



Home Office



HM Treasury

# Action Plan for anti-money laundering and counter-terrorist finance

April 2016

# **Action Plan for anti-money laundering and counter-terrorist finance**

April 2016



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# Ministerial Foreword

This Action Plan represents the most significant change to our anti-money laundering and terrorist finance regime in over a decade. It sends a clear message: that we will not stand for money laundering or the funding of terrorism through UK institutions. We are determined to protect the security and prosperity of our citizens, and the integrity of our world-leading financial system, and will vigorously pursue those who abuse it for illicit means.

This Action Plan is principally concerned with three priorities. First, we need a more robust law enforcement response to the threats we face. That means creating aggressive new legal powers and building new capabilities in our law enforcement agencies to enable the relentless disruption of criminals and terrorists. This is in addition to the cross-agency taskforce recently announced by the Prime Minister to investigate any evidence of illegality that may be found in the 'Mossack Fonseca' papers.

Second, to reform the supervisory regime and ensure that those few companies who facilitate or enable money laundering are brought to task. The Government wants to ensure a risk-based approach to tackling money laundering and terrorist finance. We expect the banks and other firms subject to the Money Laundering Regulations to take a proportionate approach, focusing their efforts on the highest risks, without troubling low risk clients with unnecessary red-tape. We will continue to maintain our strong regulatory regime to ensure that our financial services industry is the best regulated in the world.

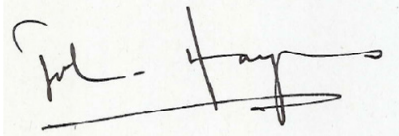
Third, to increase our international reach to tackle money laundering and terrorist financing threats by working with international groups, such as the G20 and Financial Action Task Force, to take action overseas.

Underpinning these three priorities, and central to the success of the Action Plan, is a new way of working with the private sector. We need radically more information to be shared between law enforcement agencies, supervisors, and the private sector; and we need to take joint action to disrupt criminals and terrorists. The pilot Joint Money Laundering Intelligence Taskforce (JMLIT), which has brought together law enforcement agencies and ten banks under the leadership of the National Crime Agency (NCA) to share information on money laundering and terrorist financing, has demonstrated the opportunities offered by this type of approach.

The Prime Minister's Anti-Corruption Summit next month will galvanise the international response and address issues including corporate secrecy, government transparency, the enforcement of international anti-corruption laws, and the strengthening of international institutions.

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This Government has done more than any other to tackle money laundering and terrorist financing. More assets have been recovered from criminals than ever before, with a record £199m recovered in 2014/15, and hundreds of millions more frozen and put beyond the reach of criminals. This Government is committed to pursuing further significant reforms, following this Action Plan and the Prime Minister's Anti-Corruption Summit.

A handwritten signature in black ink, appearing to read 'John Hayes', with a horizontal line underneath.

**John Hayes**  
**Minister for Security**

A handwritten signature in black ink, appearing to read 'H Baldwin', with a horizontal line underneath.

**Harriett Baldwin**  
**Economic Secretary to the Treasury**

# Summary of Actions

	Action	Lead	Completed by
<b>A stronger partnership with the private sector</b>			
1	Reform the Suspicious Activity Reports (SARs) regime, making the necessary legislative, operational and technical changes to deliver the proposals detailed in this Action Plan.	Home Office / National Crime Agency (NCA)	Oct 2018
2	Move Joint Money Laundering Intelligence Taskforce (JMLIT) to a permanent footing.	NCA	July 2016
3	Create a register of banks' particular business specialisms and make it available to JMLIT to ensure that relevant expertise is brought into JMLIT work on money laundering and terrorist financing typologies.	British Bankers' Association	End 2016
4	Explore legislation to achieve better information sharing between law enforcement agencies and the private sector, and between private sector entities.	Home Office	Oct 2017
5	Deliver Prevent campaigns to raise awareness amongst professionals in the regulated sector of money laundering risks and the actions needed to mitigate them.	Home Office, HM Treasury (HMT)	Ongoing
6	Public-private partnership to run a Prevent campaign to educate consumers and businesses as to the risks of becoming involved in money laundering.	British Bankers' Association, Home Office, HMT	End 2017
<b>Enhancing the law enforcement response</b>			
7	Deliver improvements in intelligence collection capability.	NCA	Jan 2017
8	Ensure an effective multi-agency investigation response, drawing on private sector expertise, to target the most complex high-end money laundering cases.	NCA	Oct 2016
9	Create a programme to upskill intelligence, analytical, investigative and legal staff to take on complex money laundering cases.	NCA	June 2017
10	Establish a more sustainable funding model for Regional Asset Recovery Teams to ensure their robust response to money laundering linked to serious and organised crime, including through asset confiscation and denial.	Home Office	Oct 2016



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	Action	Lead	Completed by
11	Explore new powers to tackle money laundering.	Home Office	Oct 2016
12	Reduce vulnerabilities and close loopholes that can be exploited by terrorists.	Home Office	Oct 2017
<b>Improving the effectiveness of the supervisory regime</b>			
13	Complete the review of the supervisory regime taking into account relevant evidence submitted to the Cutting Red Tape Review, and announce reforms.	HMT	Autumn 2016
<b>Increasing our international reach</b>			
14	Create new NCA International Liaison Officer posts in important jurisdictions.	NCA	Mar 2017
15	Develop a new approach for cross-border information sharing between private sector and Government entities.	HMT, Home Office	ongoing
16	Submit a new approach for international law enforcement and prosecutor co-operation on international corruption cases.	NCA	Mar 2017
17	Deliver training to, and share expertise with, key overseas partners to help them build their capacity and capability to investigate and combat the financing of terrorism.	NTFIU	Ongoing
18	Continue to support Counter-ISIL Finance Group efforts to degrade Daesh finances and work to support activity to combat terrorist finance.	FCO	Ongoing
19	Support UK charities operating in difficult environments overseas to mitigate the risk of their funds being abused for terrorist purposes.	Charity Commission	Ongoing

# 1. Introduction

## The threat

- 1.1 This Action Plan tackles money laundering in all its forms, but it is particularly focussed on money laundering as a critical enabler of serious and organised crime, grand corruption, and terrorism. The November 2015 National Security Strategy (NSS) and Strategic Defence and Security Review (SDSR) identified terrorism and serious and organised crime as Tier One and Tier Two national security threats.<sup>1</sup> Terrorism poses a direct and immediate threat to our domestic security and overseas interests. Serious and organised crime costs the UK at least £24 billion annually, causes loss of life and deprives people of their security and prosperity.<sup>2</sup>
- 1.2 Money laundering and terrorist financing undermine the integrity of our financial institutions and markets, enable criminals to hide, store and benefit from the proceeds of their crime, and enable terrorist groups to function, recruit and commit terrorist acts. Money laundering into and through the UK financial system is also related to grand corruption overseas – the bribery and theft of public funds.
- 1.3 The UK remains the largest centre for cross-border banking, accounting for 17% of the total global value of international bank lending and 41% of global foreign exchange trading. The size of the UK's financial and professional services sector, our open economy, and the attractiveness of the London property market to overseas investors makes the UK unusually exposed to international money laundering risks. Substantial sums from crimes committed overseas are laundered through the UK.<sup>3</sup> There is no definitive measure of the scale of money laundering, but the best available international estimate of amounts laundered globally would be equivalent to some 2.7% of global GDP or US\$1.6 trillion in 2009.<sup>4</sup>
- 1.4 Most businesses want to comply with the law and those subject to the regime can play a significant part in tackling money laundering and terrorist financing. Government has a duty to help them comply and is aware that the current regime does not work as well as it could and that more could be done to help businesses comply and better focus resources on serious crime. A more effective response to the threat, so that resources can be better targeted at areas of real risk, for example by removing duplication or conflicting compliance advice, will help lift unnecessary bureaucratic burdens that do not contribute to the fight against crime and help resource be used better elsewhere. The Government is committed to reducing the regulatory burden on business, which can distract or make it harder for companies to focus on real risks and will also ensure that any additional burdens placed on businesses and individuals are targeted, proportionate and justified by evidence of significant need.

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<sup>1</sup> 'National Security Strategy and Strategic Defence and Security Review', HM Government, November 2015.

<sup>2</sup> 'Understanding organised crime: estimating the scale and social and economic costs', Home Office, October 2013.

<sup>3</sup> 'National Strategic Assessment of Serious and Organised Crime 2015', NCA, June 2015.

<sup>4</sup> 'Estimated illicit financial flows resulting from drugs trafficking and other transnational organised crime', UNODC, October 2011.

## The UK's Strategic Approach

- 1.5 The Government's strategic response to money laundering is founded upon a risk-based approach. The 2013 Serious and Organised Crime Strategy aims to substantially reduce the level of serious and organised crime affecting the UK and its interests. It is based upon the UK's successful counter-terrorism framework, which has four main elements: prosecuting and disrupting serious and organised crime (**Pursue**); preventing people from engaging in serious and organised crime (**Prevent**); increasing protection against serious and organised crime (**Protect**), and reducing the impact of serious and organised crime where it takes place (**Prepare**).<sup>5</sup>
- 1.6 Countering terrorist financing is important in protecting national security and forms a key part of the UK's counter-terrorism strategy, CONTEST,<sup>6</sup> the aim being to reduce the terrorist threat to the UK and its interests overseas by depriving terrorists and violent extremists of the financial resources and systems required for terrorism-related activity.
- 1.7 The SDSR set out the Government's intention to introduce new measures to make the UK a more hostile place for those seeking to move, hide or use the proceeds of crime or corruption or to evade 'sanctions'. In order to achieve that aim, the SDSR committed the Government to enhancing its cooperation with the private sector, building on the work of the JMLIT, and publishing this Action Plan.
- 1.8 Central to the approach taken in this Action Plan is the recognition of the need to establish a much more effective public-private partnership to tackle illicit finances than has existed until now. Only by bringing together the efforts of law enforcement agencies, supervisors and regulators, and the private sector; and by making sure that law enforcement agencies and supervisors have the right 'pursue' powers and capabilities, can the threat from money laundering and terrorist financing be addressed successfully. This Action Plan will deliver the Government's strategic aim to make the UK a more hostile place for those seeking to move, hide or use the proceeds of crime or corruption through a focus on four priority areas:
- A stronger partnership with the private sector
    - Law enforcement agencies, supervisors and the private sector working in partnership to target resources at the highest money laundering and terrorist financing risks.
    - New means of information sharing to strengthen the application of the risk-based approach and mitigate vulnerabilities.
    - A collaborative approach to preventing individuals becoming involved in money laundering.
  - Enhancing the law enforcement response
    - New capabilities and new legal powers to build the intelligence picture, disrupt money launderers and terrorists, recover criminal proceeds, and protect the integrity of the UK's financial system. For example, the Government has established a Task Force, led jointly by the NCA and

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<sup>5</sup> 'Serious and Organised Crime Strategy', HM Government, October 2013

<sup>6</sup> CONTEST: The United Kingdom's Strategy for Countering Terrorism', HM Government, July 2011

HMRC, to investigate all forms of illegality stemming from the data related to Mossack Fonseca, the law firm based in Panama.

- Improving the effectiveness of the supervisory regime
  - Investigate the effectiveness of the current supervisory regime, and consider radical options for improvement to ensure that a risk-based approach is fully embedded, beginning with the understanding of specific risks, and the spotting of criminal activity, rather than a focus on tick-box compliance.
- Increasing our international reach
  - Increase the international reach of law enforcement agencies and international information sharing to tackle money laundering and terrorist financing threats. The international leadership being shown by the UK through the Prime Minister's Anti-Corruption Summit will lead to greater disruption of money laundering and terrorist financing activities, the prosecution of those responsible and increased recovery of the proceeds of crime, and a greater protection of the UK financial system. The Summit will galvanise the international response and address issues including corporate secrecy, government transparency, the enforcement of international anti-corruption laws, and the strengthening of international institutions.

1.9 A successful anti-money laundering and counter-terrorist finance regime will result in the relentless disruption of money laundering and terrorist finance activities, the prosecution of those responsible and the recovery of the proceeds of crime. A successful regime will dissuade those seeking to undertake money laundering and terrorist finance activities from doing so. It will help the regulated sector better protect itself through targeted support from its supervisors, and it will help deliver a stronger international effort to tackle upstream money laundering and terrorist finance threats.

1.10 The success of this Action Plan depends on the efforts of law enforcement and prosecutorial agencies, government departments, supervisors, and the private sector. It requires a collective understanding of the risks, and a willingness to collaborate and target resources and activities as the threat changes and develops in what must be a shared endeavour. It also requires international co-operation from key jurisdictions, particularly other global and regional financial centres and international organisations, such as the European Union, Europol, Interpol and FATF.

1.11 Most businesses want to comply with the law and those subject to the anti-money laundering regime can play a significant part in tackling money laundering and terrorist financing. A more effective response to the threat, so that resources can be targeted at areas of real risk, will help lift bureaucratic burdens that do not contribute to the fight against crime.

## What we have done so far

1.12 The UK was a founder member of the Financial Action Task Force (FATF), the inter-governmental body established in 1989, that sets global standards and

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promotes effective legal, regulatory and operational measures to combat money laundering and the financing of terrorist activities.

- 1.13 Since 2010 we have taken important steps to strengthen our response. In 2011, the CONTEST counter terrorism strategy was refreshed. In 2013, the Government founded the NCA to lead, co-ordinate and support the national response to serious and organised crime, including money laundering. At the same time, it published a new Serious and Organised Crime Strategy that made attacking criminal finances central to our efforts to tackle serious and organised crime. Since then, more assets have been recovered from criminals than ever before, with a record £199m recovered in 2014/15, and hundreds of millions more frozen and put beyond the reach of criminals.
- 1.14 In 2014, the Serious and Organised Crime Financial Sector Forum was set up to facilitate practical collaboration between government, law enforcement, the regulators and the financial sector. A new International Corruption Unit in the NCA was formed, to become a UK centre of excellence for dealing with overseas bribery and corruption, and the Cabinet Office launched a review of the wider law enforcement response to bribery and corruption. The Serious Crime Act 2015 strengthened asset recovery powers, and brought in a new offence of participating in the activities of an organised crime group.
- 1.15 The FATF requires countries to assess and take action against their understanding and assessment of their national risks, through a National Risk Assessment, and to then take a risk-based approach, meaning the legal, regulatory and operational measures that are commensurate with these risks.

## National Risk Assessment of Money Laundering and Terrorist Financing

- 1.16 In October 2015, the Government published the National Risk Assessment for Money Laundering and Terrorist Financing (NRA).<sup>7</sup> It provides a candid and robust assessment to better understand the UK's money laundering and terrorist finance risks, and to inform the efficient allocation of resources to the highest risks and where there will be the greatest impact.
- 1.17 The most significant money laundering threats are:
  - High-end money laundering of criminal funds into or through the UK, particularly linked to grand corruption and major fraud.
  - The role of professionals in the financial, legal and accountancy and related service sectors such as Trust and Company Service Providers (TCSPs) to enable the laundering of the proceeds of UK and overseas crime into, through and out of the UK.
  - The role of 'international controllers' in facilitating the laundering of proceeds of crime from the UK, or from overseas and into the UK, linked to money service businesses (MSBs).

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<sup>7</sup> 'National Risk Assessment of Money Laundering and Terrorist Financing', HM Government, October 2015

- The proceeds of crime from major crimes including organised immigration crime and modern slavery.

1.18 The most significant terrorist financing threats are:

- The raising of terrorist funds through the exploitation of vulnerabilities in the financial sector and the movement of funds for the financing of terrorism through MSBs and cash couriers.
- The abuse of the charitable sector, both for raising and moving funds specifically for terrorist purposes.

1.19 The NRA identified six areas in which action is needed to strengthen the anti-money laundering and counter-terrorist finance regimes. These areas are listed below.

- Reform the suspicious activity reports regime, and upgrade the capabilities of the UK Financial Intelligence Unit
- Transform information sharing between law enforcement agencies, the private sector and supervisors, building on the progress already made through the JMLIT
- Fill intelligence gaps, particularly those associated with high end money laundering through the financial and professional services sectors
- Enhance our law enforcement response to tackle the most serious threats
- Address the inconsistencies in the supervisory regime that have been identified
- Work with supervisors to improve individuals' and firms' knowledge of money laundering and terrorist financing risks in key parts of the regulated sector to help them avoid being exploited by criminals and terrorists

1.20 This Action Plan and the 4th Anti-Money Laundering Directive, due to be transposed by June 2017, will increase the UK's emphasis on this risk-based approach.<sup>8</sup> The Directive will require private sector firms to reinforce this approach across all aspects of their anti-money laundering and counter-terrorist finance regimes. The consultation on its transposition will launch this year.

1.21 This Action Plan contains a range of measures which the Government is committed to implementing, and a series of proposals on which the Government is seeking the views of stakeholders. Questions on the legislative proposals, and details of how to provide comment on them, can be found at Annex A. The Call for Information regarding proposals for changes to the supervisory regime and how to provide comment can be found at Annex C.

1.22 The Government will monitor the implementation of this Action Plan. An update to the National Risk Assessment will be conducted in 2017.

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<sup>8</sup> Directive of the Parliament and of the Council on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing, 2015/849

## 2. Actions

### 2(a): A stronger partnership with the private sector

**The Government wants to find new ways for the public and private sectors to work in partnership in order to increase radically the effectiveness of our collective response to money laundering and terrorist financing, and strip away unnecessary bureaucratic burdens in the process. The private sector collectively spends billions of pounds a year on financial crime compliance, but it is not always an effective first-line of defence against those seeking to engage in money laundering and terrorist finance, despite these efforts. Reform of the Suspicious Activity Reports (SARs) regime, and building on the success of the Joint Money Laundering Intelligence Taskforce (JMLIT) pilot will be central to founding a new and more collaborative public-private partnership.**

- 2.1 The private sector forms the first line of defence against money laundering and terrorist financing. The British Bankers' Association (BBA) estimates that its members are collectively spending at least £5 billion annually on core financial crime compliance, including enhanced systems and controls and recruitment of staff. Other parts of the private sector spend additional sums. Despite this very significant investment, money laundering and terrorist financing still occurs. Too much resource at present is focused on dealing with regulatory compliance, and too little is focused on tackling financial crime risk. The public and private sectors need to work together to ensure that existing resources are used to greatest effect. The Government is committed to considering potentially radical reforms to the way the public and private sectors work together for a more effective regime against money laundering and terrorist financing, including in the way the system of business supervision works (see section 2c below).
- 2.2 Effective exchange of knowledge within the private sector, and between the public and private sectors, is necessary to increase our collective knowledge of threats and vulnerabilities. Developing a common understanding of the highest priority risks will provide the basis for a more focused and efficient use of public and private resources that will have the greatest effect on money laundering and terrorist financing threats. To deliver this, law enforcement agencies need information from the private sector to inform their intelligence, while the private and supervisory sectors need information from each other and from law enforcement agencies to assist them in managing the risks and vulnerabilities that they face as the threat changes and develops.

### The Suspicious Activity Reports regime

- 2.3 The SARs regime is central to the UK's anti-money laundering and counter-terrorist financing structures. The Proceeds of Crime Act 2002 (POCA) requires persons in the regulated sector to report to the NCA where there are reasonable grounds to know or suspect that another person is engaged in money laundering. The Terrorism Act 2000 imposes a duty of disclosure upon persons in the regulated sector and also upon any person who in the course of a trade, profession or business or in the course of their employment believes or suspects that someone has committed any of the principal terrorist financing offences in the Act. If a SAR is

submitted and consent is gained, the reporter gains a statutory defence from a money laundering or terrorist financing prosecution.

- 2.4 SARs have the potential to be a critical intelligence resource, and provide important opportunities for law enforcement agencies to intervene to disrupt money laundering and terrorist financing, and build investigations against those involved. Last year, over 350,000 SARs were filed with the UK Financial Intelligence Unit (UKFIU) in the NCA, which operates the SARs regime.<sup>9</sup> In recent years, however, both law enforcement agencies and the private sector have expressed increasing concerns about the effectiveness of the SARs regime.



- 2.5 The Home Office launched a review of the SARs regime in February 2015. Following a call for evidence from the ‘regulated sector’,<sup>10</sup> supervisors, law enforcement agencies and non-governmental organisations, a number of areas were identified where action was needed to improve the regime. A summary of the responses, and the key themes, can be found at Annex B. Many of the proposals in this Plan address these responses and reflect subsequent engagement with the reporting sector and others.

- 2.6 The Home Office review of the SARs regime found that the most effective way for the UK to improve its response to the threat from money laundering and terrorist finance is through stronger partnership working between the public and private sectors, and through jointly identifying and tackling those entities – individuals, companies, and others – that pose the highest risk. At present, too much resource in both the public and private sectors is devoted to dealing reactively with relatively low risk transactions. Radical changes to the way that the SARs regime operates will be required to make this operate effectively and the Government will take action to address the concerns of legitimate businesses in these reforms for example by helping business to focus reports on areas of concern rather than taking a box ticking approach. Key changes that the Government proposes to make to the SARs regime are outlined below. The JMLIT and new legal powers for law enforcement agencies, detailed in the next section, will also be integral to the reformed SARs regime.

<sup>9</sup> ‘Suspicious Activity Reports (SARs) Annual Report 2014’, NCA, December 2014.

<sup>10</sup> The ‘regulated sector’ means those firms that are subject to the Money Laundering Regulations 2007, such as firms in the financial, legal, accountancy and gambling sectors.



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### *Re-focus the regime on the highest risk entities*

- 2.7 The SARs regime will be reformed to focus the public and private sector effort on tackling those entities, such as individuals and organisations, that pose the highest money laundering and the financing of terrorism risks, rather than targeting transactions. The volume and speed of financial transactions in the 21st century makes a transaction-focused regime less effective. Instead, public and private resources will be directed at the highest risks. Reporters will still need to provide reports where they have suspicion, but the Government will enable the reporting sector to work with the NCA and other law enforcement agencies to provide more effective SARs where there are strong suspicions of criminal activity, through new information sharing legal gateways, improved official guidance, and a permanent and strengthened JMLIT.

### *Remove the current consent regime*

- 2.8 The consent regime is inefficient and we will consider whether it should be removed.<sup>11</sup> We envisage that it could be replaced with an intelligence-led approach, supported by information sharing through the JMLIT (see below). The statutory money laundering defence provided by the current consent regime would also be removed, although the POCA would be amended to ensure that reporters who fulfill their legal and regulatory obligations would not be criminalised. The Government would create powers to enable reporters to be granted immunity for taking specified courses of action (e.g. maintaining a customer relationship when to terminate it would alert the subject to the existence of a law enforcement investigation). The Government would also legislate to provide a power for the NCA to oblige reporters to provide further information on a SAR where there is a need to do so.

### *Upgrade the UK Financial Intelligence Unit's capabilities*

- 2.9 The NCA will oversee the upgrade to the UK Financial Intelligence Unit's (UKFIU) capabilities, including the development of a replacement for the SARs IT system, which is nearing the end of its working life. This would provide a modern IT system both for reporters to submit reports, and which will automatically check SARs against law enforcement data and other information to assess whether a SAR should be prioritised for further investigation or other action by law enforcement agencies, supervisors, or the reporter. The Government considers that those who will benefit from the new IT system should share the costs for developing it.

### *Develop better analysis of SARs*

- 2.10 As part of the upgrade of the capabilities of the UKFIU, the NCA will develop capabilities to enable a better analysis of the SARs submitted, to identify the typologies of money laundering and the financing of terrorism, and provide assessments of these to the private sector, to allow them to both identify those responsible and work with law enforcement agencies to tackle them, and to take measures to protect themselves.

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<sup>11</sup> Under the Proceeds of Crime Act (POCA), individual persons and businesses in the regulated sector are required to report the suspicious transactions or activity that they become aware of. A reporter can avail themselves of a defence against committing a money-laundering offence if they seek the consent of the FIU, under section 335 of POCA, to conduct a transaction or activity about which they have suspicions.

*Data sharing to develop more effective SARs*

- 2.11 The Government would consider legislation to permit the reporting sector to share information, under legal safe harbour, on money laundering and terrorist finance risks. The Government will work with the reporting sector to address issues about confidentiality and protection, and learn from the experiences of law enforcement agencies and banks in using the powers provided in section 314 of the USA PATRIOT Act in this regard. This will enable firms to better understand the risks they face and to submit higher quality SARs as a result.

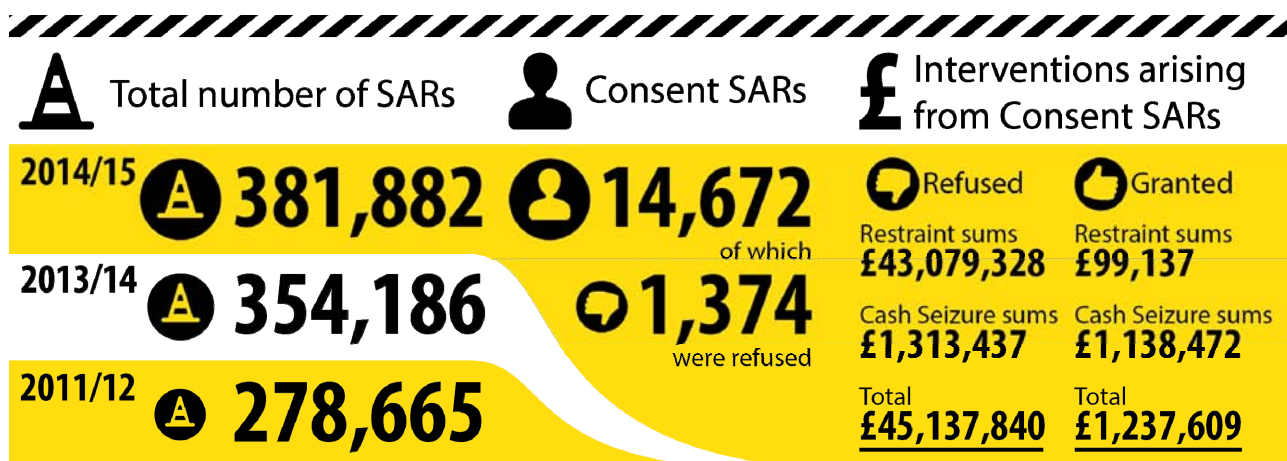
**Action 1:**

**Reform the SARs regime, making the necessary legislative, operational and technical changes to deliver the proposals detailed in this Action Plan. (Pursue, Protect)**

**Lead: Home Office and NCA**

**Joint Money Laundering Intelligence Taskforce (JMLIT)**

- 2.12 The Government has already taken steps to build better cooperation between the public and private sectors on illicit finances. The JMLIT was established under the Serious and Organised Crime Financial Sector Forum, chaired by the Home Office, the British Bankers' Association (BBA) and the NCA. The JMLIT is led by the NCA and includes representatives from the financial sector, City of London Police, Financial Conduct Authority (FCA), HMRC and the Home Office.
- 2.13 The JMLIT was established as a pilot in February 2015 to provide an environment in which the financial sector and law enforcement agencies could exchange and analyse information and intelligence to detect, prevent and disrupt money laundering and wider economic crime threats against the UK. The pilot has demonstrated the clear benefits of partnership working between law enforcement agencies and the financial sector. Strategically, the JMLIT has increased the UK's public and private sectors' resilience to economic crime and this must continue as the threat changes and develops.
- 2.14 From an operational perspective, it has enhanced collective anti-money laundering detection capability and generated increased prevention and disruption opportunities relating to money laundering in the UK through the sharing of tactical intelligence using the legal framework set out in the Crime and Courts Act 2013. As of February 2016, the JMLIT pilot has directly contributed to law enforcement operations, including eleven arrests and restraint of £558,144 of criminal funds. Over 1,700 bank accounts linked to suspected criminal activity have been identified, 261 have been closed, and 517 are subject to heightened monitoring by the banks. Twelve alerts have been issued to the financial sector to raise awareness of threats.



2.15 The Terrorist Finance Experts Group within the JMLIT supports the exchange and analysis of terrorist finance information and intelligence and thematic pieces of work related to terrorist finance and methodologies. The group is chaired by the Home Office and the BBA, and includes the National Terrorist Financial Investigation Unit and representatives of the financial sector. The overall purpose of the Group is to build a greater common understanding of terrorist financing risks and to foster a closer working relationship between the private and public sector to counter the financing of terrorism affecting the UK and its interests.

2.16 With the JMLIT approaching the end of its pilot, the Government will build on the experience gained to put the taskforce on a permanent footing and make it an integral part of the UK’s anti-money laundering and counter-terrorist financing regime. The Government, in partnership with private sector members of JMLIT, will seek to increase its scale and capabilities, in order to tackle economic crime threats including money laundering linked to corruption, trade-based finance, high-priority crimes and terrorist finance. An expansion of JMLIT will require all participants to build up its analytical capability and devote greater resources to its work. Its membership should be expanded to include more banks and other financial services firms.

**Action 2:**

**Move JMLIT to a permanent footing, increase its analytical capability and expand its membership to include more banks and other financial services firms. Consider how the taskforce approach could be developed in other reporting sectors. (Protect and Pursue)**

**Lead: NCA, supported by Home Office and British Bankers’ Association.**

2.17 Many banks will not have the resources to provide a permanent member of staff to JMLIT. It will be important for firms with specialist knowledge and expertise to be able to contribute to JMLIT to work on, for example, money laundering typologies, that touch upon their areas of expertise. To that end, a register of financial sector firms’ specialisms should be made available to JMLIT to ensure that all relevant information and expertise is available to it.

**Action 3:**

**Create a register of banks' particular business specialisms and make it available to JMLIT to ensure that relevant expertise is brought into JMLIT work on money laundering and terrorist financing typologies.**

**Lead: British Bankers' Association.**

2.18 Criminals often launder the proceeds of their crimes across multiple private sector firms. Whilst the Data Protection Act permits the sharing of information between firms in certain circumstances, the limited nature of those permitted circumstances, in combination with case law, data protection rules, and the risk of legal challenge in the civil courts militates against firms sharing information to prevent and detect money laundering and terrorist financing. The JMLIT pilot has demonstrated that existing legal information sharing gateways are insufficient for sharing data directly between private sector organisations. There is a need for legal 'safe harbour' provisions to allow data and intelligence to be shared lawfully between financial institutions in order to prevent and detect money laundering and terrorist financing. The Government intends to consider legislating to create the necessary legal information sharing gateways.

**Action 4:**

**Explore legislation to achieve better information sharing between law enforcement agencies and the private sector, and between private sector entities through the introduction of 'safe harbour' information sharing powers.**

**This will facilitate the development of a coherent public-private sector response to financial crime in all its forms. (Pursue, Protect)**

**Lead: Home Office**

2.19 The Home Office has worked with supervisors, firms and law enforcement agencies to run public communications campaigns in 2014 and 2015 targeting solicitors and accountants to raise awareness of the money laundering risks they face. The campaigns have aimed to prevent professionals getting drawn into money laundering, as they have skills that are particularly attractive to criminals seeking to launder their funds. The campaigns have been welcomed by private sector representatives.

2.20 The first campaign led to a 20% increase in suspicious activity reports from the sector. The second campaign is still running at the time of publication. Its impact will be fully evaluated on completion. These campaigns have proven the importance of the Prevent strand in tackling money laundering. There will continue to be a need for Government, supervisors, law enforcement agencies and the sectors themselves to work together in the future to prevent professionals wittingly or unwittingly facilitating money laundering and terrorist financing.

**Action 5:**

**Public-private partnerships to run sector-specific Prevent campaigns to raise awareness amongst professionals in the regulated sector of money laundering risks and the actions needed to mitigate them. (Prevent).**

**Lead: Home Office, HM Treasury, supervisors and law enforcement agencies**

**Action 6:**

**Public-private partnership to run a Prevent campaign to educate consumers and businesses as to the risks of becoming involved in money laundering.**

**Lead: British Bankers' Association, supported by Home Office and HMT.**

## **2(b): Enhancing the law enforcement response**

**The law enforcement response will be strengthened to disrupt the highest-priority threats to the UK and pursue those seeking to engage in money laundering and terrorist finance. Intelligence collection capabilities will be targeted to build a better intelligence picture and resources will be marshalled to the most complex, high-end money laundering investigations. As an example, the cross-agency taskforce, recently announced by the Prime Minister, will investigate the data from Mossack Fonseca, the Panamanian law firm, and any forms of illegality that it is found. Powers will be strengthened to protect the integrity of the UK financial system.**

2.21 The speed and complexity of the global financial system, the links between money laundering, terrorist finance and a wide range of predicate crimes, often committed overseas, presents difficulties for law enforcement agencies seeking to tackle illicit finances. To be effective, UK law enforcement agencies need to have the right capabilities in place to enable them to build a strong intelligence picture and to intervene to disrupt the threat, supported by appropriate legal powers.

### **Building the intelligence picture**

2.22 The NRA identified significant intelligence gaps, in particular in relation to 'high-end' money laundering. The intelligence picture in other areas – such as high value dealers, gambling and new payment methods – was mixed. The NCA, as the lead on the national response to economic crime, including money laundering, has a programme of work to build a better intelligence picture, supported by other law enforcement agencies and the intelligence community. They will work with their partners to increase their knowledge of high-end money laundering techniques and instruments so that the NCA can identify, develop and action an increased number of opportunities for disruption and regular reassessment of the threat. They will also continue to monitor emerging threats and to inform the propositions for the regulatory approach. The private sector holds much of the data needed to develop the intelligence picture, and will play an enhanced role both through the strengthened JMLIT and by producing better quality reports through a reformed SARs regime.

- 2.23 HM Treasury launched a Call for Information in 2014 on the benefits and risks associated with digital currencies. Respondents to the Call for Information identified that digital currencies and associated technology have the potential to deliver real benefits for businesses and consumers. Responses also highlighted that some features of digital currencies could provide opportunities for illicit use. HM Treasury notes this potential risk, while acknowledging that evidence from across government, law enforcement and academia suggests that there is currently a low level of illicit activity in digital currency networks.
- 2.24 We intend to bring digital currency exchange firms into anti-money laundering regulation, as it is at the point where users “cash in” and “cash out” of digital currency networks that money laundering and terrorist finance risk is highest. This is consistent with a risk-based approach, and we note that extending the perimeter of anti-money laundering regulations beyond digital currency exchange firms (e.g. to wallet providers) would not deliver any benefits in terms of mitigating money laundering and terrorist finance risk, and would place significant burdens on firms in this innovative and embryonic sector.

#### **Action 7:**

##### **Deliver improvements in intelligence collection capability including through:**

- **greater and better use of sensitive intelligence**
- **greater exploitation of SARs**
- **enhanced intelligence exchanges with the financial and legal sectors, including through JMLIT; and**
- **closer co-operation with domestic and international partners.**

**Produce a new set of intelligence collection requirements on high end money laundering, to assist with intelligence collection. Regularly re-assess the threat, particularly that posed by high-end money laundering. (Pursue)**

**Lead: NCA**

#### **Investigative capabilities**

- 2.25 The NRA found that the law enforcement response to money laundering has been weak for an extended period of time. The NCA was launched in 2013 to lead, coordinate and support UK law enforcement agencies’ response to serious and organised crime including money laundering, bribery and corruption.<sup>12</sup> Other law enforcement agencies, in particular Serious Fraud Office (SFO) and HMRC have expert officers and access to a wide range of legal powers. Law enforcement agencies will pool their resources in order to take on the high-end money laundering cases that pose the greatest risk to the UK.
- 2.26 High-end money laundering is complex, and can involve the misuse of the accountancy service providers and legal professionals such as TCSPs to provide legitimacy and access to other regulated sectors without detection. Proceeds can

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<sup>12</sup> The Cabinet Office is taking forward a review of the enforcement response to bribery and corruption. It includes full consideration of the powers, capabilities and structures involved in the response to bribery and corruption. Once concluded it will report to the Inter-Ministerial Group on Anti-Corruption.

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be held in bank accounts, real estate and other investments. Ownership is disguised behind multiple corporate structures, often registered overseas. To respond adequately to this threat, it is necessary for UK law enforcement agencies to review their existing financial investigation capabilities and to develop the expert intelligence, analytical, investigative and legal skills needed, while drawing on the specialist knowledge available in the private sector.

### Action 8:

**Ensure an effective multi-agency investigation response, drawing on private sector expertise, to target the most complex high-end money laundering cases. (Pursue)**

**Lead: NCA, supported by CPS, SFO, HMRC**

### Action 9:

**Create a programme to upskill intelligence, analytical, investigative and legal staff to take on complex money laundering cases. (Pursue)**

**Lead: NCA, supported by HMRC, SFO, CPS, National Police Chiefs' Council**

- 2.27 The regional policing tier is critical if the UK is to provide an effective pursue response to money laundering. Whilst national agencies will be expected to take on the most serious threats, there will remain a significant number of money laundering cases for which specialist capabilities will be required.
- 2.28 The Strategic Policing Requirement is the Home Secretary's statement of the national threats and the national policing capabilities which are required to counter them. Police and crime commissioners (PCCs) are required to have regard to the SPR when issuing their police and crime plans, and Chief Constables must have regard to both the police and crime plan and the SPR when exercising their functions. It helps PCCs plan for threats that span local force boundaries. Serious and organised crime is one of the six national threats in the 2015 SPR.<sup>13</sup>
- 2.29 Regional Asset Recovery Teams (RARTs) sit within Regional Organised Crime Units (ROCU) and develop financial intelligence in aid of the investigation and disruption of criminal entities. They also utilise financial investigation to conduct money laundering investigations, disrupt subjects and recover assets using the powers provided in the Proceeds of Crime Act. Their core financial intelligence and investigation capabilities must be maintained and developed to fulfil this purpose, as well as to respond to requirements set through the national tasking and coordination arrangements.
- 2.30 Most funding for the ROCUs comes from the PCCs of the forces in each region. The Home Office provides additional funding for ROCUs (£25 million in 2015/16). The 2015 Conservative Party Manifesto included a commitment to allow police forces to retain a greater percentage of the value of assets they seize from criminals. Under the Asset Recovery Incentivisation Scheme (ARIS) half of all recovered assets are returned to operational partners.

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<sup>13</sup> 'The Strategic Policing Requirement', Home Office, March 2015.

**Action 10:**

**Establish a more sustainable funding model for Regional Asset Recovery Teams to ensure their robust response to money laundering linked to serious and organised crime, including through asset confiscation and denial. (Pursue)**

**Lead: Home Office**

**New powers**

- 2.31 The POCA contains comprehensive money laundering offences, and provides law enforcement agencies with specialised financial investigation powers and a suite of asset recovery measures. But it does not go far enough in providing law enforcement agencies with the powers they need to deal with money laundering for which the predicate offence was committed overseas. Nor does it offer the administrative powers that other countries, notably the U.S, use effectively to disrupt money launderers. There are some important gaps in the asset recovery provisions which have made it more difficult than it should be for law enforcement agencies to forfeit the proceeds of crime held in bank accounts. Finally, the financial investigation powers in POCA, whilst powerful, could be made more flexible and effective.
- 2.32 The experience of UK law enforcement agencies in investigating the proceeds of international corruption suspected to have entered the UK in recent years has demonstrated POCA's limits. In cases in which offences were conducted abroad, UK law enforcement agencies are forced to rely on the cooperation of the country in which the offence took place if they are to conduct a money laundering investigation with a realistic chance of successfully securing a conviction. But in many cases the country in which the offences took place lacks either the will, the capability, or the human rights record that would allow effective cooperation to take place. This can result in assets suspected of being the proceeds of crime overseas remaining in the UK out of the reach of our law enforcement authorities.
- 2.33 The Government will explore options for new legal powers. Unexplained Wealth Orders (UWOs) are already used in some countries, such as Ireland and Australia, to tackle this problem. A UWO, when served on the defendant, requires him or her to explain to the court the origin of his or her assets. This can provide critical information on which law enforcement agencies can build their case. The Government will also explore whether a new forfeiture power should be created to enable the forfeiture of any assets for which a satisfactory explanation cannot be given to the court. Some countries have criminalised illicit enrichment, making it a criminal offence to possess assets which cannot be accounted for by way of lawful income. It is a requirement under the UN Convention Against Corruption (UNCAC) for states to consider introducing an illicit enrichment offence and the Government intends to explore whether such an offence will be effective in the UK, and whether it will be compatible with our legal system.<sup>14</sup>
- 2.34 The UK's large financial sector makes it vulnerable to money laundering risks from overseas. It is not possible to seek traditional criminal justice outcomes – prosecutions and convictions in the UK courts – against money laundering threats across the globe. The UK may be able to learn from the approach taken in the U.S., which has a similarly large and internationally-focused financial sector. Section

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<sup>14</sup> See Article 20 of the UN Convention Against Corruption.



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311 of the USA PATRIOT Act enables U.S. regulators to designate entities of 'primary money laundering concern'. Once a designation is made, banks and other firms are required to take special regulatory precautions in dealing with the entity in question. These designations help U.S. firms protect themselves against the riskiest customers, and can have a very powerful disruptive effect against the entity in question, often, in effect, freezing them out of the international financial system. The Government intends to explore what the UK could learn from the U.S. approach, and to consider how a similar approach could be applied in the UK.

- 2.35 POCA offers a variety of different tools for asset recovery. In practice, however, law enforcement agencies lack a flexible and effective tool to forfeit suspected proceeds of crime held in bank accounts. POCA enables highly effective action to be taken against criminal cash. No similar power applies to money held in bank accounts. POCA civil recovery powers enable prosecutors to recover any form of property, but civil recovery proceedings are complex and the specialist resources in UK law enforcement agencies are rightly focussed on the highest value cases. Therefore, the Government intends to explore whether new powers are needed to enable the quick and effective forfeiture of money held in bank accounts in cases where there is no criminal conviction against the account holder (because, for example, the account was opened under a false identity) and there is suspicion that the funds are the proceeds of crime.
- 2.36 The Government will also explore whether, following an initial hearing at a magistrates' court, the new power could be used administratively, with forfeitures authorised by senior law enforcement officers where the value held in the account is below a certain limit (for example, £100,000) and the case is uncontested. This new power will form an important part of the changes to the Suspicious Activity Reports regime described earlier in this document.
- 2.37 The Government will also explore whether the same power could also apply to other forms of readily moveable property that may be the proceeds of crime (e.g. jewellery and precious metals).

### Action 11:

- **Explore new powers to tackle money laundering, including:**
- **New powers to impose an obligation on an individual or entity to explain the source of their wealth in support of an investigation;**
- **a new forfeiture power or criminal offence for those who cannot provide a satisfactory explanation;**
- **new administrative powers to designate entities of money laundering concern and require the regulated sector to take special measures when dealing with them;**
- **updated POCA financial investigation powers to make them more flexible and effective; and**
- **new powers to more easily seize criminal funds held in bank accounts, ('suspended accounts') through civil forfeiture. (Pursue)**

**Lead: Home Office**

- 2.38 Compliance with sanctions is key to ensuring those sanctions regimes have the desired effect as a foreign policy and national security tool. The Government intends to legislate to increase the maximum legal penalty for breaches of financial sanctions prohibitions from 2 years imprisonment to 7 years, thus making it a 'serious crime'. Deferred prosecution agreements, serious crime prevention orders and monetary penalties will also be introduced for breaches of financial sanctions prohibitions, to ensure that there is an effective and proportionate enforcement toolkit across all financial sanctions regimes in the UK. HM Treasury is also establishing an Office of Financial Sanctions Implementation to improve awareness of sanctions by the private sector and enhance cooperation with the law enforcement community. Properly targeted and robustly enforced sanctions are a vital foreign policy tool which we increasingly rely on to deliver important national security objectives. It underlines the Government's commitment to introduce new measures to make the UK a more hostile place for those seeking to move, hide or use the proceeds of crime and corruption or to evade sanctions.
- 2.39 The law enforcement response to terrorist financing is led by NTFIU within the Metropolitan police, supported by regional police counter terrorism units (CTUs). With terrorist finance there is a greater focus on the raising and movement of smaller scale funds since terrorist attacks or travel for terrorist purposes can be funded relatively cheaply. The Government will focus on reducing vulnerabilities and closing loopholes that can be exploited by terrorists to raise and move funds, including through new legislation where necessary. This includes vulnerabilities that enable funds to be raised through fraud or other criminal activity for terrorist purposes. The Government will also ensure that operational partners have and are able to use an appropriate and effective suite of tools to counter-terrorist finance and will look to maximise the use of these tools.

#### Action 12:

**Reduce vulnerabilities and close loopholes that can be exploited by terrorists to raise and move funds and ensure that operational partners have, and are able to use, an appropriate and effective suite of tools to counter-terrorist finance. (Pursue, Protect)**

**Lead: HO supported by HMT, FCO, NTFIU, HMRC**

### 2(c): Improving the effectiveness of the supervisory regime

**It is the Government's duty to help those businesses who wish to comply with the law to do so. As the Government is aware that the current supervisory regime is not working as well as it could, and that more could be done to help businesses comply and better focus resources on serious crime. The Government is fully committed to considering evidence submitted to date – for example that submitted to the Cutting Red tape Review – and investigating further the effectiveness of the current supervisory regime in detail, and considering radical options for improvement. The structure, remit and powers of the supervisors to incentivise compliance will be considered as will the strengths and weaknesses of professional body supervision. The Government wants to ensure that a risk-based approach is fully embedded, beginning with the understanding of specific risks, and spotting criminal activity. Tick-box compliance that risks imposing needless bureaucracy on compliant businesses while making the regime less effective helps no one combat crime and needs to be avoided. An effective approach should focus resources on the areas of**

**highest risk while taking a proportionate approach to those presenting low risk. The Government values the views of all interested parties and is issuing a Call for Information as Annex C to this Action Plan. This sets out some potentially radical reforms aimed at improving the effectiveness of the supervisory regime and addressing the concerns of businesses and Non-Government Organisations who have identified areas of concern in the way it currently operates, including to the Cutting Red Tape Review.**

- 2.40 The UK's supervisory regime is unique in respect of the number and diversity of bodies that supervise businesses for AML/CTF purposes. These include statutory regulators and professional bodies and the number of Treasury-approved supervisors has grown over the years. While there are advantages in sector specialisms, the NRA found that there were inconsistencies in the supervisory regime, including in understanding and applying the risk-based approach to supervision, in the provision of guidance and in providing a credible deterrent. A key element of the risk-based approach is the identification and assessment of risks by supervisors and businesses. To aid a more consistent approach, the Government could work with supervisors to develop a common risk assessment methodology (suitably tailored for individual sectors) that allows risks to be identified and assessed in a comparable way. The Government is also aware of concerns about aspects of the supervisory regime that appear to businesses in the regulated sector to be unclear, unnecessarily cumbersome, conflicting or confusing. This also has the potential to contribute to a less effective regime.
- 2.41 The Government believes that the large number of professional body supervisors in some sectors and the inconsistencies in their approach is a particular concern. While the majority of professionals in the regulated sector are not complicit in money laundering, those who are non-compliant or negligent have the potential to cause significant harm. They may, deliberately or unwittingly, assist criminals by facilitating them in hiding the source of wealth, the wealth itself and to giving that wealth a veneer of legitimacy, which is an integral aspect of money laundering. An awareness raising Prevent communications campaign, designed to deter potential involvement in organised crime, specifically fraud and money laundering, will continue this year, delivered by the Home Office in partnership with the NCA, HMRC, HMT and professional trade bodies and regulators.
- 2.42 The Government launched a review of the impact on business of the current AML/CTF regime as part of the Cutting Red Tape Review programme in August 2015. The Review has specifically sought evidence on the role of supervisors in the regime and is examining the potential to improve compliance and efficiency, by identifying aspects of the supervisory regime that appear to be unclear, inefficient or unnecessarily cumbersome. The clear aim of this Review is to identify scope for better regulation that makes the regime more effective while reducing those regulatory burdens that do not effectively contribute to tackling money laundering or terrorist financing.
- 2.43 Charities have an important role in delivering aid overseas and Money Service Businesses, including Hawala systems, remain important in delivering remittances to some of the poorest countries, which is why it is important to ensure that both sectors are properly supervised to prevent them being used for the financing of terrorism. Any changes will need to be considered carefully to avoid unintended effects on these important sectors.

- 2.44 Work is underway to identify what additional powers and tools could be used to increase oversight and supervision of the MSB sector and improve compliance with Regulations, including the use of targeted action to address non-compliant MSBs and tackle criminal exploitation of MSBs.
- 2.45 The Charities (Protection and Social Investment) Bill contains provisions which will assist the Charity Commission's work to prevent and disrupt abuse of the charitable sector for terrorist purposes. Provisions of the Bill include an expansion of offences which automatically disqualify an individual from being a charity trustee – these include specified terrorism and money laundering offences, a general power to disqualify individuals from acting as trustees and an amendment to existing law to enable the Commission to consider past conduct, in another charity, against a trustee.
- 2.46 The UK has an anti-money laundering and counter-terrorist financing regime that makes the UK a hostile environment for illicit finance. The regime relating to Politically Exposed Person (PEPs) will be both robust and proportionate, with resources focused on higher-risk individuals in line with international best practice.
- 2.47 Considerations of how to improve the supervisory regime, will be informed by the findings of the Cutting Red Tape Review and the Government will engage closely with supervisors, regulated entities, law enforcement and NGOs to fully understand their views and present a range of options for change. In developing these options, the Government will consider:
- How to ensure supervisors and their supervised populations are supported to adopt a truly risk-based approach – focusing on those with a high risk of criminality and negligent practice, which drives money laundering and terrorist financing, with a more proportionate approach to those with lower risks.
  - How the FCA, as the supervisor for the financial sector, ensures compliance while taking a proportionate approach to money laundering and terrorist financing risks.
  - Whether the number of supervisors impacts on the effectiveness of supervision.
  - Whether the advantages associated with professional body supervision, including in-depth knowledge of the risks and latest developments in their sectors, outweigh the disadvantages of having supervisory and industry advocacy roles combined.
  - Whether all supervisors have and use appropriate incentives and powers, such as fines, disqualification, education, ability to impose changes to business models and prosecution to take effective, proportionate and dissuasive action against non-compliance.
  - Whether businesses get the right amount of appropriate guidance from supervisors. Is it consistent, clear, effective and up to date? What should the Government's role in producing or approving guidance be?
  - Whether the regime keeps up with digital innovations and allows technology to offer effective ways of meeting requirements.
  - Whether information and intelligence can be more effectively shared between supervisors, the businesses they supervise and law enforcement

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2.48 A Call for Information to inform the Government's review of the supervisory regime is included at Annex C. Your views are welcomed and responses will be accepted for a period of six weeks from the publication of this document. The Government will respond to the findings of the Cutting Red Tape review, joining this work up where relevant with the review of the supervisory regime, with clear plans for reform in the Autumn.

### Action 13:

**Complete the review of the supervisory regime, taking into account relevant evidence submitted to the Cutting Red Tape review and announce reforms. (Prevent and Protect)**

Lead: HMT

## 2(d): Increasing our international reach

**Money laundering and terrorist finance are global threats. The UK, as an open economy and a major global financial centre, is particularly exposed to risks from overseas. The Prime Minister's Anti-Corruption Summit in May 2016 will address issues including corporate secrecy, Government transparency, the enforcement of international anti-corruption laws, and the strengthening of international institutions. Appropriate customer due diligence measures contribute to the safeguarding of the UK's financial system and national security. The Government will enhance efforts to protect the UK from those who engage in money laundering and terrorist finance. To pursue those who do so, the UK will continue to work through international groups, such as the G20 and the Financial Action Task Force (FATF), and with like-minded international partners to take action on an international basis, and to achieve greater cooperation with important jurisdictions overseas.**

2.49 Investor visa regimes around the world, including the UK's, have been criticised as representing a quick money laundering route for corrupt foreign individuals. The Government has taken a number of measures designed to reduce the UK scheme's vulnerabilities to abuse. Specifically, in November 2014, the Government took powers to refuse applications where (1) there are reasonable ground to believe the applicant is not in control of the funds; (2) the funds were obtained unlawfully (or by conduct which would be unlawful in UK); and, (3) the character, conduct and associations of a third party providing the funds mean granting is not conducive to public good. In addition, in April 2015, the Government made a further change to require that Tier 1 (Investor) applicants must have opened a UK account with an FCA regulated bank for the purposes of making their qualified investment. This measure ensures that prospective applicants will have been subjected to UK due diligence and anti-money laundering checks before being able to gain a visa through the route. The Government will continue to keep the route under review.

2.50 In July 2015, the Prime Minister announced that the UK Government will consider measures to enhance the provision of beneficial ownership information for foreign companies investing in the UK. The Prime Minister identified two areas where this information would be useful – the purchase of land or property, and public procurement. As a first step, the Government issued a discussion paper on beneficial ownership transparency assessing options for requiring foreign companies to provide their beneficial ownership information when either purchasing

property or bidding for public contracts. This was closed on the 4th of April and responses are currently being analysed.

- 2.51 At last December's Joint Ministerial Council, Overseas Territory leaders agreed to hold company beneficial ownership information in central registers or similarly effective systems. Furthermore, they agreed to develop a timely, safe and secure information exchange process for law enforcement purposes. The Prime Minister informed the House of Commons on 11 April that arrangements had been finalised so, for the first time, UK law enforcement will be able to see exactly who owns and controls companies incorporated in the Overseas Territories and the Crown Dependencies.
- 2.52 The UK will increase its law enforcement cooperation and policy dialogue with jurisdictions of importance for money laundering and terrorist finance. The UK will look to tackle international corruption, where the sums of money siphoned off by corrupt politically exposed persons, businesses and criminals, through bribery and theft of public funds, can be significant. The NCA, as the lead law enforcement agency on economic crime including money laundering and international corruption, will create new International Liaison Officer posts in important jurisdictions to support this work. Other UK law enforcement agencies also have overseas networks, and the NCA will work with them to ensure a coherent approach. The NCA officers will also support work to develop capacity in other countries, and identify potential new threats to the UK. We will also expand our policy dialogue with important jurisdictions to ensure joined-up and comprehensive approaches are taken.

**Action 14:**

**Create new NCA International Liaison Officer posts in important jurisdictions. Review UK law enforcement agencies' overseas networks and ensure a coherent approach. (Pursue)**

**Lead: NCA, supported by HMRC and other law enforcement agencies**

- 2.53 A lack of consistency in the legal and regulatory frameworks that govern information sharing creates vulnerabilities for private sector firms. The sharing of information and intelligence about suspected money laundering within these firms and with UK law enforcement agencies is hampered by domestic data protection rules, and in turn creates obstacles to law enforcement investigations. The UK will work with international groups, such as the G20 and the Financial Action Task Force (FATF) to promote better and more effective international information sharing on money launderers between Governments, law enforcement agencies and financial intelligence units, and private sector firms.

**Action 15:**

**Develop a new approach for cross-border information sharing between both private sector firms and Government entities (Pursue, Protect)**

**Lead: HMT, Home Office**

2.54 Recent high profile international corruption cases have demonstrated that criminal funds were used to obtain real estate in the UK. In preparation for the May 2016 Anti-Corruption Summit, the NCA and Serious Fraud Office are leading work to establish more effective international mechanisms for investigators and prosecutors from multiple jurisdictions to work together on serious money laundering cases that span international boundaries.

**Action 16:**

**In preparation for the Anti-Corruption Summit, submit a new approach for international law enforcement and prosecutor co-operation on international corruption cases. (Pursue, Prepare)**

**Lead: NCA, SFO, CPS, Home Office, Cabinet Office**

2.55 For terrorist finance, this co-operation will take the form of working with key partners to improve their capacity and capability. The UK will continue to deliver training to, and share expertise with, key overseas partners to help investigate and combat the financing of terrorism. The UK is a member of the Counter ISIL Finance Group and works within the group to ensure closer and more effective working with international partners to degrade Daesh finances. The UK will continue to support the Group's efforts. We will also work to support activity to combat terrorist finance alongside other EU member states and alongside action at the UN and domestically.

2.56 The EU Commission published a new Terrorist Finance Action Plan on 2 February. The UK welcomes the Commission Action Plan and will continue to engage at EU level to help prevent and disrupt terrorist financing in a way that complements the UK's domestic counter-terrorist finance regime. In particular, the UK welcomes plans for accelerated and effective implementation of United Nations' freezing orders; consideration of appropriate measures regarding high denomination notes; and the call for Member States to undertake national risk assessments. The UK is ready and willing to share its experiences in undertaking its recent NRA with other EU Member States.

**Action 17:**

**Deliver training to, and share expertise with, key overseas partners to help them build their capacity and capability to investigate and combat the financing of terrorism. (Pursue)**

**Lead: NTFIU supported by Home Office and FCO**

**Action 18:**

**Continue to support Counter-ISIL Finance Group efforts to degrade Daesh finances and work to support activity to combat terrorist finance alongside other EU member states and alongside action at the UN and domestically.**

**Lead: FCO (Daesh Task Force), supported by MoD, Home Office, HMT**

2.57 A large number of UK based charities work in difficult environments overseas in support of humanitarian goals, often having to work in areas where terrorists operate. We must support legitimate charities that operate in these environments to reduce the risk of charitable funds being looted by or diverted to terrorist organisations, or otherwise abused for terrorist purposes.

**Action 19:**

**Support UK charities operating in difficult environments overseas to mitigate the risk their funds being abused for terrorist purposes**

**Lead: Charity Commission, supported by Department for International Development, Foreign and Commonwealth Office, Home Office**



## 3. Implementing the Action Plan

3.1 A successful anti-money laundering and counter-terrorist finance regime means:

- Reduced vulnerability of the regulated sector to money laundering and terrorist finance.
- Relentless disruption of money laundering and terrorist finance, the prosecution of those responsible and the forfeiture of their criminal assets.
- Fewer people engaged in money laundering and terrorist finance.
- Targeted support through the supervisory regime to financial institutions and other businesses so that they can continue to act as an effective first-line defence.
- Better international collaboration to disrupt global crime threats.

3.2 This Action Plan will deliver the Government's objective, set out in the SDSR, to make the UK a more hostile place for those seeking to move, hide or use the proceeds of crime or corruption. The four priority areas are:

- A stronger partnership with the private sector
  - Law enforcement agencies, supervisors and the private sector working in partnership to target resources at the highest money laundering and terrorist financing risks.
  - News means of information sharing to strengthen the application of the risk-based approach in practice and mitigate vulnerabilities.
  - A collaborative approach to preventing individuals becoming involved in money laundering.
- Enhancing the law enforcement response
  - New capabilities and new legal powers to build the intelligence picture, disrupt money launderers and terrorists, recover criminal proceeds, and protect the integrity of the UK's financial system.
- Improving the effectiveness of the supervisory regime
  - Investigate the effectiveness of the current supervisory regime, and consider radical options for improvement to ensure that a risk-based approach is fully embedded, beginning with the understanding of specific risks, and the spotting criminal activity, rather than a focus on tick-box compliance
- Increasing our international reach

- Work with international partners to tackle money laundering and terrorist financing threats upstream, and develop multilateral approaches in preparation for the Prime Minister's Anti-Corruption Summit in May 2016.
- 3.3 Quantitative and qualitative metrics to assess the impact of these actions will be developed, covering the Pursue, Prevent and Protect outcomes, including: prosecution, asset recovery and disruption assessment statistics; changes in criminals' behaviour as a result of public and private sector disruptions; changes in the behaviour of professionals in the regulated sector as a result of Prevent information campaigns; and changes to public and private sector understanding of the threat. The NCA will regularly re-assess the threat, including through the production of a baseline assessment on high end money laundering by the summer of 2016, and through regular updates thereafter, including the National Strategic Assessment on Serious Organised Crime.
- 3.4 The effectiveness of the Action Plan in meeting its money laundering objectives will be overseen by the joint Ministerial Home Office and HMT chaired Criminal Finances Board, with input from the Financial Sector Forum, chaired by the Home Office, British Bankers' Association and the NCA. The Criminal Finances Board will also oversee preparations for the FATF Mutual Evaluation Review (FATF MER) in 2018. Preparation for the FATF MER will include a second National Risk Assessment of Money Laundering and Terrorist Financing.
- 3.5 Deliver of the terrorist financing elements of the Action Plan will be monitored through the Ministerial Terrorist Finance Board.

## Grid of actions

	Action	Lead	Completed by
<b>A stronger partnership with the private sector</b>			
1	Reform the SARs regime, making the necessary legislative, operational and technical changes to deliver the proposals detailed in this Action Plan.	Home Office / NCA	Oct 2018
2	Move JMLIT to a permanent footing.	NCA	July 2016
3	Create a register of banks' particular business specialisms and make it available to JMLIT to ensure that relevant expertise is brought into JMLIT work on money laundering and terrorist financing typologies.	British Bankers' Association	End 2016
4	Explore legislation to achieve better information sharing between law enforcement agencies and the private sector, and between private sector entities.	Home Office	Oct 2017
5	Deliver Prevent campaigns to raise awareness amongst professionals in the regulated sector of money laundering risks and the actions needed to mitigate them.	Home Office, HM Treasury	Ongoing

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	Action	Lead	Completed by
6	Public-private partnership to run a Prevent campaign to educate consumers and businesses as to the risks of becoming involved in money laundering.	British Bankers' Association, Home Office, HMT	End 2017
<b>Enhancing the law enforcement response</b>			
7	Deliver improvements in intelligence collection capability.	NCA	Jan 2017
8	Ensure an effective multi-agency investigation response, drawing on private sector expertise, to target the most complex high-end money laundering cases.	NCA	Oct 2016
9	Create a programme to upskill intelligence, analytical, investigative and legal staff to take on complex money laundering cases.	NCA	June 2017
10	Establish a more sustainable funding model for Regional Asset Recovery Teams to ensure their robust response to money laundering linked to serious and organised crime, including through asset confiscation and denial.	Home Office	Oct 2016
11	Explore new powers to tackle money laundering.	Home Office	Oct 2016
12	Reduce vulnerabilities and close loopholes that can be exploited by terrorists.	Home Office	Oct 2017
<b>Improving the effectiveness of the supervisory regime</b>			
13	Complete the review of the supervisory regime, taking into account relevant evidence submitted to the Cutting Red Tape Review, and announce reforms.	HMT	Autumn 2016
<b>Increasing our international reach</b>			
14	Create new NCA International Liaison Officer posts in important jurisdictions.	NCA	Mar 2017
15	Develop a new approach for cross-border information sharing between private sector and Government entities.	HMT, Home Office	ongoing
16	Submit a new approach for international law enforcement and prosecutor co-operation on international corruption cases.	NCA	Mar 2017

**Action Plan for anti-money laundering and counter-terrorist finance**

	<b>Action</b>	<b>Lead</b>	<b>Completed by</b>
17	Deliver training to, and share expertise with, key overseas partners to help them build their capacity and capability to investigate and combat the financing of terrorism.	NTFIU	Ongoing
18	Continue to support Counter-ISIL Finance Group efforts to degrade Daesh finances and work to support activity to combat terrorist finance.	FCO	Ongoing
19	Support UK charities operating in difficult environments overseas to mitigate the risk of their funds being abused for terrorist purposes.	Charity Commission	Ongoing

# Annex A: Consultation on legislative proposals

The Action Plan contains a number of proposals on which the Government wishes to consult, as they will involve potential changes to legislation. These are:

- Removal of the SARs consent regime
- New powers for law enforcement agencies to require reporters to take actions in relation to their customers, and to request further information on SARs
- Data sharing between private sector organisations to tackle money laundering and terrorist financing
- The creation of a new power to require individuals to declare their sources of wealth
- The creation of a linked power to seek forfeiture of assets if they fail to declare their sources of wealth
- The creation of an illicit enrichment offence
- A power to designate an entity as being of money laundering concern
- Development of a new power to allow money held in bank accounts to be swiftly seized and forfeited
- Changes to the civil recovery powers to allow administrative seizure up to £100,000.

## Section 2(a): Public-private partnership

1. The Government is seeking views on the change in focus of the SARs regime from one on transactions to one on the entities responsible for money laundering and terrorist financing.
  - What benefits are there for the reporting sector in moving the focus of the SARs regime from *transactions* to *entities* for tackling money laundering and the financing of terrorism?
  - What would be the effect on costs to business in making that shift?
2. To support that change, the Government is considering removing the current consent regime.
  - What are the risks in removing the consent regime, and how could these be overcome?
  - If the current SARs consent regime is replaced, removing the statutory defence for SARs reporters, what legal protections should be available for reporters who unwittingly come into the possession of criminal property?

- What would be the costs to your business of this change?
3. Should a reformed SARs regime include powers for law enforcement agencies to direct reporters to take certain actions, including maintaining a customer relationship, and provide legal cover for the reporter to do so?
  4. The Government is proposing to provide legislative cover to support better data sharing within the private sector.
    - What legislation and guidance needs to be in place to allow effective sharing of information between private sector firms in order to prevent and detect financial crime?
    - What benefits would you see from having the ability to develop SARs in partnership / report jointly with other private sector entities?
    - What can we learn from the U.S. experience of data sharing between private sector entities under the s314 of the USA PATRIOT Act?
  5. Under the EU 4th Anti-Money Laundering Directive (4AMLD), Financial Intelligence Units are required to have a power to request further information in relation to a SAR. How should such information be gathered, and should it be regarded as part of the overall SAR?
  6. The Government wants to support the financial sector in dealing with suspected proceeds of crime held in suspended bank accounts.
    - What new powers are required to allow the criminal funds held in UK bank accounts to be forfeited more easily?
    - What safeguards should be put in place around any new powers in order to protect innocent account holders?
    - In uncontested cases, should administrative forfeiture be permitted, in the same way that POCA already enables the administrative forfeiture of cash?

## Section 2(b): Enhanced law enforcement response

7. What do you see as the benefits of introducing a power to require individuals to explain the sources of their wealth?
8. Would you see a benefit in a linked forfeiture power where the explanation is not satisfactory or no explanation is provided?
9. What benefit would you see in an illicit enrichment offence, targeting those who use their public position to enrich themselves? What are the potential impacts on business?
10. The Government is considering the introduction of a power to enable the Government to designate entities of primary money laundering concern.
  - What benefit would such a power provide?
  - What would be the impact of such a power on firms in the regulated sector?

## Action Plan for anti-money laundering and counter-terrorist finance

- What legal recourse should be available for designated entities who wish to challenge their designation?
  - What can the UK learn from the U.S. experience of using section 311 of the USA PATRIOT Act?
  - What would be the costs to your business?
11. What benefit would you see in the provision of a power, similar to the provisions for cash seizure, to allow seizure and forfeiture of other forms of readily moveable property such as high value jewellery or precious metals?
  12. What benefit would you see in enabling the administrative forfeiture of the proceeds of crime in uncontested cases, following an initial hearing at a magistrates' court? Should a limit be set on the value of property that could be administratively forfeited, and what should that limit be?
  13. If we amend the investigative powers within POCA so they can be sought earlier in the investigative process, and make applications and administration more flexible, what would be the impact on your business?
  14. In addition to the proposals in this Action Plan, are there additional powers that UK law enforcement agencies should have to tackle money laundering?

## Responses

The Home Office welcomes your views in response to the questions posed in this Annex.

The Government would be keen to hear examples of how the proposed changes may help or hinder the AML/CTF regime in the UK in practice. This will help ensure evidence-based policy decisions in these areas.

Electronic responses are preferred and should be sent to:  
Action\_Plan@homeoffice.gsi.gov.uk.

Questions or enquiries specifically relating to this consultation should also be sent to the above email address. Please include the words CONSULTATION VIEWS or CONSULTATION ENQUIRY (as appropriate) in your email title. **If you do not wish your views to be published** alongside the Government response to this consultation, please **clearly** specify this in your email.

Hard copy responses may be submitted to:

Action Plan questions on tackling money laundering & terrorist financing  
Home Office  
6th Floor Peel Building  
2 Marsham Street  
London  
SW1P 4DF

## Confidentiality and Disclosure policy

Information provided in response to this consultation, including personal information, might be published or disclosed in accordance with the access to information regimes. These are primarily the Freedom of Information Act 2000 (FOIA) and the Data Protection Act (DPA). If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply with and which deals, amongst other things, with obligations of confidence.

In view of this it would be helpful if you could explain to the Home Office why you regard the information you have provided as confidential. If Government receives a request for disclosure of the information, the Home Office will take full account of your explanation, but it cannot give an assurance that confidentiality will be maintained in all circumstances.

An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department. Your personal data will be processed in accordance with the DPA, and in the majority of circumstances, this will mean that your personal data will not be disclosed.

## Timetable

The closing date for responses to be submitted is 2 June 2016.



# Annex B: Findings from the Call for Information on the Suspicious Activity Reports (SARs) Regime

## Introduction

In the UK Anti-Corruption Plan, published on 18 December 2014, the Coalition Government committed to carrying out a review of the SARs regime to develop ways of better identifying money laundering and terrorist financing, and to prevent the dissipation of the proceeds of corruption.

SARs play an important role in the ability of the UK to identify money laundering and the financing of terrorism. Part 7 of the Proceeds of Crime Act 2002 requires a person to report to the NCA where there are reasonable grounds to know or suspect that another person is engaged in money laundering. Although this requirement to submit SARs applies to any individual, those businesses in the "regulated sector" such as banks, money service businesses, accountants and lawyers are obliged to report.

The Home Office ran a Call for Information on the operation of the SARs regime between 25 February and 25 March 2015. We received more than 60 responses from a wide range of stakeholders, including law enforcement agencies, the financial sector, and the legal and accountancy sectors.

The responses contained a wide range of views on the SARs regime. There were a large number of specific points that were made for each of the sections that were set out in the Call for Information, together with a number of general points about the operation of the regime. A summary of the points is set out below.

The Government is grateful for all of the contributions made by respondents throughout the Call for Information process. This document summarises the submissions received in response to the Call for Information questions.

## Key themes

A number of key themes emerged from the Call for Information:

- **Definition of Purpose:** The current regime fulfils the role of the UK reporting and intelligence gathering mechanism for suspected money laundering and terrorist financing activity. Many respondents believe that the regime is ineffective, and want to see it used in a more active manner, that will lead to clear operational outcomes, such as arrests and asset recovery. The reporting sector sees the review as an opportunity to develop a more effective regime.
- **Active information sharing:** The review has highlighted the need for a better information sharing model to support greater collaboration between law enforcement agencies, regulators and the private sector. Most respondents want to share relevant information to assist in tackling money laundering. The reporting sector is concerned that existing legislation does not explicitly support the sharing of information within and

between members of the reporting sector, and that more definite legal arrangements are required. The Joint Money Laundering Intelligence Taskforce has made some significant steps in building trust between law enforcement agencies and the financial sector, but to do this on a longer term basis, some respondents wanted explicit legal cover.

- **Improve the quality of SARs / reduce the volume:** The reporting sector has concerns regarding the phrasing of the requirement to report suspicious transactions, as set out in POCA. This concern, and the penalties for failure to report, drive a significant level of defensive reporting, where reports are made more because of concerns regarding a failure to comply with POCA than because of genuine suspicion. This places a burden on the regime, and detracts from a focus on serious and organised crime. The Government is committed to taking action to recognise and address this concern.
- **Clarify the “tipping off” offence:** There are concerns relating to the “tipping off” offence in POCA. Reporters are concerned that any sharing of information, even to assist in preventing or detecting crime, could be an offence. The poor quality and large number of SARs places the regime under strain. The poor quality is often as a result of the lack of knowledge on the part of the reporter, and the use of an all crimes approach, with no de minimus, obliges reporters to raise SARs that are of little value.
- **Upgrade the capabilities of the UK Financial Intelligence Unit (UKFIU):** All sectors viewed the technical infrastructure and the resources of UKFIU that support the regime as inadequate. The reporting sector felt that the IT system did not allow them to report as effectively as it could, and that the UKFIU was short of the capabilities necessary to utilise the information provided in the SARs.
- **Consent regime:** The consent regime is seen by many in the reporting sector as problematic. They say it causes delays, and difficulties with customers, and some also view it as incompatible with their business. Law enforcement agencies believe that there has to be a mechanism that allows transactions that involve the transfer of criminal assets to be investigated and prevented.

## Specific points

The Call for information sought the views of respondents on the following areas:

1. Context for each respondent.
2. How can money laundering and the financing of terrorism be better identified?
3. How can information sharing between and within sectors be improved to prevent crime and protect the regulated sector and the wider financial system?
4. How can SARs reporting be made more efficient?
5. How can the consent regime be improved?
6. What can we learn from international best practice?

## Summaries of responses received are outlined below:

### Context for each respondent

- Most respondents felt that they had a good understanding of SARs and how they should be raised. Staff training was seen as vital, and is carried out by many respondents. However, respondents working for smaller organisations felt they had difficulties with training, as they did not know what to look for. The role of regulators and supervisors in assisting with training was welcomed, although others mentioned concerns, particularly outside the financial sector, with the quality of oversight, and the number of regulators in particular sectors.

### How can money laundering and the financing of terrorism be better identified

- **Purpose of the SARs regime:** There is concern over what the regime is for, and what it is seeking to achieve, coupled with a wider concern over the lack of information on the effectiveness of the regime, and what the regulated sector needs to provide to assist law enforcement agencies.
- **Information sharing on risks and threats:** A lack of guidance on what to look for or to focus on leads to large numbers of SARs being raised on a guesswork basis. One respondent argued that it is unreasonable for governments to expect the regulated sector to know more about money laundering than law enforcement agencies do, and that information held by such agencies needed to be shared. The focus on an “all crimes” regime is leading to high levels of defensive SARs. Many respondents wanted strengthening of the definition of “suspicion”, to allow better judgements to be made. Suggested solutions included better information sharing on trends and typologies including new forms of transactions such as online banking and virtual currencies.
- **Due diligence:** Respondents said that financial institutions should conduct proper due diligence not only on the source of wealth but on the source of funds. Some respondents were unclear which of these (or both) should be done.
- **Regulatory oversight of non-banking sector:** The banking sector is subject to considerable regulation, and is responsible for most SARs. Criminals may have recognised this, and will use other avenues where there is less reporting. Improved oversight, and rationalisation of supervisors in some of the non-bank sectors is required to address this.
- **Difficulty of use:** Some respondents felt that the regime itself is difficult to use because the nature of their business model does not allow them to use the SARs regime effectively. This particularly applies where the transactions are many and rapid.
- **Duplication of reporting:** Respondents were often unclear where they should report different crime types to, or felt that they needed to provide duplicate reports, such as one to Action Fraud and a SAR. Clarification of the need for reporting, and to whom, would be useful for some, particularly where both fraud and money laundering were involved. This could include bulk reporting of fraud to the NFIB.
- **UKFIU capabilities:** The level of resources applied to work on submitted SARs and to investigate money laundering is seen by most respondents as too low. Respondents recommended an increase in staffing, improved IT, and work to reduce the volume of SARs, and thought that capabilities (particularly analysis skills) needed to be improved to support this work.

- **Willingness to restrain:** Concerns were raised over the difficulty in obtaining restraint orders, particularly in cases where relatively small sums are involved.

### **Improving information sharing between and within sectors to prevent crime and protect the regulated sector and the wider financial system**

- **Legislation to permit sharing of data:** Many respondents are willing to share more information than they do now, but see the current legislation as restricting their ability to do so between sectors and within sectors. Some of this relates to the Crime and Courts Act section 7 gateway, which enables data sharing with the NCA, and some to wider issues of data protection. Suggested solutions include a statutory protection for those sharing information in this area, and a definition of when it is acceptable to refer to the fact of a SAR being raised. The USA PATRIOT Act provisions on data sharing are seen as worth exploring.
- **Effective information sharing structures:** The Joint Money Laundering Intelligence Taskforce (JMLIT), which is run as a pilot by the NCA and some banks, was supported as a means of testing information sharing on a collaborative cross-sector basis. Some non-bank contributors asked for an equivalent structure. Respondents felt that the JMLIT is a good starting point, but needs development before it could be a long-term solution.
- **Cross-Government data sharing:** Respondents said that Government and other public bodies have data that would be useful to enrich the information provided through SARs. These datasets should be available to the NCA to improve the effectiveness of the regime.
- **Tipping off offence:** Some respondents argued that the tipping off offence at section 333A of POCA is drawn too widely, and has a detrimental effect on sharing information for the purpose of identifying or preventing crime. In the age of fast transactions, a customer cannot avoid noticing that their transaction has been held up, and can draw their own conclusions. Suggestions included restricting it to a deliberate action to inform the subject of a SAR for the purpose of assisting them, or scrapping the provision altogether and relying on alternatives such as aiding and abetting. Respondents also want a form of words, agreed with the NCA, to use with customers who question the delay of their transactions.
- **Outputs to the reporting sector:** Some private sector respondents would like access to SARs data. However, others felt that they did not want access themselves, and that access should remain limited, perhaps only to supervisors or regulators. Most wanted access to trend and threat data, and some to information on those convicted (or strongly suspected) of money laundering. They would like information on matters already under investigation by law enforcement, and not be required to raise additional SARs on those.
- **Collaborative working:** Respondents see a future regime operating on a much more collaborative basis. Some talked about creating a CIFAS-style anti-money laundering (AML) information sharing exchange, which would provide reporters with details of trends etc. A number wanted to see a regime that used trusted or security cleared staff (such as MLROs) far more, to share information between and within sectors.

### How can SARs reporting be made more efficient?

- **Prioritisation of SARs:** Some respondents would like information that help them to identify criminality more effectively, and to use this as the basis for a tiered approach to reporting, whereby SARs are graded according to the degree of suspicion relating to the transaction, and where the reporter provides a significant level of input where they firmly believe the transaction is criminal.
- **De minimus value for SARs:** A number of respondents felt that there should be a realistic de minimus value for SARs, to allow reporters to focus on the higher value transactions, and to reduce the number of SARs raised.
- **New technical architecture:** The current IT infrastructure is seen as having significant problems, and to be unable to support the workload. A number of proposals have been put forward for functionality that any new system should have, all of which would need to use structured data that allows effective interrogation and analysis. More use of standardised formats, alongside priority indicators, was seen as useful. Any solution would need a significant analytical capability, along with the resources to use that effectively. Bulk or linked reporting of SARs would allow the reporting sector to develop a better report package for law enforcement agencies, containing more information relating to the transaction. Non-bank respondents felt that any new technical solution needs industry-specific templates. This would help with training and the provision of relevant information.
- **Bulk information sharing:** alongside priority indicators, the reporting sector could be asked to provide bulk data for specific areas, which law enforcement agencies could mine for further information.

### How can the consent regime be improved?

- **Consent regime:** Some respondents would like the consent regime to be replaced by a restructured SARs regime, based on tiered reporting. The transactions where a bank has evidence of criminality would be subject to review by the NCA prior to action being taken. The reporter would not commit an offence if the transaction proceeded during the review period. The consent regime is supported by law enforcement agencies. Some sectors feel that a consent regime that is focused on bank transactions does not work for the more immediate transactions that they deal with.
- **Focus on accounts rather than transactions:** Some suggest that it would be better for consent requests to operate on the whole account, rather than on each transaction. They believe this would be better as it would freeze the whole account in one go, rather than require SARs for individual transactions.
- **Review the moratorium period:** There are diverse views on whether the length of the moratorium period is right. Businesses generally view it as too long, or of having the effect of causing any transaction subject to it to fall through. Law enforcement agencies believe that the time to obtain information to make a decision on further action, particularly where the request is from overseas, is not long enough, and should be extendable through a court order.
- **Start process before customer instruction:** Some respondents think if the reporter could start the consent process before the customer gives instructions, this would speed up the process, and reduce the impact on the customer.

### What can we learn from international best practice?

- **U.S:** Some respondents argue that provisions similar to those in the PATRIOT Act on information sharing would be very useful, and would provide legal cover for the regulated sector to share information.
- **Spain:** The Spanish FIU is seen as working closely with the reporting sector, and provides effective feedback, and useful information on typologies. This is caveated with a recognition that the volume of SARs in Spain is much smaller than that in the UK.
- **International information sharing:** Respondents see a number of challenges to sharing information internationally, due to the different data protection laws in other jurisdictions. This is a problem for global institutions, who may not be able to share information on customers across different parts of the group. It is also a problem for law enforcement agencies, who do not receive intelligence disseminations.
- **Impact of the 4th Anti-Money Laundering Directive (4AMLD):** Respondents thought that the impact of 4AMLD could be significant, if it drives up the number of SARs being reported, requires additional work from the UKFIU, and prevents information sharing between or within sectors.

# Annex C: Call for information – AML Supervisory Regime

## Background

The government's aim for the Anti-Money Laundering (AML) and Counter Financing of Terrorism (CFT) regime is to make the UK financial system a hostile environment for illicit finances, while minimising the burden on legitimate businesses and reducing the overall burden of regulation.

The UK's financial sector is one of the most sophisticated and open in the world. This brings huge advantages in terms of encouraging investment, entrepreneurship, and financial innovation – but it also makes it a target for criminals seeking to launder and move their ill-gotten gains around the world. It is essential, therefore, that those businesses most likely to be targeted by such criminals are properly regulated and that the bodies in place to supervise them are effective and proportionate. The UK has an anti-money laundering and counter-terrorist financing regime that makes the UK a hostile environment for illicit finance. The regime relating to Politically Exposed Person (PEPs) will be both robust and proportionate, with resources focused on higher-risk individuals in line with international best practice.

The Financial Action Task Force (FATF) sets out high-level principles for the organisation of national AML/CFT regimes and demands that jurisdictions should ensure effective supervision of regulated entities on a risk-sensitive basis by supervisors that have adequate powers to ensure compliance. The government is committed to upholding these principles and to showing that the UK has an effective AML/CFT regime during its Mutual Evaluation which will be conducted by FATF in 2017/18.

In preparation for the Mutual Evaluation and the transposition of the European Union's Fourth Money Laundering Directive, the government published the National Risk Assessment (NRA) of ML/TF risks in October 2015. This found that, while the UK's response to money laundering and terrorist financing risks is well developed, more could be done to strengthen the AML and CFT regime. Of interest to this call for information is the finding that:

*“The effectiveness of the supervisory regime in the UK is inconsistent. Some supervisors are highly effective in certain areas, but there is room for improvement across the board, including in understanding and applying a risk-based approach to supervision and in providing a credible deterrent. The large number of professional body supervisors in some sectors risks inconsistencies of approach. Data is not yet shared between supervisors freely or frequently enough, which exposes some supervised sectors where there are overlaps in supervision.”<sup>15</sup>*

Currently, the Treasury has responsibility for appointing and removing the supervisors through the Money Laundering Regulations. The Treasury engages with the supervisors, law enforcement and the regulated populations through fora such as the Money Laundering Advisory Committee, the Anti-Money Laundering Supervisors' Forum and the Financial Sector Forum as well as monitoring their activities through an annual Supervisor's Report.

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<sup>15</sup> National Risk Assessment, p. 5

However, there is no formal and systematic mechanism for assessing performance and driving changes.

The government has committed to dealing with the issues raised in the NRA and seeks views from supervisors, regulated businesses, NGOs and the public on how best to address them. It is important that in considering how to improve the regime we do not create needless burdens on business and the government launched a review of the impact on business of the current AML/CFT regime as part of the Cutting Red Tape programme in August 2015. Evidence gathered through that review will be fully considered when looking at how to improve the regime.

### Scope

The scope of this call for information is the AML/CFT supervisory regime, focusing on the system of appointing supervisors, the powers of supervisors to incentivise compliance, adoption of the risk-based approach and how they interact with supervised businesses.

The Home Office is conducting a review of the structure of the Suspicious Activity Reports (SARs) regime which is an important element of the AML/CFT regime, so this will be out of scope of this call for information.

### Purpose

The purpose of this call for information is to enable the government to examine options to improve the supervisory regime and address inconsistencies, ensuring that the UK's regime is effective, proportionate and meets the standards set down by FATF.

Once the government has a fuller picture of the benefits and risks, it will be able to take an informed decision on what changes are needed.

### Identification of risks

The first step in taking a risk-based approach to combatting money laundering and terrorist financing is to have a robust methodology for identifying and assessing risks. Supervisors have developed their own risk assessment methodologies largely independently and these are not always directly comparable. Where a number of supervisors cover similar types of business, having a methodology that is significantly different may give rise to inconsistencies, for example potentially leading to two supervisors viewing the same business type as having materially different risks.

The NRA found that some supervisors had difficulties explaining how their risk assessment translates into specific monitoring activities. This does not mean that supervisors are not taking a risk based approach or that their risk assessments do not inform their monitoring decisions, but it does suggest that the communication of monitoring decisions needs to be improved.

Once risks have been identified and assessed, supervisors should allocate resources accordingly and focus on areas of highest risk. However, this does not mean that other areas should be neglected and it is important that ongoing monitoring enables supervisors to detect new risks or changes to existing risks that necessitate a reallocation of resources.

The NRA found that there is a risk of the priority attached to AML/CFT supervision by supervisors varying over time as it is prioritised against assessments of compliance in other areas, although there is no evidence that individual supervisors are not sufficiently prioritising AML/CFT efforts.



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1. Should the government address the issue of non-comparable risk assessment methodologies and if so, how? Should it work with supervisors to develop a single methodology, with appropriate sector-specific modifications?
2. How should the government best support supervisors – and supervisors support each other – to link their risk-assessments to monitoring activities and to properly articulate how they do so?
3. Should the government monitor the identification and assessment of risks by the supervisors on an ongoing basis? Should the supervisors monitor each other's identification and assessment of risks? How might this work?
4. Should smaller supervisors be encouraged to pool AML/CFT resources into a joint risk function and would this lead to efficiencies? If so, how should they be encouraged?
5. How should the ability of the supervisors and law enforcement agencies to share information on risks be improved?

## Supervisors Accountability

To have confidence in the supervisory regime it is important that government is able to hold supervisors to account and ensure that they are carrying out their duties in an effective and proportionate manner. The variety of supervisory models means that government does not have the same influence over each supervisor. While statutory bodies (such as the FCA) are answerable to parliament, professional bodies which are granted authority to supervise by the Treasury are ultimately answerable to their members.

While the Treasury has instigated an annual report on the activities of the supervisors, not all supervisors submit returns, and the mechanism for assessing their performance in detail, identifying weaknesses and ensuring that action is taken could be strengthened. While most supervisors attend the AML/CFT Supervisors' Forum (AMLSF) and meet in the smaller affinity groups (accountancy, public sector and legal), these fora provide a means of information exchange and discussion rather than challenge, support and accountability. Some supervisors are also members of the Money Laundering Advisory Committee (MLAC) along with representatives from industry, law enforcement and government departments, this provides another forum for discussion and advises the government on its approach to preventing money laundering.

It has been suggested that a clear and transparent method for 'supervising the supervisors' is needed, not only to create a well understood mechanism for holding them to account, but also to give supervisors support and clarity on what is expected of them. The government is interested in views on whether such a mechanism is required and, if so, what it might look like.

6. To promote discussions between the supervisors, should attendance at the AMLSF and submission of an annual return to the Treasury be made compulsory for supervisors? How could the government ensure that this happened?
7. Could the Money Laundering Advisory Committee (MLAC) have a greater role in driving improvements in the supervisory regime?
8. Should the government instigate a formal mechanism for assessing the effectiveness of all the supervisors AML/CFT activities, with the power to compel action to address shortcomings? If so, should this be carried out by the Treasury

directly, through another body such as the National Audit Office, or through creating a new body, perhaps along the same lines as the Legal Services Board which oversees legal services supervisors or the Financial Reporting Council which promotes high quality corporate governance and reporting? Are there other ways of ensuring effectiveness that should be considered?

9. Would an overarching body be able to add value by maintaining a more strategic view of the entire AML/CFT landscape and identifying cross-cutting issues which individual supervisors might struggle to identify? Should such a body have the authority to guide and compel the activities of the supervisors, up to and including the power to revoke approval for bodies to be supervisors?

## Penalties and Enforcement

Supervisors should use appropriate enforcement procedures when AML/CFT breaches have been identified. Under the Money Laundering Regulations and the Fourth Anti-Money Laundering Directive (4AMLD), penalties should be “effective, proportionate and dissuasive”. Furthermore, article 59 of 4AMLD sets out minimum requirements for measures that should be available in cases of serious, repeated or systematic breaches.

There is no common approach across all supervisors to using enforcement tools to incentivise AML/CFT compliance. Typically, if a supervised business cannot provide evidence that it is applying AML/CFT controls to a satisfactory standard, a supervisor will schedule a follow-up visit to ask for evidence of improvement, leading to a referral to an investigation department if no credible evidence is forthcoming. There is scope for supervisors to take differing approaches in enforcing AML/CFT compliance, and for supervisors to take differing views on whether education or sanctions are the most appropriate remedy in a given situation.

There is also no common approach to use of sanctions or in setting the level of penalties applicable and this could give rise to inconsistencies. While some supervisors are not limited in the fines that they can impose, others set limits as low as £2500. It should be noted that having different upper limits for fines may not necessarily lead to an inconsistent approach to enforcement, provided that any penalty levied is proportionate to the breach that is being sanctioned. The supervised population ranges from sole traders to multi-national corporations, so an effective regime should not seek consistency in the absolute level of penalties but the approach should be proportionate – that is, there should be consistency in the way that supervisors decide on penalties and consistency in their effect. To this end, article 60(4) of 4AMLD sets out a non-exhaustive list of circumstances that should be taken into account when deciding on the type and level of administrative sanctions to apply.

Some supervisors have indicated that they can “fast track” disciplinary matters once a member has been convicted of an offence. However, the speed of the procedure varies from a matter of weeks to 6 months after conviction, potentially allowing a convicted criminal to practice for up to 6 months even after conviction. Public sector supervisors (such as HMRC) can also be constrained in “naming and shaming” those subject to conviction, which could reduce their ability to incentivise compliance, although it should be noted that article 60 of 4AMLD imposes, in certain circumstances, a duty to publish decisions where a penalty is imposed. Furthermore, many of the supervisors currently share information on members that have been disciplined for AML/CFT related breaches with the aim of ensuring continuity should they seek to move to a new supervisor within the same sector.

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There are variations in how the discipline/enforcement committees of supervisors are constituted. Whilst some supervisors have disciplinary procedures that are operationally independent of the supervisor, others have no lay members, external oversight or recourse to an independent disciplinary tribunal. Supervisors' disciplinary procedures should have sufficient independence to instil public confidence and there should be an adequate appeals system in place.

Finally, different supervisors have different powers to investigate their supervised populations. The Money Laundering Regulations allow FCA staff and officers of HMRC the power to require information from and attendance of relevant and connected persons, including the power to require the relevant person to attend before an officer at a specified time and place and answer questions. The Money Laundering Regulations also give powers to HMRC and FCA to enter premises with or without a warrant, and this does not directly apply to the other supervisors.

Furthermore, HMRC have authority to instigate proceedings for breaches of the Regulations that are prosecuted by the Crown Prosecution Service, whereas the other public sector supervisors (the FCA and the Gambling Commission) do not. The Gambling Commission does however have powers to take regulatory action under the Gambling Act for breaches in AML/CFT compliance, including suspension or revocation of a licence. Professional bodies, on the other hand, lack such direct powers to compel.

10. Should the government seek to harmonise approaches to penalties and powers? For example, should supervisors have access to a certain minimum range of penalties and powers and what should these be? Should there be a common approach for deciding on penalties and calculating fines based on variables such as turnover that are scalable to the size of the business?
11. Should the government seek to establish a single standard for supervisors disciplinary and appeals functions?
12. Does the inability of some supervisors to directly compel attendance of relevant persons to answer questions or to enter premises reduce their ability to effectively supervise, or is liaison with law enforcement agencies an appropriate mechanism? If so, how could the government address this?

## Ensuring high standards in supervised populations

Supervisors have a range of criteria that supervised businesses must meet. These can include adherence to codes of conduct, undergoing a fit and proper person test or requirements to obtain qualifications and training in order to be accepted for the purposes of supervision. Supervisors may also require their population to carry out continuing professional development in order to retain accreditation. The requirements will vary depending on the supervisor, and there may, in some cases, be no requirement to meet professional standards in order to become supervised.

There are also barriers to supervisors informing themselves of the background of their supervised populations, making it difficult to effectively manage entry into the sector. Most supervisors do not have access to police databases and therefore do not know, other than through declarations, if a person has a criminal conviction. Not all supervisors have powers to carry out a fit and proper test of the supervised population. Supervisors may also lack appropriate powers to deregister those who are no longer deemed fit and proper. In some sectors, individuals or businesses deregistered by one supervisor may continue to practice by simply registering with an alternate supervisor. The government will consider the extension of fit and proper tests and the ability of supervisors to de-register

businesses/individuals as part of its forthcoming consultation on the transposition of the Fourth Money Laundering Directive and submissions to that consultation are encouraged.

While most supervisors require the supervised population to complete a comprehensive annual return containing information on the firm, principals, shareholders and management; not all supervisors can compel the supervised population to do so. Therefore they may not have access to up-to-date information, making it difficult to carry out a risk assessment of the activity carried out by a supervised business.

Supervisors also work with their regulated populations in a number of ways to drive up standards, including through the use of more collaborative methods such as; industry workshops, bulletins, continuous professional development etc.

13. Should all supervisors have powers to compel supervised businesses to submit comprehensive and up-to-date information to aid risk assessment?
14. Is there a need for supervisors themselves to undergo training and/or continuous professional development? If so, what form might this take and should it be government-recognised?
15. Is there a need for relevant persons in the supervised populations across all sectors to undergo training and/or continuous professional development to aid their understanding of AML/CFT issues?

### The role of professional bodies in AML/CFT supervision

The Treasury follows best practice on better regulation by allowing professional body supervision for AML/CFT. The NRA found that there is a risk that conflicts of interest could compromise professional body supervision as these bodies represent and are funded by the firms they supervise. A report published in February 2013 into the economic and legal effectiveness of AML/CFT policy raised concerns around the role of trade bodies in supervision. The study,<sup>16</sup> published by Utrecht University, noted that “a high number of sanctions imposed by the professional association could lead to the impression that the professionals do not maintain a high quality standard.”

The evidence gathered through the consultation undertaken as part of the NRA process did not indicate that this potential conflict of interest is undermining supervision, but the perception of risk remains very real. In Sir David Clementi’s report<sup>17</sup> of 2004, he quotes from the Council for Licensed Conveyancers: “*It is difficult to understand how one body can effectively both regulate a profession and also represent and lobby for its interests without prejudice to either its regulatory or representative functions.*” The report argues that issues such as changes in practice should be examined, not against the wishes of the membership, but against the test of public interest and, even where a body does place the public interest ahead of that of its members, there remains an issue of perception.

The Clementi report led to the establishment of the Legal Services Board and the separation of lobbying and supervisory functions for lawyers in England and Wales. This separation mitigates the risk of conflict of interest, as recognised by the NRA. Furthermore, it may make it easier for law enforcement to share information with supervisors if the

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<sup>16</sup> Project ECOLEF report - [http://www2.econ.uu.nl/users/unger/ecolef\\_files/Final%20ECOLEF%20report%20\(digital%20version\).pdf](http://www2.econ.uu.nl/users/unger/ecolef_files/Final%20ECOLEF%20report%20(digital%20version).pdf)

<sup>17</sup> <http://webarchive.nationalarchives.gov.uk/+http://www.legal-services-review.org.uk/content/report/index.htm>

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supervisory arm is distinct from the representative arm and is established with appropriate safeguards and firewalls to give confidence that sensitive information would be protected.

16. What safeguards should be put in place to ensure that there is sufficient separation between the advocacy and AML/CFT supervisory functions in professional bodies? To what extent are appropriate safeguards already in place?
17. Should the government mandate the separation of representative and AML/CFT supervisory roles? What impacts might this have on the professional bodies themselves?
18. How does the UK approach to professional body supervision compare to other countries' regimes?

## Guidance

The international AML/CFT standards set by the Financial Action Task Force (FATF) require supervisors to provide their supervised population with a clear understanding of their AML/CFT obligations and ML/TF risks. This can include the production of AML/CFT guidance. Currently, supervisors and other stakeholders produce guidance which provides assistance for firms in their sector on the practical application of the Money Laundering Regulations. The Treasury does not currently issue guidance on the interpretation of the Money Laundering Regulations but instead may approve the guidance produced by supervisors and industry bodies. Treasury approved guidance means that a court must consider whether the person followed the guidance when deciding whether they failed to comply with the Regulations (or the POCA or the Terrorism Act 2000).

Evidence submitted to the Cutting Red Tape Review suggests that the large number of supervisors has resulted in a great deal of Treasury approved guidance. The current process for obtaining Treasury approval for each piece of guidance is criticised by respondents as inefficient and taking too long. Further, submissions to the review suggest that much of the guidance itself is too long, challenging to understand and is jargon-laden. Respondents complained that there is insufficient clarity around the difference between minimum legal requirements and best practice. The status of the FCA Financial Crime Guide is specifically mentioned as being unclear and inconsistent with the guidance produced by the Joint Money Laundering Steering Group (JMLSG), a finance, trade and banking industry consortium.

This results in firms having to familiarise themselves with multiple sets of guidance which, it is felt, often does not provide enough specific or practical advice on how to comply, leading to businesses being unsure of what is expected of them, or going beyond expected levels of compliance in order to minimise risk of being found non-compliant.

The government may consider, in cooperation with industry and supervisors, taking a more active role in the production of guidance that explains the legal framework of the UK's AML/CFT regime. Guidance on how to apply this legal framework to the particular sector, along with examples of best practice, would then be produced by appropriate industry and supervisory bodies and may not require Treasury approval. This could result in a consolidation in the amount of AML/CFT guidance produced and provide greater clarity to supervisors and to business.

19. How could inconsistencies between the JMLSG guidance and the FCA's Financial Crime Guide best be resolved? Should the two be merged? Or should one be discontinued and if so, which one and why?

20. What alternative system for approving guidance should be considered and what should the government's role be? Is it important to maintain the principle of providing legal safe harbour to businesses that follow the guidance?
21. Should the government produce a single piece of guidance to help regulated businesses understand the intent and meaning of the Money Laundering Regulations, leaving the supervisors and industry bodies to issue specific guidance on how different sectors can comply? If so, would this industry guidance need to be Treasury approved? Should it be made clear that the supervised population is to follow the industry guidance?

## Transparency

A transparent AML/CFT regime is more likely to maintain public confidence in the UK's approach to tackling money laundering and terrorist financing. The publication of National Risk Assessment had the clear objective of enabling a better understanding of the UK's money laundering and terrorist financing risks, informing the efficient allocation of resources and mitigating money laundering and terrorist financing risks.

Taking an open approach to improving the understanding of money laundering and terrorist financing risks should assist the government, supervisors and the private sector in targeting their resources at the areas of highest risk. In a drive towards greater transparency in AML/CFT supervision, the Treasury has developed a voluntary reporting process for supervisors which is now in its fifth year. The Annual Supervision Report plays a key role in encouraging good practice and improving the transparency and accountability of supervision and enforcement in the UK. It should also be noted that 4AMLD further encourages transparency and article 60 requires the publication of details of enforcement action in certain circumstances.

A transparent approach means that all – government, supervisors, and the private sector – can be held to account for their contribution in the fight to protect the UK from the scourge of money laundering and terrorist financing. With this in mind, concerns that a candid approach which sets out the risks and vulnerabilities would serve as a roadmap to criminals should be balanced against the argument that openly identifying weaknesses provides a strong impetus for change. This argument holds that it is only through identifying and sharing understanding of weaknesses that these can be addressed, in order to ensure that the UK's AML/CFT regime is robust, proportionate and responsive to emerging threats.

22. Should supervisors be required to publish details of their enforcement actions and enforcement strategy, perhaps as part of the Treasury's annual report on supervisors, or in their own reports? What are the benefits and risks in doing so?
23. Should the government publish more of the detail gathered by the annual supervisor's report process? For example, sharing good practice or weaknesses across all supervisors?
24. Should supervisors be required to undertake thematic reviews of particular activities or sections of their supervised populations, as the FCA currently does? If so, how often should such reviews be undertaken?

## Information sharing

A key component of an effective AML/CFT regime is the effective sharing of information between supervisors and law enforcement agencies, and among supervisors. The NRA notes that supervisors collectively need to share more information with each other in order to properly mitigate the risks. For a supervisor to act effectively it must have information-sharing gateways and appropriate mechanisms that allow it and law enforcement to share information to counter money laundering and terrorist financing. The ability to share skills, knowledge and experiences can also add to the overall effectiveness of supervision.

Following a review of the Money Laundering Regulations in 2012, the Treasury amended the Regulations to provide a legal gateway to allow supervisors to disclose information to other UK supervisors relevant to their functions. This enables supervisors to inform each other of firms or individuals they have de-registered or have particular concerns about, in order to help prevent regulatory arbitrage and non-compliant firms from evading proper controls.

The Financial Crime Information Network (FIN-NET) is an organisation that operates under the umbrella of the FCA and allows the sharing of information between law enforcement and regulators on specific individuals and entities. Membership of FIN-NET requires certain pre-requisites, appended to this document. While some AML/CFT supervisors are full members of FIN-NET, the majority are not.

Another inconsistency with regard to the sharing of information is that regulation 25 of the Money Laundering Regulations requires HMRC to keep registers for certain sectors that it supervises, including High Value Dealers (HVDs), Money Service Businesses (MSBs) and Trust or Company Service Providers (TCSPs). The FCA also keeps a list of authorised firms on its register which is easily searchable but there is no such obligation on legal and accountancy service providers to keep registers for TCSPs and the FCA is not obliged to keep a register for MSBs or TCSPs that it supervises. The Regulations allow for HMRC to publish these registers, but they currently do not do so.

25. What is the best way to facilitate intelligence sharing among supervisors and between supervisors and law enforcement? What safeguards should be imposed?
26. As one means of facilitating better sharing of intelligence among supervisors and between supervisors and law enforcement, could the government mandate that all supervisors should fulfil the conditions for, and become members of, a mechanism such as FIN-NET? Are there other suitable mechanisms, such as the Shared Intelligence System (also hosted by the FCA)?
27. Should the government require all supervisors to maintain registers of supervised businesses? If so, should these registers cover all registered businesses or just certain sectors? Should such registers be public? What are the likely costs and benefits of doing so?

## Ensuring the effectiveness of the FCA

The UK is a global financial centre, and is home to some of the most successful international financial services firms in the world as well as being the largest centre for cross-border bank lending. Because of the size and complexity of the sector it is exposed to criminals who seek to use it to move and disguise the proceeds of crime and funds of terrorism. As the conduct supervisor for credit and many financial institutions, the Financial Conduct Authority (FCA) plays a key role in protecting the financial sector from ML/TF

threats and the government is particularly motivated to ensure that the FCA is able to effectively mitigate the risks presented.

Egregious cases of banks allowing themselves to be used for ML/TF purposes may have effects beyond simply damaging the reputation of the UK financial sector and facilitating the predicate offence(s). In such a situation, enforcement action against the offending bank by a regulator or law enforcement agency could potentially lead to fines or revocation of licences which lead to the failure of the bank. This could, depending on the size of the bank, have systemic implications. This makes it all the more important that the FCA is able to effectively monitor banks and ensure that their systems prevent such breaches occurring.

The FCA seeks to apply a risk-based approach to its supervision of banks and other financial institutions. In 2014 it adapted its approach to AML/CFT supervision to try to target its resource more effectively and focuses on firms that present the highest money laundering risks, irrespective of their size. This includes carrying out deep dive assessments of major retail and investment banks as part of the Systematic Anti-Money Laundering Programme (SAML), regular inspections of smaller firms that are assessed as higher risk, thematic reviews and event-driven work, for example when a high risk of financial crime is identified. The FCA also publishes a Financial Crime Guide which gives specific guidance on anti-money laundering and countering the financing of terrorism, including examples of good practice.

Submissions to the Cutting Red Tape review show there is a perception that the FCA's supervision can focus on procedural requirements which are thought not be the most effective way of detecting and preventing money laundering and terrorist financing. This narrative contends that 'tick-box' approach by the FCA prevents banks from adopting truly effective approaches and leads them to 'over-compliance' – that is, demanding information from customers or imposing procedures that would not be required under a truly risk-based approach and are not demanded by regulations – as well as withdrawing from certain services or classes of customer in order to avoid the risk of regulatory sanctions. However, it should be noted that in order to assess the AML/CFT regime of an institution, there will be a need to do a certain amount of checking of procedures and policies which may, erroneously, be seen as 'box-ticking'.

It has been suggested that the FCA's approach to supervising the financial sector for AML/CFT compliance leads to smaller firms not receiving the scrutiny that might be warranted under a truly risk-based approach, due to the FCA's focus on the largest firms.

28. How can credit and financial institutions best be encouraged to take a proportionate approach to their relationships with customers and avoid creating burdensome requirements not strictly required by the regulations?
29. Does failure of AML/CFT compliance pose a credible systemic financial stability risk? If so, does this mean that the FCA should devote more resource to the largest banks which have the greatest potential to have systemic effects?
30. How should the FCA address the perception from evidence submitted to the Cutting Red Tape Review that it is overly focused on process and ensure that its AML/CFT supervision is focused proportionately on firms which pose the greatest risk?



## The number of supervisors

The UK's supervisory regime is unique in respect of the number and diversity of bodies that supervise businesses for AML/CFT purposes. These range from statutory regulators to professional bodies and the system has grown up organically over the years. There are currently 27 bodies appointed by Treasury as AML/CFT supervisors. This may provide advantages, allowing supervisors to leverage their specialist knowledge of their sectors in order to more effectively manage the risk of financial crime. However, there can be an overlap in the sectors covered by supervisors.

A number of the inconsistencies outlined in this document could potentially be addressed by encouraging the supervisors to work in similar ways or establishing other means of oversight. However, there is an argument that it is simply the number of bodies in existence which give rise to more opportunities for inconsistency. While this makes mechanisms that allow cooperation and sharing of best practice among supervisors all the more important, the government is also interested in views as to whether the high number by itself makes achieving greater consistency difficult and whether consideration should be given to consolidation.

31. Is the number of supervisors in itself a barrier to effective and consistent supervision? If so, how should the number be reduced and what number would allow a consistent approach?
32. If this is an issue, are there other ways to address it? For example, would supervisors within a single sector benefit from pooling their AML/CFT resources and establishing a joint supervisory function?

## List of questions

1. Should the government address the issue of non-comparable risk assessment methodologies and if so, how? Should it work with supervisors to develop a single methodology, with appropriate sector-specific modifications?
2. How should the government best support supervisors – and supervisors support each other – to link their risk-assessments to monitoring activities and to properly articulate how they do so?
3. Should the government monitor the identification and assessment of risks by the supervisors on an ongoing basis? Should the supervisors monitor each other's identification and assessment of risks? How might this work?
4. Should smaller supervisors be encouraged to pool AML/CFT resources into a joint risk function and would this lead to efficiencies? If so, how should they be encouraged?
5. How should the ability of the supervisors and law enforcement agencies to share information on risks be improved?
6. To promote discussions between the supervisors, should attendance at the AMLSF and submission of an annual return to the Treasury be made compulsory for supervisors? How could the government ensure that this happened?
7. Could the Money Laundering Advisory Committee (MLAC) have a greater role in driving improvements in the supervisory regime?

8. Should the government instigate a formal mechanism for assessing the effectiveness of all the supervisors AML/CFT activities with the power to compel action to address shortcomings? If so, should this be carried out by the Treasury directly, through another body such as the National Audit Office, or through creating a new body, perhaps along the same lines as the Legal Services Board which oversees legal services supervisors or the Financial Reporting Council which promotes high quality corporate governance and reporting? Are there other ways of ensuring effectiveness that should be considered?
9. Would an overarching body be able to add value by maintaining a more strategic view of the entire AML/CFT landscape and identifying cross-cutting issues which individual supervisors might struggle to identify? Should such a body have the authority to guide and compel the activities of the supervisors, up to and including the power to revoke approval for bodies to be supervisors?
10. Should the government seek to harmonise approaches to penalties and powers? For example, should supervisors have access to a certain minimum range of penalties and powers and what should these be? Should there be a common approach for deciding on penalties and calculating fines based on variables such as turnover that are scalable to the size of the business?
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17. Should the government mandate the separation of representative and AML/CFT supervisory roles? What impacts might this have on the professional bodies themselves?
18. How does the UK approach to professional body supervision compare to other countries' regimes?
19. How could inconsistencies between the JMLSG guidance and the FCA's Financial Crime Guide best be resolved? Should the two be merged? Or should one be discontinued and if so, which one and why?

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20. What alternative system for approving guidance should be considered and what should the government's role be? Is it important to maintain the principle of providing legal safe harbour to businesses that follow the guidance?
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32. If this is an issue, are there other ways to address it? For example, would supervisors within a single sector benefit from pooling their AML/CFT resources and establishing a joint supervisory function?

## Responses

The Treasury welcomes your views in response to the questions posed in this Annex and would be keen to hear views on how to best deal with the issues raised with a view to making the supervisory regime more effective. This will help ensure evidence-based policy decisions in these areas.

Electronic responses are preferred and should be sent to: [aml@hmtreasury.gsi.gov.uk](mailto:aml@hmtreasury.gsi.gov.uk)

Questions or enquiries specifically relating to this consultation should also be sent to the above email address. Please include the words CONSULTATION VIEWS or CONSULTATION ENQUIRY (as appropriate) in your email title. **If you do not wish your views to be published** alongside the Government response to this consultation, please **clearly** specify this in your email.

Hard copy responses may be submitted to:

Review of AML/CFT Supervision  
Sanctions and Illicit Finance Team  
1st Floor Blue  
HM Treasury  
1 Horse Guards Road  
London  
SW1A 2HQ

## Confidentiality and Disclosure policy

Information provided in response to this consultation, including personal information, might be published or disclosed in accordance with the access to information regimes. These are primarily the Freedom of Information Act 2000 (FOIA) and the Data Protection Act (DPA). If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply with and which deals, amongst other things, with obligations of confidence.

In view of this it would be helpful if you could explain to the Treasury why you regard the information you have provided as confidential. If Government receives a request for disclosure of the information, the Treasury will take full account of your explanation, but it cannot give an assurance that confidentiality will be maintained in all circumstances.

An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department. Your personal data will be processed in accordance with the DPA, and in the majority of circumstances, this will mean that your personal data will not be disclosed.

## Timetable

The closing date for comments to be submitted is 2 June 2016.

## Appendix to Annex C – Criteria for Membership of FIN-NET

Before receiving approval as a member of FIN-NET a potential member must demonstrate that they satisfy the following criteria:

1. **Mandate** Mandate to regulate entities involved in the financial services sector and/or combat financial fraud and other serious crime, which makes use of or impacts on the UK financial system.
2. **Gateways** Legal ability to share information with a significant proportion of the FIN-NET membership. Ability to share must include instances where disclosure limited to the matter being matter investigated is not in itself a breach of the entity's rules/laws.
3. **FCA** Even if gateways do not exist with all FIN-NET Members, the entity must be able to disclose confidential information to the FCA (or such other entity that is hosting the FIN-NET Secretariat).
4. **Legal identity** The entity should have the ability to enter into contracts in its own name.
5. **Integrity of information** Existence of primary interest in the cases it is submitting to FIN-NET and the ability to stand behind the information on such cases.
6. **Commitment** General ability and willingness to contribute actively to FIN-NET's objectives and to share information with other members, including responding promptly and fully to referrals/enquiries from FIN-NET Members.
7. **Confidentiality** Legal ability to hold information received from FIN-NET members free from any requirement to make public disclosure if required (subject to Court orders or the requirements of DPA and FOIA).
8. **Security** Adequate physical and electronic security to ensure that all documentation received from FIN-NET members is held securely.
9. **Clearance** If applying to become a Main Member, willingness to submit appropriate staff for clearance to required level and, if necessary pay for "developed vetting".
10. **Communication** Access to, or willingness to install, an accredited secure means of communication (ideally electronic) with the FIN-NET Secretariat.
11. **Funding** Agreement to pay contributions to the costs of FIN-NET, as set by the FIN-NET Steering Group.
12. **Reputation** A proven track record of working with at least one FIN-NET member over a reasonable period of time.



