

CIVIL RECOVERY UNIT

ANNUAL REPORT 2013/14

Foreword by the Solicitor General

I welcome the 2013/14 Annual Report by the Civil Recovery Unit (CRU), which sees civil recovery move into its second decade of operation in Scotland. This has been another successful year, both in terms of the sums remitted to the Scottish Consolidated Fund and more importantly, in terms of the disruption caused to criminals.

The CRU plays a crucial role in using the civil provisions in the Proceeds of Crime Act 2002 to disrupt serious organised crime. The unit has built on the experience of the last ten years to seek new and innovative ways of recovering assets obtained unlawfully and this report is full of such examples.

The CRU has developed excellent relationships with partners in other agencies and I am grateful to them for their continued support and assistance. To date, this strong collaborative working has resulted in over £74 million being reinvested in communities as part of the Cashback for Communities programme.

There can be no doubt that removing cash and assets from criminals using proceeds of crime legislation is having a real effect on organised crime in Scotland. Looking ahead to 2014/15, I am confident that the CRU will play its full part in the disruption agenda, working collaboratively with other partners to outsmart organised criminals and dismantle serious organised crime networks across Scotland.

**Lesley Thomson QC
Solicitor General
May 2014**

Foreword by the Head of the Civil Recovery Unit

I am pleased to introduce this Annual Report, my first as Head of Civil Recovery in Scotland. It is a privilege to lead the Civil Recovery Unit and work with a dedicated team of solicitors, financial investigators, forensic accountants and others to recover criminal cash and assets using the civil provisions in the Proceeds of Crime Act 2002.

The CRU has had an excellent year, remitting over £4.4 million to the Scottish Consolidated Fund, for reinvestment directly into communities across Scotland as part of the Cashback for Communities programme. We have continued to work closely with colleagues in the Crown Office and Procurator Fiscal Service on bribery and corruption cases and have developed our expertise on cash forfeiture and mortgage frauds.

This year has seen a significant increase in the CRU's investigative capabilities, harnessing legislative powers to trace assets which have been obtained unlawfully. In particular, the use of Disclosure Notices has increased, with 280 such notices being issued in 2013/14.

Other matters of note are the amendments to the Proceeds of Crime Act 2002, brought in by the Crime and Courts Act 2013. These amendments deal with the effect of the Supreme Court decision in *Perry v SOCA [2012] UKSC 35* and put it beyond doubt that assets held anywhere in the world can be subject to a recovery order by the Court of Session in Edinburgh. This year has seen the CRU conduct detailed investigations into foreign property, ensuring that those who seek to fund their lifestyles through unlawful means cannot escape the consequences by investing in property abroad.

We have strengthened links further this year with partners in Serious Organised Crime Division in COPFS, Police Scotland, Her Majesty's Revenue and Customs, the Department for Work and Pensions and other relevant agencies. We are grateful for their support and co-operation and look forward to developing relationships further, particularly following the opening of the new Scottish Crime Campus at Gartcosh.

Looking forward to 2014/15, the CRU will use its experience and expertise to make full use of the provisions in the Proceeds of Crime Act and take every opportunity to dismantle organised crime across the country, making communities in Scotland safer and fairer.

**Linda Hamilton
Head of Civil Recovery Unit
May 2014**

Introduction

This is the Fourth Annual Report of the activities of the Civil Recovery Unit (“CRU”) and covers the period from 1 April 2013 to 31 March 2014.

The CRU was established in 2003 to act on behalf of the Scottish Ministers to recover property and cash which have been acquired through crime. The CRU reports to the Lord Advocate and the Solicitor General, the Scottish Ministers with delegated operational responsibility for civil recovery.

The aim of the CRU is:-

‘to use civil court proceedings to disrupt crime and to make Scotland a hostile environment for criminals.’

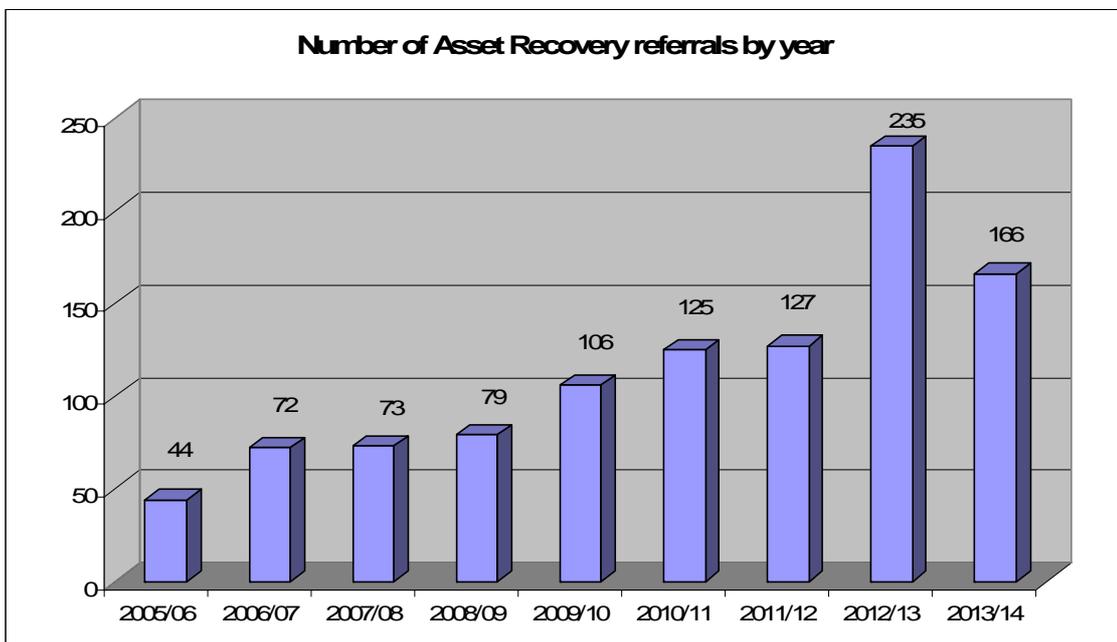
The CRU is a multi-disciplinary team of solicitors, forensic accountants, financial investigators, and administrative staff. Its primary role is to act on behalf of the Scottish Ministers as the enforcement authority for Scotland under Part 5 of the Proceeds of Crime Act 2002 (“the 2002 Act”). This involves investigating and seeking to recover assets and cash acquired through unlawful conduct.

The CRU is also involved in the development of civil recovery legislation and policy. We provide training, input and advice to a variety of stakeholders on a range of proceeds of crime issues.

Civil recovery: Asset Recovery

The 2002 Act allows the Scottish Ministers to bring civil proceedings in the Court of Session to recover property which has been obtained through crime. If proceedings are successful, the recovered property is transferred to a court-appointed trustee who sells the property and remits the proceeds to the Scottish Consolidated Fund.

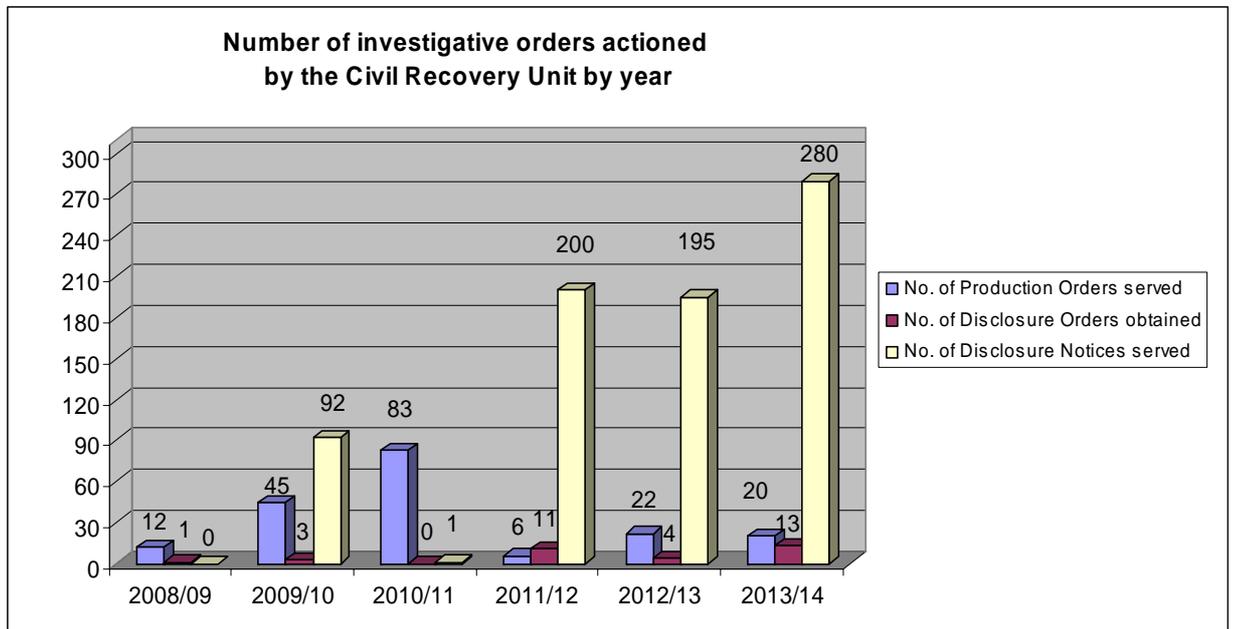
Most referrals for asset recovery are received by the CRU from Police Scotland, Her Majesty's Revenue and Customs, or the Department for Work and Pensions. All asset recovery referrals are initially considered by the Serious and Organised Crime Division of the Crown Office and Procurator Fiscal Service, to ensure that consideration is first given to criminal prosecution.



Asset Recovery referrals to the CRU are down from last year's record numbers, but those aside, this reflects a steady year on year increase since 2005/06. Work has been done within the Unit to develop a system where referrals are initially assessed on receipt, to determine their suitability for civil recovery and to allow for immediate action to be taken to minimise the dissipation of assets, if required. This process has been embedded and is working well.

It is the policy of the CRU to seek Disclosure Orders wherever possible in its investigations. Disclosure Orders are orders granted by the Court of Session in accordance with section 391 of the Proceeds of Crime Act 2002 and enable CRU financial investigators to issue Disclosure Notices to individuals and organisations requiring them to provide information and/or attend for interview.

There were 280 Disclosure Notices issued during 2013/14, which reflects the large and complex caseload of the Unit. Regular interviews of those who hold assets which are subject to civil recovery investigations are proving to be an operationally effective tool in disrupting serious organised crime.



CASE STUDIES: ASSET RECOVERY

Case Study 1: Scottish Ministers v Yvonne Kelbie

In July 2013 the Court of Session granted a recovery order in respect of money in a solicitor's bank account, held on behalf of their client, Yvonne Kelbie.

The Scottish Ministers proved in the Court of Session that Yvonne Kelbie obtained property through mortgage fraud. Lord Bannatyne ruled that Yvonne Kelbie lied in her mortgage application when she claimed to receive income from employment, when in truth she relied on state benefits. Yvonne Kelbie then used the fraudulently obtained mortgage funds to purchase a house under the right to buy legislation. She later sold the house at a considerable profit. The Scottish Ministers obtained a Prohibitory Property Order effectively freezing the free proceeds of the sale. Following an investigation carried out by the Civil Recovery Unit, the Scottish Ministers successfully petitioned the Court of Session for a Recovery Order.

As a result, £51,449.36 was remitted to the Scottish Consolidated Fund.

Case Study 2: Scottish Ministers v Brian Ellis

Brian Ellis, born 1967, from Edinburgh is a prolific offender. He has been involved in numerous crimes of acquisitive dishonesty over a thirty year period. These crimes include fraud, credit card fraud, theft by shoplifting, theft from cars and theft by housebreaking. An investigation carried out by the Civil Recovery Unit revealed that in 2001, Ellis purchased a house with the proceeds of a mortgage fraud and other dirty funds acquired throughout his life of crime.

Mr Ellis sold the house in 2007 and the Scottish Ministers stepped in, obtaining a Prohibitory Property Order from the Court of Session, which prevented him from accessing the free proceeds of the sale, held in his solicitor's client account.

The Scottish Ministers sought to recover the free proceeds of the sale and on 24 January 2014, following a proof, the Court of Session granted an order for the recovery of the funds in terms of Section 266 of the Proceeds of Crime Act 2002. The Court ruled that Mr Ellis lied in his mortgage application when he claimed to receive income from employment, when in truth he predominantly relied on income from fraud and theft.

£105,110.99 was remitted to the Scottish Consolidated Fund.

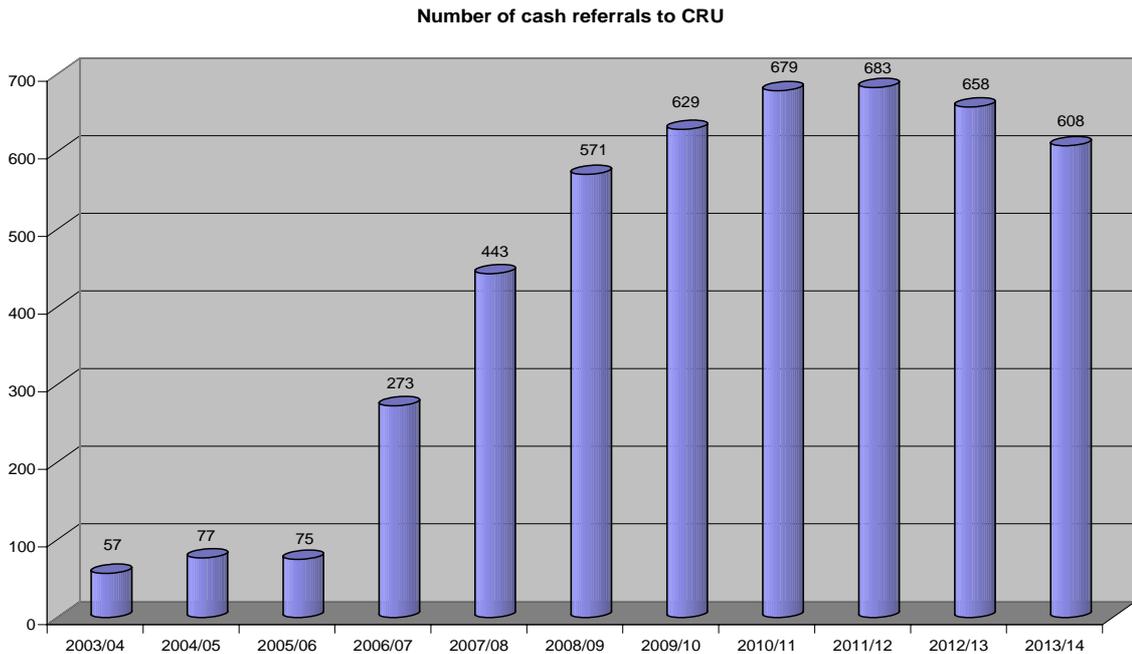
Case Study 3: Scottish Ministers v Alistair McComb

In December 2013, following an investigation by the Civil Recovery Unit, a petition for a recovery order was lodged at the Court of Session. The funds targeted were the free proceeds from the sale of a property in Glasgow, owned by Alistair McComb.

Prior to the sale, Mr McComb had used the false identity of Alfred Gillies to obtain mortgage funds of approximately £157,000 by fraud. The free proceeds of sale, amounting to £28,802 plus interest, were held in the bank account of a firm of solicitors. Mr McComb did not defend the proceedings and on 5 February 2014 the Court of Session made a recovery order for the full amount sought. The sum of £29,925.60 has been remitted to the Scottish Consolidated Fund.

Civil recovery: cash forfeiture

Section 298 of the 2002 Act enables the Sheriff Court to order the forfeiture of cash which has been seized by the police or customs officers. The 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, as with asset recovery cases, it is not necessary for the person from whom the cash has been seized to be convicted of a criminal offence.



CASH FORFEITURE – CASE STUDIES

Case study 1: Scottish Ministers v Russell Stirton

A cash sum of £58,700 plus accrued interest was forfeited from Russell Stirton, following an intelligence-led operation into the distribution of drugs.

On the evening of 6 December 2007 a suspected drugs courier drove to the World of Golf car park on Great Western Road in Glasgow. Intelligence suggested that this individual, who employed a number of anti surveillance techniques en route to the car park, was to be involved in a drugs related meeting. He met with Russell Stirton and handed him a carrier bag which was later found to contain £58,700 in cash. Following the handover, Russell Stirton was stopped by police just a few moments later and the cash was recovered.

Cash forfeiture proceedings were raised at Dumbarton Sheriff Court. Following an evidential hearing, Sheriff Fraser delivered a written judgement in which the Scottish Ministers were successful. The Sheriff was clear that in criminal investigations, an individual is within their rights to decline to answer questions

from police and no comment could be made of that in criminal proceedings. In civil proceedings, however, when determining the probability or otherwise of a particular piece of evidence, it is perfectly legitimate to take into account an individual's refusal to provide any explanation of the provenance of the money. The court held that Stirton and his wife, Jacqueline, had lied throughout their evidence in their attempts to explain away the cash that had been found in their car. During her evidence given in support of her husband, Jacqueline Stirton complained that "You don't get a break."

A total of £62,476.28 (£58,700 plus interest) was remitted to the Scottish Consolidated Fund.

Case study 2: Scottish Ministers v David Marshall

An interim order for forfeiture of £139,350 plus accrued interest was made against David Marshall from Glasgow.

Marshall allowed his home to be used as a 'safe house' for the storage of controlled drugs and/or cash. A search of Marshall's property disclosed large quantities of cash, controlled drugs and drug related paraphernalia. A blue holdall was found concealed beneath the stairs in Marshall's house, which contained £139,350 in cash. Marshall did not contest the forfeiture of this sum.

The use of "safe houses" is a well recognised tactic employed by drug dealing gangs – the forfeiture of the cash found in Marshall's home represents a significant disruption of the activities of the serious organised crime group that employed him.

Case Study 3: Scottish Ministers v Alexander McTavish

The Scottish Ministers forfeited the sum of £48,170.50 from Alexander Duncan McTavish from Kinross. Alexander McTavish has operated as a second hand car dealer for many years in and around Fife and has served prison sentences for fraud, contraventions of the Trade Descriptions Acts and breaches of the Enterprise Act 2000.

On 23 March 2011, McTavish's business premises and home were searched by the police. The search of his home disclosed a safe, which was found to contain a large sum of cash. This represented accumulated 'takings' from McTavish's unlawful 'business activities'. The case settled out of court, with Mr McTavish agreeing to forfeit the sum of £48,170.50, which has now been remitted to the Scottish Consolidated Fund.

Case Study 4: Scottish Ministers v Ronald Wright

Over £2000 in cash was forfeited from convicted drug dealer Ronald Joseph “Rondo” Wright.

On 26 February 2009, Mr Wright was found in possession of a quantity of heroin and £2,047.26 in cash. The circumstances of the search suggested that the cash found in his possession represented the proceeds of his involvement in drug dealing or, alternatively, was intended to finance drug deals yet to be done. Mr Wright maintained that the cash in his possession represented the remains of an inheritance he had received from his late mother and that the cash was intended to buy a car. A careful analysis of financial documents lodged by Mr Wright at Dundee Sheriff Court, disclosed that he had indeed received a significant inheritance from his mother, which he had withdrawn in cash from his bank account over a relatively short period of time. The Proceeds of Crime Act 2002 allows cash to be recovered where it is *intended* to be used for unlawful activity, so the Scottish Ministers successfully raised forfeiture proceedings at Dundee Sheriff Court on that basis.

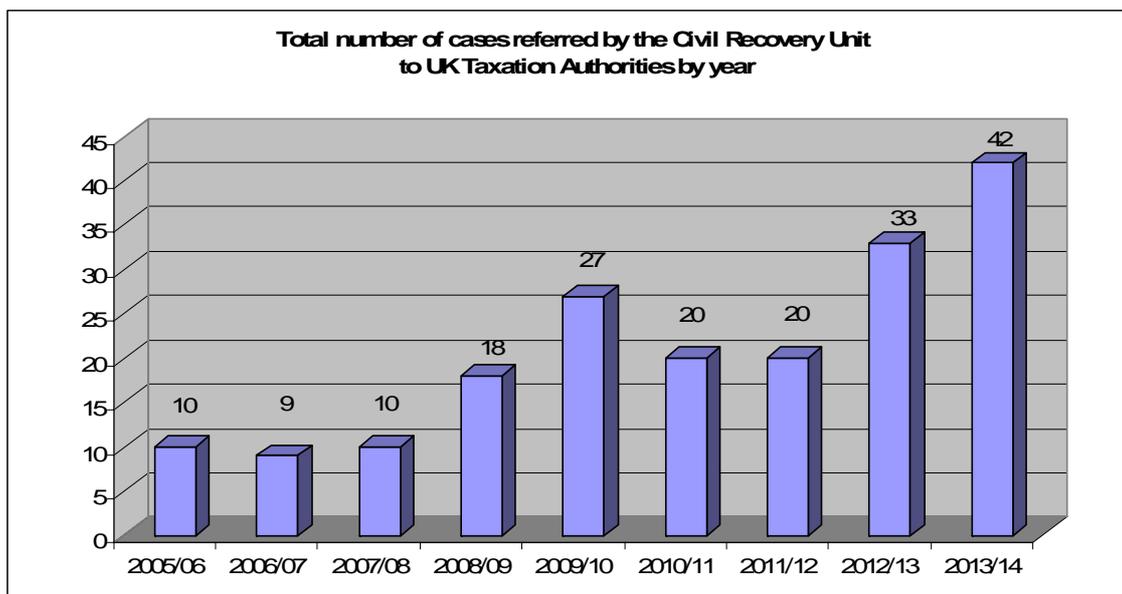
Although the sums recovered in this case are relatively small in comparison to other cases, they show the Civil Recovery Unit’s ability to use civil provisions to disrupt criminality at whatever level it occurs in Scotland.

Referrals for taxation

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 National Crime Agency (NCA) and Her Majesty's Revenue and Customs (HMRC).

In some cases following a referral from the CRU, the NCA or HMRC are able to raise tax assessments in respect of unpaid tax by persons who are suspected to be involved in crime. The CRU referred 42 cases to UK Taxation Authorities in 2013/14, an increase which is at least partly due to the excellent relationships that have developed between parties.

The CRU will continue to refer cases to the taxation authorities and, where appropriate, enter into joint working arrangements in order to ensure that opportunities to disrupt organised crime are maximised.



Liaison and training

During the course of the year, the CRU has continued to provide training on asset recovery and cash forfeiture across Scotland. In particular, standing invitations were accepted to provide inputs to the Scottish Police Financial Investigation and Economic Crime Courses.

The CRU has been instrumental in the establishment of ALEFA, a UK and Ireland forum for forensic accountants who are employed by public sector law enforcement and asset recovery agencies. They remain on the steering group for this forum as it moves towards a full European membership with the support of Europol and the European Commission.

The CRU is represented on the Scottish Multi-Agency Asset Recovery Team, ensuring that civil recovery opportunities are considered when strategic decisions are taken as to how best to tackle organised crime in Scotland.

The CRU has taken up invitations to attend multi agency meetings convened by the Police Service for Scotland, which are intended to enable the proactive consideration of civil recovery opportunities at an earlier stage of operational investigations into organised crime.

The CRU continues to discuss matters of common concern with colleagues in the National Crime Agency in England, Wales and Northern Ireland.

Cashback for Communities

Proceeds of Crime recovered by the CRU are remitted to the Scottish Government for investment back into communities through the 'Cashback for Communities' scheme. Cashback for Communities is a range of partnerships with Scottish sporting, cultural and youth organisations to provide activities for young people in Scottish communities. These initiatives aim to increase opportunities to develop young people's interests and skills, with the objective of maximising positive long-term outcomes for all those involved.

Cashback has now invested or committed more than £74 million across Scotland, which has seen over 1.25 million free, positive and healthy opportunities and activities for young people.

The total amounts remitted by the CRU to the Scottish Consolidated Fund since 2005/6 is shown below. With the exception of 2010/11, which included the exceptional recovery of £6.6 million from a Russian businessman, this shows a steady increase in the sums recovered through civil recovery.

