

**CONFIDENTIAL**  
**ROYAL MAIL GROUP SECURITY – PROCEDURES & STANDARDS**

THE PROCEEDS OF CRIME ACT 2002 & FINANCIAL INVESTIGATIONS		P&S Doc 9.1 V1 Sep 10
1. PURPOSE		
The aim of this document is to provide both Investigators and Accredited Financial Investigators within Royal Mail Group Ltd, with clear guidance on the procedure to be adopted to ensure that the recovery of business assets are maximised by exploiting the opportunities available through the Proceeds of Crime Act 2002 (POCA 2002) and Financial Investigations.		
2. CONTENTS		
Section 3	Introduction	
Section 4	General & Terminology	
Section 5	Confiscation Investigations	
Section 6	Money Laundering Investigations	
Section 7	Investigation Powers Under POCA 2002	
Section 8	Restraint Orders	
3. INTRODUCTION		
3.1	The recovery of assets from criminals is of paramount importance to Royal Mail Group Ltd. This not only increases the deterrent effect of committing acquisitive crime it also makes complete commercial sense. Accordingly Investigators must ensure that whenever possible offenders repay the value of any benefit acquired as a result of their criminality. To ensure that the benefit of crime is removed from offenders Investigators must be aware of the Proceeds of Crime Act 2002, (POCA 2002) and understand when the provisions of the Act should be utilised, as this is the legislation which gives powers to investigate, restrain and confiscate criminal assets. POCA 2002 also defines Money Laundering offences. (POCA 2002 drew together several pieces of legislation dealing with the proceeds of crime and the recovery of criminal assets into one definitive Act).	
3.2	POCA 2002 is made up of 12 "Parts" detailing the different aspects of financial investigation and the recovery of criminal assets. Part 6 deals with Confiscation, (see Section 5 below). Part 7 deals with Money Laundering and details 3 main money laundering offences, (See Section 6 below). These offences can be investigated by Investigators and Accredited Financial Investigators, (AFI) alike. Part 8 deals with Investigation Powers, such as Production Orders, (see Section 7 below). <b>In RMG Ltd these powers can only be exercised by an AFI and only when the "predominant purpose" and "predicate offence" is to further either a Confiscation or Money Laundering Investigation.</b>	
3.3	Advice on financial investigations can be obtained from the Financial Investigation Unit (FIU) on 0207 881 4339; however such advice <b>must</b> always be sought where there is a loss to the business, or personal benefit to a suspect offender, exceeding £5,000 in value. Dependant on the AFI workloads and priorities a linked financial investigation may be instigated. However, the physical analysis of information obtained by the AFI through POCA 2002 Orders may have to be undertaken by the Investigator In the Case. In normal circumstances the investigation should have reached the stage where a specific suspect, or manageable number of suspects, has been established.	
Back to Contents		

**CONFIDENTIAL**  
**ROYAL MAIL GROUP SECURITY - PROCEDURES & STANDARDS**

**4. GENERAL & TERMINOLOGY**

- 4.1 Obtaining Financial Intelligence/Evidence.** In order to progress a financial case against a suspect, financial information will have to be obtained. Below are ways of obtaining such information.

**CONFIDENTIAL**  
**ROYAL MAIL GROUP SECURITY - PROCEDURES & STANDARDS**

1. **Authority from the Subject.** If the subject is aware of the investigation they should be asked to provide authority for one, or both, of the following as applicable;
  - a. Authority for Disclosure of Information (Financial Institution) Form GS045.
  - b. Authority to Disclose Data Form GS212.
2. **Data Protection Act 1998.** Some institutions may disclose financial information on receipt of a data protection request, which can be found on the Electronic Intelligence Gathering Form GS208.
3. **Bankers Books Evidence Act 1879.** The Criminal Law Team (CLT) can make an application to a court for an order under this section. However, this Act will only give access to the Bankers' "Book" which is the bank statements.
4. **Production Orders.** Production Orders are available as long as certain conditions are met. Generally this requires that all other methods of obtaining the material have been tried without success or have not been tried because it appeared they were bound to fail. Two types of Production Order are available, they are;
  - a. POCA 2002 following an application by AFI if they are conducting a Confiscation or Money Laundering Investigation
  - b. PACE 1984 following an application by a Constable if they have reasonable grounds to believe an indictable offence has been committed.

However, prior to making an application the "Predominate Purpose" and "Predicate Offence" test should be applied. Advice on applications for Production Orders must be sought from an AFI or the CLT.

- 4.2 **Predominant Purpose.** Prior to an AFI obtaining an order under POCA 2002 the AFI is required to apply the "predominant purpose" test. This means that any Production Order application should relate to the predominant purpose for which the material is required. If predominant purpose for which the material is required to further;

1. A Confiscation Investigation into the defendants benefit from crime, or,
2. A Money Laundering Investigation where there is suspicion or evidence of money laundering.

Then the AFI will be able to apply to the Court for Production Orders under POCA 2002. However, if the predominant purpose for which the material is required is to prove another "predicate offence" such, as an acquisitive crime, like theft or fraud, then a PACE Production Order may be appropriate. Again PACE Production Orders can only be obtained by Constables.

- 4.3 **Confiscation Investigation.** A confiscation investigation is an investigation to see whether someone has benefited from **criminal conduct** and, if so, the extent and whereabouts of that benefit.
- 4.4 **Criminal Conduct.** Criminal conduct is conduct which constitutes an offence in any part of the UK or if it occurred elsewhere, would constitute an offence, if it is an offence in that jurisdiction at the time and in any part of the UK.
- 4.5 **Particular Criminal Conduct** - refers to offences that the defendant has been convicted of in the current proceedings and any other offences taken into consideration when deciding an offender's sentence.
- 4.6 **General Criminal Conduct** - means the defendants entire criminal conduct, whenever the conduct occurred and therefore includes "Particular Criminal Conduct". General Criminal Conduct depends on the concept of '**criminal lifestyle**', which is based on the principle that an offender who gives reasonable grounds to believe that they are living off the proceeds of crime should be required to show that their assets have been obtained lawfully and, if they cannot, should have them confiscated.

**CONFIDENTIAL**  
**ROYAL MAIL GROUP SECURITY - PROCEDURES & STANDARDS**

- 4.7 Criminal Lifestyle** Is defined in POCA 2002 but the aspects relevant to Royal Mail Investigators are; a person has a criminal lifestyle if the offence (or any offence) concerned is:
1. An offence specified in schedule 2 of the Act which includes, money laundering offences under 327 (concealing) and 328 (arrangements) ,but not 329 (use & possession), or
  2. An offence committed over a period of at least six months, and the total benefit is not less than £5,000
  3. Conduct forming part of a course of **Criminal Activity**

**CONFIDENTIAL**  
**ROYAL MAIL GROUP SECURITY – PROCEDURES & STANDARDS**

- 4.9 Criminal Activity.** The test for a course of criminal activity is; has the defendant;
1. Been convicted of four or more offences on the same occasion, all of which he has benefited from or
  2. Got at least two previous acquisition convictions on separate occasions, within 6 years of the most recent proceedings, for offences from which he has benefited and
  3. The offender's total benefit is not less than £5,000.
- 4.10** If the court decides that the defendant has a **criminal lifestyle**, it must make **four assumptions** in order to establish their benefit from crime, the four assumptions are;
1. Any property held by the defendant at any time since conviction was obtained by him as a result of his general criminal conduct.
  2. Any property transferred to the defendant after the relevant day was obtained as a result of general criminal conduct.
  3. Any expenditure incurred by the defendant at any time after the relevant day was met from property obtained as a result of his general criminal conduct.
  4. Any property obtained by the defendant was free of any other interest in it.
- The assumptions will not be used however if they are shown to be incorrect or there would be a serious risk of injustice if they were made.
- 4.11 Money Laundering.** Money Laundering is the procedure by which criminals try to hide the origin of the proceeds of their crimes, making it look as if those proceeds were acquired legitimately. In doing so, **criminal property** obtained unlawfully is turned into property or money that can be accessed via legitimate methods without arousing suspicion.
- 4.12 Criminal Property.** Property is criminal property if;
1. The property (in whole or in part, directly or indirectly) constitutes a person's benefit from criminal conduct; and
  2. The alleged offender knows or suspects that the property constitutes or represents such benefit. (It does not matter who carried out the criminal conduct or who benefited from it).
- 4.13 Money Laundering Investigation.** A Money Laundering Investigation is simply an investigation to see whether someone has committed a money laundering offence. The Money laundering offences are detailed in Paragraph 6.2 below.

[Back to Contents](#)

## **5. CONFISCATION INVESTIGATION**

- 5.1 Part 2 of POCA Confiscation.** Confiscation is the procedure used by the courts to take away the proceeds of an individual's criminal activity. The trigger that sets this procedure in motion is where a defendant is convicted or committed for sentence in a Crown Court for a criminal offence (or offences) from which the defendant has benefited. If no benefit has been obtained then confiscation does not apply. Confiscation Proceedings can only be instigated if the Prosecutor asks the Court to proceed (the Prosecutor in our cases is the Criminal Law Team) or if the Court believes that it is appropriate to do so.
- 5.2 FIU Rationale for instigating a Confiscation Investigation.** It is expected that a Confiscation Investigation will be initiated where:
1. There are reasonable grounds to believe that a person has benefitted from criminal conduct or,
  2. It is thought that the defendant has been or will be convicted or committed for sentence in a Crown Court for a criminal offence(s) from which the defendant has benefited and,
  3. There is a provable loss to the business, or personal benefit to a

**CONFIDENTIAL**  
**ROYAL MAIL GROUP SECURITY - PROCEDURES & STANDARDS**

- suspect offender exceeding £5,000 in value, and
4. There are indications that the defendant has assets that could be used to service any future Confiscation Order.



**CONFIDENTIAL**  
**ROYAL MAIL GROUP SECURITY – PROCEDURES & STANDARDS**

- 5.3 FIU Confiscation Investigation Process.** The FI will undertake the following process in order to ensure appropriate confiscation is pursued;
1. Discuss case with the Criminal Law Team (CLT) to agree that Confiscation is appropriate.
  2. It is expected that the defence Solicitor will liaise on behalf of defendant, who may wish to repay the loss to avoid Confiscation Proceedings. Restraint Orders may be varied by consent if agreed by all parties. If the loss is repaid consideration should be given as to whether confiscation should be aborted. (The issue of whether extended benefit is likely to be identified within financial investigation must be discussed).
  3. Consider serving a Section 18 "Request for Information" on the defendant, either within a Restraint Order or upon conviction in the Crown Court.
  4. Ensure that any processes required by the POCA 2002 timetable are complied with.
  5. Analyse any response to the Section 18 request and compare it with information already known.
  6. Consider the need for any further financial information and pursue appropriate courses of action.
  7. Decide whether the defendant has benefited from their "Particular" or "General" criminal conduct.
  8. Prepare appropriate Prosecutors Statement of Information (Section 16(3) for general criminal conduct or Section 16(5) for particular criminal conduct).
  9. Apply the assumptions within the prosecution statement, where appropriate, and record figures detailing the defendant's benefit from crime, recoverable and available amounts.
  10. Apply the Retail Price Index increase in value of money on defendants benefit from crime figure.
  11. If the defence respond to the Section 16 statement, prepare a Section 16(6) response if necessary.
  12. Prepare confiscation forms, 505 & 505a, Compensation Order and discharge of restraint (where applicable)
  13. Attend court with confiscation forms on day of Confiscation Hearing with good knowledge of the information contained within Prosecution Statement.
  14. Update Events Log, Policy Log and Document Schedule throughout this process.
  15. When Confiscation Order is set, update Joint Asset Recovery Database (JARD) with details of the order and liaise with Regional Asset Recovery Team (RART) as to the enforcement of the order
  16. Complete FI case closure form and forward to all stakeholders.

[Back to Contents](#)

**6. MONEY LAUNDERING INVESTIGATIONS**

- 6.1 Part 7 of POCA 2002.** Part 7 deals with money laundering. Any Investigator can conduct a Money Laundering Investigation and Investigators should be aware of the principle money laundering offences during suspect interviews. Assistance can be obtained from an AFI as it is accepted that an Investigator will need to involve one if they wish to obtain evidence or information through the "Investigation Powers" available in Part 8 of POCA 2002. These Powers are detailed in Section 7 below.

**CONFIDENTIAL**  
**ROYAL MAIL GROUP SECURITY - PROCEDURES & STANDARDS**

- 6.2 Principle Money Laundering Offences.** The principle money laundering offences can be found in under sections 327, 328 and 329 of POCA 2002. They are as follows:
1. **Section 327** - A person commits an offence if they conceal, or disguise, or convert, or transfer, or remove criminal property from England, Wales, Scotland or Northern Ireland.
  2. **Section 328** - A person commits an offence if he enters into or becomes concerned in an arrangement, which he knows or suspects facilitates (by whatever means) the acquisition, retention, use or control of criminal property by or on behalf of another person.
  3. **Section 329** - A person commits an offence if they acquire, use or possess criminal property.
- It should be noted that the language used in the money laundering offences has been left deliberately wide to ensure all money laundering activity is covered by the legislation.
- 6.3 Defences to Money Laundering.** As with most legislation there are statutory defences within the Act. A person does not commit a money laundering offence if they;
1. Made an authorised disclosure under section 338. (This in the main pertains to people working in financial institutions who are obliged to disclose suspicious activity in the form of Suspicious Activity Reports (SAR)).
  2. Intended to make such a disclosure but had a reasonable excuse for not doing so.



**CONFIDENTIAL**  
**ROYAL MAIL GROUP SECURITY – PROCEDURES & STANDARDS**

3. Committed the act in carrying out a function relating to the enforcement of any provision of POCA 2002 or any other enactment relating to criminal conduct or benefit from criminal conduct. (This section protects Investigators acting in a law enforcement capacity when dealing with criminal property)
4. Acquired, or used, or had position of criminal property for adequate consideration. (This only applies to Section 329 above)

- 6.4 FIU Rationale for Conducting Money Laundering Investigations.** The FI will consider the following before commencing a money laundering investigation;
1. Is there reasonable suspicion or evidence to suspect a money laundering offence?
  2. Which money laundering offence(s) has or may have been committed and by whom?
  3. Would the investigation be consistent with human rights legislation, (Proportionate, Legal, Accountable and Necessary)?
  4. Has advice, where appropriate, been sought from a Senior Appropriate Officer (SAO) or the Criminal Law Team?

- 6.5 FIU Money Laundering Investigation Process.** The FI will undertake the following process, as relevant, when undertaking a Money Laundering Investigation;
1. On receipt of the initial reports and relevant documentation from the Investigator assess the crime(s) committed and decided whether an investigation into money laundering is appropriate.
  2. Discuss the case with the Investigator and determine if any person other than the suspect has been involved in assisting in the money laundering process and decide on the future conduct of the case.
  3. Ensure that full enquiries and background checks have been undertaken as appropriate. Such checks will include Equifax, vehicles owned, property owned or leased, businesses or companies owned, Voters Register, HMRC and open source internet enquiries.
  4. If appropriate Pre Production Order enquiries with organisations, such as the bank, building society, Solicitors or Accountants will be undertaken.
  5. Discuss case with a Senior Authorising Officer (SAO) and if relevant the CLT, to seek agreement for any application(s).
  6. Make applications to the Court for Restraint/Investigation Orders where relevant. During this stage establish details of accounts held or other relevant information, confirm the time required for documents to be made available and whether the organisation wishes to attend court or be sent a copy of the information statement in support of the application.
  7. Examine any documentation received as a result of the orders to seek evidence of money laundering and the whereabouts of any of proceeds of the original offences.
  8. Prepare schedules/statements as applicable for future court hearing.
  9. Update Events log, Policy log and Document Schedule throughout this process.
  10. Where evidence of money laundering exists (or has been found during enquiries), ensure that money laundering charges are discussed with the Investigator prior to the submission of the case file, so that the correct charges are advised by the CLT

[Back to Contents](#)

## **7. INVESTIGATION POWERS UNDER POCA**

- 7.1 Part 8 of POCA 2002.** This gives an AFI Powers to obtain financial information which includes all types of information connected to money, assets, expenditure and finance of any kind. This information is present in almost every aspect of a person's life (their home, work and plans, both present and future). Non-cash based methods of dealing with money and assets such as credit and store loyalty cards also generate financial information. Investigators can analyse this information to obtain further material to assist the investigation.

Document Title: Financial Investigations  
P&S Doc. Ref.: 9.1 Version 1  
Date: Sep 2010  
Owner: Ray Pratt

**CONFIDENTIAL**

**CONFIDENTIAL**  
**ROYAL MAIL GROUP SECURITY – PROCEDURES & STANDARDS**

- 7.2 Investigation Powers.** The main powers available to an AFI under POCA 2002 are;
- 1. Section 345 – Production Orders.** These require organisations or individuals to produce material to the AFI.
  - 2. Section 352 – Search and Seizure Warrants.** This is normally granted if a Production Order has not been complied with or is likely to be ineffective.
  - 3. Section 363 – Customer Information Orders.** A Customer Information Order requires Financial Institutions to identify any account held by the person or organisation under investigation and to provide specified information about that customer. Applications for Customer Information Orders may only be made by an AFI with authority from a Senior Appropriate Officer.
  - 4. Section 370 – Account Monitoring Orders.** An Account Monitoring Order (AMO) is an order requiring Banks and other Financial Institutions to provide live intelligence on a suspected bank account(s) for up to 90 days, at any one time, from the date of the order. (Repeat orders can be obtained if necessary)
- 7.3** Applications for any of the Investigation Orders can be made at **any** stage of the Confiscation or Money Laundering Investigation as long as the predominant purpose test is met. Further details including the full conditions imposed on obtaining POCA 2002 Investigation Orders can be found in Appendix 1 to these Procedures and Standards

[Back to Contents](#)

## **8. RESTRAINT ORDERS**

- 8.1** Restraint Orders can only be obtained by AFI and the Prosecutor (CLT) and can be obtained by them at any stage after the commencement of an investigation. (The power to obtain a Restraint Order before the start of prosecution proceedings is new). Restraint is the procedure used by the Courts to prevent an individual(s) or companies from dissipating, disposing of, dealing with, or diminishing the value of any of his/her or their assets, be they derived from criminal activity or otherwise and to hold those assets in anticipation of any future Confiscation Hearing and hence satisfy any Confiscation Order.
- 8.2** The amount of realisable property that can be restrained can depend on the defendant's alleged benefit from crime. If the defendant has a criminal lifestyle and has therefore benefited from general criminal conduct, the defendant can be restrained from dealing with any and all of their assets. Alternatively, restraint may be limited to benefit from the defendant's particular criminal conduct only. The underlying principle is that, before applying for an order, there must be a real and current risk that, without a Restraint Order, assets may be dissipated by the defendant.
- 8.3** A Restraint Order will not always be appropriate. Decisions about whether or not to apply for an Order, or the timing of an application, are of strategic importance to a case and should only be taken after careful consideration of the potential effect at both the investigation and prosecution stages. Exactly what is and is not restrained is determined by the FIU with the agreement of a Senior Authorising Officer and the CLT. It is an intrusive power and should not be used lightly.
- 8.4** Restraint Orders normally make provision for;
1. Reasonable living expenses
  2. Reasonable legal expenses', or
  3. Enabling a person to carry on any trade, business, profession or occupation.
- Reasonable living expenses' is not clearly defined. Current guidelines (based on Social Security figures) allow for 'reasonable living expenses' to be set at around £250 per week. It is for the defendant to argue this to the

**CONFIDENTIAL**  
**ROYAL MAIL GROUP SECURITY – PROCEDURES & STANDARDS**

satisfaction of the Court.

- 8.5** Following a successful Restraint application there is a requirement to continually monitor and/or administer a defendant's requirement for day-to-day living expenses. RML case loads prevent FIU capacity to deal with the requirements of fully restraining a defendant's assets and as such only "limited" restraint would normally be practiced.
- 8.6 FIU Rationale for Restraint.** The FI will consider the following before commencing Restraint Proceedings;
1. Are there reasonable grounds for suspecting that the person has benefited from their criminal conduct?
  2. A criminal investigation has been started with regard to an offence,
  3. And there is a real risk that the asset will be dissipated if a Restraint Order is not obtained

- 8.7 FIU Restraint Process** The FI will undertake the following process when undertaking Restraint Proceedings;
1. Assess crime and potential recovery strategies.
  2. Collate and assess information on assets.
  3. Assess potential for dissipation of assets. Is offender likely to dissipate assets? What is the rationale for this consideration?
  4. Complete restraint risk assessment. Is any application for restraint consistent with Human Rights legislation (is it necessary, legal, justifiable and proportionate)?
  5. Discuss case with CLT and obtains agreement to restrain.
  6. Obtains consent to restrain from SAO. SAO completes record of authorisation.
  7. Prepare the "Witness Statement in Support of an Application for a Restraint Order" and the actual Restraining Order.
  8. Forward the Witness Statement and the Restraining Order to the SAO and CLT Authorising Lawyer
  9. Make arrangements with Court and submits papers day prior to hearing.
  10. Attend court to relay evidence and obtain the 'Restraint Order'.
  11. If Restraint Order is granted, copies to be served on the subject of the order and all interested Financial Institutions as soon as practicable.
  12. Update Events log, Policy log and Document Schedule throughout this process.
  13. Update the Joint Asset Recovery Database (JARD).

[Back to Contents](#)