

Civil Recovery Unit

Annual Report 2010/11



**The Scottish
Government**

Foreword by the Lord Advocate

As the Scottish Minister with operational responsibility for the Civil Recovery Unit, I welcome this Annual Report.

The work of the Civil Recovery Unit reflects a continuing determination to use all the available tools to tackle serious and organised crime in Scotland.

The Unit carries out vital work in ensuring that those seeking to benefit from crime do not succeed in their endeavours.

Although the assets recovered and remitted to the Scottish Consolidated Fund are used to benefit communities in Scotland, it is about much more than just money. A major priority of the Unit is to disrupt the activities of criminals, deprive them of their assets and demonstrate that crime does not pay therefore deterring others from similar lifestyles.

The secret of the Unit's success is in no small part due to it being a multi-disciplinary team comprising lawyers, forensic accountants, financial investigators and administrative staff.

Excellent working relationships with police, law enforcement and other agencies both in the United Kingdom and abroad are also vital to its continuing success.

The effectiveness and versatility of the Proceeds of Crime Act proves that it is a powerful tool and the Civil Recovery Unit will continue utilising it as an effective method of ensuring that crime doesn't pay.

Rt. Hon. Frank Mulholland Q.C.
Lord Advocate

June 2011



Foreword by the Head of the Civil Recovery Unit

I am pleased to present the Lord Advocate with the first Annual Report of the Civil Recovery Unit which covers the financial year 1 April 2010 to 31 March 2011. The intention is to provide the Lord Advocate with an annual report setting out key performance indicators and other material which will provide a fair representation of the work of the Unit which can be published without compromising ongoing operations or litigation.

The Annual Report describes an outstandingly successful year in terms of sums remitted to the Scottish Consolidated Fund, which is largely due to the result achieved in one particular case (*Scottish Ministers v. Kazachkov*). However, it should be remembered that success in that case was achieved through work over a number of years, not just by the Civil Recovery Unit but also by the Scottish Crime and Drug Enforcement Agency.

The Civil Recovery Unit continues to depend heavily on its excellent working relationships with the Serious Organised Crime Division of COPFS, the SCDEA and other Scottish police forces as well as the Serious Organised Crime Agency, and Her Majesty's Revenue and Customs and other law enforcement agencies in the United Kingdom and abroad.

It is clear that the continuing effectiveness of the Civil Recovery Unit should not be judged solely by reference to sums contributed to the public finances. Instead, it should also be judged by reference to disruption to crime and, in particular, serious organised crime. A continuing challenge will be to devise measurements which reflect that disruption but I hope that the production of this Annual Report will go some way to explaining what has been achieved during the last year.

In the meantime, the Civil Recovery Unit will continue to pursue its aim of using civil proceedings to disrupt crime and to make Scotland a hostile environment for criminals.

Ruaraidh Macniven
Head of Civil Recovery Unit

June 2011

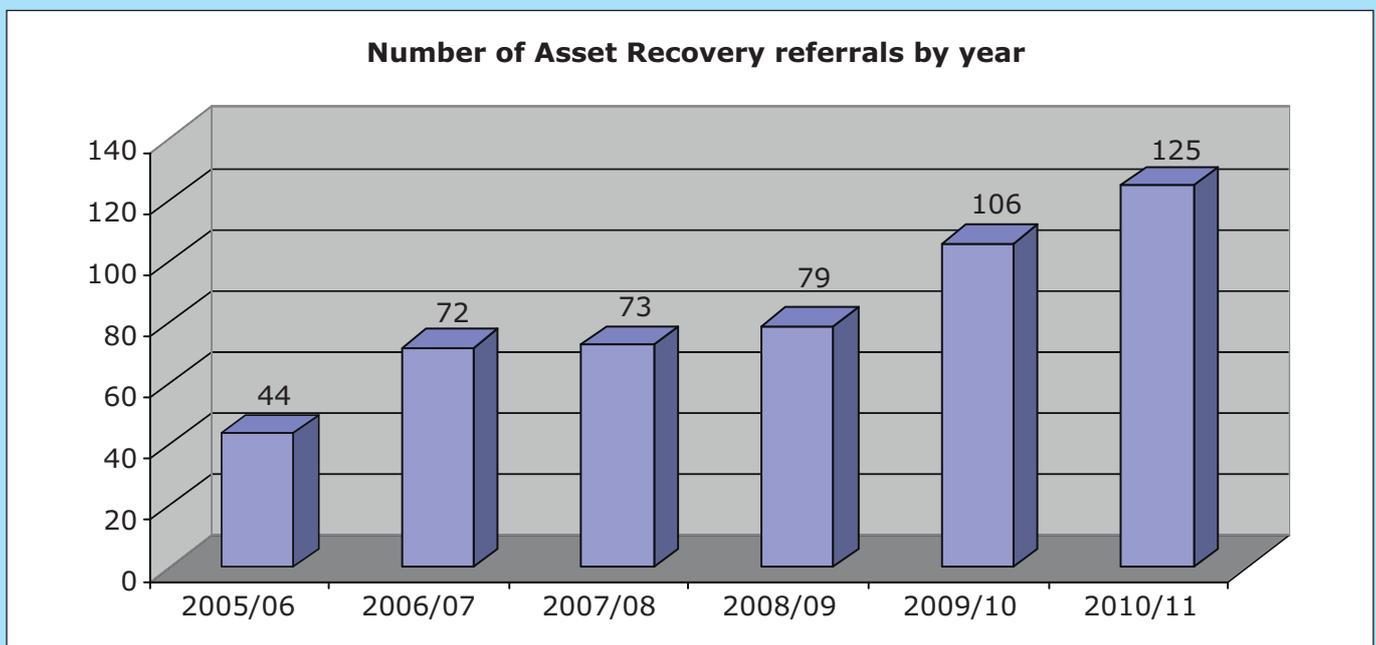


Introduction

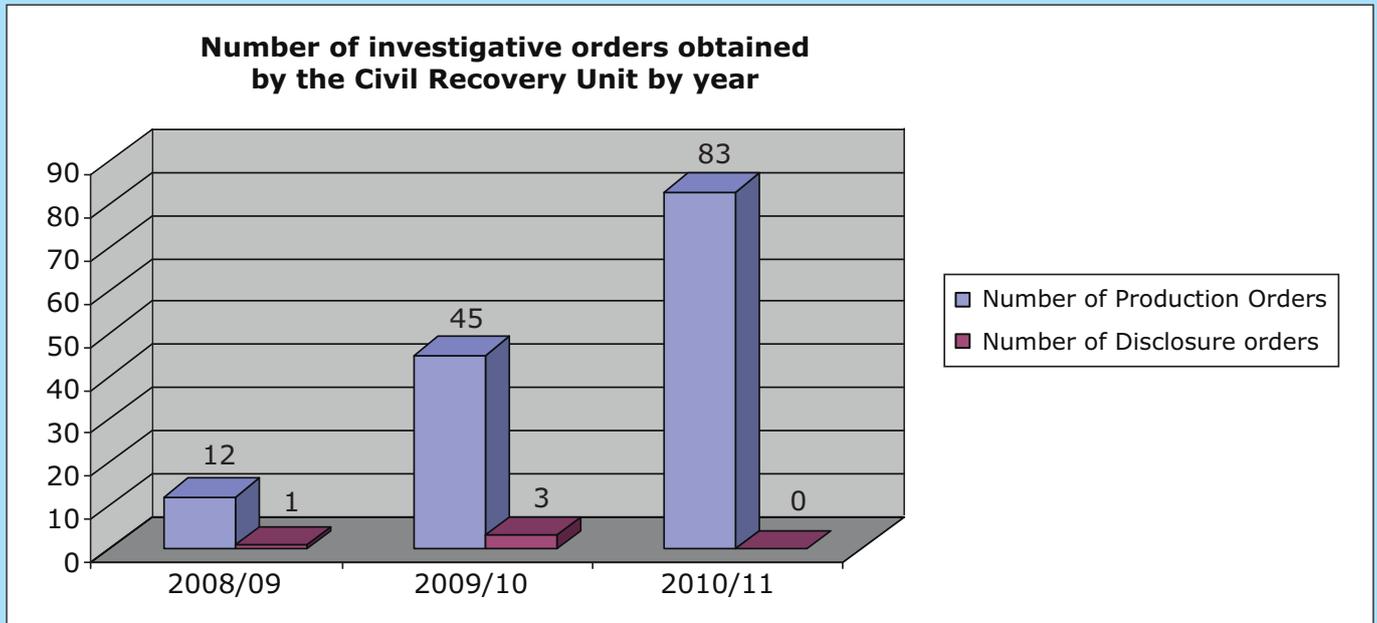
1. This is the First Annual Report of the activities of the Civil Recovery Unit ("CRU") and covers the period from 1 April 2010 to 31 March 2011.
2. The Civil Recovery Unit ("CRU") was established following the enactment of the Proceeds of Crime Act 2002 to act on behalf of the Scottish Ministers to recover property and cash which have been acquired through crime. The CRU reports to the Law Officers (the Lord Advocate and the Solicitor General) who are the Scottish Ministers with delegated operational responsibility.
3. The aim of the CRU is:-
to use civil court proceedings to disrupt crime and to make Scotland a hostile environment for criminals.
4. The CRU is a multi-disciplinary team of lawyers, forensic accountants, financial investigators, and administrative staff. Its primary role is to act on behalf of the Scottish Ministers as the enforcement authority for Scotland under Part 5 of the Proceeds of Crime Act 2002 ("the 2002 Act"). This involves investigating and seeking to recover criminal assets and cash.

Civil recovery: asset recovery

5. The 2002 Act allows the Scottish Ministers to bring civil proceedings in the Court of Session to recover any property which has been obtained through crime. If the proceedings are successful, the recovered property is transferred to a court-appointed trustee who sells the property and pays the proceeds to the Scottish Consolidated Fund.
6. Most referrals for asset recovery are received by the CRU from the police, Her Majesty's Revenue and Customs, or the Department for Work and Pensions. All asset recovery referrals are considered by the Serious and Organised Crime Division of the Crown Office and Procurator Fiscal Service to ensure that consideration is first given to criminal prosecution.



7. As well as an overall increase in the number of referrals for asset recovery, which again reflects the increased awareness amongst law enforcement agencies about the value of financial investigation in dealing with all types of crime, this year has seen the pilot of an expedited referral process to enable cases to be considered by the CRU earlier in the process. The nature of expedited referrals is such that most of the investigative work requires to be carried out by the CRU investigators rather than by the police.
8. This may be one of the reasons for the increase in investigative orders being obtained by the CRU, as illustrated below.



Asset recovery – case study 1

The CRU used Proceeds of Crime legislation to recover £6.5 million in the biggest ever civil recovery from a single case.

The cash was recovered from Moscow-based businessman Anatoly Kazachkov (64) after a suspicious bank transfer of \$10 million from an account in Hungary to a Scottish bank in 2004.

The initial investigation was sparked by information received by the Scottish Crime and Drug Enforcement Agency. The CRU then used Proceeds of Crime legislation to have the money restrained.

The Scottish Money Laundering Unit carried out extensive international enquiries to trace the source of the funds. The trail led to Russia where – with the assistance of the Russian authorities – further evidence of false documents and stolen identities was uncovered.

Anatoly Kazachkov and others provided an audit trail for the source of the funds, but this was discredited after Scottish and Russian investigators connected the funds to a Russian bank, which was bankrupted in 2004 in relation to money laundering offences.

In 2008, the case was passed to the CRU to investigate whether the money could be retrieved through the Proceeds of Crime Act 2002. The CRU petitioned the Court of Session for a recovery order. The action was undefended. As a result £6.5 million was remitted to the Scottish Consolidated Fund.

Asset recovery – case study 2

Raja Kaiser handed over in excess of £250,000 to settle civil proceedings raised by the CRU.

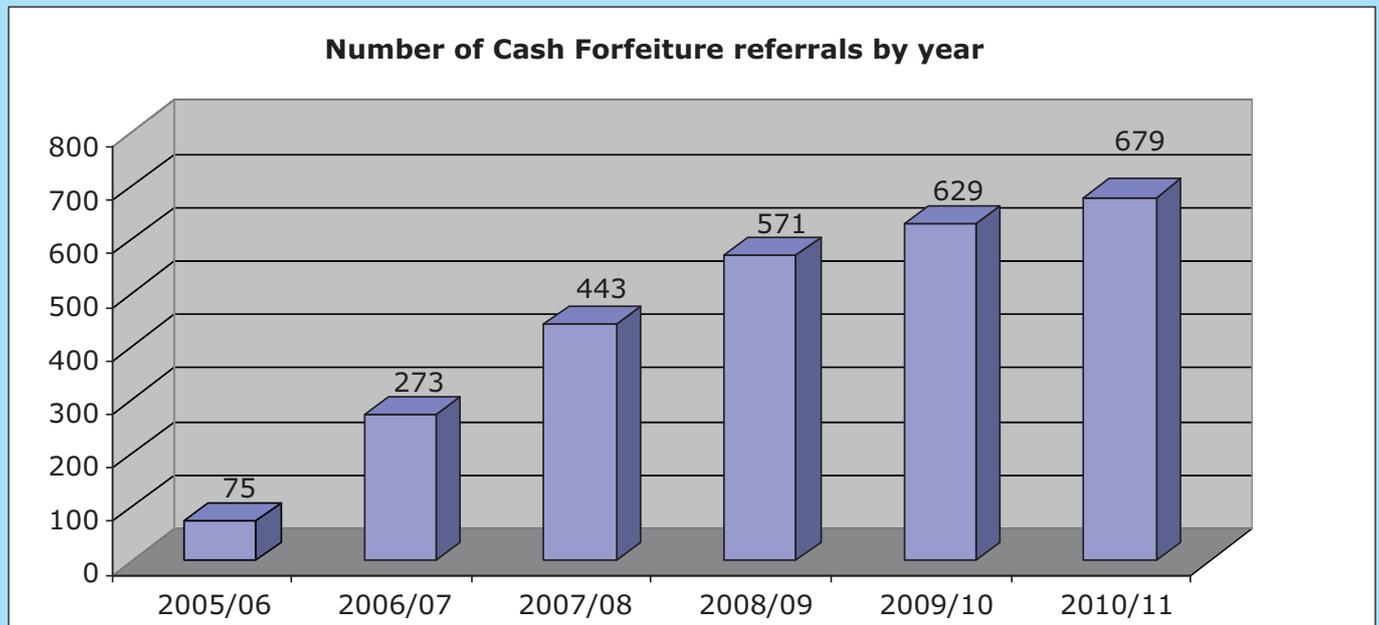
In 2007, Raja Kaiser from Cambuslang was arrested by Strathclyde Police for attempting to obtain £2m from banks in Scotland and Northern Ireland through a fraudulent scheme. Mr Kaiser pled guilty at Glasgow Sheriff Court on December 2008 to one charge of fraud and was sentenced to 12 months probation.

The CRU froze various assets owned by Mr Kaiser by obtaining a prohibitory property order on the basis that the assets had been obtained through fraud and following extensive enquiries by CRU's specialist investigators and after negotiation, Mr Kaiser reached an out of court agreement to hand over £257,115.



Civil recovery: cash forfeiture

9. Section 298¹ of the 2002 Act enables the Sheriff Court to order the forfeiture of cash which has been seized by the police or customs officers. CRU makes applications for forfeiture on behalf of the Scottish Ministers. Forfeiture is granted where it is established on the balance of probabilities that the cash was obtained through crime or was intended for unlawful use. Importantly, it is not necessary for the person from whom the cash has been seized to be convicted of a criminal offence.



10. The number of referrals received by the Civil Recovery Unit has again increased this year. This reflects a continuing determination on the part of law enforcement officers in the police, the UK Borders Agency and Her Majesty's Revenue and Customs to disrupt crime by targeting cash which is being used to facilitate crime. It also reflects the success of work within the Crown Office and Procurator Fiscal Service to make the recovery of the proceeds of crime a mainstream activity for prosecutors.
11. As the number of referrals has increased, so too have the number of proof (evidential) hearings. In 2010/11, the CRU dealt with 5 concluded proof hearings. In each of the cases that proceeded to proof and concluded, the CRU was successful in obtaining a forfeiture order.

¹ <http://www.legislation.gov.uk/ukpga/2002/29/section/298>



Cash forfeiture – case study 1

The CRU used Proceeds of Crime legislation to recover £200,191.75 from Christopher Cummins in what was the largest single cash forfeiture in Scotland since the 2002 Act came into force.

The cash was recovered on 30 June 2010 when a car driven by Christopher Cummins was stopped by Strathclyde Police, following an intelligence led operation into drug dealing.

Although no drugs were found in the car, the cash was seized under the POCA provisions and as Mr Cummins was unwilling or unable to explain his possession of the money, the Sheriff granted a decree for forfeiture of the full amount at Hamilton Sheriff Court.

Cash forfeiture – case study 2

On 31st January 2011, an order for the forfeiture of £2,200 was made at Inverness Sheriff Court against Joyce Burnside of Inverness.

The cash in question had been detected by police officers who searched Mrs Burnside's house on 4th December 2009. That search disclosed a small quantity of cannabis and items associated with the use of controlled drugs and cash.

Burnside, a twice-convicted drug dealer, maintained that the cash found represented the proceeds of a legitimate investment. This explanation was entirely rejected by Sheriff Ian Abercrombie QC.

Cash forfeiture – case study 3

The CRU secured £1,100 from an Arbroath-based drug dealer who hid the money in a tin buried near his home.

On 24 March 2010 Tayside Police searched the Arbroath home of convicted drug dealer John Welsh Sinclair (dob 28/09/1952), believing that he was still dealing controlled drugs in the town.

The search found items associated with the use of controlled drugs and a "stash" of cash which Sinclair had hidden in a cellophane-wrapped tin buried near his home.

Sinclair, who was unemployed and claiming benefits, tried to maintain that the cash found represented the proceeds of an inheritance from his late mother.

The money was recovered after a hearing in forfeiture proceedings at Forfar Sheriff Court on 23 December 2010.

The matter went to proof before Sheriff William Summers who heard in evidence that Sinclair was "synonymous" with drug dealing in Arbroath. Sinclair's "inheritance" explanation was rejected.

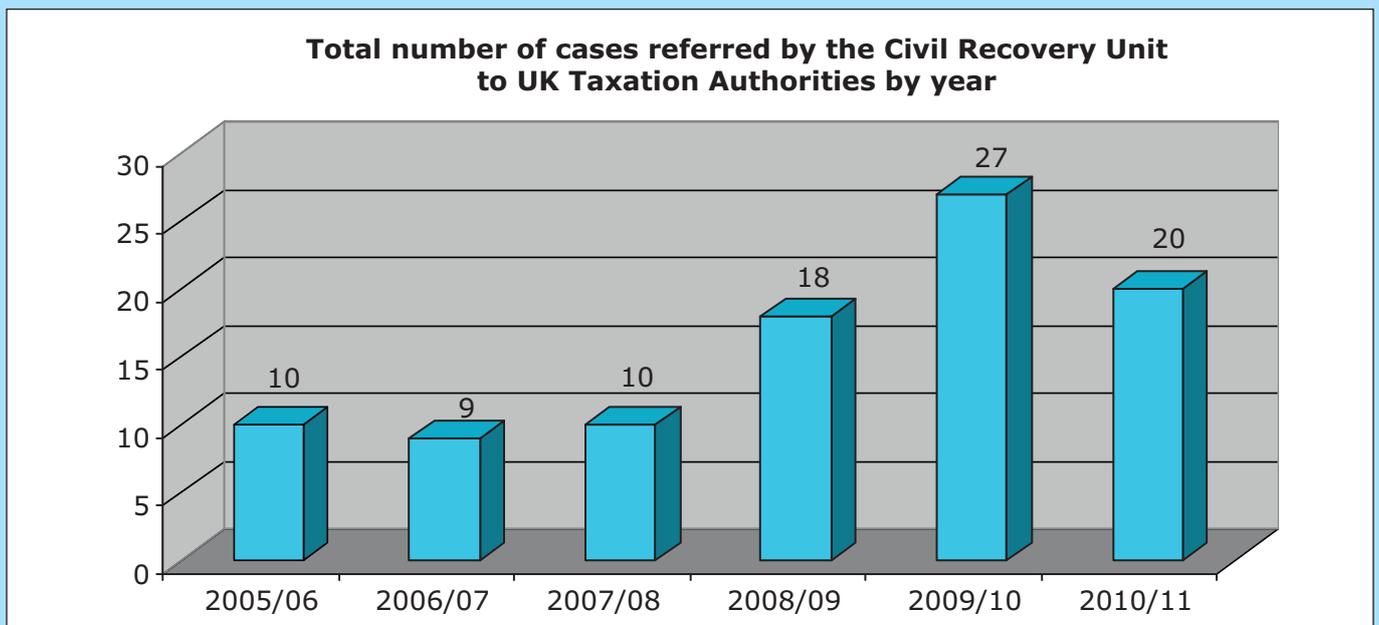


Cash forfeiture – case study 4

The CRU obtained an order for forfeiture for £3,750 which had been seized by the police from George Weepers Campbell and Angela Cross at an address in Edinburgh in February 2011. The CRU's application, which was undefended, alleged that Mr Campbell and Ms Cross had obtained the cash through dealing in drugs. This was the fifth occasion on which cash has been taken from Mr Campbell and Ms Cross in undefended cash forfeiture applications.

Referrals for taxation

12. Part 10 of the Proceeds of Crime Act 2002 enables the CRU to share information with other law enforcement agencies. In exercise of those powers, the CRU is continuing to develop its close links with the Serious Organised Crime Agency (SOCA) and Her Majesty's Revenue and Customs (HMRC).
13. In some cases where the CRU is unable to take action, SOCA or HMRC are able to raise tax assessments in respect of unpaid tax by persons who are suspected to be involved in crime.



14. The CRU will continue to refer cases to the taxation authorities and, where appropriate, enter into joint working arrangements in order to ensure that the best means of disrupting crime is used. The slight decrease in the number of cases referred on to the taxation authorities this year may reflect an increased uptake of civil recovery investigations and an increase in the number of cases which are being progressed jointly by the CRU and the taxation authorities.



Expenses/sequestration

15. As well as the formal statutory civil recovery powers available, the CRU has continued to pursue the legal expenses incurred by it and to use other means to ensure that civil recovery is effective.

Case study

Allan Ingram was declared bankrupt after failing to hand over a Rolex watch to settle a Proceeds of Crime Action raised by the Civil Recovery Unit.

Mr Ingram was made bankrupt at Glasgow Sheriff Court in January 2011 following proceedings by the CRU under the Proceeds of Crime Act 2002.

The CRU had successfully sought a prohibitory property order in respect of various assets owned by Mr Ingram on the basis that they had been obtained through crimes of violence, theft, reset, fraud and contraventions of the Misuse of Drugs Act 1971.

Although Mr Ingram agreed to an out of court settlement of the case – which has already resulted in the recovery by Scottish Ministers of £46,110.54 – Mr Ingram failed to hand over a Rolex “Yachtmaster” watch valued at £4,430 and so now must pay the cash equivalent.

Liaison

16. The CRU has continued to develop its links with colleagues from other jurisdictions within the United Kingdom and overseas. In particular, presentations have been provided to officials seeking to establish civil recovery schemes in other countries or considering such developments. Similarly, at an operational level, CRU officials have continued to engage with officials in other jurisdictions on particular cases. The identification and successful recovery of overseas assets will be one of the areas of focus for the forthcoming year.
17. A key element in the successful operation of the civil recovery scheme is effective liaison with colleagues within law enforcement in Scotland. A key part of this is the training which continues to be provided at the Scottish Police College by CRU lawyers and financial investigators.
18. Training will be key to the successful extension of the expedited referral pilot project under which law enforcement colleagues are able to pass cases to the CRU for consideration of civil recovery or onward referral to the taxation authorities.



Cashback for Communities

- 19. To date, since its creation in 2003, the CRU has recovered over £21 million in cash and assets. The Scottish Government has decided that this money should be invested back into communities through the 'Cashback for Communities²' scheme. Cashback for Communities is a programme of activities for young people to increase the opportunities they have to develop their interests and skills in a supported way, using funds recovered from criminals.
- 20. It includes a range of partnerships with Scottish sporting, cultural and youth organisations to provide activities for young people in Scottish communities. The initiatives provided have been aimed primarily at 10-19 year olds, with resources focused on areas of deprivation and/or high crime. The initiatives address both participation and diversion and aim to increase the likelihood of positive long-term outcomes for those who take part.
- 21. The total amounts remitted by the CRU to the Scottish Consolidated Fund since 2005/6 are shown below:-

