



**Trading Standards Joint Advisory Board**  
26 March 2015

**Report from the Head of Regulatory Services**

For information

Wards Affected:  
ALL

**Joint Trading Standards reserves**

**1. SUMMARY**

- 1.1. The joint trading standards services of the London Boroughs of Brent and Harrow have reserves associated with proceeds of crime, legal costs and the Consumer Support Network. This report updates Members regarding the monies held in reserve, and the approach to the addition or removal of funds from the reserves.

**2. RECOMMENDATIONS**

- 2.1. That Members note the current standing of reserves, the intend purpose of reserves and considers the intended future approach to managing and using reserves and comment where appropriate.

**3. DETAILS**

- 3.1. The joint service has three financial reserves, as follows:
- a) Proceeds of crime receipts;
  - b) Legal costs; and
  - c) Consumer Support Network.

3.2. The reserves all have different purposes and arrangements as set out below.

### **Proceeds of crime reserve**

3.3. The Proceeds of Crime Act 2002 (POCA) provides powers for investigating, restraining and confiscating assets that have been acquired as a result of criminal activities. POCA can lead to large confiscation orders as the investigations relate to serious criminal offences and involve large scale commercial activities by defendants who usually have available assets which can readily be identified and seized by the courts.

3.4. When a confiscation order is paid, the money is divided in accordance with the Home Office's asset recovery incentivisation scheme, which provides that 50% of receipts will be apportioned to the Government. The remaining 50% is divided between the prosecuting authority (18.75%), the investigating authority (18.75%) and the HM Court Service (12.5%). Therefore, where we conduct our own investigations and are also the prosecuting authority, then our share under the incentivisation scheme would be 37.5%. It is understood that the Home Office are considering a review of the incentivisation scheme arrangements.

3.5. The existing arrangements were put in place in 2011 and reported to the Trading Standards Joint Advisory Board on 28 November 2011. This arrangement provided a guaranteed level of re-investment of proceeds of crime to fund the joint Brent & Harrow asset recovery team and to a lesser extent to supplement enforcement operations in both boroughs, as the latter is a pre-requisite for POCA investigations.

3.6. The re-investment was initially guaranteed at £25k per annum for Brent and £25k per annum for Harrow in 2011-12, rising year-on-year until it reached £125k per annum for Brent and £125k per annum for Harrow in 2014/15. It would be prudent for this re-investment to remain at £125k p.a. per borough for 2015/16.

3.7. In order to provide a guaranteed level of subsidy each year, the service has created a reserve fund, into which are placed any proceeds of crime receipts greater than the guaranteed reinvestment in the service. The reserve is a safety net if there is a shortfall of POCA receipts below the budgeted re-investment.

3.8. Joint receipts for recent full years have been:

|         |       |
|---------|-------|
| 2011/12 | £69k  |
| 2012/13 | £281k |
| 2013/14 | £290k |

3.9. As of 1 February 2015 the proceeds of crime reserve fund stood at £420k.

3.10. The preferred level of reserves is £500k, which equates to 24 months of guaranteed subsidy for enforcement work. 24 months is also the notice period that either authority must give if it wishes to dissolve the consortium agreement.

- 3.11. However, unlike other reserves, in the event that POCA receipts in future years are greater than budgeted for in that year, and the POCA reserve is at or greater than the preferred level of reserves in paragraph 3.10, it is not allowable to return the surplus to general reserves due to the rules on how receipts may be used.
- 3.12. The Home Office annually monitors the use of incentive monies to assess issues of propriety and regularity. They ask at the end of the financial year that we account for our use of incentive payments.
- 3.13. This national monitoring shows that over 90% of POCA receipts are re-invested in asset recovery work such as recruitment of financial investigators with the balance being spent on enforcement operations and community projects.
- 3.14. In response to the likelihood that we will reach the preferred level of POCA reserves in the next 12 months, the service could:
- continue the status-quo, which is likely to see the reserve increasing in the short term, but then decreasing as enforcement capacity is diminished as funding for all local government services decreases;
  - increase the proportion of routine enforcement that is funded through POCA receipts; or
  - fund new enforcement work streams aimed at criminality with the best possible POCA outcomes, which means offences for which perpetrators are more likely to have tangible high-value assets.
- 3.15. The status-quo is expected to result in a longer-term decline in POCA recovery, in line with an expected reduction in investigation and enforcement capacity. Furthermore, smaller enforcement teams are less likely to sustain the greater demands and risks that come with the sort of challenging criminality-based enforcement that leads to proceeds of crime recovery.
- 3.16. An increase in the annual budget POCA contribution to mainstream enforcement services, is likely to have the same outcome as the status-quo, save that using POCA receipts as a replacement for general fund revenue for enforcement teams will likely delay and slow the expected decline.
- 3.17. The preferred approach is to identify criminality for which proceeds of crime could fund enforcement work streams aimed at criminality with the best possible POCA outcomes, namely issues that lead to offences for which perpetrators are more likely to have tangible high-value assets. Work to explore the scope for using future receipts to facilitate such an expansion of the POCA programme, and to plan a potential pilot project, will take place during 2015/16. If successful, any additional receipts could perhaps provide a more sustainable revenue stream which could potentially support a wider range of enforcement services that tackle criminality.

## **Legal reserve**

- 3.18. The service takes on many high profile cases each year, and as some of these cases place the liberty and assets of defendants at risk, there is a significant financial risk that a lost case, could result in sizeable defence costs being awarded against either authority.
- 3.19. To minimise this risk, in years of financial year-end surplus, the service has contributed some of the surplus towards a reserve specifically in place to contain any financial pressures from a costly lost case within the service.
- 3.20. As of 1 February 2015 the legal costs reserve fund stood at £162k.
- 3.21. The preferred level of reserves is £200k. Whilst this cannot assuredly all potential losses arising from defence costs, or from incurring more modest costs connected with more than one case in quick succession, it is a sufficiently substantial reserve that is larger than the greatest defence costs that have ever been awarded against the service. That case involved defence costs of £150k, although these costs were fortunately underwritten by a private organisation that was the rights owner in the case concerned. It should however be noted that despite the adverse costs award, a successful prosecution and cash-seizure were obtained.

## **4. FINANCIAL IMPLICATIONS**

- 4.1. The use of reserves is a prudent approach to managing these two volatile areas of income and expenditure. The levels of reserve are healthy, and this report sets out the approach that will be taken in the event that reserves to maintaining, increasing or using the reserves in the future.

## **5. LEGAL IMPLICATIONS**

- 5.1. None.

## **6. DIVERSITY IMPLICATIONS**

- 6.1. None.

## **7. STAFFING / ACCOMMODATION IMPLICATIONS**

- 7.1. The service employs two Accredited Financial Investigators and a Senior Prosecutor that undertake work solely on enforcement cases that lead to proceeds of crime investigations, and the undertake those financial investigations, and pursue confiscation orders. The receipts from proceeds of crime fund these posts in their entirety.

## **BACKGROUND PAPERS**

- Home Office asset recovery incentivisation scheme 2014-15: arrangements for implementation and payment.

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