

# Civil Recovery Unit

## Annual Report 2012/13



The Scottish  
Government  
Riaghaltas na h-Alba



## **Foreword by the Lord Advocate**

**This, the third Annual Report by the Civil Recovery Unit (CRU), also marks ten years since the Proceeds of Crime Act was brought into force and the Unit was established.**

**Since its establishment in 2003, the CRU has recovered over £30million of criminal gains, to add to the £50million secured through criminal confiscation. These funds have been channelled back into Scottish communities, where they are used to support activities and facilities for young people at risk of becoming involved in criminality. In 2007, this process was formalised by the Scottish Government with the launch of the CashBack for Communities scheme.**

**In Scotland we are always looking forward for new and innovative ways to disrupt crime and dismantle criminal networks. This annual report is full of such examples.**

**The CRU works closely and shares information with many other organisations, including COPFS' Serious and Organised Crime Division, to ensure that the provisions of the Proceeds of Crime Act are used to their full effect. The CRU will continue to work closely with law enforcement agencies and in particular the new Police Service of Scotland.**

**The continued success of the CRU is a credit to its dedicated team of lawyers, accountants, financial investigators and support staff who continue to work tirelessly to ensure that we deliver a world-class service to the people of Scotland.**

**I have absolute confidence that the CRU will continue to find ways to ensure that Scotland remains a hostile environment for criminals.**

**Rt. Hon. Frank Mulholland QC  
Lord Advocate  
April 2013**

## **Foreword by the Head of the Civil Recovery Unit**

**I have great pleasure in presenting the Lord Advocate with the Third Annual Report of the Civil Recovery Unit (CRU). This has been another successful year in terms of sums remitted to the Scottish Consolidated Fund and, just as importantly, in terms of the disruption which has been caused to crime and criminals.**

**The year has seen the first instalment of the *Abbot* settlement. The settlement was the culmination of the first case to be referred to the CRU under the bribery and corruption self-reporting initiative operated by the Crown Office and Procurator Fiscal Service. The successful outcome was based on excellent work by our colleagues in the Serious Organised Crime Division and we are pleased to be continuing to work closely with them on other bribery and corruption cases.**

**This year has not been without its challenges and adjustments to CRU practice and procedure have been required as a consequence of the Supreme Court decision in *Perry v. SOCA [2012] UKSC 35*. Further adjustments will be required if the amendments to the Proceeds of Crime Act 2002 contained within the Crime and Courts Bill currently before the UK Parliament are passed and we will be re-doubling our efforts to recover overseas assets.**

**The CRU has also been working on its administrative systems and processes. I am pleased to report that our electronic case management and document management systems are working effectively. We will be continuing to develop those systems with a view to streamlining our processes.**

**Looking to the future, we are excited by the opportunities which the establishment of the Police Service of Scotland will provide to increase the impact and effectiveness of civil recovery. In that regard we will be continuing to work with police colleagues to use Serious Organised Crime mapping as a tool for identifying priorities.**

**We are again grateful for the assistance we have been provided during the last year by the police forces of Scotland, the Scottish Crime and Drug Enforcement Agency, the Serious Organised Crime Agency, the Department for Work and Pensions and Her Majesty's Revenue and Customs.**

**Ruaraidh Macniven  
Head of Civil Recovery Unit  
April 2013**

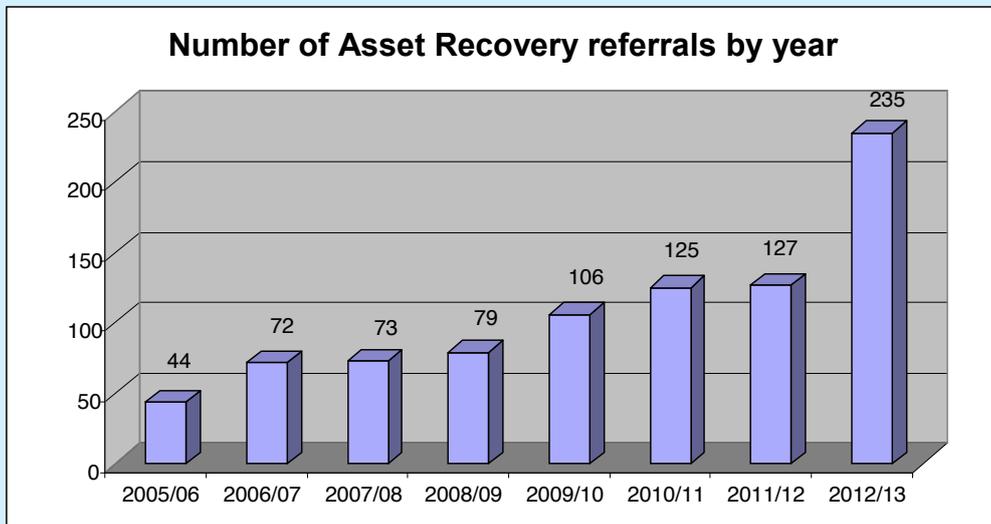
## **Introduction**

- 1. This is the Third Annual Report of the activities of the Civil Recovery Unit (“CRU”) and covers the period from 1 April 2012 to 31 March 2013.**
- 2. The CRU was established in 2003 to act on behalf of the Scottish Ministers to recover property and cash which have been acquired through crime. The CRU reports to the Law Officers (the Lord Advocate and the Solicitor General) who are the Scottish Ministers with delegated operational responsibility.**
- 3. The aim of the CRU is:-**

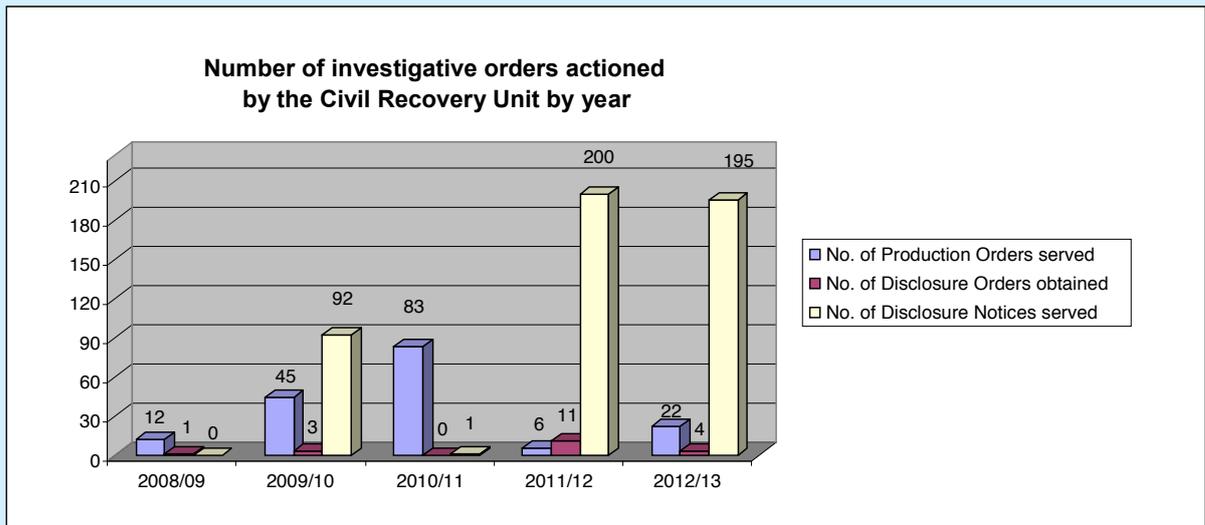
**to use civil court proceedings to disrupt crime and to make Scotland a hostile environment for criminals.**
- 4. The CRU is a multi-disciplinary team of lawyers, forensic accountants, financial investigators, and administrative staff. Its primary role is to act on behalf of the Scottish Ministers as the enforcement authority for Scotland under Part 5 of the Proceeds of Crime Act 2002 (“the 2002 Act”). This involves investigating and seeking to recover criminal assets and cash.**

## Civil recovery: asset recovery

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



7. The dramatic increase in the number of referrals to the CRU reflects changes in practice across COPFS which are designed to ensure that opportunities to disrupt crime are not missed.
8. It is the policy of CRU to seek disclosure orders wherever possible in its investigations. Disclosure orders are orders by the Court of Session which enable CRU investigators to issue notices to individuals and organisations requiring them to provide information and/or attend for interview.
9. Regular interviews of respondents is proving to be an effective means of investigation and the high number of investigative orders actioned in the last year reflects another busy year.



## Asset recovery - case study 1

In April 2012, following an investigation by the CRU, a petition for a recovery order was lodged at the Court of Session. \$279,113.77 US belonging to Ahmed Shhade, DOB 31 December 1972, and held in a bank account in Scotland was targeted by the Unit.

Mr Shhade, who was born in Beirut, Lebanon and whose whereabouts are currently unknown, was involved in a sophisticated advance fee fraud whereby unwitting victims were persuaded to transfer sums of money into bank accounts held by third parties on the false promise of a share of a far larger sum of money. In 2004, funds were transferred into Mr Shhade's account by victims in the UK and the USA.

The proceedings were not defended by Mr Shhade and, on 28 September 2012, the Court of Session granted a recovery order in respect of the money. The appeal period for that decision has expired.

The CRU traced the victims of the fraud and one successfully applied to the Court to be reimbursed the cash that he had transferred into the account under the misapprehension that he would receive a large pay-out from South Africa.

£163,759.26 was remitted to the Scottish Consolidated Fund.

## Asset recovery - case study 2

In March 2012, following an investigation by the CRU, a petition for a recovery order was lodged at the Court of Session in respect of property formerly held by the late Kevin Carroll, who was killed on 13 January 2010 in a daylight shooting at a supermarket car park in Glasgow. The Scottish Ministers sought to recover property belonging to Mr Carroll's estate,

which had been obtained through his involvement in organised crime, violence, drug dealing and his obtaining of mortgages by fraud.

The proceedings were not defended by Mr Carroll's next of kin and, on 1 May 2012, the Court of Session granted a recovery order in respect of the property. The property comprises a house at 11 Ivy Leaf Place, Lennoxton and a term assurance policy in the name of Mr Carroll. The property has been sold for £152,500 and any free proceeds will be remitted to the Scottish Consolidated Fund.

### **Asset recovery – case study 3**

The CRU forfeited £181,053.02 under the Proceeds of Crime Act from Juraj Gombar, DOB 17/12/1964, of Glasgow.

Gombar, a Slovakian national, had perpetrated a long-running and determined fraud against Her Majesty's Revenue and Customs (HMRC). This fraud involved many fraudulent claims for Working Families Tax Credits and other benefits.

### **Asset recovery – case study 4**

The CRU is to recover £5.6 million under Proceeds of Crime legislation after a Scottish drilling company accepted that it had benefited from unlawful conduct.

Abbot Group Limited ("Abbot"), which is based in Aberdeen, admitted that it had benefited from corrupt payments made in connection with a contract entered into by one of its overseas subsidiaries and an overseas oil and gas company.

The contract was entered into in 2006 and the payments were made in 2007. The sum to be paid by Abbot represents the profit made by the company under the contract. Since then, the ownership and structure of Abbot has changed significantly.

The corrupt payments were brought to light in May 2011 following enquiries by an overseas tax authority which resulted in an investigation by a firm of solicitors and a firm of accountants instructed by Abbot itself. Abbot reported the results of the investigation to COPFS in July 2012 under the bribery and corruption self-reporting initiative for businesses.

In view of any criminal investigation of others that may follow, it is not possible to provide any further details of the corrupt payments.

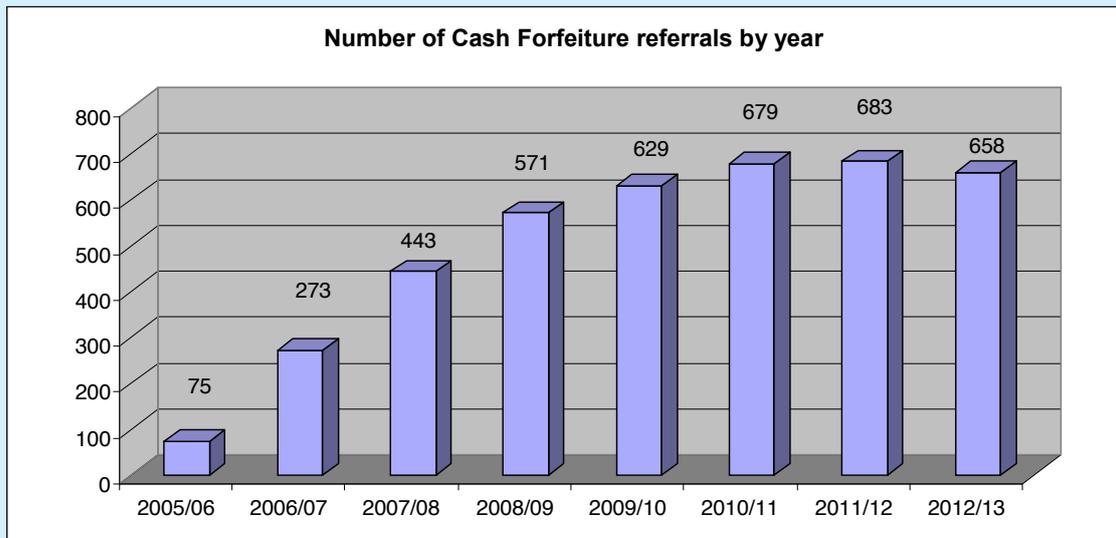
In accordance with the published guidance on self-reporting, the following criteria were considered in the decision to refer this case to the CRU for an extra-judicial settlement:-

- **the nature and seriousness of the offence and the extent of the harm caused;**
- **the extent of the wrongdoing within the business, including whether the conduct was authorised by, or connived in, by senior management, or restricted to a small number of lower-ranking individuals;**
- **whether it is clear that the business is taking action as soon as the matter comes to the attention of senior management (as opposed to taking no action until it becomes aware that there is a risk that the conduct is going to come to light);**
- **whether the business (or the individuals involved in the matter reported) has any previous record for this type of conduct. This would go beyond a previous criminal conviction, and would include any regulatory enforcement action or warning;**
- **whether the individuals involved in the wrongdoing have left the business and, where decisions were taken at Board level, whether there is a new Board in place, and in both cases the timing and reasons for the departure of these individuals;**
- **whether the business has honoured its commitment to engage with the Crown meaningfully and in particular to disclose the full extent of the wrongdoing;**
- **whether the business had in place adequate anti-bribery systems at the time of the criminal conduct and whether it has further addressed this following the conduct;**
- **whether there are particular considerations which may weigh against prosecution, such as the consequences of prosecution for the company's employees and stakeholders.**

**Abbot is the first company to enter into a civil settlement under the self-reporting initiative since it was introduced in 2011.**

## Civil recovery : cash forfeiture

10. Section 298<sup>1</sup> of the 2002 Act enables the Sheriff Court to order the forfeiture of cash which has been seized by the police or customs officers. The CRU makes applications for forfeiture on behalf of the Scottish Ministers. Forfeiture is granted where it is established on the balance of probabilities that the cash was obtained through crime or was intended for unlawful use. Importantly, it is not necessary for the person from whom the cash has been seized to be convicted of a criminal offence.



## Cash forfeiture – case study 1

At Hamilton Sheriff, £99,960 in cash was forfeited from Mark Gormly (DOB 18/04/1987) of Airdrie.

The cash was detected during the course of an intelligence-led police operation on 19 January 2008.

Information had been received indicating that Mark Gormly would, during the course of that day, take delivery of a substantial quantity of controlled drugs and/or cash on behalf of an organised crime group active in and around North Lanarkshire.

Gormly was kept under surveillance on the afternoon of 19 January 2008. He drove to a remote car park in Motherwell where he was seen to accept a number of weighty bags from a man later identified as Andrew Sutcliffe of Preston in Lancashire.

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

**Gormly was stopped a little while later. Two Louis Vuitton gift bags were found in the boot of his car. These bags were stuffed with bundles of cash which when later counted amounted to £99,960.**

**Mark Gormly did not oppose the forfeiture of the cash.**

## **Cash forfeiture – case study 2**

**A Glasgow drug dealer had £1,200 forfeited from him after the CRU successfully brought an action against him.**

**Ronald Goldie, of Maryhill, Glasgow, was stopped by Strathclyde Police officers on 25 October 2011 and found to be in possession of diazepam and cocaine. He had £1,200 in cash concealed in his underwear, and was also carrying a knife.**

**Goldie is a career criminal and a twice convicted drug dealer.**

**He claimed that the cash found concealed in his underwear represented part of an inheritance he had received from his late mother. This was accepted by the Scottish Ministers when they sought forfeiture of the cash in question.**

**The Sheriff granted a forfeiture order having been satisfied that Mr Goldie intended to use the money he had inherited in the furtherance of his drug dealing activities.**

## **Cash forfeiture – case study 3**

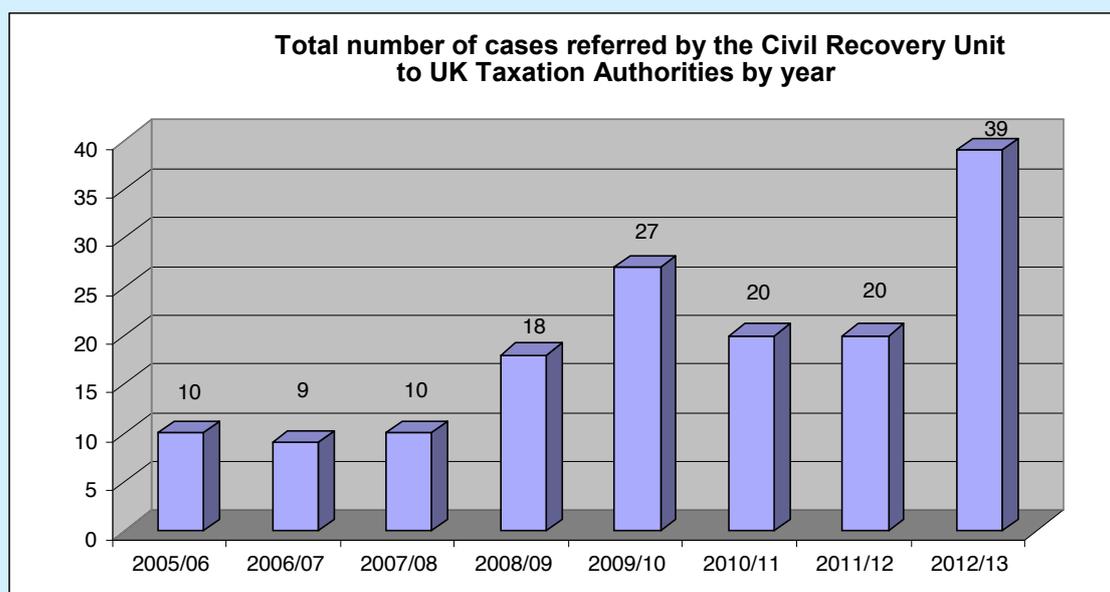
**A forfeiture order was made at Dundee Sheriff Court against Stuart Johnston for £45,798.45.**

**The cash had been seized from Johnston, of Dundee, following a search of his home address on 13 January 2011 by officers of Tayside Police. In addition to the £45,798.45 cash they found controlled drugs and a quantity of high value goods including jewellery and perfumes. Johnston claimed to be unemployed and in receipt of state benefits.**

**The CRU raised an action at Dundee Sheriff Court for the forfeiture of the sum on the basis that the cash had been derived from unlawful conduct, specifying drug dealing, the sale and supply of contraband tobacco and the resale of stolen goods.**

## Referrals for taxation

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



13. The CRU will continue to refer cases to the taxation authorities and, where appropriate, enter into joint working arrangements in order to ensure that the best means of disrupting crime is used.
14. Information from SOCA and HMRC establishes that the referrals by CRU and joint working this year have led to the identification of over £750,000 in potential tax liabilities.

## **Liaison and training**

- 15. During the course of the year, the CRU has continued to provide training on asset recovery and cash forfeiture across Scotland. In particular, standing invitations were accepted to provide inputs to the Scottish Police Financial Investigation and Economic Crime Courses. Other *ad hoc* training was provided to police forces and other agencies.**
- 16. The CRU has been instrumental in the establishment of an international forum for forensic accountants who are involved in law enforcement and asset recovery activity and hosted a conference in Edinburgh. They remain on the steering group for this forum as it moves towards a full European membership with the support of Europol amongst other agencies.**
- 17. The CRU is represented on the Scottish Asset Recovery Group and has taken up an invitation to sit on the Scottish Tactical Tasking and Co-ordination Group. These efforts are designed to ensure that civil recovery opportunities are considered when strategic decisions are taken as to how best to tackle organised crime in Scotland.**
- 18. The CRU has taken up invitations to attend multi agency meetings convened by the Police Service for Scotland. This initiative is intended to enable the consideration of civil recovery opportunities at an earlier stage of operational investigations into organised crime.**
- 19. The CRU continues to discuss matters of common concern with colleagues in the Serious Organised Crime Agency in England, Wales and Northern Ireland.**

## Cashback for Communities

20. Since its creation in 2003, the CRU has recovered over £30 million in cash and assets. The Scottish Government has invested this money back into communities through the 'Cashback for Communities' scheme. Cashback for Communities is a programme of activities for young people to increase the opportunities they have to develop their interests and skills in a supported way, using funds recovered from criminals.

21. It includes a range of partnerships with Scottish sporting, cultural and youth organisations to provide activities for young people in Scottish communities. The initiatives provided have been aimed primarily at 10-19 year olds, with resources focused on areas of deprivation and/or high crime. The initiatives address both participation and diversion and aim to increase the likelihood of positive long-term outcomes for those who take part.

22. The total amounts remitted by the CRU to the Scottish Consolidated Fund since 2005/6 are shown below:-

