Known Unknowns
Plugging the UK’s Intelligence Gaps on Money Laundering Involving Professional Services Providers

Helena Wood, David Artingstall, Haylea Campbell and Anton Moiseienko
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Executive Summary

THIS PAPER SETS out the findings of a fifteen-month research project undertaken by the Centre for Financial Crime and Security Studies at RUSI, examining the structural, systemic and cultural issues in the UK’s anti-money-laundering (AML) regime as it relates to information and intelligence flows to and from the non-financial sectors of legal services, accountancy service providers (ASPs), property and estate agencies, and trust and company service providers (TCSPs). These sectors were selected for this study because they were highlighted as medium- or high-risk areas in the National Risk Assessment of Money Laundering and Terrorist Financing 2015 (NRA 2015).¹

The gaps identified undermine the understanding in the UK of money laundering, particularly using the services of professionals to launder large amounts of money (such as the proceeds of overseas corruption or large-scale fraud), ‘wittingly or unwittingly through the UK financial sector and related professional services’,² otherwise known as high-end money laundering (HEML). Since 2014, there has been considerable effort to focus the UK’s intelligence collection machinery on plugging the intelligence gaps in this field.

These intelligence gaps are particularly evident in relation to the role of so-called ‘professional enablers’ (accountants, lawyers, estate agents and TCSPs) examined in this research, who are regarded as pivotal to this type of complex money laundering. The NRA 2017 promotes the idea that progress has been made in better understanding the role of these sectors. However, this paper finds that obvious intelligence gaps remain.

Through documentary review, interviews and workshops, this research seeks to understand the reasons why, despite a concerted effort by the government and law enforcement agencies, the intelligence base needed to tackle money laundering involving professionals in the UK remains patchy. Evidence collected highlights a number of cross-cutting systemic and structural issues relating to the application of the AML regime across the professions considered in this paper, as well as some specific sectoral issues.

This research identifies inadequacies in the guiding government narrative, intelligence structures and the role of the AML supervisory regime in relation to intelligence sharing. These result in

1. HM Treasury and Home Office, ‘UK National Risk Assessment of Money Laundering and Terrorist Financing’, October 2015. Superseded by the NRA 2017, the findings of which are built into this research paper.
poor public–private intelligence flows, including through the Suspicious Activity Reports (SARs) regime, and under-utilisation of non-SARs information and intelligence.

In relation to the government narrative, the authors’ research finds that continuing to silo intelligence collection, dissemination and risk assessment primarily along sectoral lines neglects the overlaps and interplay between sectors in supporting the activities that underpin non-cash money laundering. The narrative should be restructured along activity lines to overcome this fragmentation. Furthermore, the vocabulary used to describe the nature of professional service provider involvement in money laundering needs to better reflect the nuances between complicit, complacent and duped actors in the system so that interventions can be better targeted.

This paper also examines the nature and scale of information sharing relationships between the public and private sectors: the dynamic and free-flowing intelligence-sharing relationships outside the SARs regime are increasingly being recognised as a bedrock of a well-functioning AML intelligence regime.

Here the relationship with the non-financial sectors lags behind the more dynamic relationships emerging with the banking sector, for example under the Joint Money Laundering Intelligence Taskforce (JMLIT) model. While a structure along the lines of the JMLIT is not appropriate for these sectors, given the dominance of small and medium-sized enterprises (SMEs), the JMLIT could benefit from their expertise. Furthermore, establishing a network of trusted sector experts, perhaps via the National Crime Agency (NCA) Specials programme or formal secondments of staff, who could use their knowledge on tactical and strategic levels to create a more dynamic model of information exchange, would be beneficial.

With regard to the UK’s AML supervisory regime, this research finds that the lack of coordination between the UK’s 25 statutory and professional body supervisors (PBS) is a significant barrier to building a money-laundering intelligence picture. Furthermore, the authors’ research highlights the differing capabilities, capacities and cultures around the handling and exploitation of intelligence within PBS, which suggest that, to date, the role of many in the intelligence cycle has been minimal.

This paper also highlights the UK AML supervisory regime’s weakness as a ‘credible deterrent’ in many of these sectors. This weakness risks undermining AML compliance overall and reducing the quality and quantity of SARs submissions from the regulated entities in these sectors, which are regarded as inadequate by the authorities.

The recently established Office for Professional Body Anti-Money Laundering Supervision (OPBAS) is welcome. Its key initial challenge will be to embed a culture of intelligence and risk

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3. A public–private sector financial intelligence-sharing mechanism, established in 2015, which sits outside the formal SARs regime.

4. PBS are non-governmental membership organisations for individual professions that are authorised by the UK Treasury to act as supervisors of their membership for AML purposes.
within PBS where this does not currently exist. Partnering initiatives with the host department of OPBAS – the Financial Conduct Authority (FCA) – may provide this support.

The authors’ interviews suggest that improving information sharing among PBS and between PBS and law enforcement is, quite rightly, high on the agenda of OPBAS. While initial OPBAS guidance suggests that membership of one of two existing intelligence-sharing platforms – the Financial Crime Information Network (FIN-NET) or the Shared Intelligence Service (SIS) – provides a solution, more needs to be done to communicate the benefits of these systems to PBS.

There are high – and possibly unrealistic in the short term – expectations that OPBAS will provide the solution to poor intelligence flows between PBS and law enforcement. This paper recognises that, primarily, OPBAS is the ‘supervisor of supervisors’ and not an intelligence provider for PBS. Early communication of this message to PBS and law enforcement will be key to managing expectations, but OPBAS should also move quickly to explain how it sees its overall function of facilitating intelligence flows.

Although this paper recognises that there will frequently be more than one profession involved in a transaction (such as the purchase of property) or service (such as the formation of a company), it is critical to understand the factors specific to individual sectors that undermine their contribution to the intelligence picture. This paper examines factors specific to each of the four sectors by considering the findings of the NRA 2017, the SARs yield from each sector, industry cultures and intelligence-sharing relationships.

**Accountancy Services Providers**

This paper finds that a one-size-fits-all approach to intelligence gathering in relation to such a large and diverse sector is failing. While the NRA 2017 went some way in refining the risks to specific activities and sub-sectors, it did not go far enough. This paper specifically recommends developing the understanding of the threat in relation to unregulated accountants (who sit inside the AML regime) and the accountants in industry (outside the AML regime).

It is debatable whether the number of SARs from this sector is too low (as the government claims). However, this paper recommends: first, improving intelligence outreach to SMEs and micro-businesses, which make up 87% of the sector, to improve the quantity of reporting; and second, better communicating the business benefits of wider AML compliance to improve SARs quality.

The authors’ examination of current information sharing relationships in this sector finds that intelligence sharing between supervisors, via the Accountancy Affinity Group, is happening, but not in a systematic manner. This paper recommends establishing a specific intelligence-sharing forum for this purpose, and recognises the untapped potential of industry experts, who are well placed to inform the intelligence picture at strategic and tactical levels. Better exploitation of this expertise, perhaps via the NCA Specials programme, is recommended.
Legal Services Providers

While the NRA 2017 better defines the risks of specific types of activities performed by legal professionals, it does not adequately identify which parts of the higher-risk sub-sector (solicitors) are most at risk.

Furthermore, case studies detailing evident complicity or complacency do little to help those making an effort to comply. The authors’ research highlights the need for better information on how the innocent are duped and how criminals present themselves. Refining these typologies would go some way to improving risk awareness and resulting SARs submissions.

With regard to information sharing, this paper suggests that, while the supervisory environment for the legal profession also consists of a number of different bodies, this is due to geographical and professional distinctions and is thus easier to navigate for law enforcement. However, information sharing between law enforcement and the sector is not on the dynamic footing needed to react to increasingly complex money laundering. This research identified the need to design more bespoke forms of information sharing with legal professionals, outside the confines of the SARs regime, to improve collective knowledge.

Estate Agents

Estate agents are on the front line of the UK’s property market, but this research establishes that the industry, government and law enforcement agree that, despite pockets of good practice, AML compliance rates are poor and SARs submissions too low. This paper asserts that the low risk rating assigned to estate agents in the NRA 2017 will do little to remedy this situation.

The authors’ research also suggests that the NRA 2017 and other guidance need to display a better understanding of the increasing diversity within the sector, particularly by examining the potential criminal abuse of less well-understood areas such as property finders, auctions and the emerging online-only model. There is also a clear need to establish a more effective means of reaching out to the sole traders and micro-businesses that dominate this sector.

The key to securing better intelligence engagement from the sector lies in tackling two key issues – the industry culture around AML and poor AML supervision registration rates. This paper suggests rebalancing the risk–reward equation in this competitive market through more robust and visible supervision by HM Revenue and Customs (HMRC) and the creation of ‘proud to comply’ AML branding to sit alongside other good-practice hallmarks adopted by the industry.

This paper establishes that links between HMRC and industry regulatory and representative bodies are underdeveloped and therefore failing to make use of the wealth of information and intelligence outside the formal AML regime, such as trade bodies. It recognises the difficulty for

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5. The AML supervisor for estate agents.
law enforcement in engaging with a sector dominated by sole traders and micro-businesses, but recommends that more should be done to engage with the sector via trade bodies.

**Trust and Company Service Providers**

Finally, this paper addresses the increasingly well-documented misuse of UK companies and corporate vehicles in global money-laundering scandals. While the NRA 2017 assigns its highest risk rating to UK standalone TCSPs, this paper asserts that more needs to be done to understand the risks of non-UK-based TCSPs, as well as criminals’ abuse of the direct incorporation route.

The SARs yield from standalone TCSPs is universally accepted as poor. This paper identifies weak overall AML compliance within this sector as the primary cause and recommends improving AML supervision registration rates (by working with Companies House to identify non-registered businesses) and more robust and visible AML supervision by the sector supervisor, HMRC.

This paper finds that the diverse options available to criminals who wish to establish corporate structures – through accountants, lawyers, financial professionals, standalone UK TCSPs, and directly with Companies House – coupled with an uncoordinated supervisory response, create significant barriers to plugging the intelligence gap. The authors’ research also identifies legal barriers to intelligence sharing between Companies House and HMRC, which must be rectified.

**Non-SARs Intelligence**

This paper recognises that much of the dialogue in relation to closing the intelligence gap remains focused on SARs. However, exploring other intelligence streams provides a potential means of improving the intelligence picture. Again, the under-exploitation of potential intelligence from other sources, such as whistleblowing, is in contrast with the financial sector. This paper highlights models from the UK and the US, such as whistleblowing and more targeted information collection (using the example of geographic targeting orders [GTOs]), which merit consideration in this context.

**Conclusion**

This paper makes a number of observations about the findings as a whole. First, to silo intelligence along sectoral lines is misguided and fragments the picture. There is a need to look at this issue through the prism of activities.

With regard to intelligence inputs from the regulated sector, while this paper recognises that a ‘more SARs’ approach is not the answer, it finds that poor SARs submissions (assessed on a quantitative and/or qualitative basis) are a feature in the non-financial sectors. This is, in part, a symptom of poor overall compliance, which is itself a product, in places, of weak AML supervision.

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6. The UK registrar of companies.
Furthermore, the one-way snapshot intelligence flow delivered by the SARs regime is increasingly viewed as an anachronism. The need for a more dynamic flow of intelligence is clear, but lacking in the non-financial sectors. Other potential areas of intelligence, such as whistleblowing, are largely untapped in this arena.

Changing the AML culture within the industry requires a two-fold approach of more robust and visible AML supervision and of identifying specific measures to apply within each sector. To better attune these sectors to the specific risks also requires more granular risk assessment at both national and sectoral levels – steps have been taken in this regard in the NRA 2017, but further work is needed. In short, there is no single solution which will remedy the intelligence gaps in this arena. This paper highlights the need for systemic change.

Recommendations

Recommendation 1: Information and intelligence in relation to money laundering should be gathered, structured and disseminated along activity rather than sectoral lines.

Recommendation 2: Strategic intelligence assessments of particular high-risk activities should be produced in advance of the preparation of a future NRA, with sanitised versions made available to the professions.

Recommendation 3: Risk assessments at national and sectoral levels should be recognised as joint assessments by government and representatives of the professions.

Recommendation 4: Law enforcement should work with the professions to disambiguate the term ‘money laundering’ and to develop less divisive terminology describing professionals’ involvement.

Recommendation 5: OPBAS should suggest partnering initiatives between the FCA’s Intelligence Department and less well-equipped PBS and highlight PBS good practice examples across the system.

Recommendation 6: OPBAS should review the format and processes of FIN-NET and SIS once critical mass has been achieved to consider the capacity of PBS participants to process intelligence derived from them.

Recommendation 7: OPBAS should facilitate discussions around the pooling of PBS resources in certain areas to create effective intelligence functions to support their work.

Recommendation 8: The intelligence value of non-complicit professionals should be disaggregated from the money-laundering risk presented by the activities that they facilitate.
Recommendation 9: The NCA Specials programme or another mechanism should be used to develop a coordinated network of vetted professionals to advise on operational intelligence and to co-write typologies and alerts.

Recommendation 10: The UK government should consider ways to involve the professions in developing intelligence under the JMLIT model.

Recommendation 11: HMRC should improve the visibility of the AML registration gap and of the sanctions it issues.

Recommendation 12: HMRC should clarify the information-sharing pathways between itself and partners in the AML and non-AML intelligence regime.

Recommendation 13: A redesign of the SARs regime and procedures should ensure that the system adequately meets the needs of non-financial sector actors.

Recommendation 14: Policymakers should consider the different whistleblowing models, which may offer a route to improved intelligence collection in relation to money laundering involving professionals.

Recommendation 15: Policymakers should consider the value of supplementing the SARs regime with more targeted reporting measures.
Introduction

The UK’s place at the top table of ‘money-laundering capitals of the world’ is often disputed by government. However, in 2016, the National Crime Agency (NCA) noted that the amount of money laundered in the UK could be between £36 billion and £90 billion.¹ The following year, demonstrating that the nature of money laundering makes it difficult to quantify, the NCA suggested this figure was likely to be a significant underestimate.²

Although the size of the problem may be unquantifiable, the risk to which the UK is exposed, due to the size of its financial and professional services sector, is clear. A particular attraction of the UK as a destination for licit and illicit money is the well-developed infrastructure of professional service providers (the lawyers, accountants, trust and company service providers, and estate agents examined in this research) set up to support the movement of wealth through the UK’s economy.

Over the past decade, the government has increasingly demonstrated an awareness that the billions of pounds of criminal proceeds that flow through the UK’s financial system are a systemic risk to its financial integrity and a reputational slur on the UK as a place to do business.

Since the inception of the NCA in 2013, the government has been keen to scale up efforts to challenge the UK’s reputation in this field, particularly with regard to tackling the more complex, non-cash-based money laundering to which it links the non-financial sector professions examined in this research – accountancy service providers (ASPs), legal service professionals, estate agents,

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and standalone trust and company service providers (TCSPs). While the bulk of activity carried out by these professions is undoubtedly legitimate, the government’s focus on their role is enduring.

However, to tackle a problem one must first understand it. It is here that the UK response falls short. UK law enforcement’s activities, including intelligence gathering, have traditionally focused on organised criminal groups involved in illicit trafficking (drugs, arms, people, etc.) and the resultant cash-based money laundering. As a result, the intelligence picture in relation to more sophisticated money-laundering typologies and the professionals who facilitate them is less well understood. The 2014 ‘High End Money Laundering: Strategy and Action Plan’ (HEML) acknowledged this, stating that knowledge of the threat from HEML was weaker, but improving.

Moreover, the first NRA in 2015 noted that ‘the collective knowledge of UK law enforcement agencies, supervisors and the private sector of money laundering and terrorist financing risk is not sufficiently advanced’, and made a commitment to plug the intelligence gaps relating to high-end money laundering.

Although the refreshed NRA 2017 noted that ‘whilst intelligence gaps remain in these areas, we have developed our understanding substantially since 2015’, the authors’ research suggests that the ability of the UK to plug the significant remaining intelligence gaps in this field will be predicated on the extent to which it tackles the structural and systemic reasons for their existence.

Scope of this Paper

The sectors examined in this research are distinct in culture and character. However, when examining the factors within each sector that contribute to the intelligence gaps around their involvement in money laundering, the authors’ research identifies a number of commonalities that, to date, have not been comprehensively aired in other literature.

First, this paper looks at the structure of money-laundering intelligence flows (which are predominantly demarcated by sector) and examines whether that structure is fit for purpose in understanding the role of these sectors in the complex processes that facilitate non-cash-based money laundering. It also examines the language and terminology used to describe the roles of these sectors in facilitating money laundering and how this may be a barrier to intelligence development and improved cooperation.

3. Company formation and management services may also be offered by law and accountancy firms, supervised by their Professional Body Supervisors (PBS) and, indeed, by financial institutions, supervised by the Financial Conduct Authority (FCA).
6. Ibid.
7. Ibid.
Second, this paper examines the role of the UK’s fragmented AML supervisory regime, with its 25 supervisors (statutory and professional body supervisors – PBS), both in terms of supervisors’ role as a source and disseminator of intelligence and their role in providing a ‘credible deterrent’ to drive wider anti-money-laundering (AML) compliance and, by extension, the provision of suspicious activity reports (SARs).

Although this part of this paper highlights cross-cutting systemic and structural commonalities that must be remedied to rectify this situation, it does not neglect the factors specific to each sector that may provide levers for change. In this vein, this paper goes on to examine the commonalities and differences between the sectors, which, with the cross-cutting issues identified, offer a holistic approach to increasing intelligence in relation to these professions. For each sector, this paper examines the intelligence and risk picture highlighted in the NRAs, and the intelligence yield from the SARs system. Noting that closing the intelligence gaps cannot be achieved simply with more SARs, this paper examines other potential intelligence streams, including examples from other areas of UK and international practice.

In short, this paper highlights the various actions, both cross-cutting and sectoral, that are needed to enable this system to generate much-needed intelligence more effectively. Doing the same thing in the same way and expecting a different result is wrong-headed and naïve. New approaches and new ways of thinking are required if the UK is to see the fundamental step-change needed to plug the intelligence gap. This paper seeks to provide impetus for this change.

Methodology

The research is grounded on three principles:

- First, if the intelligence gaps identified in the NRA are to be closed, then all participants in the AML regime must play a part in closing them (for example, law enforcement, AML supervisors and the private sector).
- Second, SARs are an important form of financial intelligence on HEML, and creating optimal conditions in the SARs regime is important. However, a ‘more SARs’ approach is not the answer. Other intelligence inputs must be exploited to their full potential.
- Third, intelligence-sharing between all parties in the AML regime must be free-flowing and dynamic at all levels, including public–private dialogue.

During the first stage of the project, the RUSI team analysed publicly available information on the current state of HEML intelligence in the UK, including government literature, open source intelligence products and criminal and regulatory cases. In the second stage, the team conducted approximately 40 semi-structured interviews with representatives from law enforcement, policymaking, supervisory bodies, and the professions. Findings from the literature review and interviews were tested in stakeholder workshops in November 2017.

8. Public sector bodies undertaking the role of AML supervisor.
I. Going Beyond the Government Narrative

The inclusion of the professions examined in this study within the AML regime\(^1\) derives essentially from the recommendations of the international standard-setter in this field, the Financial Action Task Force (FATF). The standards to which these professions\(^2\) must adhere\(^3\) relate to their two key roles in the regime: a preventative role as gatekeepers in the financial system and a detection role through identifying suspicious activity; and delivering it to the authorities in the form of SARs reporting.\(^4\)

Their inclusion by FATF derives from the fact that certain activities carried out by professionals in these sectors – such as company formation, real-estate transactions and facilitating financial transactions – are vulnerable to abuse for money-laundering purposes.

Activity vs Sectoral Risk

The authors’ research finds that the conflation of activity and sectoral risk translates into a common shorthand of referring to certain professions (lawyers and accountants, for example) – rather than the particular activities they facilitate – as being high risk for money laundering. Furthermore, this research finds that this has a direct impact on the way publicly available information and intelligence on money laundering, particularly that which is deemed ‘high end’ is gathered, structured and disseminated.

When examining the structures, processes and transactions that underpin the non-cash-based money laundering that is the current focus, this sectoral approach presents an intelligence picture that is fragmented and fails to understand and harness the interplay between certain activities. Although the authors’ research suggests that the NCA is now examining intelligence in

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1. As part of the regulated sector under the provisions of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 and the Proceeds of Crime Act 2002.
2. Known in FATF terminology as designated non-financial businesses and professions (DNFBPs).
3. That is, ‘know your customer’, monitor transactions and report suspicious activity to the authorities.
5. The research team was not privy to restricted intelligence products in the research process, but reviewed extensively the publicly available information and intelligence in this field and supplemented this with interviews with law enforcement professionals to confirm findings.
terms of key environments for money laundering, this has neither appeared in publicly available information nor been reflected in its dialogue with the professions.

**Box 1: Activities and Sectors in International Standards**

The activity basis for the inclusion of these professions in the global AML regime is apparent in the FATF standards for lawyers and accountants,⁶ where only certain activities carried out by these professions are included in the scope of the AML regime. Notably, independent legal professionals and accountants are covered by FATF standards only when they prepare or carry out certain transactions for their client in relation to a range of activities, such as buying and selling real estate, managing client money and assets and creating or managing companies.⁷

The extent to which this nuance is translated into the UK Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (MLRs 2017)⁸ is, for the time being at least, strongly linked to the European Directive in this field,⁹ which deviates from the FATF standards in places by taking a more sectoral approach, particularly in relation to ASPs.¹⁰

**NRAs 2015 and 2017 – The Need for Strategic Analysis**

As per FATF standards, money-laundering risks need to be identified at national level by governments in order to inform the approach taken by AML supervisors and their supervised population.¹¹ The UK has, to date, defined these risks in two editions of a strategic document – the NRA 2015 and NRA 2017. In the latter, a subtle shift in terminology from ‘regulated sectors’ to ‘high-risk services’ has been welcomed by representatives of the professions interviewed.¹²

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6. Similarly, there are definitions of the types of activity that bring estate agents and TCSPs within the regime.
7. FATF Recommendation 23.
10. For example, the activity basis in the EU Directive (and ensuing UK MLRs 2017) still helps define when lawyers, TCSPs and estate agents are included in the regime, while all the professional activity of certain types of accountant is within scope.
11. FATF Recommendation 1.
However, the authors’ research suggests that this should be developed further in future NRAs towards cross-sectoral activity risk.

A common theme across the sectors reviewed during the research is a view that the NRA 2017 does not adequately identify and assess money-laundering and terrorist finance risks to the required level of granularity. There is an acceptance that assessment has been enhanced since the NRA 2015, but that it is still very broad brush and does not fully reflect the diversity of firms and services in the sectors. One criticism is that the methodology behind the NRA 2017 is not clear.\textsuperscript{13}

It would not be correct to suggest that representatives of the professions had no involvement in the preparation of the NRA 2017. However, several interviewees said their views had not been given much weight and that they had not seen the detail of other material, primarily law enforcement analyses, on which the assessments were based.

These law enforcement analyses appear to be based on individual pieces of tactical intelligence rather than strategic intelligence assessments\textsuperscript{14} of money laundering associated with an activity or sector overall. Whatever the case, the opacity of the intelligence base for these assertions undermines their validity in the eyes of PBS and regulated sectors.

Much of this paper will deal with the need for better dialogue and closer cooperation between the public and private sectors to inform the intelligence picture, and this is perhaps nowhere more important than in the preparation of national risk assessments.

**Terminology**

A key finding of the authors’ research is that the term used by government and law enforcement in this context – professional enablers – is seen as divisive. This term is disputed by those working hard to comply with MLRs and reporting requirements, who feel that it implies criminal intent rather than reflecting the more inadvertent involvement of professionals in some instances. The authors’ research suggests the need for less divisive terminology to better engage the professions.

\textsuperscript{13} NRA 2017, Annex A states that it ‘follows the three key stages identified in FATF guidance, of identification, assessment and evaluation of evidence within the context of the Management of Risk in Law Enforcement (MoRILE) model’. It refers to an impressive-sounding data collection effort, but lacks detail on how analysis of this data leads to the risk assessments contained in the body of the report.

\textsuperscript{14} Broadly speaking, tactical intelligence relates to specific individuals or operations and informs decision-making in live operations. Strategic intelligence defines a problem as a whole and broadly informs operational policy.
In some instances, the term ‘money laundering’ itself may cause the under-reporting of intelligence. While the law is clear that reporting obligations cover the activities in question,\textsuperscript{15} this paper suggests the need for public disambiguation of the term to ensure that those who do not handle or help move funds,\textsuperscript{16} but who facilitate the structures that allow this to happen, do not excuse their non-reporting on the basis that they do not launder money.\textsuperscript{17}

**Types of Involvement**

For law enforcement agencies and AML supervisors to use their limited resources in an optimal manner, it is necessary to differentiate between complicit individuals and the professional advisers who act as inadvertent enablers, as engagement strategies differ significantly depending on the nature of involvement. For example, in situations of complicity, individuals are unlikely to file SARs, so law enforcement agencies should channel their efforts into identifying key players and engaging with supervisory authorities to take criminal or regulatory action. In cases where abuse has been inadvertent, the best use of resources would be in raising awareness of money-laundering typologies and red flags to improve reporting.

Whereas at an international level there is broad recognition that the involvement of professional advisers in money laundering is not always intentional or even negligent, the authors’ research suggests that not enough work has been done, at least publicly, to delineate the role of the professions along these lines.

In 2013, FATF highlighted a range of involvement of legal professionals in money laundering and terrorist financing from ‘innocent involvement’ to ‘complicity’.\textsuperscript{18} Figure 1 illustrates how these descriptions of levels of involvement translate into compliance responses and failures by professionals, including whether a Suspicious Transaction Report (STR) was made or not.\textsuperscript{19} Each of these would require a different supervisory and enforcement stance.

\textsuperscript{15} Under the Proceeds of Crime Act (POCA) 2002, Part 7, Section 330, a person who knows or suspects, or has reasonable grounds for knowing or suspecting, that another person is engaged in money laundering, based on the information that came to him in the course of a business in the regulated sector, commits an offence if he does not make a disclosure to the Money Laundering Reporting Officer (MLRO) or the NCA.

\textsuperscript{16} This is fundamentally the risk identified at FATF level.

\textsuperscript{17} Often, professional services providers will be involved in creating structures or arrangements that facilitate the management of the proceeds of crime, which is considered money laundering under UK law if the professional knows or suspects the criminal provenance of the property. However, various interviews with the authors between March and September 2017 suggest that some in the sector do not make this link in practice.

\textsuperscript{18} FATF, ‘Money Laundering and Terrorist Financing Vulnerabilities of Legal Professionals’, June 2013, p. 5.

\textsuperscript{19} STR is the term used by the FATF, rather than SAR.
Figure 1: Involvement of Legal Professionals in Money Laundering and Terrorist Financing

RED FLAGS NOT IDENTIFIED

INNOCENT INVOLVEMENT
No red flag indicators apparent

UNWITTING
Basic customer due diligence (CDD) undertaken. Some red flags, but missed or significance misunderstood

RED FLAGS IDENTIFIED

WILFULLY BLIND
Further questions are not asked, isolated transaction is completed and often no STR is filed where required

BEING CORRUPTED
Wilful blindness persists for repeat instructions from the same client, the client's associates or other matters with similar red flag indicators

ALERT & PROACTIVE 1
Low level of suspicion – STR made where required and proceed with caution if appropriate or stop acting

ALERT & PROACTIVE 2
Higher level of suspicion or knowledge – STR made where required and stops acting

COMPLICIT
Actual knowledge of the criminality in which they are involved

Source: Adapted from a diagram in FATF, 'Money Laundering and Terrorist Financing Vulnerabilities of Legal Professionals'.
In her 2016 study of the facilitation of money laundering by legal and accountancy service providers, Katie Benson reviews the terms used in the literature and sums up the various characterisations of professionals’ involvement in money laundering as in Table 1. The inconsistency of terminology demonstrated is not helpful and a better taxonomy, coupled with analysis of where the most significant failures occur, would help to define supervision strategies.

Table 1: Characterisation of Professionals’ Involvement in Money Laundering

<table>
<thead>
<tr>
<th>Knowing</th>
<th>Unknowing</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Willing</strong></td>
<td><strong>Unwilling</strong></td>
</tr>
</tbody>
</table>


Since professionals provide services that may be used by criminals as well as legitimate customers, their abuse by money launderers should not, in itself, suggest complicity or negligence on the part of the professional. The authors’ research notes the need to avoid after-the-fact assessments of professional advisers’ actions on the basis of information that was not and could not have been available to them at the time. Many interviewees felt that the nature of their work meant that their involvement was frequently incidental rather than central to money laundering.20

In short, the terminology and narrative used to discuss the involvement of these professions in money laundering should more accurately reflect the range of their facilitation of involvement (from inadvertent to complicit) to better inform engagement strategies from law enforcement and PBS.

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20. For example, an accountant or lawyer may be involved at some point in a business process. However, their lack of involvement in the underlying business transaction means that money laundering may not always be evident to them.
Recommendations

Recommendation 1: Information and intelligence in relation to money laundering should be gathered, structured and disseminated along activity rather than sectoral lines.

Recommendation 2: Strategic intelligence assessments of particular high-risk activities should be produced in advance of the preparation of a future NRA, with sanitised versions made available to the professions.

Recommendation 3: Risk assessments at national and sectoral levels should be recognised as joint assessments by government and representatives of the professions.

Recommendation 4: Law enforcement should work with the professions to disambiguate the term ‘money laundering’ and to develop less divisive terminology describing professionals’ involvement.
II. Supervisors and Supervision

A KEY COMPONENT OF an AML regime, as set out by FATF, is an effective supervisory system, which ensures that those private sector entities captured by the AML regime are adhering to the rules. In the UK, this includes supervising compliance with the requirements of the MLRs 2017 and the need to report suspicious activity.

The UK’s AML supervisory regime, in contrast to the more unitary models adopted by some other countries, is split between three statutory bodies and 22 PBS. In the NRA 2015, the government recognised the weaknesses of this system as both the lack of a consistent credible deterrent and breakdowns in the sharing of information between law enforcement and AML supervisors.

The broader weaknesses of such a fragmented supervisory regime have been widely commented on elsewhere. This paper does not seek to reiterate these points of criticism, but, based on a review of the available literature and a dip-sample of interviews with statutory and PBS supervisors, looks at the impact of such a fragmented regime on the intelligence process. In this context, we explore the potential role of the Office for Professional Body Anti-Money Laundering Supervision (OPBAS), launched in January 2018, to raise standards within the 22 PBS and to better coordinate supervisory activity – a development the authors’ research welcomes (see Box 2).

Role of the Supervisor as a Credible Deterrent

The purpose of appointing AML supervisors for the various professions is, of course, to drive up standards of compliance. Specific analysis of alternative supervisory frameworks is lacking, but the authors’ research suggests a relationship between poor overall AML compliance and low or poor-quality SARs submissions. One factor in ensuring successful supervision is the existence of a ‘credible deterrent’ – the likelihood that non-compliance will be identified and, where appropriate, what FATF describes as ‘effective, proportionate and dissuasive’ sanctions applied.

1. Such as customer due diligence and risk assessment.
2. POCA 2002, Part 7, Section 330 creates an offence of failure to disclose suspicious activity.
3. For example, Spain has a single AML supervisor.
4. HM Revenue & Customs, the Financial Conduct Authority and the Gambling Commission.
7. Research included interviews or email exchanges with a sample of nine PBS.
8. FATF Recommendation 35.
The NRA 2015 noted that the AML supervisory environment was failing in places to provide such a deterrent and thus failing to raise overall AML compliance in certain areas. While the MLRs 2017 are clear that supervisors are required to take appropriate measures to ensure compliance, this research finds that, in both the PBS and statutory realms, this requirement could currently be found wanting.

**Box 2: Office for Professional Body Anti-Money Laundering Supervision (OPBAS)**

OPBAS became operational in January 2018 with a mandate to ensure high standards of PBS AML supervision, to liaise with the three statutory supervisors and to facilitate the flow of information between law enforcement and PBS.9

The OPBAS sourcebook10 notes that one of its key expectations is for PBS to actively share information and intelligence, stating: ‘Professional body supervisors will actively share intelligence with other supervisors and with law enforcement agencies’.11 Supervisors should also have in place arrangements to handle whistleblower intelligence.

In relation to the PBS, this research finds that some do not see themselves as ‘enforcers’, but more as guides and/or supporters for their members. This is perhaps in line with the continuing dual role of many PBS as advocacy bodies and AML supervisors.

**Box 3: The Clementi Principle**

David Clementi’s 2004 report into the regulation of legal services in England and Wales enshrined the principle that regulation of a sector should be separate from its representative functions and laid the foundations for the creation of the Legal Services Board.12

In many cases, PBS have not followed the example of the Law Society of England and Wales in establishing a clearly separate supervision and enforcement function in the Solicitors Regulation Authority. The wider adoption of the Clementi Principle of separation of regulatory and representative functions is beyond the scope of this report, but it is worth noting that resistance to it by some PBS also extends to the AML regime.

The OPBAS sourcebook makes clear that ‘enforcement should seek to remove the benefits of non-compliance and deter future non-compliance, but should also be remedial and preventive’. As part of the FCA, OPBAS may look to sharing FCA credible deterrence practice as a means of raising standards in this regard.

However, some PBS do not believe that an FCA approach to supervision is appropriate for their supervised populations or possible under their powers. While this research does not examine this point in detail, it is clear that none of the PBS has the supervisory or enforcement capacity of the FCA, nor their close working relationship with law enforcement.

Where HM Revenue and Customs (HMRC) is the statutory supervisor for all or parts of a profession, the lack of transparency of enforcement actions taken by them also reduces credible deterrence. HM Treasury and OPBAS are committed to better, and more standardised, publication of data on AML supervisory activity, but concerns remain. In the context of this report, the need to highlight enforcement measures to build credible deterrence and, by extension, to drive intelligence reporting, should be noted.

**Intelligence-Driven Supervision: Differing Approaches**

Statutory AML supervisors, namely the FCA, HMRC and the Gambling Commission, housed within larger organisations with intelligence capability and capacity, have an advantage over PBS in that they operate within an intelligence-driven environment.

Nonetheless, the authors’ research identifies some examples of PBS working to recognised intelligence-handling standards, with intelligence being a central part of their supervisory approach. However, these could be seen as the exception rather than the rule; there is a widely uneven playing field and vastly differing cultures around the role of intelligence within the PBS population. Research reveals that a number of PBS do not see a role for themselves in the intelligence process and regard their supervisory role as one of supporting and guiding their members (rather than playing an active part in the defensive AML regime). In some cases, this reflects their view of the low risk posed by their profession; in others, cultural factors may be in play, such as the importance of client confidentiality and privilege to the professions, and lack of experience working within the law enforcement and intelligence community, particularly in handling intelligence in accordance with national standards.

This research suggests that the primary challenge for OPBAS will be supporting the outliers to incorporate an intelligence-led approach into their supervision and developing their

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14. The government did not supply AML supervisors with a common toolkit of powers when the MLRs were revised.
15. Non-regulated accountants, standalone TCSPs and estate agents.
16. This issue is explored later in this paper in relation to the specific sectors.
17. Email to the authors from PBS, April 2017.
capacity and capability to handle intelligence. It is here that OPBAS may be able to draw on the well-developed resources of its host organisation, the FCA, to share good-practice models and partner specific PBS. OPBAS is well placed to identify good practice in PBS intelligence models and to disseminate these across the system. However, this research suggests that a significant transition period will be needed, and some may find this hurdle culturally and procedurally hard to overcome, particularly smaller PBS, where resource constraints will be an issue.

**Information Sharing**

Information sharing is key to an effective AML regime overall, but, with 25 supervisors, effective information sharing is challenging, not least due to the numerous supervisors for some sectors, but also because of the cross-sector nature of some high-risk activities, such as the purchase of real estate or the formation of companies. The former implies a need for effective information-sharing mechanisms between the PBS and statutory supervisors within a particular sector, the latter a need for better sharing between PBS from different sectors.

This research finds that the uneven playing field in intelligence-handling capability and capacity noted above is a significant barrier to a free flow of intelligence between statutory supervisors, PBS and law enforcement. This is due largely to the trust deficit between many players within the system, given a lack of confidence in the ability of some PBS to protect sensitive intelligence.

The government has given OPBAS a key role in driving information sharing between PBS, other supervisors and law enforcement. Levelling the playing field with regard to intelligence-handling capacity and capability must be the precursor to increased trust and better information sharing. OPBAS has only recently become operational and it is not possible to assess how it will tackle this issue, but research suggests it is high on its agenda.

**Existing Information-Sharing Mechanisms**

The OPBAS sourcebook specifically mentions existing information-sharing platforms, namely two intelligence platforms hosted by the FCA – the Financial Crime Information Network (FIN-NET) and the Shared Intelligence System (SIS). Some PBS are members of these systems and, while not mandatory, OPBAS guidance strongly advocates membership.

The authors’ research notes the concerns of some PBS currently engaged with these mechanisms, who see little value in the intelligence they derive from them. However, this paper suggests that only by involving all PBS will a critical mass of useful information be fed into the system and a virtuous circle of intelligence sharing be achieved.

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18. Particularly ASPs, which have fourteen different supervisors.
Whatever the case, this paper notes that focusing on the overarching mechanisms for sharing intelligence without dealing with the underlying approach of PBS to intelligence-driven supervision risks these mechanisms remaining under-utilised. PBS need to see themselves as part of an intelligence-sharing approach, which will require a change of attitude, rather than as passive receivers of intelligence.

Aside from concerns about the day-to-day handling of intelligence, the authors’ research notes that these platforms do not provide a central intelligence collection and analysis function that can pull captured information into a strategic overview. This research suggests that the capacity of certain PBS may not allow them to create their own intelligence functions, with suitably trained and experienced staff, to plug this key gap. While many will look to OPBAS to fulfil this role, it is primarily a ‘supervisor of supervisors’ and not an intelligence function for PBS. One solution may be for PBS to pool resources.

A number of other arrangements exist, including outreach efforts of initiatives such as the Flag It Up Campaign and the establishment of AML Affinity Groups for the accountancy and legal sectors under the auspices of the AML Supervisors Forum, which facilitate discussion of sector supervisory policy to promote consistency in standards and act as an information-sharing forum. Although these bodies are a valuable part of coordination between the supervisors in a particular sector, our view is that they do not necessarily provide a fit-for-purpose forum to share the focused (and sensitive) intelligence required to drive the process. They also reinforce the sectoral – rather than activity – approach, as suggested earlier in this paper. The authors’ research suggests a rethink is needed on the approach to inter-supervisor intelligence sharing.

Information Sharing Between Supervisors and Law Enforcement

This research finds that the well-developed relationships between statutory supervisors and law enforcement is often in stark contrast to those with PBS. While a minority of PBS have working relationships with law enforcement, these depend largely on personal relationships rather than a strategic approach to partnership. Where such relationships do not exist, the authors’ research identifies operational security concerns (whether justifiable or not) to be a barrier to effective information sharing.

Another challenge highlighted through the authors’ research is that, given the multiplicity of PBS, law enforcement struggles to identify which PBS to approach in connection with a specific case or for more general engagement. There are potentially unrealistic expectations within law enforcement of the OPBAS role as a broker, including by developing a central register of

21. MLRs 2017, Regulation 48 sets out what is legally expected of PBS in this regard.
23. The AML Supervisors Forum is a non-statutory body set up to encourage the sharing of information and best practice between supervisors.
individual PBS member firms and individuals. For operational investigative needs, FIN-NET or SIS could also play a role, should all or most PBS become active members.

**Recommendations**

The role of the supervisor in the intelligence process is clear, both in providing a credible deterrent to drive overall compliance and subsequent SARs reporting, and as an intelligence source themselves. On both of these points the authors’ research finds the UK AML supervisory regime lacking. Furthermore, this paper finds that the difficulties of coordinating intelligence in such a complex environment need to be addressed if a holistic intelligence picture is to emerge.

There are high expectations of the role of the OPBAS in solving some of these issues, particularly by facilitating information sharing between supervisors and with law enforcement. The authors’ research suggests this is an issue OPBAS should prioritise, but that there is a need to clarify at an early stage how it sees its role in facilitating flows between law enforcement and supervisors.

The authors’ research notes that there are intelligence and information platforms and forums to facilitate this exchange, but that their fitness for specifically coordinating PBS intelligence has not been fully assessed. OPBAS must make a clear case for the advantages of membership of FIN-NET and SIS, and government should encourage the creation of more bespoke intelligence-sharing forums under the AML Supervisors Forum.

**Recommendation 5:** OPBAS should consider partnering initiatives between the FCA’s Intelligence Department and less well-equipped PBS and highlight PBS good-practice examples across the system.

**Recommendation 6:** OPBAS should review the format and processes of FIN-NET and SIS once critical mass has been achieved to consider the capacity of participants to process intelligence derived from them.

**Recommendation 7:** OPBAS should facilitate discussions around the pooling of PBS resources in certain areas to create effective intelligence functions to support their work.

**Public–Private Information Sharing**

The discourse on the role of the professions in contributing to the AML intelligence picture has traditionally been confined to their legal requirements under the POCA 2002 to file SARs, rather than on a two-way information exchange focused on operational priorities. This model is outdated and fails to recognise the maturing of the global AML regime.
This appears to have been recognised by the UK government in commitments made in the AML Action Plan 2016 to develop new means of information sharing with the private sector.\textsuperscript{24} Since 2015, this has been evident internationally through the growth of more formalised financial information-sharing partnerships (FISPs),\textsuperscript{25} of which the UK’s Joint Money Laundering Intelligence Taskforce (JMLIT – Box 4) was a forerunner.

\begin{quote}
\textbf{Box 4: The UK’s FISP – JMLIT}

FISPs between the private and public sectors in relation to AML have emerged in a number of jurisdictions in recent years, including the UK. Engagement with these mechanisms is voluntary and outside the formal reporting requirements of the SARs regimes. Their focus is on developing a more coordinated and dynamic approach to information exchange based on operational imperatives rather than regulatory requirements.

The UK FISP is the JMLIT, which brings together the NCA, law enforcement and some major UK banks to share information and develop strategies to tackle high-level money laundering and economic crime. Its output is developed through, among other things, an Operations Group, which concentrates on developing actual cases, and Expert Groups, which examine particular themes, such as terrorist finance or laundering the proceeds of corruption.\textsuperscript{26}
\end{quote}

However, to date, the UK’s efforts to build a more dynamic and two-way flow of information and intelligence with the private sector have largely been confined to the financial sector. The authors’ research finds that the information-sharing relationship with the sectors examined in this report can broadly be defined by its ‘them and us’ culture.

This relationship, or lack thereof, means that the government’s stated commitment that ‘radically more information’\textsuperscript{27} needs to be shared with the private sector is not being fulfilled, and that the professions are largely working in the dark when it comes to filing SARs. Moreover, the authors’ research finds that the red flags and typologies provided by the authorities are not a good basis on which to identify suspicious activity.\textsuperscript{28} It also suggests that, given the diversity

\begin{itemize}
\item \textsuperscript{28} One frequent example noted by the authors’ research is the suggestion that criminals could be identified by their use of false documentation.
\end{itemize}
identified in the individual sectoral commentaries later in this paper, there needs to be a more detailed understanding of particular sub-sectors’ exposure to AML risk.

**Increasing Public–Private Intelligence Collaboration**

The authors’ research finds that the primary barrier to increasing public–private exchange of information in this arena is a pervading culture of mutual mistrust. Only by addressing the causes of this can a new culture be created in which law enforcement dares to share closely guarded operational intelligence with the private sector and by doing so create a virtuous circle of two-way information exchange.

The majority of interviewees felt the lack of a true public–private partnership approach to intelligence sharing was undermining intelligence development in this field. While trusted personal relationships exist, these need to be deeper and on an institutional level, in line with improved relationships with the banking sector under the JMLIT model.

As noted earlier, the authors’ research identifies that the terminology used has set the tone for the relationship, and statements regarding professional enablers fail to disaggregate the value of the professions as intelligence providers from the risk to which the professions are exposed. For example, categorising whole sectors as high risk has put the government into conflict with them. A discourse that focuses instead on the high-risk nature of certain activities and the subsequent high-value role of non-complicit sector participants in providing intelligence to tackle these threats is preferable.

Repairing this relationship may lead to increased information exchanges and aid the building of the HEML intelligence picture, such as:

- Access to the expertise of the professions to enhance live operational intelligence.
- Development of useful and meaningful typologies.
- Increase in voluntary forms of information exchange.

**Access to the Expertise of the Professions to Enhance Operational Intelligence**

The authors’ research identifies instances of individual law enforcement officers building personal contacts in the professions and sharing meaningful operational intelligence in order to gain expertise and advice on specific complex money-laundering cases. This fundamentally changed their understanding of the intelligence picture and informed the direction of cases.

However, this approach is far from systematised, and the authors’ research suggests this could be achieved by working with supervisors to identify and establish a network of trusted professionals to feed into developing intelligence assessments and advise on tactical matters. To give law enforcement the confidence to share operationally sensitive intelligence, these
individuals could be adopted via the NCA Specials\textsuperscript{29} system or formal secondments, which would enable them to be vetted\textsuperscript{30} to government-approved standards.

**Development of Useful and Meaningful Typologies**

As noted in a 2017 RUSI report: ‘Historically, private sector entities have been given little useful or timely information by public agencies with which to assess risks of money laundering or to identify suspicious activity’\textsuperscript{31} This statement is borne out in the authors’ research, which suggests that law enforcement and UK Financial Intelligence Unit (UKFIU) typologies and alerts are of limited use to the professions in setting the operational risk profiles that are often the trigger for SARs.

Interviewees suggested that there were not only too few typologies and alerts, but that they were not helpful because they were written from the perspective of law enforcement rather than tailored to the needs of the professions. For example, interviewees stated that case studies noting instances of criminality or incompetence were not useful to those striving to comply. Debriefs of situations where compliant sector participants had been duped would be more helpful, as would an assessment of how the criminal had presented themselves as legitimate in these circumstances.

The authors’ research suggests that the involvement of the professions is essential to improve the relevance of typologies and to increase awareness of risk.

**Increase in Voluntary Forms of Information Exchange**

Perhaps most important, in recognition of the inherent limitations of the SARs regime,\textsuperscript{32} the UK and global partners are increasingly seeking to exploit voluntary intelligence and information exchanges with the private sector\textsuperscript{33} to achieve their operational aims. These FISPs primarily involve the large banks as private sector partners.

\begin{itemize}
\item[29.] NCA Specials are civic-minded individuals who volunteer with the NCA to offer specific expertise. See NCA, ‘NCA Specials’, \texttt{<http://www.nationalcrimeagency.gov.uk/careers/specials>}, accessed 27 March 2018.
\item[30.] All NCA Specials are cleared to UK government standards to allow them to access NCA and wider government intelligence.
\item[31.] Artingstall and Maxwell, ‘The Role of Financial Information-Sharing Partnerships in the Disruption of Crime’, Executive Summary.
\item[32.] This is a one-way information flow driven by regulatory compliance rather than operational imperatives.
\item[33.] In the UK, this is occurring primarily through the JMLIT model.
\end{itemize}
While the 2017 RUSI report recognised that ‘FISPs are in their infancy as an operational and policy approach to tackling crime’, they are a growing feature of the UK AML landscape and that of several other jurisdictions. However, the JMLIT has, to date, been confined to a limited group from within the financial sector, primarily a small number of large banks.

While a JMLIT for the professions is a tempting notion, our research suggests this concept does not easily translate; while the UK’s banking sector is dominated by a handful of big players, the non-financial sectors are dominated by SMEs and micro-businesses. This makes identifying a manageable number of actors to engage in such a mechanism problematic and sustainable resourcing difficult.

However, this does not mean non-financial sector actors should be excluded from this process; more effort should be made to bring key professionals into the JMLIT arena to work on key cases and typologies, through the operations and expert groups, as appropriate.

While the JMLIT is not the correct model for voluntary information exchange with these sectors, that is not to say there is no need for some mechanism or response. Ways of harnessing the potential of the professions via a more informal and flexible mechanism, perhaps utilising the suggested network of professionals noted above, should be considered.

Recommendations

The lack of a dynamic relationship between these sectors and law enforcement is in stark contrast to that between law enforcement and the major banks, particularly since the advent of the JMLIT. This contrast is difficult to defend given the government’s accusatory tone in relation to the role of the professions in facilitating money laundering and the high-risk rating given to legal and accountancy service providers in the NRA.

It is fundamental that the relationship be reset from one of conflict to one of cooperation. Establishing a network of vetted and trusted professionals to advise on intelligence cases and to jointly frame alerts and typologies to industry may go some way to increasing the quality and quantity of mandatory reporting under the SARs regime.

However, identifying a means of leveraging greater voluntary information exchanges, along the lines of the FISP model, is more complex given the prevalence of SMEs and micro-businesses. Despite the challenges, developing a more flexible and informal network to complement the JMLIT model should be seen as a priority.

35. Including the US, Hong Kong, Singapore and Australia.
36. See individual sectoral commentaries included in Chapter III of this paper for more details.
Recommendation 8: The intelligence value of non-complicit professionals should be disaggregated from the money-laundering risk presented by the activities that they facilitate.

Recommendation 9: The NCA Specials programme or other mechanism should be used to develop a coordinated network of vetted professionals to advise on operational intelligence and to co-write typologies and alerts.

Recommendation 10: The UK government should consider ways to involve the professions in developing intelligence under the JMLIT model.
III. Looking at the Professional Services Sectors – Commonalities and Differences

ALTHOUGH THIS PAPER advocates a focus on activity risk over sectoral risk, it acknowledges that some of the potential levers for change in relation to intelligence generation lie within individual sectors. Thus, the overarching themes outlined earlier must be considered alongside issues that are distinct to individual sectors, including the make-up of the sectors themselves and their AML supervisory arrangements.

This section presents the authors’ findings, which coalesce primarily around two key themes for each sector: looking beyond the NRA to prioritise intelligence development that promotes better understanding of the risks within the sector; and increasing the intelligence yield from the sector by promoting better compliance rates and improved SARs reporting.

A Sectoral View: Commonalities

Looking at the issue from this perspective again highlights some commonalities, which should be examined first. In addition to the overarching themes of better risk analysis and information sharing discussed earlier, the role of HMRC as an AML supervisor and the importance of improving the intelligence yield from SARs are important factors across the sectors.

The Role of HMRC as an AML Supervisor

HMRC plays a crucial role across three of the four sectors considered in this report. It is the sole AML supervisor for estate agencies and for standalone TCSPs. It also acts as the AML supervisor of last resort for accountancy service providers that are not members of a PBS. Concerns have been raised across these three sectors regarding the under-registration of firms for AML supervision (registration for AML supervision is a legal requirement, but one that is seemingly rarely enforced).

A number of interviewees suggested that information sharing between HMRC, their directly supervised firms and PBS has been hampered by the restrictions placed on HMRC by the Commissioners for Revenue and Customs Act 2005 (see Box 5) and many PBS have publicly

1. Request for information from HMRC was made under Freedom of Information Request 2017/01513. The request was declined on 15 September 2017, as the information is exempt under section 31(1)(a) and 31(1)(g) of the Freedom of Information Act.
highlighted the potential opportunity lost by not extending OPBAS supervision to HMRC.\(^2\) OPBAS does have a role in facilitating information sharing between PBS and HMRC, and making progress on this confidentiality issue will be important.

Another aspect of the HMRC approach highlighted in the research is the lack of publicly available information on sanctions issued by the tax authorities to firms it supervises for AML failures, both in aggregate terms and in identifying the specific firms. The information in the public domain suggests there are low numbers and levels of sanctions.

**Box 5: HMRC’s Duty of Confidentiality**

HMRC’s duty of confidentiality regarding taxpayers’ affairs is a long-established principle, legally enshrined in section 18(1) of the Commissioners for Revenue and Customs Act 2005, which notes that: ‘Revenue and Customs officials may not disclose information which is held by the Revenue and Customs in connection with a function of the Revenue and Customs’.\(^3\)

Section 18(2) provides for a number of exemptions regarding the disclosure of information held by HMRC, including that under section 18(2)(a), the exemption that a disclosure can be made if the disclosure is ‘made for the purposes of a function of the Revenue and Customs’.\(^4\)

**Recommendation 11:** HMRC should improve the visibility of the AML registration gap and of the sanctions it issues.

**Recommendation 12:** HMRC should clarify the information-sharing pathways between itself and partners in the AML and non-AML intelligence regime.

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3. ‘Commissioners for Revenue and Customs Act 2005 (UK)’.

4. While sharing information for the purposes of a civil or criminal investigation is given a clear exemption from the confidentiality clause, there is no express exemption for sharing information for the purposes of an AML supervisory matter. Whether a perceived or real legal barrier, amending or clarifying the legislation for this purpose would help free up the flows of information between HMRC and PBS (and other important bodies in this context, such as Companies House) in relevant areas of mutual interest.
Improving the Intelligence Yield: Low SARs Yield

Another common theme is an assertion by the authorities (including law enforcement) that the quantity and quality of SARs from all of these sectors is too low.\(^5\)

Given that it is impossible to set a correct level of reporting suspicions that are often subjective in nature, this paper does not wholly subscribe to this view. However, this paper notes that the SARs reporting system (which is primarily viewed as being based on reporting bank account transactions) is not user friendly for the professions, for whom ‘transaction’ has different meanings. This may discourage reporting where suspicion is identified.

For example, suspicion may emerge over time in the relationship between a professional services provider and their client, rather than being prompted by a particular financial transaction or series of transactions. Interviewees expressed frustration at the practicalities of reporting such suspicions and the understanding of them by the NCA and law enforcement, citing rejection of SARs on quality grounds as evidence of a lack of comprehension of their role in transactions.

In addition, these sectors are characterised by very large proportions of SMEs. Small firms, partnerships and sole practitioners all share capacity and capability issues when it comes to developing understanding of risk and indicators of suspicion (as well as coping with the AML compliance burden, including CDD obligations). Increasing the yield from SARs will require effective dissemination of such information from their AML supervisors.

Recommendation 13: A redesign of the SARs regime and procedures should ensure that the system adequately meets the needs of non-financial sector actors.

Individual Sectoral Observations

The following chapters of this paper examine these issues in each of the sectors covered by the authors’ research, with specific recommendations to implement the general approach outlined above.

Accountancy Services

Accountancy is a catch-all term that belies the diversity of activities and business models under its umbrella, from book-keeping, to audit, to tax consultancy and insolvency.

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5. This is in contrast to a common observation that there are too many SARs from the financial sector.
Further complexities should also be noted in the distinction between ASPs who are part of the regulated sector, and in-house accountants working within industry, who are not, and professional body accountants, who are members of one of the many self-regulatory bodies for the profession, and unregulated accountants, who are not.

This complexity is carried through to the AML supervisory arrangements; ASPs are supervised by thirteen different PBS, with HMRC acting as the default supervisor for unregulated accountants.

The size of the sector presents a further challenge. The NRA 2017 notes that there are more than 24,000 firms carrying out accountancy services in the UK, but the number of individuals providing accountancy services is unknown.

The size, scale and diversity of the sector requires an approach to intelligence development that reflects this. Research suggests that it is in this regard that approaches to date have failed.

**Looking Behind the NRA: Prioritising Intelligence Development**

The NRA 2017 repeated the NRA 2015’s categorisation of accountancy services as high risk on the basis that: ‘Accountancy services remain attractive to criminals due to their ability to use them to gain legitimacy, create corporate structures or transfer value’.

However, in contrast to its predecessor, the NRA 2017 better recognised the diversity of activities that sit under the term ‘accountancy services’ and took steps to distil this high-risk rating into specific activities and services assessed as higher risk – viewed by the NRA 2017 to be company formation and termination, facilitating financial transactions (including use of client accounts) and tax evasion. This research suggests that, while these findings may be true, they are incomplete and the basis on which they are made is opaque.

6. As defined by the MLRs and Schedule 9 of POCA, insolvency practitioners, those providing accountancy services to other persons and tax consultants are within the scope of the regulated sector.

7. Furthermore, the scope of the regulated sector is often far from clear, with occasional providers of accountancy services unsure whether they are covered by the regime and need to register with HMRC. See, for example, Society of Virtual Assistants, ‘Money Laundering Regulations’, 28 August 2017, <https://www.societyofvirtualassistants.co.uk/2017/08/28/money-laundering-regulations/>, accessed 7 November 2017.

8. NRA 2017, p. 44. Doubts have been raised about the veracity of this number and no official figures exist.

9. Anyone in the UK can call themselves an accountant and offer services without having been trained or being a member of a professional body.

10. NRA 2017, p. 43.

11. Voluntary and involuntary insolvency.

12. However, the authors’ research suggests the use of client accounts by accountants is a rare and marginal activity.
Despite the NRA 2017 noting that ‘recent work by law enforcement has helped significantly to develop our understanding of this area’, research suggests that intelligence development work around other potentially high-risk areas or poorly understood issues would be beneficial. The following two areas are intelligence development priorities.

**Ensure Risk Ratings are Based on a Strategic Understanding of the Sector**

Interviews suggested that law enforcement has a poor understanding of the role of the accountant, often mistakenly equating the role with financial transactions (a niche activity for most accountants) or misunderstanding the role of an audit. Improving knowledge of accountants’ roles should be seen as the foundation to building a better intelligence picture.

While interviewees did not dispute the existence of some complicity and malpractice, it was felt that more could be done to reflect the distinctions in the role and nature of this involvement in more nuanced risk ratings.

**Better Understand the Risk in Areas with Limited Oversight**

While the NRA 2017 better reflects the individual risks associated with certain activities, it does not reflect the risks present in others. This paper suggests the following areas should be additional priorities for intelligence development.

**Unregulated Accountants**

The term ‘accountant’ is not a protected one in the UK, and thus anyone can call themselves an accountant, book-keeper or tax adviser. ASPs who choose not to join a professional body, while bound to register for AML supervision with HMRC, are subject to no other professional oversight. While lack of professional body membership should not be seen to denote criminal intent, intelligence gaps exist around the extent to which this lack of oversight correlates with poor AML practices and whether minimal oversight is seen as attractive to organised criminals.

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13. NRA 2017, p. 43.
14. This led to many of the professional bodies, including those taking part in the Consultative Committee of Accountancy Bodies (CCAB), calling for statutory protection of the term as a way to increase standards.
15. Accountants who are members of a professional body are, by and large, supervised for AML purposes by that body.
16. Accountants who are members of a professional body are subject to a wide range of requirements, such as fit and proper checks, disciplinary processes and sanctions, qualifications and training.
17. NRA 2017, p. 44 notes that investigations have highlighted both regulated and unregulated accountants.
In-house Accountants

As the NRA 2015 recognised, ‘many professional accountants fall outside of the regulations, as they operate in industry, commerce or the public sector. These activities present different risks to those undertaken by accountants offering services by way of business’.\(^{18}\)

The government has made no public attempt to quantify the nature of these different risks. The NRA 2017 uses case studies involving in-house accountants without mentioning the risks specific to them, and does not note that the individuals in question sat outside the AML regulatory framework.\(^{19}\) This area may be an intelligence blind-spot, and more could be done to publicly assess this risk.

*Improving the Intelligence Yield*

Although disputed by some in the sector,\(^{20}\) the NRA 2015 and 2017 assert that the number of SARs from the accountancy sector is too low, with numbers declining year on year; accountants and tax advisers submitted 4,254 SARs in 2015–16,\(^{21}\) representing 1.06% of the total.

*Improving Awareness of Typologies and Red Flags in SMEs*

In common with other non-financial sectors, the identification of suspicious activity in the accountancy sector was portrayed as a manual process\(^{22}\) that relied on a synthesis of understanding of business norms and money-laundering typologies to trigger suspicion. Increasing understanding to produce these triggers is therefore key to improving SARs output in numerical terms.

Across all business sizes, geographies and activities in this study, a lack of tailored outreach to the sector to improve the knowledge of risks relating to particular activities was seen as a key barrier to improving the quality and quantity of SARs. However, while research highlighted instances of good practice in SMEs, interviews suggest it is here that engagement is most needed but most lacking.

As the NRA 2017 notes, the UKFIU has established an Accountancy Engagement Group of organisations submitting the highest numbers of SARs, and shares information on trends and

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18. NRA 2015, p. 38. The NRA 2017 makes no comment on in-house accountants.
19. NRA 2017, p. 46.
20. Many in the sector ascribe the drop to more stringent customer take-on processes that turn away riskier business, as well as the effects of the economic downturn and the non-financial transaction-based nature of most accountancy work.
22. As opposed to automated transaction-monitoring technologies widely used in financial institutions.
patterns with them.\textsuperscript{23} This approach would seem to favour larger firms that already file high numbers of SARs. Finding ways to share useful and relevant information with the SMEs and sole traders that make up 87\% of ASPs\textsuperscript{24} will be key to increasing input from this sub-sector.

**Improving SARs Quality Via Wider Compliance Improvements**

The NRA 2015 also highlighted concerns about the perceived quality of reporting from the sector, noting that, in 21\% of reports, the reason for the suspicion was not clearly stated.\textsuperscript{25} While some of this can be explained by the limited information available to the accountant at the time of making the report,\textsuperscript{26} research also suggests that this may be symptomatic of wider issues around AML compliance more generally (from SME up to multinational firms).\textsuperscript{27}

A number of interviewees highlighted a pervading culture in which AML compliance is seen as a business burden rather than a core business principle.\textsuperscript{28} This frequently led to a tick box approach to know your customer (KYC) checks, culminating in poor-quality SARs.\textsuperscript{29} This would suggest that engagement with the sector should focus on the start of the process – KYC and CDD – rather than the end (the SAR) as a means of improving SARs quality.

**Changing Industry Culture: Incentives to Comply**

One interviewee from a national accountancy firm felt there was a lack of understanding of the wider business benefits of AML activity, beyond simply complying with the law; compliance officers within firms were aware of these but felt sidelined in the wider business development process. Promoting the wider business benefits of AML compliance and understanding of clients was thought to be one way of achieving the cultural change in the industry needed to improve SARs provision.

AML supervisors should collectively work to highlight the ways in which better developed AML/KYC checks could help to improve customer service by increasing ASPs’ understanding of client business needs. There should also be wider recognition of the extent to which AML compliance checks may highlight concerns about a client that may reflect badly on the firm’s reputation.

\textsuperscript{23} NRA 2017, p. 47.

\textsuperscript{24} Ibid. p. 44. Defined as firms employing fewer than ten people.

\textsuperscript{25} NRA 2015, p. 41.

\textsuperscript{26} Interviews suggested that for the accountant to go back and request the details sought by law enforcement of specific transactions and individuals may result in tipping off the individual about the intention to make a report.

\textsuperscript{27} This finding is also reflected in previous RUSI research. See Inês Sofia de Oliveira et al., ‘The Cartography of Compliance’, *RUSI Occasional Papers* (January 2017).

\textsuperscript{28} This is not unique to the accountancy sector.

\textsuperscript{29} Some interviewees have suggested that this may be driven by a supervisory culture that focuses on process rather than understanding.
In short, shifting the dialogue on AML compliance towards business benefit (as opposed to business burden) may improve other AML compliance activities, such as KYC checks, and increase the quality of SARs intelligence from the sector.

**Improving Intelligence Flows**

In any sector as large and diverse as accountancy, ensuring that intelligence flows smoothly between law enforcement, supervisors and professional firms is challenging. However, research highlights two specific structural and systemic issues – a multiplicity of supervisors and a lack of a public–private partnership in intelligence – which require tailored solutions to improve intelligence flows in relation to ASPs.

**Multiplicity of Supervisors**

AML supervision of the accountancy sector in the UK is unique in its mix of fourteen different supervisors, with one statutory supervisor and thirteen PBS. While managing intelligence relationships across such a diverse group would be challenging under any circumstances, this research suggests this is compounded by the vastly differing capabilities and attitudes towards intelligence. In addition to resolving the legal barriers to information sharing with HMRC and increasing the use of sectoral expertise, identified above, this research identifies the need to establish a formalised information-sharing platform between accountancy supervisors.

A number of interviewees welcomed the Accountancy Affinity Group as a means of sharing information and good practice in accountancy AML supervision. But it was noted that intelligence sharing in this forum was ad hoc rather than part of a systematic response aimed at achieving coordinated tactical outcomes or better strategic understanding of money laundering involving ASPs.

Several of those interviewed broadly supported the creation of a more bespoke intelligence-sharing forum charged with coordinating and developing intelligence from all supervisors and responsible for liaising with law enforcement. While this paper does not advocate a specific structure for this forum, it proposes that, providing members are vetted to government security levels, such a forum would be a good starting point for a more trusted relationship with law enforcement.

30. HMRC is the statutory supervisor for accountants who are not members of a professional body (unregulated accountants).
31. NRA 2015 noted the lack of information-sharing between supervisors as a significant risk factor.
32. This is not unique to the accountancy sector, but divergence is more evident given the high number of supervisors.
33. Suggestions included a specific sub-committee of the Affinity Group or a separate body overseen by OPBAS.
34. The UK government has various levels of vetting to allow individuals within and outside government to access sensitive information.
Legal Services

The market for legal services in the UK is large and varied, serving a range of clients from domestic consumers to multinational companies. It is highly regulated, and legal services providers cannot carry out specific activities (otherwise known as reserved legal activities) unless they are authorised to do so. The market is served by law firms of huge variety, ranging from large international firms based in the City of London to small high-street firms serving local communities. The NRA 2017 states that in 2016 there were over 14,000 firms providing legal services, 72% of them with fewer than ten employees.\(^{35}\)

Following the major review of the profession by David Clementi in 2004,\(^{36}\) regulation in England and Wales underwent significant change, implemented through the Legal Services Act 2007\(^{37}\). This created an independent oversight regulator, the Legal Services Board, ending the tradition of self-regulation. The Act also created approved legal services regulators, which directly regulate lawyers practising in England and Wales.

Each regulator covers a specific profession, the most well-known being solicitors and barristers, with their own list of reserved activities. As a result of a principle established by Clementi, each regulator is required to separate their regulatory function from their representative function – for example, the Law Society of England and Wales is the representative body and the Solicitors Regulation Authority (SRA) is the regulatory body for solicitors in those jurisdictions.\(^{38}\)

The MLRs 2017 follow this pattern by appointing the appropriate legal services regulators, nine in total, as AML supervisors for their part of the profession. Thus, in contrast to the ASPs described above, the AML-supervised legal services sector is more precisely divided along professional and geographic lines.

Although the geographic split, which is explained by the differing legal systems in the UK as well as historical tradition, does present some challenges to adopting a UK-wide approach to national threats, it is relatively easy to identify the appropriate supervisor, and information sharing is, in principle, much easier. That said, the intelligence dividend from lawyers via the SARs regime is regarded as low, despite some legal services being assessed as high risk.

\(^{35}\) NRA 2017, p. 49.
\(^{36}\) Clementi, ‘Review of the Regulatory Framework for Legal Services in England and Wales’.
\(^{37}\) ‘Legal Services Act 2007 (UK)’.
\(^{38}\) Legal Services Board, <www.legalservicesboard.org.uk>. There are separate regulatory arrangements for legal services in other parts of the UK, but again separate professions are regulated by separate bodies (for example, the Law Societies of Scotland or Northern Ireland and the General Bar Council of Northern Ireland).
Looking Behind the NRA: Prioritising Intelligence Development

The NRA 2015 assessed legal services as having a high risk of exploitation for money laundering. The NRA 2017 follows a similar theme, but makes laudable efforts to provide a more nuanced approach by identifying particular legal services that are more vulnerable to money laundering. These include trust and company formation, conveyancing and client account services. These services are generally provided by solicitors rather than barristers (whose contact with the public is strictly regulated), prompting the NRA 2017 to assess that barristers, legal executives and notaries are exposed to lower risks.

This is a commendable start to a more granular risk assessment of legal services, taking into account the particular services at risk and those who provide them, but the headline remains that legal services are high risk. The sectors of the profession assessed as being exposed to lower risks are nonetheless subject to the full extent of the AML regime and their regulators will fall under OPBAS oversight, causing them to publicly and vocally cast doubt on the need for their members (many of whose activities do not fall under the regulations in any case) to bear the expense in the same way as their colleagues in higher-risk activities.

The NRA 2017 goes on to examine each of the high-risk services in some detail, giving case examples. However, there is little attempt to further examine where the risks lie in those areas of the profession (primarily solicitors) that are at risk. As a result, companies ranging from the largest City-based firms to small-town partnerships are left to assess their risks in a vacuum of understanding.

Ensure Risk Ratings are Based on a Strategic Understanding and Segmentation of the Sector

Despite the perceived progress in the NRA 2017, in common with findings relating to ASPs, the authors’ research identifies a desire for better understanding of the role of legal services providers in the types of transaction identified as being involved in non-cash-based money laundering. Although there have been outreach and collaboration efforts on the part of the profession and the NCA and law enforcement, there still appears to be little common understanding of risks.

This is exacerbated, in part, by the NRA 2017’s statement that apart from a proportion of complicit actors, the majority of cases of money laundering involving legal professionals are likely to involve those who are wilfully blind or negligent (without defining those terms). This may be so in the eye-catching cases selected for inclusion in the NRA, but this approach is not helpful for those professionals making an effort to introduce effective controls.

The indicators provided to the profession are not well regarded, and examples of how solicitors have been duped, rather than negligent, would be welcomed as a basis for improvement. It is striking that these same issues arise for ASPs.

39. This may be partly explained by the ability of all solicitors to offer the services identified.
**Improving the Intelligence Yield**

Again, as with the accountancy sector, the NRA 2015 assessed that the number of SARs submitted by the legal sector was ‘relatively low’. The numbers actually fell subsequently, with independent legal professionals submitting 3,447 SARs in 2015–16, just under 1% of the total and a decrease of nearly 10% compared with 2014–15.\(^{40}\) Although the NCA officially makes no comment on the relative volume of reports from different sectors, the clear implication in the NRA is that more reports could be expected from the legal services sector. It certainly suggests that there are quality issues, stating that outreach has taken place with the sector to improve the quality of SAR submissions.

The authors’ research identifies similar key issues that could improve the intelligence yield from the legal services sector, as with other non-financial sectors.

**Improving Awareness of Typologies and Red Flags in High-Risk Areas**

In common with other non-financial professions, SARs from legal professionals are not generated by automated transaction-monitoring systems, but from the identification of suspicions in the interactions between professionals and their clients. Often these suspicions arise not in carrying out unusual services, compared with the normal business of the firm, which would be an obvious red flag, but from some aspects of the client and their business. Identifying, from an improved intelligence picture, the scale and nature of the firms dealing with the most high-risk individuals should be a precursor to reaching out to these categories of firms to increase their understanding of prevailing threats. To date, this kind of tailored outreach is noted as not having occurred.

Further work needs to be done in terms of identification, analysis and dissemination of indicators and how they may be applied in the work of law firms at the highest risk.

**Improving the Quality of SARs**

In the legal sector, the regulator of solicitors in England and Wales, the SRA, has carried out substantial thematic and other work around AML compliance. The NRA 2017 acknowledges that the SRA had found that most law firms visited had effective compliance frameworks in place.\(^{41}\) Thus in this instance, it seems that any quality issues around SARs cannot be explained by low compliance levels. The SRA reported that law firms are increasingly confident that they understand the requirements for reporting suspicious activity and even that some of the decline in SARs reporting may be attributable to early identification and refusal of high-risk business.

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\(^{40}\) NCA, ‘SARs: Annual Report 2017’.

However, more recent work by the SRA has found that firms are struggling to comply with the enhanced requirements in the MLRs 2017, particularly in relation to carrying out risk assessments. In six of the 50 firms examined, the concerns were so serious as to merit disciplinary processes.\(^4^2\)

As with other sectors, the authors’ research identifies the need for better information flows for both the legal sector and the authorities. The former would benefit from information on how criminals might present themselves to a law firm, while the latter requires more information on how legal services providers interact with clients (and other professionals) in establishing the complex structures that are sometimes associated with non-cash-based money laundering.

As with ASPs, there is some support for the creation of more bespoke intelligence-sharing arrangements for the legal sector PBS to liaise with law enforcement and share relevant information with their supervised population. However, it was pointed out that lawyers are seldom the only professionals involved in a transaction, and that cross-sector analysis is also required. The NCA has started to examine multi-sector key environments with the professions and this is to be encouraged. Inevitably only a small proportion of lawyers can be involved in such collaboration and there are concerns about the trickle down of relevant intelligence to the profession. Clearly, this is a role for the supervisors and representative bodies (overseen by OPBAS), but the better segmentation of where risks lie in the sector mentioned above would drive improved dissemination.

**Property and Estate Agency Services**

As noted by the NCA’s 2017 National Strategic Assessment of Serious and Organised Crime, ‘[t]he purchase of property in the UK, in particular within the London property market, through offshore companies presents a significant money laundering risk’.\(^4^3\) The risk of money laundering through the UK property market has led senior figures in the NCA to note that ‘the London property market has been skewed by laundered money. Prices are being artificially driven up by overseas criminals who want to sequester their assets here in the UK’.\(^4^4\) While proving the case on this point would be difficult, it is clear that the same factors that make the UK property market, particularly in London, attractive to legitimate investors – its openness, stability and economic returns – make it an attractive market to global criminality.

The need to embed a strong AML culture in this vibrant market is clear, due to the unique risk exposure the UK faces; in the year to June 2013, the residential research team at Knight Frank\(^4^5\) noted that 49% of all prime central London residential property worth over £1 million


\(^{43}\) NCA, ‘National Strategic Assessment of Serious and Organised Crime 2017’, p. 22.


\(^{45}\) A global estate agency headquartered in London.
was purchased by non-UK nationals.\textsuperscript{46} Although the majority of these transactions will be legitimate, the scale of the industry and, in particular, the foreign investor market, gives the money launderer room to hide.

Estate agents are well positioned to be a key intelligence source in the property sector. While estate agents rarely handle funds themselves, they are, in many instances, the only actor in the process to interact directly with buyer and seller. Despite this, the industry overall lacks an AML culture and its potential as an intelligence source is as yet not fully harnessed.

With the sole bar to market entry being registration with the estate agency AML supervisor, HMRC, wider oversight of the industry is minimal. Coupled with the fact that 85\% of the 20,000 estate agencies operating in the UK are sole traders or micro-businesses,\textsuperscript{47} and with the diversity of business models in operation growing,\textsuperscript{48} engagement and outreach on AML issues is increasingly challenging.

\textit{Looking Behind the NRA: Prioritising Intelligence Development}

The NRA 2017 notes that ‘property continues to be an attractive vehicle for criminal investment, in particular high-end money laundering’,\textsuperscript{49} given that it offers the money launderer the chance to conceal large amounts in a few transactions and corporate vehicles can be used to disguise ownership. On this basis it assesses abuse of property as a medium risk.

However, despite the key interface role played by estate agents, the services of estate agents are categorised as low risk. In an industry that the NRA 2017 recognises as having low AML compliance with the MLRs,\textsuperscript{50} this low risk rating is difficult to comprehend,\textsuperscript{51} and sends mixed messages about the importance of the industry as an intelligence source (and gatekeeper).

While the authors’ interviews held with industry experts in spring and summer 2017 chime with the statements in the NRA 2017 that the involvement of estate agents in money laundering can be broadly categorised as wilful blindness or complacency rather than complicity, the NRA 2017 does little to highlight the risks associated with particular business models within the industry or to note the differing levels of compliance in different sub-sectors.\textsuperscript{52} It is these that this paper notes as priority intelligence development areas.

\textsuperscript{47} NRA 2015, p. 54. Micro-businesses are defined as businesses with fewer than ten employees.
\textsuperscript{48} From traditional high-street estate agents to property finders and online-only models, all of which are captured by the broad definition of an ‘estate agent’ for the purposes of the MLRs.
\textsuperscript{49} NRA 2017, p. 54.
\textsuperscript{50} \textit{Ibid}.
\textsuperscript{51} It is defended by the authorities on the basis that estate agents themselves do not move money.
\textsuperscript{52} It also failed to reference the risk, as yet unquantified, of criminal capture of estate agency businesses, particularly in the lettings sector, which is not subject to MLRs 2017, as a means of laundering high volumes of money.
Improve the Delineation of the Differing Risks in Sub-Sectors

While the term ‘estate agent’ is traditionally associated with high-street operations, it increasingly covers a growing range of business models and activities. The NRA 2017 makes no distinction between these or the particular risks associated with them. Interviews suggest that the following growth areas may be the least well understood, as well as the most exposed to risk, and should be a priority for intelligence development and outreach.

Property Finders

Although not exclusively the case, research suggests that property finders tend to be concentrated around the higher end of the market, concerning properties selling for £500,000 or more; are more predominant in London and the southeast; and tend to work more frequently with foreign buyers. Despite this particular risk exposure, the role of the property finder has not been explored in the major money-laundering risk and intelligence assessments to date. Selected interviewees suggest there is an awareness in the sub-sector of this risk exposure and a readiness to engage with the authorities.

Online Estate Agents

While the online-only estate agency sector is estimated to be a small percentage of the market (around 5%), it is a growth area. The perceived anonymity this model offers could make this sub-sector attractive to those seeking to launder money via the property market. A lack of understanding of how this emerging sub-sector operates is evident in the fact that HMRC has struggled with the issue of whether sub-agents in the online hybrid model need to register for AML supervision. As the market grows, an assessment of its vulnerabilities will be key to the emerging intelligence picture.

53. This research does not suggest complicity or lack of MLR compliance in these sub-sectors, merely a greater potential exposure to risk.
54. Estate agents searching and viewing property on behalf of a buyer, rather than selling property on behalf of the vendor.
55. Due to the difficulty a non-UK-based buyer would have in finding, viewing and negotiating UK property at the speeds often needed to secure a purchase.
57. The online hybrid model can be described as an estate agent with no physical high-street office, but which has a local expert to value properties and meet clients (as opposed to a purely online model, when the client is not met face-to-face). These local agents are often self-employed sub-contractors not directly employed by the central company and are responsible for their own AML policies, procedures and AML reporting.
58. Author telephone interview with online estate agent, August 2017.
Property Auctioneers

The property auction market is a well-established means of transacting property and has traditionally been regarded as a route of last resort or one suitable for more unusual properties. However, according to the trade press, this is changing as the sub-sector’s ability to achieve quick sales is capitalised upon.\(^9\) The sub-sector’s attraction to criminals, due to the speed of transactions and its perceived anonymity,\(^6\) should be recognised, as should the difficulties inherent in this model of conducting CDD on all buyers, as required by the MLRs 2017.

\textit{Increase Understanding of Compliance Rates in Sole Traders and Micro-businesses}

The NRA 2017 points to considerable variation in compliance standards across the industry.\(^6\) While it would be wrong to suggest that compliance within all smaller operations is universally poor,\(^6\) the challenges of compliance in smaller firms that lack a standalone compliance function are self-evident. Selected interviews with industry experts suggest that low compliance rates in smaller firms may not be due to a lack of awareness but to a perception that the difficulty in complying fully will compel smaller firms to not comply at all. Testing this theory and better understanding the extent to which this, and other factors inherent in smaller businesses,\(^6\) may make them attractive to criminals is essential in improving intelligence-development strategies.

\textit{Improving the Intelligence Yield}

The NRA 2017 assesses the SARs output from estate agents to be low, with only 514 submitted in 2015–16.\(^6\) Furthermore, analysis by one interviewee suggested that, in 2014–15, only an estimated 200 firms had filed a SAR.\(^6\) The NRA 2015 noted that ‘[t]he absence of robust CDD processes within some elements of the sector combined with low SARs reporting leads to low levels of information for law enforcement agencies to act on’.\(^6\)

Uniquely in this study, government, supervisor and sector representatives interviewed agreed that the low number of SARs emanating from the sector poorly reflected the exposure of the UK property market to money laundering. This study identifies two key issues that may create the conditions for more optimal SARs output.

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\(^6\) Particularly when buyers purchase property via proxy bidders and phone auctions.

\(^6\) NRA 2017, p. 56.

\(^6\) Or that this is an issue that confines itself to the smaller end of the sector.

\(^6\) Such as vulnerability to intimidation and blackmail.

\(^6\) NRA 2017, p. 57.

\(^6\) Author interview with a sector representative, London, July 2017. This information is unconfirmed and is solely the impression of the interviewee.

\(^6\) NRA 2015, p. 55.
**Changing the Risk–Reward Equation**

In an industry whose culture inclines towards the reward end of the risk–reward equation, the need for robust AML supervision is all the more essential. The majority of interviewees noted that the lack of robust and visible sanctions for non-compliance from the sector supervisor, HMRC, added to this imbalance.

Transparency International UK has commented on this, noting in a March 2017 report on the use of the London property market to launder the proceeds of corruption: ‘In 2014–15 HMRC issued just 677 fines across all the sectors it supervises. These fines amounted to £768,205; just over £1,100 per fine, providing little disincentive to estate agents faced with suspicious activity’.\(^{67}\)

Additionally, the National Association of Estate Agents (NAEA), in its response to the Call for Information on the AML Supervisory Regime,\(^{68}\) noted that it believed that fines are an effective deterrent against money laundering, but that levels of fines consistent and scaleable with other sectors were needed.

**Tackling Under-Registration**

As noted above, under-registration for AML supervision is an issue in this sector. Of an estimated 20,000 estate agency businesses in the UK,\(^{69}\) only 9,500 were registered with HMRC for AML purposes in 2016.\(^ {70}\) This considerable gap would suggest either that unregistered firms are deliberately avoiding registration or are unaware of the need to register. Whatever the reasons, logic would suggest that, if a firm is not registered for AML supervision, it is not aware of or complying with its obligations to file SARs.

Despite HMRC increasing estate agency registrations from 8,000 to 9,500 since taking over the supervision of the sector from the Office of Fair Trading in 2014,\(^ {71}\) the shortfall remains considerable. While precise figures relating to the registration gap were unavailable,\(^ {72}\) a more targeted strategic communications effort by HMRC, involving sector trade bodies and trade press, may go some way to increasing registration.

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69. Although not all of these are subject to MLRs, most importantly those agents that only provide letting services and do not engage in estate agency work as defined under section 1 of the Estate Agents Act 1979.
70. NRA 2017, p. 56.
71. *Ibid*.
72. There was no response to formal and informal requests to HMRC for information.
Changing Industry Culture: Incentives to Comply

Coupled with low registration levels and the lack of a credible deterrent, the high-pressure, target-driven nature of estate agency work could be said to contribute towards a culture of complacency with regard to money laundering. This complacency is particularly amplified in the high-end London and southeast property market, where the financial rewards of a single transaction can be significant. Changing this culture requires a shift not only in the risk end of the equation, but also in the reward, as set out below.

Creating a ‘Proud to Comply’ Culture

In an industry with minimal entry requirements, unprofessional practices have often been allowed to permeate. To challenge the unfortunate reputation this brings and to raise industry standards, there are a number of voluntary self-regulation models in place to enable responsible actors to differentiate themselves to customers. The branding associated with these models is frequently used as a marketing tool with regard to a business’s web presence.

Examples of good business practice branding used routinely by estate agents are:

![RICS](image1)
![tsi](image2)
![approved code](image3)

However, registration with HMRC for AML supervision or adherence to MLRs is not routinely noted as a means of marketing good business practices, though there were isolated examples.73 The creation of an AML-registered brand may be a first step in promoting a ‘proud to comply culture’74 in the industry.

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73. Research of the web presence of eight London property finders revealed that only two were displaying AML registration.
74. Although this paper recognises that registration does not necessarily mean adherence to MLRs or requirements to file SARs, it may be a first step in affecting cultural change in the industry.
**Improving Intelligence Flows**

This study reveals that the stand-out systemic issue regarding intelligence flows relating to the property sector is the prevailing ‘them-and-us’ culture between law enforcement and the statutory supervisor, HMRC, on the one hand, and industry professional bodies and businesses on the other. Breaking down this barrier is key to improving intelligence flows.

**Improving Links Between the AML Supervisor and Industry Professional Bodies**

Industry professional bodies, such as the Royal Institution of Chartered Surveyors (RICS) and the NAEA, hold a wealth of information, both about the prevailing compliance culture in the industry as a whole and about individual members. Furthermore, they can publicly expel members for poor practice,\(^{75}\) a sanction that can effectively debar a member from working in the firms they regulate.\(^{76}\)

However, flows of information between industry trade bodies and the supervisor, HMRC, are deemed to be poor, and information about AML compliance breaches is not shared frequently enough between the supervisor and industry professional bodies to take advantage of the alternative sanctions available outside the AML supervisory regime. A ‘dare-to-share’ intelligence culture is needed to improve the supervisor’s understanding of the sector and its access to alternative forms of intelligence.

**Increasing Links Between Law Enforcement and the Industry**

The authors’ research highlights examples of industry good practice and active engagement in AML. However, even those within the industry actively engaged in AML did not feel they had sufficient sight of the prevailing money-laundering threat picture to enable them to adopt a comprehensive risk-based approach and, in turn, to play their full role in highlighting suspicion to the authorities. With many taking their lead from the only public document, the NRA 2017, this left the identification of suspicious activity, to some extent, to chance. Industry experts called for more formal outreach from law enforcement and the supervisor, both in terms of sharing typologies and via industry events.\(^{77}\)

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76. Although there is no formal means of de-barring an estate agent from practice, expulsion from a professional body acts as a de facto bar from employment by regulated firms.

77. A UKFIU typology in relation to the property sector was based only on SARs reporting and, although disseminated to supervisors and industry professional bodies, was not made publicly available online for all potential reporters.
Companies, Corporate Structures and TCSPs

While companies, as legal structures, do not provide for the movement of funds, they do provide a vehicle for money launderers, which adds legitimacy, complexity and opacity to their criminal enterprises and puts distance between themselves and criminal proceeds. As noted in the NCA’s National Strategic Assessment of Serious and Organised Crime 2017, ‘corporate vehicles are an attractive and easily accessible way to disguise beneficial ownership’.  

Although this is a truly global issue, the use of UK companies (the focus of this chapter) in complex, multi-jurisdictional money-laundering schemes, such as the global laundromat scandal, is a well-documented reputational issue, which the UK government is interested in being seen to be tackling effectively.

However, despite recent efforts to reform the UK company formation regime, including through the introduction of the People with Significant Control register, the issue remains a live one, with a 2017 Transparency International UK (TI-UK) report on the abuse of UK company structures to launder the proceeds of corruption (hereafter the TI-UK 2017 report) noting that 766 UK-registered corporate vehicles were used in the 52 large-scale corruption and money-laundering cases they reviewed.

However, despite widespread acceptance that UK companies are routinely being abused to facilitate money laundering, the size of the problem, and the extent to which TCSPs are complicitly or complacently facilitating it, remains unclear.

This is, perhaps, due in large part to the government’s desire for the UK to be a good place to do business, which is reflected in the ease of establishing a company and the numerous channels – accountants, lawyers, standalone TCSPs or directly with Companies House – through which this can be done.

The disparate nature of the system for company formation in the UK adds a number of challenges and complexities to building an intelligence picture and is matched by a fragmented supervisory regime, no formal entry requirement to the profession and the lack of accurate information regarding the levels of TCSP activity in general.

78. NCA, ‘National Strategic Assessment of Serious and Organised Crime 2017’, p. 22.
80. In 2016, the UK introduced amendments to the Companies Act 2006 requiring companies to file information with Companies House regarding the beneficial ownership of companies on the UK register, with a view to increasing transparency.
**Looking Behind the NRA: Prioritising Intelligence Development**

The NRA 2017 assesses that the vast majority of the 3.8 million companies and 60,000 limited liability partnerships on the UK register were established and used for legitimate purposes.\(^{82}\) However, it notes that ‘corporate structures and trusts are used in almost all high-end money laundering cases, including to launder the proceeds of corruption’. It therefore ascribes a high risk to the use of both UK and overseas corporate structures for money laundering.

Despite this, standalone TCSPs were ascribed only a medium risk rating.\(^{83}\) According to the NRA 2017, the highest risk is posed by UK TCSPs offering a range of services in addition to company formation, such as nominee directors, registered offices and banking services, which are used together to mask beneficial ownership, ‘whether through complicity, wilful blindness or negligence’.\(^{84}\)

This attempt to add greater granularity to potentially higher-risk areas is welcome. However, research suggests that a number of areas on which the NRA 2017 is broadly silent represent intelligence gaps that should be explored further.

**Understanding the Risk from Overseas Incorporations**

Only TCSPs carrying out business in the UK are subject to 2017 MLRs. This is despite there being no barrier to a non-UK-based TCSP incorporating companies and corporate structures in the UK for their clients. These bodies are not subject to the UK’s AML supervisory regime or to POCA fail-to-disclose provisions.\(^ {85}\) As noted by the TI-UK 2017 report, there is ‘a whole industry of overseas professionals setting up and managing UK companies, who are subject to little or no AML supervision’.\(^ {86}\) While these companies are, in theory, covered by their domestic AML regulations, relying on international cooperation between financial intelligence units or AML supervisors to deliver this intelligence to the UK is unsatisfactory.

Again, the NRA 2017 remains broadly silent on the issue, except to note that corporate vehicles are being created by or for criminals in ‘both the UK and overseas’.\(^ {87}\) Better understanding of the threat from overseas TCSPs and the use of UK and overseas TCSPs by criminals is important to better define the risk in this area.

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82. NRA 2017, p. 61.
83. This rating was complemented by a claim that the provision of these services was deemed to be a higher risk when provided in conjunction with financial, accountancy or other professional services.
84. NRA 2017, p. 63.
85. POCA 2002, Section 330: Failure to Disclose: Regulated Sector.
87. NRA 2017, p. 61.
Understanding Criminal Use of the Direct Incorporations Route

According to the TI-UK 2017 report, 39% of all corporate structures registered in the UK in 2016–17 were made directly with Companies House, sidestepping the need to use a professional intermediary, such as a TCSP, and the AML oversight and SARs filing requirements to which they are subject. Companies House is not subject to the AML regime’s requirements and has limited powers to stop companies from being incorporated.

The NRA 2017 makes limited comment on the risks posed by direct incorporations and the extent to which criminals exploit this route, instead noting that most (but actually in this case only 60%) companies are formed using an intermediary.

This paper suggests that absence of evidence does not equate to evidence of absence. Indeed, interviews with members of the sector suggest there is a perception that this may be one of the highest-risk areas of company formation. While Companies House voluntarily files SARs, it is not obliged to do so, leaving a potentially considerable gap in the intelligence picture; interviews suggest that, despite good relationships with law enforcement at a tactical level, more should be done with Companies House at a strategic level to improve understanding of this risk.

Questioning whether Companies House should be formally brought into the AML regime, requiring it to conduct CDD before incorporating for a client, is outside the scope of this paper, but the author’s research suggests that, with growing levels of direct incorporations, it is a question that the UK government will be forced to confront sooner or later.

Improving the Intelligence Yield

While the disparate nature of TCSP activity across different sectors makes analysis of SARs output difficult, the intelligence yield from standalone TCSPs in 2015–16 was a mere 74 submissions, and there has been a steady decrease in SARs reporting year on year since 2013–14.

The NRA 2017 identifies the main reasons for this as being inconsistent supervision and mixed compliance standards, factors which are borne out in this paper and research conducted by others, leading the TI-UK 2017 report to comment that ‘ineffective AML supervision leads to inadequate compliance with the rules, and low and poor-quality reporting of suspicious activity’.

88. Cowdock, Hiding in Plain Sight, p. 19.
89. Although, as this research recognises, adherence to these requirements by TCSPs is less than adequate.
90. Companies House has a statutory duty to incorporate companies if all the relevant information has been provided.
91. NRA 2017, p. 64.
92. Ibid.
93. Cowdock, Hiding in Plain Sight, p. 31.
However, the industry itself sees a number of reasons for this low number, including an increase in direct incorporations. Either way, despite pockets of good practice, there is widespread recognition of poor compliance standards in much of the industry that need to be tackled to improve the SARs yield.94

**Tackle Poor CDD by Standalone TCSPs**

With regard to standalone TCSPs, poor compliance rates were evidenced in 2014 by Michael Findley, Daniel Nielson and Jason Sharman (Box 6),95 whose research of 96 standalone UK TCSPs noted only a 51% compliance rate with CDD requirements, as then set out in the Money Laundering Regulations 2007.

**Box 6: The Scale and Quality of CDD Undertaken in the TCSP Sector**

Michael Findley, Daniel Nielson and Jason Sharman conducted experimental research on the extent of compliance by TCSPs with the FATF standards that require them to conduct CDD, in particular to identify the customer’s identity before setting up a company for them. The paper sent 150 emails to UK-based TCSPs and received 96 replies. Of these, 49 suggested that the TCSP was acting in compliance with the FATF’s requirements and had requested appropriate documents. The rest did not. The researchers therefore estimated the compliance rate of UK-based TCSPs as 51%.

In an increasingly competitive market, much of this poor compliance is attributed to the cost of carrying out requirements such as CDD and a lack of fear of sanction. This research suggests that only by tackling the wider compliance rates within this sector can the government reasonably expect to improve the SARs dividend. One way of achieving this is to ensure that firms are registered for, and subject to, AML supervision.

**Dealing with Under-Registration of Standalone TCSPs for AML Supervision**

It is easy to surmise that if a standalone TCSP is not adhering to its legal requirement to register with HMRC for AML supervision,96 it is also not complying with other legal requirements, such as filing SARs. Tackling the under-registration evidenced in this field should therefore be a key priority to close the intelligence gap.

94. The link between poor AML compliance overall, including CDD requirements, and low or low-quality reporting is one that is widely made, including in this report.


96. Other professionals providing this service are supervised by their PBS for AML purposes.
This paper accepts that, given the lack of any formal entry requirements in this field, identifying non-registered businesses is a difficult task for HMRC, the AML supervisor for standalone TCSPs. However, data held by Companies House may help to close the registration gap. A number of TCSPs are authorised by Companies House to use bulk-filing software to establish companies.

Interviews confirm that there is nothing to preclude a TCSP registering with Companies House for bulk-filing while being unregistered for AML supervision. Cross-referencing bulk-filing TCSPs with the TCSP register held by HMRC is one way of closing the registration gap and, therefore, increasing awareness of the need to comply with SARs filing requirements.

Changing Industry Culture: Incentives to Comply

As noted by the Association of Company Registration Agents (ACRA), one of the few trade representative bodies in the standalone TCSP field, ‘Company registration is a fiercely competitive arena. Yet one with surprisingly little in the way of formal professional monitoring’.

While ACRA members are bound by the association’s rules to be registered for AML supervision, membership of such a trade body is not obligatory. Outside areas of voluntary oversight, the authors suggest that a poor AML compliance culture exists, with isolated pockets of good practice. Lack of fear of sanction, given that HMRC has not publicly advertised sanctions against its supervised population to date, has contributed to this culture.

Improving Intelligence Flows

The disparate nature of activity in the TCSP field in the UK has inevitable consequences for the efficient flow of information between those with a stake in preventing and tackling money laundering. The primary challenges in this respect are identified by this research to be the fragmented nature of AML supervision and the lack of strategic data flows between AML regime participants on the one hand, and the company registrar, Companies House, on the other.

Fragmented Supervision

As noted, a number of different professions can provide services in this field. These professionals are supervised for AML purposes by nineteen different bodies. Coordinating information and intelligence flows between all of them is a significant challenge.

97. TCSP work does not require formal qualifications or professional body membership and oversight. While representative bodies, such as the Association of Company Registration Agents (ACRA), exist, they do not have formal status.
100. Cowdock, Hiding in Plain Sight, p. 31.
To coordinate information and policy between the numerous accountancy and legal profession AML supervisors, the Accountancy and Legal Affinity Groups\(^{101}\) have been established. As TCSP services defy categorisation as a sector, no such coordination group exists. Finding ways to rectify this should be a priority. This may be achieved by creating a specific TCSP intelligence forum under the AML Supervisors Forum or through OPBAS acting as a host and broker for coordinated activity.

**Coordination with Companies House**

Companies House holds a wealth of data and knowledge regarding the 3.8 million corporate structures on the UK register. It should therefore be seen as a key contributor to the intelligence picture. Research suggests that the Integrity Unit within Companies House (Box 7) is expanding and increasing its links with law enforcement in relation to tactical intelligence sharing on individual cases.

**Box 7: Companies House – Integrity Unit**

The Integrity Unit within Companies House is responsible for ensuring that information on the register is correct and non-fraudulent. It deals with registered office disputes, directors’ office disputes and data integrity disputes. Interviews suggest that 90 people work on all of the matters mentioned above.

While the unit has no specific responsibilities for AML, it has a dedicated team with intelligence capabilities that works closely with law enforcement and the Insolvency Service to share information on alleged malpractice and criminality.

However, the strategic capabilities of this unit are still not sufficiently linked up with AML supervisors to share information relating to potential AML breaches. Reports of regular meetings between Companies House and HMRC are encouraging, and interviews suggest emerging relationships with PBS. However, interviews also suggest that the difficulties posed by HMRC confidentiality restrictions described previously in this report affect the effectiveness of these relationships.

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IV. Non-SAR Intelligence from Professional Services Providers

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VERLY RELYING ON SARs – an intelligence source that is undirected in nature and, to a large extent, represents the subjective suspicions of the compliant rather than highlighting the activities of the complicit – risks skewing the intelligence picture towards reporting trends rather than criminal trends.¹

Despite this, the authors’ research notes the lack of dialogue on increasing non-SARs intelligence inputs on money-laundering issues surrounding the professional services providers. To spur this dialogue, this paper explores two new or potentially underexploited intelligence streams for consideration by policymakers,² and highlights existing models from the UK and overseas that may provide a template – whistleblowing and more targeted or directed reporting from the sectors.³

Whistleblowing

Put simply, the term ‘whistleblowing’ refers to an employee disclosing information, internally or externally, about perceived wrongdoing in an organisation. Given the historical difficulties of unearthing poor practice or complicit activity in the field of AML, this is a potential source of intelligence that merits exploration.⁴

This chapter explores the current statutory regime in relation to AML whistleblowing in the UK, as well as highlighting case studies of specific whistleblowing models from other areas of law and jurisdictions as a starting point for dialogue.

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¹ It should also be noted that discussions on the introduction of financial reporting thresholds to increase oversight of the financial sector are not applicable to sectors that have a limited role in handling money movements.

² It should be noted that these are not the only models identified by research, but others, such as anonymous SARs reporting or Crimestoppers reports, were deemed to be of limited value in practical terms.

³ Research noted a number of further UK and international examples, but for brevity this paper selected those deemed most relevant to the AML regime.

⁴ However, this paper recognises some of the challenges of running whistleblower schemes, given the potential for vexatious complaints and the high burden of duty of care owed to whistleblowers.
The three areas explored are:

- **Current UK Whistleblower Laws**: The Public Interest Disclosure Act 1998 (PIDA), which offers general protections for whistleblowers.

- **Incentivising Whistleblowing – Immunity from Prosecution**: The UK Enterprise Act 2002, which offers a route for whistleblowers to seek protection from prosecution or regulatory action for cartel offences in exchange for cooperation.

- **Incentivising Whistleblowing – Financial Incentives**: The US model for incentivising whistleblowers in relation to securities fraud, which allows them to receive a percentage of a subsequent fine paid.

**Current UK Whistleblower Laws**

Current whistleblower legislation accounts for the needs of financial sector AML whistleblowers and that this is well supported by procedural channels through the FCA’s whistleblowing hotline. The same cannot be said for the non-financial sectors. At the time of research, gaps were found in the legislative frameworks under PIDA (Box 8) and in procedures in place in PBS.

Currently, the FCA is named as the prescribed body for a range of matters relating to their field of regulation, including money laundering. However, there is (at the time of writing) no named prescribed person or body in relation to non-financial sector money-laundering whistleblowing. Research interviews in September 2017 suggest that there are plans to extend the legislation to name the NCA as a prescribed body for AML whistleblowing, in addition to their current designation for bribery and corruption.

While this paper welcomes any measure that seeks to address this gap, it is important to note that a legislative change will only be effective in practice if it is properly promoted and procedures put in place to support the management of whistleblowers.

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5. ‘Public Interest Disclosure Act 1998 (UK)’.
6. ‘Enterprise Act 2002 (UK)’.
8. Section 46(2)(e) of 2017 MLRs requires all supervisory authorities to ‘take effective measures to encourage its own sector to report breaches of the provisions of these Regulations to it’. Research interviews with PBS suggest that, while a minority have publicised channels in place, backed up by procedures to handle sensitive whistleblower intelligence, this was far from the case universally.
9. The need to ensure that whistleblowers do not inadvertently become covert human intelligence sources (as defined by the Regulation of Investigatory Powers Act 2000) is another challenge that must be considered when establishing a new whistleblower programme.
The UK’s general employment law protections for whistleblowers are set out in PIDA. Put simply, PIDA offers an after-the-event route for individuals to seek recourse via an employment tribunal if they suffer discrimination as a result of blowing the whistle.

To invoke the protection of the law, whistleblowers must only blow the whistle on matters deemed to be in the public interest, either to their employer or (in cases where they feel unable to do so) externally to the prescribed people and bodies10 set out in legislation. These prescribed people and bodies cover a wide range of public interest topics,11 including fraud, bribery, corruption and other financial crimes.

Furthermore, it is important to recognise the limitations of the current PIDA model, which is often criticised by civil society groups for offering redress only after the event. In effect, while seeking redress is possible in theory, it is difficult in practice, with many of those blowing the whistle being permanently locked out of their field of employment.12

These limitations led the 2017 OECD report, ‘Implementing the OECD Anti-Bribery Convention’, to note that law enforcement representatives had indicated that PIDA may not adequately incentivise whistleblowers, given the high risks they face.13

Research for this paper suggests that these risks can broadly be categorised as legal (for those involved in the wrongdoing they report) and financial (loss of livelihood as a result of whistleblowing). Existing whistleblower models, which seek to overcome these risks in other fields and jurisdictions, are explored below.

**UK Case Study: Incentivising Whistleblowing – Immunity from Prosecution**

While the term ‘whistleblower’ is often associated with public-spirited individuals seeking to right an injustice, it is not the case that you need clean hands to blow the whistle – it could be argued that the best intelligence sources are complicit themselves.

It is therefore important to explore ways of incentivising those involved with or on the periphery of an activity to blow the whistle. Here, UK legislation in relation to cartel offences under

11. These include, among others, broadcasting, health, housing, tax, education and defence.
13. OECD, ‘Implementing the OECD Anti-Bribery Convention: Phase 4 Report United Kingdom’, 2017, p. 18. While these findings were in the context of Bribery Act investigations, they are deemed by the authors to be more broadly applicable.
the Enterprise Act 2002 may provide valuable lessons. Premised on the basis that, without insider help, it has been traditionally difficult to gain knowledge of cartels in operation, the Act contains provisions which allow the Competition and Markets Authority (CMA) to issue a whistleblower with a written notice that he or she will not be prosecuted for the matter under investigation, provided that certain contractual conditions set out in the notice are met. These conditions would likely include that the applicant makes an admission of guilt; must not be the lead cartel member; must cease all involvement in the cartel; and must cooperate fully with the investigation.14

While the application of this law is more complex than it seems at first sight, and is backed by a substantial policy to ensure that all the necessary legal and public interest factors are considered,15 it is intended to ensure that cartel participants are incentivised to highlight a cartel in operation.

However, while this model has been successful in gaining valuable lead intelligence in relation to cartel offences, interviews suggest that translating this intelligence into successful prosecution can be challenging.16

Despite this, given the difficulties of accessing high-quality intelligence about the modus operandi of those facilitating HEML, an AML whistleblower model that offers some level of immunity from prosecution may merit consideration by policymakers.

US Case Study: Incentivising Whistleblowing – Financial Incentives

Financial incentives for blowing the whistle may help to mitigate the problem caused by the potential loss of employment opportunities in the whistleblower’s field of employment.

The legal culture in the UK has traditionally been staunchly resistant to this concept,17 as have regulators such as the FCA.18 but this is not the case in the US, where there are a variety of programmes that offer payments in return for information that leads directly to successful enforcement action resulting in the imposition of fines (from which the incentives are paid).

16. This is perhaps due to a culturally ingrained mistrust of cooperating offenders by UK juries.
18. FCA and the Prudential Regulatory Authority, ‘Financial Incentives for Whistleblowers’, July 2014. This note for the Treasury Select Committee concluded that ‘introducing financial incentives for whistleblowers would be unlikely to increase the number or quality of the disclosures we receive from them’.
Although a range of models exist, the primary model considered here is that operated by the US Securities and Exchange Commission (SEC) under the so-called Dodd-Frank Act.\textsuperscript{19}

The SEC whistleblower incentivisation programme was created in 2010 to encourage individuals with knowledge about securities fraud to inform the SEC. Under the programme, whistleblowers can apply for an award of between 10\% and 30\% of the sanctions collected as a result of their information.\textsuperscript{20}

While it is impossible to know whether these individuals would have come forward without the financial incentives, SEC press releases laud the success of the programme and the substantial role played by whistleblowers.

The use of financial incentives merits further consideration in this context, given the often-high financial rewards associated with the professions examined in this paper. In short, while individuals with access to relevant information may be uncomfortable with a particular activity, they may have too much at stake financially to blow the whistle.

**Whistleblowing: A Model for UK AML Intelligence?**

Interviews in summer 2017 with officials involved in whistleblowing highlighted that legal and procedural challenges of handling whistleblower intelligence should not be underestimated; receiving such intelligence confers a high burden of duty of care on the receiving party and invariably means managing a number of false leads and vexatious complaints.

However, this paper asserts that these challenges are, to a large extent, outweighed by the potential gains. The whistleblower has knowledge and information that would otherwise be unlikely to come to the attention of the authorities. In relation to complicit facilitators, the SARs regime is unlikely to unearth these individuals given that it largely relies on reporting by compliant individuals.

While proposed extensions of PIDA and clear signposting of encouraging whistleblowing as a role of AML supervisors are welcome, they may fall short of fully harnessing the potential of this intelligence source. There are a number of shortcomings in the PIDA model, in particular the lack of incentives for whistleblowers to come forward.

\textsuperscript{19} ‘Dodd-Frank Wall Street Reform and Consumer Protection Act 2010 (US)’. It should be noted that the US has analogous provisions in place for whistleblowers in the realm of commodity futures trading, tax fraud and, most recently, motor-vehicle safety.

\textsuperscript{20} Furthermore, the SEC whistleblower law actively prohibits unfair treatment of employees by the employer against whom they are blowing the whistle, rather than offering after-the-event redress as under the PIDA model.
Targeted Reporting: Geographic Targeting Orders – the US

The utility of the SARs regime is limited by its largely undirected nature. To remedy this, under the US Bank Secrecy Act, the US Financial Crimes Enforcement Network (FinCEN) has the authority to issue mandatory targeted transaction reporting and record-keeping requirements on specific private sector entities in specific geographic areas for a period of up to 180 days. These threshold-based orders are known as geographic targeting orders (GTOs).

GTOs were used in the 1990s in relation to money remittances to Colombia by money service businesses (MSBs) in New York, as part of operational activity to combat money laundering associated with drug cartels. Later examples include reporting requirements on land title agents in relation to cash buyers in property transactions. On expanding this GTO in July 2016, the acting director of FinCEN noted: ‘The information we have obtained from our initial GTOs suggests that we are on the right track. By expanding the GTOs to other major cities, we will learn even more about the money laundering risks in the national real estate markets, helping us determine our future regulatory course’.

The value of a GTO over SARs reporting is in its ability to direct private industry towards a particular operational goal or to help inform a particular knowledge gap. A GTO offers the further benefit of acting as a de facto intelligence exchange between the public and private sector. The content of a GTO will alert the wider-regulated sector to issues of current operational interest to FinCEN and law enforcement, allowing them to consider their own risk assessments relating to involvement in similar activity.

Furthermore, GTOs are a means of substantiating intelligence hypotheses. For example, the GTO issued in 1996 to target drug cartels suspected of using MSBs as a money-laundering conduit with Colombia helped to substantiate this hypothesis. It led to a substantial fall in cash flow through the top three remitters from $67 million to $2 million and a substantial increase in cash seizures along the US east coast.

In short, GTOs offer a valuable means of directing the intelligence flow on money laundering from the private sector in a way the undirected SARs regime is unable to do. Geography may be just one way of targeting data collection from the professions, most obviously in connection

23. From a previous focus on Manhattan and Miami to other major cities.
with the property market.25 Other thresholds or selection criteria, such as types of high-risk
corporate vehicles being formed and managed in certain ways, may be more appropriate in
other fields if these indicators can be identified through enhanced intelligence collaboration.

Recommendations

The AML policy dialogue is often focused on SARs as the primary intelligence input, but it is
important to note that SARs are just one source of financial intelligence and their value is limited
in many ways, including in their undirected nature.

While it is not possible to capture all the potential inputs that may aid the closing of the
intelligence gap, this chapter of the paper acts as a spur for dialogue and offers clear examples
from other fields of ways in which whistleblowing and targeted reporting regimes have been
mobilised towards achieving particular intelligence goals.

**Recommendation 14:** Policymakers should consider the range of whistleblowing models,
which may offer a route to improved intelligence collection in relation to money laundering
involving professionals.

**Recommendation 15:** Policymakers should consider the value of supplementing the SARs
regime with more targeted reporting measures.

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25. The London prime property market is one example quoted as a crime risk, but other areas, such as
    lettings in university towns, were also mentioned during the authors’ research.
Conclusion

WHILE THIS PAPER considers issues from both cross-cutting and sectoral angles, several common themes emerge when viewing the findings of the research as a whole.

First, continuing to view the issue of money-laundering intelligence through the prism of sectors neglects the overlapping nature and interplay between activities supported by a number of different actors that are key to the complex systems underpinning non-cash-based money laundering. To silo intelligence collection, dissemination and dialogue in this way means that the intelligence picture will remain fragmented. This paper strongly asserts that intelligence collection and risk assessment must, in future, focus on activities rather than sectors. Only by doing so will the true scale and nature of the vulnerabilities inherent in the UK system be highlighted and cross-sectoral links be made.

Second, while this paper recognises that SARs are just one form of financial intelligence and that more SARs from the sectors examined in this study is not the answer to closing the intelligence gap relating to non-cash-based money laundering, current levels of SARs quantity and/or quality can be categorised as sub-optimal. In this regard, this paper notes that a number of interventions are necessary to remedy this.

Critically, it is argued that in sectors where there is poor compliance with AML standards, this may correlate with low or poor-quality SARs reporting. In turn, the relationship between poor-quality AML supervision and low AML standards has been widely commented on by others and is supported by the authors’ findings. Only by strengthening the supervisory response, and through this, raising AML standards overall, will the conditions for optimal SARs reporting, in quantitative and qualitative terms, be reached.

Stronger supervision and enforcement is, however, one means of improving compliance and reporting rates. The authors’ research also identifies ways to address cultural issues within individual sectors that may contribute to delivering their intelligence potential. Examining these two factors in concert is key to creating a broader, more positive, culture of compliance, from which a greater SARs dividend will be an output.

Third, SARs reporting is, to a large extent, driven by an understanding of risk that attunes the reporter to threats and the ways they may present themselves, and to the red flags and other indicators that may help identify criminal activity. While the NRA 2017 goes some way to including a level of granularity to the risks inherent in individual activities, it does not go

1. Property purchase is a good example. It is an activity that can often require, in HEML cases, the involvement of estate agency, financial, legal and accountancy professionals.
2. See Bridgewater, Don’t Look, Won’t Find.
far enough. This paper examines the findings of the NRA 2017 and identifies areas that are underdeveloped, under-reported, or both. Moving the level of detail from the generic to the specific in documents such as the NRA has a role to play.

Fourth, it is important not to rely solely on the SARs regime to deliver the intelligence needed to plug this gap. SARs are but one source of intelligence and they are, by their nature, subjective. The authors’ research suggests there are intelligence streams that are currently untapped, such as whistleblowing, and examples from overseas, such as GTOs, which merit consideration to improve the flow of intelligence and knowledge on non-cash-based money laundering.

Furthermore, the static and largely one-way information flow provided by the SARs regime has limitations. This paper took as a starting point the need to create more free and dynamic information flows between government, law enforcement and AML supervisors as a prerequisite to forming a holistic intelligence picture. This cannot yet be said to be the case in the sectors examined and should be seen as the priority issue for development. This paper provides potential solutions to achieve this aim.

In addition, while most of the focus has been on those within the UK’s AML regime, one should not overlook those outside who may be well placed to identify poor compliance or money-laundering risk, whether these are professional bodies with no formal AML supervisory responsibilities, in-house professionals (as opposed to the service providers covered by MLRs) or other government departments. To neglect these often-willing sources of information and knowledge is to undermine the collective effort.

In summary, there is no single systemic remedy for an intelligence collection and dissemination system predicated on the UK’s large, complex and fragmented AML regime. However, this paper provides analysis and potential solutions along a number of tracks, which, in concert, may offer an impetus for change. A concerted effort, involving policymakers, law enforcement, AML supervisors, professional bodies and the professions themselves is required, with OPBAS providing the catalyst and strategic direction to turn the known unknowns into well-understood phenomena.
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