Economic Crime Enquiry

HM Treasury Select Committee

Written Evidence from Dr Nicholas Ryder, Professor in Financial Crime, Bristol Law School, Faculty of Business and Law, University of the West of England, Bristol.

Introduction

The submission provides a summary of the research conducted by Professor Nicholas Ryder on money laundering, the financing of terrorism, the respective legislative frameworks, regulatory agencies and the enforcement of financial crime legislation in the United Kingdom (UK). The submission presents a summary of the key findings in the hope that they will support the Treasury Committee's inquiry into Economic Crime.

The anti-money laundering, counter-terrorist financing and sanctions regimes

Money Laundering

It is extremely difficult to measure the true extent of money laundering, with many previous attempts proving largely unsuccessful.[1] Any measurement is hampered by the fact that there are so many different ways that organised criminals launder money. Nonetheless, there have been claims that money laundering is one of the world's largest industries, with the International Monetary Fund (IMF) noting that it was equal to 2-5 per cent of global gross domestic product (GDP). Other studies have suggested that money laundering is $500bn,[2] $1.5tn [3] or $2.85tn per year.[4] In the UK, it was estimated that the amount of money laundered annually ranged from £19bn to £48bn.[5] HM Treasury noted that "each year £10bn of illicit funds passed through the regulated sector",[6] whilst Transparency International reported that the figure was £48bn.[7] If we take the IMF estimation of between 2 and 5 per cent GDP and base it on the GDP figures for the UK in 2017 (£2.624tn) we are looking at between £52.48bn and £131.2bn. The amount of money involved is therefore of epic proportions and requires an effective monitoring and prevention strategy.

Terrorist Financing

The financial process adopted by terrorists to accumulate funds is different to that adopted by money launderers. Terrorist financing is more commonly referred to as 'reverse money laundering', which is a financial practice that seeks to transform 'clean' or 'legitimate" money, into 'dirty' money that is funnelled to finance acts of terrorism. Conversely, money

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[1] See Unger, B. The scale and impacts of money laundering (Edward Elgar: Cheltenham, 2007).

[2] R. Spalek 'Regulation, White–Collar Crime and the Bank of Credit and Commerce International' (2001) *Howard Journal of Criminal Justice*, 40 166–179, 167.

[3] S. Maylam, 'Prosecution for Money Laundering in the UK' (2002) *Journal of Financial Crime*, 10 157–158, 158.

[4] J. Walker 'Modelling Global Money Laundering Flows – some findings' <http://www.johnwalkercrimetrendsanalysis.com.au/ML%20method.htm> accessed 6 June 2011.

[5] J. Harvey, 'An Evaluation of Money Laundering Policies' (2005) *Journal of Money Laundering Control* 8(4) 339–345, 340.

[6] Financial Conduct Authority *Anti-money laundering annual report 2012/13* (Financial Conduct Authority: London, 2013) at 3.

[7] Transparency International 'Corruption Statistics', n/d, available from http://www.transparency.org.uk/corruption/statistics-and-quotes/uk-corruption, accessed June 16 2016.

laundering involves the conversion of 'dirty' or 'illegal' money into clean money via its laundering through three recognised phases, placement, layering and integration. The prevention of terrorist financing is difficult due to the large number of mechanisms used to fund acts of terrorism. Traditionally, terrorists relied on two sources of funding: state and private sponsors. State sponsored terrorism, refers to nation states providing logistical and financial support to terrorist organisations. However, since the terrorist attacks in 2001, state-sponsored acts of terrorism have declined and terrorists receive funding from private sponsors or donors. Therefore, terrorists have become self-sufficient, as acknowledge by the official report on the terrorist attacks on London on the 7 July 2005.[8] Terrorists are able to access funds through a broad spectrum of measures including kidnap for ransom, robbery, drug trading, counterfeiting and the sale of conflict diamonds.[9] The wide range of sources available to terrorists is illustrated by the activities of Islamic State of Iraq and the Levante (ISIL) who have exploited four funding streams: the control of oil reserves, kidnapping for ransom, foreign and private financial benefactors and antiquities.[10] Al Shabaab have obtained funding from the illegal smuggling of ivory, charcoal exports and the illegal importation of contraband sugar. Boko Haram are funded by private donors, misapplied charitable donations, the sale of goods and other lucrative activities, business profits/logistical support, contributions from members of a terrorist group, begging by vulnerable persons, extortion of civilians by means of intimidation, arms smugglers, cash couriers and financial contributions of political leaders.

It is also important to discuss the concept of cheap terrorism. The threat posed by cheap terrorism was identified by HM Treasury who stated the "UK experience bears out the relatively low costs required for an effective terrorist attack".[11] Examples of 'cheap terrorism' include the first attack on the World Trade Centre in 1993, an estimated cost of only $400.[12] Two years after the World Trade Centre attack Timothy McVeigh detonated a truck bomb outside Alfred P. Murrah Federal Building in Oklahoma City. In an interview with MSNBC, Timothy McVeigh estimated that the total costs of the attack, including the truck rental, fertilizer, nitro methane and other costs amounted to $5,000.[13] The terrorist attacks by Al Shabaab on the Westgate Mall in Kenya "cost less than $5,000 to execute" [14] and the materials used in the Boston Marathon bombings [in 2013] reportedly cost about $500".[15] It has been estimated that "the cost of making a suicide bomb can be as low as $5, while the deployment of a suicide bomber including transportation and reconnaissance, can cost as little as $200".[16] More recently, there has been an increase in the number of 'lone

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[8] House of Commons *Report of the Official Account of the Bombings in London on 7th July 2005* (House of Commons 2005, 23).

[9] See generally Ryder, N. The Financial War on Terror: A review of counter-terrorist financing strategies since 2001 (Routledge, 2015).

[10] Ryder, N. 'Out with the old and … in with the old? A critical review of the Financial War on Terrorism on the Islamic State of Iraq and Levant' (2018) Studies in Conflict and Terrorism, 41(2), 79-95.

[11] HM Treasury *Combating the financing of terrorism. A report on UK action* (HM Treasury: London, 2002) at 11.

[12] Gaddis, J. 'And Now This: Lessons from the Old Era for the New One', in Talbott, S. and Chander, N. (eds.) *The Age of Terror: America and the World After September 11* (Basic Books: New York, 2001) at 6.

[13] NBC News *The McVeigh Tapes: confessions of an American terrorist* (19 April 2010), http://www.nbcnews.com/id/36135258/ns/msnbc_tv/#.VDJpOU10zIU, accessed October 6 2017.

[14] Department of Treasury *Remarks of Under Secretary for Terrorism and Financial Intelligence David Cohen before the Center for a New American Security on Confronting New Threats in Terrorist Financing* (March 4 2014), available from http://www.treasury.gov/press-center/press-releases/Pages/jl2308.aspx, accessed September 22 2014.

[15] *Ibid*.

wolf' and cheap acts of terrorism within the European Union (EU). For example, in August 2017 a terrorist driving a van killed 13 people in Barcelona. In June 2017, one person was killed outside Finsbury Park Mosque in a terrorist attack and terrorists on London Bridge and Borough Market killed eight people. A month before the terrorist attacks in London, 23 people were killed and 59 injured following a terrorist attack by a suicide bomber in Manchester. Further terrorist attacks within the EU occurred in Paris, Stockholm, Berlin, Normandy, Nice and Brussels. Despite this caution Waszak claims that "the cost of making a suicide bomb can be as low as $5, while the deployment of a suicide bomber including transportation and reconnaissance, can cost as little as $200".[17] There are three common themes in these terrorist attacks: the use of low capability weapons, lone wolf terrorists and cheap terrorism. These three factors illustrate that the practical difficulties faced by law enforcement agencies and the security services in limited the funding streams of terrorist groups.

The current legislative and regulatory landscape, including any weaknesses in the rules and their enforcement

Financial Conduct Authority

The Financial Conduct Authority (FCA) have concentrated on imposing financial penalties on corporations who have breached financial crime legislation. For example, in 2007 the FSA imposed fines totalling £5.3m, 2008 £22.7m, 2009 £35m, 2010 £66.1m, 2011 £89.1m, 2012 £311.5m, 2013 £474.1m, 2014 £1.47bn, 2015 £905m, 2016 £22.2m, 2017 £229.5m and £3.4m. However, the impact of these fines on persistent repeat offenders is negligible as the fines represent a small percentage of their annual profits. Conversely, there has been some success in relation to the number of prosecutions and convictions for money laundering. For example, between 1999 and 2007, there were 7,569 money-laundering prosecutions in the UK, resulting in 3,796 convictions. This amounts to a 50.15 per cent conviction rate. The conviction rate of over 50 per cent suggests that the mechanisms as described above are working fairly well within the UK.

Serious Fraud Office

The Serious Fraud Office (SFO) has been subjected to intense criticism due to its previous prosecutorial failures including *Guinness*, *Blue Arrow*, *Maxwell* and *Levitt*. The SFO has been in the headlines for its handling of the bribery allegations against BAE Systems and its abandonment of the investigation into arms sales in Saudi Arabia. However, it is important to emphasize that the SFO *has* increased the frequency of its investigations and prosecutions. For example, between 2001 and 2006, the SFO reported a conviction rate of 61%.[18] This increased to 71% in 2007.[19] By 2008, the conviction rate had fallen slightly to 68%.[20] In 2009, the SFO achieved a conviction rate of 91 per cent, 84 per cent in 201, 73 per cent in 2011, 70 per cent in 2012, 85 per cent in 2013 and 78 per cent in 2014. The conviction rate fell to 57% in 2015. The SFO reported, "That between 2012 and 2016 the conviction rate was 65% per defendant and 81% per case, with 75 defendants in 25 cases convicted". There

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[16] Waszak, J. 'The obstacles to suppressing radical Islamic terrorist financing' (2004) Case Western Reserve Journal of International law, 36, 673-710, at 673.
[17] *Ibid*.
[18] Serious Fraud Office *Annual Report 2006/2007* (Serious Fraud Office: London, 2007) at 4.
[19] *Ibid*.
[20] Serious Fraud Office *Annual Report 2007/2008* (Serious Fraud Office: London, 2008) at 5.

is an overlap between the regulatory remit of the FSA and SFO, a position that could have been be resolved by the creation of a single Economic Crime Agency (ECA) as proposed by the Coalition Government in 2010. Its formation was obstructed by differences of opinion within the Coalition Government over its proposed remit and the unparalleled enforcement reaction from the SFO and FSA since the financial crisis. The Home Office decided against creating the ECA, and turned its attention to establishing the broader National Crime Agency in 2013.

Corporate Economic Crime

UK efforts to tackle financial crime concentrated on targeting individuals as opposed to corporations. The unsatisfactory nature of this stance, led to the introduction of the failure to prevent bribery corporate offence (Bribery Act 2010, s 7). This has secured several DPAs against corporations, but there have been no related prosecutions. This position is unsatisfactory. DPAs must be used in conjunction with criminal proceedings against employees and/or agents of corporations if they are to have a deterrent effect to reduce future misconduct. The introduction of the Senior Managers and Certification Regime by the FCA is the most significant mechanism that could overcome the restrictive interpretation of the doctrine of corporate criminal. By placing the management of financial crime control within the remit of a corporations 'senior management' this will allow the courts to identify the person who within a corporate structure meets the controlling mind test. The ability to recognise the person who has the controlling mind could go some way to redress this problem. However, in order for this approach to be adopted it would require the FCA to liaise with the SFO and other prosecutors to implement this innovative mechanism. The ability of the FCA to instigate financial penalties draws unfavourable comparisons with the provisions in the US and it is recommended that the UK should introduce legislation based on the Financial Institutions Reform, Recovery and Enforcement Act 1989. Such a move would provide the FCA and other related enforcement agencies with the ability to pursue a series of civil actions against corporations for financial crime.

Conclusions

I have made the following conclusions to address some of these weaknesses some of issues discussed in this report:

- The UKs money laundering policy is generally compliant with the international measures. Its policy is well managed by HM Treasury and assisted by both the FCA and NCA;
- The enforcement of the UK's money laundering criminal offences under the Proceeds of Crime Act 2002 has been generally effective;
- The UK has a very robust policy toward the financing of terrorism, yet the extensive array of sources of finance and cheap acts of terrorism have recently resulted in its effectiveness being questioned;
- The UKs enforcement of corporate financial crime breaches is weak in comparison to other jurisdictions and the extension of the failure to prevent criminal offences (Bribery Act 2010 and Criminal Finances Act 2017) must be questioned;

In addition to these suggestions, the Treasury Committee may be interested some of these research publications that provide a more in-depth commentary on how the UK has tackled financial crime:

- Ryder, N. The Financial War on Terror: A review of counter-terrorist financing strategies since 2001 (Routledge, 2015, 210 pp),
- Ryder, N. The Financial Crisis and White Collar Crime: The Perfect Storm? (Edward Elgar, 2014, 323 pp),
- Ryder, N. Money laundering an endless cycle? A comparative analysis of the anti-money laundering policies in the USA, UK, Australia and Canada (Routledge, 2012, 200 pp),
- Ryder, N. 'Too scared to prosecute and too scared to jail? A critical and comparative analysis of enforcement of financial crime legislation against corporations in the United States of America and the United Kingdom (2018) Journal of Criminal Law, [In Press],
- Ryder, N. 'Out with the old and … in with the old? A critical review of the Financial War on Terrorism on the Islamic State of Iraq and Levant' (2018) Studies in Conflict and Terrorism, 41(2), 79-95,
- Ryder, N. 'Banks in Defense of the Homeland: Nexus of Ethics and Suspicious Activity Reporting' (2013) Contemporary Issues in Law (Special Issue on Law, Ethics and Counter-Terrorism), 12(4), 311-347, with Turksen, U, and
- Ryder, N. 'The Financial Services Authority, the Reduction of Financial Crime and the Money Launderer – A Game of Cat and Mouse', (2008) Cambridge Law Journal, 67(3), 635-653.

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