



## **Typologies: Non-Conviction Based Forfeiture**

The following typologies relate to cases of non-conviction based forfeiture. They include cases of acquisitive crime, specifically burglary cases, that have resulted in no convictions and cases of drug trafficking in which confiscation legislation could not be used for confiscation of forfeit monies associated to the suspects.

Criminal's activity attempt to hide the illicit origin of their assets and civil forfeiture legislation therefore enables stand-alone civil proceedings to recover the proceeds of crime. When it is difficult to obtain the conviction of such individuals, these proceeds derived from crime are often effectively out of the reach of the law, and the criminals are able to peacefully enjoy their ill-gotten gains. This damages public confidence and works in detriment of the general deterrent purpose of criminal law.

### **2011**

#### **Case 1**

Cash seizure as a result of an acquisitive crime, specifically burglary whereby unknown individuals broke into a house occupied by two persons and stole a quantity of cash from within the premises. A number of other burglaries were committed in the vicinity.

The day preceding the burglary, five persons were identified attempting to leave the Bailiwick by ferry to Jersey. The group were searched by police officers and found to be in possession of a quantity of cash totalling £2,300. It was suspected that members of the group had been involved in the burglary and they were arrested. Evidence from the burglary was found during the preceding investigation, however there was insufficient evidence to charge or convict any persons for the crime.

The £2,300 was seized pursuant to section 6 of the civil forfeiture legislation. The investigation established that two of the persons, Male A and Male B had extensive history of acquisitive crimes and Male A and Male B had no monies in their possession when arrested by police officers. Male A, Male C, Male D and Female A claimed that the majority of the monies in their possession belonged to Male B. The civil investigation established that Male A and Male B provided inconsistent and uncorroborated accounts as to the true source of the monies found on the group. Male B was unemployed and claiming social benefits and was the instigating party, inviting to pay for the group to travel out of the island and dividing cash between the group prior to travelling.

On 20<sup>th</sup> May 2011 a forfeiture application was made to the Court, contested by Male A and Male B (albeit Male B failed to attend Court). A judgement was made that there was evidence on the balance of probabilities that the funds emulated from unlawful conduct and the Judge ruled that £2,221.37 be forfeited and £70.00 returned to Male A as it was considered to be from a legitimate source.

## **Case 2**

Cash seizure as a result of an acquisitive crime, specifically burglary whereby victims were threatened and a quantity of cash stolen.

Male A, Male B and Female A were arrested attempting to leave the Bailiwick, and approximately £3,850 was found in the possession of Female A and Male B, having paid an additional £450 cash to purchase airline tickets. Male A was subsequently charged with offences relating the acquisitive crime and imprisoned for three years. The monies seized from Male B and Female A, suspected to be linked to Male A, were seized under civil forfeiture legislation.

At the time of the seizure, Male A and Female A were in a relationship and both were unemployed and seeking supplementary benefit. Male B was employed but evidence identified that Male B had no bank account, had financial problems and was in contact with Male A soon after the crime took place. Male A could not provide any evidence as to the true derivation of funds in his possession.

A forfeiture application made on 24<sup>th</sup> August 2011 was contested by Male A and Male B, granted by Judge. In his final judgement he stated: - *'In my judgement the cash seized was established to be the proceeds of, or represented the proceeds of, offences of dishonesty'*.

## **Case 3**

Male A was arrested by the Police in February 2011 and found to be in possession of ½ an ecstasy tablet and £1,446.51 in cash. Male A was convicted in the Magistrates Court and found guilty of possession of a Class A controlled drug and fined £600.00. Forensic examination of Male A's I-Phone revealed a substantial number of text messages indicative of drug dealing over a three month time period, including the collection of monies associated to drug trafficking. Expert evidence was included in the civil forfeiture application.

As there was no legal gateway to forfeit the cash found in his possession, the cash was seized under civil forfeiture legislation.

A disclosure order was served on Male A to attend an interview, where he answered "no comment" to all questions put to him regarding the phone data.

A forfeiture application was made on 23<sup>rd</sup> September 2011. Male A was not present and the application was granted by the Court and the monies forfeited.

## **2013**

### **Case 4**

Money Service Provider (MSP) notified Police that a customer, Female A, had attempted to complete a MoneyGram payment (£700) to Thailand which included five counterfeit Guernsey £20 notes. Female A was arrested and found to be in possession of £1,055 and a further £37,950 was found in a plastic bag at the residential address of Female A. The son of Female A was arrested, interviewed and subsequently left the island to reside in Thailand.

The Police investigation concluded and there was no evidence to link the cash seized from the address to Female A. The case was adopted for civil forfeiture.

The investigation established that Female A provided differing accounts as to the source and derivation of the funds found in her possession. She initially believed it to be 'drug money' and stated that it belonged to a third party, Male B. Female A then claimed it belonged to her son, Male A. Evidence established there was a link to Male A, Male B and a Male C all of which had convictions from drug trafficking offences. Male A could not provide the true legitimate ownership of the funds and declined to return to the island to exercise his right to prove the funds originated from a legitimate source.

An uncontested forfeiture application was made on 2<sup>nd</sup> September 2013 and the Court order that £39,746 be forfeited.

#### **Case 5**

On 14<sup>th</sup> March 2012, Male A was stopped by police officers for the purpose of being recalled to Prison for failure to comply with a parole licence. Male A was searched and found to be in possession of a quantity of controlled drug (cannabis resin). A police officer assisted by a drug detector dog undertook a search of Male A's bedroom and the dog provided a positive indication to a bedside cabinet in which a toilet bag was found which contained an envelope and £1,520 in cash.

Male A was convicted and sentenced to 100 hours community service. The money was seized under the civil forfeiture legislation as there was no confiscation hearing due to the case being heard in the Magistrates Court.

The civil forfeiture investigation established that Male A was unemployed and seeking supplementary benefit at the time of his arrest. The subsequent investigation established that there were substantial inferences that showed the source of the funds found in Male A's possession were the proceeds or unlawful conduct, specifically the proceeds of drug trafficking. Inference could also be drawn that Male A intended to use the funds for further unlawful conduct, specifically the purchase of further controlled drugs for onward distribution.

On 13<sup>th</sup> March 2013 a civil forfeiture application was made to the Court and granted. The Deputy Bailiff ruled that given the circumstances of the application, he was satisfied that the funds seized were the proceeds of unlawful conduct.

### **2014**

#### **Case 6**

Male A and Male B travelled out to the UK in August 2013 and were subject to a Customs Search on departure from Guernsey. The pair were asked if they had anything to declare to Customs, specifically any large amounts of cash, to which they both replied 'No'; they were then questioned further and admitted they had cash on their persons and in the vehicle. £2,184.31 and €55.00 (£44.21) was seized from Male B and £5,004.00 and £2,165.84 was seized from Male A; the £5,004.00 was found concealed in a wellington boot in the rear of the vehicle.

Male A claimed the cash had been paid to him a few days earlier for a 'cash in hand' job, the £5,000.00 in the wellington boot was part re-payment of a debt he owed to his brother from years ago and that the £2,000.00 found on Male B was wages Male A had paid him. Male A claimed that he had invoices and could provide details of the source (origin or derivation) of the seized cash. He

was explicitly advised on several occasions of what was required by the Guernsey Border Agency in respect of this, however sufficient supporting documentation was never forthcoming.

A forfeiture application was made nine months after the initial seizure. Male A and Male B contested the forfeiture, however the judge ruled that the total amount subject to the application be forfeited. The final judgement stated *“On the balance of probabilities, the application succeeds in relation to the total sum in question. On the facts, and having heard the evidence, the claims of A and B are rejected. The evidence demonstrates that it is more likely than not that this money was intended for use in unlawful conduct under the Law, namely the acquisition of a quantity of controlled drugs”*.