

CRIMINAL
ASSETS
BUREAU

Annual Report

CRIMINAL ASSETS BUREAU ANNUAL REPORT 2013



Criminal Assets Bureau
Harcourt Street
Dublin 2
Ireland

Tel: +353 1 666 3266
Fax: +353 1 666 3296
Email: info@cab.ie
Twitter: [criminalassets](https://twitter.com/criminalassets)

Tá an tuarascáil seo ar fáil i Gaeilge freisin.
This report is also available in the Irish language.

© Copyright Government of Ireland.

This report was compiled and designed by the CAB Annual Report Committee 2013.

Contents

Contents.....	i
Letter from Commissioner of the Garda Síochána to Minister for Justice & Equality.....	v
Letter from Chief Bureau Officer to Commissioner of the Garda Síochána.....	vii
Foreword	xi
One: Overview of the Criminal Assets Bureau and its officers & staff	
<i>The Bureau</i>	1
<i>Finance</i>	1
<i>Objectives and functions</i>	1
<i>Chief Bureau Officer</i>	2
<i>A body corporate</i>	2
<i>Bureau officers and staff</i>	3
<i>Anonymity</i>	4
<i>Bureau Legal Officer</i>	4
<i>Structure of the Bureau</i>	4
<i>Chief State Solicitor's Office</i>	4
<i>Divisional Profilers</i>	4
Two: Criminal Assets Bureau Investigations	
<i>Investigations</i>	7
<i>Section 14</i>	7
<i>Section 14A</i>	8
<i>Applications made during 2013</i>	8
Three: Actions under the Proceeds of Crime Act, 1996 & 2005	
<i>Introduction</i>	9
<i>Section 2 review</i>	10
<i>Valuation breakdown</i>	11
<i>Geographical breakdown</i>	11
<i>Section 3 review</i>	11
<i>Property</i>	12
<i>Vehicles</i>	13
<i>Section 4 & 4A</i>	13
<i>Section 6</i>	13
<i>Section 7</i>	14
Four: Revenue actions by the Bureau	
<i>Tax Functions</i>	17
<i>Tax Assessments</i>	17
<i>Tax Appeals</i>	17
<i>Case 1</i>	17
<i>Case 2</i>	18
<i>Case 3</i>	18

Contents
(continued)

Case 4	18
Collections	18
Demands	19
Customs & Excise functions	19
Revenue tables	21
Five: Social Welfare actions by the Bureau	
Savings	23
Overpayments	23
Recoveries	23
Appeals	24
Staff	24
Six: Criminal Prosecutions arising from investigations of the Bureau	
Introduction	27
Tax Related Offences	27
Case 1	27
Case 2	27
Case 3	28
Case 4	28
Social Welfare Related Offences	28
Case 5	28
Threats and Intimidation Offences	28
Case 6	28
Corruption Related Offences	28
Case 7	28
Seven: Significant Court Judgements during 2012	
CAB v. Frederick Mallon & Melanie Hackett (Unreported)	31
CAB v. B & Others [2013] IEHC 302	32
Gilligan & Ors v. CAB, Ireland & AG [2012] IEHC 609.....	34
Eight: International developments	
The international perspective	37
Asset Recovery Office	37
International operations	37
Europol	37
Interpol	38
CARIN	38
The relationship with the United Kingdom	39
Cross Border Organised Crime Conference	39
Cross Border Fuel Group & Excise Group.....	39
Visits to the Bureau.....	39

contents
(continued)

Nine: Conclusions	41
Appendix: Objectives and Functions	43

Contents
(continued)

[This page has been left intentionally blank]

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

Dear Minister

In accordance with the provisions of Section 21 of the Criminal Assets Bureau Act 1996, I am pleased to present to you, the 2013 Annual Report of the Criminal Assets Bureau. The report outlines the activities of the Bureau during the course of 2013, 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 during 2013 focussed considerable efforts at tackling the serious issue of the illicit trade in mineral oils which involved extensive collaboration and cooperation with colleagues in Northern Ireland. This illegal activity results in significant losses in revenue to the exchequer but also serious financial implications to authorities in rectifying the resulting environmental harm.

The Bureau however continues to make significant inroads in tackling serious criminals including those involved in the particularly harmful trafficking and sale of drugs which causes such problems within our community.

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. I would like to thank in particular the Department of Justice and Equality, together with the Defence Forces for contributing to the success of the CARIN AGM during the period when Ireland held the presidency of the EU.

In pursuing its objectives, the Bureau liaises closely with the 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 sincerely



NÓIRÍN O'SULLIVAN
COMMISSIONER OF
THE GARDA SÍOCHÁNA

Letter forwarding report from Chief Bureau Officer to Garda Commissioner

[This page has been left intentionally blank]

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

Dear Commissioner

It is my pleasure to present to you the 18th Annual Report of the Criminal Assets Bureau for the calendar year 2013. 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 report sets out the activities of the Bureau throughout the year in pursuit of its statutory remit in targeting the proceeds of crime.

During 2013, in addition to undertaking new investigations, the Bureau has continued the policy of bringing to conclusion cases under the Proceeds of Crime Act 1996 as amended, yielding in excess of €1 million to the exchequer. During the year 2013 eight new proceedings were brought before the High Court under the proceeds of crime legislation. Once again, 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 criminal fuel laundering activities.

In addition, the Criminal Assets Bureau, using appropriate Revenue provisions, forwarded in excess of €5.4 million to the Central Exchequer and also recovered in excess of €287,000 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 the 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, the 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 Training Programme continued its development during 2013. The primary aim of this development is to enhance the Bureau's effectiveness through the provision of training to related agencies.

During the year, work was undertaken with the Garda Training College with a view to developing an investigative training course specifically designed for CAB officers. It is a matter of priority for the Bureau to ensure that all officers maintain a high level of skill, expertise and education in the ever changing

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

operating environment in which the Bureau is required to operate. As remarked upon in previous reports, the tactics employed by those involved in hiding the proceeds of crime have become more sophisticated. This training course is scheduled to commence in early 2014 and takes account of the recommendations to Ireland from the Council of the European Union arising from the Evaluation report on the Fifth Round of Mutual Evaluations on "Financial Crime and Financial Investigations" in 2012.

The Bureau continues to develop its relationships with Interpol, Europol and Camden Assets Recovery Inter-Agency Network (CARIN). In addition, on the international level, the Bureau continues to represent Ireland at the platform of the Asset Recovery Offices.

During 2013, the Bureau in its role as host of the CARIN Presidency, held a number of Steering Group Meetings in Dublin. The Bureau also held the CARIN Annual General Meeting which was hosted at the Royal Hospital Kilmainham, Dublin. The CARIN AGM also formed part of the official events held in conjunction with Ireland's European Union Presidency in 2013. The Bureau was honoured that the CARIN AGM was officially opened by the Minister for Justice and Equality Mr. Alan Shatter TD.

The CARIN AGM was attended by participants from sixty five countries world wide together with a number of

international agencies involved in activities similar to the CARIN Network.

I wish to formally express my gratitude to all those who contributed to such a successful and well received CARIN AGM and in particular I thank the Minister for Justice and Equality for his opening address to the conference. I also wish to acknowledge and express my sincere thanks to the administration staff of the Bureau for their tireless efforts by way of organisation, which contributed enormously to the success of the AGM. I also wish to thank the Defence Forces for assisting with transport, the OPW for the provision of the Royal Hospital Kilmainham as a stunning venue for the event. Finally, I wish to express my appreciation to the International Coordination Unit of the Garda Síochána, based at Garda Headquarters for their assistance.

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 illicit assets of 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 Criminal Assets 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 the Garda Síochána, 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 solicitor 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.

It was with deep sadness that all within the Bureau learned of the passing of Mr Justice Kevin Feeney in August 2013. Mr. Justice Feeney leaves behind a legacy of instructive judgements which will serve well into the future in understanding the complex areas of law surrounding the proceeds of criminal conduct. On behalf of all personnel at the Bureau, I wish to express sincere condolences to his family.

During the year, there were many personnel changes within the Bureau arising from the departure of a number of personnel on promotion, retirement, and transfer. I wish to acknowledge the dedication and hard work of all personnel

formerly attached to the Bureau. In many instances the hard work remains unseen and unacknowledged publicly due to the requirement for anonymity and security provisions relating to their work. I would also like to welcome new personnel and look forward to working with them into the future.

Finally, as Chief Bureau Officer, I wish to acknowledge the continued 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, the Garda Síochána, the Department of Social Protection and the Revenue Commissioners.

Yours sincerely



EUGENE CORCORAN
DETECTIVE CHIEF SUPERINTENDENT
CHIEF BUREAU OFFICER

27th June 2014

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



Foreword

Section 21 Report

This is the 18th Annual Report of the activities of the Criminal Assets Bureau (hereinafter referred to as “the Bureau”) and covers the period from 1st January 2013 to 31st December 2013 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 the Garda Síochána, to the Minister for Justice and Equality outlining its activities during the year 2013.

Foreword
Section 21



Part One

Overview of the Criminal Assets Bureau and its officers & staff

The Bureau

On the 15th 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 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 2013

Description	Amount €	
	2012	2013
Pay	5,599,000	5,591,000
Non-pay	811,000	864,000
Total	6,410,000	6,455,000

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 subject 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 the 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 1st 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 fulfil 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 1st 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 [to] the State."

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

Officers 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;
- III. administrative and technical members of staff of the Bureau.

Officers of the Bureau continue to be vested with their powers and duties notwithstanding their appointment as Bureau Officers.

The staffing level at the Bureau comprising Bureau Officers and other

staff stands at seventy one. This number previously stood at seventy and was increased during the year through the allocation of one additional Social Welfare Bureau Officer. However, the overall staff numbers at the end of 2013 has been reduced temporarily due to vacancies in the overall Garda strength at the Bureau. The vacancies arise by reason of one retirement, two promotions and an officer on secondment to United Nations duties. Competitions to fill these vacancies are scheduled to take place during 2014.

Multi-agency authorised levels

	37
	6
	16
	12

Part One

Overview of the Criminal Assets Bureau and its officers & staff

Anonymity

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

Bureau Legal Officer

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

Structure of the Bureau

The multi-agency structure of the Bureau, which draws together various skill sets from the personnel involved, has the benefit of 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 legal advice and solicitor services to the Bureau.

The CSSO represents the Bureau in both instituting and defending litigation in all court jurisdictions primarily but not exclusively with the assistance of Counsel. In addition, the CSSO provides representation for all tax and social welfare matters both before the respective appeal bodies and in the Circuit Court.

Finally, the CSSO provides general legal advices at all stages of case progression from investigation to disposal including both contract drafting and conveyancing services.

During 2013 the CSSO was staffed as follows:

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

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

Divisional Profilers

The Divisional Criminal Assets Profiler

Training Programme continued throughout 2013. The number of trained Divisional Criminal Asset Profilers currently stands at one hundred and ninety six within the jurisdiction.

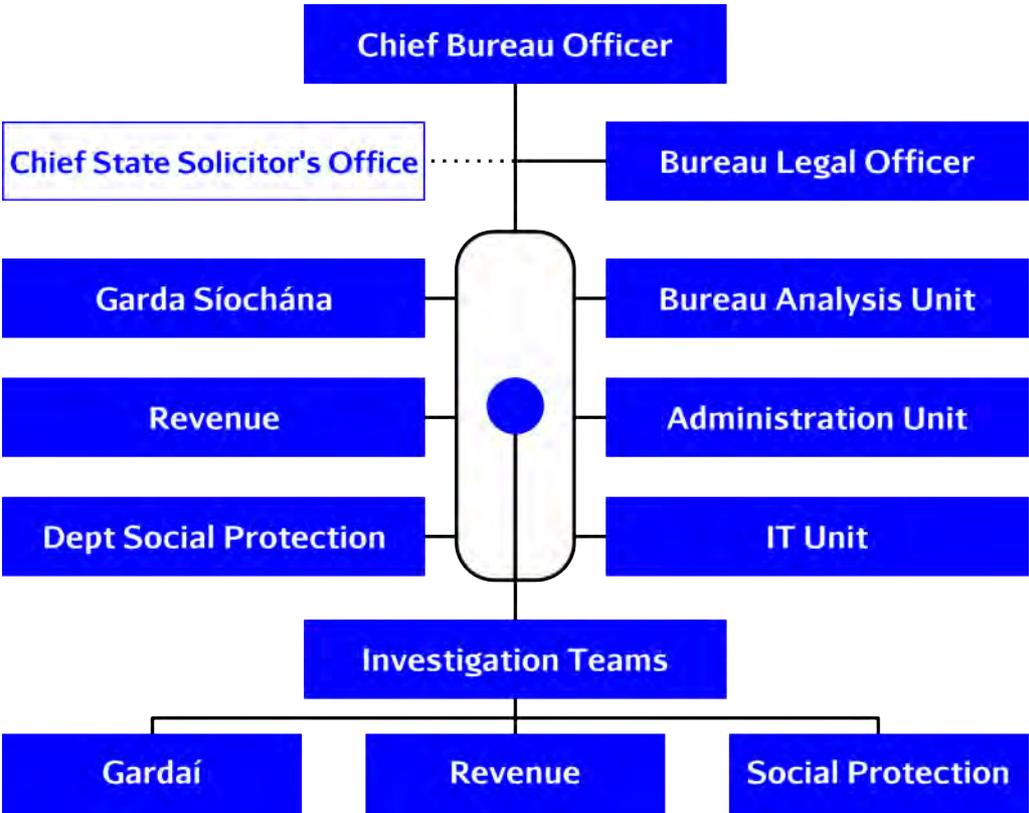
This includes:

- 174 Gardaí;
- 19 Officers of the Revenue Commissioners engaged in Customs and Excise duties; and
- 3 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 2013, Bureau Officers continued to exercise the powers and duties vested in them under Section 8 of the Act.

It is important to note that this section vests in the Bureau Officers, the duties and powers conferred on them by virtue of membership 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 2013 with the cooperation and assistance of Garda personnel from Garda Divisions and also from Garda 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.

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 continues to cooperate with the Special Investigation Units of the Department of Social Protection in respect of their investigations in 2013.

In addition, the Bureau assisted the Official Assignee in Bankruptcy in recovering monies during 2013, and also cooperated with bankruptcy applications internationally.

This continued assistance received has been critical to the success in targeting the proceeds of criminal conduct during 2013.

Section 14

Section 14 of the Act provides for CAB search warrants. Under Section 14(1), an application may be made by a Bureau Officer, who is a member of the Garda Síochána, 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 the issue of a similar search warrant in circumstances involving urgency whereby the making of the application to the District Court is rendered

Part Two

Criminal Assets Bureau Investigations

impracticable and the warrant may be issued by a member of the Garda Síochána not below the rank of Superintendent.

During 2013, all applications under Section 14 were made to the District Court and no warrants were issued pursuant to Section 14(2).

A Section 14 search warrant operates by allowing a named Bureau Officer who is a member of the 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 the Garda Síochána to be accompanied by such other persons as the Bureau Officer thinks necessary including persons who are technically and/or professionally qualified people to 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 the 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 2013

During 2013, 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	
	2012	2013
Search warrants under Section 14 CAB Act, 1996 & 2005	103	172
Orders to make material available under Section 14A of the CAB Act, 1996 & 2005	108	175

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 an application to the High Court supported by sworn affidavits of relevant witnesses including, members of the 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 may be brought on *ex-parte* basis. This means that the Bureau makes its application in the absence of a requirement to notify the person affected (the Respondent) by the application at that stage. The Section 2 order lasts for 21 days unless an application under Section 3 of the PoC Act is brought. The

person affected by the order is notified during this time.

Section 3 proceedings were commenced in all cases brought by the Bureau during 2013 in which a Section 2(1) order was made. Section 3 allows for the longer term freezing of assets.

While Section 3 cases must 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 High 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 a Legal Aid Scheme in place for this purpose. 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 the Court will make an order freezing the asset. This order lasts a minimum of seven years during which the Respondent or any other party claiming ownership in respect of the property can make applications to have

Part Three

Actions under the Proceeds of Crime Act 1996 & 2005

the Court order varied in respect of the property.

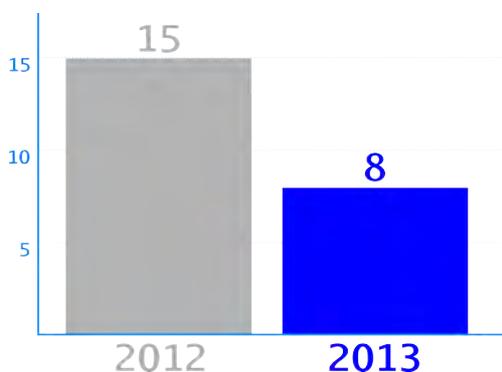
At the expiration of the period of seven years, the Bureau may then commence proceedings to transfer the asset to the Minister for Public Expenditure and Reform or other such person as the Court determines under Section 4 of the Act. During these proceedings, all relevant parties are again notified and may make applications to the Court.

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.

Section 2 Review

Eight new cases were brought before the High Court during 2013. This compares with fifteen for the year 2012.

New POC cases brought before High Court

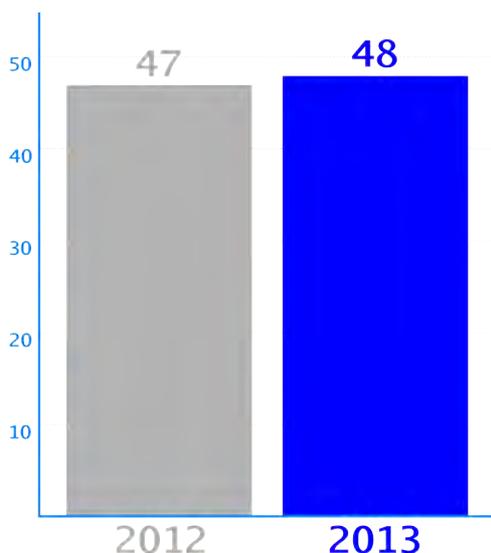


The Bureau notes the decrease in the number of cases commenced in 2013

when compared to 2012. However, this reflects on the nature of the cases brought by the Bureau and the underlying complexity relating to the types of assets targeted in 2013.

When analysed, the number of assets over which an order was obtained under Section 2(1) increased in comparison to 2012 from 47 assets to 48 assets.

Assets over which Section 2(1) Orders made

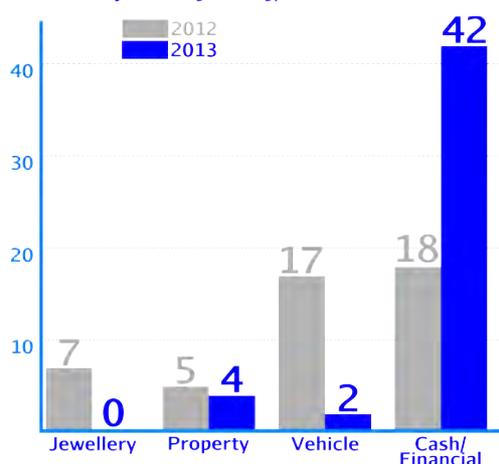


During 2013 the Bureau took proceedings in respect of a variety of asset types with a notable increase in cash/financial type assets.

The number of cash/financial assets that were made subject to an order under Section 2(1) in the course of 2013 is reflective of the work of the Bureau in targeting criminal proceeds generated by organised crime groups engaged in or

connected with large fuel laundering investigations.

Assets over which Section 2(1) Orders made
Breakdown of assets by asset type



For profiling purposes, the assets are broken down into jewellery, property, vehicles, and cash/financial matters.

Valuation Breakdown

The value of the forty eight assets frozen under Section 2 of the PoC Act during the year 2013 was €2,821,305. This figure may be broken down in the table below.

Analysis of Section 2 Order by asset type	
Description	€
Property	1,183,539
Vehicle	27,100
Cash/Financial	1,610,666
Total	2,821,305

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.

Accordingly, while the number of cases commenced by the Bureau in 2013 is reduced when compared to 2012, the value of the assets involved compared to the same period increased by €710,970.22. This represents an increase of 33% in the 2012 figure.

Geographical Breakdown

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

During 2013, the Bureau obtained orders over assets in respect of proceeds of crime in all of the large urban areas, rural communities, and foreign jurisdictions.

The Bureau remains committed to actively targeting assets which are the proceeds of criminal conduct wherever they are situated.

Section 3 Review

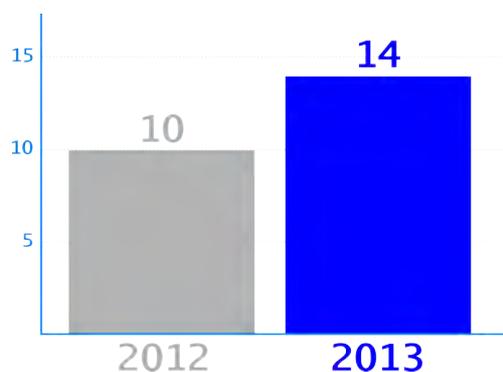
Section 3(1) orders are made at the conclusion of the hearing into whether an asset represents or not, the proceeds of criminal conduct. As such, the date and duration of the hearing of the matter is a matter outside of the Bureau's control.

Fourteen orders were made to the value of €2,180,940.21 pursuant to Section 3(1) of the PoC Act.

Part Three

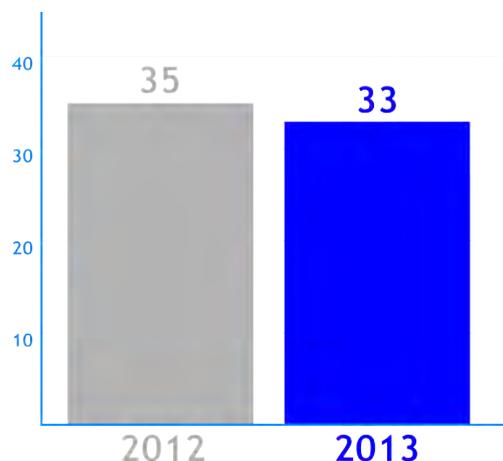
Actions under the Proceeds of Crime Act 1996 & 2005

Number of cases in which Section 3(1) Orders made



The number of assets over which orders were made by the High Court pursuant to Section 3(1) decreased marginally from thirty-five assets in 2012 to thirty-three assets in 2013.

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.

Section 3(3) of the PoC Act provides for an application to be made to court while a

Section 3(1) order is in force to vary or discharge the order. The application can be made by the Respondent in a case taken by the CAB or by any other person claiming ownership in the property. While Section 3(3) largely contemplates the bringing of an application by a Respondent to a case, victims of crime who can demonstrate that the monies or property frozen under the 3(1) order is directly their property, an application can be made by such victims for the return of same.

The 2012 Annual Report set out in detail an application made by victims under Section 3(3). During 2013, no orders were made by the High Court either in favour of the Respondents or any other person.

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, namely applying funds from criminal conduct towards mortgage repayments and other forms of borrowing, has become more prevalent in recent years.

The statutory aims and objectives of the Bureau include ensuring that those who are engaged in serious organised crime do not benefit from such crime.

In cases where it is shown that the property is the proceeds of criminal conduct, the statutory provision whereby an individual enjoying the benefit of those proceeds may be deprived or denied that benefit, includes that he/she 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* [2012] IESC 64.

The Bureau, in 2013, continued to pursue properties notwithstanding the fact that in some cases the property was in negative equity. This is designed to ensure that those involved in serious organised crime are not put in the advantageous position by being able to remain in the property and thereby benefit from the proceeds of crime.

Vehicles

The Bureau continues to note the interest of those involved 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 2013 included:

1. Range Rover; and

2. Toyota Avensis.

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, thus allowing the property to be transferred to the Minister for Public Expenditure and Reform in a period shorter than seven years.

Sixteen cases were finalised and concluded under Section 4 and 4A in 2013.

During the year 2013, a total of €1,038,680.52 was transferred to the Minister under the PoC Act arising from Section 4 and 4A disposals.

Section 6

Section 6 provides for the making of an order by the court during the period whilst a Section 2(1) or 3(1) order is in force to vary the order for the purpose of allowing the Respondent or any other party:

Part Three

Actions under the Proceeds of Crime Act 1996 & 2005

1. a discharge reasonable living or other necessary expenses; or
2. carry on a business, trade, profession or other occupation relating to the property.

In disposing of assets under Section 7, the Receiver is obliged to obtain the best price reasonably available. In this regard a new approach was adopted by the Bureau through the sale of a Rolex watch on an internet auction site. This generated a great deal of publicity and highlighted the attention of the public to the public disposal of the proceeds of crime.

During 2013 two such orders were made affecting three different assets in three different cases relating to nine different Respondents to a total value of €178,187.94.

This compares to 2012 where five such orders were made affecting eight different assets in five different cases relating to twenty different Respondents to a total value of €372,195.42

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 2013, the Bureau obtained receivership orders in regard to thirty five assets. In every case, the Receiver appointed by the court was the Bureau Legal Officer. These cases involved properties, cash, money in bank accounts, motor vehicles and a watch. 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

Statement of Receivership Accounts

	Amount €	STG£	US\$
Opening balance receivership accounts 01/01/2013	4,720,068.77	290,100.24	647,732.90
Amounts realised, inclusive of interest and operational advances	1,522,931.03	123.33	1,493.83
Payments out, inclusive of payments to Exchequer and operational receivership expenditure	1,171,007.04	6,649.65	0.00
Closing balance receivership accounts 31/12/2013	5,071,992.76	283,573.92	649,226.73

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

[This page has been left intentionally blank]

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 the agencies which comprise the Bureau and from the Office of the Revenue Commissioners. The primary legislation used in this regard is the Disclosures of Certain Information for Taxation and Other Purposes Act 1996.

Tax Functions

The following is an update of the tax cases commenced prior to 2013 and also details the current status of cases initiated during 2013.

Tax 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 2013, a total of nineteen individuals/entities were assessed to tax

resulting in a total tax assessed figure of €9.019m.

Tax Appeals

Revenue Bureau Officers also manage tax appeals ensuring that the appeal process is fully implemented in compliance with the Revenue Acts and the Procedures and Regulations applicable in such cases. This applies to all forms of appeal provided for, including appeals before an Appeal Commissioner, the Circuit Court and to the High Court by way of case stated.

In accordance with Section 933(1)(a) TCA 1997, an individual assessed to tax shall, subject to specific requirements, 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.

During 2013, an application for an appeal to the Appeals Commissioner against income tax assessments was refused in respect of two individuals.

Case 1: The appeal was refused under Section 933(1)(b) TCA 1997 on

Part Four

Revenue actions of the Bureau

the grounds that the tax pursuant to the provisions of Section 957(2)(a)(II) TCA was not paid.

The Inspector's refusal was appealed in accordance with Section 933(1)(c). The appeal was heard by the Appeal Commissioner and the Inspector's original decision to refuse the appeal was upheld.

Under the provisions of Section 933(7)(a) TCA 1997, the appellant then sought the admission of a late appeal. As the provisions of the section were not satisfied, the application was refused. This refusal was appealed to the Appeal Commissioner. As at 31st December 2013, a date for the hearing was awaited.

Case 2: The appropriate tax pursuant to the provisions of Section 957(2)(a)(II) TCA 1997 was not paid. The appeal was refused in accordance with Section 933(1)(b) TCA 1997.

At the beginning of the year appeals in respect of seven individuals were pending before the Appeals Commissioner, two of which were heard by the Commissioner during 2013.

Case 3: As the appellant neither attended nor was represented at the appeal hearing, the

assessments were confirmed by the Commissioner.

Case 4: In this case, the appellant gave evidence in support of his appeal. On cross examination of the appellant, significant discrepancies arose between the declared and assessed income. The assessments were confirmed by the Commissioner. The appellant subsequently exercised his right under Section 9429(a) TCA 1997 and applied to have his appeal reheard by a judge of the Circuit Court. As at 31st December 2013, a date for the hearing was awaited.

As of 31st December 2013, a hearing date in respect of the remaining five appeals was awaited.

During 2013, appeals in respect of five individuals/entities (three taxes, two excise) were correctly invoked. One of these appellants subsequently withdrew his appeal and as at 31st December 2013, a hearing date for the remaining four appeals was awaited.

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.

Demands

During 2013, tax demands (inclusive of interest) served in accordance with Section 961 TCA 1997 in respect of twelve individuals amounted to €13.865m.

Tax recovered by the Bureau during 2013 amounted to €5.323m from thirty eight individuals / entities. This figure includes €3.469m which was collected through use of attachments pursuant to Section 1002 TCA 1997 in five cases.

High Court proceedings for the recovery of tax and interest in the sum of €14.166m were initiated in twelve cases.

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 breadth

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. The Bureau has taken an active role in the review, granting, and refusal of licences in connection with the sale of mineral oils. This refusal of such licence during 2013 marked a further initiative to interrupt this criminal activity.

Fighting against organised crime gangs

Part Four

Revenue actions of the Bureau

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.

Customs and Excise 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 beneficial.

During 2013, Excise Duty assessments have been raised by the Bureau in the amount of €16.513 million utilising these powers. These assessments were raised against major criminals involved in the distribution and sale of smuggled/laundered fuel and the illicit trade in smuggled cigarettes.

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 State's resources in the most efficient way on tackling criminals.

Revenue tables

Outcome of Appeals refused by the Bureau

Description	No. of cases
Opening Appeals	0
Appeals refused	3
Refusals appealed to Appeal Commissioner	2
Bureau decision upheld by Appeals Commissioner	1
Closing Appeals	1

Outcome of Appeals at Appeal Commissioner Stage

Description	No. of cases
Opening Appeals	7
Appeals correctly invoked	5
Appeals determined by Appeals Commissioner	2
Appeals withdrawn	1
Closing Appeals	9

Outcome of Circuit Court Appeals

Description	No. of cases
Opening Appeals	0
Appealed to Circuit Court	1
Appeals determined by Circuit Court	0
Appeals withdrawn	0
Closing Appeals	1

Part Four
Revenue actions of the Bureau

Tax Assessments

Taxhead	Tax €M	Interest €M	No of assessments
Income Tax	9.019	19	126
Excise	16.513	3	3
Totals	25.53	22	129

Tax and Interest demanded

Taxhead	Tax €M	Interest €M	Total €M	No. of cases
Income Tax	8.060	5.805	13.865	12
Excise	11.294	1.303	12.597	1
Totals	19.354	7.108	26.462	13

Tax and Interest Collected

Taxhead	Amount €	No. of cases
Income Tax	5,285,000	34
Value Added Tax	29,000	3
PAYE/PRSI	9,000	2
Excise	80,000	1
VRT	15,000	1
Totals	5,418,000	41

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 2013, a number of persons had their payments either terminated or reduced. These actions resulted in a total saving to the exchequer of €497,403. The various headings under which these savings were achieved are as follow:

Social Welfare Savings

Scheme type	Saving €
Carer's allowance	13,872
Child benefit	1,105
Disability allowance	186,073
Jobseeker's allowance	146,957
One-parent family payment	135,637
BASI	13,759
Totals	497,403

A Basic Supplementary Welfare Allowance (commonly referred to as BASI) provides a basic weekly allowance to eligible people who have little or no income.

This year marked the first period in which the Bureau became directly involved in the investigation of Basic Supplementary

Welfare Allowance payments.

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 €1,260 to €216,368. The total amounts for 2013 Social Welfare Overpayment Assessed & Demanded are as follows;

Social Welfare Overpayments

Scheme type	Over- payment €
Carer's allowance	177,407
Child benefit	1,260
Disability allowance	374,182
Jobseeker's allowance	1,200,000
One-parent family payment	138,004
Blind Pension	124,399
Totals	2,015,252

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 standing order. Deductions of up to 15% of a person's current social welfare payments can be made to recover debts. This is a

Part Five

Social Welfare actions by the Bureau

new provision for debt recovery and was enacted by Section 13 of the Social Welfare Act 2012.

The Bureau was instrumental in the introduction of additional powers for the recovery of social welfare debts by way of Notice of Attachment proceedings. This new legislative power is provided for in Section 15 of the Social Welfare and Pensions (Miscellaneous Provisions) Act of 2013.

Social Welfare Recovered

Scheme type	Recovered €
Carer's allowance	63,120
Disability allowance	42,461
Jobseeker's allowance	86,234
One-parent family payment	88,030
State pension (old age)	5,928
Invalidity Pension	1,607
Totals	287,380

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 2013, there were six appeals against determinations made by Deciding Officers attached to the Bureau.

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 six appeals, four have formally lodged their appeals in the Circuit Civil Court. All four cases are awaiting hearing dates.

In the course of 2013, the Circuit Court heard one appeal carried over from the previous year. The Circuit Court affirmed the decision of the Deciding Officer in that case.

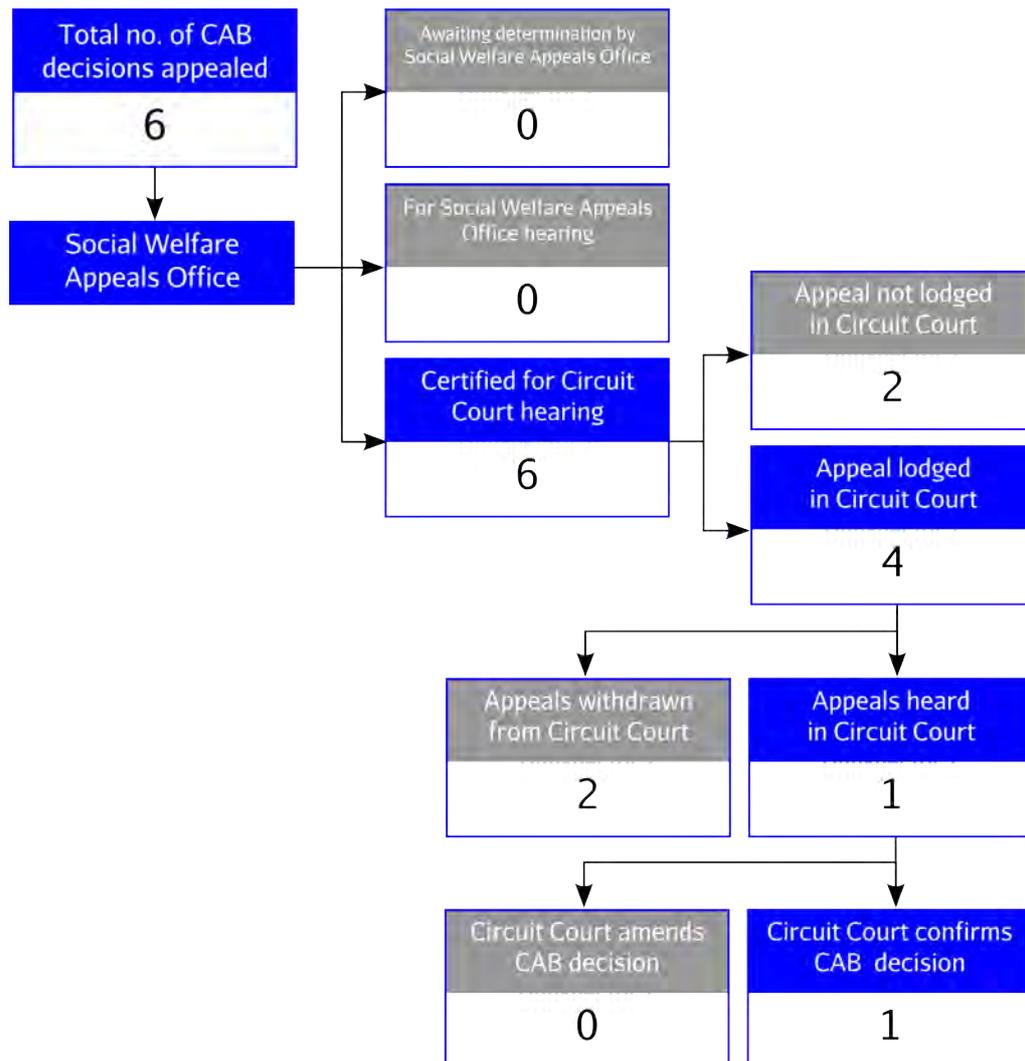
A further two appeals, also carried over from 2012, were withdrawn.

As at 31st December 2013, there remain two appeals dating from previous years before the Circuit Court awaiting determination.

Staff

The Bureau obtained one additional Social Welfare Bureau Officer in 2013, bringing the total of Social Welfare staff in the Bureau to six.

Diagram: Scheme of Appeals



Part Five
Social Welfare actions by the Bureau

[This page has been left intentionally blank]

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 2013 and a number of new actions commenced as in

common with other years.

The following is an update of the cases commenced prior to 2013 and also details the current status of criminal prosecutions initiated in 2012.

Tax related offences

Case 1

The 2012 Annual Report set out that three individuals were arrested for an offence contrary to Section 1078 of the TCA 1997 during 2011.

During 2013, one individual was convicted following a hearing of his case and sentenced to twelve months in prison which was suspended for twelve months.

The second individual pleaded guilty in the Circuit Criminal Court and his case has been adjourned to 2014 for sentencing.

The third individual was found guilty following a full hearing of the case in the Circuit Court and he was sentenced to eighteen months in prison which was suspended and a fine of €10,000.00 was imposed.

Case 2

As reported in 2012 Annual Report, a file had been submitted to the DPP in respect of one individual for suspected offences contrary to Section 1078 of the TCA 1997.

During 2013, directions were received from the Director of Public Prosecutions

Part Six

Criminal prosecutions arising from investigations of the Bureau

to charge the individual with two offences. The case was adjourned to 2014 and it is currently before the Circuit Criminal Court.

Case 3

As outlined in the 2012 Annual Report, one individual who was charged in 2011 for an offence contrary to Section 1078 of the Taxes Consolidation Act failed to appear in court and a warrant was issued for his arrest. As of 2013 he remains at large and is being sought in relation to the matter.

The same individual was also charged with an offence contrary to Section 13 of the Criminal Assets Bureau Act 1996 – 2005 which relates to the intimidation of a Bureau Officer. He also failed to attend court in respect of this charge in the Circuit Court and a second warrant was issued for his arrest.

Case 4

The Bureau is still pursuing one case from 2007 which relates to an individual who is charged with offences contrary to Section 1078 of the TCA 1997 which were the subject of a Judicial Review.

The Judicial Review was heard in 2012 and the Supreme Court issued its judgement during 2013 and found against the defendant. The case is now listed for hearing in the Special Criminal Court for 2015.

Social Welfare related offences

Case 5

The 2012 Annual Report noted that a file was submitted to the DPP in respect of a person who was arrested in 2011 for suspected breaches of the Criminal Justice (Theft & Fraud Offences) Act 2001.

Directions were received from the DPP in 2013 and an individual was charged with 156 separate offences under the Theft and Fraud Offences Act. The case has been remanded to 2014 for hearing.

Threats and intimidation offences

Case 6

As reported in the 2012 Annual Report, one individual was remanded to appear in Court in 2013 having previously pleaded guilty to an offence contrary to Section 13 of the Act for intimidation of a Bureau Officer.

The case was dealt with in 2013 and he received a three year prison sentence with the last twelve months suspended.

Corruption related offences

Case 7

As noted in the 2012 Annual Report, five people facing charges or offences contrary to Section 1(2) of the Public Bodies Corruption Practices Act 1889 as amended by Section 4(2) of the Prevention of Corruption Act 1916 had

Criminal prosecutions arising from investigations of the Bureau

their cases adjourned to 2013 for hearing.

This case was heard in the Circuit Court and the DPP entered a *"nolle prosequi"* during the trial in respect of all the charges due to the illness of a witness.



Part Six
Criminal prosecutions arising from investigations of the Bureau



Part Seven

Significant court judgements during 2013

CAB v. Frederick Mallon and Melanie Hackett

28th June 2013, Unreported (ex tempore) (High Court, Feeney, J)

Proceeds of crime – Sections 3 and 7, PoC Act – application by Chief Bureau Officer – divorced couple – monies in Irish account claimed by wife as part of divorce settlement – husband after divorce alleged monies in account were proceeds of his criminality

The matter concerned a bank account containing a sum of money held in the amount of STG€120,012.78. This money was claimed by the second named Respondent. The first and second named Respondents had been married and the monies were claimed by the wife as part of a divorce settlement.

The court was faced with the unusual position where the person alleged to have generated the criminal assets had given oral evidence and evidence on affidavit that the assets were all in fact generated by him from criminal activity and placed in the account to avoid detection. This evidence was corroborated by evidence from the South Wales Police force.

The court having heard evidence which included oral testimony from both Frederick Mallon and Mellanie Hackett gave judgement:

“Mr. Mallon’s evidence was clear and direct. All the funds lodged to the account in issue were the proceeds of his criminal activity. That activity extended to many different crimes centred on motor vehicles and included theft, stripping parts from stolen cars for re-sale, theft in Ireland and the UK and the use of cars for fraudulent insurance claims and the falsification of records concerning cars. When his house and premises were searched, goods, material, including burnt out cars were located, consistent with Mr Mallon’s evidence.

None of the funds lodged to the account in issue were ever declared to the Revenue in the United Kingdom or in this jurisdiction, and were lodged in a manner consistent with a desire to keep the funds hidden and unidentified. The Respondent’s various accounts as to the source of funds is inconsistent with Mr. Mallon’s evidence and her account could only be credible if I was, a) satisfied that Mr. Mallon’s account of the source of funds was false, and b) that Melanie Hackett’s (that is the name of Mrs. Mallon since her divorce), that her account, that is the Respondent’s account, of the funds being earned by Mr. Mallon was true. I do not so accept, as I believe Mr. Mallon when he says that he did not earn such money from his plant hire business and also the documentary evidence does not support such account, and indeed the Respondent’s ability to be aware of the source of funds was, on her own evidence, limited.

...

I can, therefore, identify no basis which

Part Seven

Significant court judgements during 2013

would permit the Respondent to retain all or any of it. If her separation and divorce was agreed on a false basis, that is a matter between herself and her former husband."

The court accordingly made a Section 3 order over the bank account and appointed a Receiver under Section 7 with no order as to costs.

This decision of the High Court is currently under appeal by Melanie Hackett to the Supreme Court.

Key Cases Cited

- McK v. GWD [2004] 2 IR 470
- PD -v- AF & Ors (6th July 2012)
- Murphy -v GM [2001] 4 IR 113

CAB v. B & Others

[2013] IEHC 302 (High Court, Cross J, 30 July 2013)

Section 2 order removed over assets affecting 21st Respondent to case.

Proceeds of crime – procedure – Order – Ex parte – Discharge – Onus of proof – Section 2 – Evidence – Money Laundering – Fuel Laundering

The Bureau had sought and obtained an order pursuant to Section 2 over assets including a bank account of the 21st named Respondent.

A litigant applying ex parte for an onerous order in circumstances which amount to a basic breach of the principles of fair procedure is obliged to make full and frank disclosure of all material matters in his knowledge for the judge to know and which are relevant in the exercise of the judge's discretion.

If the duty of disclosure is not observed by the plaintiff, a court will discharge the ex parte order and may refuse the plaintiff any further *inter partes* reliefs even though the circumstances would justify the grant of such relief.

The criminality giving rise to the assets in dispute were in connection with an elaborate fraudulent scheme in relation

Part Seven
Significant court judgements during 2013

to the transforming of marked diesel (agricultural diesel which is liable to lower oil tax, lower excise, and lower VAT rates) and also the stretching of petrol by the addition of additional matters.

The 21st Respondent challenged the making of the ex parte Section 2 order on the grounds of that the Bureau failed to disclose all material facts to the court in making the Section 2 application.

The court held:

"I hold that the application under s. 2 was made against these Respondents on the basis of fuel laundering, not on money laundering and in that regard the obligations of disclosure were not met in that there was a failure to appraise the court of the explanations given by and on behalf of the [21st] Respondent to the effect that all of its transactions were legitimate commercial transactions backed up by paperwork from legitimate companies that could have been checked and indeed the Bureau is not now maintaining any fuel laundering allegations against these Respondents.

I hold that that even if a case for money laundering was being made against the Respondents, the court ought to have been appraised of this fact in clear language.

...

After some hesitation, I have come to the conclusion notwithstanding the possibility than an application under s. 2 alleging money laundering might have

been successful had all the facts of the matter been put before the court, I cannot speculate or invent an entirely new application on behalf of the Bureau.

...

Accordingly, I grant the application to lift the s. 2 order insofar as it affects the 21st named Respondent."

This decision of the High Court is currently under appeal by the Bureau to the Supreme Court.

Key Cases Cited

- Michael Bambrick -v- Johanne Corbley [2005] IEHC 43
- FMcK and DCST -v- BH Ltd [2006] IEHC 185
- Tate Access Floors Inc -v- Boswell [1990] 3 All ER 303

Part Seven

Significant court judgements during 2013

John Gilligan & Ors v. Criminal Assets Bureau, Ireland and the Attorney General

[2012] IEHC 609 (High Court, Birmingham J, 20 December 2013)

High Court struck out proceedings brought by John Gilligan, Geraldine Gilligan, Tracey Gilligan and Darren Gilligan against the Bureau, Ireland and Attorney General.

Proceeds of crime – Bureau’s application to strike out – default of pleadings – statement of claim – no cause of action – abuse of process – delay – lis pendens

The plaintiffs sought a declaration order that the order obtained by the Bureau pursuant to Section 3 of the PoC Act was unconstitutional and accordingly so too was the Section 4 forfeiture order. Damages were sought for a failure to protect the plaintiffs’ constitutional rights and rights protected by the European Convention on Human Rights.

The plaintiffs had failed to deliver a Statement of Claim and had delivered instead a “Grounding Statement”. The style and layout was different than that which would be expected but did elaborate on the endorsement of claim.

The court noted that in the ordinary way the notion of striking out proceedings because of a delay of some weeks in

delivering a pleading would be unthinkable, especially considering that the plaintiff had gone some distance down the road towards the provision of a Statement of Claim by delivering a “grounding statement”. However the application must be seen in wider context.

The wider background was the proceedings commenced on the 21st November 1996 by the then Chief Bureau Officer and resulted in the making of an order on the 16th July 1997 by the High Court pursuant to Section 3 of the PoC Act. This order had been challenged by the plaintiffs both individually and collectively and had been considered by the Supreme Court which dismissed a substantial number of such applications.

The Section 3 order had been subject to challenge by the plaintiffs pursuant to Section 3(3) of the PoC Act. On the 20th December 2011 the High Court delivered a judgement following a Section 4 hearing. These are currently subject to appeals before the Supreme Court.

The Bureau contented that the issues raised by the instant plenary summons have either been ventilated already or ought to have been ventilated already or are in the process of being ventilated in the appeals pending before the Supreme Court.

The court concluded:

“... I am driven to the conclusion that the

present proceedings constitute an abuse of process. Particularly in the situation where the matters now sought to be raised yet again, are already before the Supreme Court, not, some might think, for the first time. I am in no doubt that the proceedings fail to disclose any reasonable cause of action and that they are vexatious and as such ought to be dismissed, pursuant to O. 19, r. 28 RSC and pursuant to the Court's inherent jurisdiction.

...

Insofar as it might be suggested that the issues as now presented had not previously been formulated in the current form, then, in my view, this is classically a situation where Henderson v Henderson [1844] 6 Q.B. 288 applies.

...

I am driven to the conclusion that the present proceedings have been launched because it was seen to be tactically advantageous to issue proceedings which could offer support to the registration of a lis pendens.

...

The history of proceedings between the plaintiffs and defendants is by any standards a long and tortuous one. As Dr Paul McDermott points out in the introductory chapter to Res Judicata and Double Jeopardy, the notion that there should be some finality to litigation is a fundamental principle of the common law. It is also, as he points out to be found in Roman Law, Hindu Law, African Tribal Law, Native American Indian Law, Canon Law, and many modern civil codes. I do not doubt that the plaintiffs

are greatly distressed at what the Criminal Assets Bureau (CAB) have been seeking to achieve. That they would seek to resist and indeed frustrate CAB in their endeavours is scarcely surprising. In a situation where they have identified a point of major significance, that they would wish to pursue it and would be reluctant to let go of it is entirely expected. However, there is a limit to how often and in how many different ways the same point can be argued. There is a limit how long and how often any drum can be banged. That limit has now been reached, if indeed exceeded.

Proceedings struck out for lack of cause of action, delay, and *lis pendens* vacated.

Costs were awarded to the Bureau.

The decision is currently under appeal by the Gilligans to the Supreme Court.

Key Cases Cited

- Damache -v- Director of Public Prosecutions & Ors [2012] 2 ILRM 153
- Henderson -v- Henderson [1844] 6 QB 288

Part Seven
Significant court judgements during 2013



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 (AROs) 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 ARO 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 AROs in Member States are important tools in that work.

The Bureau has actively engaged with other Members States' AROs in progressing investigations and also assist other Member States in their requests

for assistance.

During 2013, the Bureau received twenty five requests for assistance and sent six requests.

International Operations

From an operational perspective, the Bureau continues to be involved in a number of international operations. The Bureau's engagement in such operations can vary depending on the circumstances of the case. It may include providing ongoing intelligence in order to assist an investigation in another jurisdiction. More frequently, it will entail taking an active role in tracking and tracing individual criminal targets and their assets in conjunction with similar agencies in other jurisdictions.

Europol

The Bureau continues in its role as the 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 exploit the opportunities presented by freedom of movement across international frontiers in their criminal activity or to facilitate such activity.

The 2012 Annual Report reported on the international cooperation of a number of

Part Eight International Developments

European countries in respect of Operation Oakleaf. The Bureau continues to work in close cooperation on this operation with Europol and the European countries.

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 2013.

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 organisation is governed by a Steering Committee of nine members and a rotating Presidency.

During 2013, the Bureau in its role as host of the CARIN Presidency, held a number of Steering Group Meetings in Dublin. The Bureau also held the CARIN Annual General Meeting which was hosted at the Royal Hospital Kilmainham in Dublin on the 16th & 17th May 2013. The Conference was formally opened by the Minister for Justice and Equality, Mr. Alan Shatter, T.D. The CARIN AGM also formed part of the official events held in conjunction with Ireland's European Union Presidency in the first six months of 2013.

Part Eight International Developments

The CARIN AGM was attended by participants from all over the world and a number of other agencies similar to CARIN were also represented at this meeting.

The Bureau would like to thank all the people involved who made the event a great success and in particular, thanks to the staff of the Department of Justice and Equality and the Defence Forces who assisted in the preparation of the venue and provided transport to and from the event



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.

Cross Border Fuel Group and Cross Border Excise Group

The Bureau continues to participate in the Cross Border Fuel Group and the Cross Border Excise Group.

Visits to the Bureau

The success of the Bureau continues to attract international attention. During 2013, the Bureau facilitated visits by foreign delegations covering a range of disciplines, both national and international.

The Bureau's continued involvement in investigations having an international dimension presents an opportunity to both contribute to and inform the international law enforcement response to the ongoing threat from trans-national organised criminal activity. In addition, this engagement provides an opportunity for the Bureau to share its experience

Part Eight
International Developments

with its international partner agencies.



Part Nine

Conclusions

During 2013, 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. The investigations conducted by the Bureau and the consequential proceedings and actions resulted in sums in excess of €1.035 million being forwarded to the exchequer under the Proceeds of Crime legislation. In addition, in excess of €5.4 million was collected in Revenue and in excess of €287,000 in Social Welfare overpayments was 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. As the designated Asset Recovery Office (ARO) in Ireland, the Bureau continues to further develop enhanced law enforcement links with

other EU Member States. The Bureau continued to work on the Steering Committee of CARIN and held the Presidency of CARIN during 2013.

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 of or denied the benefits of assets or gains from criminal conduct.

As has been noted in previous Annual Reports, one of the Solicitors posts assigned to the Bureau from the Chief State Solicitor's Office has not, to date, been filled. In an effort to address this matter, the Bureau, in consultation with the Chief State Solicitor's Office, has previously submitted a business plan seeking replacement staff in this area.

In pursuing its objectives, the Bureau continues to liaise closely with the Garda Síochána, the Revenue Commissioners, the Department of Social Protection and the Department of Justice and Equality in developing a coherent strategy to target the assets and profits deriving from criminal conduct. This strategy is considered an effective tool in the overall fight against organised crime.

During 2013, the total sum of €6,744,060.52 was forwarded to the Central Fund as a result of the actions of the Criminal Assets Bureau.

Part Eight
Conclusions

[This page has been left intentionally blank]

Appendix

objectives & functions of the Bureau

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

Functions of the Bureau: Section 5 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).

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

Appendix 1 objectives & functions of the Bureau

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,

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.

