

**PROCEEDINGS AT HEARING
OF
DECEMBER 16, 2020**

COMMISSIONER AUSTIN F. CULLEN

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December 16, 2020

(Via Videoconference)

(PROCEEDINGS COMMENCED AT 9:30 A.M.)

THE REGISTRAR: Good morning. The hearing is now resumed. Mr. Commissioner.

THE COMMISSIONER: Thank you, Madam Registrar.

Yes, Mr. McCleery, do you have conduct of matters this morning?

MR. McCLEERY: I do. Good morning, Mr. Commissioner. Today we have a panel of witnesses that will be giving evidence regarding civil asset forfeiture in the Republic of Ireland. The panel includes Dr. Colin King from the School of Advanced Studies at the University of London and Detective Inspector Barry Butler and Mr. Kevin McMeel, both of the Irish Criminal Assets Bureau. I understand that Dr. King and Mr. McMeel prefer to affirm and that Detective Inspector Butler will be sworn.

THE COMMISSIONER: Thank you.

THE REGISTRAR: Witnesses, please unmute yourselves. Thank you. Would each of you state your full name and spell your first name and last name for the record. Let's start with Detective Inspector Butler.

1 A (BB) Barry Butler, B-a-r-r-y B-u-t-l-e-r.

2 THE REGISTRAR: Thank you. And Dr. King.

3 A (CK) Colin King, C-o-l-i-n K-i-n-g.

4 THE REGISTRAR: Thank you. And Mr. McMeel.

5 A (CK) Kevin McMeel. That's K-e-v-i-n
6 M-c-M-e-e-l.

7 THE REGISTRAR: Thank you.

8 **BARRY BUTLER, a witness**
9 **called for the**
10 **commission, sworn.**

11 **COLIN KING, a witness**
12 **called for the**
13 **commission, affirmed.**

14 **KEVIN MCMEEL, a witness**
15 **called for the**
16 **commission, affirmed.**

17 THE REGISTRAR: Thank you.

18 THE COMMISSIONER: Yes, Mr. McCleery.

19 MR. McCLEERY: Thank you, Mr. Commissioner. Just to
20 give you a bit of a road map on the plan for
21 today, Mr. McMeel has generously prepared a
22 presentation that provides an overview of the
23 organization and operations of the Irish
24 Criminal Assets Bureau and the operation of the
25 *Proceeds of Crime Act*. Before we get to that

1 presentation, I'm going to ask a few
2 introductory questions to introduce our
3 witnesses and put that presentation in context.

4 **EXAMINATION BY MR. MCCLEERY:**

5 Q And just before we begin. For the benefit of
6 our panelists as we go through the evidence
7 today, I'm going to do my best to direct my
8 questions towards the witness I think best
9 positioned to provide an answer, but I certainly
10 encourage each of you to jump in and feel free
11 to add comments whenever you feel you've got
12 something you'd like to add.

13 So I'll just begin with some introductory
14 questions with Dr. King. Dr. King, you're a
15 reader in law and the director of postgraduate
16 research studies at the Institute of Advanced
17 Legal Studies in the School of Advanced Studies
18 at the University of London; is that correct?

19 A (CK) Correct.

20 Q And in 2010 you completed a PhD at the
21 University of Limerick, including a thesis
22 titled "The Confiscation of Criminal Assets:
23 Tackling Organised Crime Through a
24 'Middleground' System of Justice"; is that
25 right?

Barry Butler (for the commission)
Colin King (for the commission)
Kevin McMeel (for the commission)
Exam by Mr. McCleery

4

1 A (CK) Correct.

2 Q And since that time you've continued to study
3 and write about the subject of civil and asset
4 forfeiture, among other subjects, and have
5 published regularly on that topic?

6 A (CK) Yes.

7 Q And some of your publications include a 2013
8 article written with Martin Collins titled "The
9 Disruption of Crime in Scotland Through
10 Non-Conviction Based Asset Forfeiture"?

11 A (CK) Correct.

12 Q It also includes a book chapter "'Hitting Back'
13 at Organised Crime: The Adoption of Civil
14 Forfeiture in Ireland" in a book titled *Dirty
15 Assets: Emerging Issues in the Regulation of
16 Criminal and Terrorist Assets*, which you edited
17 along with Clive Walker?

18 A (CK) Yes.

19 Q It also includes another chapter titled "Civil
20 Forfeiture in Ireland: Two Decades of the
21 *Proceeds of Crime Act* and the Criminal Assets
22 Bureau," a book *Chasing Criminal Money:
23 Challenges and Perspectives on Asset Recovery in
24 the EU?*

25 A (CK) Yes.

1 Q And it also includes another chapter titled "The
2 Difficulties of Belief Evidence and Anonymity in
3 Practice: Challenges for Asset Recovery," and
4 that was a 2018 chapter in *The Palgrave Handbook*
5 *of Criminal and Terrorism Financing Law*?

6 A (CK) Yes.

7 Q And last but not least, a chapter titled
8 "International Asset Recovery: Perspectives
9 From Ireland" in a book titled *The Development*
10 *of Transnational Policing:*
11 *Past, Present and Future* in 2019?

12 A (CK) Yes.

13 MR. McCLEERY: And, Mr. Commissioner, those
14 publications are already before you as
15 appendices to the exhibit marked as exhibit 375.

16 THE COMMISSIONER: Thank you.

17 MR. McCLEERY: And for your reference,
18 Mr. Commissioner, that exhibit also includes
19 copies of the Irish *Proceeds of Crime Act*, the
20 *Irish Criminal Assets Bureau Act* and the 2019
21 annual report of the Criminal Assets Bureau.

22 THE COMMISSIONER: Thank you.

23 MR. McCLEERY: Madam Registrar, can we see Dr. King's
24 CV.

25 Q Dr. King, do you see a document on the screen

Barry Butler (for the commission)
Colin King (for the commission)
Kevin McMeel (for the commission)
Exam by Mr. McCleery

6

1 before you?

2 A (CK) Yes.

3 Q And this is a copy of your CV which you provided
4 to the commission?

5 A (CK) Correct.

6 MR. McCLEERY: And, Mr. Commissioner, if we could
7 have that marked as a next exhibit.

8 THE COMMISSIONER: Very well. I think we're at
9 380 --

10 THE REGISTRAR: 383.

11 THE COMMISSIONER: 383. Thank you.

12 THE REGISTRAR: Exhibit 383.

13 **EXHIBIT 383: Curriculum Vitae of Colin King**

14 MR. McCLEERY: Thank you. And, Madam Registrar, we
15 can take that down now.

16 Q Turning to you next, then, Detective Inspector
17 Butler. You've been a member of the Republic of
18 Ireland's national police force since 1993; is
19 that correct?

20 A (BB) That's correct, yes.

21 Q And in 2018 you were appointed to your current
22 role of detective inspector with the Criminal
23 Assets Bureau?

24 A (BB) Yes, that's correct.

25 Q And can you give us a brief description of your

1 responsibilities in that role.

2 A (BB) Yes, I can. My role as a detective
3 inspector attached to the Criminal Assets Bureau
4 involves supervision of the team rooms that are
5 attached to the Criminal Assets Bureau, the
6 investigation team rooms. I suppose my function
7 primarily is on the investigative side involved
8 in operations, the preparation and submission of
9 proceeds of crime investigation files. And I
10 also have a liaison role with various detective
11 inspectors located around the country attached
12 to various police units and stations.

13 I also perform a role, an international role
14 linking in with our colleagues in the ARODS, the
15 recovery offices, and also the CARIN network as
16 well. So that's primarily my role and function.

17 MR. McCLEERY: Thank you very much. Madam Registrar,
18 can we see Detective Inspector Butler's career
19 history.

20 Q And this is a sort of summary of your career
21 that you prepared and provided to the
22 commission?

23 A (BB) Yes, it is. Yes.

24 MR. McCLEERY: Mr. Commissioner, could we have that
25 marked as the next exhibit.

Barry Butler (for the commission)
Colin King (for the commission)
Kevin McMeel (for the commission)
Exam by Mr. McCleery

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1 THE COMMISSIONER: Exhibit 384.

2 THE REGISTRAR: Exhibit 384.

3 **EXHIBIT 384: Barry Butler Career History**
4 **Summary**

5 MR. McCLEERY: And then moving on to Mr. McMeel. We
6 can take that document down now, Madam
7 Registrar.

8 Q Mr. McMeel, you completed a Bachelor of Arts in
9 Law and European Studies at the University of
10 Limerick in 1998; is that correct?

11 A (KM) That is correct.

12 Q And subsequent to that you completed a solicitor
13 traineeship and qualified to the Roll of
14 Solicitors in Ireland?

15 A (KM) That is correct, yep.

16 Q And from 2012 to 2019 you were section head of
17 the criminal assets section of Ireland's Chief
18 State Solicitor's Office; is that right?

19 A That is correct, yes.

20 Q Can you give us a brief sense of your
21 responsibilities in that position.

22 A (KM) Well, actually that's not the position I
23 currently hold. My position now is the bureau
24 legal officer, which is a statutory law officer
25 position which is -- I'm appointed pursuant to

1 section 9 of the *Criminal Assets Bureau Act*. So
2 I assume, Mr. McCleery, it's the latter position
3 that you're more interested in.

4 Q I would be interested to hear a little bit about
5 your role with the Chief State Solicitor's
6 Office. We'll move to your current --

7 A (KM) Okay. No, no, that's absolutely fine. So
8 in my former role with the Chief State
9 Solicitor's Office I would have vetted any case
10 which would have emanated from the Criminal
11 Assets Bureau and provided legal advice and a
12 solicitor service function through a small team
13 of solicitors and legal executives that are
14 assigned to a unit of the Chief State
15 Solicitor's Office which is co-located with the
16 Criminal Assets Bureau. So it's a separate
17 organization but co-located with the Criminal
18 Assets Bureau.

19 Q Thank you. And then as you've indicated, you've
20 since moved into a new role in 2019 as bureau
21 legal officer with the Criminal Assets Bureau;
22 correct?

23 A (KM) That is correct, yes.

24 Q And can you give us a brief sense of your
25 responsibilities in your current role?

1 A (KM) In a sense I compared the role to -- it's
2 similar to that of an Attorney General, I
3 suppose, to a cabinet. You have a general
4 advisory role both in -- there is a director
5 role in relation to proceeds of crime
6 applications. In addition I would be the person
7 who is appointed receiver over all of the assets
8 which are seized by the Criminal Assets Bureau
9 to which an -- to which a receiver is appointed.
10 And I would act much in the same way as
11 Inspector Butler and I -- in attending
12 international conferences and there's an
13 ambassadorial role, I suppose, with the
14 position.

15 Q Thank you very much.

16 A (KM) Yeah.

17 MR. McCLEERY: Thank you. Madam Registrar, can we
18 see Mr. McMeel's career history as well.

19 Q And, Mr. McMeel, this is a career history that
20 you've prepared and provided to the commission?

21 A (KM) That is correct, yes.

22 MR. McCLEERY: And, Mr. Commissioner, if we could
23 have that marked as the next exhibit.

24 THE COMMISSIONER: 385.

25 THE REGISTRAR: Exhibit 385.

1 **EXHIBIT 385: Kevin McMeel Career History**

2 **Summary**

3 MR. McCLEERY:

4 Q As I indicated at the outset, before we turn to
5 the presentation, I have just a few questions to
6 sort of help put that information in context.

7 Dr. King, I thought I might begin with you,
8 if I may. The focus of the evidence the
9 Commissioner is hearing this week is on the
10 subject of civil asset forfeiture. The main
11 focus of the Commission's mandate is the subject
12 of money laundering. I understand in addition
13 to your work on civil asset forfeiture you've
14 also written independently on the subject of
15 money laundering, edited books on that subject.
16 I wonder if you can comment on the relationship
17 between those two topics and your perspective on
18 the role that civil asset forfeiture plays in
19 combatting money laundering.

20 A (CK) Yes. There are different elements to
21 follow the money approach of anti-money
22 laundering. Post-conviction confiscation of
23 assets, taxation, taxing the proceeds of crime,
24 and then this civil approach, the non-conviction
25 based approach to targeting criminal assets.

1 In essence, money laundering involves
2 efforts to make dirty money clean. That's
3 obviously a basic definition. That's the
4 general gist. And anti-money laundering, then,
5 is -- it's designed to prevent criminal money
6 entering the legitimate financial system, but of
7 course AML does not stop all criminal money
8 entering the system. And this is where asset
9 confiscation or asset forfeiture comes into to
10 play a role. So targeting that criminal money
11 that does manage to enter the legitimate system.

12 And most, if not all, commentators in this
13 area would agree with the general principle that
14 crime should not pay and that if a person is a
15 criminal and has benefitted from criminal
16 activity, then quite rightly that money, the
17 proceeds of crime, should be targeted. The
18 issue then is how proceeds of crime are
19 targeted, whether it is the post-conviction
20 based approach, the non-conviction based
21 approach or taxing the proceeds of crime.

22 That's just a very general overview of the
23 different approaches.

24 Q Thank you very much. Detective Inspector
25 Butler, I wonder if I might turn to you and see

1 if you have any comment on sort of how the
2 Criminal Assets Bureau views the issue of money
3 laundering as a focus of this work -- its work,
4 whether it does, and if so, sort of how.

5 A (BB) Yes. I suppose from our perspective
6 following the money, proceeds of crime, money
7 laundering -- money laundering and the proceeds
8 of crime certainly are intrinsically linked, and
9 we certainly address every investigation from
10 that perspective. We work closely with our
11 colleagues in the Economic Crime Bureau here in
12 Dublin as well. But really, I suppose, from a
13 Criminal Assets Bureau perspective, our work
14 relates to the terms that are named "assets" and
15 "criminality," and really our function and role
16 revolves around targeting assets that we can
17 link directly to criminality. And that's
18 really the nub of what we do and that's the
19 primary objective of our work.

20 Q Thank you. Mr. McMeel, maybe I'll give you an
21 opportunity to comment if you've got anything to
22 add on the subject before moving to the next
23 question.

24 A (KM) Well, yeah -- no, I think that in terms of
25 civil forfeiture, its application and its links,

1 I suppose, with money laundering -- and it's
2 interesting just hearing from the other two
3 contributors. My relation to this is that every
4 money laundering investigation may not uncover
5 the proceeds of crime, but to have the proceeds
6 of crime there must have been an offence of
7 money laundering at some stage. And when you
8 look at all of our proceeds of crime
9 investigations, there is not one that I have
10 seen in the last 10 years which did not involve
11 an offence of money laundering.

12 And the way the Criminal Assets Bureau
13 works, I suppose, is that we're in a position to
14 conduct parallel criminal investigations and
15 civil investigations at the same time, and often
16 that is the way our investigations will work.
17 So we will be able to invoke criminal law powers
18 to, for example, freeze bank accounts under our
19 money laundering investigation but also be able
20 to ultimately seize the balance in that account
21 through civil forfeiture if we can prove to the
22 satisfaction of the court that it is the
23 proceeds of crime.

24 So the two things are intrinsically linked
25 as both Barry and I think Dr. King have said.

1 And -- but there's just one thing. It's not
2 necessarily always the case that moneys have
3 entered into the system before we can seize it
4 through forfeiture, civil forfeiture. Often our
5 cases will involve large cash seizures which
6 haven't entered the system at all. And so just
7 in that sense civil forfeiture can apply to
8 moneys which haven't quite been integrated into
9 the system in the kind of three-tier money
10 laundering, you know, example. So -- and that's
11 really it.

12 Q Thank you. Thank you very much. Perhaps we can
13 move, then, towards the Irish model of civil
14 asset forfeiture. Dr. King, in one of the
15 chapters that's before the Commissioner titled
16 "Hitting Back At Organized Crime: The Adoption
17 of Civil Forfeiture in Ireland" you describe the
18 context that surrounded the enactment of the
19 *Proceeds of Crime Act* and *Criminal Assets Bureau*
20 *Act* in 1996. I wonder if you can describe for
21 us both the events that sort of immediately
22 preceded the enactment of that legislation and
23 maybe as well the broader political context from
24 your perspective in which that took place.

25 A (CK) I think it is very useful to contextualize

1 the background to the adoption of the
2 non-conviction based approach and the
3 establishment of CAB in Ireland. Very briefly,
4 the immediate background was the murders of
5 investigative journalist Veronica Guerin and
6 Detective Garda Jerry McCabe in two separate
7 incidents a few weeks apart in June 1996. And
8 that was the spark that led to the enactment of
9 the *Proceeds of Crime Act*, the *Criminal Assets*
10 *Bureau Act*, the *Disclosure of Certain*
11 *Information For Taxation and Other Purposes Act*.
12 But there has been wider concerns even before
13 these murders.

14 There was widespread concern about organized
15 crime in Ireland during the 1980s into the
16 1990s, but by the mid-1990s, this concern was at
17 a high point. And certainly at a political
18 level it generates a lot of political discourse
19 at the time. So political debates on reform in
20 the criminal justice system referred to, for
21 example, the godfathers of crime, drug
22 overlords, the kingpins.

23 Ireland had introduced the *Criminal Justice*
24 *Act* of 1994, which provided detailed rules for
25 post-conviction confiscation. Two years later,

1 amidst concern that the post-conviction approach
2 was ineffective and the murders already
3 mentioned, a decision was made to adopt the
4 non-conviction based approach.

5 Q Thank you very much. Detective Inspector
6 Butler, I note that these events happened sort
7 of within the first few years of your joining
8 the police force. And I wonder if you have any
9 recollections of what was happening around that
10 time or any thoughts on the context in which
11 this legislation was enacted.

12 A (BB) Yes. Certainly in the media at the time
13 there was a lot of public commentary about the
14 perception and the fact that certain criminals
15 were accumulating wealth. They were living in
16 impressive properties, and at the same time
17 claiming social welfare payments. This was
18 certainly something that was gaining a lot of
19 attention in the media. People were aware of it
20 in the public and there was quite, I suppose, an
21 undercurrent of unhappiness about this. So I
22 suppose that's pretty much the context into
23 which the legislation for the Criminal Assets
24 Bureau was born and established.

25 Q Thank you very much. And, Mr. McMeel, we'll

1 move to your presentation next, but maybe I'll
2 just give you a chance to comment on sort of the
3 history and context as laid out by Dr. King and
4 Detective Inspector Butler, if you'd like.

5 A (KM) I think both of my co-contributors have
6 quite succinctly summed up what has -- what the
7 situation was at the time. I think it's
8 important to note, and I don't know if Dr. King
9 mentioned this, but the legislation was brought
10 in within four months. I know that his paper
11 mentions the very -- the brevity with which the
12 organization, the Criminal Assets Bureau had
13 been established.

14 As Dr. King had mentioned, those two murders
15 occurred in June -- within two weeks of each
16 other in June 1996. By October 1996 the
17 Criminal Assets Bureau was in being and the
18 *Proceeds of Crime Act* had been enacted and were
19 operative. And I think that the first of the
20 proceeds of crime cases were taken in either
21 late October or early November of that year.
22 And I think it's probably safe to say that in
23 the current political climate to bring in such
24 far-reaching legislation under any heading --
25 law enforcement or any other heading would be

1 unheard of currently, and certainly within a
2 four-month time frame. And this legislation was
3 brought in with all parties' support, as far as
4 I'm aware, and within such a brief time period.
5 And I suppose that highlights the grand swell of
6 feeling that had occurred, particularly at the
7 murder of the Veronica Guerin, the investigative
8 journalist that Dr. King had mentioned there.
9 So that was the contextual background back in
10 1996 which brought the legislation into being.

11 Q Thank you. Maybe just one quick followup
12 question for Dr. King. In that chapter you do
13 write about the speed with which this
14 legislation was enacted. And you raise a
15 question around the issue of proportionality, in
16 particular whether it's sort of possible to
17 identify whether that response was proportionate
18 to the scope -- scale and urgency of the
19 problem. I wonder if you can just briefly speak
20 to that issue.

21 A (CK) Yes. This was introduced -- as Kevin has
22 said, it had wide-spread support on the
23 political level. It actually started off as a
24 private members bill, so it was introduced by
25 the opposition party. And it's very rare for an

1 opposition party bill to become legislation.
2 There is debate about whether ultimately it was
3 a government bill or an opposition bill, but
4 that just shows how much support this did have.

5 As for proportionality, as a general point,
6 reforming -- reform of the criminal justice
7 system, it should be proportionate to the ends
8 that that particular reform seeks to achieve.
9 So there must be an immediate and serious
10 threat. The measures adopted should be
11 effective in tackling that threat and those
12 measures should go no further than necessary to
13 do so. And this is one of the debates around
14 the NCB approach, non-conviction based approach.
15 So I don't think there's a doubt as to the
16 threat.

17 So organized crime was an issue. There were
18 paramilitary concerns as well. So in terms of
19 the first of those three aspects, I think that's
20 satisfied. You could compare organized crime in
21 Ireland to organized crime in the US or the
22 Mafia in Italy and it does put it into
23 perspective, but certainly for a country of the
24 size of Ireland, criminality was an important
25 concern. The measures adopted should be

1 effective. And I know we will likely come to
2 effectiveness later on, so I won't dwell on this
3 point.

4 And the third point is that the measures
5 adopted should go no farther than necessary to
6 do so. One of the concerns in this regard is
7 that it was such a radical change of approach.
8 And I would agree with the principle that crime
9 should not pay. If someone has benefitted from
10 criminality, you should take that money off of
11 the criminal but contingent on that statement is
12 there must be a conviction.

13 So post-conviction confiscation had been
14 adopted in 1994. Less than two years later
15 there was the shift to the non-conviction based
16 approach. One of my questions raised about this
17 area is whether post-conviction had sufficient
18 time to become embedded and whether the
19 perception that post-conviction confiscation was
20 inadequate, was a justified approach to adopt.

21 And there has been discussion in this
22 context in relation to a particular case in
23 Ireland where a leading drug figure was
24 prosecuted, was convicted, but there were
25 difficulties in -- it was impossible to secure a

1 post-conviction confiscation order because of
2 how the legislation was drafted. The person was
3 convicted in the special criminal court and that
4 meant that post-conviction confiscation was not
5 allowed.

6 That could be seen as an issue of -- a
7 mistake in legislative drafting, and whether it
8 justified a shift towards the non-conviction
9 approach is debatable. There has been criticism
10 that the entire system has changed to address
11 this type of situation. I'm sure there are many
12 other situations where a conviction is not
13 possible, and that's why the non-conviction
14 based approach is seen as very important in that
15 regard. It is an issue I have discussed on
16 numerous occasions with people in CAB, and I'm
17 sure Kevin would want to come in on this point
18 as well, as to whether this does go farther than
19 was necessary.

20 Q Sure. Mr. McMeel, if you'd like to respond or
21 follow up to that, I'll certainly give you the
22 opportunity.

23 A (KM) I know that we're going to deal a little
24 bit later, as Dr. King had mentioned, with
25 effectiveness, so it might be more appropriate

1 to deal with it in detail at that point. But I
2 think that -- in terms of proportionality, I
3 think that it's quite clear that it hasn't
4 solved the problems that it had set out to do.
5 So on that argument alone you can say that it is
6 proportionate because it wasn't using a
7 sledgehammer to crack a nut. The nut still
8 hasn't been cracked some 20 years on. But I
9 do believe, given all that I know, that the nut
10 would be sizably bigger but for it. So I think
11 that it is effective in that sense and I think
12 it is proportionate insofar as it actually
13 hasn't solved the problem wholesale. So we can
14 deal, I suppose, a little bit more with the
15 effectiveness at a later stage.

16 Q Yes, we'll certainly do that. With that, then,
17 why don't I suggest we move into the
18 presentation.

19 MR. McCLEERY: So, Madam Registrar, if you wouldn't
20 mind pulling that up.

21 Q And then I understand we're going to hand the
22 wheel over to Mr. McMeel to take us through
23 that.

24 A (KM) Thank you very much. I'll just request
25 control of the slide, and I think I have it

1 there. Thank you very much, Mr. Commissioner,
2 and Madam Registrar. And this is just, I hope,
3 a brief introductory presentation. It's not
4 particularly detailed, and I just wanted to keep
5 it within the time frame of no more certainly
6 than a half an hour. And so hopefully it
7 achieves that. And if there's any questions
8 that anybody has at any stage during it,
9 please -- okay. Here we go.

10 I hope to cover the structure, organization
11 and operation of the Criminal Assets Bureau.
12 And the second part of the presentation I hope
13 to deal with the restraint of proceeds of crime
14 and unjust enrichment as is provided for in the
15 *Proceeds of Crime Act*. I only deal briefly with
16 that. And then I deal with what I understand
17 are the key safeguards in the system, both
18 institutional, structural and the legal
19 safeguards. And -- because as I understand it,
20 Mr. Commissioner, you've been provided with
21 papers that Dr. King has written in relation to
22 this. And some of those -- I haven't had an
23 opportunity to read all of them certainly in
24 preparation for today, but those that I have
25 read certainly highlight some of the concerns, I

1 suppose, that Dr. King expresses in relation to
2 the two process and fair procedures elements
3 that -- or issues that are raised by both the
4 Criminal Assets Bureau and -- but more
5 particularly by the *Proceeds of Crime Act*.

6 So the first part of the -- is going to deal
7 with structure and operation of the bureau. And
8 this is set out in the *Criminal Assets Bureau*
9 *Act*, 1996 as amended in 2005. And so section
10 3(2) of the CAB ACT, as I'll refer to it, sets
11 out that:

12 "The Bureau shall be a body corporate with
13 perpetual succession and an official
14 seal."

15 So effectively it's establishing an independent
16 statutory body and with the power to hold,
17 acquire, dispose of land or interests in land
18 and the power to sue and be sued.

19 The Criminal Assets Bureau as a structure --
20 and this is something that we cherish and
21 champion over here -- is a multi-agency body. It
22 comprises -- this -- I don't know if you can see
23 my cursor, but the emblem on the left is that of
24 the police force in Ireland, the An Garda
25 Síochána, and the middle one is the customs

1 service, which is part of the revenue. The one
2 with the bird coming from the hand there is the
3 emblem of Irish Department of Social Protection,
4 which is our social welfare agency. And then
5 the bottom is the -- effectively our tax revenue
6 body. And they all essentially come together to
7 make the Criminal Assets Bureau, but the bureau
8 itself is a separate independent statutory body.

9 The structure of the bureau is important in
10 some of the issues that I think that you will
11 need to deal with or you're hoping to tease out
12 today, Mr. Commissioner. And the organization
13 is headed up by a Chief Bureau Officer. You'll
14 see to the left there and below and joined by a
15 broken line is the Office of -- the Chief State
16 Solicitor's Office. The line is broken because,
17 as I mentioned before in reference to my own
18 career history, that is an independent but
19 co-located solicitor service that's provided.
20 It's a body -- it's a law office of the state,
21 and it has its own statutory powers and
22 functions. And they work with the bureau in
23 providing legal advice and solicitor services,
24 but they are independent of the bureau. They're
25 not employees of the bureau, and therefore when

1 this structure was set up, it was hoped that
2 this would help and provide a level of
3 independent legal advice. If the bureau is
4 acting ultra vires and its powers will then --
5 the Chief State Solicitor's Office is there to
6 insist that the rule of law is upheld and
7 nothing unlawful occurs.

8 Beside that you'll see the bureau legal
9 officer. That's my role. And as I mentioned
10 once again in reference to my own current
11 appointment, that role is primarily an advisory
12 role much in the way as an Attorney General
13 advises a cabinet. But -- so I advise generally
14 in relation to all aspects, any legal concerns
15 of the bureau from search warrants,
16 investigations, anything from an operative level
17 up to the very final litigation that ensues.
18 And I provided a director function in relation
19 to proceeds of crime cases. So I'll act very
20 much in the same way as a director of public
21 prosecutions would act in assessing the evidence
22 of a particular case before it's put forward to
23 the courts.

24 And in that regard -- and I mention it
25 later -- I have -- I report to the Chief Bureau

1 Officer, but I am not -- I cannot be dismissed
2 by the Chief Bureau Officer. In fact it takes
3 the Attorney General, the Minister For Justice
4 and the Minister For Finance, effectively, in
5 this jurisdiction to agree and consent to my
6 dismissal. So the Chief Bureau Officer -- and
7 that provides me with an element of independence
8 as well in performing my function as a director.
9 So if the Chief Bureau Officer recommends a file
10 for onward forwarding and for application to the
11 courts, I can veto that decision. And so
12 there's an element of oversight in that.

13 Very importantly from a structural
14 perspective, the bureau is made up of all the
15 various agencies as I mentioned before. But if
16 you see that circle in the middle, it goes down
17 to the investigation teams. And I would say
18 this is one of the crucial structural benefits
19 of the system, of the Criminal Assets Bureau is
20 that the investigation teams themselves are not
21 made up of -- there's not a police investigation
22 team and a tax investigation team and a social
23 welfare investigation team. Each investigation
24 team of which there are seven currently in the
25 bureau, those investigation teams are made up of

1 accountants and of technical experts. We call
2 them financial crimes analysts, and they will
3 work files. Often they will go out on
4 investigations and searches together with the
5 investigation teams, but they will -- the
6 accountants tend to wait for the information to
7 come to them, and then process and prepare
8 financial reports which will be converted into
9 affidavits for the purposes of our applications.

10 And Dr. King had mentioned following the
11 money earlier on, and I suppose the forensic
12 accountants provide an important function in
13 that regard, so ... We have an administrative
14 unit and an IT unit, I suppose, like any other
15 organization there.

16 So what does -- what's CAB's objectives and
17 functions. This is set out in sections 4 and 5
18 of the *Criminal Assets Bureau Act*. And the
19 objectives, the way I describe it is it's what
20 we hope to do or what we're mandated to do, and
21 that is to identify the proceeds of crime and to
22 deny and deprive the proceeds -- those
23 benefitting from the proceeds of crime. And
24 then section 4, so section C, states that we're
25 to -- we're permitted to engage in all

1 preparatory work. I suppose that's conducting
2 investigations.

3 So how do we perform this. And that's set
4 out in section 5 of the *CAB Act*. 5(1), we can
5 do that through -- or 5(a), sorry, is through
6 our Garda powers or our police powers to freeze
7 and seize. And what essentially there --
8 they're referring to there is the *Proceeds of*
9 *Crime Acts* generally. But also the police who
10 are assigned to the Criminal Assets Bureau
11 retain all their powers of arrest and their
12 duties as well. So they're -- they can conduct
13 criminal investigations, as I mentioned earlier
14 on.

15 We also have the revenue function. So
16 since -- I think it's 1983 or 1984 there was a
17 provision of the *Finance Act* which allows the
18 revenue commissioners to tax the proceeds of
19 crime, and that's exactly what -- the function
20 there of the revenue -- our revenue function in
21 the Criminal Assets Bureau is to ensure that the
22 proceeds of criminal conduct is taxed
23 accordingly.

24 And finally under the social welfare
25 function there's two -- there's kind of two

1 subfunctions. There's -- one is to investigate
2 claims from those engaged in criminality, so to
3 assess people who were involved in criminality,
4 their social welfare claims and to see whether
5 or not they're lawfully claiming, if they are
6 claiming. And also if somebody has intimidated
7 or threatened a member of the social welfare
8 office outside of the Criminal Assets Bureau,
9 that person could be nominated as a target for
10 the Criminal Assets Bureau and be dealt with
11 even if they're not involved in criminality. So
12 a simple intimidation or a threat could land
13 somebody to be assigned to the Criminal Assets
14 Bureau for the purposes of investigation under
15 the social -- under our social welfare function.
16 So -- and that's what and how we do.

17 The important thing is -- and this is a very
18 simple slide -- is that we do it all together.
19 And I think that slide highlights another one of
20 the great benefits of -- the structural benefits
21 of the system that we have, and that is that not
22 only when the team room is investigating can
23 they exchange information between the various
24 agencies with ease but also if they're
25 interviewing a particular suspect in relation

1 to -- or a particular, we say target of the
2 bureau -- in relation to their assets, well,
3 they can interview them and that can take place
4 where they're interviewed by a member of the
5 police force, a revenue inspector or a tax
6 inspector and a social welfare inspector.

7 And if you can imagine if somebody is on
8 social welfare and they have declared no tax in
9 the previous 10 years and, to use a very far
10 side example, they're driving a Range Rover.
11 And they can be asked by those three individuals
12 at interview what -- how do they afford the
13 Range Rover. Now, they could turn around and
14 they could say, I'm not telling you. And the
15 fact that they have refused to answer that
16 question can be used -- can be stated in an
17 affidavit in our civil proceedings. There's --
18 and unless -- and even if they're cautioned, it
19 can be stated, although the weight of that will
20 be lessened by virtue of the fact that they've
21 been cautioned prior to making that statement.

22 If they haven't been cautioned, the fact
23 they haven't provided an explanation at a
24 particular point in time when they were given an
25 opportunity to will -- could be deemed a count

1 against them in their -- in defending their
2 claim later on.

3 But let's say they say they turn around and
4 they say well, actually I've been washing
5 windows for the last 10 years. Well, that would
6 immediately cause a concern for the revenue
7 inspector who's saying looking and them and say
8 well, if you've been washing windows for the
9 last 10 years, well, then, you know, you haven't
10 paid any income tax in relation to that. And
11 then that would generate an income tax bill or
12 may generate an income tax bill with
13 considerable interest and penalties. They might
14 have been better off saying nothing. And
15 similarly, if they say either of those two
16 answers, it might have implications from a
17 social welfare perspective if they've been claim
18 it all at the same time.

19 So I think that in essence it's kind of a
20 three-pronged approach, but it works because it
21 means that the individual has, in essence,
22 nowhere to hide. But also if they have a
23 receipt and the Range Rover for -- to continue
24 with that example -- they can show that it was
25 gifted to them or the money was gifted to them

1 and they have the receipt, well, then, you know,
2 that doesn't -- that might mean that they have
3 no -- they have no problems from the police or a
4 tax perspective. It might mean that they have
5 underdeclared an asset in their social welfare,
6 but, you know, that's no different to anybody
7 else, and our investigation could end there.

8 Now, the question is what is CAB, and I've
9 mentioned this already. It's -- this is a case,
10 *Murphy v. Flood* in -- back in 1999. It was a
11 case in which the -- you know, the Irish High
12 Court set out what it understood CAB to be. It
13 says that -- I suppose it defined it by what
14 it's not. It's said it's not a branch of An
15 Garda Síochána, An Garda Síochána once again
16 being our police force. It said -- and just to
17 move down. It said:

18 "It is not a prosecuting body, and is not
19 a police authority. It is an
20 investigating authority which, having
21 investigated and used its not
22 inconsiderable powers of investigation,
23 then applies to the Court for assistance
24 in enforcing its functions."

25 So it's important to note with very limited --

1 to a very limited extent -- and we have
2 administered powers for a temporary period of
3 time, 121 days, which was introduced under or
4 2016 *Proceeds of Crime Amendment Act* -- we can
5 do nothing without judicial oversight and
6 authorization. And so that's -- that is
7 referenced there and -- but we do have that
8 investigative function. It's an independent
9 statutory body which is -- it's not a unit of
10 the police force.

11 So this is our current breakdown of staff.
12 This is from the 2019 annual report, which
13 you'll see there. And it's probably increased
14 slightly since then, but it's as recent as I
15 currently have. So there's 47 -- sorry --
16 members of the police force in the organization.
17 There's 21 members of the Department of Justice.
18 Our officers from the Department of Justice,
19 including myself. And I'm coming from, that's
20 my parent organization for my time in CAB. And
21 there's eight members of the -- so the
22 Department of Social Protection there. And then
23 there's 17 revenue inspectors.

24 So it's a relatively concise organization.
25 There's less than a hundred people. I think

1 it's just tipping on a hundred now. But it has
2 far-reaching effects, and I think Barry might be
3 able to talk a little bit about that later on.

4 But what we do in terms of operationally is
5 we rely on all of our parent organizations when
6 conducting larger operations. So, for example,
7 if our -- if breach and entry is required with
8 the emergency response unit, we can call on the
9 emergency response unit team to come in and
10 assist us. And also local police if we're doing
11 an operation which requires more numbers.
12 Sometimes we can get members of the customs
13 and/or revenue commissioners to come and assist
14 us in operations as well, if required. So we
15 have more reach than those hundred people, I
16 suppose, would suggest.

17 Under section 18 of the CAB Act, this --
18 what this is to do with the appointment to CAB
19 and how that affects a person's -- the appointed
20 officer's, I suppose, duties and obligations.
21 They become -- they are granted, in effect,
22 special leave with pay from the parent
23 organization, but they continue under
24 section 8 -- so section 8 of the CAB Act, they
25 continue to be vested with any pre-existing

1 powers or duties. And so they are -- you know,
2 a police officer who becomes a bureau officer
3 will have all the powers and duties that they
4 would've had as a police officer, but they gain
5 additional powers as a bureau officer.

6 And all of these people act under the
7 direction and control of the Chief Bureau
8 Officer. And that's important as well. So they
9 don't -- whoever they would have reported to
10 previously, it's now the chief bureau officer
11 for the time they're on special leave with the
12 Criminal Assets Bureau.

13 Generally the police stay on a permanent
14 basis. And then the revenue and social welfare
15 staff stay for about five years each rolling --
16 for a rolling period of five years, and they
17 would volunteer to join on those terms.
18 Sometimes there's extensions, but it's generally
19 within five, seven years to try and keep a
20 natural turnover of staff.

21 The duties -- the Chief Bureau Officer is
22 appointed pursuant to section 7 of the *CAB Act*.
23 And his duty is to carry on and manage and
24 control generally the administration and
25 business of the bureau. He or she shall be

1 responsible to the commissioner -- that's the
2 commissioner of the police -- for the
3 performance of the functions of the bureau.
4 Now, that seems like a strange reporting channel
5 given that it's an independent statutory body,
6 but that reporting is through the commissioner
7 to the -- and to the Minister for Justice, and
8 I'll talk about that a little bit later on.

9 But the Chief Bureau Officer is appointed
10 from the ranks of An Garda Síochána -- that's,
11 once again, the police force -- of a rank of
12 Chief Superintendent. So that is, I'm told, the
13 fourth highest rank that you could be in the
14 police force in Ireland. And so one must
15 already be of that rank before you can be
16 appointed the Chief Bureau Officer.

17 This is my -- I report -- sorry, my role as
18 bureau legal officer. The bureau legal officer,
19 it's dealt with under section 9 of the CAB Act.
20 And I report directly to the Chief Bureau
21 Officer, but as I said earlier, cannot be -- I
22 cannot be dismissed by the Chief Bureau Officer.
23 And my duties are to -- and it's quite nebulous
24 and vague, I suppose, in the act. It says to
25 assist generally the bureau in the pursuit of

1 its objections and functions. But my role as a
2 general counsel -- that's an advisory
3 function -- I would direct and function
4 regarding proceeds of crime applications, and
5 also as a receiver under section 7 of the
6 *Proceeds of Crime Act*. Now, that's not -- none
7 of those three are set out in statute, but that
8 has been and is interpreted as what the role is.

9 Bureau officers are appointed pursuant to
10 section 8(2) -- sorry, pursuant to section 8 of
11 the *Criminal Assets Bureau Act*. And 8(2)
12 states:

13 "The powers and duties vested in the
14 bureau officer ... shall be exercised now
15 in the name of the bureau."

16 So that's just -- they retain those power and
17 duties and -- but they're exercised in the name
18 of the bureau.

19 Section 8(4), whoever you performed the
20 duty -- our function at the direction of
21 previously, now you do it to the -- at the
22 direction of the Chief Bureau Officer if you are
23 appointed as a bureau officer.

24 I mention that -- and there's a -- you
25 know, the bureau has to report to somebody, and

1 the way we do it is set out in section 21 of the
2 CAB Act. There's an annual report which goes
3 through the commissioner -- once again it's the
4 commissioner of the police -- to the minister --
5 and that's the minister for justice -- setting
6 out the activities during that year.

7 And Mr. McCleery has, I understand, provided
8 you with a copy of our latest report from 2019.
9 Generally our obligation is to report, I think,
10 within six months of the year having ended. So
11 there's generally -- around this time now we'll
12 be starting to move towards gaining -- gathering
13 all the statistics to -- and preparing our
14 reports setting out key judgments and what has
15 happened in the bureau generally over the
16 preceding 12 months. So that would be -- the
17 one for 2020 hopefully will be published. It's
18 usually off by us by April, but it's published
19 then, again, in maybe June. June usually.

20 Okay. So the *Proceeds of Crime Act*. And
21 these are the acts that -- I think that the
22 commission is most generally interested in, but
23 it's not everything that we do. And this is our
24 non-conviction based forfeiture statute. I
25 suppose this is -- I know that in British

1 Columbia you have a similar system or a similar
2 non-conviction based forfeiture system, so this
3 won't be alien to anybody there.

4 What we do is we move from the criminal
5 towards the asset. Our proceedings are in rem
6 proceedings against the property, and we focus
7 both our investigations and our cases on the
8 assets. People can be fabulous criminals, but
9 if they don't have any assets, then they're of
10 no interest to the Criminal Assets Bureau. And
11 similarly people could have a wealth of assets
12 and unless they're involved in criminality, then
13 they're of no interest to the Criminal Assets
14 Bureau. So we need both criminality and assets.
15 And the person is only of interest to us insofar
16 as they hold assets and they have -- they are, I
17 suppose, the nexus by which we show the
18 criminality.

19 So the proceeds of crime application, how
20 does that work. It's always taken in the High
21 Court, which is an important thing to note. And
22 that's -- there's an initial *ex parte*
23 application, a section 2 short-term freezing
24 order. I'll just run through this.

25 Subsequently -- and that red area there is

1 the main hearing of the action. That's our
2 section 3 order. It's what's somewhat
3 misleadingly referred to an "interlocutory
4 order" in the act, but it's not interlocutory in
5 nature. It's the main hearing of the action.
6 And then finally there's a section 4 disposal
7 order.

8 I just go through what essentially are the
9 main areas in that. First of all, there's a
10 minimum threshold there has to be 5,000 euros
11 to -- before we can move an application under
12 the *Proceeds of Crime Act*. That is a
13 particularly low threshold, I think you'll
14 probably agree. It was up until -- at the very
15 inception of the act up until 2016 it was -- it
16 was 13,000 euros, or 10,000 Irish pounds as it
17 was then. And it was reduced in 2016. And the
18 policy makers, I think, were aware that people
19 were being searched and found with assets
20 between certainly 5,000 euros and 10,000 euros,
21 which were, quite clearly and obviously to the
22 people that were seizing them, assets which were
23 the proceeds of crime and nothing was being done
24 about it because it was below the threshold.
25 And giving us the power to apply for assets

1 between 5,000 euros and 13,000 euros, I think
2 the legislator was giving us a mandate to go
3 after those lower level individuals.

4 Now, I understand that somewhere in the
5 region of about 20 percent of the applications
6 that we move under the *Proceeds of Crime Act*
7 come between 5,000 and 13,000, but most would be
8 at the higher range of that given, as you might
9 appreciate, the legal cost of moving the
10 application in the High Court will be somewhere
11 in the region of 15- to 20,000 euros for a
12 relatively ordinary, uncontested application.
13 So it doesn't make any commercial sense at all,
14 if commercial sense was all you were thinking
15 about, to move an application for something in
16 the region of 5,000 euros.

17 The section 2 order is an order that's made
18 *ex parte*. And it is -- it applies for 21 days
19 after the order is made unless -- and this is in
20 every case we do this -- unless a motion is
21 issued for a section 3 order within those 21 --
22 or 21 days. And if that happens and a motion is
23 issued, well, then the order remains in place
24 until the determination of the section 3, which
25 is, as I said, the main trial. And this is an

1 important -- and I mention this later on -- an
2 important safeguard. Under section 4, when we
3 get a section 3 order, so we -- let's say we win
4 our main trial and we show on the balance of
5 probabilities that the asset is the proceeds of
6 crime. We -- a receivership order will usually
7 happen, and I will be appointed -- the bureau
8 legal officer will be appointed the receiver,
9 and often with power to liquidate and to sell
10 the asset or manage the asset as necessary. And
11 that asset just is kept in a suspense account,
12 effectively, until -- for a period of seven
13 years.

14 And the reason for this is, I think it's
15 widely accepted, that the seven-year period
16 is -- I know it's the period whereby somebody,
17 if they're missing, they cannot be certified as
18 dead unless that seven-year period has expired.
19 And I think it's generally accepted in common
20 law countries as being a period by which if
21 evidence hasn't come to the fore which would
22 prove the contrary, well, then it's never going
23 to -- it's never going to come to hand. So that
24 seven-year period was put in as, I suppose, a
25 procedural safeguard to ensure that anybody

1 that's affected by the orders has plenty of
2 opportunity to find that receipt or to get that
3 affidavit from the person that -- from that
4 benefactor that was -- wasn't around at the
5 section 3 hearing and be able to -- and show
6 that in fact it isn't the proceeds of crime. So
7 that is what we consider one of the important
8 safeguards.

9 What are the reasons for the relative
10 success, I suppose, or the perceived success of
11 the Criminal Assets Bureau. One of the things
12 which we know is different to some of our -- the
13 other jurisdictions is that we're entirely asset
14 focused. Whereas we have powers to investigate,
15 you know, criminal investigations, with the
16 exception of money laundering, we very seldom
17 exercise those powers. Certainly the
18 difficulties in prosecuting a criminal case in
19 terms of resources and the drain that it causes
20 is significant. And we recognize that the
21 Criminal Assets Bureau has been tasked with a
22 specific mandate of denying and depriving, and
23 that is where we focus our resources.

24 So when we look at a case, we don't look at
25 it as -- the secondary option is to go for civil

1 forfeiture. Now, that's the primary option.
2 Either tax or civil forfeiture is our end game
3 when we start out our investigations provided
4 the evidence obviously is there. And we're a
5 multi-agency body, and so that provides that
6 exchange of information within the team rooms
7 that I've mentioned.

8 There's nowhere to hide. You say that
9 because of -- that example I had of the
10 interview where three individuals from three
11 different agencies are being interviewed in
12 relation to the same asset. And the answer --
13 the right answer for one interviewer might not
14 be the right answer for the other. The initial
15 section 2 application is *ex parte* and therefore
16 the investigation is often complete -- you know,
17 mostly complete before the respondent to that
18 application even knows there was an
19 investigation, and that is a distinct advantage
20 from our perspective. Sometimes they realize
21 when they got dropped in the letter box, you
22 know, two or three folders of papers setting out
23 the case against the assets that we're making
24 that it's going to cost them a considerable
25 amount of money to -- or else they will -- you

1 know, they'll have to get legal aid to defend
2 that application. And in the event that they
3 already know that it is the proceeds of crime,
4 that that is the subject matter of the
5 application, it might dissuade them from
6 contesting it.

7 We act obviously under the civil burden of
8 proof. There is -- pursuant to section 8 of the
9 *Proceeds of Crime Act* there is -- belief
10 evidence led. And that's -- it's exclusively
11 the Chief Bureau Officer who the provides belief
12 evidence, although I know the act provides for a
13 senior revenue officer as well to provide that.
14 But in all of the cases that have been taken by
15 the bureau since its inception, it's been the
16 Chief Bureau Officer who provides that belief.

17 Now, the belief evidence is very narrow. If
18 the Chief Bureau Officer believes something to
19 be the proceeds of crime and the value is not
20 below the threshold amount, well, then that
21 constitutes evidence of the fact, but it's open
22 to rebuttal. And it must be reasonably
23 grounded, but that belief evidence can be
24 grounded in hearsay evidence. And that is
25 crucial to our success as well. I know Dr. King

1 has mentioned -- and certainly in one of his
2 papers he focuses a lot on this, although it's
3 mentioned in a few in terms of due process and
4 considerations and concerns, so we'll perhaps
5 tease that out at a later stage.

6 Once the belief evidence is accepted, and
7 that's a big -- that's a big step, but once that
8 is accepted as being reason to be grounded, the
9 onus then shifts on the respondent to show why
10 it's not the proceeds of crime. Now, some
11 people think that there's a reversal of the
12 burden of proof. That's not the case, but there
13 is a shifting of the burden of proof once we
14 establish on a prima facie basis that the belief
15 evidence is reasonably grounded.

16 And then -- and this is something else that
17 Dr. King mentions in one of his paper is
18 anonymity of civilian bureau officers, and that
19 is -- and in fact members of staff at the
20 bureau. So that means that bureau officers and
21 members of the staff of the bureau are protected
22 by statute. They do not have to reveal their
23 names in the course of proceedings or in the
24 course of their operations or duties. And in
25 fact if you ring the office of the Criminal

1 Assets Bureau, the administrative officer often
2 is to answer whoever -- who answers the phone
3 will give you a number. She will identify
4 herself as administrative officer number 8 or
5 such like, and -- but other than that, the
6 conversation will go as normal.

7 And similarly, when giving evidence,
8 civilian bureau officers and members of the
9 staff of the bureau, so forensic accountants and
10 technical experts, give their name -- sorry, do
11 not give their name in those proceedings, but
12 they walk into court. They're not behind a
13 screen as such. They will give a number. And
14 so financial crimes analyst number 4, for
15 example, will be FCA4. They will identify
16 themselves as FCA4. But an application has to
17 be moved pursuant to section 10 of the *Criminal*
18 *Assets Bureau Act* for that to be permitted.

19 So I've mentioned it throughout that, just
20 the safeguards in it -- inherent in the system,
21 but I'm just go through a few. I don't know
22 if -- I just think that this might be helpful
23 given the context of what we're hoping to
24 discuss. First of all, the bureau officers when
25 appointed retain all of the duties inherent to

1 the role, you know, for example, the duty to
2 uphold the law.

3 CAB is an independent statutory body and as
4 such is not required to report directly to any
5 of its constituent agencies. So it's free from
6 outside influence and interference. And
7 essentially the decision as to who becomes a
8 target of the Criminal Assets Bureau is made in
9 the Criminal Assets Bureau. It's made by
10 Criminal Assets Bureau officers and therefore
11 it's protected, I suppose, from, let's say,
12 political interference or something like that.

13 The operational head is the Chief Bureau
14 Officer and the legal head is the bureau legal
15 officer. And I'd mentioned, I think, on a
16 couple of occasions that my role has an advisory
17 interacting function. The bureau legal officer
18 while reporting cannot be dismissed directly by
19 the Chief Bureau Officer and therefore there's
20 an independence piece there, one would hope, in
21 ensuring that the cases that get before the
22 courts have at least been vetted from an
23 evidential perspective, that they've met the
24 evidential threshold. But obviously if they
25 haven't, we could come under some considerable

1 judicial criticism for prosecuting cases which
2 haven't met that threshold.

3 And the Chief State Solicitor's Office is
4 the provider of solicitor services and legal
5 advice to CAB. And once again, they're
6 independent, and one would hope that they would
7 uphold their duty to adhere to the rule of law
8 and the constitution in performing that
9 function.

10 Sorry. All proceeds -- okay. So I'll just
11 make sure I haven't gone too many slides --
12 yeah. So this next slide, like, all proceeds of
13 crime and proceedings take place before the High
14 Court, which is the highest court of first
15 instance in Ireland. There's a full unfettered
16 right of appeal to the appellant courts. So --
17 and therefore applications are subject to the
18 highest possible level of independent judicial
19 scrutiny. It's not administrative. There's no
20 administrative rubber-stamping involved in what
21 we do at all. It has to go before the court.
22 And ultimately if you want to hold -- we can
23 hold onto something for 21 days without
24 approaching the court, but after that we have to
25 hand it back unless we've gone to the High

1 Court. So that's an important, I suppose,
2 safeguard.

3 Similarly, I've mentioned that the process
4 is staggered in three main steps. The first
5 step is *ex parte*, so the respondent has no
6 opportunity to address the court at that
7 juncture, but the final two steps provide an
8 opportunity to fully contest. And those final
9 steps, it takes seven years unless consent is
10 given. It's interesting, when people consent,
11 there's -- about 40 percent, I would say, of our
12 cases are dealt with on consent. So the person
13 invariably is conceding that the assets that
14 we've targeted are the proceeds of crime. I
15 think people sometimes are surprised by the
16 level of cooperation that we get from some of
17 the respondents. But this provides -- but these
18 seven years that are required that we have to
19 wait out provides ample opportunity to
20 challenge. And there's a provision under
21 section 3(3) of the act whereby any interested
22 party can apply to have the order vacated or
23 varied on the basis that some or all of the
24 assets, the subject matter of that order, are
25 not in fact the proceeds of crime or if an

1 injustice would occur if the court deemed that
2 it was the provides of crime.

3 So they have to show that the -- so yeah.
4 It shows that the freezing order is not the
5 proceeds or crime or that an injustice would
6 occur. So additional procedural safeguards
7 are -- the default hearing is on affidavit
8 and -- but invariably if somebody wants to
9 contest, a full preliminary hearing will ensue,
10 including cross-examination of all witnesses.
11 And so that is permitted and is often availed of
12 by respondents to our applications. And the
13 initial burden of proof is on the bureau like
14 any civil case.

15 The legal aid is available to those -- to
16 those who qualify under its terms. And they
17 would have to be of insufficient means to
18 prosecute the -- or to defend the application
19 themselves. It has to be a Criminal Assets
20 Bureau case to avail of that particular scheme,
21 and there has to be some special circumstances
22 which will permit it. Special circumstances are
23 interpreted quite broadly. And if, for example,
24 a family home is involved, that would certainly
25 qualify as special circumstances as the

1 jurisprudence would suggest.

2 At all the steps -- so the section 2 --
3 well, the section 3 stage and the section 4
4 stage, and the section 3(3), if -- even if the
5 court is happy that it is the proceeds of crime,
6 if an injustice would -- if that would cause --
7 if making the order would cause an injustice,
8 the court should not make the order -- shall not
9 make the order. So there's a provision whereby
10 a safeguard there whereby the courts can -- will
11 grant the order if it deems an injustice to
12 occur -- would occur.

13 And in addition there's -- compensation can
14 be provided in the event that an order is made.
15 For example, we seize bitcoin, as the
16 cryptocurrencies are one of the things that
17 we're finding ourselves involved with more and
18 more recently. We seize Bitcoin and we find out
19 that the person actually isn't involved in drugs
20 but that they're involved in -- I don't know --
21 trading online in -- I don't know; whatever it
22 is -- some legitimate product or goods, and we
23 freeze the order. And bitcoin is at a dollar,
24 and then the by the time we -- and we sell the
25 bitcoin as part of a receivership order and then

1 it goes up to \$4. Well, then we're stuck for
2 the difference, and we have to pay the
3 individual back in full for the amount that
4 they're out of pocket if we are found
5 subsequently to have obtained the order
6 incorrectly.

7 So I think that that's all I have just for
8 that. I hope I kept it within the 30 minutes
9 allotted. I think I may have, but hopefully if
10 there's -- that might prompt a few questions
11 from various people.

12 Q Yes. Thank you very much for that. That was
13 enormously helpful.

14 MR. McCLEERY: Mr. Commissioner, can we have that
15 slide deck marked as the next exhibit.

16 THE COMMISSIONER: Yes. Very well. That's -- I
17 think we're at 387.

18 THE REGISTRAR: 386 Mr. Commissioner.

19 THE COMMISSIONER: Thank you. 386.

20 **EXHIBIT 386: Slide deck - Criminal Assets**
21 **Bureau Structure and Legislation - Kevin**
22 **McMeel - December 16, 2020**

23 MR. McCLEERY:

24 Q And I'd like to move into some followup
25 questions, first around the structure and

1 operations of the Criminal Assets Bureau and
2 then moving into the mechanics of the forfeiture
3 process. Before we to that, though, Dr. King, I
4 might give you a chance to comment or add to
5 what Mr. McMeel has said while it's still front
6 of mind.

7 A (CK) I'm happy to come in on this. Do you want
8 me to address some particular aspects of what
9 has been raised in the presentation?

10 Q I'll have some followup questions about various
11 topics. I just thought if -- I noticed you were
12 taking some notes, so if there was anything in
13 particular that was front of mind right now you
14 wanted to say, I thought I'd give you the
15 chance, but we can also move forward into those
16 specific questions if you prefer.

17 A (CK) I'm happy to address your specific
18 questions.

19 Q Great. Thank you. I think the first thing I'd
20 like to delve into in a little bit more detail
21 is the multi-agency structure of the bureau. I
22 think it's evident from the presentation from
23 some of what Dr. King has written that it's one
24 of the most distinctive and significant features
25 of the bureau.

1 And I thought maybe, Detective Inspector
2 Butler, I'll turn to you first and see if you
3 can comment and discuss a little bit about how
4 the members of the different agencies sort of
5 work together on a day-to-day basis and from
6 your perspective how you see the value of this
7 structure to the bureau.

8 A (BB) Sure. Yeah. I suppose coming from the
9 background that I come from, my background is
10 primarily district detective unit. It was a
11 detective sergeant for 11 years, so I suppose I
12 worked in a team room purely with detectives and
13 we were tasked with investigating crime on that
14 basis. I suppose the CAB is unique in that the
15 team rooms -- most of the team rooms consist
16 primarily of detectives, four or five
17 detectives. We will also have a number of
18 revenue bureau officers, one or two depending on
19 the size of the team room, and also a social
20 welfare bureau officer. And each of the
21 individuals has direct access to their own home
22 agency IT system. Which means that at any
23 evaluation or assessment stage in a case that
24 information is available from their own home
25 agency straight away. So it means the

1 conversation in the room can revolve around the
2 various elements, the various intelligence and
3 information that's available to the individuals
4 from the different agencies.

5 So I think that's hugely significant from an
6 investigator's point of view. Certainly trying
7 to source that kind of information as a
8 detective out in the station, trying to get that
9 full picture is a very slow, very cumbersome
10 process. So I think the Criminal Assets Bureau
11 has a huge advantage in that respect. It's able
12 to access that information in the team room.

13 Kevin also mentioned the fact that we don't
14 have revenue bureau officers together, social
15 welfare bureau officers together. The team
16 rooms operate with each of the various agencies
17 within that room. I think that's hugely
18 important. The relationships develop within
19 that room and that room is responsible for the
20 targets that are allocated to that room over the
21 course of a given year, and each of the various
22 individuals in that room contribute.

23 Some of the targets will be dealt with via
24 revenue. Some will be more suitable to be dealt
25 with by social welfare and some will be dealt

1 with by the proceeds of crime legislation. So
2 we see a mix and a variation over the course of
3 a year. Some rooms may find that they're
4 weighted more towards revenue outcomes. That
5 can vary, but I think the option is there, and
6 the option is there to see what's the most -- I
7 suppose the most straightforward way to address
8 or deal with a specific target.

9 So I think on that basis it's unique and
10 it's certainly a hugely efficient way to do our
11 business, and certainly from a practitioner and
12 an investigator's point of view it works. And
13 as I say, I've seen it from both sides of the
14 fence and I can certainly vouch for that.

15 Q Thank you very much. Dr. King, I saw you
16 nodding along as Mr. McMeel was describing the
17 significance of the multi-agency structure. And
18 I wonder if you might comment from your
19 perspective on how you see the significance of
20 that aspect of the system.

21 A (CK) Sure. Before I say anything about the
22 multi-agency approach I think it's worth just
23 saying something about my approach to this. So
24 obviously I have some scepticism about the
25 non-conviction based approach, and I suppose

1 that's one of the reasons I am here today, to
2 give that other side. But I am not criticizing
3 for the sake of criticizing. And it is often
4 said by law enforcement that if only academics
5 could see what they see, that we would be much
6 less critical. That might be well true. But we
7 are -- as academics we are independent and we
8 can only go by what we have before us, whatever
9 it is. Legislation, policy reports, case law,
10 et cetera.

11 So as a general point, if law enforcement
12 were more willing to be open, to be more
13 transparent with researchers, I think that would
14 be a very positive development. And if we look
15 at the Netherlands, for example, where there are
16 excellent links between researchers and policy
17 makers and there is access to relevant, albeit
18 redacted, data to inform policy analysis, I
19 think that would be a really useful model to
20 look at.

21 And I'm not making a criticism of CAB here.
22 CAB has actually become much more open, much
23 more willing to engage with external
24 stakeholders in recent years. So if you look at
25 the annual report, compare the report from its

1 initial years to the current document that the
2 commission has before it -- I think it's 92 or
3 94 pages -- it's much longer now. There is a
4 lot more detail in the report, and I think that
5 is a really positive development.

6 We also see CAB is active on social media
7 with the Twitter account and Facebook. Again, I
8 think that -- both of those are really positive.
9 CAB have actually spoken at some conferences
10 that I have organized. CAB have been willing to
11 speak with me about my research on *POCA*. And
12 that is very different to when I started my PHD
13 in Limerick in 2005. And it is really useful
14 for me to be able to talk to CAB to hear that
15 perspective, not just to hear the other side.

16 In terms of the multi-agency approach,
17 then, I have conducted empirical research in
18 recent times. So my research has developed from
19 a doctrinal analysis of legislation and case
20 law, for example, to interviewing stakeholders.
21 And this multi-agency approach was held up by a
22 number of different practitioners in this
23 research. And a key aspect that was emphasized,
24 as you've already heard, is that you do have
25 these different people from different

1 backgrounds sitting around the same table
2 working together. So whether it be from CAB
3 obviously talking about that perspective, but
4 equally people from the other side, if you want
5 to label it that. So defence solicitors, for
6 example, or barristers who act against CAB.
7 They all recognize the importance of this
8 multi-agency approach.

9 And another thing that is emphasized here
10 is that the work of the different teams, it is
11 backed up by the ready availability of legal
12 advice, so in-house who -- could be, in this
13 instance, going to Kevin. And it's a case of
14 often you might have to walk down the corridor
15 to ask a question, and that can be contrasted
16 with different agencies.

17 And the CAB approach with having the bureau
18 legal officer in house dare to ask any question
19 as the investigation is ongoing has been flagged
20 as an approach that other agencies might
21 actually learn from. So, for example, other
22 units of the police should be open to that type
23 of approach. And that is coming from, as I say,
24 people who act against CAB in proceedings.

25 So that's some positive points about it.

1 settlement, so how many cases are settled, is
2 something that the bureau is keen on. I note
3 that Kevin mentioned that 40 percent of ours are
4 consent orders to this. From my research it
5 appears that enthusiasm or willingness to settle
6 can vary from Chief Bureau Officer or bureau
7 legal officer or a combination. So it seems --
8 and this is the impression from defence
9 solicitors -- that some combinations of Chief
10 Bureau Officer and bureau legal officer are more
11 open to settlement where others are more
12 determined to go for the full amount following
13 trial of the issue.

14 In the UK there is a much a more evidence
15 preference for settlement, and actually it was
16 said to me that without settlement *POCA* would
17 not work in the UK. In Ireland it has been said
18 that -- CAB have been described as playing hard.
19 So they might have a very rigid approach early
20 on. As the case coming nearer to a trial, for
21 example, then there might be more common grounds
22 between the other side and the bureau and there
23 might emerge some room for settling. But it was
24 emphasized as a starting point CAB do start off
25 as playing hard. And this does go back to the

1 multi-agency approach as well as CAB coming at
2 the target from the different angles. But it
3 was also stressed here that CAB has been
4 pragmatic in decisions whether or not to engage
5 in settlement discussions.

6 Q Mr. McMeel, maybe I'll see if you have -- wanted
7 the chance to respond and speak to the role of
8 settlement in the Irish asset forfeiture regime.

9 A (KM) Yeah. No, I think that Dr. King is
10 absolutely correct in his assessment there. We
11 certainly would -- well, I would agree just on a
12 basic level that we play hard, and the kind of
13 people that we're playing with I think require
14 it. And there is an openness to settlement.
15 And Dr. King is once again correct in terms of
16 my own experience in the eight and a half years
17 that I've been here that there has been greater
18 openness in terms of, you know, the management
19 and the individuals that are involved, and I
20 don't think that that makes it any different to
21 any other organization in that regard. Some
22 people are more inclined towards finding kind of
23 a consent approach and others are more
24 adversarial. And I'd like to think I'm in the
25 former category.

1 In my view there is -- and this is an
2 important consideration as well. The Criminal
3 Assets Bureau is increased since 2016. It
4 almost doubled the number of proceeds of crime
5 applications that it moves in a given year and
6 has maintained that since 2016. And as a result
7 I suppose it's no different to, let's say, the
8 tax authorities insofar as if it to -- if it was
9 required to prosecute and go to trial on every
10 single case that it applies for, it would be
11 tied up, and I think that that would be an
12 unfortunate use of its resources. So settlement
13 is certainly something that we see more and
14 more. And there can be reasons why individuals
15 would seek to settle matters, you know, out of
16 court, and then -- and it can be to the mutual
17 benefit of both.

18 So I disagree with very little that Dr. King
19 is saying in regards to that aspect other than
20 I'd like to think that I'm one of the bureau
21 legal officers that's perhaps more open to the
22 idea of settlement provided the terms are
23 acceptable to the bureau, you know.

24 Q Thank you. I wonder if maybe tying this back to
25 the multi-agency structure, Mr. McMeel, can you

1 speak to whether settlements -- so we're
2 speaking about whether individuals can sort of
3 trade off perhaps a tax bill to avoid proceeds
4 of crime proceedings, or once those streams are
5 separated are they sort of in one or the other?

6 A (KM) The reality is that often -- for the most
7 part people are selected either in one or other.
8 So if it's a tax investigation, it's maintained
9 as a tax investigation. Or a proceeds of crime
10 investigation, then it remains a proceeds of
11 crime investigation. In certain circumstances
12 tax bills are raised against individuals that
13 are also the subject matter of a proceeds of
14 crime investigation.

15 The general rule that we apply in the
16 Criminal Assets Bureau is if the assessments are
17 raised or concern the same assets that are the
18 proceeds of crime and subject to the proceeds of
19 crime application, if the person is willing to
20 forfeit those assets, well, credit be given
21 against their tax bill for that forfeiture. But
22 it can be important in bringing somebody to
23 settlement because you can imagine from a
24 coercive perspective, you can ensure that a
25 settlement occurs. Because if somebody in the

1 rare occasion that they would win a proceeds of
2 crime -- statistically rare occasion that people
3 would win or partially win a proceeds of crime
4 application against the Criminal Assets Bureau,
5 well, they would still have to successfully
6 appeal their tax bill in order to get -- to get
7 away from the clutches of the Criminal Assets
8 Bureau in that regard.

9 So often they will come to the table and the
10 propositions that we would hear would usually
11 involve a global settlement, which would involve
12 either a further stage payment that they would
13 settle their ultimate bill or they would be able
14 to pay it upfront and -- so yes, it's very much
15 using the various tools available to the
16 Criminal Assets Bureau. And using them
17 sometimes in a dual approach can provide a
18 pincer movement as such, and can provoke or
19 trigger a settlement that way.

20 Q Thank you. I wonder if we might move now to
21 sort of the very beginning of CAB's process, and
22 the subject of how the bureau identifies assets
23 to target for investigation.

24 And, Detective Inspector Butler, I might
25 come to you to start off this conversation. The

1 2019 annual report refers to CAB's network of
2 divisional asset profilers. I wonder if you can
3 tell us a little bit about that network and who
4 it's comprised of and the work that they do with
5 the bureau.

6 A (BB) Sure. Yeah. The bureau currently has
7 474 trained asset profilers, and the profilers
8 are trained by the Criminal Assets Bureau. The
9 profilers consist mainly of police officers but
10 not solely of police officers. I think about
11 450 are police officers. The remaining
12 profilers come from different agencies and
13 different organizations.

14 But the role of the divisional asset
15 profiler -- I think Kevin earlier mentioned the
16 term "reach." And really, I suppose, because of
17 the relatively small size of CAB, and in order
18 to identify targets and to maintain a national
19 reach in a country of -- shy of 5 million
20 people, it's essential that we have a national
21 reach. We can't solely function in the main
22 urban centres, Dublin, Cork and Limerick. We
23 need to be out in every town and village in the
24 country. So the profiler effectively is the
25 eyes and ears of the bureau on the ground. And

1 primarily the police officers that perform this
2 role for us, ideally the people we train are
3 active front line police officers, generally in
4 local detective units, local drug units, local
5 community policing unit, people who have a
6 strong sense of what's going on on the ground in
7 any community. People who are out and about
8 policing, searching, investigating crime. A
9 real sense of what's happening.

10 And I suppose for the bureau to identify --
11 or to remain relevant, really, and to perform
12 the role that we're tasked to perform it's
13 essential that we target the right people. And
14 that involves both high-end targets and
15 street-level targets. The high-end target is
16 certainly somebody we identify by our links with
17 our own national intelligence service, and
18 that's a conversation we have on a daily basis.
19 It certainly assists us in identifying the
20 people we should be targeting at a high level.

21 The people who can be most significant or
22 have the most significant impact in a community,
23 in a village, in a town are the targets
24 generally that our profilers will identify. And
25 these are people where generally speaking the

1 assets we will be targeting would be at the
2 lower end of the spectrum but not always. But
3 certainly the minimum threshold, we talk about
4 5,000 euro, where we're dealing, I suppose, in a
5 lot of cases with people involved in the sale
6 and supply of controlled drug locally. People
7 who are maybe relatively young, who are starting
8 to accumulate wealth and assets, people who
9 certainly need to be targeted and have their
10 assets targeted. These are the people that
11 generally our profilers will identify for us.

12 So I suppose the role of the profiler is
13 about -- really it's identifying these targets
14 locally. And it is -- in a lot of respects it's
15 a two-way street. They also perform a role
16 where they identify targets. There are also
17 people that the bureau can task with performing
18 local checks, local profiling. So where maybe
19 somebody is identified as part of a bureau
20 investigation and additional work need to be
21 done at a local level, the profilers are certain
22 a resource to the bureau.

23 Just, I suppose, the nature of the training
24 that those profilers are provided with. The
25 bureau provides them with access to our land

1 registry platform, the company register, the
2 company registration office platform, these are
3 platforms they wouldn't ordinarily have access
4 to. So once they're trained they're given
5 access via the bureau. And it means they can
6 conduct investigations locally into assets.

7 And they also link in when they're trained
8 with a specific named team room. So the trained
9 profiler is allocated to a team room and they
10 have access to the team room, to the revenue
11 officers, to the social welfare officers as
12 well. So there's a good working relationship
13 developed.

14 So really it's -- the role of the profiler
15 is hugely important to the bureau. It's hugely
16 important to maintaining the relevance and the
17 significance of the targets we select. So I
18 suppose in summary that's the role that the
19 profiler performs.

20 Q Thank you very much. You mentioned that they're
21 typically front line police officers. I take it
22 they remain in that role once they become part
23 of the asset profiler network and they don't
24 become employees of the Criminal Assets Bureau;
25 is that correct?

1 A (BB) No, they're employed locally as police
2 officers. They perform their normal policing
3 tasks. And I suppose An Garda Síochána, like
4 every large organization, we certainly have
5 movement and turnover over time, so it's
6 important that we continuously retrain. So we
7 try to run two training programs every year and
8 targeting up to a hundred new profilers. And
9 that ensures once we select the right people
10 that we constantly have people who are out there
11 on the front line because as people's careers
12 progress and change, they move into different
13 areas. So it's crucially important that we have
14 those people on the ground around the country.
15 And that's really the objective of the program.

16 Q Thank you very much. I wonder if you can
17 comment as well on the extent to which the
18 information CAB receives may be dependent on
19 dictated by the local -- priorities of local law
20 enforcement detachments.

21 And maybe to illustrate the question I can
22 give an example. If in a particular community,
23 say, there was a need for a focus on drug crime
24 and maybe a lesser emphasis on something like
25 fraud, is the Criminal Assets Bureau likely to

1 get far more information about -- from that
2 detachment about drug crime and maybe less about
3 other types of crime that are sort of lower
4 priority for that detachment?

5 A (BB) Well, I suppose in the Criminal Assets
6 Bureau we're always open to information from any
7 source. Certainly -- and I suppose the
8 prioritization and how the bureau choose to
9 prioritize targets can -- it can occur based on
10 local issues. A lot of that -- you know, what
11 we regularly see are maybe local criminal feuds
12 which flare up, and certainly the Criminal
13 Assets Bureau would seek to be actively involved
14 in any way we can in targeting the key
15 individuals in such feuds. So, you know, it
16 happens in every country and it happens in every
17 city.

18 So that's something that we try to maintain
19 our relevance by being available and being
20 dynamic and being willing to respond quickly to
21 feuds as they develop. So that's something
22 that's crucially important and it's something we
23 certainly emphasize and we try to do.

24 So I don't know if that answers you
25 question, but that's certainly -- when it comes

1 to targeting locally and prioritizing, and I
2 suppose the greatest urgency, it's certainly
3 something we're willing to target if it's a
4 priority. Absolutely.

5 Q Thank you. Yes. And can you comment, then, on
6 whether there are other significant sources of
7 information CAB is receiving that would help
8 identify targets aside from the asset profilers?

9 A (BB) Sure. Yeah. Well, obviously the police
10 intelligence network is hugely important and
11 hugely relevant to CAB, and that's certainly a
12 major source of information for the Criminal
13 Assets Bureau. We would certainly receive
14 referrals from the other policing units,
15 national units, from drugs and crime to economic
16 crime to the various national units that work
17 within the An Garda Síochána network.

18 And we also receive a lot of what we would
19 call GCRs, which are good citizen reports. And
20 GCRs are something that we receive and we assess
21 as we receive them. We have an intelligence and
22 assessment office, and any information that we
23 receive we would assess through them. What we
24 have noticed and what we have found is where CAB
25 are active, active on the ground in a particular

1 area, active in the media even in a particular
2 area, it can lead to a parallel surge in
3 information received from the local community.

4 We certainly had a program that ran over a
5 number of years where the Chief Bureau Officer
6 sought to go out into the community and speak to
7 joint policing committees up and down the
8 country. There's 36 of them. We certainly
9 noticed -- at whatever committee the Chief
10 Bureau Officer spoke or whatever committee he
11 addressed, we've certainly seen an increase in
12 information from that general area. People
13 became aware of CAB, became aware probably
14 through local media as well, the coverage that
15 CAB received, and we've seen a parallel increase
16 in information received.

17 So various sources at a high level from the
18 national intelligence to the profilers to GCRs
19 and to other policing bodies. Also referrals
20 coming in from our colleagues in revenue,
21 customs and social welfare. So all of those
22 various sources act as sources for CAB.

23 Q Thank you. You mentioned in that response the
24 work of the intelligence and assessment office
25 in assessing targets once they're identified.

1 And I wonder if you can speak in a little more
2 detail about the work that group does and how
3 they go about assessing targets to the extent
4 you can comment on that.

5 A (BB) Sure, yeah. Just from a structural point
6 of view, I suppose, our profilers feed into that
7 office and certainly any new targets that we're
8 seeking to assess we have -- in the same way as
9 we have in our team rooms, we have police
10 detectives, we have revenue bureau officers and
11 social welfare bureau officers attached to our
12 intelligence and assessment office. So really
13 their role and their function there is to assess
14 and evaluate a target that's submitted to the
15 Criminal Assets Bureau.

16 When they've completed their assessment, we
17 have an admissions board, and our admissions
18 board consists of the head of each of the
19 individual agencies attached to CAB. The
20 admissions board meets once a week and reviews
21 new targets that are submitted by the
22 intelligence and assessment office and makes a
23 call then on whether they're suitable targets or
24 not. And the assessments are conducted over
25 various categories. Some targets may well be

1 suitable for proceeds of crime, for revenue, for
2 social welfare or may tick all of those boxes.

3 So that's the basic assessment process. And
4 the admissions board are kind of the final
5 arbiter, the final decision maker as to whether
6 a target should be taken on. And at that point
7 if a target is deemed suitable, they will then
8 be allocated to a particular team room, and then
9 the full investigation then commences at that
10 point.

11 Q Thank you very much. I'll maybe offer a chance
12 for Mr. McMeel or Dr. King to comment on any of
13 that, barring any interest in weighing in.

14 A (KM) I might just mention there, I mean, it's --
15 I think it's very simple -- our law is very
16 simple insofar as it allows us to proceed to act
17 against any asset which is deemed to be the
18 proceeds of crime. It's not discriminatory in
19 terms of what that crime could be, and it
20 doesn't stop us. I mean, we've moved
21 applications from anything from your traditional
22 organized crime to things such as environmental
23 crime, illegal dumping, white collar crime,
24 corruption and everything and anything in
25 between. I mean, you know, things like burglary

1 and -- but the vast majority -- and I suppose
2 this kind of ties in with the idea, I mean, we
3 have to -- the vast majority of what we deal
4 with would be in the traditional either burglary
5 or theft and/or drug-related crime. And that's
6 where we're at at the moment. But our model
7 doesn't preclude us from moving into different
8 directions. And I could certainly see
9 environmental crime, for example, being
10 something that would be a more -- would be a
11 growth area for -- in the Criminal Assets Bureau
12 in the coming years, and no more than it has and
13 is becoming an area of greater concern globally.

14 So the idea of identifying targets, as I
15 say, we're not discriminatory in terms of what
16 we identify. We have a finite resource in the
17 Criminal Assets Bureau, so it's not necessarily
18 the case that we're going to be able to deal
19 with every target equally and as quickly. And
20 we have to -- if you can imagine, we've
21 mentioned there's only a hundred people in the
22 Criminal Assets Bureau. And I think I'm correct
23 in saying that we have -- currently we have
24 1,600 targets identified in our books or in and
25 around that. So even a simple mathematic will

1 tell you that we're not going to be in a
2 position to deal with all of those targets at
3 the same time.

4 And therefore those targets -- sometimes
5 it's not dealt with on a commercial basis.
6 Sometimes it's dealt with, as Inspector Butler
7 has mentioned there, areas of greatest concern.
8 Something like a feud, the assets might be lower
9 in commercial value than in an alternate target,
10 but they will be prioritized simply because
11 they're causing the most difficulty. And the
12 idea that extra attention from another arm of
13 law enforcement against a particular gang or a
14 particular feuding group will hope to dampen
15 down whatever feud is happening. Extra
16 attention sometimes is all that's required to
17 dampen down violence.

18 So something like that would be a priority
19 for us. But, as I say, we're not discriminatory
20 in terms of the targets we take, by we have a
21 finite resource.

22 Q Thank you. The next --

23 A (CK) Can I just come in on that as well. So
24 going back to what DI Butler spoke about with
25 the asset profilers a well. That is an area

1 that has been flagged up in my research as an
2 example of good practice for law enforcement
3 elsewhere. And I do know that law enforcement
4 here in the UK, for example, has used a CAB
5 model for profilers to look at expanding that or
6 adopting it in the UK.

7 A separate point to mention, just to pick
8 up on DI Butler's point about the churn of
9 people changing jobs. One of the issues that
10 I've come across is former CAB officials. So to
11 rewind for a second. When a Garda is promoted,
12 they are generally promoted to a different role
13 in a different part An Garda Síochána, moving to
14 a more senior position in another unit. And in
15 some instances Garda bureau officers have
16 applied for promotion while they're in CAB. If
17 they're successful, they're then promoted
18 elsewhere, so they move on from CAB as a result.

19 But the CAB approach then becomes embedded
20 in that other unit that they are transferred to.
21 So let's say, for example, a Garda bureau
22 officer is promoted, moves to the national drug
23 unit. If they're heading up there, the drug
24 unit, for example, they have the skills or
25 expertise from their time at CAB and so the

1 approach becomes embedded there.

2 Of course there are difficulties.

3 Difficulties have been flagged in my research
4 with this automatic approach that you are
5 promoted outside your current position, to CAB
6 end up losing experienced staff, for example.
7 It has been flagged this -- the lack of
8 possibility of internal promotion can be
9 problematic in some instances. I know that
10 there were some suggestions that that might be
11 reviewed since I conducted my research. I don't
12 know if there have been any recent developments
13 in that regard, but I know of people outside
14 the bureau who have acted against the bureau,
15 have flagged up the point that it can almost
16 dissuade specialization. This is a policy of An
17 Garda Síochána rather than a CAB issue. There
18 are pros and cons of that.

19 Q Thank you. Before I move to the next topic
20 maybe I'll just leave a chance for Mr. McMeel or
21 Detective Inspector Butler to follow up or
22 comment on that.

23 A (KM) No, there's no dispute. That is a general
24 policy in the An Garda Síochána. I think that
25 there's been a very slight kind of withdrawal

1 from that policy in certain circumstances, but I
2 do know that if somebody is promoted from within
3 CAB -- sorry, promoted in CAB, they would
4 automatically venture to a unit outside of CAB,
5 and that does lead to some concerns in terms of
6 losing the corporate knowledge.

7 And if you can imagine, moving -- it's often
8 quite a sea change for -- and perhaps Detective
9 Inspector Butler would be better placed to talk
10 about this. But it's a sea change for police
11 officers who are used to dealing in the criminal
12 justice sphere in everything that they do and
13 certainly coming to try and deal with civil law
14 investigations and proceeds of crime
15 investigations. That there's a definitely a
16 different way of doing things, and sometimes it
17 takes a little while to learn the system, and
18 obviously once that's learned, we do lose
19 experience. But I don't think we're any
20 different to any other organization in that
21 regard.

22 But all of the points that Dr. King, as far
23 as I know, said there in relation to the loss of
24 experience on promotion is true and correct.

25 (BB) I can make a comment on that too, and

1 certainly I think that's the rationale behind
2 the movement back into frontline policing, and
3 there is a strong cogent argument for it.

4 Q Thank you. The next issue I hope to address
5 will be some of the powers granted to Criminal
6 Assets Bureau officers under the *Proceeds of*
7 *Crime Act* and *Criminal Assets Bureau Act*.

8 Mr. McMeel, I'll begin with you, if I can.
9 You mentioned in the presentation that CAB
10 members retain the powers of their home agencies
11 when they join the bureau. I wonder if you can
12 speak to some of the additional powers, in
13 particular the CAB search warrant authority and
14 production order authority and sort of what
15 those add to the work being done by the bureau.

16 A (KM) Yeah. The powers are set out in the most
17 part in the *CAB Act*. Under section 14 there's a
18 power to search, a search warrant power. And on
19 section 14(a) there's a power -- it's a
20 production order power. And a CAB officer can
21 apply to a district court and judge to -- on
22 foot of an information for a warrant in both
23 regards, and those warrants are specific to
24 proceeds of crime investigations as opposed to
25 criminal investigations. And the CAB -- or the

1 bureau officer will have to show in their
2 information why they suspect that there is --
3 that this will assist their investigation into
4 the proceeds of crime. And so if there's
5 anything further, I can assist.

6 Q No, that's helpful. Thank you. Detective
7 Inspector Butler, are you able to comment on
8 sort of the value of some of these powers to CAB
9 investigations?

10 A (BB) Sure. Yeah. I suppose, firstly, the
11 warrant, the search warrant, it's specific
12 obviously to CAB cases. But the broader search
13 powers and the warrants generally the criminal
14 justice system are using hugely different. And
15 CAB officers retain the power of seizure under
16 section 7 of the *Criminal Justice Act* 2006, so
17 that power of seizure entitles them to seize
18 evidence of any other crime that they may come
19 across during the course of the search.

20 So in a lot of respects the power of search,
21 the power of seizure is quite similar to what
22 they would've had in their former life as a
23 police officer out in frontline policing.

24 And so, you know, while the orders and that
25 in relation to accounts, to uplift accounts and

1 that, are specific to CAB investigations.

2 Broadly based similar powers exist to conduct
3 similar economic crime-type investigations in
4 mainstream policing.

5 Q Thank you. Dr. King, in one of the book
6 chapters before the Commissioner you raise a
7 concern about the search warrant provision and
8 the breadth of the language around who may
9 accompany a Criminal Assets Bureau officer on a
10 search. And I wonder if you can briefly speak
11 to that concern.

12 A (CK) Yes. There was concern certainly in the
13 early years after CAB was established as how
14 broadly or how widely worded this was because of
15 course a police officer has particular skills,
16 training, expertise in carrying out a search,
17 for example. The wording of the legislation
18 does allow for a number of other people to be
19 involved. And my understanding -- and I'm open
20 to correction on this -- is that that was
21 designed to allow, for example, computer experts
22 to accompany a bureau -- sorry, a bureau officer
23 in a search, but it's not restricted to what
24 that person may or may not do. But my
25 understanding is that in practice it is the

1 police bureau official who will have full
2 responsibility for the search.

3 Q Okay. Detective Inspector Butler, I don't know
4 if you want to follow up and comment on sort of
5 how that provision operates in practice.

6 A (BB) Sure. Yeah. Generally CAB search
7 operations will involve the swearing of a
8 warrant under the *Criminal Assets Bureau Act* by
9 a CAB bureau officer who is a member of An Garda
10 Síochána. And they will be the warrant holder
11 on the search and they will be supported then by
12 the various individuals, primarily from CAB, who
13 would support that the search. But that's
14 generally how it works, as Dr. King says, in
15 practice.

16 And I suppose the reference made to
17 specifically maybe a seizure of data or hard
18 drives or that kind of stuff, the fact that we
19 have, I suppose, that kind of technical support
20 available to us, the resources that we can draw
21 on for the purposes of search operations, if and
22 when required. Yes.

23 Q Thank you very much. Before maybe leaving the
24 sort of investigative side of the process and
25 speak a little bit more about the judicial

1 process, I want to speak just a little bit about
2 some of the training of CAB members.

3 And, Mr. McMeel, in particular there's a
4 reference to the 2019 annual report to a new
5 partnership between the Criminal Assets Bureau
6 and the University of Limerick. I wonder if you
7 can speak to the nature of that partnership and
8 the nature of the program that's been developed.

9 A (KM) Sorry. Yes, I can. And if,
10 Mr. Commissioner, you'd like to go, I think it's
11 at page 11 of the latest CAB annual report. And
12 it sets out what's referred to as the POCAI,
13 which refers to the Proceeds of Crime and Assets
14 Investigation Course, which is a level 9
15 accreditation, run in conjunction with the
16 University of Limerick. And that is a training
17 course primarily for investigators. Well, at
18 the moment it's exclusivity for investigators.
19 But that course has only been conceived in the
20 last six months. I think it was September it
21 began. But it took over from a former course
22 which was referred to as the TACTIC Course,
23 which is The Asset Confiscation and Tracing
24 Investigator's Course, which took place for many
25 years.

1 But this course is designed -- there's five
2 modules in learning. And I'm just reading from
3 page 11 there. It says there's a multi-agency
4 proceeds of crime investigation, it says, is the
5 first module. Dark net and open-source
6 intelligence is the second model -- or module.
7 And module 3 involves forensic accounting.
8 Module 4 is the national and international and
9 best practice and proceeds of crime
10 investigation, law, procedure, policy and
11 practice. Module 5 is experimental learning
12 module.

13 And so it's just -- it's another development
14 in the training process for -- generally for CAB
15 staff, but it's not exclusively for CAB staff.
16 But my understanding is it's somewhere in the
17 region of 12 to 15 per annum go on this course.
18 But as you can imagine, and given that we're an
19 organization of only hundred people and the
20 course is a level 9 accreditation, that's
21 probably sufficient for our purpose. And what
22 it does -- it's a significant commitment, as you
23 can appreciate, for the Criminal Assets Bureau
24 to let near to 10 percent of its staff attend
25 this course for -- I think it's up to -- it was

1 I think three weeks this term. And it's a
2 significant commitment as well, as a level 9
3 accredited course, and for the individuals to
4 partake in it.

5 So if there's anything further. I know that
6 Dr. King probably has a little bit more
7 knowledge of it than even I do and might be able
8 to assist somewhat in relation to it.

9 Q Sure. Dr. King, if you've got anything to add
10 to that, please go ahead.

11 A (CK) Yes, I'm happy to come in on that. One of
12 the points I'd like to flag as a positive
13 development in relation to CAB's work. Because
14 CAB has been in operation since 1996, it has had
15 numerous bureau officials working for CAB during
16 the past 30 years or so -- or sorry, 25 years.
17 But officials working for CAB never got any
18 accreditation or qualification for their work.
19 And my understanding is that this is one of the
20 rationales underpinning this new course. And it
21 is a link between CAB and the University of
22 Limerick designed by CAB with CAB officers in
23 mind.

24 As with any new university course, there is
25 a lot of bureaucracy and paperwork involved.

1 One of the issues that any new course -- any new
2 university course will have is to have external
3 evaluators or external examiners. I was
4 approached to be one of the external examiners
5 for this course. My scepticism is one of the
6 things I think that is one reason why I was
7 asked to do this, but I think it is a very
8 well-designed course.

9 It is not your typical classroom course. It
10 is onsite training, in the field training
11 delivered by CAB senior officials as well,
12 alongside academics in Limerick.

13 Q Thank you. Detective Inspector Butler, maybe
14 I'll give you a chance to comment, if you'd
15 like, and if you're able to make speak to the
16 issue of the need for this kind of specialized
17 training for the type of investigations that CAB
18 has.

19 A (BB) Sure. Yeah. No, I think it's a great
20 development and it's huge opportunity for the
21 Criminal Assets Bureau to upscale our own bureau
22 officers. The current class which commenced in
23 September, so -- the course runs over the
24 academic year. So we have a class of 14 this
25 year, all current bureau officers with the

1 exception of one. And that class, you know,
2 have four separate week-long modules where
3 they're fully onboard and partaking in the
4 course.

5 I suppose from an operational investigations
6 point of view the key element of the course is
7 the experiential learning element of it. And
8 participants complete a professional development
9 portfolio and that portfolio relates directly to
10 a case that they're investigating. They have a
11 mentor who mentors them throughout the
12 investigation. And ultimately on completion of
13 the course they would present -- or conduct a
14 presentation of how they dealt with the various
15 challenges they encountered in the investigation
16 and present the action in the investigation they
17 conducted.

18 So it's practical, it's hand-on and it has
19 to be a positive for the Criminal Assets Bureau.

20 Q Thank you very much. I wonder if can really
21 shift gears and focus a little bit more on the
22 judicial proceeds under the *Proceeds of Crime*
23 *Act* that follow CAB investigations.

24 Dr. King, if I might come to you. During
25 the presentation Mr. McMeel foreshadowed that

1 you may have some comments or concerns about the
2 use of belief evidence and hearsay in the course
3 of those proceedings. And I wonder if you can
4 speak to your thoughts on those aspects of the
5 system.

6 A (CK) Yes. This is -- so belief evidence is also
7 available in criminal proceedings as well and in
8 terrorism cases and that of course then was
9 shifted over to the proceeds of crime context.

10 I do have particular concern about a senior
11 police officer giving belief that a person might
12 be involved in criminality, and of course there
13 is the possibility of cross-examination. But
14 there is significant concern for me when that
15 witness, the senior police officer, then claims
16 informer privilege, cannot give further
17 information about the source of his belief.

18 It is an issue that I have discussed with
19 CAB previously. I did give a talk at King's Inn
20 a couple of years ago where CAB officials were
21 in attendance at that lecture. I think it's one
22 of the issues that we will continue to agree to
23 disagree about. I'm sure Kevin or DI Butler
24 will come in and justify it. But I still have
25 my concerns that it does undermine due process.

1 Q Mr. McMeel, I'll turn to you first for comment
2 or response.

3 A (KM) In some ways I understand the concerns that
4 are expressed by Dr. King. I think that if one
5 sees it from a theoretic level that would raise
6 concerns of any legal practitioner, a
7 fair-minded legal practitioner. However, when
8 one sees it in operation, I think that those
9 concerns can be allayed. Belief evidence is
10 only used in circumstances -- it's really --
11 it's only used in one circumstance. The Chief
12 Bureau Officer can believe that something -- a
13 particular item or asset in a schedule is the
14 proceeds of crime and that that asset is not
15 below a certain value. So the second part of
16 that we don't need to worry about. It's usually
17 self-evident that the asset is not below a
18 particular value.

19 So the reality is that when the belief
20 evidence is being given it's only of value to
21 the applicant to the Criminal Assets Bureau
22 because it can allow what would be ordinarily
23 inadmissible evidence to be admitted in the
24 hearing. And when I say that, I mean generally
25 hearsay evidence. That would usually involve,

1 as Dr. King has pointed out, either intelligence
2 or it would also involve witness statements
3 which haven't been put in affidavit.

4 Now, I would say that the reason for this --
5 and we were talking about proportionality. The
6 reason for this is because of the types of
7 people that the Criminal Assets Bureau target.
8 There was -- I know that we might be dealing
9 with anonymity later on or we may be dealing
10 with the issue of anonymity later on. And the
11 reason for this is the same as a reason for the
12 anonymity. The people -- an awful lot of the
13 people that the Criminal Assets Bureau target
14 are involved in serious criminality and have
15 histories of violence or directing violence.
16 And often witnesses will not provide evidence in
17 those circumstances, particularly not for a
18 civil hearing. But they may have provided a
19 witness statement or they may have made
20 off-the-cuff remarks to a police officer at a
21 particular moment in time. For example, on a
22 search they might have revealed that had the
23 asset that has been -- the money that was found
24 under the bed is -- that was from Johnny's
25 drugs, but I won't be putting anything in a

1 statement, is what you might hear.

2 And then the police officer who heard that
3 can record that and give evidence of it. And
4 that evidence would ordinarily be inadmissible
5 but for the fact that the chief bureau officer
6 can provide belief evidence upon which he can
7 rely on hearsay evidence. And that's a hook by
8 which hearsay evidence can be brought in. As I
9 say, intelligence information can be provided,
10 intelligence of criminality, which is based on
11 informants.

12 But all of this must be reasonably granted.
13 And this is an important factor. The courts
14 have indicated -- and I know even in -- Dr. King
15 fairly mentions and references this in the
16 *Gilligan* case back in 2000, I think, and
17 Mrs. Justice McGuinness stated that the courts
18 would be very slow to allow a case to proceed on
19 the basis of hearsay evidence only or the belief
20 evidence alone. In reality I've never -- and
21 I've been practicing this for eight and a half
22 years and I have been involved in every case --
23 in one capacity or another in every case that
24 the bureau has prosecuted during that time. So
25 we're talking about hundreds of cases. And I've

1 never seen a case which was prosecuted solely on
2 the basis of belief evidence.

3 And even when we do incorporate hearsay
4 evidence or intelligence in the belief evidence,
5 there is always other evidence which would
6 support that contention. And the kind of things
7 that would inform the belief of a Chief Bureau
8 Officer would be the obvious things, the kind of
9 things that would be admissible in court anyway.
10 For example, there's, as we've had before,
11 1.2 million euros in cash found in the back of
12 the truck. That is self-evidently suspicious.
13 And the fact that the person that has that in
14 the back of their truck is not in any gainful
15 employment, and that is something that would
16 inform the chief's belief that that is the
17 proceeds of crime.

18 The fact that that person has been claiming
19 the dole over that period and the fact that that
20 person may have known criminal associates -- and
21 this is where we're getting into the hearsay
22 element or the intelligence element aspect of
23 it -- all of those factors would combine to
24 ground the belief of the chief bureau officer.

25 Now, the effect of that is -- in an ordinary

1 hearing is very straightforward. The hearing is
2 heard like any civil action. The Criminal
3 Assets Bureau provides its evidence. And the
4 court will invariably reserve judgment if
5 there's anything -- you know, if there is a case
6 put up by the defence. And in that judgment it
7 will say that it found that the belief was well
8 grounded or not. But during the course of the
9 hearing the bureau just puts forward all its
10 evidence, and the respondent then puts forward
11 all its evidence. And invariably in my
12 experience -- and I was practising civil law for
13 a considerable number of years prior to coming
14 to the Criminal Assets Bureau -- the
15 practicalities of the case are very much the
16 same as any civil case.

17 It's important to note also in the context
18 of belief evidence that the chief bureau officer
19 can be cross-examined in relation to the belief.
20 So in those particular circumstances that
21 Dr. King highlights are the ones of most concern
22 where, for example, a chief bureau officer might
23 turn around and say well, I believe that this
24 person is a criminal and I believe -- usually it
25 will be more specific than that. It will be --

1 it will state -- the belief will state what the
2 intelligence says. That this person was
3 involved in particular drug deals on particular
4 days and that was -- and that this person was
5 questioned in relation to X, Y and Z crime or
6 that this particular person is known to be --
7 have associates with various other individuals.

8 The source of that information could be a
9 wiretap, it would be surveillance, it could be
10 an informant. All of which -- the revelation of
11 which would compromise the source, the
12 investigation that's being conducted from which
13 that information came. And -- but if that's the
14 case, the chief bureau officer can be
15 cross-examined in relation to the source of
16 that. And if the court is not satisfied that he
17 or she has properly set out the grounds for that
18 belief, well, that evidence is then -- it would
19 not be accepted in those circumstances.

20 And invariably -- and, as I say, in every
21 case that I have seen since 2012 that the
22 Criminal Assets Bureau has dealt with there has
23 been additional admissible in any civil court
24 evidence which would support that belief over
25 and above the hearsay evidence or the

1 intelligence evidence that Dr. King has the
2 concerns in relation to. But I do appreciate
3 that looking at it from a theoretic perspective
4 it would ordinarily cause -- be a cause of
5 concern.

6 But it's very important given that -- it's
7 very important too in our armoury given that a
8 lot of the people that we target are involved in
9 organized crime and/or can be involved in
10 paramilitary or terrorist organizations, and
11 there's a genuine fear on the part of potential
12 witnesses who will not give evidence but for the
13 fact that we can get their evidence in through
14 the belief evidence hook. So, as I say, it's
15 important.

16 Is there anything else? Yeah, in reality I
17 find that it's not a huge factor at all in the
18 cases that we hear. And in many cases it's
19 not -- in many cases, I would say the vast
20 majority of cases, it's certainly not
21 determinative of the case, but it does bolster a
22 case.

23 And I don't know if I've dealt with that,
24 but if I can be of any further assistance to
25 either the Commissioner or to yourself in that

1 regard ...

2 Q Thank you. That's very helpful. Maybe I'll
3 just give Dr. King a chance to follow up with
4 anything further and then I'll come to you,
5 Detective Inspector Butler.

6 A (CK) Yes. This is reminiscent of various
7 discussions I've had informally with CAB
8 previously. I completely accept Kevin's point
9 about the bare beliefs of -- certainly in the
10 anti-terrorism context from which this
11 evidential provision developed, it has now
12 become established that the courts will not
13 convict as a matter of practice rather than as a
14 matter of law based solely on a belief. And my
15 understanding is that -- as conformed by what
16 Kevin has said here, that a case will not go
17 ahead just on the basis of belief evidence
18 alone. So I do accept that point.

19 And because of the various discussions I've
20 had with CAB on this point, when I was
21 conducting my research, interviewing different
22 stakeholders, I was able to push the CAB
23 perspective to criminal defence solicitors or
24 barristers who act on behalf of CAB. And as I
25 said earlier, my role as an academic is not to

1 criticize for the sake of criticizing. When I
2 interview people from CAB, for example, I do
3 play devil's advocate, saying well, this is what
4 the defence solicitors say. Vice versa when I
5 talk to defence solicitors, this is what CAB
6 say.

7 And I did make similar points to what Kevin
8 has just said, and defence solicitors still
9 disagree with this viewpoint. They are still
10 very critical of belief evidence provisions.
11 They argue that it is not a level playing field.
12 They have said that it is impossible to
13 effectively challenge belief evidence under
14 cross-examination and that the court -- and I am
15 conscious of a point mentioned during the
16 presentation earlier that the courts are not
17 there to just rubber stamp the point. But there
18 was concern expressed by defence solicitors and
19 barristers that the courts have been overly
20 acquiescent in simply accepting belief evidence.

21 As far as I'm aware there was only one
22 reported case where belief evidence was
23 rejected. I could be wrong on that. Kevin?

24 (KM) You mentioned the *Farrel* [phonetic]
25 case, and you're correct. That's the only case

1 that I'm aware of that belief evidence was
2 rejected in its entirety. And the basis for
3 that rejection was that the information on which
4 it was grounded was of such antiquity and
5 related to a different jurisdiction than the one
6 that the assets were found in.

7 However, there are many cases in which the
8 bureau doesn't secure a victory or a victory in
9 its entirety. And one would have to assume that
10 the belief evidence then is only partially
11 accepted if the belief evidence is that all of
12 the assets in the schedule are the proceeds of
13 crime, and the court ultimately determines that
14 actually no, only 80 percent or only 70 percent
15 were. And there's many examples of the courts
16 finding that there's -- you know, there's a
17 partial win, I suppose, for the Criminal Assets
18 Bureau. And that is, in fairness, a partial
19 acceptance of the beliefs -- of the belief
20 evidence, but it's also a partial rejection of
21 the belief evidence as well.

22 Q Detective Inspector Butler, I see you've
23 unmuted. Do you have something you'd like to
24 add to the topic before I move on?

25 A (BB) Yeah, just quickly. It's just an

1 additional point. I think you'll find in all
2 proceeds of crime investigation files there will
3 ultimately be affidavit evidence provided by an
4 individual who's provided a criminality report
5 or evidence of criminality, and the chief bureau
6 officer opinion will rely on that too. And it
7 will in all cases be rooted in fact and will
8 cross-corroborate and it's done through
9 intelligence and in often cases a bit like the
10 profiler structure that we referenced earlier.
11 It will be from an individual who has direct
12 experience of the target who was in possession
13 of the asset and can provide that evidence of
14 criminality and criminal links. Because the one
15 thing we do find with seasoned criminals is that
16 many of them may accrue convictions at the
17 earlier stage in their career, but as they move
18 through their criminal career they're less and
19 less likely to be linked to criminality either
20 because they move up the food chain or become
21 wiser to the system. But they will continue to
22 associate, they will continue to conduct
23 themselves.

24 And obviously police who are on the ground
25 who are familiar with them may be in a position

1 to provide factual evidence that's rooted in
2 fact. And I think that's the key to it. It's
3 not solely opinion. The opinions are based on
4 facts that they provide in their affidavit, and
5 I think that's important.

6 Q Thank you. Perhaps this is a good time to move
7 to a broader discussion of some constitutional
8 and due process issues raised, in particular in
9 some of Dr. King's writing. And really -- well,
10 please go ahead, Dr. King.

11 A (CK) Just before you move on from the judicial
12 aspect of it, I wonder is it worth mentioning
13 the role of the judge himself or herself?

14 Q Please. Yes.

15 A (CK) In Ireland the practice has tended to be
16 that there is one judge as allocated to the *POCA*
17 list, in a sense ticketing the judge to poke at
18 cases. And I do think that it does ensure
19 consistency, continuity, certainty of knowledge
20 of the legislation and the case law. So that
21 has been flagged as one positive aspect.

22 There has been some criticism, albeit less
23 common, that if you have a judge on the *POCA*
24 list for a particularly long period of time --
25 and I'm conscious that it's not a regular

1 particular judge again, but every single case
2 that we move will be moved in front of that
3 judge unless he either -- he or she recuses
4 himself or herself or that judge is assigned to
5 a different list.

6 And therefore it's very important that we
7 don't dirty our bib or tarnish our reputation in
8 any way with that judge. And that's
9 particularly the case in respect of belief
10 evidence. And if a particular judge early on in
11 their tenure determines that the belief wasn't
12 reasonably grounded, I suspect that judge will
13 look with particular scrutiny on every other
14 belief affidavit from that moment on. So it
15 works both ways. And if the judge believes the
16 trust -- or trusts in the belief evidence of the
17 chief bureau officer that's assigned, well,
18 then, that trust is earned and then -- and that
19 would be very much the view of the Criminal
20 Assets Bureau.

21 We would not -- and I would certainly guard
22 against belief evidence being provided that
23 wasn't reasonably grounded as a result of that
24 very thing that Dr. King points out. He's
25 absolutely right, by the way, in terms of it

1 being a recommended policy consideration.

2 We have lists which -- I mean, all of our
3 cases are relisted every month so as to ensure
4 that they're progressed. If they were listed
5 before a different judge each time, that would
6 be hugely problematic for progressing those
7 cases. The judges also build up an expertise in
8 the areas that we look at. Forensic accounting,
9 for example, being an obvious example. And the
10 more a judge can read into forensic accountants'
11 reports and affidavits, the more attuned they
12 are to them. And also that they just become
13 more acquainted with the business that we do.

14 So from every perspective we say that it's
15 better to have consistency on the bench in terms
16 of the cases that we're dealing with.

17 Obviously in Ireland we're a very small
18 jurisdiction. The numbers of cases that we are
19 moving make it practical to have one judge. It
20 might not be the case in other jurisdictions
21 depending on population, the number of cases
22 that are being moved and whatnot. But it
23 certainly works for us.

24 Q Thank you very much. I suggest that we're going
25 to move to a discussion sort of more broadly

1 about some due process and constitutional
2 questions.

3 Dr. King, I might begin with you. You've
4 expressed some concerns already and more broadly
5 in your writing about some due process issues
6 around the *Proceeds of Crime Act*. I wonder
7 before we get to your views, if you could give
8 us a brief overview of sort of the state of the
9 constitutional litigation that's taken place to
10 date with respect to this act and where things
11 stand at the moment.

12 A (CK) Sure. For convenience you can say that you
13 can break the challenges to *POCA* into two waves.
14 And this is not my classification of Wales. I
15 do give credit to Ben O'Floinn, who is a
16 barrister who has represented CAB in numerous
17 cases, who did suggest this at a presentation he
18 gave at the Royal Lawyers Academy a couple years
19 ago.

20 Looking at this wave approach. The first
21 wave of legal challenge involved constitutional
22 challenges on the grounds that, for example,
23 *POCA* formed part of the criminal law, not the
24 civil law, and so as a result it's merited
25 enhanced procedural protections of the criminal

1 process. So a standard of proof, trial by jury,
2 presumption of innocence, double jeopardy,
3 et cetera. A further constitution challenge
4 here concerned property rights, whether there
5 was an impermissible interference with property
6 rights.

7 There were other secondary challenges
8 concerning whether there was oppressive delays
9 linked to the seven-year time period,
10 contravention of the privilege against
11 self-incrimination, concern that the act was
12 overbroad and vague, that there was an
13 impermissible interference with the judicial
14 function and, finally, that the act had
15 retrospective effect. And this was confirmed in
16 the main Supreme Court decision on *POCA*. So
17 it's the *GM Gilligan* case from 2001. All of
18 these challenges were rejected. So it would be
19 seen as the first wave of legal challenge.

20 The second wave of challenge then would
21 involve challenges to the operation of the act.
22 So, for example, challenging the operation of
23 belief evidence or anonymity provisions to give
24 some examples. I think this is likely to
25 continue. But the consensus does now seem to be

1 that the act has been robustly challenged and it
2 has withstood scrutiny in the Irish courts.

3 The Supreme Court, as I say, effectively
4 resolved the constitutional question in
5 *GM Gilligan*. That was 2001. Similar approaches
6 can be seen elsewhere. So in Canada it was
7 *Chatterjee* in 2009. In the UK it was the *Gale*
8 decision in 2011. And also in the European
9 Court of Human Rights in *Gogitidze*. That was
10 2015. So it does seem now as if the issue is
11 firmly resolved.

12 Q Thank you. And from your perspective and some
13 of the writing that's before the Commissioner
14 you comment on your level of agreement with
15 those decisions. And I wonder if you can just
16 briefly describe for us your perspective as to
17 whether the courts have got it right today.

18 A (CK) I came to this area after the Irish Supreme
19 Court had handed down its judgment of the *GM*
20 *Gilligan* case in 2001. I started looking at
21 this area in 2003. I have not been entirely
22 convinced. I got the impression that the courts
23 have been deferential in their approach. I
24 would have concerns that you are effectively
25 laying criminal allegations against an

1 individual, so is it appropriate to have your
2 typical -- your standard civil proceeding to air
3 these. And of course the courts have -- the
4 courts would reject my views.

5 I do have some particular concerns. First
6 of all, the standard of proof. There is an
7 argument that a higher standard of proof should
8 apply. Whether that is the criminal standard of
9 beyond reasonable doubt or a standard that has
10 been adopted in the US for clear and convincing
11 evidence as some other people have suggested as
12 an intermediate standard.

13 I do know that CAB are very thorough in
14 their work. So they do take their gatekeeper
15 role very seriously. And my impression is that
16 when CAB are taking a case, they're not going in
17 under any fear of losing, again, because of the
18 thorough work that is being done beforehand. So
19 in a sense are CAB almost applying or
20 self-applying this higher standard in their
21 investigations already before it comes to court,
22 so is it worth reviewing the civil standard of
23 proof? I don't see it happening certainly in
24 Ireland. I don't think any government who has
25 hopes of re-election would ever change the

1 standard of proof in this type of process.

2 But I do think that a higher standard of
3 proof would give greater legitimacy, but I do
4 recognize the counter argument that some people
5 would say well, that could potentially undermine
6 the very purpose of the non-conviction based
7 approach. That is one point.

8 The second point we've already mentioned
9 about belief evidence. I would object to the
10 use of belief evidence, especially when combined
11 with informer privilege. We've already
12 discussed belief evidence. I won't dwell on
13 that.

14 And a following point you mentioned here is
15 the non-conviction based approach post-acquittal
16 in criminal proceedings. So if an individual is
17 charged and prosecuted and there is an acquittal
18 for whatever reason, it is still possible to
19 bring proceedings under *POCA*, so a
20 non-conviction based approach. And I do
21 recognize that there are distinctions between
22 the criminal process and the civil process. The
23 standard of proof is an obvious one. And of
24 course an acquittal in criminal proceedings does
25 not signify that a person is innocent; it

1 signifies that guilt has not been established
2 beyond reasonable doubt. But certainly when I
3 spoke to interviewees from my study, there was
4 very strong criticism of the use of *POCA* after
5 an acquittal in criminal proceedings.

6 Q Thank you. Mr. McMeel, before I maybe turn to
7 Detective Inspector Butler to comment on CAB's
8 gatekeeping function, maybe I'll ask you if you
9 want to comment on or respond to anything that
10 Dr. King has said.

11 A (KM) Yeah, there's a couple things there that I
12 just, I suppose, would like to mention for the
13 benefit of the commission. The first is there
14 was reference there -- and I know Dr. King
15 wasn't making any kind of quarrel of assessment
16 of it, but there was a challenge on the basis
17 that the seven-year period was an undue delay in
18 the process. The seven-year period is a
19 safeguard that's put in for the benefit of the
20 respondent. And I think that the court -- I
21 mentioned that earlier in my presentation. I
22 think the court recognized that. Some of these
23 challenges are clearly without merit. Note some
24 of them are ones that are far more based in
25 legal principle and equity and deserve closer

1 consideration.

2 The issue, and the primary issue, I think,
3 that was raised and was dealt with in the *GM*
4 *Gilligan* case was to do with the
5 constitutionality and whether or not the
6 criminal law protections should be afforded
7 individual -- should be afforded to individuals
8 who are the subject of these types of
9 applications.

10 In that case the court highlighted -- and I
11 know that it's been highlighted in other papers
12 since -- that to remove the property which is
13 proven on the balance of probabilities to have
14 been the proceeds of crime from the person
15 cannot be a punishment because there's -- that
16 person has no property rights to something which
17 is the proceeds of crime. So if you take that
18 as self-evident, once you get over the hurdle of
19 that, which to my mind seems like a simple
20 enough thing to get over -- you can imagine if
21 somebody robs money from a bank -- that's the
22 most obvious example of the proceeds of crime --
23 nobody would suggest that simply because those
24 marked bills were in their house that they have
25 somehow have a property right to the marked

1 bills.

2 But proceeds from drug dealing is a little
3 more problematic, and I think that that's
4 generally the area that we're looking at. And
5 there might be an argument that they made that
6 money from some other source or some other
7 trade, and it's up to them to be able to set out
8 in their defence the basis for that. I mean,
9 presumably if they're washing windows, as I used
10 the example earlier on, they would have a list
11 of customers that they go to. Even if they
12 haven't paid a penny in tax in relation to it,
13 there would be people that would be willing to
14 give evidence and say, this gentleman has washed
15 my house for the last 10 years, or washed the
16 windows in my house for the last 10 years. And
17 that's usually how we address the defences that
18 are put up to us. We probe them and we
19 interrogate them and we provide evidence.

20 Now, once you get over that legal concept
21 that to deprive somebody of the proceed of crime
22 is not a punishment. Well, then, if it's not a
23 punishment, then the criminal law protections no
24 longer apply. It's a civil process. And to
25 remove from somebody something that they don't

1 have any property rights in and certainly don't
2 have any constitutionally to protected property
3 rights in.

4 The other, I suppose, dual -- and I think of
5 this as the dual pillar. So the first one is
6 you don't have any constitutional property
7 rights in the proceeds of crime, and the second
8 is that the person -- from a practical and
9 evidential perspective the courts in Ireland,
10 and I'm sure in Canada, accept that the person
11 who is in the possession, power and control of a
12 particular asset is uniquely well placed to
13 evidence the provenance of that asset. The
14 source of the funds for that asset. If we look
15 at anything that we hold, a nice watch or, you
16 know, the car that we drive, we will, if
17 pressed, be able to provide probably within a
18 very short period of time evidence on internet
19 bank accounts or credit card accounts. Or even
20 if it's a gift, an affidavit from somebody that
21 will be able to verify that a gift was given on
22 a particular date, and perhaps their bank
23 records would be able to evidence the source of
24 that.

25 So our courts and the jurisprudence

1 recognizes that the person in ownership,
2 possession, power and control, as it's described
3 in our act, is the person best placed to
4 evidence the provenance of that particular
5 asset. And once you accept those two pillars, I
6 think the criminal law protections, as espoused
7 by Dr. King, fall away. They shouldn't apply.
8 They should be dealt with in the very same way
9 that any civil law matter is dealt with. The
10 vast majority of people, if not everybody, that
11 owns assets legitimately are able to evidence
12 the source of those assets. So that's that
13 point

14 The last -- and in fact you mentioned it.
15 Maybe Detective Inspector Butler will deal with
16 the self-regulation aspect or gatekeeper aspect
17 that Dr. King has -- had mentioned there as
18 well.

19 Q Sure. Detective Inspector Butler, Dr. King
20 raised the gatekeeping function of the CAB. And
21 I wonder if you might comment briefly on that.

22 A (BB) I think one point that's worth making
23 relating to the standard of proof and
24 investigations conducted by CAB bureau officers.
25 By a large the proceeds of crime investigations

1 are conducted by police officers who have come
2 from a criminal burden of proof background. So
3 the police investigators are coming from that
4 background. Their investigations have been
5 conducted to that standard. They bring that to
6 CAB, that training.

7 And you mentioned a point or referred to an
8 interim standard of proof. It's obviously my
9 own opinion, but I think you will find that buy
10 and large the standard of proof far exceeds the
11 basic civil burden of proof. And I think that
12 comes primarily from the schooling and the
13 background of the individuals who are conducting
14 the investigations that -- how they go about
15 their work. I think that is an important point
16 to make.

17 Q Thank you. Dr. King, maybe just to give you a
18 chance to add anything you'd like to in response
19 before we move on.

20 A (CK) Just some of the points that were raised in
21 the study that I conducted. So some defence
22 solicitors, for example, talked to me, so -- in
23 relation to this point about property rights. I
24 use the example of -- the family home, for
25 example. A person has purchased a property, a

1 house, for example, and if that is fully
2 registered, they are the registered owners. A
3 query came up in relation to this about, well,
4 why should a person have to justify their source
5 of funds. That's going back to this issue of
6 financial privacy. And this was a topic that
7 did attract quite a lot of discussion amongst
8 the different interviewees.

9 Some people were very much in favour of --
10 if you point at, well, I should not have to
11 justify myself at all; CAB are bringing a case
12 against me; they should have to prove it. Other
13 people had the opposite viewpoint by saying,
14 just as Kevin has said there, that you are in an
15 ideal position to justify your source of funds
16 and that you should do so. So, as I say, it was
17 an area that did not attract any agreement from
18 across the board from the interviewees that I
19 spoke to.

20 Just to pick up on one point there from
21 DI Butler, and I move away from the Irish
22 approach briefly. Mr. Butler, you mentioned
23 about the background of CAB officials
24 predominantly is coming from a policing
25 background. Of course if you're used to

1 investigating criminality, you're looking for
2 the criminal -- a criminal investigation that
3 could lead to prosecution. You are applying the
4 criminal standard in your investigation.

5 I have been speaking to stakeholders in the
6 UK as well, and that point was also mentioned in
7 the UK context that this is not something that I
8 would necessarily encourage CAB to adopt. I do
9 think it is a good approach adopted with
10 applying the higher standard that CAB do at the
11 moment. But in the UK it was suggested that in
12 the early years of ARA and then SOCA, the Asset
13 Recovery Agency and the Serious Organized Crime
14 Agency, that that same approach was adopted.
15 You had police officers applying the same
16 criminal investigation approach, but they were
17 then being encouraged to lose that mindset to
18 then switch to the balance of probabilities
19 approach because that is the standard that
20 applies in *POCA* proceedings. So, as I say, I
21 wouldn't encourage that, but it is a point I
22 thought worth mentioning

23 Q Thank you very much.

24 MR. McCLEERY: Mr. Commissioner, this -- I think we
25 might be overdue for a break. I'm going to

1 suggest 10 minutes, if that's agreeable to you.

2 THE COMMISSIONER: Yes, that's fine. We'll take

3 10 minutes. Thank you, Mr. McCleery.

4 THE REGISTRAR: This hearing is adjourned for a

5 10-minute recess until 12:13 p.m.

6 **(WITNESSES STOOD DOWN)**

7 **(PROCEEDINGS ADJOURNED AT 12:02 P.M.)**

8 **(PROCEEDINGS RECONVENED AT 12:12 P.M.)**

9 **BARRY BUTLER, a witness**
10 **for the commission,**
11 **recalled.**

12 **COLIN KING, a witness**
13 **for the commission,**
14 **recalled.**

15 **KEVIN MCMEEL, a witness**
16 **for the commission,**
17 **recalled.**

18 THE REGISTRAR: Thank you for waiting. The hearing
19 is resumed. Mr. Commissioner.

20 THE COMMISSIONER: Thank you, Madam Registrar.

21 Yes, Mr. McCleery.

22 MR. MCCLEERY: Thank you, Mr. Commissioner.

23 **EXAMINATION BY MR. MCCLEERY (continuing):**

24 Q Before we get into our final discussion of the
25 effectiveness of Ireland's approach, I thought

1 we might briefly deal with the financial aspects
2 of CAB and the *Proceeds of Crime Act* system.

3 Dr. King, I thought I might begin with you
4 to introduce the topic. In 2013 one of the
5 articles before the Commissioner is a paper you
6 wrote with Martin Collins, and in that you
7 discuss the impact of the different financial
8 models applicable to asset forfeiture in England
9 and Wales compared to the model to Scotland.
10 And I wonder if you can just briefly describe
11 for us the comparison of those two systems and
12 your conclusions as to implications of those
13 differences. Dr. King, I think you're muted.

14 A (CK) Apologies. There is always one person on
15 Zoom. It had to be me.

16 So I'm certainly happy to discuss that. In
17 Scotland -- and I should clarify. I know if you
18 have the article or if anyone has read the
19 article they will see Martin's background. So
20 Martin Collins is a solicitor in the Civil
21 Recovery Unit in Scotland. So this article was
22 a collaboration between me as an academic and
23 Martin as a practitioner in this area.

24 In Scotland the emphasis for the CRU, the
25 Civil Recovery Unit, is very much on disruption.

1 Disrupting organized crime through the
2 non-conviction based approach. When money is
3 confiscated in Scotland the general approach is
4 that money recovered is allocated to the
5 CashBack for Communities fund. There is limited
6 moneys taken out for reinvestment elsewhere, but
7 that is rare. In general the approach is that
8 the money should be spent in local communities.
9 I don't know if there have been any further
10 developments in this area in Scotland with
11 CashBack for Communities since 2013, but
12 CashBack does continue to operate.

13 And the Scottish approach has to be
14 contrasted with the approach adopted in England
15 and Wales. So in England and Wales you have
16 ARIS, A-R-I-S, the Asset Recovery
17 Incentivization Scheme. So under ARIS
18 50 percent of money recovered goes to the home
19 office and the other 50 percent is allocated
20 between different agencies involved. So in a
21 sense you have this incentivization to become
22 involved in confiscation proceedings.

23 The rationale was clear in the English
24 context, and that being to encourage different
25 police forces to take up these powers, to make

1 greater use of confiscation provisions and
2 non-conviction based provisions.

3 I have serious concerns about this asset
4 recovery incentivization scheme. I do not think
5 it is appropriate that a police force be
6 incentivized to -- essentially to do their job.
7 And this is a point that was raised in
8 interviews with former law enforcement people in
9 the UK. And they emphasized the practical
10 challenges that they did face to encourage
11 uptake, but they also flagged up there should
12 have been a cut-off date for the ARIS scheme.
13 So to get greater use of confiscation
14 post-conviction and non-conviction based, but to
15 then to have that ARIS scheme stopped. But that
16 did not happen and it does continue to operate.

17 A further point about England and Wales is
18 to mention the Serious Fraud Office. The SFO
19 did participate in the ARIS scheme in its early
20 years but no longer does so. So since 2014 the
21 Serious Fraud Office has given up its
22 entitlement to any money under the ARIS scheme
23 in exchange for a set figure every year. And
24 that set figure is the cost of covering the
25 proceeds of crime unit within the SFO. And the

1 whatever happens after that is none of CAB's
2 business. And that viewpoint was aired by
3 officials in CAB and defence solicitors,
4 barristers who work on both sides.

5 Q Thank you very much. Mr. McMeel, I might turn
6 to you next. I mean, first any comments you may
7 have to what Dr. King has said, and then
8 secondly maybe speak to the question of
9 whether -- well, let's begin there and see if
10 you have anything to follow up on from Dr. King.

11 A (KM) Okay. Just in relation to the idea of
12 incentivization. That is something that we
13 don't practice here, as Dr. King has quite
14 rightly pointed out. It's something that we in
15 CAB have since its inception been wholly and
16 vehemently against. And we hear horror stories
17 from other jurisdictions in which fast cars are
18 required for the highway police department and
19 suddenly fast cars are being seized all over the
20 cities. And CAB -- we guard religiously the
21 independence that we have in choosing the
22 targets that we go after and we -- and, you
23 know, ultimately the assets that we choose to
24 proceed against. And it's very important for us
25 to be seen to be acting apart of any incentive

1 to do that, either to feather our own nest or to
2 feather the nest of some other state body other
3 than the central fund. And so that's something
4 that we very much hold dear.

5 And then the idea that -- what's been
6 alluded regularly and continues to be alluded in
7 the press is the idea that somehow, you know,
8 moneys that are seized from -- let's say, from
9 the proceeds of drug dealing would go to drug
10 rehabilitation funds and such like. And we have
11 no view at all of that. We're entirely neutral
12 in relation to that. And in some ways that of
13 itself might act as an incentive, and if the
14 charity is something that a particular
15 individual investigator holds dear, one would
16 think that it might incentivize the pursuit of
17 assets that perhaps they wouldn't have sought to
18 pursue otherwise. I don't know. But it could
19 certainly leave open the charge that that is the
20 motivation behind a particular investigation.
21 But -- or application.

22 We think that by far the cleanest way is the
23 way that we're currently doing it which is send
24 it back to the exchequer, to the central fund,
25 and let the politicians decide where the money

1 needs to be best put. And we are -- our budget
2 comes from -- ultimately from the same fund, but
3 it's decided wholly separate from how much money
4 we return to the exchequer.

5 Q Thank you. Mr. McMeel just to follow up on
6 that. Is it the case, then, that CAB has --
7 there's no expectation that CAB will cover its
8 own costs or has any financial targets to meet?

9 A (KM) Well, there are -- there's a performance
10 delivery agreement which is signed with the
11 department in which there are certain targets.
12 Targets in relation to amount of tax that's
13 returned. Targets in relation to the amount of
14 cases we take. Targets in relation to the
15 amount of assessments that we raise on the tax
16 front and targets in relation to the amount of
17 money that we return to the exchequer at the end
18 of a given year. But none of those would even
19 come close to our annual budget. And it's
20 not -- one is not the same as the other.

21 So our budget might increase and it might
22 push a little bit out what our target is, but we
23 don't return -- currently don't return to the
24 exchequer the same -- we don't wipe our face, I
25 think is the expression, and we don't return to

1 the exchequer the same amount of money as we
2 generate essentially -- or as we spend, sorry,
3 in a given year. So yeah, so two are unrelated.

4 Q Thank you. Detective Inspector Butler, I might
5 turn to you. Can you comment on the
6 significance of the sort of lack of
7 incentivization scheme as described by Dr. King
8 and the selection of investigative targets?

9 A (BB) Sure. I think the key point -- and I think
10 the key point here relates to target selection.
11 And just to drive home the points already made,
12 and the point that was made earlier relating to
13 the target who's having the impact at a local
14 level, the low value targets, the target who may
15 have assets that aren't too far above our
16 minimum threshold. I think a policy of
17 incentivization would probably mitigate against
18 taking on those targets because the costs
19 exceeded the ultimate value of the assets that
20 we seized.

21 So I think it's hugely important from a
22 social point of view, from a greater good point
23 of view that we're in a position to do our work
24 unhindered in that respect, that we can
25 target -- or we can target individuals and

1 assets for the right reasons, and I think
2 incentivization maybe could cause a difficulty.
3 And, listen, there's perfectly good reasoning
4 and perfectly sound arguments for trying to
5 repatriate the asset value back into
6 communities, and it certainly makes a lot of
7 sense. But I think from a CAB perspective, when
8 we have a low threshold, a minimum threshold of
9 5,000 euros, I think it's vitally important that
10 we can take on those targets primarily for the
11 social reasons that we do. And I think that's
12 very, very important.

13 Q Thank you very much. Mr. McMeel?

14 A (KM) Yes. Sorry. Just to come there. There
15 was one point that I wanted to make just in
16 relation to what Dr. King had said on the study
17 that he had conducted with Mr. Collins. And the
18 basis upon which the incentivization was brought
19 about in the England and Wales, as I understood
20 it, and it was to encourage people to use the
21 legislation. And one of the great things -- and
22 I think that this is perhaps one of the
23 recommendations that we might ultimately -- that
24 might flow from today, is that one of the great
25 things about what the Criminal Assets Bureau

1 does is we're mandated to do one specific thing.
2 That's to deny and deprive the proceeds of
3 crime.

4 As I said, there's two basic tools or three
5 tools between the social welfare and the tax,
6 but the primary tool is *Proceeds of Crime Act*.
7 And because we're not mandated to conduct
8 criminal investigations, what we do is not --
9 the *Proceeds of Crime Act* or the civil
10 forfeiture doesn't come secondary to it. We
11 don't need encouragement to do it. That's
12 really all we have to do. So when you have an
13 organization that's mandated to do one specific
14 thing, which is what we are, then you don't need
15 to encourage it to do that specific thing.

16 Q Thank you. I wonder now if we might turn to the
17 final topic I want to cover, which is the
18 effectiveness of CAB and the approach to
19 proceeds of crime in Ireland.

20 Dr. King, I might start with you again.
21 You've written a number of these articles and
22 chapters before the Commissioner about, you
23 know, how we go about evaluating civil
24 forfeiture regimes in different parts of the
25 world. And I wonder if maybe you can speak

1 first to the question of, you know, leaving
2 aside the Irish model in particular for now, how
3 it is we should and can go about evaluating
4 asset forfeiture legislation in units like the
5 Criminal Assets Bureau.

6 A (CK) If I could come up with a solution in that
7 regard, I think I would make a lot of money as a
8 consultant around the world. Breaking down the
9 question of is civil forfeiture effective, the
10 short answer I would suggest is we don't know.
11 Again, to break that down a bit further. So
12 even in the Irish context, has CAB seized
13 significant amounts of money over the past
14 25 years? Yes. Have CAB successfully secured
15 court orders against property deemed to be
16 proceeds of crime? Yes. But I don't think that
17 there should be a focus on the number of orders
18 alone. I don't think that should be
19 determinative. And one official did caution me
20 against this in my studies saying that there
21 have to be other ways to measure success. And
22 that official told me that if they wanted -- and
23 they stressed that they did not, but if they did
24 want to, it would be quite easy to manipulate,
25 for example, the number of orders.

1 So, for example, you can get a section 2
2 *ex parte* order against a house, a car and money
3 in a bank. So you can get three separate orders
4 or you can get one order to cover all three.
5 And that was just a basic example that this
6 person gave to me.

7 Has this approach -- so the non-conviction
8 based approach, has it had an impact on
9 organized crime? I would say arguably yes. So,
10 for example, there is anecdotal evidence -- and
11 this is mentioned in some of the papers. There
12 is anecdotal evidence that indeed some criminals
13 have moved abroad to take themselves beyond the
14 reach of CAB.

15 Has organized crime decreased as a result?
16 That is unclear. If anything, arguably not.
17 Crime is still a problem in Ireland. If
18 anything, it's possibly more of an issue now
19 than it was in 1996 when *POCA* was enacted. And
20 this was a point that Kevin mentioned earlier.
21 And, Kevin, you were speaking about this issue
22 of crime still continues to be an issue and you
23 referred to this approach in *POCA* not being a
24 sledgehammer to crack a nut.

25 And I specifically noted that down for the

1 very reason that when I spoke to other -- people
2 on the other side, so defence solicitors, for
3 example, they had the opposite argument. So
4 they used the same phrase and they argued that
5 the *POCA* approach was a sledgehammer to crack a
6 nut. That it was too extreme.

7 Going back to this point about the impact
8 on organized crime. And this is something
9 that's teased out in some of the papers. What
10 do we know of the criminal market, whether in
11 Ireland or in other countries, or the seizure of
12 criminal wealth as a proportion of overall
13 criminal wealth.

14 So give an example. If CAB seize, let's
15 say, 1 million and the overall criminal market
16 is worth 5 million, that's one thing. But if
17 the overall criminal market is 100 million or
18 1 billion, that is very different. So you do
19 have to look at it in the overall context of how
20 much of an impact is this having on the criminal
21 market. Of course there are difficulties in
22 measuring the criminal markets. I do
23 acknowledge that.

24 But that's just to say that the focus on the
25 amount of money recovered every year does not

1 tell us -- it does not give us an answer. And
2 CAB do include these amounts in their annual
3 reports, but I don't think CAB hold up the
4 amounts recovered every year as an indicator of
5 success or the only indicator of success.

6 I would say that there is very little
7 empirical work to support the claim that a
8 non-conviction based approach is effective.
9 Certainly none that I am aware of in Ireland.
10 There has been some work in Australia and the
11 US, but again, that stresses the need for
12 greater empirical research on this issue.

13 We've mentioned Scotland. In Scotland there
14 is this strong emphasis on the level of
15 disruption caused by the non-conviction based
16 approach. So to what extent our level 3
17 organized crime groups are impacted, for
18 example. And Scottish authorities are still
19 exploring different ways to accurately measure
20 this, which will likely involve people with
21 expertise in accounting or economics
22 backgrounds.

23 A final point to mention here is public
24 perception. CAB are widely viewed in a very
25 positive light by the public. I think you'd be

1 hard pressed to find much criticism of CAB
2 amongst the general public. If anything, if
3 there are particular problems in different
4 areas, there's a regular refrain, why have not
5 CAB not been brought in. So that does show the
6 positive light that CAB are held in. I think
7 that public endorsement is an important
8 consideration.

9 I don't think there has been any specific
10 public perception survey on the work of CAB, but
11 it is generally very positive. This is an issue
12 that I would really like to see more work on, so
13 more empirical work, that would demonstrate that
14 POCA is effective or not.

15 Q Thank you. Dr. King, in addition to CAB's
16 reputation within Ireland, you write in a number
17 of these book chapters and articles and describe
18 the Irish approach as an example of best
19 practice internationally. I wonder if you might
20 comment on what it is about the Irish model that
21 has sort of led to this reputation and what are
22 seen as best practices.

23 A (CK) CAB does have a very strong reputation at
24 the international level. So whether that is
25 true of its work at the asset recovery level,

1 their roles -- the asset recovery officers are
2 in CARIN, the Camden Assets Recovery
3 Inter-Agency Network. I know CAB do work very
4 closely with counterparts in other
5 jurisdictions.

6 Why CAB is held up as an exemplar of best
7 practice, I would say it probably goes back to
8 some of the points that we have already
9 discussed, particularly the multi-agency
10 approach. That will be a key issue that is
11 widely emphasized.

12 Q Thank you very much. Detective Inspector Butler
13 or Mr. McMeel, perhaps I'll leave it to you to
14 decide who's best positioned to answer this
15 question. Dr. King has spoken about the
16 challenges in assessing the effectiveness of
17 civil forfeiture. How does the Criminal Assets
18 Bureau assess whether it's doing its job and
19 having an effect?

20 A (BB) Perhaps I can come in first and hand it
21 over to Kevin. I think it's important just as a
22 start point to see CAB for what it is and CAB in
23 relation to the battle against organized crime,
24 for lack of a better term. CAB is only one tool
25 in the toolbox and it performs a very specific

1 role. And I think judging CAB solely by the
2 numbers returned, by the numbers of targets, as
3 Dr. King says, I don't think that's the
4 parameter or the way to judge it. I think if
5 you want to judge CAB as a dynamic outfit that
6 can respond and deal with the situation that's
7 evolving, be it local feuds, be it criminals who
8 are particularly active at a given point, CAB
9 are certainly in a position to conduct major
10 search operations at short notice and do work
11 that has an impact. I think that's -- I think
12 that's important.

13 I think ensuring that CAB targeting the
14 right people is certainly a measure of the
15 relevance of CAB, and it's something we
16 mentioned earlier. I think it's hugely
17 important that CAB are seen publicly to be
18 targeting significant players but also players
19 that are relevant to the local community. And I
20 think we certainly take measures to ensure that
21 that's the case through the profiler network,
22 through our engagement with our national
23 intelligence partners. I think that's crucially
24 important.

25 Dr. King also referred to anecdotal evidence

1 of criminals moving abroad. And that's
2 certainly something we have encountered. We've
3 had some high-profile cases in recent years
4 where we've seen very high-profile criminals do
5 exactly that and have departed the Irish
6 criminal landscape, certainly aren't -- while
7 their fingerprint may be on some actions and
8 things that are happening locally, they're
9 certainly no longer resident in Ireland. And I
10 think certainly CAB can take some credit -- not
11 all, but certainly take some credit for the fact
12 that that has happened.

13 So I think in an evolving criminal landscape
14 like Ireland, now it's a very different country
15 to where it was in 1996. I think the Criminal
16 Assets Bureau have certainly evolved. And I
17 think if CAB continue to be some level of thorn
18 in the side of people who are involved in
19 organized criminality, I think that's certainly
20 something we aspire to and I think that's a goal
21 worth achieving. But to judge us purely and to
22 evaluate CAB purely on numbers, I think
23 certainly isn't something that we should be
24 doing

25 Q Thank you. And maybe the same question I posed

1 to Dr. King in a slightly different frame. To
2 the extent CAB has had success, what features of
3 the bureau, or maybe of the civil forfeiture
4 regime more broadly, would you identify as
5 responsible or most important to that success?

6 A (KM) I find I'm agreeing a little bit more often
7 than I'd like to Dr. King in relation to a lot
8 of the answers that he's given. He emphasized
9 the multi-agency approach as being one of the
10 things that other jurisdictions see as being a
11 successful aspect of what CAB does. I think
12 that the fact that that is in a team room, the
13 investigation team room is itself multi -- is a
14 multi-agency subset is hugely crucial. And the
15 fact that we can use the powers of all those
16 agencies at once -- and I think I'm probably
17 detracting somewhat from your question there,
18 Mr. McCleery, insofar as an emphasizing simply
19 the civil forfeiture powers of CAB is to do CAB
20 a significant disservice, I think.

21 If we investigate somebody, we might not
22 see that there's sufficient evidence of
23 criminality which would warrant a proceeds of
24 crime case, or we see assets which are clearly
25 bought or clearly purchased with legitimate

1 funds, but that there's an element of
2 criminality involved as well in the background.
3 In those instances taxes is the way to go. And
4 the ability to use both in the same organization
5 is a real boon and a real bow in our quiver.

6 And the other issues -- and I suppose we
7 touch on it. The things that sort of set us
8 apart is that we are an organization that -- and
9 I mentioned this two or three times so I don't
10 want to keep on banging the same drum, but we
11 are an organization which is mandated with one
12 simple goal: to deny and deprive those of the
13 proceeds of crime. The fact that we have an
14 investigative capacity is something which I
15 understand is different from the current British
16 Columbian model -- British Columbia model, and
17 as such I think -- and, in fairness, it's
18 different to an awful lot of jurisdictions,
19 including the UK, where that is our sole
20 emphasis and focus is denying and depriving
21 individuals of the proceeds of crime. And I
22 think and would recommend that certainly -- that
23 aspect, I think that that's one of the key
24 factors in our success.

25 So the multi-agency -- and then obviously

1 there is -- the aspects I think that Dr. King
2 perhaps has concerns with is the addition of
3 police evidence and the provision of anonymity,
4 I say, is less of a factor but it does mean that
5 we can get quality civilian staff with the
6 requisite expertise who have at least -- we've
7 allayed some of their concerns in respect to the
8 security.

9 And so these are all factors, I think, that
10 ensure the success of the bureau.

11 And one of the other things that I think is
12 probably -- that hasn't been mentioned is that
13 we have been very settled. And in fairness an
14 awful lot of credit has to go to the people that
15 drafted the legislation initially, both the
16 *Criminal Assets Bureau Act* and the *Proceeds of*
17 *Crime Act* back in 1996 because very little has
18 changed. The *Proceeds of Crime Act* is a 23-page
19 act, and the *Criminal Assets Bureau Act* I think
20 is about 12 or 13 pages. Very little, if
21 anything, has changed -- and that's including
22 their amendments -- over the course of the
23 years. And when I see jurisdictions
24 encountering difficulties with public perception
25 it's because what I understand to be overreach

1 and continually changing the goal posts.

2 We don't -- there's certain provisions which
3 are available in your jurisdiction which are not
4 available in ours. One of those is the
5 administrative restraint. We don't have that,
6 and I know that that's something that would
7 probably cause difficulties in this jurisdiction
8 from a public perception perspective.

9 Similarly, the issue of making civil
10 applications in respect of the instruments or
11 instrumentalities of crime. We don't -- with
12 the exception of some very -- you know, some
13 very limited exceptions, people trafficking, I
14 think that there's -- drug trafficking boats
15 that are used and vans that are used in
16 smuggling can be seized as instrumentalities of
17 crime. But if -- but primarily -- or
18 exclusively what we are focused on is the
19 proceeds of crime and not the instrument s
20 instruments of crime. And I think that protects
21 us from a lot of the criticism.

22 And Dr. King is absolutely correct. I would
23 struggle -- perhaps in the last year, maybe the
24 health -- the health service in Ireland, the
25 nurses and doctors might be the only public

1 service body that would encounter or engender as
2 much positive public support as the Criminal
3 Assets Bureau. Dr. King is absolutely correct.
4 I -- just anecdotally I would have known prior
5 to ever coming to the Criminal Assets Bureau the
6 high esteem in which it was held, not only
7 internationally but also within the country.
8 And I think it's a testament to the people that
9 work in the organization to ensure that that
10 reputation is upheld.

11 If we're moving applications against people
12 whose criminality is very much in question, then
13 I think we would encounter significant pushback
14 not only from the defence practitioners and the
15 courts but also from the public. And it's
16 important that when you're empowered with
17 significant and far-reaching powers, that you
18 use those judicially and that you are cautious
19 and careful and conservative in your use of
20 those insofar as you can be and make sure that
21 the targets of your operations are proper and
22 appropriate targets.

23 And I think that has been done by the
24 Criminal Assets Bureau over the last nearly
25 25 years. And as a result very little has

1 changed and very little needs to change. And
2 that idea of, I suppose, conservatism, the idea
3 that we have a structure that works and keeping
4 it is something that we hold dear.

5 So I don't know if I've answered your
6 question there. I hope I have.

7 Q Yeah, thank you. That's very helpful, and I
8 think a fine note perhaps on which to conclude.
9 Unless Dr. King or Detective Inspector Butler
10 have any comments to follow up onto that.

11 MR. McCLEERY: In that case, Mr. Commissioner, I
12 think we can move on to questions from
13 participants. And I believe we have Ms. Chewka
14 from the Province up first.

15 THE COMMISSIONER: Yes, that's right. I understand
16 Ms. Chewka has been allocated 30 minutes.

17 MS. CHEWKA: Yes. Thank you, Mr. Commissioner.

18 **EXAMINATION BY MS. CHEWKA:**

19 Q I have just a few questions, as Mr. McCleery
20 covered many of the areas I had hoped to cover
21 this morning. And so I'll begin with a question
22 for Mr. McMeel, if I may. This morning you had
23 talked about the process for identifying
24 targets, if I understand correctly that it
25 begins with the divisional asset profiles --

1 really -- it boils down to criminality and
2 assets, and they're the two key points that we
3 return to every time is criminality and assets.
4 Once we've identified an asset and we can link
5 criminality to that asset, and we can eliminate
6 then through the assessment process what are
7 forms of legitimate income that could have
8 funded that asset, then we're happy to take that
9 target on. So really -- and I think once we're
10 absolutely resolute about those two key points,
11 it ensures that we're taking on the right
12 people. We have clear criminality and we have
13 an asset that we can -- and if we're missing one
14 or another, well, then it's not a valid case for
15 us to take on.

16 Q And would you say that those same factors are
17 what's considered by the admissions board as
18 well?

19 A (BB) Absolutely. I sit on the admissions board
20 and certainly the team of us that sit on the
21 admissions board every week, they really are the
22 key factors and then everything else flows from
23 that. We may then see revenue issues. We may
24 well see social welfare issues. But ultimately
25 we have an asset. So if it's a thing that we

1 take action, we have an asset that we can attach
2 that action to, and I think that's the key,
3 really.

4 Q I understand -- and I believe it was the
5 Detective Inspector Butler this morning who had
6 said that CAB often focuses or targets small
7 assets or lower value assets; is that correct?

8 A (BB) Yeah. I hope I explained myself well
9 enough in the justification of why. We have a
10 minimum threshold of 5,000 euros or a minimum
11 threshold for an asset. And I think when we're
12 identifying targets, it's important that we
13 identify significant players locally as well as
14 significant players nationally. And I think
15 really by targeting the smaller assets -- or
16 being able to target smaller assets, I should
17 say, allows us to target players who are maybe
18 individuals who see themselves on the up, people
19 who are maybe known locally in the community.
20 And by targeting those individuals, it certainly
21 has an impact in the local community. And I
22 think that sometimes can be hugely significant
23 and hugely important that the local community
24 can see CAB taking action against somebody who's
25 well-known locally, who's out on the ground,

1 maybe involved in the sale and supply of drugs,
2 driving a nice car, no legitimate income. And I
3 think the fact that CAB take action against that
4 individual sends out a signal to the broader
5 community, and I think that's very, very
6 important.

7 Q I understand that the threshold is 5,000 euros.
8 Is that correct? For taking action --

9 A (BB) That's correct.

10 Q In your opinion would you say that's an adequate
11 threshold, or would you prefer the threshold to
12 be lower or higher for the purpose of achieving
13 CAB's mandate or objectives?

14 A (BB) The threshold was previously 13,000 euro.
15 And I certainly -- at the time the threshold was
16 at 13,000 euros, I was a detective sergeant
17 working out in a district station, and it was
18 something I was quite conscious of at the time.
19 We were certainly dealing with low-level drug
20 dealers at the time where that 13,000 euro
21 threshold was too high, so we were seeing
22 people -- we were making cash seizures that
23 weren't meeting that threshold.

24 So I think the reduction to 5,000 has
25 certainly assisted CAB in going after those

1 lower-tier players. And I think its probably
2 low enough in the current climate. I think it's
3 certainly -- it has the impact, I think, that it
4 was set out to achieve, and I think that's the
5 important thing.

6 Q And when you say the impact that it hoped to
7 achieve, is it of a deterrent impact on those
8 lower end criminals or is there another purpose
9 that that lower -- the threshold was attempting
10 to achieve?

11 A (BB) Yeah, I think it was important that all
12 levels in the criminal world were conscious that
13 CAB could come to take their assets, that CAB
14 could be a thorn in their side. And I think by
15 lowering that threshold it allowed CAB to move
16 into that area which was important. It also
17 allows CAB to take out potential criminals,
18 maybe the more serious criminals of tomorrow.
19 It's important that we have some footprint in
20 that area too that we can target those people.
21 And I think that's really what it was set out to
22 do. And we certainly take a lot of assets in
23 around that area. Well, maybe not quite at
24 5,000. I think last year we had an asset of
25 5,050. Maybe correct me on that one, Kevin. We

1 certainly aren't afraid to go after lower value
2 assets.

3 And as the discussion went through earlier
4 on in relation to incentivization about the cost
5 of taking those actions, the cost of taking
6 those proceedings isn't really an issue for us.
7 It's about the target, the suitability of the
8 target and the likely impact that taking that
9 asset or going after that asset will have.

10 Q This morning the panel also discussed that one
11 of the hallmarks of CAB was the
12 multidisciplinary approach that's been taken.
13 And I'm wondering if in your opinion there are
14 any other agencies or bodies which could be
15 incorporated into the CAB model in order to
16 achieve your goals.

17 A (KM) I might come in on that one, if that's all
18 right. What we tend to do is we tend to liaise
19 with various other agencies external to the
20 bureau. So, for example, the Environmental
21 Protection Agency, you know, if they have
22 concerns in relation to an issue, so -- local
23 authorities as well. They might have issues in
24 relation to also environmental crime or
25 something like that. So I don't personally --

1 and maybe Barry, if he does have examples. I
2 don't see any reason for additional agencies or
3 disciplines to come into CAB.

4 We pride ourselves on having the expertise
5 that we need to deal with the cases that we
6 have. We have the tools already there. But we
7 are always willing to collaborate with any
8 agency and once, as Barry -- and we keep on
9 harping on -- once there's crime and there's
10 assets, we're happy to get involved. And where
11 that tip-off comes from, whether it's a civilian
12 or whether it's the Environmental Protection
13 Agency, it doesn't matter to us as long as the
14 information is good and those factors are there.

15 There's just one other thing, Ms. Chewka, I
16 wanted to mention in relation to the lower level
17 seizures. Just to follow along from what Barry
18 said there. Is that you have to remember, if
19 you're going after a 17-year-old or an
20 18-year-old drug dealer and he has 10,000 or
21 15,000 euros in his back pocket, and he has no
22 explanation for that, I know it seems like a
23 small amount of money, but if you seize that,
24 what you're seizing is not only disincentivizing
25 drug dealing in the area, he's not going to be

1 able to buy the luxury goods that would show off
2 his status as the richest kid on the block, but
3 you're also seizing the seed capital for further
4 crimes, and that's an important incentive in
5 what we do.

6 Of that 10,000 euros, maybe 8,000 would be
7 used to purchase more drugs and they will be
8 sold for significantly more than was used. If
9 you can catch and use your powers and tools at
10 an early stage, it has an effect. And this
11 follows on from what Dr. King was saying in
12 terms of effectiveness and the question of
13 effectiveness. Barry touched on it there about
14 criminals and having to leave the jurisdiction.
15 If -- and I fully accept as a percentage of the
16 total suspected illicit assets in any country,
17 the most successful models only take -- only
18 scratch the surface in terms of seizure and
19 forfeiture. But if you can make the individuals
20 that you're targeting have to take precautionary
21 measures which will involve them having to move
22 outside the jurisdiction perhaps or having to
23 spend significant amounts of money, up to
24 20 percent, on laundering the money that they
25 wouldn't otherwise have to launder, well, you're

1 also fulfilling your mandate to deny and
2 deprive, aren't you? Because 20 percent of the
3 money, the total amount, even if you're not
4 getting 20 percent, forfeiting 20 percent,
5 you're costing them 20 percent in fees to
6 launder that money, and you're causing them
7 significant inconvenience.

8 Back in the early 1990s criminals were
9 allowed to spend their money with impunity, and
10 spend ill-gotten gains with impunity. And
11 whatever the criticisms or assessments of
12 effectiveness of CAB are over the last 25 years,
13 it's certainly a more difficult place -- Ireland
14 is a more difficult place to spend the proceeds
15 of crime and to use the proceeds of crime. And
16 if CAB can take some of the credit in that, I
17 think that's also an indication of
18 effectiveness.

19 Q Detective Inspector Butler, do you have anything
20 to add with respect to the other agencies or
21 bodies that may work with CAB through
22 information sharing agreements or that could be
23 incorporated into the CAB model in your opinion?

24 A (BB) Certainly the necessity for incorporating
25 other agencies is not something we've seen on

1 the basis of investigations that we've
2 conducted. I think if we -- there was a
3 shortfall or if there was a gap in our capacity,
4 it would certainly have become apparent at that
5 stage, and that's not something that has become
6 apparent. I think, as Kevin said, we're well
7 placed to link in with other agencies when we
8 need do during the course of investigations, and
9 it's certainly something we do.

10 But no, I'm not sure at this stage that
11 there's any evidence there to suggest that we
12 might need to bring anybody else on board.

13 Q I understand from the evidence this morning as
14 well that CAB officers retain the powers that
15 they have from their original positions but they
16 also gain additional powers as a result of their
17 CAB position itself, for example, search
18 warrants or orders for production, I think. And
19 so I'm wondering if in your experience there are
20 additional authorities or powers that would be
21 helpful to CAB officers in fulfilling, again,
22 their duties under the respective legislative
23 schemes.

24 A (BB) There's certainly some changes to the
25 legislation -- I suppose, and Kevin might want

1 to talk about that -- that have been remembered
2 that would certainly assist CAB in performing
3 our role. I suppose increased international
4 cooperation is something. I know there's also
5 plans to introduce a bank account register. It
6 certainly a project at the European level, and I
7 know it's well advanced in Ireland. And that
8 would certainly give CAB access to -- much
9 easier access, I suppose, to bank account detail
10 and data in relation to named individuals.
11 That's something that's in the pipeline. So I
12 think these are certainly things that we have
13 sought and requested and are happy to see coming
14 down the line.

15 Kevin can provide detail in relation to some
16 of the other matters that are on track.

17 But, no -- and I think I'm happy to say that
18 over the years where we have with sought
19 additional assistance in that regard we've
20 generally -- we've had a listening ear available
21 to us, you know.

22 Maybe, Kevin, do you want to take the new
23 legislation or certainly amendments to the
24 legislation?

25 (KM) Yeah, there's certain powers that we're

1 seeking to obtain at the moment. The Criminal
2 Assets Bureau has to use its powers in the
3 criminal law to see -- or to freeze bank
4 accounts. There's no provision whereby bank
5 accounts can be frozen on foot of a suspicion.
6 The funds in those accounts constitute the
7 proceeds of crime. The only provision which CAB
8 can use is under the money laundering acts and
9 therefore -- I mean -- and therefore that's the
10 provision that's used to freeze bank accounts.
11 It would be useful for CAB to have its own
12 specific provisions which would be based on the
13 civil law function rather than the criminal law
14 function.

15 There's a few -- and Barry has already
16 touched on it. There's a few other powers that
17 we're seeking. And we've mentioned about the
18 administrative power. A bureau officer can
19 seize any item that he or she believes to be the
20 proceeds of crime for 24 hours. The chief
21 bureau officer can extend the time that that is
22 frozen without reference to the court and for a
23 period of 21 days. We would be looking to
24 extend that for the purposes of our
25 investigations, and we would be looking to have

1 a similar system than we -- or a similar system
2 to the one that we use in relation to the money
3 laundering and freezing the bank accounts. That
4 there would be a provision whereby you could
5 apply to the court for an extension of up to
6 three months so that an asset can be held to
7 allow for often very complex and detailed
8 investigations to take place.

9 So we don't have everything we want
10 currently and there are powers that we're
11 looking to get, which would enhance the powers
12 that we currently have.

13 Q This morning the panel also gave evidence with
14 respect to the program being offered by the
15 University of Limerick and the training received
16 by investigators. And I'm wondering perhaps,
17 Mr. McMeel, you can start. But you emphasized
18 this morning the importance of experiential
19 learning through that program, and I'm wonder if
20 you can explain to the Commissioner other kinds
21 of training that in your experience or your
22 opinion are useful to CBA officers -- or CAB
23 officers. For example, maybe professional
24 ethics or cyber crime, those types of training
25 opportunities.

1 A (KM) Yes. Well, there's considerable resources
2 that are made available to all of the staff and
3 bureau officers in the bureau for training and
4 education. An awful lot of our bureau officer
5 have attended a diploma in -- well, in the
6 King's Inn, which is the training school for
7 barristers, in corporate, regulatory and white
8 collar crime. And we see -- some of our
9 technical experts are provided with as much
10 expertise as is required in relation to ongoing
11 developments in that area. And we have recently
12 provided training in relation to e-discovery and
13 new software and tools that we have available to
14 all investigators.

15 And it's an evolving area. It's an organic
16 area. We try to provide as much in terms of
17 resources as is viable. And conducting our own
18 course, the course in which Dr. King is involved
19 that we collaborate with the University of
20 Limerick, is a significant and further step in
21 that process. And that is -- of course that's
22 specifically designed to give a considerable
23 qualification, a level 9 accredited
24 qualification to its attendees and participants.
25 And as it's an experiential, it's focused on

1 investigations. There's the mentoring element
2 that Detective Inspector Butler has mentioned as
3 well and Dr. King has mentioned. It's very much
4 focused on the practical, and it's better for
5 it, I think. I think that that's what the
6 investigators are looking for and that's
7 something that we are very proud of, I suppose,
8 here until the Criminal Assets Bureau that it's
9 up and running.

10 And it's -- and we'll see, I suppose,
11 over -- we'll see the benefits of this over the
12 next five, ten years when these investigators
13 are coming back with so much more experience and
14 training. And often what we see in these
15 courses -- and I've been involved in the
16 training of them myself -- is that far more is
17 learned, as is often the case, between the
18 practitioners when they discuss issues after the
19 presentations rather than from the presentations
20 themselves. From the experience of the
21 seasoned -- the seasoned investigators and how
22 they have dealt with particular challenges or
23 problems as they arise.

24 So these are the kind of things that are
25 involved and I think that that's huge that

1 dialogue between individuals, which is all the
2 harder on Zoom, but it's -- as it's had to be in
3 the last three months. But hopefully next year,
4 you know, the proper classroom where those
5 discussions will be up and running will be a
6 further improvement in the course.

7 I don't know if I've -- I hope I've answered
8 your question there.

9 Q Yes. Thank you. Detective Inspector Butler, do
10 you have anything to add with respect to
11 training?

12 A (BB) Yeah, sure. Certainly the value of the
13 POCAI course and how it was drafted, the Gardas,
14 An Garda Síochána, like every policing
15 organization, a senior investigating officers
16 training program -- and I know certainly large
17 elements of the POCAI course and the structure
18 of the course were based on that SIO program
19 that's run for senior investigating officers in
20 the Garda. So that is also run in conjunction
21 in the University of Limerick. And I think the
22 professional development portfolio in
23 particular, that's the hands-on, that's the
24 practical element of it. That relates to the
25 investigation that the course participant is

1 undertaking and that's ultimately what they have
2 to discuss and present at the end. So really
3 the final presentation would show the
4 understanding and the skills and the ability
5 that they have to complete a proceeds of crime
6 investigation. That's the ultimate assessment.

7 So I think it's practical. I think that's
8 hugely important because it has to be a
9 practical course for people who are doing
10 practical work.

11 Q Thank you. Dr. King, I have a couple of
12 questions for you or one in particular. In a
13 chapter that you had written in the *Dirty Assets*
14 book you had spoke about -- you expressed some
15 concerns about a lack of accountability of CAB.
16 And I'm wondering if you can explain to the
17 Commissioner what your concerns are with respect
18 to the lack of accountability.

19 A (CK) One of the main things was reporting back
20 on the work of CAB. And as I'm not here to get
21 a dig at CAB for a sake at getting a dig at CAB,
22 I have to give credit where it's due because the
23 annual reports have improved significantly
24 compared to the early years of CAB. Now there
25 is a lot more detail in that regard. So in

1 terms of public accountability and
2 [indiscernible] who work that is undertaken on a
3 yearly basis, and that is certainly an
4 improvement.

5 Q In your chapter you had also, I think, expressed
6 some concerns about the national parliament
7 playing a passive role in just merely receiving
8 the annual reports. Is that still a concern
9 that you have?

10 A (CK) I don't think there is any active review of
11 the CAB reports. In a sense they are just laid
12 before parliament. So in terms of parliamentary
13 review, my understanding is that unless a
14 particular politician was to put a ministerial
15 question forward, for example -- this might have
16 changed in recent years, and the CAB officials
17 will be better fit to comment on that recent
18 change if it has happened. But it only comes up
19 in our parliament if it is raised as a specific
20 issue by a particular politician. It's not a
21 regular issue on the agenda every June or so
22 when the report is finalized.

23 Q Would you have any recommendations as to how
24 accountability could be improved?

25 A (CK) I would have to go away and think about

1 that one, I think. Yeah, I would say leave that
2 one with me.

3 Q Of course.

4 MS. CHEWKA: Unless anyone has anything to add with
5 respect to accountability point, those are my
6 questions, Mr. Commissioner.

7 THE WITNESS: (KM) Sorry, just on the accountability
8 piece. I know that there's significant
9 oversight and transparency in respect of our
10 interactions with the Department of Justice.
11 They have an auditing and transparency unit
12 which review the work of CAB and a governance
13 unit which we report to on a quarterly basis.
14 In addition obviously to the annual report,
15 which has been put before -- or which is brought
16 to the attention of the minister and put before
17 the Oireachtas, the parliament here in Ireland.

18 So -- it's a continuing process. It's not
19 publicized. We regularly get PQEs, political
20 questions, and have to address them. Often it's
21 short notice. And it's -- CAB for its size is
22 something that attracts a significant amount of
23 attention both with the public and the press and
24 our politicians as well. So it's generally a
25 good news story. Dr. King had mentioned there

1 that the annual report is received -- well,
2 actually it was your question. In fairness to
3 Dr. King, it wasn't Dr. King that had said it,
4 but I think you had referred to one of his
5 articles that it was passively received. I
6 suspect if the news in the report was bad, then
7 it might not be so passive, the reception and we
8 might see and hear a little bit more criticism
9 from or politicians. But thankfully the news
10 and the reports have been good.

11 And it's nice to hear Dr. King acknowledge
12 the fact that the reports have become more
13 voluminous in recent years and contain more
14 information. And that's to the benefit of the
15 academics and also of the public and the
16 politicians that are receiving the report.

17 MS. CHEWKA: Thank you. I have no further questions,
18 Mr. Commissioner.

19 THE COMMISSIONER: Thank you, Ms. Chewka.

20 Now turning to Ms. Magonet on behalf of the
21 British Columbia Civil Liberties Association,
22 who also has been allocated 30 minutes.

23 MS. MAGONET: Thank you, Mr. Commissioner. I don't
24 anticipate using all of that time in light of
25 the examination conducted this morning, which

1 answered many of our questions.

2 THE COMMISSIONER: Thank you.

3 **EXAMINATION BY MS. MAGONET:**

4 Q I first have a few questions for Mr. McMeel.
5 You mentioned this morning that legal aid is
6 available in Ireland in some *POCA* cases; is that
7 correct?

8 A That's absolutely correct. And if a person
9 is -- qualifies for the scheme, it's available
10 in all *POCA* cases. So obviously they have to
11 have sufficient -- or insufficient means to be
12 able to conduct their own defence of the case.
13 And if they qualify on that basis, they --
14 there's another factor that there has to be --
15 there has to be exceptional circumstances, it
16 says, but in reality the practical application
17 of that is that virtually every case is
18 exceptional, and it's not strictly adhered to.
19 It was supposed to be a selective legal aid
20 provision to be used in exceptional cases, but
21 any significant asset that's been proceeded
22 against is considered -- well, has been
23 considered by the courts to qualify under that
24 provision. So it's not strictly adhered to.

25 Q Thank you. And is it also correct that under

1 POCA when an interim or interlocutory order is
2 in force, an order can be made to enable the
3 person whose property is targeted by that order
4 to discharge reasonable living and other
5 necessary expenses, including their legal
6 expenses in relation to the proceedings?

7 A (KM) Yes. That provision and -- that provision
8 under section 6 of the *Proceeds of Crime Act*
9 allows for the disbursement of living or legal
10 expenses generally. It's very rarely invoked,
11 in fairness, and the legal aid -- ad hoc legal
12 aid scheme was brought into being in 1998, two
13 years after the inception of the act. And as a
14 result it's -- very seldom is the section 6
15 provision used. What invariably happens is when
16 a deal is done, a settlement agreement happens,
17 sometimes section 6 is then evoked to allow for
18 payment out to the solicitor or to the legal
19 representatives of the person that advised -- or
20 that engaged in the settlement to pay for the
21 legal advice in entering into that settlement.
22 So it's usually only involved in those
23 principles. Legal aid has trumped it,
24 essentially.

25 Q Thank you. In Ireland is -- the availability of

1 legal aid in these cases as well as this
2 provision in *POCA*, are these viewed as important
3 from an access to justice perspective in civil
4 asset forfeiture cases?
5 A Absolutely. And Dr. King might speak from that
6 side of the argument. But it is one of the
7 safeguards, I think, that is -- are acknowledged
8 safeguards in the act, if it was the case that
9 we could proceed against individuals, seize all
10 of their assets, not allow them any access to a
11 defence, then I think that that would be quite
12 critically received and perhaps rightly so. The
13 reality is that we do challenge a lot of the
14 legal aid applications in the interests -- we
15 were speaking about transparency earlier on.
16 And in the interest of transparency we do tend
17 to challenge legal aid applications, and we
18 challenge them on the basis that we may have
19 information that the person isn't being
20 forthcoming with their affidavit of means. So
21 if you can imagine where the Criminal Assets
22 Bureau with its access to databases and
23 information may be in a position to assist the
24 court in interrogating the statement of means of
25 a legal aid applicant, and often we engage in

1 that process. And sometimes the legal aid
2 hearing is that part of the application that's
3 most vociferously fought, and often it can be
4 the winning and the losing of the case, both
5 from CAB's perspective and from the respondent's
6 perspective. But legal aid is available.

7 And also it's very important to note that in
8 the event that CAB -- in the event an individual
9 is not legally aided and they are successful in
10 convincing the court on the balance of the
11 probabilities that the asset is not the proceeds
12 of crime, not -- or CAB don't meet the
13 evidential threshold, well, then the individual
14 who is affected by the orders will be in a
15 position to seek their costs for the full
16 application. And that can be and is very
17 expensive, and CAB ultimately foots the bill in
18 those circumstances.

19 So in circumstances where there's no legal
20 aid, obviously if they're legally aided they
21 can't claim their costs on the double. So if
22 they're not legally aided and they win their
23 case, well, then CAB will have to pay their
24 coasts.

25 Q Thank you.

1 A (KM) Okay.

2 Q I now have some questions for Dr. King.

3 Dr. King, you mentioned earlier that the CAB is
4 viewed by --

5 A (CK) Sorry. I wonder if I --

6 Q Can you hear me?

7 A (CK) Yes. I wonder if I could add something to
8 what has already been said about legal aid.

9 Q Absolutely. Please.

10 A (CK) Because I think it is worth me jumping in
11 on that point as this did spark a lot of
12 discussion in my research. As has already been
13 indicated, in very early years there was a lot
14 of concern about legal expenses being paid for
15 out of frozen assets, and that did result in
16 this ad hoc legal aid scheme. And the
17 rationale was to stop assets being dissipated on
18 legal expenses.

19 But in my research there were very
20 different perspectives on the legal aid scheme,
21 even amongst barristers who act for CAB, for
22 example. But a common thread that did run
23 through my interviews was the importance of a
24 respondent being represented. That a person
25 should not go unrepresented in *POCA* proceedings.

1 And this point was -- I have the quote here from
2 a barrister who acted for CAB who said:

3 "Don't be afraid of paying for lawyers on
4 the other side because that gives a proper
5 process. The critical thing is how strong
6 is your evidence. If your evidence is
7 strong and clear, it's very difficult for
8 a defendant to put up a false case. And
9 if they can put up a true case, well, then
10 you are wrong, in which case it shouldn't
11 be in court anyway."

12 There were significant concerns about the
13 process for applying for legal aid. And
14 defence solicitors were vociferous in this
15 regard.

16 So as Kevin has mentioned about CAB
17 challenging applications for legal aid, this
18 point was picked up by defence solicitors. They
19 said that you do have to set out your case in
20 the application for legal aid. And they
21 contrasted that with legal aid in criminal
22 proceedings. So the person said, if he was
23 representing a client charged with murder, then
24 you don't get refused legal aid just because
25 you're guilty. It was emphasized that legal aid

1 is there to ensure representation.

2 This was a key point coming out. There was
3 a lot of criticism about the difficulty of
4 securing legal aid. That the threshold is quite
5 high. It was emphasized, as Kevin has said,
6 that CAB do resist applications. And also that
7 decisions whether or not to grant legal aid are
8 taking longer to resolve. It was described as a
9 war of attrition as to whether or not you will
10 get legal aid.

11 And I think this is important, certainly
12 from the practitioner's perspective, because a
13 solicitor is not going to take on a case unless
14 they have some certainty that they will get paid
15 at the end of it. And one defence solicitor
16 went so far as to say that they have been driven
17 out of this area of law because of how the legal
18 aid scheme works that I spoke about, going back
19 and forth to the court in the hope that they
20 might get legal aid rather than an expectation.
21 And again they contrast of that with the
22 approach in criminal cases.

23 In my research CAB officials did stress,
24 though, that the application for legal aid, it
25 is distinct from the merits of the case. That

1 the defence team do not have to open up the full
2 defence of their case, but they do have the show
3 that there is an arguable case.

4 When I asked CAB officials whether legal
5 aid is widely granted one official did say that
6 yes, it is widely granted. And they clarified
7 that to say that there's no respondent in *POCA*
8 cases that goes unrepresented. I contrast that
9 with a defence solicitor, though, who did take
10 exception with that type of statement, and they
11 said they have been refused legal aid not
12 infrequently.

13 And the view was put forward that well, if
14 CAB are saying everyone gets legal aid or
15 everyone is represented, why not allow that at
16 the outset. And this led to their criticism.
17 The criticism was that there was that there is
18 this perception that CAB are using the legal aid
19 application to flush out information that should
20 be confidential between the solicitor and their
21 client.

22 A separate or a further point here is the
23 financial reward in *POCA* cases. So there was
24 mention of Rolls Royce lawyers, about people
25 making a lot of money from the legal aid scheme.

1 People -- some respondents spoke about this
2 being very lucrative. But others agree with
3 that viewpoint, saying yes, it is higher than
4 criminal legal aid, but not significantly so.

5 And one final point here is the criticism
6 that was made by some solicitors along the lines
7 that you never know when you're going to be paid
8 and how much you're going to be paid. So it was
9 said that the amount that a solicitor will be
10 paid is allocated on some sort of parity with
11 the amount that the junior counsel for CAB gets
12 paid, so the defence solicitor has to wait until
13 fees are filed by that barrister to work out how
14 much they're going to get paid and to receive
15 that money.

16 And this was acknowledged by some CAB
17 officials that they have had to chase off some
18 barristers in certain instances so that the
19 defence solicitor could be paid as well.

20 Q Thank you, Dr. King. I'll now move to a
21 different topic. I have some questions for you
22 about the CAB. And earlier this morning you
23 were mentioning that the CAB is viewed as quite
24 a powerful agency within Ireland. It's the case
25 that the CAB Act enables significant information

1 sharing between bureau officers from police,
2 revenue, customs and social assistance agencies;
3 is that correct? Oh, you're muted, Dr. King.

4 A (CK) Yes. Yes.

5 Q Okay. Thank you. You would agree that
6 information in these types of databases may be
7 of a very personal, private nature and that --

8 A Yes.

9 Q Thank you. And that in particular social
10 assistance databases may contain private
11 information about very vulnerable individuals.

12 A (CK) Yes.

13 Q Thank you. It's also the case that the *CAB Act*
14 can enable individuals who aren't police
15 officers to take on policing powers; correct?

16 A (CK) Yes. I should clarify there. So that's
17 what the legislation provides or permits, at
18 least in theory. But as we've heard earlier, in
19 practice my understanding is that only police
20 officials exercise policing powers.

21 I pass it over to my CAB colleagues to
22 comment on that.

23 (KM) Yeah, Dr. King's last comment is
24 correct. There's no provision within the acts
25 which allow for a non-police officer to exercise

1 policing powers. And in fact a lot of the
2 policing type powers which are contained within
3 the act are -- which are referable to bureau
4 officers are exclusively only for bureau
5 officers who are members of the police force.

6 So there's one -- I think that there's one
7 provision under the new 2016 act, which is the
8 administrative provision, the power to seize an
9 asset for 24 hours, which would ordinarily
10 associate with a policing power, albeit that a
11 revenue inspector or customs individual would
12 have a similar power. That is not specific to
13 what type of bureau officer it is, so a
14 person -- a bureau officer who is a member of --
15 or who is a revenue inspector or a social
16 welfare inspector would have the power to seize
17 for 24 hours, but obviously that's limited
18 temporarily and just to that period. So it's
19 not a very extensive power. And -- but the
20 accusation or view that the *CAB Act* allows
21 non-police to exercise policing powers is not
22 correct.

23 Q So just to clarify, section 8(6)(a) of the
24 *CAB Act* which says that a bureau officer may be
25 accompanied or assisted in the performance of

1 on this point, Kevin. I'd agree with your point
2 there that in practice it doesn't seem to be a
3 practical issue. It might well be a more
4 academic criticism. But if you look at
5 section 8(6)(c), so if someone does accompany a
6 bureau officer, they have conferred with -- they
7 shall have and be conferred with the powers and
8 duties of the first bureau officer for the
9 purposes of that assistance.

10 (KM) I've never seen that actually being
11 invoked in any way or an issue ever arising out
12 of it. And no, that's not to say one hasn't,
13 but I simply am -- I simply haven't seen it
14 arise. And you can see me scrambling to look at
15 the provision in the act. It's not something
16 that arising with any great regularity at all.

17 Q Thank you, Dr. King. That was the provision I
18 had meant to refer to.

19 If I may just ask you a followup question
20 about this, Dr. King. Taking -- or assuming
21 that this provision isn't utilized in practice,
22 a law which would enable non-police officers to
23 exercise policing powers for the purposes of
24 asset forfeiture would raise accountability
25 concerns. Would you agree with that?

1 A (CK) Yes.

2 Q Thank you. I now have a few questions about the
3 constitutionality of Ireland's -- or of *POCA*. I
4 understand from your research that you have
5 concerns that *POCA* undermines due process in
6 particular through the use of the civil standard
7 of proof and through -- as well by undermining
8 the presumption of innocence. Is that a fair
9 characterization?

10 A (CK) Yes.

11 Q And you would agree that the Irish Supreme
12 Court, while having upheld the constitutionality
13 of *POCA*, did characterize the legislation as
14 unquestionably draconian?

15 A (CK) Yes.

16 Q Thank you. And actually those are my questions
17 about the constitutionality of *POCA*.

18 If I could now take you to an article that
19 was published in a volume you edited.

20 MS. MAGONET: And if I actually could ask Madam
21 Registrar to pull this up. This is an article
22 by Michelle Gallant, which was -- or sorry, Mary
23 Michelle Gallant, which was published in your
24 *Dirty Assets* book. It's called "Chapter 8 -
25 Civil Processes and Tainted Assets: Exploring

1 Canadian Models of Forfeiture." Thank you.

2 Q Are you familiar with this article, Dr. King?

3 A (CK) Yes. It has been a while since I've read
4 it, but I am familiar with it, yes.

5 Q Okay. Thank you. If you don't remember this, I
6 can take you to the place in the article, but
7 would you agree that in this article Professor
8 Gallant raises a concern that civil forfeiture
9 represents a significant expansion of state
10 power?

11 A (CK) Yes.

12 Q And that this power, while it can be used to
13 target individuals engaged in criminal activity,
14 can also be pitted against vulnerable and
15 marginalized members of society?

16 A (CK) Yes.

17 MS. MAGONET: Thank you. Mr. Commissioner, if this
18 could be marked as the next exhibit, please.

19 THE COMMISSIONER: Yes. Very well. Sorry, I don't
20 remember the number we're at, Madam --

21 THE REGISTRAR: The next number is 387,
22 Mr. Commissioner.

23 THE COMMISSIONER: Thank you.

24 **EXHIBIT 387: Civil Processes and Tainted**
25 **Assets: Exploring Canadian Models of**

1 **Forfeiture, Michelle Gallant - Chapter 8 - 2014**

2 MS. MAGONET: Thank you.

3 Q I just have a few last questions for you,
4 Dr. King regarding the effectiveness of
5 Ireland's asset forfeiture regime and other
6 asset forfeiture regimes. I think it was
7 mentioned earlier that the work of the CAB may
8 have led some individuals engaged in criminal
9 activity to leave Ireland, but my understanding
10 is that -- or I believe you said earlier that
11 that didn't lead to an actual decrease in
12 organized crime in Ireland. Is that correct?

13 A (CK) There are of course difficulties in
14 measuring the extent of organized crime, so I
15 couldn't comment on the exact extent, whether it
16 has gone up or not. But certainly organized
17 crime continues to be a concern today, as it was
18 in the mid-1990s.

19 Q Thank you. And I understand from your research
20 that even when groups left Ireland, other new
21 crime groups quickly filled the vacuum that
22 those groups provided; is that correct?

23 A (CK) Anecdotally that is what I understood has
24 happened.

25 Q Thank you. And you would agree that it's not at

1 all clear based on the evidence we have that
2 civil recovery regimes actually disrupt criminal
3 activities?

4 A (CK) We don't have empirical evidence. I would
5 be surprised if it does not have an impact,
6 whether it is disbursing organized crime groups
7 elsewhere or sending out this message that crime
8 does not pay. I do think it has an impact
9 overall. I cannot say what that impact is.

10 Q But certainly trying to measure that impact by
11 looking at the amount of assets that have been
12 forfeited by an agency is not the right way to
13 go about it?

14 A (CK) Correct.

15 Q And that that is the bulk of -- or that is
16 predominantly the empirical evidence we have
17 right now for measuring the effectiveness of
18 these regimes?

19 A (CK) It's -- yes, the evidence we have available
20 is very limited, so I would not suggest CAB, for
21 example, rely on this as their indicator of
22 success, but I'm aware that some other agencies
23 in other countries have used this as a
24 measurement of success. Wrongly, in my view.

25 MS. MAGONET: Excellent. Those are my questions,

1 Mr. Commissioner. Thank you.

2 THE COMMISSIONER: Thank you, Ms. Magonet.

3 Now Mr. Rauch-Davis on behalf of
4 Transparency International Coalition has been
5 allocated 15 minutes.

6 MR. RAUCH-DAVIS: Thank you, Mr. Commissioner.

7 **EXAMINATION BY MR. RAUCH-DAVIS:**

8 Q I'll start with Detective Butler. In your
9 evidence this morning you gave evidence that
10 profilers provide lists of target to the
11 admissions board, and that the admissions board
12 in turn decides whether a target should be taken
13 on; is that right?

14 A (BB) I think profilers will generally submit a
15 profile which profiles the target. There will
16 be an assessment process then conducted within
17 CAB of the nominated target. And at that stage
18 it would be submitted if there's sufficient
19 evidence to reach that threshold to the
20 admissions board, and the admissions board then
21 will make a final call on whether the target --
22 the nominated target reaches the required
23 threshold.

24 Q And the admissions board -- I take your evidence
25 from my friend's cross-examination previously,

1 but the admissions board gets its mandate from
2 two key points, and that's the criminality
3 aspect and the assets -- whether there's -- the
4 aspect of criminality and then whether the asset
5 has that aspect of criminality; is that right?

6 A (BB) Yes, that's correct.

7 Q And so does the admission -- is the
8 communication between the admissions board down
9 to the profiler, is that a two-way communication
10 stream in that the -- and what I mean by that is
11 that -- does the admission board tell the
12 profiler who to target?

13 A (BB) No. The admissions board has no real role
14 with the profiler. The profiler links in with
15 the team room within the Criminal Assets Bureau.
16 And I suppose the role of the profiler is
17 twofold. The profiler can be tasked by the
18 bureau to obtain information or to conduct
19 inquiries in relation to a named target. And
20 separately, then, the profiler also acts as a
21 source of targets. And the profilers would
22 certainly act to submit profiles of possible --
23 potential targets that are assessed by our
24 intelligence and assessment team. And then a
25 recommendation is made to the admissions board

1 based on the work done following the submissions
2 of the profile.

3 Q So it's not the admissions board. It's the
4 bureau that would direct a profiler who to
5 target?

6 A (BB) Absolutely, yes.

7 Q Okay. And maybe this is a better question for
8 Mr. McMeel, but I'll open it up. I believe
9 Mr. McMeel gave evidence this morning that the
10 vast majority of criminal conduct that CAB
11 pursues is burglary, theft or drug-related
12 offences. Is that -- do I have that right?

13 A (KM) Yeah, the lion's share of what we do is
14 related to either burglaries and/or drugs or
15 drugs and organized crime and armed robberies
16 sometimes as well. But drugs-related crime is,
17 I would say, the predominant area that we
18 target.

19 Q Is the reason -- I mean, I think part of your
20 evidence this morning was that the reason for
21 why there's a priority regime is that there are
22 finite resources. That you can't practically
23 speaking go after everyone. Is that correct?

24 A (KM) I think that there's, I suppose, a
25 difference between what we can do and what we

1 actually do, and our mandate is very broad. And
2 as you can imagine we're an organization that's
3 staffed with a significant number from the
4 police force and our profiling network, as
5 Detective Butler has indicated, is predominantly
6 staffed also by police officers.

7 And as such, the targets that we're going to
8 get are going to be targets that would
9 ordinarily be identified from that area of
10 experience. And obviously from a policy
11 perspective -- and I'm not involved in
12 identifying targets, but from a policy
13 perspective there's a clear mandate to target
14 that type of traditional or organized crime
15 because it's perceived as being of significance,
16 a significant concern for society.

17 It's also, as Dr. King had point out in his
18 reference and summary of how the bureau -- why
19 the bureau was conceived or established in the
20 very -- in the first place. It's the reason --
21 it's that type of crime is the reason the bureau
22 was brought about, and I think that it's very
23 much thought that if we have a finite amount of
24 resources that a significant amount of those
25 resources are targeted towards those two areas,

1 qualifies for the two main pillars that it has,
2 criminality and there are assets, the assessment
3 board will decide will decide whether or not
4 that case is to be accepted as a target. And
5 then when it is accepted as a target, the
6 individual team room will have to prioritize
7 that case as they see fit.

8 And the idea that policy is -- there's
9 overreaching policy considerations is probably a
10 little bit too grand. And I don't mean to do
11 your question a disservice. The cases come as
12 they come and they're processed as they're
13 processed. And often urgency or an ongoing
14 feud, as Detective Inspector Butler related to,
15 might be a reason why a case might be bumped up
16 the list in priority and be processed. But we
17 have significant white collar cases in the
18 bureau and we've processed a number of those.
19 Fraud, you know -- the pyramid scheme-type
20 frauds, and various other types of frauds, and
21 we continue to do that. I was only processing a
22 fraud case today prior to coming online.

23 And so it's not -- it's simply how -- it's
24 an organic process and policy considerations are
25 minimal a driver on how we choose our targets.

1 Q You said the cases come as they come. But
2 they're coming from the profilers for the most
3 part; right?

4 A (KM) Well, that's not -- there are -- a number
5 of profile reports would be sent in from the
6 profilers. And in fairness, Detective Inspector
7 Butler would be better placed to say how many of
8 the targets that we take on. But there's
9 various other sources of information and
10 targets. And often one case will lead to
11 another case.

12 So if we're investigating and we're
13 searching in respect of a particular organized
14 crime group, we might search a premise and that
15 might reveal another target or another asset
16 that we are unaware of. And that might be in
17 the ownership or control of a different person
18 and therefore a new case will have to be
19 started. And often, as I say, the process is
20 almost organic. One case can often lead to
21 another the case and the cases are progressed on
22 a kind of natural basis, they will come to the
23 team room. And sometimes an asset -- for
24 example, an asset could be -- they could be at
25 risk of dissipation and that could bump it to

1 the top of the list. Or as I said before, a
2 particular target could be of concern due to an
3 ongoing feud and that could bump that case to
4 the top of the list.

5 And there's various -- varying degrees and
6 reasons why a case might be -- why a case might
7 be processed and quicker than another case. I
8 hope I've answered the question.

9 Q Yes. Thank you. Followup to that. Are
10 profilers or any other CAB officers given any
11 type of specialized training to detect what
12 we're kind of referring to as white collar
13 crimes in terms of corporate crimes and the
14 schemes that you alluded to in your evidence?

15 A (KM) Just to be clear, profilers are not CAB
16 officers. They're people that are outside. So
17 I don't know if -- in terms of special training,
18 people will take up training in relation to the
19 areas that -- primarily that they're interested
20 in. We have a number of people who have taken
21 courses in relation to white collar crime, and
22 there's no specific mandate or policy that
23 would -- that we direct that a certain number of
24 people train up in white collar crime. But we
25 do have forensic accountants. And if a specific

1 white collar crime incident or offence has
2 occurred and that can be referred to us by the
3 fraud bureau or -- and it will be processed as
4 required. And if there's something of
5 particular concern, you know, that would get
6 bumped to the top of the list.

7 (BB) Just on the issue of training, and you
8 asked about maybe white collar crime training.
9 We also have an economic crime bureau that have
10 a national remit. And the economic crime bureau
11 run economic crime training courses for police
12 and for front line police out operationally in
13 police stations. And that course is probably
14 closer to what you may be referring or certainly
15 may well be of relevance to the money laundering
16 area, to the area of deception and various theft
17 and fraud offences under the *Theft and Fraud*
18 *Offences Act*. But it certainly gives them
19 access to the financial intelligence unit and it
20 educates them in relation to maybe suspicious
21 transaction reports and that whole wider area.
22 So it may be more in the criminal field than
23 specifically proceeds of crime.

24 And the training, then, that we provide to
25 profilers is generally a three-day course. And

1 we run those run those courses twice a year, and
2 we generally run that course for up to maybe
3 50 profilers.

4 Q Detective Butler, you agree that nothing
5 precludes CAB from pursuing these types of
6 assets that are associated with white collar
7 crime; right?

8 A (BB) No, certainly not. And if we can link an
9 asset to criminality, we're well placed to
10 target it. Absolutely.

11 MR. RAUCH-DAVIS: Thank you. Those are my questions.

12 THE COMMISSIONER: Thank you, Mr. Rauch-Davis.

13 Anything arising, Ms. Magonet?

14 MS. MAGONET: Nothing arising, Mr. Commissioner.

15 THE COMMISSIONER: Thank you. Ms. Chewka?

16 MS. CHEWKA: No, Mr. Commissioner.

17 THE COMMISSIONER: Thank you. Mr. McCleery?

18 MR. McCLEERY: Nothing arising from me, Mr. Commissioner.

19 THE COMMISSIONER: All right. Thank you. Thank you
20 very much to each of you, Dr. King, Detective
21 Inspector Butler and Mr. McMeel. You've
22 furnished us with some very interested insights
23 and evidence about a very -- what appears to be
24 a unique organization and I think it's going to
25 be of great benefit to us as we move towards our

1 final report.

2 Thank you for your time, your experience and
3 expertise. And I know it's getting on in the
4 evening where you are, so I will now excuse you
5 from any further testimony. Thank you.

6 **(WITNESSES EXCUSED)**

7 THE COMMISSIONER: We will adjourn now to tomorrow at
8 4:00 p.m., I think, Mr. McGowan.

9 MR. MCGOWAN: That's correct, Mr. Commissioner.

10 THE COMMISSIONER: Thank you.

11 THE REGISTRAR: The hearing is adjourned until
12 December 17, 2020, at 4:00 p.m. Thank you.

13 **(PROCEEDINGS ADJOURNED AT 1:44 P.M. TO DECEMBER 17,**
14 **2020)**

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