

THE FINANCIAL SERVICES AUTHORITY AND MONEY LAUNDERING A GAME OF CAT AND MOUSE

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Money laundering is one of those problems that is very hard to get a grip on.¹

I. MONEY LAUNDERING

THE Joint Money Laundering Steering Group defined money laundering as the “process whereby criminals attempt to hide and disguise the true origin and ownership of the proceeds of their criminal activities”.² Money laundering is the practice of concealing assets to avoid any discovery of the unlawful activity that fashioned them. Money laundering has three recognisable stages – placement, layering and integration.³ In the first stage, the money launderer introduces the proceeds of crime into the financial system. In the second phase, the launderer enters into several financial transactions to distance the illegal money from its original source. In the final stage of the money laundering cycle, the monies re-enter the economy.⁴ It has been argued the phrase “money laundering” was first used by Al Capone in the 1930s.⁵ However, Levi *et al.* took the view that the term money laundering was first used in the United States in the 1920s “when street gangs sought a seemingly legitimate explanation for the origins of the money their rackets were generating”.⁶ The Mafia added an element of romance to the history of money laundering through a Polish man

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¹ M. Yeandle, M. Mainelli, A. Berendt and B. Healy, *Anti-Money Laundering Requirements: Costs, Benefits and Perceptions* (London 2005), p. 11.

² Joint Money Laundering Steering Group, *Prevention of Money Laundering / Combating the Financing of Terrorism: Guidance for the UK Financial Sector Part I* (London 2006), pp. 7–8. The current statutory definition of money laundering is contained in the Proceeds of Crime Act 2002, ss. 327–340. For a more detailed discussion of the Proceeds of Crime Act 2002 and money laundering see P. De Verneuili Smith, “POCA in Practice - Issues arising from Compliance with Pt 7 of POCA” (2007) 22 *Butterworths Journal of International Banking and Financial Law* 258–260.

³ See J. Robinson, *The Laundrymen* (London 1995), p. 12.

⁴ *Ibid.*, at pp. 11–29 and P. Alldridge, *Money Laundering Law* (Oxford 2003), pp. 2–3.

⁵ See note 3 above at p. 4.

⁶ M. Levi, R. Naylor and P. Williams, *Financial Havens, Banking Secrecy and Money Laundering* (New York 1998), p. 12.

called Meyer Lansky who was “lovingly” referred to as “the patron saint of money laundering”.⁷ The earliest reported use of the term in a legal context was in the US in 1982 in the case of *US v. \$4,225,625.39*.⁸ However, it was not until 1986 that money laundering became a criminal offence in the US by virtue of the Money Laundering Control Act 1986.⁹ It only received world wide attention as a result of the international community’s attempt to counteract the illegal drugs trade in the 1980s and the establishment of the Financial Action Task Force (FATF) in 1989.¹⁰ The first anti-money laundering (AML) legislation in the United Kingdom (UK) occurred in 1986 by virtue of the Drug Trafficking Offences Act 1986 (DTOA 1986).¹¹ These laws have since been expanded to include criminalising the laundering of the proceeds of a wide range of other criminal offences.¹² In 1993 the European Union recognised the importance of tackling money laundering and imposed a series of specific AML obligations on financial institutions.¹³

Due to its secretive nature, the actual amount of laundered money is impossible to calculate and it has led to claims that it is one of the world’s largest industries.¹⁴ Spalek claims that the amount is approximately \$500bn,¹⁵ while Maylam estimated that the annual figure could be as much as \$1.5trn.¹⁶ Estimates of the amount of money laundered annually in the UK range from £19bn to £48bn.¹⁷ However, van Duyne has questioned the accuracy of such estimates

⁷ See note 3 above at p. 3.

⁸ (1982) 551 F Supp.314. See also B. Buchanan, “Money Laundering – a Global Obstacle” (2004) 18 *Research in International Business and Finance* 115, at 120.

⁹ This Act was a direct response to the case of *US v. Anzalone* (1985) 766 F.2d 676 1st Cir.

¹⁰ J. Johnson and Y. C. D. Lim, “Money Laundering: Has the Financial Action Task Force made a Difference?” (2004) 10 *Journal of Financial Crime* 7–22. For a more detailed commentary on the international response to money laundering see M. Gill and G. Taylor, “Preventing Money Laundering or Obstructing Business” (2004) 44 *British Journal of Criminology* 582–594, at 583.

¹¹ The Drug Trafficking Offences Act 1986 has been amended by the Criminal Justice Act 1988, the Prevention of Terrorism (Temporary Provisions) Act 1989, the Criminal Justice (International Co-operation) Act 1990, the Criminal Justice Act 1993, the Drug Trafficking Act 1994, the Criminal Justice and Public Order Act 1994, the Proceeds of Crime Act 1995 and the Crime and Disorder Act 1998.

¹² See for example the Proceeds of Crime Act 2002.

¹³ European Council, *Directive on the Prevention of the Use of the Financial System to Launder Money* 91/308, 1993 O.J. (L 166). This Directive was implemented by Money Laundering Regulations 1993, S.I. 1993/1933. For a more detailed commentary and analysis on the EU legislative framework and policy towards the prevention of money laundering see V. Mitsilegas and B. Gilmore, “The EU Legislative Framework against Money Laundering and Terrorist Funding: a Critical Analysis in Light of the Evolving Global Standards”, (2007) 56 *International and Comparative Law Quarterly* 119–140.

¹⁴ See note 3 above at p. 4.

¹⁵ R. Spalek, “Regulation, White-Collar Crime and the Bank of Credit and Commerce International” (2001) 40 *Howard Journal of Criminal Justice* 166–179, at 167.

¹⁶ S. Maylam, “Prosecution for Money Laundering in the UK” (2002) 10 *Journal of Financial Crime* 157–158, at 158.

¹⁷ J. Harvey, “An Evaluation of Money Laundering Policies” (2005) *Journal of Money Laundering Control* 8(4) 339–345, at 340.

and stated that if they were true “the visible effects [of money laundering] would be far more obvious”.¹⁸ Gallant also concluded that “any attempt to measure money laundering is, of course, fraught with methodological difficulty”.¹⁹ Attempts to calculate accurately the extent of money laundering are also hindered because there are so many different ways that organised criminals launder money. For instance, Kennedy identified over 20 methods including cash couriers, cash conversion, domestic bank accounts, credit cards, wire transfers, alternative remittance systems, precious metals and gems, casinos and shell corporations.²⁰ The level of sophistication was commented upon by the FSA who stated that money launderers are utilising even more complicated techniques through a larger number of financial transactions and shell corporations in order to legitimise the proceeds of crime.²¹ The most common means of laundering money in the UK are the purchasing of property, investment in front companies, high levels of conspicuous consumption and moving large amounts of cash to foreign jurisdictions.²² Money laundering is now regarded as a multinational phenomenon where extremely disciplined and well funded organised criminals manipulate national AML rules to move their proceeds of crime.²³ It is evident that a large number of mechanisms exist which could be exploited by organised criminals to hide their wealth and assets without regard to international borders.²⁴ This means that virtually *any* financial transaction could involve money laundering. Therefore, money laundering is a global problem, which needs an effective and co-ordinated international response. The international community has implemented a series of measures including the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances,²⁵ the statement of principles of the Basle Committee on Banking Regulations and Supervisory Practices,²⁶ the 40 Recommendations of the

¹⁸ P. van Duyne, “Money Laundering: Pavlov’s Dog and beyond” (1998) 37 *Howard Journal of Criminal Justice* 359–374, at 360.

¹⁹ M. M. Gallant, *Money Laundering and the Proceeds of Crime* (Cheltenham 2005), pp. 11–12.

²⁰ A. Kennedy, “Dead Fish across the Trail: Illustrations of Money Laundering Methods” (2005) 8 *Journal of Money Laundering Control* 305–319, at 306–315. For more examples of how money is laundered see HM Treasury, *Anti Money Laundering Strategy* (London 2004), p. 12 and G. Baldwin, “The New Face of Money Laundering” (2003) 4 *Journal of Investment Compliance* 38–41.

²¹ FSA, *Consultation Paper 46 Money Laundering – The FSA’s new role* (London 2000), p. 10.

²² NCIS, *UK Threat Assessment* (London 2003), p. 53.

²³ K. Alexander, “The International Anti-Money Laundering Regime: the Role of the Financial Action Task Force” (2001) 4 *Journal of Money Laundering Control* 231–248, at 233.

²⁴ *Ibid.*, at p. 231.

²⁵ D. P. Stewart, “Internationalising the War on Drugs: United Nations Convention against Illicit traffic in Narcotic Drugs and Psychotropic Substances” (1990) 18 *Denver Journal of International Law and Policy* 387–404, at 388.

²⁶ Basle Committee on Banking Supervision, *Core Principles for Effective Banking Supervision Basle Committee on Banking Supervision* (Basle 1997).

FATF,²⁷ the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds of Crime and three European Money Laundering Directives to reduce the extent of money laundering. Some of these international measures impose specific AML obligations on nation states. For example, in the UK, the AML legislative framework is spread across a plethora of statutes including the Proceeds of Crime Act 2002 (PCA 2002), the Serious Organised Crime and Police Act 2005 (SOCPA 2005) and three sets of Money Laundering Regulations. This type of legislative framework is overcomplicated and the UK would benefit from a single money laundering act.

Whilst there has been a specific AML obligation in the UK since the DTOA 1986, there has not been any attempt to prevent money laundering in the legislation regulating the financial services sector. This is somewhat surprising especially if one undertakes an historical investigation of the financial services industry; it is littered with instances of scandals involving money laundering. Examples include the infamous collapse of the Bank of Credit Commerce International, the failure of Barings Bank, Mexican banks' involvement in laundering drug money and the Bank of New York's alleged involvement in money laundering for the Russian mafia.²⁸ The Serious Organised Crime Agency (SOCA) took the view that organised criminals "seek to exploit financial institutions, particularly at the placement stage of money laundering".²⁹ Financial services legislation in the UK has ignored money laundering; financial regulatory bodies have not been given the appropriate enforcement powers or even a clear legislative mandate to tackle money laundering. For example, the Financial Services Act 1986 (FSA 1986) did not impose any AML obligations on firms authorised under the Act, or provide the Securities and Investment Board (SIB) with any specific AML powers. Any persons who acted in the course of a relevant business, which included investment business,³⁰ were only required to comply with the money laundering reporting aspects of the DTOA Act 1986.³¹ This was the position until the 1993 Money Laundering

²⁷ FATF, *Forty Recommendations* (available from www.fatf-gati.org). The FATF has also made recommendations in relation to the funding of terrorism. See FATF, *Nine Special Recommendations on Terrorist Financing* (available from www.fatf-gati.org). For a more detailed commentary and analysis of the international attempts to reduce money laundering see A. V. M. Leong, "Chasing Dirty Money: Domestic and International Measures against Money Laundering" (2007) 10 *Journal of Money Laundering Control* 141–156, at 145–153.

²⁸ See note 10 above at p. 7 and note 19 above at pp. 11–14.

²⁹ SOCA, *The UK Threat Assessment of Serious Organised Crime* (London 2006), para. 4.10.

³⁰ As defined in the Financial Services Act 1986, s. 1(2).

³¹ Drug Trafficking Offences Act 1986, s. 24. See D. G. McCormack, "Money Laundering and Banking Secrecy" (1995) 16 *Company Lawyer* 6–10, at 7.

Regulations (MLR 1993) were implemented.³² Under these regulations any person or firm who conducts investment business, or who forms a business relationship or carries on a one-off transaction with or for another person, as defined in the FSA 1986, must comply with these regulations.³³ The SIB did not play an active role in enforcing the provisions of the MLR 1993 against those firms who it authorised under the 1986 Act.³⁴ The prosecutorial role of the SIB was limited to breaches relating to the authorisation to conduct investment business and insider dealing. It did not extend to money laundering.³⁵ The performance of the SIB has been criticised by some commentators because it paid little or no attention to its supervisory role towards tackling or even preventing financial crime.³⁶ FSMA 2000 represents a bold and innovative attempt by the government to tackle the extent of money laundering in the UK. Under section 6, the FSA has a statutory duty to reduce money laundering by ensuring that financial institutions have systems and practices in place to protect themselves against being used as vehicles to launder money by financial criminals. This was a timely change and it is to this statutory objective that this article now turns.

II. SECTION 6 AND THE REDUCTION OF MONEY LAUNDERING

Financial crime is broadly defined within FSMA 2000. It incorporates any offence including fraud or dishonesty,³⁷ misconduct in, or misuse of information relating to, a financial market;³⁸ or handling the proceeds of crime.³⁹ This definition also includes an extra-territorial dimension, which criminalises overseas conduct that would be an offence if it had taken place in the UK.⁴⁰ The statutory objective requires the FSA to work with criminal law intelligence and prosecution agencies.⁴¹ The principal objective of the FSA has been

³² See note 13 above. The 1993 Directive was amended in 2003 by the Money Laundering Regulations 2003, S.I. 2003/3075. The EU published the Third Money Laundering Directive (2005/60), which was implemented via the Money Laundering Regulations 2007, S.I. 2007/2157. See HM Treasury, *Implementing the Third Money Laundering Directive: Draft Money Laundering Regulations 2007* (London 2007).

³³ See note 13 above at Regulation 4 (1)(f).

³⁴ For a more detailed commentary on the enforcement of the obligations under the MLR 1993 see note 4 above at pp. 205–206 and note 16 above at p. 157.

³⁵ For a more detailed discussion of the enforcement policy of the SIB towards insider dealing see A. Alcock, “Insider Dealing – How did we get here?” (1994) 15 *Company Lawyer* 67–72. For a more recent commentary see B. Dubow and N. Monteiro, *Measuring Market Cleanliness – FSA Occasional Paper 23* (London 2006).

³⁶ See generally B. A. K. Rider, “Policing the City – Combating Fraud and Other Abuses in the Corporate Securities Industry” (1988) 41 *Current Legal Problems* 47–68.

³⁷ Financial Services and Markets Act 2000, s. 6 (3)(a).

³⁸ Financial Services and Markets Act 2000, s. 6 (3)(b).

³⁹ Financial Services and Markets Act 2000, s. 6 (3)(c).

⁴⁰ Financial Services and Markets Act 2000, s. 6 (4).

⁴¹ See for example FSA, *Partnership Agreement between the National Criminal Intelligence Service and the Financial Services Authority* (London 2001).

to focus on the AML systems and controls that the regulated sector has in place.⁴² In April 2000, the FSA published a consultation paper outlining its money laundering role, the proposed rules, its systems and controls.⁴³ In order to regulate effectively such a wide range of firms the FSA sets standards with which the regulated sector must comply. The FSA has the power to make rules in relation to money laundering and the ability to prosecute organisations and individuals for breaches of its regulations under the Money Laundering, or ML part of its Handbook.⁴⁴

A. Risk Based Money Laundering Policy

The FSA outlined its risk based approach towards financial regulation in 1997 when it stated that it would assume an adaptable method of supervision by targeting specific business practices and the level of risk associated with certain markets and firms.⁴⁵ This means that a firm will be able to allocate its resources in a cost effective and proportionate way so that it can focus on the most relevant risks from money laundering that it faces. The FSA has adopted a two stage policy. Firstly, it has devised a list of services and products that categorise risk status and secondly, it has put in place a new set of procedures to ensure that firms verify the identity of a client.⁴⁶ The risk based approach between the FSA and the regulated sector will vary between the “highest” and “lowest” at risk firms. According to the FSA the most at risk sections of the financial services industry are international banking and high risk jurisdictions, domestic banking, independent financial advisers, online stockbroking, spread betting and credit unions.⁴⁷ The highest risk firms will benefit from what is best described as a “continuous relationship” with the FSA in terms of their AML obligations, while the lower risk firms will have a “remote relationship”.⁴⁸ In order for this to work, it is essential that firms

⁴² A. Proctor, “Supporting a Risk-based Anti-Money Laundering Approach through Enforcement Action” (2004) 13 *Journal of Financial Regulation and Compliance* 10–14, at 11. Members of the regulated sector are defined in the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 S.I. 2001/544.

⁴³ See note 21 above at p. 4. The FSA has a statutory objective to consult where it proposes to make any rules, Financial Services and Markets Act 2000, s. 155.

⁴⁴ The FSA has the power to prosecute for breaches of the 2003 Money Laundering Regulations under the Financial Services and Markets Act 2000, s. 402.

⁴⁵ FSA, *Financial Services Authority – An Outline* (London 1997), p. 31. A risk based approach toward money laundering is also an integral part of the international community’s policy towards reducing levels of money laundering. See S. Ross and M. Hannan, “Money Laundering Regulation and Risk-based Decision Making” (2007) 10 *Journal of Money Laundering Control* 106–115, at 107.

⁴⁶ M. Gill and G. Taylor, “The Risk-based Approach to Tackling Money Laundering: Matching Risk to Products” (2003) 24 *Company Lawyer* 210–213, at 212.

⁴⁷ See FSA Press Release, Tackling the risk of money laundering in the financial services industry, FSA/PN/100/2001, July 30 2001, available from www.fsa.gov.uk.

⁴⁸ C. Sergeant, “Risk-based Regulation in the Financial Services Authority” (2002) 10 *Journal of Financial Regulation and Compliance* 329–335, at 333.

continuously identify the risks of entering into certain financial transactions which are used in the process of money laundering.⁴⁹ The FSA hoped that a risk based approach would lift the regulatory burdens and reduce the AML compliance costs on the regulated sector.⁵⁰ The government has also strongly advocated that “a risk based approach will keep the compliance costs to an absolute minimum”.⁵¹ However, the AML regime introduced by the FSA is not cost effective. The compliance costs for the regulated sector have increased by 60% since the introduction of the FSA AML regulations.⁵² This approach has not worked because the regulated sector is facing spiralling AML compliance costs as the FSA attempts to reduce money laundering.

A controversial issue regarding the risk based approach is that it requires the regulated sector to act as front line financial policemen and become involved in crime prevention. Is the regulated sector the most appropriate mechanism to reduce money laundering? For this approach to succeed, the FSA is heavily reliant upon the good will of firms, senior managers, directors and employees. The good will is becoming progressively more difficult to obtain from the sector which is already sceptical of the general effectiveness of the risk-based AML regime introduced by the FSA. However, there are a number of advantages to the risk based approach, from which the regulated sector would benefit from. For example, this approach would reduce the number of SARs submitted to SOCA, it provides the regulated sector with great flexibility and it transfers responsibility from the FSA to the regulated sector so that they can implement the most appropriate AML regime.⁵³ It is extremely difficult, if not impossible to quantify if the risk based approach towards the reduction of money laundering has worked. What can be concluded is that this approach has failed to meet its optimum objective, to reduce the AML costs of the regulated sector. Therefore, the FSA must seek to produce a more cost effective and streamlined AML regime by allowing the regulated sector greater flexibility to reduce the extent of money laundering. It is recommended that the FSA produces a set of guidelines which allows the regulated sector to implement its own unique risk based AML policy so that they have an even greater level of flexibility.

⁴⁹ See note 45 above at p. 11.

⁵⁰ FSA, *Financial Risk Outlook 2006* (London 2006), p.93. Also see A. V. M. Leong, “Anti-money laundering measures in the United Kingdom: a review of recent legislation and FSA’s risk-based approach” (2007) *Company Lawyer* 28(2) 35–42, at 41.

⁵¹ Ruth Kelly, (2002) Speech to the Financial Services Authority Money Laundering Conference, 11th July, p.3, available from www.hm-treasury.gov.uk.

⁵² BBC News, 9 July 2007, Anti-laundering Expenses ‘Soar’, available from www.bbc.co.uk. Also see KPMG, Press Release 9 July 2007, Banks battle against money laundering as market complexity increases, available from www.kpmg.com.

⁵³ See note 43 above at p. 107–108.

B. Rule Making Powers

Until 2006, the rule making powers of the FSA were contained in ML.⁵⁴ Each member of the regulated sector was required, *inter alia*, to have in place a money laundering reporting officer (MLRO),⁵⁵ procedures to ensure the accurate identification of a client,⁵⁶ internal money laundering reporting requirements,⁵⁷ the use of national and international findings on material deficiencies in AML regimes,⁵⁸ and to ensure that members of staff were trained to detect money laundering.⁵⁹ In addition there was a series of unique provisions for sole traders and professional firms.⁶⁰ The FSA AML rules did not change the existing procedures that the regulated sector had to have in place under the 1993 MLR. Therefore, the rationale behind ML must be questioned because it created an additional level of regulation for an area of law which is complicated and fraught with practical difficulties.⁶¹ The obligations imposed by ML were burdensome and are counterproductive for smaller firms. The FSA's initial approach to the AML obligations of the regulated sector can be described as a "one size fits all" approach. This meant that the FSA imposed the same level of AML obligations on the regulated sector irrespective of their differing nature and size. This created a fear factor amongst smaller firms who might not have the resources or experience to meet their obligations under ML.⁶² For example, the first person the FSA fined for breaches of ML was the managing director of a small business which employed only six members of staff with 23 clients.⁶³ The FSA found no actual evidence of money laundering or that the firm or the managing director had intentionally misled the bank to

⁵⁴ FSA, *Money Laundering Handbook* (London, 2006). The FSA adopted the MLR 1993 via the Financial Services and Markets Act 2000 Regulations (Relating to Money Laundering Regulations) 2001, S.I. 2001/1819.

⁵⁵ *Ibid.*, at section 2.

⁵⁶ See note 54 above at section 3.

⁵⁷ *Ibid.*, at section 4.

⁵⁸ See note 54 above at section 5.

⁵⁹ *Ibid.*, at section 6.

⁶⁰ See note 54 above at section 8.

⁶¹ For a detailed commentary on these issues see R. E. Bell, "The Prosecution of Lawyers for Money Laundering" (2002) 6 *Journal of Money Laundering Control* 17–26.

⁶² C. Nakajima, "Principle-based vs. Rule-based Regulation: The Implications for Governance" (2006) 27 *Company Lawyer* 129–130, at 129. According to the FSA, smaller firms include general insurance firms, motor retailers, financial advisers, mortgage and other home finance advisers, credit unions, mutual societies and friendly societies. See www.fsa.gov.uk. It has been suggested that the FSA should adopt a diverse approach towards the different type of financial institutions it regulates. For a critical commentary see N. Ryder, "Financial Services: Diversity is the Key to Effective Regulation" (1999) 21 *Business Law Review* 62–65.

⁶³ FSA Press Release, FSA fines bond broker and managing director for anti-money laundering failures, FSA/PN/115/2005, available from www.fsa.gov.uk. The FSA imposed the penalty in this instance in respect of breaches of Principles 2 and 3 of the FSA's Principles for Businesses and of Rules 2.1.1 R, 3.1.3 R (1), 3.1.3 R (2), 6.3.1 R and 7.3.2 R (1) of the FSA's Money Laundering Sourcebook. See FSA, *Final Notice Investment Services UK Limited and Mr Ram Mehvani* (London 2005).

which they had failed to supply appropriate information about their clients, yet a fine was imposed.⁶⁴ This approach had important implications for small entities regulated by the FSA, especially credit unions, even though their potential for being used for money laundering is small. A 2004 review of the AML policies used by credit unions concluded that they were struggling to comply with the obligations under ML.⁶⁵ A credit union can be defined as a co-operative society offering its member's loans out of a pool of savings built up by the members themselves.⁶⁶ Credit unions are largely operated by unpaid volunteers who manage to dedicate several hours of their time each week to run a credit union. The importance of volunteers cannot be underestimated because credit unions rely exclusively upon them to serve on boards and committees.⁶⁷ The AML obligations imposed by ML meant that credit unions have to comply with a much higher level of regulation than they were accustomed to under the Credit Unions Act 1979 (CUA 1979). The FSA took over the role of regulating credit unions from the Registry of Friendly Societies (the Registry) in July 2002,⁶⁸ which was previously responsible for deciding whether to register a new credit union.⁶⁹ The Registry stated that "from the earliest days they were obliged to take a tight grip on credit unions and hence its development", therefore restricting the growth of credit unions.⁷⁰ The Registry required each credit union to produce an annual return and a valid insurance policy.⁷¹ The Registry also had limited statutory powers of the kind available to other financial regulators to intervene in the affairs of a credit union, or to discipline officers or employees where things have gone wrong.⁷² The Registry developed an informal and ineffective system of supervision, which relied upon the honesty of

⁶⁴ See note 62 above at p. 129.

⁶⁵ FSA, *Money laundering – A Review of Credit Unions' Anti-Money Laundering Systems and Procedures* (London 2004). Also see SOCA, *Serious Organised Crime Agency Annual Report 2006/2007* (London 2007), p. 12.

⁶⁶ R. Berthoud and T. Hinton, *Credit Unions in the United Kingdom* (London 1989).

⁶⁷ M. Chapman, A. Boyle, F. Rutherford and F. Wager, *Credit Union Training and Skills Audit* (Edinburgh 2004).

⁶⁸ For a more detailed discussion on the impact of the FSA on the development of credit unions see K. Smyth, "Union City Blues" (October/November 2003) *Scottish Banker* 27 and N. Ryder, "The Financial Services Authority and Credit Unions – A New Era of Regulation" (2003) 11 *Journal of Financial Regulation and Compliance* 241–249.

⁶⁹ Credit Unions Act 1979, s. 1.

⁷⁰ Registry of Friendly Societies, *Credit Unions in Great Britain, A Review of the Years 1979–1995* (London 1996). It must be noted that there are several other well documented factors that have affected the development of credit unions in the UK. See generally N. Ryder, "Out with the Old and In with the New? A Critical Analysis of Contemporary Policy towards the Development of Credit Unions in Great Britain" [2005] *Journal of Business Law* 617–639.

⁷¹ Credit Unions Act 1979, s. 15.

⁷² D. McKillop, J. Glass and C. Ferguson, "Investigating the Growth Performance of UK Credit Unions Using Radial and Non-Radial Efficiency Measures" (2002) 26 *Journal of Banking and Finance* 1563–1591, at 1582.

credit union members.⁷³ This ineffective financial regulation prompted the government to seek an improved system for credit unions. In November 1998 HM Treasury proposed two ways in which credit unions should be regulated.⁷⁴ Firstly, that the powers of the Registry should be transferred to FSA,⁷⁵ and secondly, that credit unions should be brought within the scope of FSMA 2000.⁷⁶ The government opted for the latter of these options in 1999.⁷⁷ Credit unions are now subject to a higher level of regulation by the Credit Union Handbook, or CRED. CRED contains rules and regulations relating to the FSA's Principles of Business, Senior Management Arrangements, Systems and Controls, the approved persons regime, lending policies, registration and authorisation.

A review of the AML procedures of credit unions by the FSA concluded that while there is a general awareness of their AML requirements, credit unions' procedures, controls and training must be strengthened.⁷⁸ The review raised serious concerns about the AML policies of credit unions in five areas – client identification, suspicious transaction reporting, record keeping, reports by the MLRO and volunteer training.⁷⁹ In terms of client identification, the FSA concluded that many credit unions failed to clearly set out in their AML policy what documents they were prepared to accept as evidence of member identification. Furthermore, the review also noted that several credit unions did not make it clear to their volunteers that a report should be sent to the MLRO and that most credit unions provided no guidance on the form and content of this report. The review concluded that a large percentage of credit unions failed to mention in their AML policy and related documents any guidance as to what might constitute a suspicious transaction. The final part of the review reported that credit unions' policies and procedures noted that ML compliance training was given to staff and volunteers but it was unclear whether the training covered the required matters and how frequently it was provided. The FSA realised that the needs of smaller firms were different from larger members of the regulated sector and developed an informal means of overcoming any difficulties and potential breaches of ML. If a firm has weak AML controls, like a credit union, the problem is now dealt with by a series of informal

⁷³ N. Ryder, "The Financial Services Authority and Credit Unions: The Final Piece of the Jigsaw?" (2002) 11 Nottingham Law Journal 17–32, at 23–24.

⁷⁴ HM Treasury, *Proposed Amendments to the CUA 1979 – A Consultation Paper* (London 1999).

⁷⁵ *Ibid.*, at p. 11.

⁷⁶ See note 74 above at p. 12.

⁷⁷ HM Treasury, Press Release 191/99, November 16 1999, Enhanced Role for Credit Unions, available from www.hm-treasury.gov.uk.

⁷⁸ See note 65 above at p. 2.

⁷⁹ *Ibid.*, at p. 4. This review led to the publication of a new set of guidance notes for credit unions. See FSA, *Anti-Money Laundering Guide for Credit Unions* (London 2004).

discussions with the FSA. The new approach adopted by the FSA towards enforcing the AML regulations is to offer advice and then, only as a last resort, to use its enforcement powers. The FSA must be commended for recognising the needs of smaller firms, especially credit unions.

In 2005, the FSA published a consultation paper outlining its plans to simplify the obligations under the Handbook.⁸⁰ There was strong support from the regulated sector to remove the burdensome regulations imposed by ML and replace them with high-level requirements for firms to have their own risk-based controls on money laundering.⁸¹ In January 2006 the FSA announced that it was streamlining ML,⁸² and it became obsolete from August 31 2006.⁸³ ML has been replaced with a principles-based approach in the Senior Management Arrangements, Systems and Controls, or SYSC part of the Handbook. Part 3 of which now provides that firms must have in place systems and controls which are appropriate for the firm to conduct its business.⁸⁴ In particular, a firm is required to “take reasonable care to establish and maintain effective systems and controls for compliance with applicable requirements and standards under the regulatory system and for countering the risk that the firm might be used to further financial crime”.⁸⁵ Firms are therefore required to carry out regular assessments of the adequacy of their AML systems they have in place to prevent themselves from being used to further financial crime,⁸⁶ allocate a director or senior manager with overall responsibility for establishing and the maintaining of the AML system and to appoint an MLRO.⁸⁷ The new AML regime is intended to provide the regulated sector with an even higher degree of flexibility. This means that firms are able to identify the risks and determine how they can best allocate their resources in areas which are most vulnerable.⁸⁸ The FSA has removed the detailed AML rules within ML and replaced them with requirements so that the regulated sector can have their own or “personal” risk-based controls. This approach might encourage and enable the regulated sector to target their resources more appropriately on activities at risk from money laundering, thus reducing the AML compliance costs.

⁸⁰ FSA, *Consultation Paper - 5/10 - Reviewing the FSA Handbook - Money Laundering, Approved Persons, Training and Competence, and Conduct of Business* (London 2005).

⁸¹ FSA Press Release, FSA to streamline rules on money laundering, FSA/PN/008/2006, January 26 2006, available from www.fsa.gov.uk. Also see FSA, *Policy Statement 06/01 Reviewing our Money Laundering Regime - Feedback on Chapter 2 of CP05/10* (London 2006) at p. 5.

⁸² *Ibid.*

⁸³ See note 80 above at chapter 2.

⁸⁴ FSA, *FSA Handbook* (London, 2006), at SYSC 3.1.1.

⁸⁵ *Ibid.*, at SYSC 3.2.6 R.

⁸⁶ See note 84 above at SYSC 3.2.6 C.

⁸⁷ *Ibid.*, at SYSC 3.2.6 H and I.

⁸⁸ See note 81 above.

C. Investigative and Enforcement Powers

The most important tools that the FSA has in the fight against money laundering are its investigative and enforcement powers. Part XI of FSMA 2000 provides the FSA with extensive investigatory powers.⁸⁹ The FSA has the ability to require information from firms,⁹⁰ to appoint investigators,⁹¹ to obtain the assistance of overseas financial regulators⁹² and provide appointed investigators with additional powers.⁹³ An example of how the FSA has successfully used these powers in respect of money laundering was the investigation into the finances of the former leader of Nigeria, General Sani Abacha, who was suspected of illegally withdrawing \$1bn from government funds. The FSA investigation identified 42 personal and corporate account relationships linked to Abacha family members and close associates in the UK. These accounts were held at 23 banks which included UK banks and branches of banks from both inside and outside the European Union.⁹⁴ As a result of the investigation the FSA concluded that 15 out of the 23 banks had significant weaknesses in their AML systems.⁹⁵ The banks were forced to improve their policies under strict supervision by the FSA.⁹⁶ A second illustration was a joint operation with law enforcement agencies in Northern Ireland.⁹⁷ Here, the FSA investigated whether Northern Ireland Insurance Brokers Limited and its directors were involved in money laundering. The investigation identified £8m which appeared to have been laundered through the firm. As a result of the investigation, the FSA ordered this firm to cease from undertaking several regulated activities.⁹⁸ After these two high profile early examples of how the FSA has utilised its investigatory powers to combat money laundering, little has happened since.

Enforcement within the context of FSMA 2000 incorporates two broad concepts. Firstly, preventing those who are not authorised to conduct banking or investment business; and secondly, to ensure that those who are authorised to conduct such businesses do so properly.⁹⁹

⁸⁹ J. Bagge, "The Future for Enforcement under the new Financial Services Authority" (1998) 19 *Company Lawyer* 194–197, at 195.

⁹⁰ Financial Services and Markets Act 2000, ss. 165–166.

⁹¹ Financial Services and Markets Act 2000, ss. 167–168.

⁹² Financial Services and Markets Act 2000, s. 169.

⁹³ Financial Services and Markets Act 2000, s. 172.

⁹⁴ FSA Press Release, FSA publishes results of money laundering investigation, FSA/PN/029/2001, March 8 2001, available from www.fsa.gov.uk.

⁹⁵ *Ibid.*

⁹⁶ A. Whitehouse, "A Brave New World: the Impact of Domestic and International Regulation on Money Laundering Prevention in the UK" (2003) 11 *Journal of Financial Regulation and Compliance* 138–145, at 140.

⁹⁷ FSA Press Release, FSA acts with Police on money laundering concerns, FSA/PN/061/2002, May 30 2002, available from www.fsa.gov.uk.

⁹⁸ *Ibid.*

⁹⁹ See note 89 above at p. 194.

Under FSMA 2000 the FSA has become a prosecuting authority in respect of certain money laundering offences.¹⁰⁰ These powers apply whether or not the entity to be prosecuted is actually regulated by the FSA and they are therefore, the most important aspects of the FSA's obligation to reduce money laundering.¹⁰¹ The FSA also has the power to impose a financial penalty where it establishes that there has been a contravention by an authorised person of any requirement imposed under FSMA 2000.¹⁰² The FSA has imposed a series of fines on firms who have breached ML, even where there was no evidence of money laundering. For example, the FSA fined the Royal Bank of Scotland £750,000,¹⁰³ Investment Services UK Limited £175,000,¹⁰⁴ Raiffeisen Zentralbank £150,000,¹⁰⁵ Northern Bank £1.25m,¹⁰⁶ the Bank of Ireland £375,000¹⁰⁷ and the Abbey National £2.2m.¹⁰⁸ The level of the fines is doubtlessly politically satisfying to some, yet it raises an important question, are the fines having any effect? A 2005 study conducted into firms' attitudes towards AML regulations revealed that the vast majority of them complied with the AML obligations not because they perceive it as representing good practice or as combating money laundering, but only because of the threat of sanctions.¹⁰⁹ Approximately two-thirds of UK respondents thought that the level of regulation is too severe for the risks involved in their sector.¹¹⁰ Therefore, despite the protestations from the regulated sector, it

¹⁰⁰ FSA, *Money Laundering: the FSA's New Role – Consultation Paper 46* (London 2000).

¹⁰¹ Financial Services and Markets Act 2000, s. 402 (1)(a).

¹⁰² Financial Services and Markets Act 2000, s. 206 (1).

¹⁰³ FSA Press Release, FSA Fines Royal Bank of Scotland £750,000 for money laundering control failings, FSA/PN/123/2002, December 17 2002, available from www.fsa.gov.uk. The FSA determined that the Royal Bank of Scotland had breached Rules 3.1.3 of the Money Laundering Rules, which provides that a "A relevant firm must take reasonable steps to find out who its client is by obtaining sufficient evidence of the identity of any client who comes into contact with the relevant firm to be able to show that the client is who he claims to be". See note 54 above at section 3.

¹⁰⁴ FSA Press Release, FSA fines bond broker and managing director for anti-money laundering failures, FSA/PN/117/2005, November 9 2005, available from www.fsa.gov.uk.

¹⁰⁵ FSA Press Release, FSA Fines Raiffeisen Zentralbank £150,000 for money laundering control failings, FSA/PN/035/2004, April 6 2004, available from www.fsa.gov.uk. The FSA concluded that Raiffeisen Zentralbank B had contravened Rule 3.1.3 and 2.1.1 of the ML. See note 54 above at sections 2 and 3.

¹⁰⁶ FSA Press Release, FSA Fines Northern Bank £1,250,000 for money laundering control failings, FSA/PN/084/2003, August 7 2003, available from www.fsa.gov.uk. The FSA concluded that Northern Bank had contravened Rules 3.1.3 of the ML. See note 54 above at section 3.

¹⁰⁷ FSA Press Release, FSA Fines Bank of Ireland £375,000 for money laundering control failings, FSA/PN/077/2004, September 2 2004, available from www.fsa.gov.uk. The FSA concluded that the Bank of Ireland's failures demonstrated a material breach of Rule 3.2.6 of the FSA's Senior Management Arrangements, Systems & Controls Rules. See also FSA, *Final Notice, The Governor and the Company of the Bank of Ireland* (London 2004).

¹⁰⁸ FSA Press Release, FSA Fines Abbey National £2,320,000 for money laundering control failings, FSA/PN/132/2003, December 10 2003, available from www.fsa.gov.uk. Here, the FSA concluded that Abbey National had contravened Rule 3.2.6, 3.1.3 and 4.3.2 of the FSA's Senior Management Arrangements, Systems and Controls Rules. See note 54 above at sections 3 and 4.

¹⁰⁹ See note 1 above at p. 44.

¹¹⁰ R. Sarker, "Anti-Money Laundering Requirements: Too much Pain for too little Gain" (2006) 27 *Company Lawyer* 250–251, at 251.

appears that the mere threat of financial sanctions by the FSA compels firms to comply with the AML regulations. This approach could be described as heavy handed. Nonetheless, it is having the desired effect and it would take a very brave firm to hold up their hands and publicly admit they were not compliant with the FSA regulations aimed at reducing money laundering.

D. Suspicious Activity Reports

The final aspect of the FSA's policy towards the reduction of money laundering is the SARs regime, which is the most traditional mechanism used to combat money laundering. It has been argued that such regulations are the most important weapon in the fight against money laundering.¹¹¹ The SARs system has been in place for many years and it was first introduced by the DTOA 1986.¹¹² This Act was amended in 1993 by the Criminal Justice Act, which gave effect to the first European Directive on Money Laundering, and it introduced the concept of mandatory reporting.¹¹³ The requirements of mandatory reporting have since been amended by the PCA 2002.¹¹⁴ ML 4.3.2 required the regulated sector to complete an SAR where they knew or suspected, or they had reasonable grounds to know or suspect that a person had been engaged in money laundering.¹¹⁵ The reporting requirements under ML were divided into two subsections – internal and external. As part of the external reporting requirements, the MLRO, once in possession of an internal report, must make the report to SOCA, if there are grounds for suspicion.¹¹⁶ Once the SAR has been received by SOCA, they will ultimately determine whether or not to pass the information on to the police for further investigation.¹¹⁷ The overall effectiveness of the SARs regime has been questioned. For instance, a report by the accountancy firm KPMG identified a number of deficiencies within the reporting requirements,¹¹⁸ and made a series of recommendations aimed at improving the monitoring of law

¹¹¹ N. C. Morrison, "Money Laundering Legislation in the UK" (1995) 14 *International Banking and Financial Law* 3–6, at 4.

¹¹² For a more detailed discussion of this legislation see the excellent commentary by R. Stokes and A. Arora, "The Duty to Report under the Money Laundering Legislation within the United Kingdom" [2004] *Journal of Business Law* 332–356.

¹¹³ See J. Wadsley, "Money Laundering: Professionals as Policemen" (1994) 58 *Conveyancer* 275–288.

¹¹⁴ M. Isaacs, "Money Laundering Dilemmas for Banks" (2004) 19 *Journal of International Banking Law and Regulation* 284–288, at 284.

¹¹⁵ M. H. Fleming, *UK Law Enforcement Agency Use and Management of Suspicious Activity Reports: Towards Determining the Value of the Regime* (London 2005).

¹¹⁶ For a more detailed discussion of what amounts to suspicion see R. Bosworth-Davies, "CJA 1993: Money Laundering" (1994) 15 *Company Lawyer* 56–58.

¹¹⁷ SOCA, *Review of the Suspicious Activity Reports Regime* (London 2006), at p. 5.

¹¹⁸ KPMG, *Money Laundering: Review of the Reporting System* (London 2003), at p. 14. The deficiencies according to KPMG were the SARs database, the monitoring of enforcement outcomes, inadequate training and the lack of government support for the scheme.

enforcement outcomes and the provision of training in relation to SARs.¹¹⁹ Fleming also noted that SARs were under-used by law enforcement agencies.¹²⁰ In particular, he criticised the regime because law enforcement bodies continue to have poor management information on how SARs are utilised.¹²¹ The Lander Review noted several weaknesses of the regime including a lack of overall management and responsibility of the scheme, inconsistent reporting by the regulated sector and inappropriate training.¹²² The reporting requirements under ML have created a fear factor amongst the regulated sector and it resulted in a 35,000 increase in the number of SARs submitted to the National Criminal Intelligence Service (NCIS) in 2004.¹²³ The increase is directly attributable to the threat of sanctions by the FSA, which had resulted in over-reporting to NCIS. This has led to the regulated sector adopting a tactic that has been referred to as “defensive” or “preventative” reporting.¹²⁴ However, it must be noted that the increase in the number of SARs has also been influenced by legislative changes and an increase in the range and number of entities who are required to report by the FSA. By comparison, there has also been an increase in the number of SARs submitted by financial institutions in the US to the Financial Crimes Enforcement Network (FINCEN), largely due to the onerous reporting requirements imposed by Title III of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act 2001. In 2006 the FINCEN reported that US financial institutions filed 919,230 SARs, an increase of 37% when compared to the number of reports filed in 2004.¹²⁵ Therefore, it is also clear that US financial institutions have adopted a defensive reporting mechanism to avoid the imposition of financial sanctions.

The banking sector has raised concerns about the SAR regime,¹²⁶ and some commentators have suggested that the reporting requirements should be abandoned and that the resources should be

¹¹⁹ *Ibid.*, pp. 17–20. The report recommended the establishment of a Task Force drawn from the public and private sectors to implement the recommendations, a complete overhaul of the Economic Crime Branch within NCIS, improving the quality of reporting and improving the results of use of SARs by law enforcement agencies.

¹²⁰ See note 115 above at p. 48.

¹²¹ *Ibid.*

¹²² See note 117 above at p. 16–17.

¹²³ Sarker, note 110 above, at 251. KPMG reported that the number of SARs submitted between 1995 and 2002 increased from 5,000 to 60,000. See note 118 above at p. 14.

¹²⁴ See note 27 above at p. 142.

¹²⁵ FINCEN, *The SAR Activity Review – By the Numbers* (Washington 2006), at p. 1. For a more detailed assessment and commentary about the US SARs regime see FINCEN, *1st Review of the Suspicious Activity Reporting Systems* (Washington 1998) and N. Ryder “A False Sense of Security? An Analysis of Legislative Approaches to the Prevention of Terrorist Finance in the United States of America and the United Kingdom” [2007] *Journal of Business Law* 821–850, at 835–837.

¹²⁶ Home Office, *Report on the Operation in 2004 of the Terrorism Act 2000* (London 2004), at pp. 19–20.

redirected elsewhere.¹²⁷ The British Bankers Association claims that their members annually spend £250m each year to comply with the regulations.¹²⁸ Conversely, KPMG estimated that annual the costs are nearer £90m.¹²⁹ Research has suggested that the AML costs in the UK are higher than in other countries including Germany, France and Italy.¹³⁰ It must be noted that financial institutions in the US are also experiencing a dramatic increase in the costs of complying with AML regulations. Roberts reported that US institutions have spent over \$11bn to strengthen their internal AML controls.¹³¹ The safeguards provided by the SARs regime can easily be avoided by the process of *smurfing*. This is sometimes achieved by separating larger sums of money into smaller amounts that can be deposited into several bank accounts, thus avoiding financial institutions' AML policies and procedures.¹³² The effectiveness of the SARs regime is heavily reliant upon the accuracy of the reports completed by the regulated sector and the quality of the investigations by the police. The requirement for the regulated sector to complete a SAR under ML made little sense because they were legally required to do so under the under the MLR 1993.¹³³

III. CONCLUSION

Section 6 is an innovative attempt to reduce the impact of money laundering. It is the first time that a financial regulatory body in the UK has been given such a specific role. To date the FSA has been concerned with implementing a policy that occurs at the pre-placement stage of the money laundering process. This has imposed an additional

¹²⁷ Anon, "The Lost Trail – Efforts to Combat the Financing of Terrorism are Costly and Ineffective" *The Economist*, 22 October 2005, available at www.economist.com.

¹²⁸ *Ibid.* Alexander claims that the annual costs of the AML to banks in the UK are £650m per year. See R. Alexander, *Insider Dealing and Money Laundering in the EU: Law and Regulation*, (Aldershot 2007), p. 119.

¹²⁹ See note 118 above at pp. 46–47. The exact costs of the SARs regime are impossible to calculate. For an excellent commentary see P. A. Sproat, "The New Policing of Assets and the New Assets of Policing: a Tentative Financial Cost-Benefit Analysis of the UKs Anti-Money Laundering and Asset Recovery Regime" (2007) 10 *Journal of Money Laundering Control* 277–299, at 278–288. For other estimates of the costs see FSA, *Anti-Money Laundering Current Customer Review Cost Benefit Analysis – Report Prepared by Pricewaterhouse Coopers LLP* (FSA 2003).

¹³⁰ See note 1 above at p. 24.

¹³¹ M. Roberts, "Big Brother isn't just Watching you, he's also Wasting your Tax Payer Dollars: an Analysis of the Anti-Money Laundering Provisions of the USA Patriot Act" (2004) 56 *Rutgers Law Review* 573–602, at 592.

¹³² This process is commonly referred to as smurfing where criminals will deposit money in a financial institution in amounts that are lower than the level at which the financial institution must complete a suspicious activity report. See S. N. Welling, "Smurfs, Money Laundering, and the Federal Criminal Law: the Crime of Structuring Transactions" (1989) 41 *Florida Law Review* 287–339.

¹³³ It must be noted that due to the amendments to ML and the transfer of the SARs regime from NCIS to SOCA, firms are no longer required to submit an SAR to the FSA. The transfer of these functions was contained in the Serious Organised Crime and Police Act 2005, s.58 and Schedule 3.

burden on firms in the UK who are already required to comply with a plethora of AML regulations. The obligations imposed ML do not represent a change of substance because they are similar to those contained in the 1993 MLR. This extension into the criminal law sphere must be treated with caution because the FSA joins a long list of regulatory and law enforcement agencies that target money laundering. The common sense approach would be the creation of a single agency rather than several, with a single set of AML rules. The FSA has implemented a costly and at times unnecessarily complicated AML regime, yet they have at least attempted to lessen the AML obligations by implementing SYSC. Therefore, even if the FSA could reduce money laundering how could it accurately be measured? Furthermore, there are numerous mechanisms used by criminals to hide their proceeds of crime, which makes it even more difficult for the FSA to reduce the extent of money laundering. The scheme introduced by the FSA will, in the main, do little to discourage well organised criminals from laundering money in the UK. This article has identified four parts of the AML regime as having particular significance.

Risk Based Money Laundering Policy and Rule Making Powers

The objectives of the risk based money laundering policy were two fold. Firstly, to reduce the compliance costs for the regulated sector, and secondly, to lessen the burden on firms. In the first instance, the policy has categorically failed. This is illustrated by a 60% increase in the costs faced by the regulated sector in the last three years. The amendments to ML introduced by the FSA in 2006 represent a significant change in policy towards reducing money laundering. The policy has moved from what this article refers to as a “heavy handed” approach towards a more conciliatory AML method. This must be welcomed by the regulated sector. Furthermore, the amendments circumvent the wasteful duplication of the AML obligations contained in the 1993 MLR. The departure from the oppressive provisions of ML does not mean that the FSA has softened its stance on money laundering; it has attempted to introduce a more streamlined version of ML. The new version provides the regulated sector with an unprecedented level of flexibility which could prove to be vital in the fight against money laundering.

Investigative and Enforcement Powers

It becomes clear from an examination of the relevant provisions of FSMA that the FSA has extensive investigative and enforcement powers. The FSA has concentrated upon its powers to impose financial sanctions upon the regulated sector as opposed to seeking

criminal prosecutions under the 2003 MLR. The imposition of financial penalties has had its desired effect, to make the regulated sector comply with the AML regulations. However, it can be concluded that the threat of sanctions has led to a great deal of resentment from the sector and scepticism as to whether the regulations introduced by the FSA are reducing the level of money laundering. The article suggests that the success of the enforcement powers could be cynically measured in the total amount of the fine. It is likely that headline figure of a £2m fine is politically satisfying to some; it is not a true measure of effectiveness.

Suspicious Activities Reporting Regime

The reporting requirements under ML imposed significant administrative burdens on financial institutions that already had to comply with reporting requirements under the PCA 2002 and the 2003 MLR. ML has led to an increased level of record-keeping, report filing, and internal policing requirements. The imposition of even more mandatory reporting requirements was inevitable given the government's tough stance towards money laundering. It is questionable however, whether the filing of an SAR will make any difference given the difficulties in securing prosecutions in money laundering offences.¹³⁴ It is also possible to argue that the reporting requirements under ML have created a "needle-in-the-haystack" problem, especially given the large number of SARs annually submitted. The SARs regime was amended by the SOCPA 2005, which brought together the National Crime Squad, NCIS, the investigative function of HM Customs and Excise on drug trafficking and the related recovery of criminal assets and the Home Offices responsibilities for organised crime, to form SOCA. The government announced its intention to establish SOCA in February 2004, following an extensive Home Office review of organised crime.¹³⁵ The most significant amendment to the SARs regime is that SOCA has taken the over its management from NCIS. The SOCPA 2005 has given SOCA three powers and tasks that are pertinent to the role it inherited from NCIS.¹³⁶ Firstly, the prevention and detection of serious organised crime.¹³⁷ Secondly, the mitigation of the consequences of such crime.¹³⁸ Thirdly, the function of gathering, storing and analysing and disseminating of information.¹³⁹ These powers provide SOCA with the ability to share information and to

¹³⁴ See note 4 above at pp. 204–206 and note 16 above at p. 157.

¹³⁵ Home Office, *One Step Ahead – A 21st Century Strategy to Defeat Organised Crime* (London 2004). A copy of this report is available from www.homeoffice.gov.uk.

¹³⁶ See note 117 above at p. 5.

¹³⁷ Serious Organised Crime and Police Act 2005, s. 2(1)(a).

¹³⁸ Serious Organised Crime and Police Act 2005, s. 2(1)(b).

¹³⁹ Serious Organised Crime and Police Act 2005, s. 3.

support exactly those partners who have a direct interest in using the information contained in SARs. At this stage, the full impact of SOCA upon the SARs regime is difficult to determine. SOCA must build upon the recommendations made by the Lander Review and through its new powers attempt to rebuild confidence in the SAR regime.

This article has sought to assess critically the effectiveness of the measures introduced by the FSA to reduce the extent of money laundering. The extent to which this statutory objective will work is impossible to determine given the difficulties in calculating the actual extent of money laundering. Furthermore, given the abundant number of sources available to criminals to launder their proceeds of crime, the effectiveness of this statutory objective will always be questioned.