

Guarding against injury

Monty Jivraj discusses the impact of financial crime on the UK economy and the duties of finance professionals to avoid it.

On the cricket pitch, a fast ball is designed to throw the batter off guard. We're talking a cracking pace: balls can fly across at 80-90mph in an international game, faster than the motorway speed limit. Even a classic village green game may feature speeds of 60mph.

“In the financial world, as in sport, it's sensible to guard against injury.”

Back in the 70s we played bareheaded at international level. Then English player Dennis Amiss strode onto the pitch for the World XI wearing a customised motorbike helmet. Not long afterwards David Hookes had his jaw broken and, when he recovered, he asked Dennis if he could borrow his helmet.

These days there's a requirement for designs to comply with International Cricket Council regulations. Although some players object as they find the helmets cumbersome, it's clear that the aim is to protect us all.

Key points

- Economic crime has a terrible impact and is prevalent in the UK, comprising 40% of crime.
- The Home Office and Houses of Parliament currently have a strong focus on this area: a new fraud initiative has been launched and the Economic Crime and Corporate Transparency Bill has cross-party support in Parliament.
- Money laundering is an intrinsic part of economic crime.
- As financial professionals we already have responsibilities and requirements, by law. It's important that we are all fully up to speed and act, and we help raise broader awareness of the risks and requirements.
- There are clear guidelines and processes for when financial professionals have suspicions. We can seek specific legal defences to cover ourselves if needed.



© Shutterstock/nicolamargaret

In the financial world, as in sport, it's sensible to guard against injury.

Economic crime has a terrible impact, costing the UK nearly £7b a year, comprising over 40% of crime, and funding organised crime and terror. As financial professionals, we need to be proactive: watching for signs of criminals seeking to hide the proceeds of crime and taking action accordingly.

Home Secretary Patel recently commented: 'I'm very open about the fact that for too long London has been the place that people have come to wash dirty money.'

Washing dirty money

- Criminals profit from activities such as tax evasion, theft, fraud, drug trafficking, people smuggling and arms trafficking. They need to hide the origins of this money, for further gain and to avoid prosecution. They may move money or other property across international borders by means such as funds transfers, remittances, bulk cash smuggling or cross-border movement of gold.
- They may buy high-value goods and real estate, gamble and put money into legitimate businesses.

What are the principal money laundering offences?

- Concealing, disguising, converting, transferring or removing criminal property from the UK.
- Arranging: where someone involves themselves in an arrangement for money laundering.
- Becoming part of an arrangement where someone knowingly suspects or facilitates the acquisition, retention, use or control of criminal property by, or on behalf, of another person.
- Acquiring, using or possessing criminal property.
- Further details are in Proceeds of Crime Act 2002, ss 327 - 329.

Recent events have necessitated a fresh focus on the problem. When Russia invaded Ukraine, there was a scramble to identify and quantify Russian money and financial links to crime within the UK, which was then estimated at £1.5b by Transparency International — that's a serious hit. The 'golden visa' investor scheme was scrapped last year, amid concerns about its usage. New lines of corruption have emerged, created by exploiting loopholes in the Brexit framework. Criminals always seek to make use of new opportunities, such as through e-commerce, and they are becoming ever more sophisticated in the techniques they employ. As financial institutions become more regulated, they're looking for softer targets.

Increasingly money launderers are using professionals such as accountants, lawyers, financial advisers, insolvency practitioners and real estate agents, to help undertake transactions. It could be that they are exploiting these individuals, or those involved may be criminals too.

Prevention is better than the cure

As the old medical adage goes, 'prevention is better than cure'. All businesses and traders, large and small, from both the regulated and unregulated sectors, need to be taking action as part of due diligence, on a proportionate risk basis. Other organisations that handle large sums of money, such as public sector bodies, also need to be clued up and doing the same. No one wants to be caught out by criminals, nor indeed be the subject of an anti-fraud investigation.

The Home Office recently launched a new strategy, aiming to stop fraud at source and pursue those responsible wherever they are in the world, reducing fraud by 10% on 2019 levels by 2025.

Meanwhile the Economic Crime and Corporate Transparency Bill has cross-party support. The House of Lords

is currently providing scrutiny and discussing amendments to further strengthen the bill. The bill is set to give Companies House new powers and place new responsibilities on both money laundering officers and authorised corporate service providers (ACSPs) to carry out broader and more detailed due diligence checks, particularly for identity verification. This will affect all businesses, from blue chip firms right down to micro-entities. To give an idea of the scale, 1.3 million micro-entity accounts were filed in 2019-20. The aim is to make it simpler for UK authorities to sanction individuals, including foreign owners of UK companies, when required. A big challenge for us all.

“The aim is to make it simpler for UK authorities to sanction individuals, including foreign owners of UK companies.”

What should we be doing?

Let's zoom in and look at what exactly those handling finances should be doing right now, and how to go about it.

Firstly, there should be training and a willingness to seek advice as and when needed from supervisors, trade bodies, independent lawyers or other compliance experts. Industry specific guidance is also available online (see www.nationalcrimeagency.gov.uk) for accountancy and law firms, money service businesses, estate agents, high value dealers, gambling businesses and others.

As financial professionals we're the main line of defence, both for our firms and as 'eyes and 'ears' for the regulatory bodies. Our business sense, instincts and knowledge can be invaluable.

Example of a method of money laundering: 'Cuckoo smurfing'

This scam dates back to ancient banking systems. It's becoming more common as technology advances and can use electronic or in-person transactions. It is named after cuckoos, who lay their eggs in the nests of other species of birds, who then take care of the eggs, believing them to be their own.

Criminal gangs target someone who is expecting legitimate money into their account, and trusts someone else (the 'smurf') to make the transaction. But they deposit proceeds of crime instead and pass the legitimate money to criminals. Usually, the victim is completely unaware.

Funds may come from within the UK, or from overseas. Banks or other organisations may be involved, and money may cross country borders once or many times. Deposits are often made in small amounts, in an attempt to fall below the reporting threshold; this is known as structuring.

Those particularly vulnerable to being targeted include expatriates, exporters, international students, international investors and migrants looking to settle in the UK. Individuals are usually easier targets than businesses. Those who regularly make international transactions should be particularly vigilant.

Potential red flags to watch for include cash flow issues, behaviour such as multiple deposits in small amounts within a short timeframe, and transactions that seem odd given the profile and history of the account holder; checks should continue throughout the relationship, on a risk-sensitive basis.

You can follow up by identifying if there is any relationship between the third party and the account holder, and checking the links between deposits received, remittance and the account holder.

Where possible, engage with overseas counterparts to identify further information about the source of funds.

A risk-based approach is essential and where there is a higher risk, due diligence checks must go further, usually before establishing a business relationship or carrying out a transaction.

Case study:

- Operation Confab resulted in the first conviction in Scotland for cuckoo smurfing. Shop-keeper Muhammed Hameed, his uncle Saleem Shikari and worker Shahid Aslam laundered almost £700,000 belonging to Scots gangsters.
- Deposits were made to the accounts of individuals – and sometimes companies – who had no personal or other connection to any of the accused. They were caught in 2013 at Hameed's flat with a plastic bag containing £75,000 in cash.

What should be in a SAR?

- Why you have grounds for suspecting, knowing, or believing criminal intent. State the information you have.
- Describe the property which would be affected.
- Give clear explanations with enough detail.
- Describe what you plan to do, so it's clear why you are concerned and may need a defence.

Criminal property is anything affected if the alleged offender knows or suspects it is derived from activity, here or abroad, which would be illegal in any part of the UK. Your training should have shown you what to look out for. If you think that money laundering may have taken place or is likely to happen, you need to alert the National Crime Agency (NCA) by sending a Suspicious Activity Report (SAR). There doesn't need to be actual evidence as there's a low threshold for suspicion.

Another key point is that even if only a relatively small part of the property is deemed criminal property, the whole asset could be affected, under a legal concept called fungibility. For example, in cases of tax evasion, failure to declare turnover upon which tax should be paid generally renders the entire turnover criminal property, not just the portion where tax was evaded.

“ You'll need to be careful not to discuss the fact of making a SAR with anyone if there is a risk of prejudicing an investigation.”

The NCA may ask for clarification. If you need guidance, contact your trade bodies, regulators or lawyers. You'll need to be careful not to discuss the fact of making a SAR with anyone if there is a risk of prejudicing an investigation, bearing in mind that offences under POCA 2002, s 333A and s 342 relate to 'tipping off' and 'prejudicing an investigation'. However, you can discuss with financial investigators or financial intelligence officers within law enforcement.

Seeking a legal defence

If you suspect that by proceeding you risk committing one of the principal money laundering offences (Proceeds of Crime Act 2002 offences under ss 327, 328, 329), you can ask the NCA for a defence against money laundering (DAML), providing protection under s 335.

Importantly this is not a 'go ahead' authorisation, it's purely a legal defence, should it be required. It's a defence to specific offences in POCA 2002 but not to other criminal offences, such as those in the Money Laundering Regulations 2017, Bribery Act 2010 and Fraud Act 2006.

For a DAML to be considered, criminal property must already exist when a SAR is submitted. Defences can usually only be sought for future actions, not something that has already been done.

Clear and specific details are needed, not just generalisations.

Good practice examples of defences sought:

- 'I seek a defence to transfer the closing balance of £5,000 of the client's account to their alternative account at High Street Bank Sort Code 11-11-11, Account 111111111'.
- 'I seek a defence to exchange contracts, complete the property purchase and transfer the sale proceeds to the client's account at High Street Bank Sort Code 11-11-11, Account 111111111'.
- 'I seek a defence to act in the liquidation of the disclosed company, and distribute the assets to creditors in line with the court order.'
- 'I seek a defence by acting for the executor of an estate in obtaining probate and distributing estate assets.' (Where in this case a legal adviser suspects that part of the estate is criminal property).
- Requests relating to a specified or time-limited activity: such as advising in a corporate takeover or providing legal advice in a matrimonial dispute. Or acting for executors in obtaining a grant, collecting assets and distributing an estate or making payments within a certain timeframe in relation to insolvency.
- Requests to accept monthly payments from a subject on an ongoing basis, as long as these are time-limited, ideally no longer than 12 months. The full monthly transaction details must also be disclosed.
- Asking for a defence to hold funds indefinitely is unlikely to be able to be considered. However, more time-limited requests where there are reasonable grounds for the retention of funds will be considered on their own merits.

In law, only the NCA can provide a defence to a principal money laundering offence, but it cannot consider a request to undertake an act which breaches or contravenes any existing court order in the UK or abroad. It is your own responsibility to ensure that the proposed activity will not breach any court order.

If you believe that your future actions will lead to the creation of criminal property, that's a different scenario, which can't be the subject of a DAML because it would be seeking a defence to carry out criminal conduct. In this situation you should simply refuse to act.

The NCA has a statutory seven-working-day period to consider all DAML requests. It has a very high caseload so don't make requests for updates or prioritisation, except in very extreme circumstances such as where there's a threat to life or where harm to a vulnerable person could be prevented.

The NCA then has a statutory seven-working-day period to make a decision. It will analyse the DAML request and may consult with UK and international law enforcement partners. During this period the activity that is the subject of the request should not be carried out, otherwise you risk committing an offence.

Should your request for a DAML be refused, the NCA will notify you and a Moratorium Period of 31 days then begins, which may be extended if need be. During this time law enforcement will be working to take positive enforcement action against the criminal property you have identified. If refusal to provide a DAML causes serious issues, such as threat of litigation or significant financial loss, you'll need to let the NCA know.

Good practice example

- The Greater London Authority has a clear structure of named post holders with anti-money laundering duties.
- It has a detailed policy in place which outlines the context, legal background, offences, responsibilities and procedures. This also includes risk assessment forms, forms to send to prospective borrowers/recoverable grant recipients, a form to make a money laundering reporting officer report, frequently asked questions and answers and instructions on record keeping. The policy owner is subject to regular review.

In most cases, consent for a DAML will be given – it should only be refused when a criminal investigation with a view to bringing restraint proceedings is likely to follow or is already underway.

Once the NFA has communicated its decision, it's up to the individual practitioner to consider the risks, weighing up legal, regulatory and ethical obligations, and then choose whether or not to go ahead with the planned activity.

It's also the individual's responsibility to consider taking further action, if need be, to report a crime or try and protect potentially vulnerable people. SARs are not formal crime reports and the NCA is not a crime reporting agency (although of course it holds extremely useful intelligence for law enforcement). Action Fraud is one body that could be relevant. It may also be appropriate to consider online reporting for specific concerns such as exploitation of children, modern slavery and human trafficking.

Conclusion

We have a big problem with the prevalence of economic crime, and that's despite the fact that the British national character is often characterised as grounded in principles of fairness. 'Fair play' and 'it's not cricket'. We have many such common-usage phrases. However, we also already have regulations and guidance in place to protect and defend against money laundering, with more hefty measures visible on the horizon. As financial professionals we must meet our responsibilities, ensure that we are equipped with the right defences in place, step up, take action and help others to do the same. ●

Author details

Monty Jivraj is senior consultant at Mezzle, specialising in business tax disputes and investigations, financial crime, AFO and compliance. He is an ex-professional international cricketer.

He can be contacted at: monty.jivraj@mezzlelaw.com. Tel: +44 7369 204400.

**✓ FIND OUT MORE**
On Taxation.co.uk

- Economic Crime and Corporate Transparency Bill: lordslibrary.parliament.uk/research-briefings/lln-2023-0008/

Half page AD
120 x 180mm