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# Letter forwarding report from Garda Commissioner to Minister for Justice and Equality

Dear Minister

In accordance with the terms of Section 21 of the Criminal Assets Bureau Act 1996, I am pleased to present to you, the 2012 Annual Report of the Criminal Assets Bureau.

The report outlines the activities of the Bureau during the course of 2012, in the pursuit of its statutory remit, detailing actions brought by the Bureau under the proceeds of crime, revenue and social welfare legislation in successfully targeting the suspected proceeds of criminal conduct. The report demonstrates that the Bureau remains an integral part of the law enforcement response to criminal conduct in Ireland.

The Bureau saw an increase in cases relating to fraud and theft and actions brought by the Bureau against assets deriving from this type of criminal conduct. Of significance, in this regard, is the development which has resulted in the identification of funds from which victims of crime may recover their losses. During the course of 2012, the Bureau also successfully targeted a number of cases of significant fraud against the social welfare system, resulting in the recovery of overpayments and the referral of cases to the Director of Public Prosecutions for consideration of prosecution.

Internationally, the Bureau continues to liaise and conduct investigations with law

enforcement and judicial authorities throughout Europe and worldwide in pursuit of assets deriving from criminal conduct.

The Bureau continues to be an active member of the Camden Asset Recovery Inter-Agency Network (CARIN) and to maintain its effectiveness at an international level as the designated Asset Recovery Office (ARO) in Ireland, utilising these networks to achieve its objectives.

In pursuing its objectives, the Bureau liaises closely with An Garda Síochána, the Office of the Revenue Commissioners, the Department of Social Protection and the Department of Justice and Equality and all law enforcement agencies in the State in developing a coherent strategy to target assets and profits deriving from criminal conduct, and in particular, organised crime.

Yours faithfully



MARTIN CALLINAN  
COMMISSIONER OF  
AN GARDA SÍOCHÁNA

Letter forwarding report from Chief Bureau Officer to Garda Commissioner

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# Letter forwarding report from Chief Bureau Officer to the Commissioner of An Garda Síochána

Dear Commissioner

It is my pleasure to present to you the 17<sup>th</sup> Annual Report of the Criminal Assets Bureau for the calendar year 2012. This report is submitted for presentation to the Minister for Justice and Equality, pursuant to the provisions of Section 21 of the Criminal Assets Bureau Act, 1996.

The format of the report has been altered from that presented in previous years. The report sets out the results of the work undertaken by the Bureau throughout the year in pursuit of its statutory remit in targeting the proceeds of crime.

During 2012, in addition to undertaking new investigations, the Bureau has continued the policy of disposing of outstanding cases under the Proceeds of Crime Act 1996 as amended, where the period of seven years, provided for under the Act has been reached, yielding in excess of €4.8 million to the exchequer. During the year, fifteen new proceedings were brought before the High Court under the proceeds of crime legislation. As in previous years, the majority of these actions were taken arising from the proceeds of drug trafficking. In addition, actions were taken against persons suspected of involvement in other forms of criminal conduct, notably fraud offences. Actions were also taken against persons engaged in the illicit trade in counterfeit fuel laundering and counterfeit cigarette smuggling.

In addition, the Criminal Assets Bureau, using appropriate Revenue provisions, forwarded in excess of €1.9 million to the Central Exchequer and also recovered in excess of €393,797 in respect of overpayments under Social Welfare provisions.

As in previous years, the strategy of the Bureau has been drawn up insofar as possible to co-ordinate with the Policing Plans of An Garda Síochána and the strategies of the Revenue Commissioners and the Department of Social Protection. While the Bureau is not primarily engaged in the investigation of criminal offences, there has been strong liaison with the Office of the Director of Public Prosecutions, An Garda Síochána and the Revenue Commissioners in ensuring that the appropriate remedies are pursued in respect of criminal conduct. This report sets out a number of criminal investigations undertaken by the Bureau throughout the year, some of which have resulted in proceedings before the Criminal Courts. The Divisional Assets Profiler Programme has been extended and further developed during 2012. The primary aim of this development is to enhance the Bureau's effectiveness through the provision of training to related agencies. It also aims to ensure that the Bureau maintains a presence in all Garda Divisions.

The Bureau continues to develop its relationships with Interpol, Europol and Camden Assets Recovery Inter-Agency Network (CARIN). In addition, on the

## Letter forwarding report from Chief Bureau Officer to Commissioner of An Garda Síochána

international level, the Bureau continues to represent Ireland at the platform of the Assets Recovery Offices in Brussels.

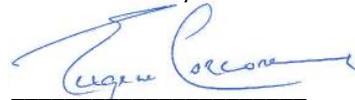
As in previous years, the Bureau continues to receive excellent support from members of the public. This is demonstrated through the good working relationships with the Financial Institutions, Accountancy Bodies and the other regulatory agencies within the country as well as from direct liaison with the public. Overall the primary focus of the Bureau remains, namely, to target serious organised criminals operating at national and international levels. This core priority is matched by the Bureau's policy to support efforts to combat criminal conduct at local community level and the Divisional Profiler Programme continues as a major part of that effort to pursue the proceeds of crime at a local level.

I wish to acknowledge with gratitude the support and co-operation afforded to the Bureau throughout the year by An Garda Síochána, the Office of the Revenue Commissioners, the Department of Social Protection, the Department of Justice and Equality, the Department of Finance, the Department of Public Expenditure and Reform, the Office of the Attorney General and the Office of the Director of Public Prosecutions. I would also like to particularly acknowledge the expertise and commitment of the solicitors and staff allocated by the Chief State Solicitor to the work of the Bureau. I also wish to acknowledge the contribution of Counsel engaged by the Bureau.

I wish to congratulate Mr Declan O'Reilly on his appointment as Bureau Legal Officer during the year. I also wish to express sincere thanks to the former Bureau Legal Officer, Mr Frank Cassidy, for his commitment and dedicated service to the Bureau over the past five years. On behalf of all staff members at the Bureau, I wish Mr Cassidy well in his future career.

Finally, as Chief Bureau Officer, I wish to acknowledge the high level of professionalism, dedication and commitment demonstrated by all Bureau Officers and staff of the Bureau comprising the Bureau Legal Officer, the personnel seconded from the Department of Justice and Equality, An Garda Síochána, the Department of Social Protection and the Revenue Commissioners.

Yours faithfully



EUGENE CORCORAN  
DETECTIVE CHIEF SUPERINTENDENT  
CHIEF BUREAU OFFICER

# Foreword

## Section 21 Report

This is the 17<sup>th</sup> Annual Report of the activities of the Criminal Assets Bureau (hereinafter referred to as “the Bureau”) and covers the period from 1<sup>st</sup> January 2012 to 31<sup>st</sup> December 2012 inclusive.

The Criminal Assets Bureau Act 1996 and the Proceeds of Crime Act 1996 have both been amended on a number of occasions but most substantially by way of the Proceeds of Crime (Amendment) Act, 2005.

For the purpose of this report, the Criminal Assets Bureau Act 1996 and 2005 will hereinafter be referred to as “the Act” and the Proceeds of Crime Act 1996 and 2005 will hereinafter be referred to as “the PoC Act”. The 1996 Acts, together with the 2005 Act, provide a collective title of amendments governing the powers and functions of the Bureau.

This report is prepared pursuant to Section 21 of the Act which requires the Bureau to present a report, through the Commissioner of An Garda Síochána, to the Minister for Justice and Equality outlining its activities during the year 2012.

Foreword  
Section 21

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# Part One

## Overview of the Criminal Assets Bureau and its officers & staff

### The Bureau

On the 15<sup>th</sup> October 1996, the Bureau was formally established by the enactment of the Act. The Act provides for (among other matters):

- the objectives of the Bureau;
- the functions of the Bureau;
- the Chief Bureau Officer;
- Bureau Officers;
- staff of the Bureau;
- the Bureau Legal Officer;
- anonymity of staff of the Bureau;
- offences and penalties for identifying staff of the Bureau and their families;
- offences and penalties for obstruction and intimidation;
- CAB search warrants; and
- CAB production orders.

### Finance

During the course of the year, the Bureau expended monies provided to it through the Oireachtas by the Minister for Justice and Equality in order to carry out its statutory functions and to achieve its statutory objectives.

All monies provided by the Oireachtas as outlined in Table 1 below are audited by the Comptroller and Auditor General, as is provided for by Statute.

In addition, the Internal Audit Section of the Department of Justice and Equality carry out an annual independent audit of the Bureau's procedures and processes.

Accounts for 2012

Description	Amount €	
	2011	2012
Pay	5,744,000	5,599,000
Non-pay	929,000	811,000
Total	6,673,000	6,410,000

### Objectives and functions

The objectives and functions of the Bureau are respectively set out in Sections 4 and 5 of the Act. These statutory objectives and functions are set out in full at appendix 1, and may be summarised as:

1. identifying and investigating the proceeds of criminal conduct;
2. taking actions under the law to deny and deprive people of the benefits of assets that are the proceeds of criminal conduct by freezing, preserving and confiscating the assets;
3. the taking of actions under the Revenue Acts to ensure that the proceeds of criminal activity are subjected to tax; and
4. investigating and determining claims under the Social Welfare Acts.

## Part One

### Overview of the Criminal Assets Bureau and its officers & staff

## Chief Bureau Officer

The Bureau is headed by the Chief Bureau Officer, appointed by the Commissioner of An Garda Síochána from among its members of the rank of Chief Superintendent. The current Chief Bureau Officer is Detective Chief Superintendent Eugene Corcoran who took up his appointment on 1<sup>st</sup> September 2010.

The Chief Bureau Officer has overall responsibility, under Section 7 of the Act, for the management, control and the general administration of the Bureau. The Chief Bureau Officer is responsible to the Commissioner for the performance of the functions of the Bureau.

This Section also provides for the appointment of an Acting Chief Bureau Officer to fulfill the functions of the Chief Bureau Officer in the event of incapacity through illness, absence or otherwise.

## A body corporate

The Bureau exists as an independent corporate body as provided for under Section 3 of the Act. The status of the Bureau was first considered in 1999 by the High Court in the case of *Murphy -v- Flood* ([1999] IEHC 9).

Mr Justice McCracken delivered the judgement of the High Court on the 1<sup>st</sup> of

July 1999. This judgement is pivotal to understanding the nature of the Bureau.

The Court set out:

*"The CAB is established as a body corporate with perpetual succession. While the Chief Bureau Officer must be appointed from members of the Garda Síochána of the rank of Chief Superintendent, nevertheless the CAB is independent of An Garda Síochána, although it has many of the powers normally given to that body.*

...

*The CAB is a creature of Statute, it is not a branch of An Garda Síochána. It was set up by the Oireachtas as a body corporate primary for the purpose of ensuring that persons should not benefit from any assets acquired by them from any criminal activity. It is given power to take all necessary actions in relation to seizing and securing assets derived from criminal activity, certain powers to ensure that the proceeds of such activity are subject to tax, and also in relation to the Social Welfare Acts. However, it is not a prosecuting body, and is not a police authority. It is an investigating authority which, having investigated and used its not inconsiderable powers of investigation, then applies to the Court for assistance in enforcing its functions.*

*The Oireachtas, in setting up the CAB, clearly believed that it was necessary in the public interest to establish a body which was independent of the Garda Síochána, and which would act in an investigative manner. However, I do not*

*think it is the same as An Garda Síochána, which investigates with an aim to prosecuting persons for offences. The CAB investigates for the purpose of securing assets which have been acquired as a result of criminal activities and indeed ultimately paying those assets over the State."*

notwithstanding their appointment as Bureau Officers.

The Bureau concluded 2012 with a total of 70 officers and staff (including one officer on temporary secondment to the United Nations UN Peace Keeping).

Multi-agency authorised levels

### Bureau officers and staff

Section 8 of the Act provides for the appointment of Officers of the Bureau. Members of staff of the Bureau are appointed under Section 9 of the Act.

Officers of the Bureau are:

- A. members of An Garda Síochána;
- B. officers of the Revenue Commissioners;
- C. officers of the Department of Social Protection; and

who are seconded from their parent agencies.

Staff of the Bureau consist of:

- I. the Bureau Legal Officer;
- II. professional members of staff of the Bureau; and
- III. Administrative and technical members of staff of the Bureau.

Officers of the Bureau continue to be vested with their powers and duties

	37
	5
	16
	12

### Anonymity

In order to ensure the safety of certain Bureau Officers and staff, anonymity for those members is set out under Section

## Part One

### Overview of the Criminal Assets Bureau and its officers & staff

10 of the Act. Under this Section, officers and staff of the Bureau execute their duties in the name of the Bureau.

Section 11 of the Act provides for criminal offences relating to the identification of certain Bureau Officers, staff and their families.

The prohibition of identification does not extend to the Chief Bureau Officer, an Acting Chief Bureau Officer, the Bureau Legal Officer or the Bureau Officers who are members of An Garda Síochána.

### Bureau Legal Officer

In June of 2012, Mr Declan O'Reilly was appointed Bureau Legal Officer by the Minister for Justice and Equality with the consent of the Minister for Finance and the Attorney General.

Mr O'Reilly replaced Mr Francis H. Cassidy and the Bureau extends its collective thanks to Mr Cassidy for his long service to the Bureau.

The Bureau Legal Officer reports directly to the Chief Bureau Officer, and is charged under Section 9 of the Act with assisting the Bureau with its objectives and functions.

### Structure of the Bureau

The multi-agency staffed Bureau brings together various skill sets enhancing investigative capabilities in pursuit of the

Bureau's statutory remit. This is possible under Section 5 of the Act detailing the functions of the Bureau.

### Chief State Solicitor's Office

The Criminal Assets Section of the Chief State Solicitor's Office (hereinafter referred to as 'the CSSO') provides the representation of the Bureau in Court with the assistance of Counsel. The CSSO act for the Bureau in all matters in the High Court brought by the Bureau under the PoC Act, represents the Bureau before the Supreme Court, provides representation for all tax and social welfare matters both before appeal bodies and the Circuit Court, and makes necessary applications before the District Court.

The CSSO is staffed as follows:

- 1 solicitor;
- 2 legal executives; and
- 2 clerical officers.

The CSSO continues with an unfilled vacancy of 1 solicitor since 2009.

### Divisional Profilers

The Divisional Criminal Assets Profiler Programme continued throughout 2012. A training course was conducted, which trained a further 55 Profilers. The number of trained Divisional Criminal Asset Profilers currently stands at 199 within the jurisdiction.

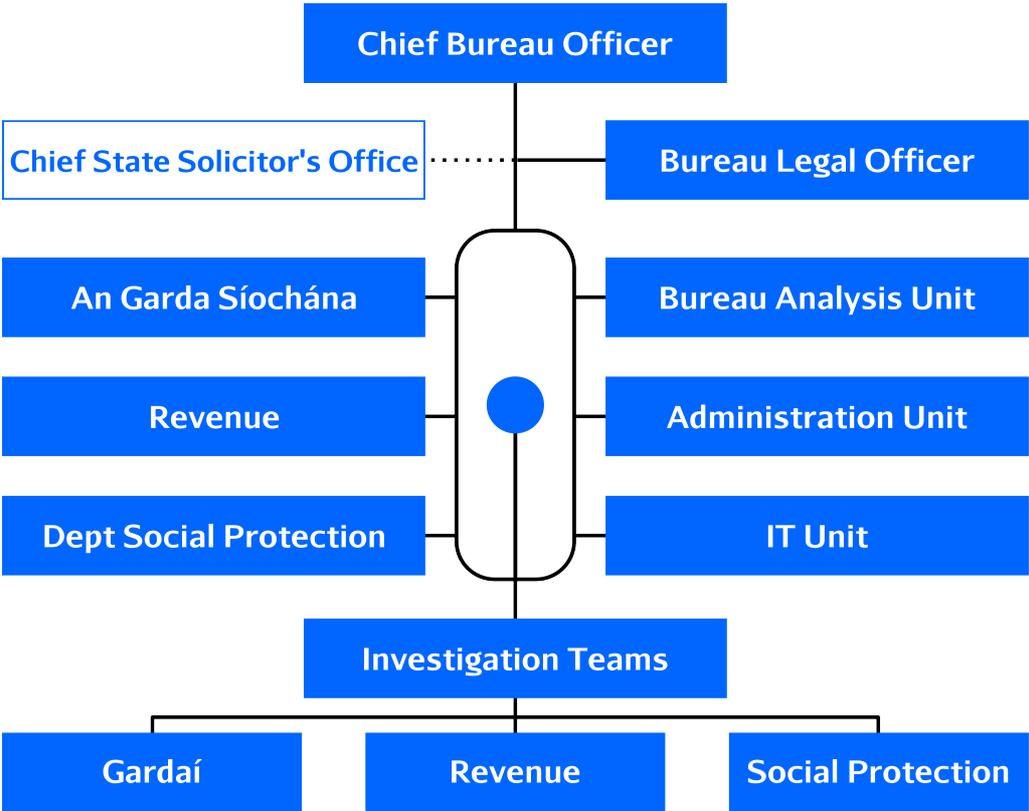
This includes

- 176 Gardaí;
- 19 Officers of the Revenue Commissioners engaged in Customs and Excise duties; and
- 4 Officers of the Department of Social Protection.

The role of the Divisional Criminal Asset Profilers is to liaise with; and assist the Bureau in the course of investigations within their respective Garda Divisions and Districts. In addition, Divisional Criminal Asset Profilers prepare profiles on criminals operating within their area and refer them to the Bureau for consideration of action pursuant to the Bureau's statutory remit.

Part One  
Overview of the Criminal Assets Bureau and its officers & staff

Diagram: Organisation of the Bureau



## Part Two

### *Criminal Assets Bureau investigations*

#### Investigations

During 2012, Bureau Officers continued to utilise and exercise the powers and duties vested in them under Section 8 of the Act.

This section vests in the Bureau Officers, the duties and powers conferred on them by virtue of them being members of their respective parent organisations.

In addition to these powers, the Bureau has particular powers available to it, namely:

1. CAB search warrants; and
2. Orders to make material available to CAB.

These powers are contained within Section 14 and Section 14(A) of the Act and the PoC Act, respectively.

The Bureau conducted its investigations throughout 2012 in many cases with the cooperation and assistance of Garda personnel from Garda Divisions and also from national units such as the Garda Bureau of Fraud Investigation (GBFI), the Garda National Drugs Unit (GNDU), the National Bureau of Criminal Investigation (NBCI), the Special Detective Unit (SDU) and the Security and Intelligence Section, Garda Headquarters.

Many of these investigations were also supported by personnel from the Revenue Commissioners from each of

the regions: Dublin Region (Port & Airport); Borders, Midlands and West Region; South-West Region and East, South-East Region and also from the Investigations and Prosecutions Division.

The Bureau also cooperated with the Special Investigation Unit of the Department of Social Protection in respect of its investigations in 2012.

The assistance received has been critical to the success in targeting the proceeds of criminal conduct during 2012.

#### Section 14

Section 14 of the Act provides for CAB search warrants. Section 14(1) provides for applications to be made by a Bureau Officer, who is a member of An Garda Síochána, to apply to the District Court for a warrant to search for evidence relating to assets or proceeds deriving from criminal conduct.

Section 14(2) & (3) provides for a similar search warrant in circumstances of urgency wherein rather than making the application to the District Court, the warrant is issued by a member of An Garda Síochána not below the rank of Superintendent.

During 2012, all applications under Section 14 were made to the District Court and no warrants were issued pursuant to Section 14(2).

Part Two  
Criminal Assets Bureau Investigations

A Section 14 search warrant operates by allowing a named Bureau Officer who is a member of An Garda Síochána, accompanied by other such persons as the Bureau Officer thinks necessary, to search, seize and retain material at the location named.

This is noteworthy in that it allows the member of An Garda Síochána to be accompanied by technically and professionally qualified people who will assist him/her in the search.

### Section 14A

Section 14A was inserted by the PoC Act and provides for applications to be made by a Bureau Officer who is a member of An Garda Síochána to apply to the District Court for an order directed to a named person, to make material available to the Bureau Officer.

### Applications made during 2012

During 2012, the following number of applications were made under Section 14 and 14(A) of the Act and the PoC Act, respectively:

Applications under Section 14 & 14A CAB Act, 1996 & 2005

Description	Number	
	2011	2012
Search warrants under Section 14 CAB Act, 1996 & 2005	85	103
Orders to make material available under Section 14A of the CAB Act, 1996 & 2005	237	108

## Part Three

# *Actions under the Proceeds of Crime Act 1996 & 2005*

### Introduction

The PoC Act provides the mechanism under which the Bureau can apply to the High Court seeking to freeze or restrain a person / entities dealing with a specific asset.

It further allows for the High Court to determine, on the civil burden of proof, whether that asset represents, directly or indirectly, the proceeds of criminal conduct.

The PoC Act was amended in 2005 to allow the proceedings to be brought in the name of the Bureau instead of its Chief Bureau Officer. Since then all applications by the Bureau have been brought in the name of the Bureau.

The Court proceedings are commenced by way of sworn affidavits of members of An Garda Síochána, other Bureau Officers and in relevant cases, staff from law enforcement agencies in other jurisdictions.

Section 2 of the PoC Act provides that the application must be brought on *ex-parte* basis. This means that the Bureau makes its application in the absence of any other person before the High Court. The Section 2 order lasts for 21 days unless an application under Section 3 of the PoC Act is brought.

Section 3 proceedings were commenced

in all cases in which a Section 2(1) order was made in 2012. Section 3 allows for the long term freezing of assets.

Whilst Section 3 cases commence within 21 days of the making of a Section 2 Order, it may take some considerable time for the hearing of the Section 3 to come before the Court. Section 3 hearings are heard with the respondent present during which the respondent has the opportunity to challenge the case being put forward in respect of the property in question.

In cases where the respondent has insufficient means to pay for legal representation, the respondent may apply to the Court for a grant of legal aid under the CAB Ad Hoc Legal Aid Scheme. This ensures that the rights of the respondent are fully represented to the highest standards.

If it is ultimately shown to the satisfaction of the High Court following a Section 3 hearing that the asset represents, directly or indirectly, the proceeds of criminal conduct then it will make an order freezing and preserving that asset. This order lasts a minimum of seven years during which the respondent or any other interested party can make applications to have the asset returned.

At the expiration of the period of seven years, the Bureau may then commence proceedings to transfer the asset to the Minister for Public Expenditure and

### Part Three

#### Actions under the Proceeds of Crime Act 1996 & 2005

Reform or other such person as the Court determines under Section 4 of the Act. During these proceedings, all relevant parties are again notified and may make applications to Court.

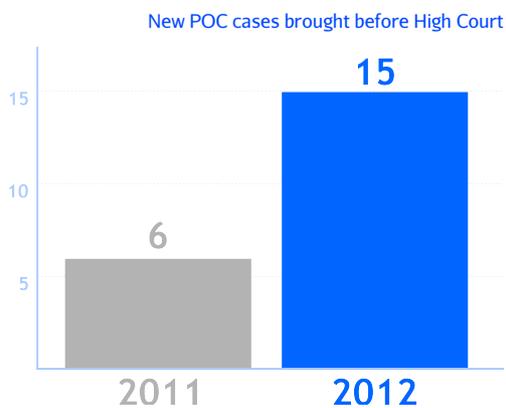
Accordingly, while certain assets became the subject of High Court proceedings in 2012, in some instances the investigative process leading to the court proceedings commenced prior to 2012.

Where the period of seven years has not expired, a consent disposal order under Section 4A of the Act may be effected with the consent of the respondent and the Court.

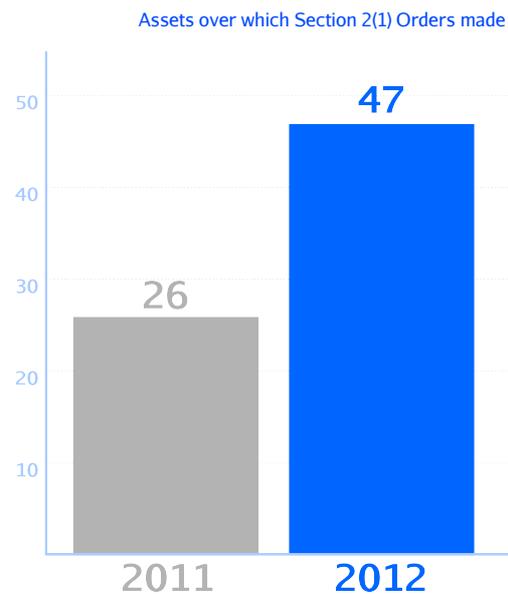
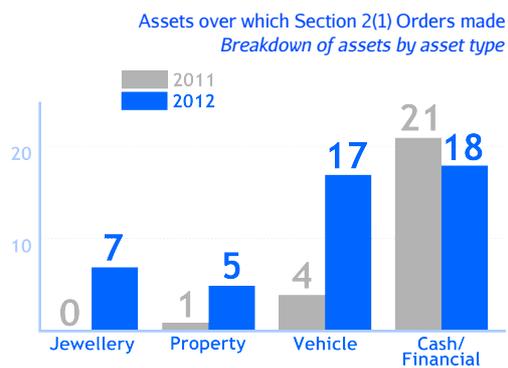
The type of assets over which Section 2(1) Orders were made vary greatly. For profiling purposes, the assets are broken down into jewellery, property, vehicles, and cash/financial matters.

### Section 2 Review

Fifteen new cases were brought before the High Court during 2012. This compares with six for the year 2011.



In combination with the increased number of cases commenced by the Bureau in 2012, the number of individual assets targeted similarly increased from twenty six to forty seven assets. Each individual asset requires investigation to demonstrate that it represents, directly or indirectly, the proceeds of crime.



The breakdown of assets table shows

that the number of cash/financial orders reduced during 2012 by comparison to the 2011 figures. The breakdown shows an increase in the number of other types of assets frozen.

The Bureau notes, in particular, significant increases in the identification of proceeds of criminal conduct being converted into jewellery and vehicles.

To take the example of high value watches, this trend may be illustrated during 2012, in which 5 Rolex, 1 Breitling and 1 Chanel watches were seized by the Bureau under Section 2 of the POC Act, 1996.

## Valuation Breakdown

The value of the forty seven assets frozen under Section 2 of the POC Act during the year 2012 was €2,110,334.78. This figure may be broken down in the table below.

Analysis of s2 order by asset type	
Description	€
Jewellery	49,363.00
Property	576,950.00
Vehicle	291,502.00
Cash/Financial	1,192,519.78
Total	2,110,334.78

These figures are based on the estimated value placed by the Bureau on the asset at the time of making the application under Section 2(1) of the PoC Act.

## Geographical Breakdown

The Bureau's remit covers investigation of proceeds of crime cases irrespective of the location of the assets.

During 2012, the Bureau obtained orders over assets in respect of proceeds of crime in all of the large urban areas such as Dublin, Cork, Limerick and Waterford. Cases were also taken in the more rural areas of Mayo, Roscommon, Carlow, Kilkenny and Louth.

The important point in this regard is that the Bureau remains committed to actively targeting assets which are the proceeds of criminal conduct wherever they are situated.

## Section 3 Review

Section 3(1) Orders are made at the conclusion of the hearing into whether an asset represents or not, the proceeds of criminal conduct. As such, the date and duration of the hearing of the matter is a matter outside of the Bureau's control.

### Part Three

#### Actions under the Proceeds of Crime Act 1996 & 2005



Ten orders were made to the value of €2,017,512.54 pursuant to Section 3(1) of the PoC Act. In addition to the orders made under Section 3(1) whereby monies were frozen, a number of orders were made under Section 3(3) of the PoC Act whereby monies amounting to €741,552.06 was returned by the Bureau to victims of crime as directed by the High Court.

The case of *CAB –v- Eamon Kelly* (High Court Record No. 2012/001/CAB) was one such case in 2012. The respondent had been convicted by the Dublin Circuit Criminal Court to sample charges of theft, producing a false instrument and forgery between October 2007 and February 2010.

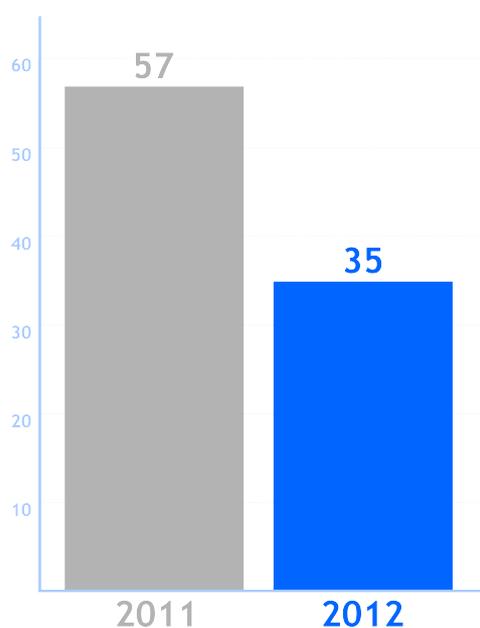
The evidence displayed that the Respondent was involved in a fraudulent scheme, commonly known as “a Ponzi

scheme”, whereby he introduced investors to a non-existent investment scheme. The Bureau was in a position to conduct a forensic investigation and identify bank accounts containing victim’s monies and to freeze these monies firstly under Section 2 and later under Section 3. Ordinarily, in a proceeds of crime case, this money would remain frozen and after the period of seven years be transferred to the State.

However, in this instance, the investigations conducted by the Bureau was sufficiently thorough to enable particular victims to be identified. The High Court was complimentary of many aspects of this investigation and in particular, the manner in which the tracing exercise was carried out. The exercise was conducted in a cost effective manner, thereby avoiding potential costs which victims may have been exposed to using alternative remedies.

The Bureau remains committed to the speedy and cost effective hearing of the matter, but is conscious that rights of person’s claiming legitimate ownership in the asset must be protected and given every opportunity to give a full account to protect whatever rights that person may have in that asset.

Assets over which Section 3(1) Orders made



The Bureau is conscious of the extreme financial pressures on public finances and accordingly, the Bureau continues to seek costs orders and attempts to recover those costs from the respondent when successful.

In 2011, the Bureau obtained a freezing order under Section 3 of the Act in the case of *CAB –v- Routeback Media AB* (High Court Record No 2009/002/CAB) over a sum of approximately US\$700,000. This money remains frozen in a bank account pending a Section 4 application and order. The earliest date on which this process can be commenced is January 2018.

The Bureau was successful in obtaining a

costs order during the course of the proceedings. A sum of €44,897 was awarded by the Taxing Master for the legal costs of the Bureau in pursuing this case and in March 2012, the High Court ordered that this sum be paid out of the frozen monies allowing the State to recoup its legal costs.

This was the first such application brought in a proceeds of crime case under Section 3(3A) which was introduced by the 2005 Amendment Act. Such an approach has the dual effect of recovering costs directly and also limiting costs. It similarly discourages respondents from making wasteful applications to Court.

## Property

In recent years property, which has been found by the High Court to be the proceeds of criminal conduct, has fallen greatly in value. In respect of the cases involving mortgage fraud offences, the Bureau focuses on cases where the party in possession of the property has engaged in serious crime. In addition, emphasis is also placed on cases where mortgage repayments are used as a means of laundering the proceeds of criminal conduct. This form of money laundering, using funds obtained from criminal conduct to repay mortgage and other forms of borrowing, has become more prevalent in recent years.

The Bureau is keen to ensure that those who are engaged in serious organised

## Part Three

### Actions under the Proceeds of Crime Act 1996 & 2005

crime do not benefit from such crime.

The Bureau, however, does not operate on this basis but rather on the basis that where it is shown that the property is the proceeds of criminal conduct, that those in possession of same should be divested of the property.

This is a view that the Supreme Court endorsed in 2012 in the case of *CAB –v- John Kelly and TT* (Appeal No 364/2007) (see Part 7 for further details of this case).

The Bureau, in 2012, continued to pursue properties notwithstanding the fact that the property was in negative equity. This ensures that those involved in serious organised crime are not put in the advantageous position by being able to remain in the property.

## Vehicles

The Bureau continues to note the interest of those in serious organised crime in high value cars.

The type of vehicles seized by the Bureau under Section 2(1) of the PoC Act during the year 2012 included:

1. Custom made motorcycles;
2. Robinson Helicopter; and
3. Prestige cars including a Ferrari

## Section 4 and 4A

Section 4 provides for the transfer of property to the Minister for Public Expenditure and Reform. This Section refers to assets which have been deemed to be the proceeds of criminal conduct, for a period of not less than seven years, and over which no valid claim has been made under Section 3(3) of the PoC Act.

Section 4A allows for a consent disposal order to be made by the respondent in a CAB case, this allowing the property to be transferred to the Minister for Public Expenditure and Reform in a period shorter than seven years.

During the year 2012, monies to the sum of €4,850,540.17 were transferred to the Minister under the PoC Act under Section 4 and 4A.

In addition, on the 9<sup>th</sup> November 2012, the Supreme Court refused a stay on the transfer of the lands at Muclon, Enfield, County Kildare to the Minister together with other property. These assets were the subject of extensive litigation between the Bureau and Mr John Gilligan and his family. It is intended that these lands will eventually be sold by the Minister.

## Section 7

Section 7 provides for the appointment, by the Court, of a Receiver whose duties include either to preserve the value of or dispose of property which is already

frozen under Section 2 or Section 3 Orders.

In 2012, the Bureau obtained receivership orders in regard to forty eight assets. In every case, the receiver appointed by the Court was the Bureau Legal Officer. These cases involved properties, cash, money in bank accounts and motor vehicles. In some receivership cases, the High Court made Orders for possession and sale by the receiver. A receivership Order cannot be made unless a Section 2 or Section 3 Order is already in place.

Part Three  
Actions under the Proceeds of Crime Act 1996 & 2005

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## Part Four

### Revenue actions by the Bureau

The role of the Revenue Bureau Officers attached to the Bureau is to perform duties in accordance with all Revenue Acts and Regulations to ensure that the proceeds of crime or suspected crime, are subjected to tax. This involves the gathering of all available information from both other agencies operating within the Bureau and from the Office of the Revenue Commissioners through use of the Disclosures of Certain Information for Taxation and Other Purposes Act 1996.

resulting in a total tax assessed figure of €8.986m.

Tax charged by assessment

Taxhead	Amount assessed €	No assessed	No. assessments
Income Tax	3,347,552	20	144
VAT	2,119,292	4	6
CGT	19,377	1	1
Excise	3,500,587	3	3
Duties			
Totals	8,986,808	28	154

#### Tax Functions

The following is an update of the tax cases commenced prior to 2012 and also details the current status of cases initiated during 2012.

#### Assessments

Revenue Bureau Officers are empowered to make assessments to tax under Section 58 of the Taxes Consolidation Act 1997 (hereinafter referred to as the TCA 1997) – the charging section.

As part of any Bureau investigation, the Revenue Bureau Officer will investigate the tax position of all those linked with that investigation with a view to assessing their tax liability, where appropriate. Investigations vary in terms of size and complexity.

During 2012, a total of twenty eight individuals/entities were assessed to tax

#### Appeals

Revenue Bureau Officers also manage tax appeals ensuring that the appeal process is fully implemented in accordance with the Revenue Acts, Procedures and Regulations. This applies to appeals heard at all levels – Appeal Commissioner, Circuit Court and cases stated to the High Court.

In accordance with Section 933(1)(a) TCA 1997, an individual assessed to tax shall, subject to specific conditions, be entitled to take an appeal to the Appeals Commissioner in respect of any such assessment.

Where appeals are not correctly invoked, the application for such an appeal will be refused in accordance with Section 933(1)(b) TCA 1997. Where an application has been refused, the appellant may appeal this refusal to the Appeal Commissioners in accordance with Section 933(1)(c) TCA 1997.

## Part Four

### Revenue actions of the Bureau

During 2012, an application for an appeal to the Appeals Commissioner against income tax assessments was refused in respect of one individual. In making his appeal, the individual failed to comply with the provisions of Section 957(2)(a)(II) TCA 1997.

As at 1<sup>st</sup> January 2012, appeals in respect of six individuals were awaiting a hearing by the Appeals Commissioner. During 2012, four of these appeals were withdrawn while the remaining two await a hearing date.

During 2012, five individuals correctly invoked appeals against assessments. In total, as at 31<sup>st</sup> December 2012, the dates for hearing of seven appeals by the Appeals Commissioner were awaited. In accordance with Section 942 TCA 1997, any person aggrieved by the decision of the Appeals Commissioner may seek to have the appeal reheard by a judge of the Circuit Court. As at 1<sup>st</sup> January 2012, appeals in respect of five individuals awaited hearing by the Circuit Court Judge (CCJ). These represented cases where the Appeals Commissioner had previously found in favour of the Bureau and the individual exercised his/her right to have the matter reheard by the CCJ.

In respect of the four appeals which were heard, the CCJ upheld the decision of the Appeals Commissioner. Brief details of each of these cases are given below:

#### Case 1:

At the appeal hearing, the appellant failed to provide any evidence in support of his appeal.

**Outcome:** Assessment confirmed.

#### Case 2:

In this case, the appellant failed to attend. A representative for the appellant did attend so as to inform the judge that the solicitors for the appellant had come off record. No case was presented on behalf of the appellant.

**Outcome:** Assessment confirmed.

#### Case 3:

In this case, the appellant gave evidence in support of their appeal. On cross examination of the appellant, serious discrepancies were found between declared and assessed income.

**Outcome:** Assessment confirmed.

#### Case 4:

In this case the appellant failed to attend.

**Outcome:** Assessment confirmed.

## Demands

During 2012, tax demands (together with interest) served in accordance with Section 961 TCA 1997 amounted to €12,940,080.

Tax recovered during 2012 by the Bureau amounted to €1,967,925. These figures

include collections in the amount of €724,320 through use of attachments pursuant to Section 1002 TCA 1997 in respect of twenty one entities.

High Court proceedings for the recovery of tax and interest in the amount of €4,944,929 were initiated in two cases.

## Collections

Revenue Bureau Officers are empowered to take all necessary actions for the purpose of collecting tax liabilities as assessed and which have become final and conclusive. Revenue Bureau Officers hold the powers of the Collector General and will pursue tax debts through all available routes. Collection methods include:

- the issue of demands – Section 961 TCA 1997;
- power of attachment – Section 1002 TCA 1997;
- Sheriff action – Section 960(L) TCA 1997; and
- High Court proceedings – Section 960(I) TCA 1997.

Part Four  
*Revenue actions of the Bureau*

## Tax tables

Outcome of Appeals refused by the Bureau:

<b>Description</b>	<b>No. of cases</b>
Opening Appeals	0
Appeals refused	1
Refusals appealed to Appeal Commissioner	0
Bureau decision upheld by Appeals Commissioner	0
Closing Appeals	0

Outcome of Appeals at Appeal Commissioner Stage

<b>Description</b>	<b>No. of cases</b>
Opening Appeals	6
Appeals correctly invoked	5
Appeals determined by Appeals Commissioner	0
Appeals withdrawn	4
Closing Appeals	7

Outcome of Circuit Court Appeals

<b>Description</b>	<b>No. of cases</b>
Opening Appeals	5
Appealed to Circuit Court	0
Appeals determined by Circuit Court	4
Appeals withdrawn	1
Closing Appeals	0

Part Four  
Revenue actions of the Bureau

Tax and Interest demanded

<b>Taxhead</b>	<b>Tax €</b>	<b>Interest €</b>	<b>Total €</b>	<b>No. of cases</b>
Income Tax	4,234,132	3,290,114	7,524,246	18
VAT	1,176,112	185,416	1,361,528	5
CGT	19,377	9,685	29,062	1
PAYE/PRSI	53,970	44,236	98,206	1
Excise	3,500,589	426,449	3,927,038	3
<b>Totals</b>	<b>8,984,180</b>	<b>3,955,900</b>	<b>12,940,080</b>	<b>28</b>

Tax and Interest Collected

<b>Taxhead</b>	<b>Amount €</b>	<b>No. of cases</b>
Income Tax	1,412,439	38
Value Added Tax	416,598	7
Capital Gains Tax	25,000	1
PAYE/PRSI	98,206	1
Relevant Contracts Tax	15,682	1
Stamp Duty	0	0
VRT	0	0
<b>Totals</b>	<b>1,967,925</b>	<b>48</b>

## Part Four

### *Revenue actions of the Bureau*

## Customs & Excise Functions

The Customs & Excise (C&E) functions in the Bureau support all investigations with a view to identifying any issues of Customs relevance and bring the breath of C&E related legislation, rules, regulations, information and/or intelligence to bear in the appropriate manner.

Traditionally, serious and organised crime groups in almost every jurisdiction attempt to breach both customs regulations and excise regulations with a view to making substantial profits while draining the exchequer of funds and having a negative impact on society in general.

The situation in Ireland is no different and the existence of a border with another jurisdiction where tax rates on various products are different has provided an incentive for serious organised crime gangs to engage in smuggling and associated activities. These activities result in significant loss to the exchequer while providing significant gains to those crime gangs.

For instance, the illegal trade in mineral oils, including the laundering of marked products and the emerging trend of the sale of laundered diesel through filling stations, is evidence of such criminal behaviour.

Fighting against organised crime gangs operating across borders requires co-

operation among competent authorities on both sides of the border. Such co-operation extends not only to sharing information and intelligence, but also to planning and implementing joint operations on an international multi-agency and multi-disciplinary platform.

In such cases all the tools of mutual assistance, whether they be customs to customs and/or police to police can and are used.

Co-operation and information/intelligence sharing between the Bureau and Revenue's Customs Service, and other customs services internationally, improves the effectiveness of the deterrent action against smugglers.

Such co-operation and the international dimension of the Bureau's activities are elaborated upon in Chapter 6 of this report.

In this jurisdiction, the Bureau has successfully targeted such criminal gangs and continues to do so.

C&E continually seek to take advantage of any legislative changes in the fight against organised criminal conduct.

To this end, recent legislative changes to the Finance Act of 2001 (which deals with the consolidation and modernisation of general excise law), which provide for the

raising of Excise Duty assessments and which, had heretofore not been an option, have been exploited.

During 2012, Excise Duty assessments have been raised by the Bureau in the amount of €3,927,038 utilising these powers. These assessments were raised against major criminals involved in the distribution and sale of smuggled/laundered fuel.

The customs staff attached to the Bureau take every opportunity to link up and work closely with their Customs' colleagues in Revenue in order to avail of all investigative opportunities and to use all the States resources in the most efficient way on tackling criminals.

During a Bureau investigation in 2012, CAB Customs Officers became aware that the person who was the subject of investigation had breached vehicle registration tax or VRT regulations.

As a result of appropriate action taken by Customs staff of the Bureau, working closely with the Revenue/Customs Dublin Regional Team, eleven vehicles were detained and seven vehicles were subsequently seized. VRT was collected on the four vehicles prior to their release. Prosecutions are pending in respect of the seven vehicles seized.

Part Four  
*Revenue actions of the Bureau*

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## Part Five

### Social Welfare actions by the Bureau

The Bureau takes action under the Social Welfare Acts, pursuant to its functions as set out in Section 5 of the Act. Social Welfare Bureau Officers investigate and determine entitlement to social welfare payments. Arising from investigations by Bureau Officers, actions pursuant to the Social Welfare remit of the Bureau was taken against one hundred and two persons.

#### Savings

As a direct result of investigations conducted by Social Welfare Bureau Officers in 2012, a number of persons had their payments either terminated or reduced. These actions resulted in a total saving to the exchequer of €612,670. The various headings under which these savings were achieved are as follow;

##### Social Welfare Savings

Scheme type	Saving €
Carer's allowance	77,465
Child benefit	15,198
Disability allowance	65,601
Disability benefit	31,584
Jobseeker's allowance	204,414
One-parent family payment	218,408
State pension (old age)	-
Totals	612,670

#### Overpayments

The investigations conducted also resulted in the identification and assessment of overpayments against individuals. An overpayment is described as a payment received by an individual over a period(s) for which that person was not entitled to make the claim the subject of payment and creates a debt to the Department of Social Protection. As

a result, demands were issued against these persons for the repayment of the Social Welfare debts ranging in individual value from €3,000 to €160,000. The total amounts for 2012 Social Welfare Overpayment Assessed & Demanded are as follows;

##### Social Welfare Overpayments

Scheme type	Over- payment €
Carer's allowance	167,885
Child benefit	3,576
Disability allowance	138,137
Disability benefit	-
Jobseeker's allowance	802,448
One-parent family payment	390,466
State pension (old age)	-
Totals	1,502,512

#### Recoveries

The Bureau utilises a number of means by which to recover Social Welfare debts from individuals.

The methods include payments by way of lump sum and/or instalment or by way of deductions from current Social Welfare entitlement payments. The Bureau is currently actively pursuing increased legislative powers which will assist in the recovery of Social Welfare debts for the benefit of the exchequer. The amounts of Social Welfare debts recovered by the Bureau in 2012 are as follows;

## Part Five

### *Social Welfare actions by the Bureau*

#### Social Welfare Recovered

<b>Scheme type</b>	<b>Recovered €</b>
Carer's allowance	45,620
Child benefit	-
Disability allowance	47,395
Disability benefit	-
Jobseeker's allowance	271,057
One-parent family payment	25,565
State pension (old age)	4,160
<b>Totals</b>	<b>393,797</b>

Deciding Officer.

As of the 31<sup>st</sup> December 2012, there was one appeal remaining with the Chief Appeals Officer pending determination. There was also three appeals, carried over from the previous year which remain before the Circuit Court for determination.

## Appeals

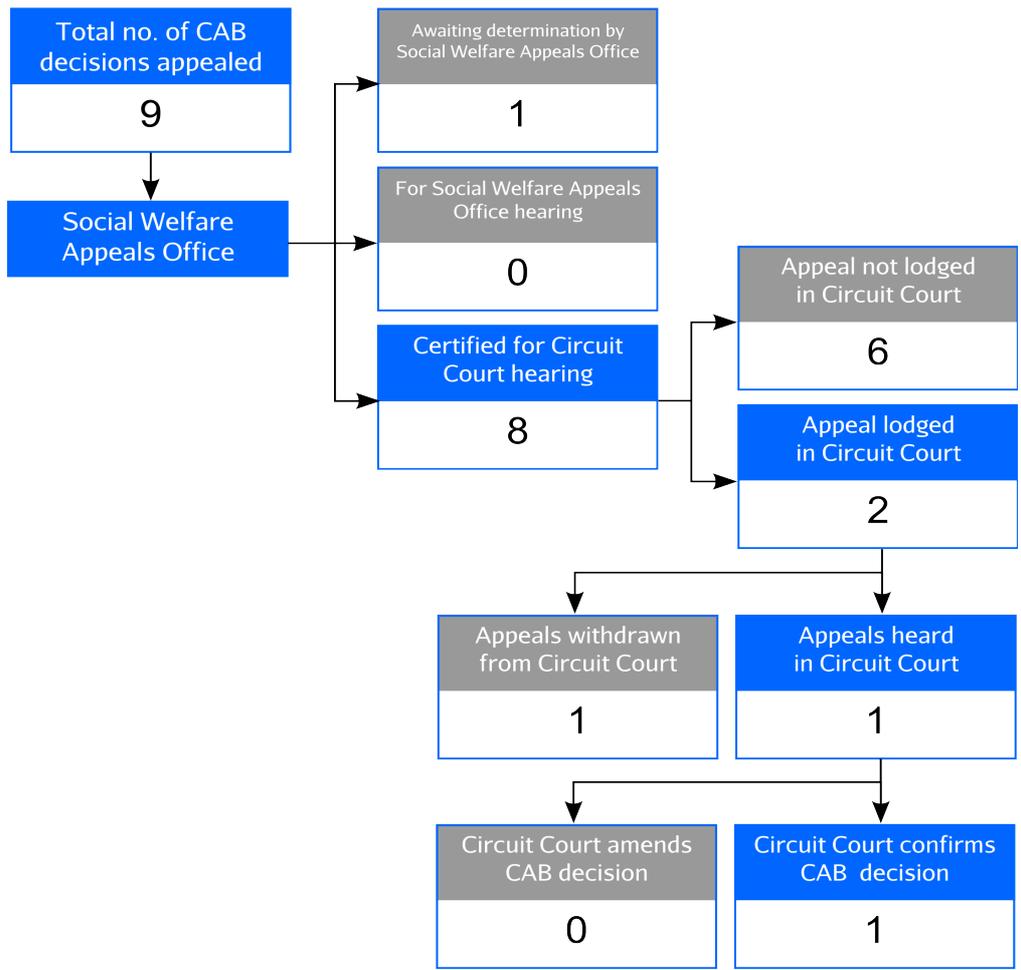
There is an independent agency, the Social Welfare Appeals Office, which is headed by a Chief Appeals Officer. This provides an appeals service to persons who are unhappy with determinations made by the Department of Social Protection on questions relating to their entitlement to social welfare payments.

In 2012, there were nine appeals against determinations made by Deciding Officers attached to the Bureau. This represents a reduction of 50% in the number of appeals which were lodged in 2011.

The Chief Appeals Officer certified that the ordinary appeals procedure was inadequate to secure the effective processing of these appeals and directed that the appellants submit their appeals to the Circuit Civil Court.

To date, of the nine appeals, two have formally lodged their appeals in the Circuit Civil Court. One appeal has since been withdrawn. In the second case, the Court has upheld the decision of the

Diagram: Scheme of Appeals



Part Five  
*Social Welfare actions by the Bureau*

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## Part Six

# *Criminal prosecutions arising from investigations of the Bureau*

### Introduction

Arising from investigations conducted by the Bureau, pursuant to its statutory remit, evidence of suspected breaches of criminal offences was uncovered and, as a result, a number of persons were arrested and files were prepared seeking the directions of the Director of Public Prosecutions (hereinafter referred to as 'the DPP') and a number of criminal prosecutions ensued.

The suspected offences identified were contrary to Sections under the following Acts:

- The Taxes Consolidation Act, 1997;
- The Criminal Justice (Theft and Fraud Offences) Act, 2001;
- The Criminal Justice (Money Laundering and Terrorist Financing) Act, 2010;
- Social Welfare Consolidation Act, 2001;
- The Criminal Assets Bureau Act, 1996 & 2005;
- Public Bodies Corrupt Practices Act, 1889;
- The Prevention of Corruption Act, 1916; and
- The Ethics in Public Office Act, 1995.

A number of cases from previous years were resolved during 2012 and a number of new actions commenced as in

common with other years.

The following is an update of the cases commenced prior to 2012 and also details the current status of criminal prosecutions initiated in 2012.

### Tax related offences

#### *Case 1*

The 2011 Annual Report set out that three individuals were arrested during that year for suspected revenue offences contrary to Section 1078 of the TCA 1997 relating to the failure to make tax returns.

All three individuals were charged with criminal offences in 2012 and all three cases are currently adjourned to 2013.

One of the three cases is subject to judicial review proceedings by the defendant in the High Court and as of 31<sup>st</sup> December 2012 a hearing date was awaited.

#### *Case 2*

The Bureau submitted a file to the DPP in respect of another individual in 2012, who had been previously arrested for offences contrary to Section 1078 of the TCA 1997. Directions are currently awaited from the DPP.

#### *Case 3*

In 2011, a person was charged with offences contrary to Section 1078 of the

## Part Six

### *Criminal prosecutions arising from investigations of the Bureau*

TCA 1997 relating to the failure to make tax returns.

During 2012, the defendant was sent forward for trial to the Circuit Criminal Court. However, the defendant failed to appear in Court and a warrant was issued for the defendant's arrest.

#### Case 4

The Bureau is still pursuing one case under the TCA 1997 from 2007 which is still currently being reviewed by way of judicial review by the defendant.

While the defendant lost the appeal in the High Court, the defendant has lodged an appeal to the Supreme Court. This appeal was heard in 2012 and judgement is awaited. The criminal charges are currently remanded in the Special Criminal Court.

#### Case 5

The Bureau Annual Reports from other years have set out how it was involved in an investigation into Vehicle Registration Tax (VRT) irregularities. This investigation was conducted under the operational name of "Operation Tie".

During the course of 2012, one individual pleaded guilty to fourteen counts of VRT fraud and his case has been adjourned to 2013.

Arising out of the same investigation, a second individual pleaded not guilty in

the Circuit Criminal Court. Following the hearing of his case, two of the criminal charges were withdrawn by the State and a *nolle prosequi* or 'No Prosecution' was entered in respect of the remaining four charges.

### Social welfare related offences

#### Case 6

The 2011 Annual Report noted that the Bureau was continuing with an investigation into a person who was arrested for suspected breaches of the Criminal Justice (Theft and Fraud Offences) Act of 2001 relating to suspected fraudulent claims for social welfare. During 2012, the Bureau completed its investigation, submitted a file to the DPP and directions are currently awaited.

#### Case 7

The 2011 Annual Report disclosed that the Bureau had previously charged an individual with forty eight offences contrary to the provisions of the Social Welfare Consolidation Act, 2005 and the Criminal Justice (Theft and Fraud Offences) Act, 2001.

During the course of 2012, the individual pleaded guilty to these offences in the Circuit Criminal Court and was sentenced to three years imprisonment.

## Threats and intimidation offences

### *Case 8*

As reported in the 2011 Annual Report, Bureau Officers who were members of An Garda Síochána, arrested and charged two individuals with offences contrary to Section 13 of the CAB Act 1996 & 2005 which relates to the intimidation of Bureau Officers.

One individual has pleaded guilty before the Circuit Criminal Court in 2012 and has been remanded to 2013 for sentencing. The second individual has had his case adjourned to the Circuit Criminal Court in 2013.

Court. In 2012, the Supreme Court heard both appeals and in both instances, the Supreme Court ruled against each of the Appellants. A hearing date has been set for 2013 to hear the criminal case against the five defendants.

## Corruption related offences

### *Case 9*

The 2010 Annual Report noted that six individuals were charged with offences contrary to Section 1(2) of the Public Bodies Corrupt Practices Act, 1889 as amended by Section 4(2) of the Prevention of Corruption Act 1916 and Section 38 of the Ethics in Public Office Act 1995.

Due to the death of one of the individuals concerned, five of these cases remain before the Courts. Two of the defendants brought appeals before the High Court which were heard during 2012. Both appeals were unsuccessful. In both cases, appeals of the High Court decision were taken to the Supreme

Part Six

*Criminal prosecutions arising from investigations of the Bureau*

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## Part Seven

### Significant court judgements during 2012

#### Byrne v. F

[2012] IEHC 428 (High Court, Feeney J, 6 July 2012)

The High Court refused to make orders against property and bank accounts alleged to be proceeds of crime, on the grounds that hearsay and opinion evidence concerning alleged criminal activity was not sufficiently corroborated.

**Reporting restrictions note:** an order was made by the High Court on the 4<sup>th</sup> July 2001 pursuant to Section 8(3) of the PoC Act directing “the disclosure of the identities of the Defendants or the publication of any information in relation hereto which may lead to the disclosure of the identities of the Defendants be prohibited.”

*Proceeds of crime – Sections 3 and 7, PoC Act – application by Chief Bureau Officer – properties and bank accounts held by deceased person(s) – properties acquired in 1970s and 1980s – requirement of corroboration – properties purchased without borrowing – alleged money laundering – problems with quality of evidence relied upon by applicant – passage of time and fading of memories – evidence reliant upon communications from unidentified third parties – allegations of criminal and smuggling activities – alleged contact with drug dealers – alleged cigarette smuggling – investigations of deceased persons in Northern Ireland and in Ireland – contact between Gardaí, RUC*

*and Scotland Yard in London – inconsistencies in evidence – lack of reliable information concerning any criminal activities prior to 1994 – original proceeds of crime legislation not relevant to crimes committed outside the State – whether safe to admit opinion evidence – whether sufficient evidence that hidden funds were proceeds of crime being laundered – Section 8 PoC Act.*

The court noted:

*“There are a number of factors in this case, which, when taken together and when considered cumulatively, lead the Court to the conclusion that the quality of the evidence relied upon by the Chief Bureau Officer and upon which he bases his opinion is not of sufficient strength or effect which would permit the Court to conclude that the plaintiff has established reasonable grounds for the Chief Bureau Officer’s belief or opinion evidence. There are also special problems present in this case which leads the Court to the same conclusion.”*

*“The Court has also been placed in the situation that there is a lack of contemporaneous documentation available to the Court and there is almost no documentation in relation to F’s financial position in the United Kingdom prior to his returning to Ireland in 19XX which was almost ten years after he had left the jurisdiction. This makes it very difficult for the Court to evaluate and test the evidence upon which the Chief Bureau Officer seeks to rely and reduces the quality of that evidence and places the Court in a situation that it cannot*

## Part Seven

### Significant court judgements during 2012

*draw adverse conclusions from the manner in which the funds were dealt with. It is the admission of hearsay or belief evidence in relation to the generation of the proceeds of crime by the late F within the jurisdiction which the Court must address in the first instance and in the light of the matters identified in the previous paragraphs, this Court is satisfied that the quality of the evidence upon which the Chief Bureau Officer seeks to rely on in support of his opinion evidence and the nature and circumstances in which such evidence must be viewed renders the quality of that evidence such that the opinion or belief evidence should not be admitted in evidence. The Court is not satisfied that there are reasonable grounds, established in evidence, for the belief. In those circumstances the Court cannot conclude that the evidence adduced by the plaintiff constitutes a prima facie case under s. 3 and the onus of proof does not shift to the defendant."*

- McK v. TH [2007] 1 ILRM 338
- Murphy v. GM [2001] 4 IR 113

#### Key Cases Cited

- Clarke v. Governor of Cloverhill Prison [2011] 2 I.R. 742 and also McKeon v. Director of Public Prosecutions (Unreported, Supreme Court, 12th October, 1995)
- FMcK v. GWD (Proceeds of Crime Outside the State) [2004] 2 I.R. 470
- Gilligan v. Criminal Assets Bureau [1998] 3 IR 185
- McIntosh v. Lord Advocate [2001] 3 WLR. 107
- McK v. F and F (Unreported, High Court, Finnegan P, 24th February, 2003)

## CAB v. John Kelly & TT

[2013] IESC 2 (Supreme Court, McMenamin J, 29 November 2012)

Supreme Court upheld decision of High Court in favour of the CAB, that the transfer of property to the Minister for Finance caused no injustice where it had been found to be the proceeds of crime even where that property was claimed as a family home.

**Reporting restrictions note:** an order was made by the High Court on the 3<sup>rd</sup> October 2007 pursuant to Section 8(4) of PoC Act directing “that the identity of the Second Named Respondent and her two children not be revealed in the prosecution of these proceedings.” However this does not include the naming of John Kelly, the husband of TT.

*Proceeds of crime – Section 8 and 4, PoC Act – appeal by TT – no appeal by Kelly – house being resided in a family home of TT – Circuit Court family proceedings had awarded TT 50% beneficial interest – Kelly acquitted of criminal charges – tax proceedings by CAB against Kelly – CAB should have been put on notice of family law proceedings – whether delays had caused “injustice” – fair procedures – rights to private property – activities that profoundly anti-social and contrary to common good – proportionate – factors to be weighed in assessing the risk of injustice – no direct financial contributions – no mortgage – alternative accommodation – contributions to*

*enhancement in value – social welfare repayments -anonymity under Section 8(4) of the Act – abuse of process.*

The central matter for consideration by the Supreme Court was the factor to which a court must have regard to, in the balance of justice, in making an order for the disposal of property under Section 4 of the PoC Act. In particular, the application of Section 4 to a property claimed by a spouse as a family home.

The appeal by TT arose from a judgement of the High Court given by Mr Justice Feeney on the 3<sup>rd</sup> October 2007. The effect of this order was that:

1. the name of TT and her two children were not to be identified,
2. that monies be transferred from bank accounts to the Minister for Finance for the benefit of the Central Fund, and
3. that a house together with fixtures and fitting be likewise transferred to the Minister for Finance subject to the condition that TT and her two children be permitted to reside there until the 30<sup>th</sup> June 2008.

The High Court had found that the monies and the house represented, directly or indirectly, the proceeds of crime under the PoC Act. The High Court heard evidence that John Kelly (the husband of TT) had been involved in criminal activities and in particular, drug

## Part Seven

### Significant court judgements during 2012

dealing and the property had been acquired from funds generated by his drug dealing.

Mr Kelly did not appeal the decision of the High Court and the appeal to the Supreme Court was by TT alone. In the High Court, it was not disputed that Mr Kelly had purchased the property and that it was the proceeds of crime.

The matter before the Supreme Court was whether transferring the property to the Minister as required under Section 4 of the Act caused an “injustice” with regard to a property claimed by the spouse as a family home.

This case commenced in 1997 when the CAB obtained a freezing order from the High Court on the 9<sup>th</sup> May 1997. This was a short term freezing order under Section 2 of the Act and a final order was made under Section 3 of the Act by the High Court on the 27<sup>th</sup> March 1998. This order was made on consent of the parties.

The CAB also issued tax collection proceedings against Mr Kelly for the sum of €378,522.76 in respect of income tax. The High Court gave judgement in the full amount and an appeal was rejected by the Supreme Court on the 11<sup>th</sup> October 2002.

Mr Kelly had been convicted of drug dealing by the Circuit Criminal Court in

July 2000 but that conviction was quashed by the Court of Criminal Appeal on the 21<sup>st</sup> March 2002 on technical grounds. Mr Kelly was subsequently acquitted of any outstanding charges, but the Supreme Court found this of limited weight in light of the concessions already made by Mr Kelly and TT in regard to the origins of the property in question.

Three months prior to the hearing in the High Court in 2007, TT commenced family law proceedings in the Circuit Court. The Circuit Court made an order pursuant to Section 36 of the Family Law Act 1996 to the effect that the family home was held jointly by TT and her husband. These family law proceedings were held *in camera* and the CAB was not put on notice of the hearing. The Supreme Court heard that there was no marital breakdown and in fact, it was said by TT that the family law hearing was “urgent” only because of the High Court CAB proceedings. The Bureau was only put on notice three months after the making of the Circuit Court order. The Supreme Court stated that “*the Criminal Assets Bureau, could, and should have been placed on notice of the making of the application*”.

The Supreme Court reaffirmed its position in *CAB v. H* [2011] IESC 10 where the Court had found in a similar case that the High Court Judge (Feeney, J.), in that case “had not erred” in his reasoning of the issues before him and upheld that judgement of the High Court in its entirety.

In this case, the Supreme Court noted that there is a strong public policy dimension to the PoC Act. It noted that the policy is to ensure that persons do not benefit from assets which were obtained with the proceeds of crime irrespective of whether the person benefiting actually knew how such property was obtained with the proceeds of crime. This, however, may be limited in the case of a *bona fide* purchaser.

The Court noted that TT was not a good faith purchaser of property and had given no evidence that she had contributed to the purchase of the property. The Court stated:

*“One cannot lose sight of the fact that, for some 22 years since 1990, and as distinct from many in the community, the appellant has had the benefit of living rent and mortgage free in the property which was acquired by the proceeds of crime, and has not had to deal with the normal liabilities which fall on other persons who acquire property. The fact that persons can benefit from the proceeds of crime cannot be in accordance with sound justice or the common good.”*

The Court noted that the Department of Social Protection had brought proceedings against TT but that this could not have any effect on this judgement of the Court.

The Court upheld the Section 8(4)

anonymity provisions of the High Court and concurred with the High Court that the identity of John Kelly did not, nor would not, require protection. The Court agreed with the High Court and noted the benefit to society in not making any anonymity provisions in respect of John Kelly. The Court noted:

*“It is an unfortunate fact that persons, who engage in crime, run the risk of attracting adverse publicity. It is not denied that the first named respondent was involved in criminal activities which are detrimental to the common good. The order protects the rights of the appellant in a proportionate and sufficient way.”*

#### Key Cases Cited

- CAB v. H [2011] IESC 10
- McK v. AF [2002] 1 IR 242,
- Rowan v Byrne, (Unreported, High Court, Barr J, 17th December, 1990)
- Royal Bank of Ireland v. O'Rourke [1962] IR 159
- Director of Public Prosecutions v. Gill [1980] 1 IR 263
- Murray v. McArdle (Unreported, High Court, Morris J., 11th May, 1998)
- The State (Clarke) v Roche [1986] IR 619
- Murphy v. MC And others, (Unreported, Supreme Court, Keane C.J., 9th March, 2004).
- Murphy v. GM [2001] 4 IR 113
- CAB v. H (Unreported, High Court, Feeney J., 3rd October, 2007)

## Part Seven

### Significant court judgements during 2012

- Gilligan v Criminal Assets Bureau [1998] 3 IR 185

### CAB v. Roger O'Grady

#### High Court Record 2012/007/CAB

Unreported

The central matter for consideration saw a challenge to the authority of the High Court in freezing assets. The respondent had assets in his possession and control which were the subject of an investigation by the Bureau.

The assets included a Ferrari and Robinson helicopter. The Court made an Order freezing the assets and a Receiver appointed under Section 7 of the PoC Act to take possession of the assets. By way of response, the assets were removed beyond the jurisdiction of the court.

The Bureau, with the assistance of the Police Service of Northern Ireland, successfully located the assets and secured their return to this jurisdiction.

An additional feature of the case required the Bureau to commence contempt of court proceedings against the respondent. This resulted in the Bureau, for the first time, taking attachment and committal proceedings against the respondent as a matter of public importance.

The respondent was subsequently

apprehended and brought before the High Court to answer for his contempt.

As a result, the sum of €26,687.60 was made the subject of a Section 2, 3 and 4 Order, together with a Ranger Rover Vehicle which was also seized.

Similarly, orders were secured under Sections 3 and 4 over the helicopter and Ferrari.

[Photograph of Ferrari and helicopter seized](#)



This is a significant case, from the perspective of demonstrating:

- the international cooperation afforded to the Bureau;
- the degree to which the Bureau will move to have orders of the High Court enforced; and
- a multi-agency approach to secure and preserve assets.

# Part Eight

## *International Developments*

### The International Perspective

As a front line agency in the fight against criminality, the Bureau's capacity to carry out this function, together with its success to date is, to a large degree, based on its multi-agency and multi-disciplinary approach, supported by a unique set of legal principles. The Bureau continues to play an important role in the context of law enforcement at an international level.

### Asset Recovery Office (ARO)

In 2011, the EU Commission adopted a report on the functioning of Asset Recovery Offices (ARO) set up by Member States to fight organised crime. By identifying illegally acquired assets within their own jurisdiction and by facilitating the exchange of relevant information at European level, these offices help depriving criminals from their criminal profits. The Bureau is the designated Asset Recovery Office for Ireland.

Criminal groups are trans-national and acquire assets in jurisdictions other than their own. The purpose of ARO is to facilitate Member States in their efforts to trace and identify criminal assets in other Member States. The Asset Recovery Offices in Member States are important tools in that work.

The Bureau is very active in using the facilities of the Members States' AROs in progressing investigations and also assist

other Member States in their requests for assistance

During 2012, we received seventeen requests for assistance and sent two requests.

### International Operations

From an operational perspective, the Bureau have been involved in a number of international operations. Such operations can vary in nature and include providing ongoing intelligence available to the Bureau to taking an active role in tracking and tracing individual criminal targets and their assets in conjunction with similar agencies in other jurisdictions.

An example of cooperation, at an international level, may be found in the three actions pursuant to the PoC Act against Brian Meehan following his conviction for the murder of Veronica Guerin. The latest action was in respect of Bank accounts held in Austria and the Isle of Man where a successful court process yielded IR£522,924.38 to the Bureau on 3<sup>rd</sup> December 2012. The Bureau worked very closely with the relevant authorities in Austria and the Isle of Man who provided excellent assistance in the recovery of these monies from the various bank accounts.

### Europol

The Bureau continues in its role as the

## Part Eight International Developments

lead Irish law enforcement agency in a number of ongoing international operations which are being managed by Europol. These operations are targeting the activities of organised crime gangs who recognise no borders and who attempt to use movement across international frontiers as an advantage in their criminal activity or to facilitate such activity.

“Operation Oakleaf” is a Europol co-ordinated operation which targets the criminal activities of a gang with prominent links to Ireland. This gang operates across the Americas, Asia and Australia. Some €9m worth of tax demands have been served on nine key members of the gang. This is a highly organised crime group which was involved in a range of serious crime: counterfeit products, tarmac fraud, robbery, money laundering and drug trafficking. The group is also known as a global specialist in the theft and illegal trade in rhino horn, which is highly prized.

## Interpol

Interpol is an agency comprising of the membership of police organisations in one hundred and ninety countries worldwide. The agency’s primary function is to facilitate domestic investigations which transcend national and international borders. The Bureau has utilised this agency in a number of investigations conducted in 2012.

## CARIN

In 2002, the Bureau and Europol co-hosted a conference in Dublin at the Camden Court Hotel. The participants were drawn from law enforcement and judicial practitioners.

The objective of the conference was to present recommendations dealing with the subject of identifying, tracing and seizing the profits of crime. One of the recommendations arising in the workshops was to look at the establishment of an informal network of contacts and a co-operative group in the area of criminal asset identification and recovery. The Camden Assets Recovery Inter-agency Network (CARIN) was established as a result.

The aim of the CARIN is to enhance the effectiveness of efforts in depriving criminals of their illicit profits.



The official launch of the CARIN Network of Asset Recovery agencies took place during the CARIN Establishment Congress in The Hague, in September 2004.

The CARIN permanent secretariat is based in Europol headquarters at the Hague. The organization is governed by

a Steering Committee of nine members and a rotating Presidency. The Bureau remains on the Steering Committee and will hold the Presidency for 2013. Ongoing work is progressing in relation to the management, planning and logistics associated with holding the presidency. The bureau will continue to hold the presidency till 31<sup>st</sup> December 2013.

During 2012, the Bureau attended Steering Group meetings and the Annual General Meeting which was held in Hungary.

The Bureau, through its work on CARIN, continues to frame and inform the international discussion surrounding all issues related to identification, seizure, and forfeiture of assets associated with criminal conduct. In particular, the Bureau continues to seek to have non-conviction based forfeiture orders recognised and enforced against properties situated in other member states

## Relationship with the United Kingdom

The Bureau has a unique relationship with the authorities in the UK, given the fact that it is the only country with which we have a land frontier and the relationship has developed between the two jurisdictions over the years.

### *Cross Border Organised Crime Conference*

The Cross Border Organised Crime

Conference provides an opportunity for all law enforcement agencies from both sides of the border to get together and review activities that have taken place in the previous year as well as plan for the forthcoming year. It also provides the opportunity to exchange knowledge and experience and identify best practice in any particular area of collaboration.

In general trans-national organised crime presents challenges to law enforcement.

The existence of a land frontier provides opportunities to engage in cross border VAT fraud, fuel laundering and smuggling to name but a few. In recent times, the re-emergence of dissident groups adds to the complexity of this situation. Organised crime gangs (OCGs), who operate across the border within Northern Ireland, presents a unique set of challenges. These challenges can only be overcome with the combined efforts of law enforcement on both sides of the border.

### *Cross Border Fuel Group*

The Cross Border Fuel Group was established in 2008 to counter the activities of those involved in the cross border smuggling, laundering and distribution of fuel. This criminal activity results in a loss to the exchequer, has a detrimental impact on the legitimate trade, causes serious difficulties for drivers who inadvertently use it in their vehicles and also causes environmental damage as a result of the sludge which is a waste bi-product of the laundering

## Part Eight International Developments

process and which is normally dumped or buried indiscriminately thus contaminating land and water systems.

The Bureau along with the Revenue's Customs Service, An Garda Síochána, the Department of the Environment, Community and Local Government, Her Majesty's Revenue and Customs (HMRC), The Serious Organised Crime Agency (SOCA), Police Service of Northern Ireland (PSNI), United Kingdom Border Agency (UKBA) and the Northern Ireland Environment Agency devise strategies to counter the activities of those involved. Cross border international operations are planned and executed against selected targets where the full powers of all the agencies are brought to bear.

In 2012, excise assessments in excess of €3.5 million were served on those who were targeted during such cross border international operations.

### *Cross Border Excise Group*

Cross Border Organised Crime Gangs continue to take advantage of the price differential of tobacco products between jurisdictions. The smuggling of counterfeit and contraband cigarettes and tobacco remains a significant issue.

New trends have been detected in respect of the modus operandi of the major organised crime gangs. The Cross Border Excise Group, which was established in 2010, is a forum for law enforcement agencies on both sides of

the border to plan and roll out their strategies for combating this criminal activity.

The Bureau serves alongside Revenue's Customs Service, PSNI, SOCA, HMRC and UKBA. As a result of the work of this forum, individuals and groups are being investigated pursuant to the statutory remit of the Bureau.

The success of the Bureau continues to attract international attention. During 2012, CAB facilitated visits by foreign delegations covering a range of disciplines, both national and international.

Our continued involvement on the international stage allows us to contribute to and at the same time inform the international law enforcement response to the ongoing threat from trans-national organised criminal activity and also in particular, to bring our experience, which is focused by the remit of the Bureau, to bear for the benefit of our international partners.

During 2012, we have visitors from as far apart as North Wales Police and the Australian Federal Police. In the normal course of our business we would have regular visitors from various UK, other European and US agencies.

## Part Nine

### Conclusions

During 2012, the Bureau continued to pursue its statutory remit and target the proceeds of criminal conduct, utilising the provisions of the Proceeds of Crime, Revenue and Social Welfare legislation, wherever appropriate. The provisions which empower the Bureau to utilise a multi-agency, multi-disciplinary approach were fully invoked in this regard.

The Bureau continued to target assets deriving from a variety of suspected criminal conduct including drug trafficking, fraud, theft, the laundering and smuggling of fuel and the illegal tobacco trade. A variety of assets were targeted by the Bureau including cash, funds in bank accounts, property (including residential, commercial and holiday homes), motor vehicles, jewellery and a helicopter. The investigations conducted by the Bureau and the consequential proceedings and actions resulted in sums in excess of €4.8 million being forwarded to the exchequer under the Proceeds of Crime legislation, in excess of €1.9million taxes being collected and in excess of €393,797 of Social Welfare overpayments being recovered.

Internationally, the Bureau continued to liaise with, and where appropriate, conduct investigations in parallel with law enforcement and judicial authorities throughout Europe and worldwide in targeting assets deriving from suspected criminal conduct.

The Bureau continued to develop its

relationship with Interpol, Europol and the CARIN and continued to be the designated ARO in Ireland. The Bureau continued to work on the Steering Committee of CARIN and was scheduled to hold the Presidency of CARIN during 2013.

The effects of the economic downturn, as commented upon since 2010 remain.

The Bureau continues to develop strategies to ensure that, wherever possible, assets are targeted, in liaison with financial institutions, where appropriate, so that suspected criminals are deprived or denied of the benefits of assets or gains from criminal conduct.

As has been noted in prior reports, one of the Solicitors assigned to the Chief State Solicitor's Unit has not been replaced. This has generated a backlog of work and this has contributed to a reduction of the number of new cases which could be brought in the course of the year. The Bureau, in consultation with the Chief State Solicitor, has previously prepared a business plan seeking replacement staff in order to address this backlog and improve productivity within the Bureau.

In pursuing its objectives, the Bureau continues to liaise closely with An Garda Síochána, the Revenue Commissioners, the Department of Social Protection and the Department of Justice and Equality in developing a coherent strategy to target

## Part Eight Conclusions

the assets and profits deriving from criminal conduct. This strategy is considered an effective tool in the overall fight against organised crime.

During 2012, the total sum of €7,215,912 was forwarded to the Central Fund as a result of the actions of the Criminal Assets Bureau.

# Appendix 1

## *objectives & functions of the Bureau*

### Objectives of the Bureau: Section 4 of the Criminal Assets Bureau Act 1996 & 2005

4.—Subject to the provisions of this Act, the objectives of the Bureau shall be—

- (a) the identification of the assets, wherever situated, of persons which derive or are suspected to derive, directly or indirectly, from criminal conduct,
- (b) the taking of appropriate action under the law to deprive or to deny those persons of the assets or the benefit of such assets, in whole or in part, as may be appropriate, and
- (c) the pursuit of any investigation or the doing of any other preparatory work in relation to any proceedings arising from the objectives mentioned in paragraphs (a) and (b).

### Functions of the Bureau: Section 5 of the Criminal Assets Bureau Act 1996 & 2005

5.—(1) Without prejudice to the generality of Section 4, the functions of the Bureau, operating through its Bureau Officers, shall be the taking of all necessary actions—

- (a) in accordance with Garda functions, for the purposes of, the confiscation, restraint of use, freezing, preservation or seizure of assets identified as deriving, or suspected to derive, directly or indirectly, from criminal

conduct,

- (b) under the Revenue Acts or any provision of any other enactment, whether passed before or after the passing of this Act, which relates to revenue, to ensure that the proceeds of criminal conduct or suspected criminal conduct are subjected to tax and that the Revenue Acts, where appropriate, are fully applied in relation to such proceeds or conduct, as the case may be,

- (c) under the Social Welfare Acts for the investigation and determination, as appropriate, of any claim for or in respect of benefit (within the meaning of Section 204 of the Social Welfare (Consolidation) Act, 1993) by any person engaged in criminal conduct, and

- (d) at the request of the Minister for Social Welfare, to investigate and determine, as appropriate, any claim for or in respect of a benefit, within the meaning of Section 204 of the Social Welfare (Consolidation) Act, 1993, where the Minister for Social Welfare certifies that there are reasonable grounds for believing that, in the case of a particular investigation, Officers of the Minister for Social Welfare may be subject to threats or other forms of intimidation,

[Appendix 1](#)  
[objectives & functions of the Bureau](#)

and such actions include, where appropriate, subject to any international agreement, co-operation with any police force, or any authority, being an authority with functions related to the recovery of proceeds of crime, a tax authority or social security authority, of a territory or state other than the State.

(2) In relation to the matters referred to in subsection (1), nothing in this Act shall be construed as affecting or restricting in any way—

(a) the powers or duties of the Garda Síochána, the Revenue Commissioners or the Minister for Social Welfare, or

(b) the functions of the Attorney General, the Director of Public Prosecutions or the Chief State Solicitor.

