

# Money laundering (criminal property offences)

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This section contains practical advice for investigators on how to conduct a money laundering investigation.

Further information is also available on the following topics:

- [asset recovery](#)
- [cash seizure](#)
- [confiscation and recovery](#)
- [forfeiture and deprivation](#)

## Investigating criminal property

Money laundering offences may be disclosed during investigations into other offences, through the use of financial investigation techniques. Money laundering investigations should be considered:

- when carrying out proactive investigations of those targeted as a result of the tasking and coordination process
- in cases involving suspects who benefit directly from criminal activity but are distancing themselves in some way from the crime
- in cases where people warn money launderers about any police interest in their activities
- when a cash seizure and forfeiture has taken place

The Proceeds of Crime Act 2002 (POCA) creates various criminal property offences which investigators should always consider when formulating their investigative plan.

## Understanding money laundering

Money laundering is the process by which funds and criminal property derived from crime, are moved and used by criminals. It:

- incentivises crime by making it profitable
- provides domestic and trans-national organised crime with a cash flow to perpetrate further crimes
- threatens the financial system and its institutions, both domestic and international

Therefore, where there is sufficient evidence to meet the evidential test under the CPS [Code for Crown Prosecutors](#) the following public interest factors should be considered:

- the importance of deterring professional launderers
- the importance of protecting the integrity of financial institutions domestically and internationally

Anyone who is involved in concealing, disguising, converting, transferring or removing criminal property could be vulnerable to a money laundering charge. This applies at all levels of criminality from National Intelligence Model (NIM) level 1 to level 3.

## How to investigate money laundering

Instead of targeting the way in which the benefit was acquired, a money laundering investigation focuses on the existence of the benefit itself. The very fact that a person is in possession of criminal property (proved to the criminal standard) means that they could be charged with money laundering in addition to any other offence they may have committed.

It may not be necessary to prove the offence which resulted in the benefit; the benefit itself and the circumstances surrounding it may be enough to support a charge of money laundering, see [money laundering powers](#).

The intention is that these powers should be applied to those individuals where there is evidence that they have been living a criminal lifestyle. It is not the intention that this legislation is used to deal with minor offences of handling stolen goods. Investigators, therefore, need to provide enough evidence for an individual charge, and at least substantial intelligence that the individual has been living a criminal lifestyle.

For further information see [CPS legal guidance on proceeds of crime](#).

### Checklist: Building a standalone money laundering case

The following checklist describes how a money laundering case might be built around the following scenario:

Intelligence suggests the defendant is involved in drugs supply and has assets and/or expenditure that is not justified by his lawful income. There is insufficient evidence available to prosecute the defendant for drugs offences.

1. Use financial investigation to establish lawful income, expenditure and assets since 24 February 2003.
2. Obtain additional evidence to support the inference a jury may be asked to make from any asset-income disparity, for example:
  - previous convictions/bad character
  - association evidence
  - drug contamination (on items such as cash, or phones)
  - anti-surveillance tactics
  - abnormal financial activity (unexplained cash deposits in a bank account)
3. Arrest and interview, including full financial interview.
4. Restraint order.

Consideration of money laundering charges should be based on unexplained assets, unexplained expenditure and lack of credible explanation, together with any supporting evidence (see 2 above).

## Who investigates?

Any police officer can undertake a money laundering investigation. Some forces have created teams focusing on money laundering investigations at both the neighbourhood and force level. The amount of support available from such units varies from force to force.

There is a national network of nine regional asset recovery teams (RARTs) that can investigate or offer support for investigations of money laundering connected with serious and organised crime. Cases are generally referred to the RARTs via the Regional Tasking and Coordination process to ensure they focus their efforts on those that pose the greatest threats to the region, rather than because they may be asset rich.

Each Financial Investigation Unit (FIU) and RART has its own policy and procedures that investigators should follow in order to refer cases. Investigators are advised to familiarise themselves with their respective RART or Financial Investigation Unit.

## **Disrupting semi-organised criminality (case study) – money laundering investigation disrupts semi-organised criminality**

A special operation was set up to target a family that was known to be involved in a range of criminal activity such as vehicle theft, handling stolen vehicles and car clocking. The suspects could have been charged with handling stolen goods, but because of the sustained and organised nature of their offences, they were charged with conspiracy to launder money (convert criminal property) and tax evasion. This involved the close co-operation of officers in the case and the FIU.

Members of the public and the media reacted positively to the outcome of the case. It is not possible to quantify any reduction in associated NIM level 1 crime, but it is logical to suggest that the removal of three or more persons into custody, who previously made substantial earnings from crime, has a positive effect in general. A substantial confiscation order may reduce the incentive to commit crime and may remove the possibility to fund further criminal enterprises. A continued focus on enforcement will ensure that any return to criminal activity remains less attractive for these individuals than it was before.

## **Money laundering process guide**

Investigators should first assess the suitability of a case, see *When is a money laundering investigation appropriate?* Officers are advised to liaise with their FIU or RART and the CPS, as appropriate, to obtain early advice concerning evidence and the conduct of the investigation.

### 1. Develop an investigation plan

Investigators are required to develop an investigation plan that includes gathering material to support a money laundering charge. This might for example involve the need for a restraint order and for a management receiver. They should think laterally about the type of material that would provide evidence of money laundering. Evidence of the criminal origin of proceeds can be provided by:

- accomplice evidence

- circumstantial evidence or other evidence (for example, possessions of high value such as luxury cars and household furnishings showing that a person is living beyond their legitimate means)
- forensic evidence, for example, cash contaminated with drugs, from which inferences can be drawn that money came from drug trafficking
- evidence of complex audit trails, from which an accountancy expert may be able to conclude that the complexity of the transactions indicates that the property came from the proceeds of crime
- evidence of the unlikelihood of the property being of legitimate origin
- material where expert evidence shows criminals often attempt to launder proceeds through a cash intensive business where the cash flows appear too large or the profit margins too high

## 2. Obtain bank account information

Use Proceeds Of Crime Act 2002 (POCA) information orders to obtain bank and building society account information to identify the existence of sums of cash and assets.

## 3. Evidence of wealth or spending

If a search is conducted at a suspect's home address, look for evidence of wealth and spending, such as designer clothing, luxury electrical goods, large sums of cash, bank statements and credit card receipts.

## 4. Links to criminality

If assets or money are identified, conduct further investigation to identify links to criminality and criminal associates (people may launder money for themselves or others).

## 5. Consider a restraint order

Consider obtaining a restraint order against any identified property and assets, pending confiscation, with the assistance of a financial investigator (FI) if necessary.

## 6. Conduct interview to gather financial information

Conduct interview(s) under PACE to gather financial material. If the suspect fails to account for assets, the investigator should obtain further production orders to examine accounts and pursue other financial lines of enquiry (for example, with HMRC) based on evidence from the search (where the suspect's account cannot be verified by other means).

## 7. Produce a file of evidence

Produce a file of evidence to support the prosecution containing statements of evidence and analytical products relating to the suspect's assets. The investigating officer should include a statement using graphs and spreadsheets to show unexplained income and suspicious activity.

## Key issues for money laundering investigations

- money laundering is about criminal property, not just cash
- money laundering charges should be considered for those known or believed to have a criminal way of life, either by evidence or by intelligence background
- handling stolen goods is the appropriate charge for one off offenders
- there is no need to prove the predicate offence for a money laundering charge but a detailed circumstantial case is required
- when considering what offence to charge, investigators should have an understanding of [POCA Schedule 2](#), which details what constitutes a criminal lifestyle and will then trigger the assumptions for confiscation

## Securing the evidence (case study) – when witness evidence of an offence is difficult to obtain

A group of individuals committed many crimes against elderly and frail victims. The offenders would fit a fire alarm and then convince the elderly and frail person that they must buy a humidifier in order for the fire alarm to work properly.

They sold the humidifiers (which retailed locally at £69) to the victims at a cost of £4000 each. These offences were committed nationwide and six cases were brought to court.

The prosecution was unsuccessful because the witnesses experienced problems in identifying suspects and giving testimony. A RART conducted an investigation and discovered that the victims had all paid by cheque, payable to one person.

This person had banked the cheques and paid out sums to accomplices. On the basis of this further financial investigation, this individual and two others were arrested and charged on suspicion of money laundering.

## Money laundering powers

Money laundering offences that appear under sections 327, 328 and 329 of POCA are serious offences that carry a potential fourteen year sentence, see POCA sections:

- [327 – concealing etc](#)
- [328 – arrangements](#)
- [329 – acquisition, use and possession](#)

Money laundering includes conspiracies or attempts to commit these offences, counselling, aiding or abetting and procuring.

In order to prove a money laundering offence, the police have to prove that the **property** is criminal property (note that property is not limited to money). Criminal property constitutes a person's benefit from **criminal conduct** or it represents such a benefit, and the alleged offender has the **knowledge** or **suspicion** that it constitutes or represents such a benefit ([POCA section 340\(3\)](#)).

Offences are indiscriminate and can target those who are several stages removed from the original crime and the original offender. It is not important who was responsible for the criminal conduct or what it was. For a charge of money laundering, the police may not need to prove the specific type of criminality behind the criminal property and simply need to prove that the suspect knew or suspected the property to be criminal property.

Note – to charge for handling stolen goods under [the Theft Act 1968, section 22](#) of the Theft Act 1968 (as amended) the police need to prove that the:

- goods are stolen
- suspect knew or believed them to be stolen

## Definitions

**Property** – includes money, all forms of property or real estate and other intangible or incorporeal property.

**Criminal conduct** – conduct which constitutes an offence in any part of the UK, or would constitute an offence in any part of the UK if it occurred there.

**Knowledge** – the prosecution will need to prove the defendant's knowledge from the circumstances in which they came into possession of the property. It will not be necessary to prove the identity of

the person who committed the crime that gave rise to the creation of the criminal property. However it **is** necessary to show by reference to the circumstances that the property was dirty or criminal.

**Suspicion** – not defined in POCA. In the case of [R v Da Silva \(2006\) EWCA Crim 1654](#) the court stated that there is a possibility, which is more than fanciful that the other person was or had been engaged in, or benefited from criminal conduct and that the suspicion formed was of a settled nature.

## Section 327 POCA – concealing etc

Under [POCA section 327](#) a person commits an offence if they conceal, disguise, convert, transfer or remove criminal property from England and Wales or from Scotland or Northern Ireland. Concealing or disguising criminal property includes concealing or disguising its:

- nature
- source
- location
- disposition
- movement
- ownership of any rights with respect to it

A person can commit this offence in relation to the proceeds of their own crime, or those of someone else. See also A POCA section 327 offence (case study) below.

Examples of section 327 concealing, disguising, converting or transferring:

- stealing and selling a watch or mobile phone
- changing the colour of a car or disguising it by using false number plates
- buying a house with stolen money
- giving criminal property to someone else
- taking criminal property out of the country – transferring money from a drugs sale via money transfer to another country
- moving criminal property between Scotland and Wales
- registering a car bought with the proceeds of crime in someone else's name

### A POCA section 327 offence (case study)



A cheque book and bank cards were stolen. Each cheque was used to purchase an item worth £99.99 in various shops belonging to the same chain in one area.

The items were returned and exchanged for cash in shops of the same chain in a different area the next day. The stolen cheques had not yet been cleared through the banking system and so the offenders were able to launder criminal property.

The offenders had committed an offence under POCA section 327.

## Section 328 POCA – arrangements

**Section 328** arrangements apply when a person assists someone else to keep the proceeds of crime. They must know or suspect that they are facilitating someone else to acquire, retain, use or control criminal property, and fail to make an authorised disclosure to the authorities.

Examples of section 328 POCA – arrangements are:

- a lawyer who knowingly helps a person buy a house with criminal property money
- a person makes arrangements for their partner or parent to place a vehicle constituting criminal property in their name

## Section 329 POCA – acquisition, use and possession

An offence under **POCA section 329** is committed when a person acquires, possesses or uses criminal property and they fail to make an authorised disclosure of these matters to the authorities. Failure to make a disclosure applies to the regulated sector.

An example of Section 329 – acquisition, use and possession is:

- when a person buys a television for £50 when they know it is really worth £5000

## Self-laundering

It is possible for a person to be charged with laundering their own criminal property, for example, if after an armed robbery, they hide the money in their loft.

Drug dealers and other criminals may be more likely to do this to avoid the problems of suspicious activity reporting by financial institutions and solicitors. This section of the Act can be used to

pursue a second charge against an individual if the main charge fails. When used against career criminals who have successfully avoided conviction on the main charge, this may prove to be the only successful way of securing a conviction at court.

## Points to prove

[R v Anwoir and others \[2008\] EWCA Crim 1354](#) provides the current case law in relation to prosecuting money laundering.

In this case, the court held that the prosecution could prove money laundering in one of two ways:

- by showing that property derives from conduct of a specific kind or kinds and that conduct of that kind or those kinds is unlawful
- by evidence of the circumstances in which the property is handled, which are such as to give rise to the irresistible inference that it can only be derived from crime

If the prosecution are unable to prove the original offence, then it is necessary to prove the irresistible inference that the property can only be derived from crime. This can be done by taking several factors into consideration and these include:

- previous convictions/bad character
- association evidence
- drug contamination (on items such as cash and phones)
- circumstances of covert meetings
- whether or not the transactions make commercial sense
- anti-surveillance tactics
- unexplained cash in bank accounts
- the suspect's legitimate income
- the suspect's expenditure (if expenditure is more than the legitimate income, where is the difference coming from?)
- provable lies
- false records

This list is not exhaustive, but provides an indication of some factors that could be taken into account.

## Defences to money laundering

A person does not commit an offence under sections 327, 328 or 329 of POCA if they:

- make an authorised disclosure before they did the act and have consent
- intended to make disclosure but have a reasonable excuse for not so doing
- did the act in carrying out a function of enforcement of any provisions of POCA or any other enactment relating to criminal conduct or benefit from criminal conduct

Section 329 provides a further defence: if the property was acquired, used or possessed for adequate consideration.

This means, for example, that a person cannot be charged if they paid a reasonable amount, in good faith, for an item that they did not know was stolen.

### **Evidence of money laundering (case study) – existence of cash as evidence of money laundering**

Police officers found £180,000 in cash in the house of a 21-year-old drug dealer. The drug dealer was charged with money laundering and released on bail.

Seven months later the police executed a drugs warrant to search the house and another large amount of money was found. This resulted in a second money laundering charge. The police did not need to find evidence to the criminal standard of drug dealing in order to pursue the money laundering charge.

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