

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

**COMMISSIONER AUSTIN F. CULLEN**

**INDEX OF PROCEEDINGS**

<b>Witness</b>	<b>Description</b>	<b>Page</b>
	Proceedings commenced at 9:30 a.m.	1
	Discussion re witnesses	1
<b>Barry Butler (for the commission) Colin King (for the commission) Kevin McMeel (for the commission)</b>	Examination by Mr. McCleery	3
	Proceedings adjourned at 12:02 p.m.	124
	Proceedings reconvened at 12:12 p.m.	124
<b>Barry Butler (for the commission) Colin King (for the commission) Kevin McMeel (for the commission)</b>	Examination by Mr. McCleery (continuing)	124
	Examination by Ms. Chewka	148
	Examination by Ms. Magonet	169
	Examination by Mr. Rauch-Davis	186
	Colloquy	195
	Proceedings adjourned at 1:44 p.m. to December 17, 2020	196

**INDEX OF EXHIBITS FOR IDENTIFICATION**

<b>Letter</b>	<b>Description</b>	<b>Page</b>
---------------	--------------------	-------------

No exhibits for identification marked.

**INDEX OF EXHIBITS**

<b>No.</b>	<b>Description</b>	<b>Page</b>
------------	--------------------	-------------

383	Curriculum Vitae of Colin King	6
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384	Barry Butler Career History Summary	8
385	Kevin McMeel Career History Summary	11
386	Slide deck - Criminal Assets Bureau Structure and Legislation – Kevin McMeel - December 16, 2020	56
387	Civil Processes and Tainted Assets: Exploring Canadian Models of Forfeiture, Michelle Gallant – Chapter 8 - 2014	183

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

**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

8

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                   junction, 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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