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AMENDMENTS TO THE CRIME AND POLICING BILL TO ESTABLISH PUBLIC INTEREST COMPENSATION ORDERS

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UK law provides only a narrow basis for using the proceeds of confiscated criminal assets to compensate victims. In practice, victims are rarely allocated any share of the sums recovered, except in "clear and simple cases". We propose amending the Crime and Policing Bill to empower courts to award compensation for public interest or social purposes. This would enable compensation in cases such as sanctions breaches where, despite the offender's conduct having a clear impact on victims of human rights violations and their communities, it may be difficult for the courts to identify or quantify direct victims.

CURRENT LAW

There are three main avenues through which assets held by criminals or derived from criminal conduct could be used to compensate victims: **compensation orders**, **confiscation orders** and **forfeiture orders**. As the law stands, most assets subject to any of these orders **cannot be used to compensate most victims**, except where victims are easily identifiable and losses are straightforward to measure.

Compensation orders are available under Part 7, Chapter 2 of the Sentencing Act 2020 (the 'Sentencing Act') and are **specifically designed to compensate victims of criminal conduct**. The Sentencing Council's General Guidelines for sentencing state that, when a conviction is secured, "in all cases the court should consider whether to make compensation and/or other ancillary orders." A court may therefore order an offender to pay compensation for "any personal injury, loss or damage" arising from the offence for which they have been convicted. The amount to be paid is the sum the court considers "appropriate" having regard to any representations made by the offender or the prosecution.

However, the authorities make clear that compensation orders are intended only for "clear and simple cases" where the amount of compensation can be "readily and easily ascertained".[1] The concept of the "victim" and of their loss is narrowly defined. In practice, **a court is unlikely to issue a compensation order relating to a sanctions breach** as direct victims of the breach, or the precise loss or damage caused, may be difficult to identify or quantify.

Confiscation orders are also available under Part 2 of the Proceeds of Crime Act 2002 ('POCA'). These allow an order to be made against a defendant who has been convicted of a criminal offence before the Crown Court and who has been found to have benefitted from their criminal conduct. The amount that may be confiscated is usually equivalent to the defendant's benefit from the conduct, unless only a lesser amount is available.

The primary purpose of confiscation, however, is to deprive the defendant of the proceeds of their crime, rather than to compensate victims. Any amount confiscated is **usually paid to the government's general bank account** and then shared among the Home Office, HM Courts and Tribunals Service, the prosecutor and the investigator under the Asset Recovery Incentivisation Scheme. Subject to some exceptions, **no amount is typically paid to the victim(s)**.

[1] R v Michael Brian Kneeshaw (1974) 58 Cr App R 439; R v Kenneth Donovan (1981) 3 Cr App R (S) 192.

Certain agencies (such as the National Crime Agency (NCA), HMRC, or the Serious Fraud Office) may also institute civil forfeiture proceedings, and a court may issue a **forfeiture order**, in respect of funds which the court determines, on the balance of probabilities, (i) constitute "recoverable property" (defined as "property obtained through unlawful conduct"); or (ii) are intended to be used for unlawful conduct. Property obtained in breach of sanctions prohibitions (which is a criminal offence) would be "recoverable property".

A range of forfeiture proceedings are available under Part 5 of POCA. For example, in respect of funds in a bank account, an agency may obtain an asset freezing order to freeze the funds, followed by a forfeiture notice or forfeiture order which requires them to be forfeited to the state.

However, there is a **statutory requirement** for funds which have been forfeited this way to be **paid into the government's general bank account**.[2] There is one **narrow** exception – victims may apply for funds subject to a freezing order to be released prior to forfeiture if they demonstrate that the amount belongs to them and they were deprived of it by unlawful conduct.

WHY REFORM IS NEEDED

The current approach to using the proceeds of confiscated criminal assets represents a **missed opportunity** for the UK to champion victims' right to reparation. The courts' ability to award compensation is **overly narrow** and does not respond adequately to more complex crimes involving large numbers of victims, victims with varied connections to their offender's conduct or limited direct victims but a clear broader impact of the offender's crime on victims of human rights violations in the UK or beyond.

For instance, the UK positions itself as a global leader in enforcing Russia sanctions. Yet it retains the proceeds from these cases without ensuring they benefit the very people most harmed by the violations. If the UK is to take sanctions enforcement seriously, it must consider how these efforts can directly support Ukraine and its people, rather than simply funnelling funds into the UK's general bank account.

CASE STUDY: Peter Aven

On 29 July 2024 the NCA announced that it had recovered £783,827 believed to be held for the benefit of Petr Aven under the Proceeds of Crime Act 2002 (POCA) to end an investigation over alleged sanctions breaches. Aven was sanctioned by the UK Government in March 2022 for allegedly supporting the Government of Russia as a Director of Alfa-Bank (Russia) and having close ties with Vladimir Putin, described as **one of 'Putin's closest oligarchs**'. However, the Court could not direct that this money be put towards reparation for survivors of Putin's illegal war, due to the overly restrictive compensation provisions contained within POCA. As such, the money will likely enter the Home Office's Asset Recovery Incentivisation Scheme, with **not a penny going to survivors.**

[2] Section 303Z13(1) and 303Z17(1), POCA.

CASE STUDY: Operation Destabilise

On 4 December 2024, the NCA made an announcement revealing Operation Destabilise, an international NCA-led investigation which exposed and disrupted billion-dollar Russian money laundering networks supporting serious and organised crime around the world. According to the NCA, Operation Destabilise has resulted in the seizure of over £20 million in cash and cryptocurrency.

NCA investigators identified two Russian speaking networks collaborating at the heart of the criminal enterprise. The networks are reported to have helped "Russian elites, and designated individuals and entities" to illegally bypass sanctions and other financial restrictions to invest money in the UK.

REDRESS understands that should the **£20 million seized by the NCA be forfeited or confiscated under POCA, it will be transferred into the Home Office's Asset Recovery Incentivisation Scheme** – a discretionary funding model which allocates assets recovered under POCA between the Home Office and relevant operational partners, including the NCA, on a 50:50 basis.

PROPOSED AMENDMENTS

We propose **amending the Crime and Policing Bill** to empower courts to award compensation orders for **public interest or social purposes** in circumstances where a court issues:

a) a compensation order under the Sentencing Act; or

b) a civil forfeiture order in respect of criminal property under POCA,

provided that, at least as a starting point, the underlying criminal conduct is an offence under UK sanctions legislation.

PRECEDENTS: EU and U.S.

EU – On 24 April 2024, the EU passed Directive 2024/1260 on asset recovery and confiscation, allowing for the confiscation and repurposing of assets tied to EU sanctions violations. The directive encourages EU Member States to take the necessary measures to allow the possibility of repurposing confiscated assets, including those related to sanctions violations, for "public interest or social purposes".

U.S. – The 2023 Consolidated Appropriations Act permits the U.S. Attorney General to transfer certain seized funds – those owned or controlled by a person subject to or involved in violating certain US sanctions provisions, which were seized under specified civil and criminal asset forfeiture provisions – to the U.S. Secretary of State to provide assistance to Ukraine. In February 2023, U.S. Attorney General Merrick Garland exercised this power to transfer $5.4 million judicially forfeited from a U.S. bank account – traceable to violations of U.S. sanctions by sanctioned Russian oligarch Konstantin Malofeyev – to support Ukrainian war veterans.

Compensation orders

We propose amending Part 7 of Chapter 2 of the Sentencing Act in order to:

1. Broaden the grounds for awarding compensation orders in Section 133. This could be done by adding a new limb:

   "(c) to make a payment to one or more relevant organisations for public interest or social purposes ("public interest compensation order")"

where "relevant organisation" means an organisation listed in Schedule 22A.

Drafting Note: Schedule 22A would be a list of reparation, compensation, and victim support funds developed and maintained (annually) by the Secretary of State. We propose that the court, in making a public interest compensation order, should also be able to ask the Secretary of State to give their (non-binding) recommendations of relevant organisation(s) to whom the payment should be made. Our intention is that an appropriate official in the Foreign, Commonwealth and Development Office would ultimately take the decision regarding the organisation(s) to recommend.

2. Add a new section called "Public interest compensation orders" and specify in it that:
    a) When convicting a person of a "relevant offence", the court shall consider whether to issue a public interest compensation order, and what the terms of the order should be.
    b) "Relevant offence" could be defined as offences arising under regulations imposed under the Sanctions and Anti-Money Laundering Act 2018. To give the government flexibility to adjust the definition, there should be a provision that the Secretary of State may, by order, amend the list of relevant offences. For instance, the Secretary of State may later consider that it is appropriate for the court to be able to issue a public interest compensation order when convicting a person of an offence under the International Criminal Court Act 2001.
    c) In awarding a public interest compensation order, the court must take into account:
        i) The rights of victims of human rights violations (inside or outside the United Kingdom) to receive effective reparation and remedy;
        ii) That fact that individuals who are not proven to be direct victims of the defendant's offence may nevertheless be victims of human rights violations to which the defendant's offence is related;
        iii) The broader impact of the defendant's crime on victims of human rights violations in the United Kingdom or in other countries;
        iv) Where there is a large number of victims of human rights violations to which the defendant's offence is related, the urgency of victims' needs (which may vary depending on the harms that they have suffered);
        v) Where the relevant offence is an offence under regulations imposed under the Sanctions and Anti-Money Laundering Act 2018, the purposes of the relevant regulations and any human rights violations arising in connection with conduct that these regulations seek to discourage; and
        vi) Whether it would also be appropriate to make another type of compensation order and, if so, whether the defendant has sufficient means to pay both orders, as well as the need to prioritise compensation to direct victims of the defendant's offence.
    d) There should be an express provision that there does not need to be a direct connection between the defendant's conduct and the harm suffered by the ultimate beneficiaries of the public interest compensation order.
    e) The prosecution and the defendant should be entitled to make submissions to the court in relation to whether a public interest compensation order should be made.

Forfeiture orders

To ensure that criminal property seized under the civil forfeiture regime can be used to compensate victims as well, we propose introducing a new section Part 5 of POCA to enable courts to make public interest compensation orders in circumstances where they are imposing, or would otherwise impose, a forfeiture order.

a) Where a court determines that there is recoverable property as a result of a "relevant offence" (defined as above), the court is entitled to issue a public interest compensation order instead of, or in addition to, a forfeiture order.

b) For such a public interest compensation order, Part 7, Chapter 2 of the Sentencing Act (including the factors for the court to consider) will apply as if the defendant had been convicted of the underlying criminal conduct.

AMENDMENT TEXT

The proposed amendments are as follows:

Amendment 417: After Clause 145, insert the following new Clause—

"Amendment to the Sentencing Act 2020 to introduce public interest compensation orders

(1) The Sentencing Act 2020 is amended as follows.

(2) After section 133(b) (compensation orders), insert ", or

(c) to make a payment to one or more relevant organisations for public interest or social purposes ("public interest compensation order").

(2) In this Chapter, "relevant organisation" means an organisation listed in Schedule 22A (Relevant organisations for public interest compensation orders).".

(3) After section 135 (making a compensation order), insert—

"135A Public interest compensation orders

(1) When convicting a person of a relevant offence, the court shall consider whether to issue a public interest compensation order, and what the terms of that order should be.

(2) In this section "relevant offence" means an offence listed in Schedule 22B (Relevant offences for public interest compensation orders).

(3) The Secretary of State may by order amend the relevant offences listed in Schedule 22B.

(4) In determining whether to make a public interest compensation order against an offender, the amount to be paid under such an order, or to which relevant organisation(s) the payment(s) should be made, the courtmust, in addition to the factor in section 135(3), have regard to—

(a) the rights of victims of human rights violations (inside or outside the United Kingdom) to receive effective reparation and remedy,

(b) the fact that individuals who are not proven to be direct victims of the offender's offence may nevertheless be victims of human rights violations to which the offender's offence is related,

(c) the broader impact of the offender's offence on victims of human rights violations in the United Kingdom or in other countries,

(d) where there is a large number of victims of human rights violations to which the offender's offence is related, the urgency of victims' needs (which may vary depending on the harms that they have suffered),

(e) where the relevant offence is an offence underregulations imposed under the Sanctions and Anti-Money Laundering Act 2018, the purposes of the relevant regulations and any human rights violations arising in connection with conduct that these regulations seek to discourage, and

(f) whether it would be appropriate to make another type of compensation order and, if so, whether the offender has sufficient means to pay both orders, as well as the need to prioritise compensation to direct victims of the offender's offence.

(5) If the court considers issuing a public interest compensation order, the court may (but is not required to) ask the Secretary of State to recommend the relevant organisation(s) to which the funds subject to the order should be paid and if the court makes such a request—

(a) the Secretary of State shall, within 90 days (the "relevant period"), recommend to the court in writing one or more organisations to which the funds subject to the order should be paid (the "recommendation") and in doing so, the Secretary of State must have regard to the same factors as under subsection (4) above,

(b) the court may issue a public interest compensation order after the earlier of—

(i) the court having received a recommendation, and

(ii) the relevant period having expired,

(c) if a recommendation has been made within the relevant period, the court may take it into account in issuing a public interest compensation order but shall not be bound by it.

(6) The court may direct that confiscated funds be paid to a relevant organisation subject to such conditions as it considers appropriate.

(7) The Secretary of State may by order amend the organisations listed in Schedule 22A and the Secretary of State shall review the organisations listed in Schedule 22A at least annually.

(8) If, under subsection (5) above, the Secretary of State recommends one or more organisations that are not listed in Schedule 22B, the organisation(s) recommended by the Secretary of State shall be considered relevant organisation(s) for the purposes of the public interest compensation order at issue.

(9) For the purposes of this section, a court may issue a public interest compensation order regardless of whether there is a direct connection between the offender's conduct and the harm suffered by the ultimate recipients or beneficiaries of the public interest compensation order.".

(4) After Schedule 22 (Amendments of the Sentencing Code and related amendments of other legislation), insert the following new Schedule—

"SCHEDULE 22A

RELEVANT ORGANISATIONS FOR PUBLIC INTEREST COMPENSATION ORDERS

1 The following organisations—

The Trust Fund for Victims, created by the Assembly of States Parties in accordance with article 79 of the Rome Statute of the International Criminal Court.

The Register of Damage Caused by the Aggression of the Russian Federation against Ukraine, established within the framework of the Council of Europe by Resolution CM/Res(2023)3, or any successor body or attached fund.

The United Nations Voluntary Fund for Victims of Torture, established by the United Nations General Assembly through resolution 36/151 of 16 December 1981.".

(5) After Schedule 22A (Relevant organisations for public interest compensation orders), insert the following new Schedule—

"SCHEDULE 22B

RELEVANT OFFENCES FOR PUBLIC INTEREST COMPENSATION ORDERS

1 The following offences to the extent that they are offences under the law of England and Wales—

Offences arising underregulations imposed underthe Sanctions and Anti-Money Laundering Act 2018."."

Member's explanatory statement

This amendment seeks to amend the Sentencing Act 2020. It would allow the courts to award compensation orders not only to individuals but also for public interest or social purposes, thereby enabling the proceeds of confiscated criminal assets to be more readily used to compensate victims of offences under the UK's sanctions legislation.

Amendment 419: After Clause 146, insert the following new Clause—

"Amendment to the Proceeds of Crime Act 2002 to introduce public interest compensation orders

After section 303Z18 of the Proceeds of Crime Act 2002 (compensation), insert—

"**303Z18A Public interest compensation orders**

(1) When considering whetherto make a forfeiture orderin respect of relevant recoverable property, the court may issue a public interest compensation order instead of, or in addition to, a forfeiture order.

(2) For such a public interest compensation order, Chapter 2 of Part 7 of the Sentencing Act 2020 will apply as if the defendant's unlawful conduct constituted a relevant offence.

(3) In this section—

"relevant recoverable property" means property which is obtained through conduct which is unlawful under the provisions of an instrument specified in Schedule 22B of the Sentencing Act 2020;

"relevant offence" and "public interest compensation order" have the same meaning as in Section 133 of the Sentencing Act 2020."."

Member's explanatory statement

This amendment seeks to amend the Proceeds of Crime Act 2002. It would allow the courts, instead of, or in addition to, issuing forfeiture orders, to award compensation orders for public interest or social purposes, thereby enabling the proceeds of confiscated criminal assets to be more readily used to compensate victims of offences under the UK's sanctions legislation.