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Post Office Ltd - SECURITY GUIDELINES [Criminal Asset Recovery]

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Role	Name(s)	Date
Business input	Mick Matthews	Jun 2002
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Criminal Assets Recovery Guidelines

Purpose

- *The purpose of these guidelines are to ensure that Post Office Ltd recover the maximum possible assets that have been lost to Criminal Conduct*
- *These are new guidelines*

Methodology

- *Consultation with the National Internal Crime & Investigation Manager & Royal Mail Group Legal Services*
- *Guidelines authorised by the Head of Security and Audit*
- *Guidelines signed off by the National Internal Crime & Investigation Manager*

Detailed Specification

- *The guidelines outline the standard approach to be taken when major criminal Investigations are undertaken by Post Office Ltd Security & Audit in respect of recovering Business assets that have been lost to Criminal activity*
- *Recommended ownership the National Internal Crime & Investigation Manager*

Guidance for Deployment

- *National Internal Crime & Investigation Manager*

Enquiries

- *Phil Gerrish*
National Internal Crime & Investigation Manager
Post Office Ltd Security & Audit
Mobile **GRO**
- *Mick Matthews*
Training & Support Manager
Post Office Ltd Security & Audit
Mobile **GRO**

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Criminal Assets Recovery Guidelines

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Section - 1 Introduction

1.1 As Investigation Managers you will be mainly involved in the investigation of theft related crimes. The criminal commits crime to gain assets; the assets of the Business. It is vitally important that as a commercial organisation Post Office Ltd seeks to recover as much of the business assets lost to criminal activity as possible, this of course will help reduce losses and drive the business to profitability. We can do this by robustly identifying, restraining and recovering the assets lost to criminals. Criminals feel the loss of their proceeds of crime just as much, if not more that the sentence imposed by the Courts.

1.2 By recovering the assets we send out a clear message to the criminal/potential criminal that there is little point stealing as we will endeavour to recover their ill-gotten gains and as such reduce the benefit of their crime. This is a message the present Government wish to send out as they are in the process of setting up the National Confiscation Agency, whose role it will be to remove assets from organised crime.

1.3 The majority of assets are recovered through Police Financial Investigations. Because they are time consuming, and as such a drain on valuable resources there are "Trigger Points" before a full Financial Investigation is conducted. The general trigger points before a full Financial Investigation are;

- ***that somebody has benefited from the proceeds of crime of £10,000 or over and***
- ***they have realisable assets of £10,000 or over (Albeit these figures are not prescriptive).***

1.4 The most important consideration when thinking about involving the police in full Financial Investigation, with a view to compensation or confiscation through the Criminal Justice system, is the identification of assets. You cannot after all "get blood out of a stone". As such if there are no assets there is no point in carrying out long and complex financial investigation. Of course an initial investigation may be necessary to identify assets.

1.5 With this in mind these guidelines deal with the recovery of Criminal assets and how that relates to you. Although at times it may get complicated at the end of the day you are only trying to do three things and they are to;

- ***Identify Assets***
- ***Restrain Assets***
- ***Recover Assets***

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Section 2 Identifying Assets

2.1.1 Assets can be found in many forms not just cash. All assets, whether they be houses, cars, stocks and shares etc., should be identified with a view to recovery. The most common ways of identifying assets are through;

- *Intelligence Checks*
- *Production Orders*
- *Searches of suspects property*

2.2 Intelligence Checks

2.2.1 There are numerous intelligence checks which can be carried out at an early stage of an investigation. These checks can be carried out through the;

- *Corporate Security Criminal Intelligence*
- *The Royal Mail Group Representative at NCIS*
- *Human Resource Advisory Team (for staff)*
- *The Agency file (for Sub Post Office Branches)*
- *Intelligence from the suspect*

The following is the sort of information that you can get from these sources

2.2.2 Corporate Security Criminal Intelligence

This team can carry out the following checks;

- | | |
|---|--|
| • Land Registry | - <i>to find out the registered proprietor at a given address and if the property has a mortgage</i> |
| • Vehicle checks | - <i>given the make, model, colour and index number of a car, this check will give last registered keeper and whether the car has been reported as lost or stolen.</i> |
| • Mobile telephone subscribers | - <i>subscriber details provided for most service providers.</i> |
| • Landline telephone subscribers | - <i>subscriber details provided for most service providers.</i> |

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• Itemised BT bills	- information provided (including calls made) relating to a requested period of time.
• Postline and official telephone numbers and mobiles	- subscriber and call information.
• Post Office Boxes	- details provided regarding owner of PO Box, i.e. name, address, whether Box 'live' and whether collection or delivery.
• Passports	- given a Passport number - details can be given of the correct owner for confirmation.
• Certificate of Conviction	- official confirmation of a conviction
• Council Tax checks	- Find out details of Council Tax payments
• Credit checks	- of both companies and individuals. Company checks also reveal details of principals (directors etc.) as well as financial situations.
• Record Of Correspondence checks (ROC)	- These are checks on mail received at a given address and are conducted over a 12 day period. Obviously only the outer covers of mail are examined. Results of these checks cannot be used as evidence in Court and are strictly for intelligence only.
• Redirection checks	- details of redirection's taken out for given addresses and by who.
• Voters checks	- checks can be made of the Electoral Register relating to a given address.
• Criminal records	- there is a direct link to the Police National Computer which gives this information

2.2.3 The telephone number for this team is or Postline
 You will find all the forms needed on the Corporate Security Database.

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2.2.4 National Criminal Intelligence Service (NCIS)

The Royal Mail Group representative at NCIS is presently Bob Ash. He can be contacted on [] GRO [] and he can carry out the following Intelligence Checks

- | | |
|--|---|
| • Alert checks | - <i>Alert is the integrated NCIS database. It holds intelligence from all the NCIS Regions & specialist Units/Sections. In essence ALERT checks will identify whether a particular suspect has been brought to notice or featured in any previous enquiries.</i> |
| • CIFAS Security Alert (CIFAS = Credit Industry Fraud Avoidance System) | - <i>This may give details of further Bank accounts held by the suspect and for how long. It may also provide details of loan applications (including stated income) or details of credit card applications and limits.</i> |
| • DWP (BASIS) information | - <i>Contains records of State Benefits claimed and details of organised fraud investigations</i> |
| • TECS II Checks | <i>TECS II is the United States Customs database. It contains details of movements in and out of US, including people and credit.</i> |

2.2.5 Human Resource Advisory Team

The following information on Post Office Ltd staff may be obtained from the Human Resources Advisory Team;

- | | |
|---------------------------|--|
| • Application form | - <i>the application form is a rich source of information, giving details such as previous experiences, education qualification, previous convictions, addresses and referees.</i> |
| • SAP record | - <i>details of current address and bank details address.</i> |

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2.2.6 The Agency file

Information on Sub Post Office Branches may be obtained from the Agency file which is held by the relevant Contract Manager. The following information may be available;

- **Application form** - *the application form is a rich source of information, giving details such as previous experiences, education qualification, previous convictions, addresses and referees.*
- **Business plan** - *this will give details about how the subpostmaster intends to finance the office, including bank details, what improvements they are going to make in the office and the expected turnover of the office. It will also give information on the private business and it is a good snapshot of the possible financial position of the individual*

2.2.7 Intelligence from the Suspect

In addition to all the other Intelligence checks one that should always be remembered is Bankers Authority request. It should be emphasised at this point that as a matter of course you should be asking the suspect at interview to give you Authority for the Disclosure of Information from their Bank or Building Society using the form CS045.

- **Bankers Authority form (CS045)** - *the authority form will give you details of the suspects Bank accounts*

2.2.8 The suspect of course may not give you CS045 authority or you may wish to find out financial information before the interview stage if that is the case it can be done with Production Orders which we will be looked at soon in these guidelines.

2.3 Financial Profile form

2.3.1 Once you start carrying out checks you will begin to receive lots of intelligence. There is a form which can be used to assist complex Financial Investigations. The form is known a Financial Profile. The form is quite comprehensive and you might not get all the details on the form completed. However if you want to take a “package” to a trained Police Financial Investigator then your professionalism will be enhanced by doing as much as you can. A copy of the Financial Profile form is associated with these guidelines. Please read it to get and idea of the layout of the form.

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2.4 Production Orders

2.4.1 Production orders are orders from a court to an organisation, such as a Bank, to produce their documents pertaining to their dealings with particular people or companies. As these documents in normal circumstances are held in confidence by the bank they are known as Special Procedure Material.

2.4.2 Special Procedure Material is defined in Section 14 PACE. It is material which has been created in the course of any business or profession and there is an undertaking to hold the material in confidence.

2.4.3 In cases of theft or dishonesty there are two types of Production Order which can be obtained and these are described below;

A Production Order under Schedule 1 of PACE

- ***There must be reasonable grounds for believing that a “serious arrestable offence”, as defined by Section 116(6) PACE has been committed. (Section 116(6) is detailed below)***
- ***The application for the order is inter parte, that is to say the person or body to produce the material may be present at and contest the application.***
- ***The material to be produced must be relevant evidence.***

2.4.4 Section 116(6) Of PACE

Section 116 of PACE defines what makes offences “Serious Arrestable Offences”. Amongst other offences section 116(6) classifies offences as serious arrestable offences if there is “Substantial financial gain to any person;”

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**A Production Order under sections 93H & 93I
of Criminal Justice Act (CJA)1988 as amended
by the Proceeds of Crime Act 1995**

- *All that is needed is that there is an investigation into whether any person has benefited from any criminal conduct or into the extent or whereabouts of the proceeds of any criminal conduct.*
- *The application is ex parte that is to say the person or body to produce the material will not be present to contest the application.*
- *It is an offence under the Criminal Justice Act 1995 to Inform the suspect that a Production Order under this act has been applied for.*

2.4.5 As can be seen from the conditions required to satisfy the granting of a Production Order, applying for a CJA order would be favourable in every case over the PACE order.

2.4.6 Benefit

Benefit for the purpose of a Production Order under the Criminal Justice Act 1988 is as follows; a person has received a "benefit" if they obtain property as a result of the commissioning of an offence or they receive a pecuniary advantage. Both Property and Pecuniary Advantage have the same definitions as in the Theft Act 1968.

2.4.7 Obtaining Production Orders

Both types of application need to be made by a Constable or a HM Customs officer to a Circuit Judge, but this can be in Judges chambers. (A Circuit Judge is a High Court Judge who is at present hearing cases on the provincial criminal circuit

2.4.8 The National Criminal Intelligence Service (NCIS) have a list of some 1500 accredited financial investigators located around the country. All these officers have experience in obtaining Production Orders and as such can give advice on and make the applications. The Royal Mail Group contact at NCIS is Bob Ash on GRO

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2.4.8 In future under the new Proceeds of Crime Bill 2001 any accredited Financial Investigator will be able to apply to a Circuit Judge for a Production Order. This is thought to include civilian employee's of Law enforcement agencies.

2.4.9 A point worthy of note is that if Production Orders not complied with within the stated time then search warrants can be issued by going back to a Circuit Judge.

2.4.10 Production orders will normally identify assets. When these assets are identified they need to be "frozen" to stop them being dissipated. Within United Kingdom law this is referred to as "restraint" This will be covered later in these guidelines.

2.5 Searches

2.5.1 Financial investigations can be instigated either pre or post interview and searches. It should be remembered however that a great deal of information about assets can be found by investigators on searches

2.5.2 In view of this it will be of benefit for the "scribe" on searches to have a copy of the financial profile of the suspect.

2.5.3 The following details should be recorded;

- ***All Bank/Building Society accounts***
- ***All Life Insurance Policies/Endowments***
- ***All Stocks/Shares/Unit Trusts***
- ***All Properties owned & property values***
- ***Who lives at the properties and there status***
- ***Contents of the properties of significant value***
- ***Vehicles (including boats and caravans) Owned***
- ***Businesses owned***
- ***Expensive Jewellery***
- ***Other Incomes for other employment/benefit***
- ***Note if utilities/bills are paid in cash***

Investigation Managers should also record any relevant liabilities.

2.5.4 It is important to note that Investigation Managers need not seize large amounts of documentation as long as they have recorded sufficient intelligence to enable the appropriate officers apply for production orders. For example sufficient intelligence to apply for a Production Order for a bank would be the Bank address, the account name & account number.

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Section 3 Restraining Assets

3.1 Restraining Orders

3.3.1 In section 1 we looked at identifying assets. Now we will move on to “restraint”. Restraint is the power to prevent the criminal dealing in property in advance of and during criminal proceedings. This power is in the form of a Restraining Order issued by a High Court

A Restraining Order under Section 77 of Criminal Justice Act (CJA)1988

- *The Order prevents the defendant from dealing with or diminishing the value of assets belonging either solely or jointly by themselves.*
- *The order prevents the assets being removed from the jurisdiction*
- *If the order is disobeyed the defendant will be guilty of contempt of court and may be sent to prison, fined or their assets may be seized*

3.3.2 If we did not have Restraining orders the criminal will be able to hide or remove the assets from the jurisdiction.

3.3.3 Restraint however in most circumstances should not be used unless the criminal has benefited from crime to the sum of £10,000 or more and there are £10,000 or more worth of realisable assets to restrain and as such to recover. If it is less than £10,000 there are other methods which we can pursue and we will cover these in Section 5

3.3.4 A restraining order can be obtained to prevent anybody at all from dealing in any realisable property. This may include any “gift” given to any person by the suspect

3.3.5 The Court may specify conditions on the Restraining Order. For example it may allow reasonable living or legal expenses.

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3.2 Obtaining a Restraining Order

3.2.1 As soon as you have identified £10,000 or more of assets you must, at an early stage, get in contact with Royal Mail Group Legal Services. They can give you the appropriate advice depending on the full circumstances of the case.

3.2.2 The Legal Services can apply for Restraining Order in accordance with Section 77 of the Criminal Justice Act 1988. To get a Restraining Order an application must be made by a prosecutor to the High Court. The application can be made *ex parte* to a Judge "in chambers" Before a restraining order can be made however the High Court must be satisfied that criminal proceedings have been instituted or they are about to be.

3.2.3 The above paragraph will change if the new Proceeds of Crime Bill 2001 becomes law. If that happens the venue for making Restraining Orders will change from the High Court to the Crown Court. Additionally an application for a Restraining Order can be made at any time after a Criminal Investigation has been commenced as opposed to Court proceedings being instigated.

3.3 Witness Statements in support of applications for Restraining Orders

3.3.1 The prosecutor in the case may well ask you to produce a witness statement to support the application for Restraint. The witness statement is in a different format to the ones you will write for evidence in criminal cases. It is in a similar format to an affidavit. You will get assistance in drafting the witness statement from a section of Royal Mail Group Legal Services called Commercial Litigation Department. It is that department which will make the application for the Restraining Order

3.3.2 An example of a witness statement is associated with these guidelines. Please read it to get an idea of the type of statement that will be required.

3.3.3 If are successful at getting a restraining order you will have to get advice from a Police Financial Investigator in order to complete a full Financial Investigation. Remember NCIS have a list of the 1500 accredited Financial Investigators.

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Section 4 - Confiscation/Compensation Orders

4.1 Confiscation Orders

4.1.1 The Criminal Justice Act 1988 as amended by the Proceeds of Crime Act 1995 enables the courts to Confiscate the proceeds of all indictable offences after conviction in the Crown Court.

Indictable Offences The Interpretation Act 1978

- ***“indictable offence” means an offence which, if committed by an adult, is triable on indictment, whether it is exclusively so triable (e.g. murder or robbery) or triable either way.***
- ***“offence triable either way” means an offence which, if committed by an adult, is triable either on indictment or summarily (e.g. theft or unlawful wounding)***

4.1.2 This means that theft is an indictable offence but Confiscation Orders can only be made in respect of theft if the case is heard at the Crown Court.

4.1.3 The confiscation order is an order to pay a sum of money expressed in sterling. It is worthy of note that the order is not an order transferring the title of property, it is an order to pay a sum of money. It is therefore the responsibility of the defendant to sell his assets and pay the amount of money stated on the order to the Court.

4.1.4 A Crown Court has the power to issue a confiscation order if the defendant is convicted of one or more Indictable Offences.

Convicted of one indictable offence

- ***The Court can confiscate the proceeds of crime.***
- ***The prosecution have to prove the benefit from crime to the civil standard, that is on the balance of probabilities***
- ***The Court can order the defendant to disclose information***

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4.1.5 Proving the benefit from crime to the civil standard was the difficulty in confiscation hearings because the defendant could say what they wanted.

4.1.6 Assumptions

However if the defendant is convicted of two or more indictable offences then the court can use “assumptions”, instead of the prosecutor having to prove the benefit to the civil standard

Convicted of two indictable offence

- ***The court may use “assumptions”***
- ***The assumptions are primarily that all property held by the defendant on conviction, plus all property which passed through the defendants hands in the six years before the institution of proceedings, came from relevant criminal conduct***

4.1.7 If the defendant is unable to disprove the assumptions, the court can assess the defendant’s benefit from their crime as the total amount of benefit revealed by the Financial Investigation. The Financial Investigation will no doubt identify legitimate earnings and not include that figure in the defendant’s benefit from crime. The confiscation order can then be made up to the value of benefit of crime subject to the defendants available assets.

4.1.8 As you can see the assumptions are a very powerful tool for the recovery of assets from criminals as they transfer the burden of proof from the balance of probabilities to the defendant to disprove.

4.1.9 There is a safety value in respect of assumptions and that is assumptions may not be used if they are proved to be incorrect or the use of assumptions would result in a serious risk of injustice to the defendant.

4.2 The Compensation/Confiscation Relationship

4.2.1 It is important to note that Confiscation orders are paid to the Crown. Clearly it is better that the criminal’s assets are paid to the Crown rather than the criminal keeping them. However if Post Office Ltd can demonstrate a loss, that amount of money will be paid as compensation to them, subject to the normal compensation applications. The relationship between confiscation & compensation is as follows. Victims of crime (i.e. Post Office Ltd) will not be disadvantaged as a result of a confiscation order. The court may order that any shortfall in a compensation order is paid out of money raised by the enforcement of the confiscation order.

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4.2.2 A simple example of the above is as follows. A Postal Officer has committed a major Pension and Allowance (P&A) fraud. He has been convicted of two indictable offences so assumptions can be used. The full P&A checks reveal that the offender has overclaimed orders to the value of £50,000. A check of his bank statements over the past 6 years demonstrated in addition to his salary he has paid £200,000 in cash into his personal account. The Postal Officer has no other legitimate income apart from his salary. He has no liabilities but he has a house with £200,000 equity in it. A confiscation order of £200,000 is made with a compensation order of £50,000. An order can then be made to pay the compensation order of £50,000 out of what is raised by the enforcement of the confiscation order.

4.2.3 The reason why we should apply for confiscation is that if the offender does not pay the confiscation order he is allocated a term of imprisonment for default to run consecutively. Remember compensation to Post Office Ltd can be paid out of the confiscated money.

4.2.4 There can be some difficulty in arriving at a total figure as to the extent the offender has benefited from Crime. This is why it is suggested that in every case the advice of an experienced Financial Investigator is sought. They can assist with establishing the benefit level and the preparation of the prosecutor's statement

4.3 Prosecutors Statement

4.3.1 The Prosecutor's statement is produced at the Confiscation hearing in order for the court to establish the amount to be paid as confiscation. The statement is in a similar format to the witness statement to support a Restraining Order application.

4.3.2 An example of a Prosecutor's statement is associated with these guidelines. Please read it to get an idea of the type of statement that will be required

Prosecution statement main points

- ***The statement must show how the benefit is calculated.***
- ***The statement should include the defendant's assets and debts***
- ***The statement must state what benefit the defendant has obtained***
- ***The completed statement must inform the court exactly what the producing officer is asking for. This should include a reminder to the Judge of what compensation is being applied for.***

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4.4 Enforcement

4.4.1 The enforcement is the responsibility of the Justices' clerk. You should however note that If an offender is in default of a confiscation order they are given a period of imprisonment to run consecutive to any term of custody that the defendant is liable for being found guilty of the original offences. Additionally if they serve the extra period for being in default they are still liable for the original amount of the Confiscation order.

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Section 5 - Recovery of Money by other means

5.1 Compensation

5.1.1 Whilst confiscation orders should be sought if the offender has benefited from crime in excess of £10,000 and they have realisable assets of that amount, this will not be the case during most investigations. If the criteria for confiscation orders are not met then investigators must ensure that the prosecuting solicitor asks for compensation. (Although we ask for compensation it may not be granted, especially if the offender is sentenced to a term of imprisonment). Compensation should also include the cost of the investigators time spent on the case. Therefore the amount of time should be recorded on SIMSWMS and compensation requested at the rate of XXXX per hour.

5.2 Recovery from Pension Contributions

5.2.1 If the offender is a member of staff and compensation is not ordered then all investigators should seek to recover Money from the offenders pension fund. To do this they must get in touch with the Human Resource Advisor for the relevant Territory. The Human Resource advisor will then deal with the pension trustees. If at the outset of the case you feel that this will probably be the best way of recovering funds then make contact with the Human resources advisor at an early stage and inform them of the position. The contact details are below;

<u>Human Resource Advisors</u>	
• East	Phil Michel
• North	Vince Carroll
• West	Bill Topping

GRO

5.3 Legal Services Commercial Litigation

5.3.1 If the offender is not a member of staff, a Subpostmaster for example, and there is no confiscation or compensation order then consideration should be given to recovering funds through the Commercial Litigation office of Royal Mail Group Legal Services.

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Section 6 - Disposal of Recovered Money

6.1 1 All recovered money should be submitted with a form CC140 which is copied on the next page, to the address below:

Receipts Processing
Transaction Services
Papyrus Road
PETERBOROUGH
PE4 5PE

6.1 2 All money should be sent by Special Delivery. If you are sending cash then you should arrange for a someone to witness the Special Delivery packets being sealed. You should not send more cash in a packet than the amount the packet is insured for.

6.1.3 You will note on the form below the number **25990** is written under the column titled **ITEM CODE** this number indicates that the money has been recovered following an Investigation. Under the column titled **COST CENTRE/PROFIT CENTRE/INTERNAL ORDER NO** you should enter the Cost center number for the relevant Head of Area.

6.1 4 Please remember you must record on SIMS and the relevant BAT form the amount of money you recover in each case.

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CC140
Revised - Oct 2001

RECEIPT NOTIFICATION

To:

CLIENT CASH MANAGEMENT
TRANSACTION SERVICES
NO1 FUTURE WALK
CHESTERFIELD
DERBYSHIRE S49 1PF

RECEIPT DETAILS					ACCOUNTING CODES		
DESCRIPTION	NET AMOUNT	VAT	GROSS AMOUNT	ITEM CODE	COST CENTRE / PROFIT CENTRE / INTERNAL ORDER NO		
				25990			
TOTAL PAYMENT					COMPANY CODE :		

PAYMENT DETAILS :

PAYER :
CHEQUE NO :
DESCRIPTION:

DUE DATE:

For BACS/CHAPS receipts. Tick the recipient Bank.

Bank of England

Co-op

COMPLETED BY:

NAME:

SIGNATURE:

DEPARTMENT

TELEPHONE NO:

DATE:

NOTES ON COMPLETION

* Please complete ALL the relevant sections

* All amounts should be rounded to the nearest penny

* All GL codes beginning "1" MUST quote a product/material code

FOR USE IN CLIENT CASH MANAGEMENT ONLY

PAYMENT RECEIVED

SIGNATURE:

INPUT

KEYED:

DATE:

CHECKED:

DATE: