunity to increase the effectiveness within confiscation, although a confiscation order might not be made, in fact, until several years later after a restraint order is made because restraint orders can be made at the outset of an investigation. It is not like the old law where a defendant had to be charged before a restraint order could be made by then the High Court. Now, essentially, once an investigation has commenced—so, very early—it might be a year or more until that individual is charged or not charged. If they are charged, it might be a year or more until they are tried and convicted and confiscation might be a year or two after that, so there could be a very, very long period of time. If a particular offender has a broad base of identified assets that are restrained, then the objective of that restraint order being

to preserve those assets possibly with a view to a confiscation order being made some years down the line, of course it is going to be more effective rather than them having the opportunity, if they chose to do it, to try to dissipate those assets in advance of any confiscation order being made.

As Tim Owen says, there is a wide range of other investigative tools available at the disposal of prosecutors—account monitoring orders, customer information orders, disclosure orders, et cetera. All of those can be deployed. Under restraint, an individual can be compelled, effectively, to disclose their assets. If they do not they can be held in contempt. That is punishable with imprisonment on its own and that may occur whether or not they are ever charged with any criminal offence. That has some bite as well and that perhaps could be used more.

Q65 Stuart C. McDonald: That is helpful, thank you. The other issue I was going to ask you about is, I think I came in when Mr Berry was asking you about the different aims and objectives of this legislation. We tend always to focus on measuring success on the financial side of things—how much we are aiming to recover, how much is actually recovered, how much that has cost us, and so on and so forth—whereas of course another goal, as I think you were saying, is disruption. Is there any easy way to measure the extent of disruption? How do we measure success in terms of disruption and, if we can measure the amount of disruption it is causing, is this legislation being successful in disrupting the Mr Bigs?

Tim Owen: I really could not give you an informed or intelligent answer on that, I am afraid.

Kennedy Talbot: I think that is very hard. Of course, the ultimate irony is that if the legislation and its implementation had complete success, no proceeds of crime would be recovered at all. It is very difficult to assess.

Richard Fisher: I agree with that. I am afraid I am not going to try to attempt to go any further than what has been said.

Q66 Mr Umunna: In 2012-13, the National Fraud Authority's estimated loss to the UK economy from fraud was in the region of £52 billion, but in that year just £133 million was collected by enforcement agencies from confiscation orders. Obviously, if people are determined to commit offences and appropriate money and assets that do not belong to them, then you are going to have the problem, but the ratio of what is lost to what is recovered seems huge. HMRC suggested serious consideration of having one lead agency on these issues. The Chair asked the previous panel what they thought of this. What do you think of this? Do you think this would make us more effective in being able to recover assets?

Richard Fisher: I do not. I draw my experience of that to form that view by the implementation of the Assets Recovery Agency when the Act came into force, and that was disbanded, the whole process taken apart, fairly quickly. From my perspective, looking at it as a defence practitioner, it is very difficult to have a centralised, sole unit dealing with that, but then again, disparate units dealing with it is potentially inefficient. I think there is certainly scope, as I have seen in some of the written evidence, for review of the process and

whether there are some elements centralised. I think one suggestion was made that perhaps the National Crime Agency could be a centralised unit for orders over a certain amount. In terms of enforcement that may be a very good idea, in fact. But to have simply one overarching agency to deal with all elements of proceeds of crime, I think experience shows that is very difficult to do.

Mr Umunna: Do you agree with that, Mr Talbot?

Kennedy Talbot: Yes, I agree with what was said earlier. This needs to be made part of the everyday practice and understanding of investigators, of prosecutors and of judges. That is why we need confiscation courts, regional centres, regional specialism. No reason why one cannot have one agency with the lead control over it, with an overview, which can be centralised, but it has to be rolled out and implemented locally.

Tim Owen: Yes, I agree with that. A health warning: the £52 billion itself, I query what that is based on. The £133 million is obviously much more empirically based. The answer to tackling the £52 billion, or whatever it is, is more effective prosecution, effectively investigating, arresting, prosecuting people and getting convictions. Thereafter, whether you have a single specialist agency, or two, or three, is not, it seems to me, the real issue. The real issue is a confiscation regime that accurately identifies what a person has benefited, received from the crime, and then an effective, trained and properly staffed unit to seize it.

Q67 Mr Umunna: The £52 billion figure is from the NAO's report, and you are right to question on what it is based. I have to say, as the Chair said, there are a number of lawyers on this Committee, I am one but this was not my field, which is why, in a way, it is quite interesting coming to it fresh from another field. Just looking at the spaghetti structure that we have been provided with, for those of us who do not or did not practice in this field, to understand, this to me would seem to suggest there is a problem. At the top is the Criminal Finances Board, which in a way would fulfil the function that Mr Talbot referred to, which is kind of a halfway house between having a specialist agency and not having one at all. How successful in your view is this Criminal Finances Board in bringing together all the different actors in what we are trying to do here, which is to reduce the numbers of assets held by these people?

Richard Fisher: Very difficult to answer, I am afraid, from my perspective. I am looking at much smaller units, as in cases, and advising and appearing in confiscation matters rather than the higher level overview approach. I have experience of how my individual clients may be dealt with.

Mr Umunna: Fair enough, I will come to that in a minute. Do either of Mr Talbot and Mr Owen want to say something about the Criminal Finances Board, or would you say you are in the same position as Mr Fisher?

Kennedy Talbot: I am in the same position. I suggest you try to find some whistleblowers, some former—

Chair: We must have a final question.

Q68 Mr Umunna: Okay. This is my final question, as I am harried, Paxman-style, by our Chair. Do you think that your clients, given that is what you said you are specialists in, are even aware of the Proceeds of Crime Act? To what extent is this abominable legislation that Mr Owen refers to a deterrent at all, particularly for the defence lawyers here? To what extent is it a deterrent to them?

Tim Owen: I was saying to my colleagues earlier on, the one point in a conference you are starting to explain the way the law works and they understand how the basic law of fraud works in a trial and so on, when you come to explain what “the proceeds of crime” means and what the benefit sum is and then the hidden assets possibility, there is general, universal astonishment. Personally—it is anecdotal; it is not empirical—my impression is that people are astonished to discover the full reach of it and cannot quite believe that that is the law. To that extent, therefore, I question whether it is a very effective deterrent.

Q69 Mr Umunna: There is an ignorance there at the outset until you, counsel, explain?

Tim Owen: Until you have explained the full glorious implications of this Act and how it can end up with a telephone numbers figure, which the court deems is available to them.

Kennedy Talbot: I agree with that, and I think it would have much greater impact if it was part of the everyday language of investigating and prosecuting. As I said earlier, if you expand civil forfeiture with proper oversight—we are very good in this country at making sure our authorities do not overstep the mark—and there is good accountability, unlike America, I think we can have some of the best parts of the US system without the drawbacks.

Richard Fisher: I agree with that. I have dealt with some cases where the individual offender clearly had an interest in it, because when either the police or Her Majesty’s Revenue and Customs entered their properties, they found either copies of research on the internet on money laundering or copies of books, one of which I contributed to. There is maybe a mixed bag, but I agree with what Mr Owen says. I have represented a number of individuals who are struck in disbelief. Now, it does not necessarily mean that the Act itself is good or bad or indifferent or not working, but certainly where there is an overall public interest in trying to increase the publicity about it as a deterrent factor, there may be something in that, yes.

Chair: Thank you very much. Mr Berry has a very tiny final question.

Q70 James Berry: It will be a yes or no. When I was cutting my teeth at the Bar representing police forces about a decade ago in cash forfeiture cases, I was surprised by magistrates' and district judges' lack of understanding of the law and the amount of explaining I was having to do to them. You are dealing with the other end of the market, with the biggest cases. Do you think that that is the same with the judges you appear in front of or do you think they would benefit from more specialism or specialist training?

Tim Owen: I sit as a recorder and you attend training courses, which include to some extent training in confiscation. I have done a one-day seminar on it, I think, in five or six years. Most judges do not enjoy or look forward to doing confiscation. I am very strongly in favour of the idea of specialist judges assigned to deal with these cases from the beginning to the end.

Kennedy Talbot: Absolutely. When you very kindly invited me, I sent an email around to all colleagues that I know who do this kind of work. Overwhelmingly, the response was unenthusiastic reception at courts and, insofar as dealing with the opposition is concerned, practitioners who are not familiar with and do not want to do this and want to move on to the next jury trial. Confiscation courts is the answer.

Richard Fisher: I agree.

Chair: Excellent: we like "I agree". Thank you very much for coming. If there is anything we have missed out, anything you want to add to what you have said, please do write to us. We have just started the inquiry, so we have plenty of time to deal with these issues. Thank you very much.

Examination of Witness

Witness: **Martin Bentham**, Evening Standard, gave evidence.

Q71 Chair: Mr Bentham, thank you very much for coming. I am sorry about the Divisions, which have delayed proceedings somewhat, but I am sure that your evidence will not have suffered from having listened to a number of the other panels. Can I start by commending you and the *Evening Standard* for the excellent work that you all have done in campaigning on this issue over a number of years? I think your first article began in 2009, when you first wrote about these issues. Has it got better or worse since you first took an interest in these matters?

Martin Bentham: It is slightly hard to measure. I think in some ways it has got slightly better in the last couple of years because there has been a great focus after the Public Accounts Committee and the National Audit Office report—the National Audit Office report of December 2013 and the PAC hearing straight after that—which I think concentrated minds quite heavily in some of the enforcement agencies. From that point of view, I think it has got slightly better but it is still quite difficult to measure. There are still ongoing cases that I have

attended and reported on where there are practical problems that are delaying and thwarting enforcement efforts.

Q72 Chair: Where are these Mr Bigs? Where are these criminals hiding their assets and why is the legislation so poor that it is not able to trace what they are doing with these assets?

Martin Bentham: I think some of the evidence you heard earlier outlines the problems. First of all, this issue of restraint; it is hard to judge as a journalist from the outside exactly how quickly restraint is applied because it is not something we are a party to. Obviously, it is something very much that I hear quite regularly from people in this field, that restraint is not happening quickly enough. It was meant to be addressed in the Serious Crime Act where there was a change in the definition that is needed to apply for restraint, but again practitioners seem to be suggesting that it does not really happen quickly enough, as you have just been hearing.

I think after that the principal issues are that money is either hidden with associates, as Kennedy Talbot was just saying, or often taken abroad. That is the key problem. There are some problems relating to assets in this country, where there is subsequent litigation about third parties and so on, but I think most of it is where money has disappeared either into other people's hands or abroad.

Q73 Chair: Do you think the change in the law suggested by the commissioner, which is that there should be a criminal offence instituted for those who do not pay confiscation orders, will help or hinder the process of trying to recover these assets?

Martin Bentham: I am not sure it will necessarily help. I would not particularly go down that route myself, but I would say the default sentence, which does exist, could be enforced a bit more rapidly in some cases. There was a slight inconsistency with the way the Serious Crime Act addressed this issue, because it removed early release for those with £10 million orders or more, which would mean that they would serve the full 14-year sentence that can now be imposed, but for everybody else, they still retain the ability to have early release. The Home Office was arguing that the deterrent effect would work in respect of the people with the higher orders, but seemingly not willing to accept it in respect of the people with lower orders. In some cases, if you were looking for a sanction for non-payment and non-co-operation that is the one to use, and it is already there.

Another point in relation to that is that at the moment there is no distinction in terms of whether the person has co-operated or not with the authorities. Say somebody has a £2 million confiscation order, they have made no effort to pay it, but say the authorities have obtained half the money, then the default sentence is factored down by half in recognition of the fact that money has been paid. The same discount would be given to somebody who has actually co-operated in every respect, so somebody who makes no effort whatsoever still gets

a discount on the default sentence pro rata for the amount that has been paid, or in this case has been forcibly obtained from them, in effect, by the law enforcement authorities. I think there that particularly those who have been non-co-operative should not be entitled to early release on the default sentence.

Q74 Chair: What about the seizing of passports? We have had examples of people serving their sentence, not paying their confiscation orders, and then leaving the country. Do you think that passports should be surrendered until the order has been completed?

Martin Bentham: I think, again, that would be on a case-by-case basis, as was articulated earlier by Kennedy Talbot and one or two of the other witnesses. Clearly, there has been a problem. Several of the cases that I have reported on, again people have come out after serving their substantive sentence and then disappeared abroad before the default sentence can be imposed. The evidence is that it is more difficult to enforce clearly when the person is not in the country any more. There have been problems of that sort. I think Keir Starmer, the former DPP, wrote to you, in fact, previously suggesting that the Bail Act ought to be changed to address this issue. The Serious Crime Act of last year does have a provision in it that allows the courts to impose a requirement that a passport be surrendered in certain cases, presumably where there is a risk of somebody fleeing—not automatically, I do not think, but that power certainly needs to be there, or else the default sentence needs to be imposed more quickly, because what should not be happening is that people are coming out of their substantive sentence not having paid and then being allowed to disappear while those debts are outstanding.

Q75 Chair: We have heard some evidence earlier on about the London property market and the view that perhaps some of that inflation in prices of real estate in London is due to the proceeds of crime being laundered through London. Do you think that that is happening?

Martin Bentham: I do not know precisely. I am not involved precisely in that area of investigation. What I would say is that there have obviously been cases where that has been shown to be the case through the courts. There is a Transparency International report that was published last year that went into this issue. I think it suggested there are several—I have the figure here, I think. I can probably tell you. It quoted 36,342 properties that were owned by shell companies. Obviously, some of those companies are, for example, companies that are held in some of the Crown dependencies and so on, the ownership of which is often very opaque, and some of those are simply devices that are used by people wanting to maintain some privacy for perhaps legitimate reasons. Obviously, there is a concern, and this is one of the reasons it is difficult to enforce confiscation orders in general, that sometimes assets are held in exactly that type of shell company where ownership is opaque and, therefore, difficult to prove in a court of law. Clearly, Transparency International certainly think that some

property in this city and, indeed, elsewhere in the country is bought in that way and bought by using illicit funds. How extensive it is, it would be very hard for me to know.

Q76 Stuart C. McDonald: We have heard a little bit of evidence about ways we can try to stop criminals ferreting away their ill-gotten gains before they are taken to court, and so on. Much of that was basically saying we need better practice; it is not about new powers. Is that something you would agree with?

Martin Bentham: I would agree with it to a large degree. For example, there has been a lot of evidence today about how the overall figure of £1.6 billion is not a realistic figure. I am perfectly happy to accept that, that interest is a large part of that, sometimes on debts of people who have died, although that can now be written off under the Serious Crime Act provisions, but there will be money there that is not realisable and so on. Where there is a problem is there are cases where assets clearly are there and yet the enforcement on a very practical level is very poor.

I can think of one case that I attended in November 2014 involving a man called Whiteway-Wilkinson, who basically runs a brewery here in London. He owes a £2 million confiscation order, roughly speaking, from a previous crime; now owes £3.2 million, or at the time did, and was told by the judge in that case to pay a significant lump sum—those were the exact words—by the time of the next hearing, which was meant to be in May last year. When he turned up there, the judge was not there. There was a bench of lay magistrates who were not familiar with the case. The long and the short of it was that the case then had to be adjourned until September. It has not returned to court, in fact. The case did not happen in September. It was meant to come back into court again in February this year. You had a case where a judge had said, “You must pay a significant lump sum within six months” in November 2014. Here we are now and, as far as I am aware, there has been maybe about £11,000, certainly at last month, paid towards this, no significant lump sum, and yet the case is still continuing. Nothing has happened, and the reason for that, again, is really a straightforward lack of continuity, because the judge who was handling the case in the initial hearing was not present at the next one.

There have been similar cases. Another one I can think of related to another offender in London where there was a promise made to sell a house by his wife on his behalf to pay his confiscation order debt. The prosecution was alleging that the house had been deliberately overvalued and, as a result of that, the judge said, “You have to sell it by auction if you are not selling it quickly enough”. The next time the case came to court a different judge was there, nobody really knew what had been said, and again the thing was delayed unnecessarily.

Chair: Sure. I am sorry to interrupt, Mr McDonald. We just have to be very careful that we are not straying into talking about a case at the moment.

Martin Bentham: Yes. No, I am being careful.

Chair: Good. Excellent.

Q77 Stuart C. McDonald: These seem like quite extreme cases, but also what you seem to be arguing for there is continuity in terms of this judge taking it through from the criminal trial all the way through to confiscation and so on.

Martin Bentham: Yes.

Stuart C. McDonald: Yet what some of the other panellists appeared to suggest was that we take it away, out of the criminal court altogether, and have a confiscation court.

Martin Bentham: In a sense it is the same thing, because the Westminster Magistrates Courts in both these cases is where they enforce the confiscation order. The Magistrates Courts are enforcing it, but there is perhaps a lack of continuity there in the way that there might be certainly elsewhere in the country. I think that might also be the case. I would agree with what they were saying about having a separate specialist court for people to be able to hear these cases who are familiar and can ensure exactly that continuity of judicial supervision of a particular case, especially in the big cases where there are several million pounds theoretically outstanding. That would definitely help, I think, because people then are familiar and know the complexities of what are quite complicated cases.

Q78 Stuart C. McDonald: I have two other quick questions. First, regarding incentives, do they alter the way the agencies go about administering the Proceeds of Crime legislation? If not, what is the point of them? If they do influence how they go about it, is it a good thing?

Martin Bentham: I cannot answer that myself. All I can say is that there is certainly a view, which again you have heard today, that they do sometimes distort the way in which cases are dealt with and the priorities that are given. That would be a mistake.

Q79 Stuart C. McDonald: Finally, all these figures are bandied about, in terms of how successful the legislation is and about how much is recovered and how much it has cost to recover that. One of the other objectives is obviously disruption. Is there any way we can measure disruption? From what you have seen, is this legislation having a disruptive effect on Mr Bigs?

Martin Bentham: It is probably hard to measure the disruption per se, but clearly there are two principal purposes, to my mind. One would be to stop people straightforwardly profiting from criminal activity, which is distasteful, I think, to any ordinary law-abiding person. The second one is to stop them using that money to commit further crime. For example, Keith Bristow I interviewed last year, and he talked about this very point. He said one of the purposes is because these people rely on the profits they get from their criminal activities to bankroll the next criminal activity. I think by the authorities' own admission in this country, one of the key purposes clearly is to stop people having access to proceeds of

crime, because they then use it to commit other crimes, whether it be trafficking of people, drugs, fraud, whatever it might be. That is the key purpose. I think the greatest public interest is to ensure that money is taken off them for that reason, however much it costs. Of course, it wants to be done as efficiently as possible and so on, but ultimately the real key is to make sure that people are not able to use the money to carry out further crimes.

Q80 Stuart C. McDonald: In a sense, that brings you full circle round to measuring how much you have gained from the criminal enterprise and how much is recovered. You are almost measuring the same thing, I suppose.

Martin Bentham: Yes. I think you want to be able to recover it, exactly. You want to be able to recover what they have gained. Of course, the issue is about how that is calculated, the criminal lifestyle calculation. I think that is potentially flawed, although unless you have an ability to go back and look again—if you were just looking at known assets that the people possess, unless you are able to go back when you discover that they have assets hidden away in opaque funds overseas, then there is a difficulty there that you will just focus on the absolutely easy things and people will end up retaining a criminal benefit, which would again be problematic.

Q81 Tim Loughton: Mr Bentham, how well do you think we co-operate internationally on tracking down proceeds of crime or is that a big hole at the moment?

Martin Bentham: I think it is probably still a big hole. How much that is our own fault is a difficult issue to answer. I suspect that when you are talking about the criminal law in each country, we now have, for example, prosecutors in Dubai and Spain, I think, trying to work together and achieving some results over there, although I think fairly limited so far, trying to get on-the-ground co-operation. Every other criminal justice system often has a very different way of proceeding. It is a difficult objective to achieve using the criminal law, because each criminal jurisdiction probably has a slightly different way of doing things to our own, so you cannot have a uniform approach.

From the evidence that I know—and I am not an expert in that field; I really relay what I hear from other people as much as anything and talk about the results that I have seen—we have limited ability to get at this money. Certainly, in other jurisdictions—again, in the Crown dependencies, for example—sometimes some assets are hidden in places like India and Pakistan where it is harder to get at them, potentially. The UAE, Dubai—some of these places there are quite difficult issues in terms of accessing and breaching confidentiality of client ownership and so on. I think there is an awful lot of work needs to be done there. Some people say that civil action could be used, or even the bankruptcy laws. Receivers say that they would be better placed to enforce this than perhaps, say, the Crown Prosecution Service or the other state agencies.

Q82 Tim Loughton: That is the point I am exploring. Quite aside from whether funds are being stashed overseas because they are criminally gained, we are getting better at tracking down overseas assets of citizens subject to UK tax through HMRC and international tax agreements. Is there any overlap with the tax authorities? Because if a criminal has stashed criminal proceeds abroad and is enjoying those proceeds, then he or she should be paying tax on them.

Martin Bentham: Yes. I do not know that answer, is the straightforward response, I am afraid. I do not know the co-operation and what use there is of the success we are having that you allude to in terms of taxation and the identification of criminal assets. I really do not know that. You would have to ask people—

Tim Loughton: But there is a common cause there, it strikes me.

Martin Bentham: Of course, yes.

Tim Loughton: I have not seen any evidence that our enforcement agencies, from a taxation point of view and from a criminal point of view, are acting hand in glove.

Martin Bentham: No, you might well be right. You have been in Government; you know how Government does not always work hand in hand in the way that it might ideally do so.

Q83 Tim Loughton: That is true. On another tack, the comments we had earlier about the level of awareness by criminals and by judges and magistrates—do you agree there is a weakness there, certainly in terms of legislation, or do you think that criminals are perfectly well aware of what they are doing?

Martin Bentham: I cannot really speak for criminals as such. I do not know what they think on this issue, but I would be surprised if they were not aware that their money could be taken off them. Maybe the actual extent of the powers of the Proceeds of Crime Act and its amendments and the Serious Crime Act might surprise them. That is what Tim Owen was saying, wasn't he? What he was saying about when you explain the full scope of it and the criminal lifestyle issue—that if you are deemed to have one, then every single bit of income you have had over the last six years is taken into account and classed as criminal earnings—I think that might surprise them. The idea that if they get caught, they are likely to have an attempt to take their money off them taking place, I do not think that would surprise them. I would be very puzzled by that.

In terms of the magistrates that I see, I think the particular ones that I have seen enforcing this don't. The district judges, generally speaking, are pretty adept at knowing the ins and outs of the law in dealing with these cases. They do that quite regularly. The problem is it is different people handling the same case on different occasions, and then of course they lose the background of that particular case. In my experience, which is focused on a particular court—generally speaking, most of the ones here in London are dealt with at

Westminster Magistrates Court—it is more a problem of the people who do know about it not always following the same case through and, therefore, the loss of knowledge that way.

Q84 Tim Loughton: You would support specialist judges consistently dealing with the same case?

Martin Bentham: I think it makes sense, and I think the same with prosecutors. I have been, again, in the same cases where a different prosecutor has appeared. The next time the person is before the court it is a different prosecutor again, and of course that familiarity with what was said before sometimes can be lost. There was one case—on this occasion it was a Serious Fraud Office case—where the defence solicitor was different, the judge was different, and there was an attempt by the defence solicitor to argue that what had been said at the previous hearing was not what had been said, in effect, because they were looking at notes and trying to interpret what had been said. Fortunately, the prosecution barrister for the SFO was able to say, “This is what was said.” I was sitting there thinking, “I was there and I know absolutely that this is what was said.” It was just this lack of clarity because there was not a proper consistency of, in this case, the judicial personnel.

Q85 Tim Loughton: In terms of the deterrent effect of the Act, how could we impress upon the potential criminals the extent of what they could be liable for—to those few criminals who I am sure do not read the *Evening Standard* to read your pronouncements on the subject?

Martin Bentham: I would have thought that some success in dealing with some of the people they know is, quite frankly, the best way. I am quite sure that in some cases the word would spread if their associates have lost significant sums of money and been caught. I think that is probably the most effective way. Other than that I cannot really help, I am afraid. There are always ways of trying to publicise things, but how much they are paying attention to that I really do not know. I would think knowing that there are people they are aware of in their criminal networks and so on who have been brought to justice and suffered some financial loss as a result of it is the way to really get it home to them.

Q86 Chair: You wrote an article in yesterday’s *Evening Standard* about the evidence that has been submitted to this Committee by the British Bankers Association, when they said—and this was the headline—“Make crime bosses pay confiscation orders from new assets”. Do you think this will help? What they have basically said is: after the person leaves prison, after they go out again, if they start a new business, we should be after them then.

Martin Bentham: I think what they are basically saying is that at the moment the way a confiscation order is calculated is that there is a criminal benefit figure and then there is what is called the available sum. The available sum is what they are deemed to have made, and in essence still have, from the crime that they committed. Sometimes that available sum is going to be lower than the actual criminal benefit. What the British Bankers Association

were saying—and obviously they could tell you better than I could, having just talked about what I read from their point of view—is that sometimes the available sum will turn out to be greater than was originally thought. In other words, somebody seems to have more money than they were first thought to do, and that should be revisited so that their full criminal benefit from the activities that they carried out should be taken off them, rather than at the moment where that very rarely happens and the original decision is basically left to stand without any attempt to look at it again in the light of new evidence. That is, in essence, what I think the British Bankers Association is saying.

Of course, it makes eminent sense, because the reason that the confiscation order is at the figure it is is it is basically set lower than it might be simply because at the time of the order being set the offender is not thought to have as much available money as the full proceeds of their crime. If that changes and they can meet the order, then that is what the bankers are suggesting should happen. It really is a practical enforcement issue again of perhaps not having enough focus precisely on the cases, partly perhaps because there are so many of them and there is not enough concentration. Clearly, there is an issue about personnel and the ability of the CPS, which has had quite substantial funding cuts, for example, and lots of other priorities, to deal with some of these cases. I am not sure, you would have to ask them, but I suspect it is quite a difficult challenge for them to manage the debts.

Q87 Chair: In partnership with the Metropolitan Police, you published photographs of a number of Mr Bigs who owed £46 million.

Martin Bentham: The National Crime Agency, actually.

Chair: The National Crime Agency?

Martin Bentham: Yes.

Chair: One of the pictures, I think, was of someone who was not a Mr Big, and you corrected it after you had put his face—

Martin Bentham: Yes. That was their fault, not ours. We were supplied it in good faith and they came back to us and said they had given us the wrong person.

Q88 Chair: Absolutely, but the others were okay—the 14 out of the 15. Have you had any feedback as to whether that kind of publicity has helped the NCA in tracking down these people?

Martin Bentham: I have not as yet, so I do not know is the answer. They have not told me that as yet and I have not had any feedback of that sort. What I can say is that on a couple of occasions previously when I have published stories and produced lists, we have had information about people, one of whom was in Dubai. Another one was in Southern Spain,

who subsequently—there was a letter to my paper, a letter to Scotland Yard and I think also the CPS—has been returned and is back in prison. Occasionally it can work, perhaps not as much as we all might hope, but anyway.

Chair: I am sure they were delighted to get your assistance. Mr Bentham, thank you very much for coming in. We commend you once again on the work that you have done in the *Evening Standard* and your longstanding campaign to get to the bottom of this issue. If there is anything that we have missed out, any information that you think would be helpful to the Committee, please write to us. We are very keen to pursue this matter and to make some sensible suggestions to the Government about changes in the law.

Martin Bentham: Thank you very much.

Chair: Thank you. That concludes the hearing.