No Rest for the Wicked
Driving Change in the UK’s Post-FATF Evaluation
AML Regime
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188 years of independent thinking on defence and security

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Executive Summary

THE SURGE OF activity in the UK’s anti-money laundering (AML) regime between 2015 and 2018 was notable, with a huge range of new strategies, initiatives and AML architecture being created largely, a cynic might say, in preparation for the decennial Financial Action Task Force (FATF) evaluation of the UK, which reported its findings in December 2018. In PR terms at least, the government’s efforts seem to have paid off, with the UK receiving the highest aggregate scorings under the revised FATF evaluation methodology to date.

The chapters in this Whitehall Report examine specific elements of the UK’s AML response and seek to challenge the intimation that the UK AML regime can be judged largely effective in real terms as the 2018 mutual evaluation report (MER) appears to suggest. On this basis, the report aims to focus post-evaluation efforts by making a series of recommendations for the government’s AML efforts in the post-MER policy cycle.

Policy

Chapter I examines the evolving AML strategic landscape and suggests that priority should be given to refreshing the UK’s AML and Asset Recovery Action Plans, and ensuring that progress is properly monitored through Parliament and/or an Independent Commissioner for Economic Crime. In terms of new structural innovations, it makes the case for giving political support to the Office for Professional Body Anti-Money Laundering Supervision (OPBAS), adequate technical and human resourcing to the National Economic Crime Centre (NECC), and reinvesting in the depleted law enforcement response.

Chapter II examines the gap between the UK’s high aggregate scorings under the FATF ‘effectiveness’ methodology and the reality on the ground, which recognises the UK’s implication in various global money-laundering scandals. The chapter poses the question as to whether the UK’s place at the top of an invented ‘league table’ equates to an effective system overall and concludes that perhaps not all of the Immediate Outcomes (IOs) from the FATF’s evaluation methodology are created equal. It argues that the areas of identified weakness within the UK system – IO3 (supervision) and IO6 (use of financial intelligence) – best demonstrate the ‘wicked’ nature of the money-laundering problem (see Box 1); poor scorings in these areas drag down overall systemic effectiveness in a way that others do not. It calls on the UK government to focus on these areas to achieve effectiveness in real rather than abstract terms.

Box 1: A Wicked Problem

'A wicked problem is a social or cultural problem that is difficult or impossible to solve for as many as four reasons: incomplete or contradictory knowledge, the number of people and opinions involved, the large economic burden, and the interconnected nature of these problems with other problems'.


Prevention

Chapter III examines the issue of AML supervision of the UK’s non-financial regulated sectors, in particular those supervised by their own professional bodies, noting that this has been a perennial weak spot. The chapter notes the creation of new architecture, in the form of OPBAS, which was created to raise standards in professional body supervision, but missed an opportunity to include Her Majesty’s Revenue and Customs (HMRC), a statutory supervisor of accountants and estate agents, in its remit. As OPBAS readies itself to release its first annual report, the chapter asks whether it is time to consider an independent review of HMRC’s role alongside OPBAS’s work to ensure a level playing field.

Chapter IV looks at the innovations in the sphere of public–private information exchange since the inception of the Joint Money Laundering Intelligence Taskforce (JMLIT) in 2015. While JMLIT is a welcome innovation, the chapter cautions against complacency and calls for developments which expand the two-way information flow to the wider regulated sector (albeit in a fit-for-purpose form, rather than simple JMLIT expansion); firm the legal foundations for the partnership; extend existing bank-to-bank information-sharing provisions; and champion the conversation at the global level on the balance to be had between data privacy and financial crime objectives.

Chapter V looks at the need for the AML regime to evolve to tackle the challenges posed by new technologies. It discusses the next frontier for AML regulation – ‘the virtual asset economy’ – noting that the government will need to decide on the parameters of the regulation necessary to contain potential threats. It also discusses the need to consider regulation not only of fiat-to-virtual currency exchanges, but also of virtual-to-virtual exchanges. The chapter encourages the government to develop responses which are fit for purpose, rather than simply extending existing rules.

Disruption

Chapter VI examines the UK’s place as the destination of choice for the proceeds of grand corruption and explores whether political commitments, including new anti-corruption and transparency legislation, are being actioned in practice. It welcomes the new Unexplained Wealth Order (UWO) established in 2017, but notes that without law enforcement and prosecutorial resourcing, its impact will be largely symbolic; it notes that the new People with Significant
Control register is good in theory, but has problems with accuracy in practice; and it notes the need to push forward with whistle-blower reforms to generate much-needed intelligence.

Finally, chapter VII looks at the UK’s track record on the use of financial intelligence and finds cause to both agree and disagree with the 2018 MER’s findings in this regard. The chapter strongly agrees with the 2018 MER’s conclusion that the UK Financial Intelligence Unit (UKFIU) is in need of considerable reform and suggests that the government bolsters human and technological resources and reforms the ‘devolved analysis’ operating model. The chapter disagrees with the finding that ‘LEAs [law enforcement agencies] at the national, regional and local levels integrate the use of SARs and other financial intelligence into their standard practice’, and recommends regional resources to improve SAR exploitation.

In conclusion, this report notes that the recent FATF evaluation served one of its purposes well – that of focusing attention on the area of AML and broader financial crime – but urges the government to continue its reform programme to ensure it achieves systemic effectiveness in practice, rather than on paper.

12 Recommendations for Policymakers

**Policy and Coordination: ‘Policy, coordination and cooperation mitigate the money laundering and financing of terrorism risks’ – FATF Intermediate Outcome 13**

Recommendation 1: Refresh and publish the AML and Asset Recovery Action Plans and provide annual reports to Parliament setting out progress.


Recommendation 3: Prioritise funding of human and technological intelligence capabilities within the NECC.

Recommendation 4: Prioritise addressing deficiencies in the AML supervisory regime and use of financial intelligence over the next three years to improve systemic effectiveness overall.

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3. FATF, ‘Methodology for Assessing Technical Compliance with the FATF Recommendations and the Effectiveness of AML/CTF Systems’, updated October 2018. All references to the Immediate and Intermediate Outcomes are from this document.
Prevention and Detection: ‘Proceeds of crime and funds in support of terrorism are prevented from entering the financial and other sectors or are detected and reported by these sectors’ – FATF Intermediate Outcome 2

Recommendation 5: Provide an independent assessment of HMRC’s AML supervisory activities, alongside work OPBAS is undertaking in relation to professional body supervisors.

Recommendation 6: Review the legislative information-sharing pathways between JMLIT members and consider building fit-for-purpose gateways to support the operating model.

Recommendation 7: Support FATF efforts to champion a conversation, at the global level, regarding the balance to be had between data privacy and financial crime policy objectives.

Recommendation 8: On bringing the virtual asset economy under the purview of the AML regime, ensure that provisions are tailored to the new regime, rather than simply extending existing provisions.

Disruption: ‘Money laundering threats are detected and disrupted, and criminals are sanctioned and deprived of illicit proceeds. Terrorist financing threats are detected and disrupted, terrorists are deprived of resources, and those who finance terrorism are sanctioned, thereby contributing to the prevention of terrorist acts’ – FATF Intermediate Outcome 3

Recommendation 9: Provide training to prosecutors and financial investigators on the use of Part 5 (civil confiscation) Proceeds of Crime Act (POCA) powers in furtherance of their objective to expand use of UWOs.

Recommendation 10: Increase UKFIU headcount to 200 as promised during the 2007 FATF evaluation.

Recommendation 11: Expedite plans to update or replace the ELMER database.

Recommendation 12: Establish proactive SARs data-mining capabilities within the Regional Organised Crime Unit (ROCU) network.
Introduction

THE ESTABLISHMENT OF RUSI’s Centre for Financial Crime and Security Studies (CFCS) in December 2014 was – in hindsight – perfectly timed. It marked the moment when the UK began to face up to the challenges posed by its fourth-round mutual evaluation by the Financial Action Task Force (FATF), the outcome of which was published in December 2018.1

FATF is the global standard setter for anti-money laundering (AML) and counterterrorist financing (CTF) and approximately every 10 years since 1989 has evaluated the extent to which each country adheres to the internationally agreed standards, through its mutual evaluation peer-review process.

Prior to 2013, countries were assessed purely on their technical compliance with the FATF ‘40 plus 9’ recommendations (known, together with the Interpretive Notes, as ‘the FATF standards’), which sought to assess whether a country had the necessary laws, procedures, regulations and structures in place to respond to the threats posed by money laundering and terrorist financing.

However, following revisions to the FATF standards in 2012 and the introduction of a new assessment methodology in 2013, this changed. Recognising that laws and procedures are only as good as the extent to which they are exercised, FATF consolidated its 40 plus 9 into 40 recommendations and added a framework of 11 ‘Immediate Outcomes’ to help, in theory, determine the ‘effectiveness’ of implementation. The aim of the changes was to assess ‘the extent to which a country achieves a defined set of outcomes that are central to a robust AML/CFT system’.2

As FATF notes, ‘the objective in implementing AML/CFT measures is that “[f]inancial systems and the broader economy are protected from the threats of money laundering and the financing of terrorism and proliferation, thereby strengthening financial sector integrity and contributing to safety and security”’.3 In this context, demonstrating effective implementation has proved challenging in a range of fields for all countries – 66 at last count4 – that have been evaluated under this revised methodology.

1. For an in-depth view of some of the challenges facing the UK in the run-up to the fourth-round assessment, see Helena Wood, ‘Destination 2018: Towards the FATF Evaluation of the UK’, Whitehall Report, 4-15 (December 2015).
3. Ibid., p. 15.
In the years running up to the 2018 FATF evaluation of the UK, officials and the supervisors of the array of sectors within the scope of the evaluation were on high alert in preparation for a year-long period of scrutiny.\(^5\) This scrutiny included the submission of substantial documentation; a three-week visit to the UK by evaluators in March 2018; an extensive quality-control process for the evaluators’ work; and the review of the resulting report by the FATF plenary meeting in October 2018.

In observing this activity from the outside, one of the first publications produced by CFCS in 2015, which aimed to point to gaps in the UK’s response to its 2007 evaluation, noted that ‘whilst the UK has made reasonable steps to rectify some of the purely technical deficiencies identified in [the FATF evaluation of] 2007, there is reasonable cause for concern regarding the UK’s ratings in relation to a number of the effectiveness measures’.\(^6\)

The report pointed to areas, such as the UK’s approach to AML supervision, public sector resourcing (particularly of the UK Financial Intelligence Unit [UKFIU]), and implementation of the ‘risk-based approach’ – a concept reinforced as a central theme throughout the revised FATF standards – as areas which merited attention by UK policymakers.

CFCS’s 2015 report set out these areas, and others, as challenges facing UK officials in the run-up to the 2018 evaluation. The fact that the UK’s 2018 evaluation received the highest aggregate scoring on effectiveness of those countries evaluated so far is testament to the work undertaken by officials in preparation for the visit of the evaluators since the CFCS report was published.\(^7\)

But the fact that the UK remains a focal point for global financial crime – with its Scottish Limited Partnerships,\(^8\) financial and wealth management sector, and lawyers, accountants and estate agents ever-present in continuing scandals\(^9\) – raises an important question: if the UK, as a recognised global hub for dirty money, is gaining top marks from FATF, is the FATF mutual evaluation process really effective?

**No Room for Complacency**

On this basis, this Whitehall Report does not take FATF’s conclusions at face value, but instead considers how the UK AML regime should develop from here, not only to ‘pass the FATF test’,

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5. For businesses coming under the definition of ‘regulated sector’ in the UK, see ‘The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (UK)’.
7. Looking at the ‘effectiveness’ and technical compliance ratings in aggregate, the UK scores highest of the countries examined so far. See FATF, ‘Consolidated Assessment Ratings’.
but to drive forward an approach that genuinely protects the UK’s financial integrity in practice (rather than in theory). In line with the ‘whole of system’ approach advocated by FATF (see Figure 1), this report examines the future development of the UK’s AML response along three lines.

First, in line with FATF Intermediate Outcome 1 (see Figure 1), it examines both the UK’s AML strategy and what is meant by AML ‘effectiveness’ in practice. Second, in line with FATF Intermediate Outcome 2, it examines the UK’s preventative framework by looking at the country’s supervisory environment, the future of public–private information sharing, and virtual asset regulation. Finally, the report looks at the UK’s response under FATF Intermediate Outcome 3, by examining the UK’s disruptive efforts under both its counter-corruption strategy and its use of financial intelligence.

This report is unable to cover every aspect of a complex and multifaceted AML/CTF regime, but points to priority areas where the UK should specifically avoid falling into a post-evaluation period of complacency. This is essential if it is to solve a problem as ‘wicked’ as money laundering, which will require significant investment and coordinated action by law enforcement, prosecutors, AML supervisors, and the regulated sector.

The FATF evaluation has provided welcome focus and impetus for those in the UK charged with tackling financial crime. Long-overdue remedial action has been undertaken, including in the much-criticised AML supervisory environment with the creation of the Office for Professional Body Anti-Money Laundering Supervision (OPBAS). The launch of the National Economic Crime Centre (NECC) aligned with the reboot of the UK’s Serious and Organised Crime Strategy in 2018 (‘the SOC Strategy’), providing clear indications of (political) ambition.

But some fundamental questions remain; with the FATF assessment over and reassessment unlikely within the next decade, how will the UK drive forward its commitment to fighting financial crime? Will resources be made available for ensuring the effectiveness of this fight? Who will be accountable on a day-to-day basis for ensuring progress? And who is going to inspire the same sort of energy and activity in UK authorities and resist the extended period of neglect that the UK displayed following the 2007 evaluation?

Preparation for the UK 2018 mutual evaluation report (2018 MER) may have been hard work, but living up to the expectations that have been raised by the measures, plans and strategies put forward over the past four years will be considerably more challenging, as will remodelling the beleaguered UKFIU. This report provides recommendations for future action to ensure that promises made deliver action.

11. There will be some interaction in the meantime as the UK will report back to the FATF in five years and will also set out its response to the FATF report in due course.
**Figure 1:** FATF Framework for Assessing Effectiveness

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<tr>
<th>High-Level Objective:</th>
<th>Intermediate Outcomes:</th>
<th>Immediate Outcomes:</th>
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<tr>
<td>Financial systems and the broader economy are protected from the threats of money laundering and the financing of terrorism and proliferation, thereby strengthening financial sector integrity and contributing to safety and security.</td>
<td>Policy, coordination and cooperation mitigate the money laundering and financing of terrorism risks.</td>
<td>Money laundering and terrorist financing risks are understood and, where appropriate, actions coordinated domestically to combat money laundering and the financing of terrorism and proliferation.</td>
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<td></td>
<td>Proceeds of crime and funds in support of terrorism are prevented from entering the financial and other sectors or are detected and reported by these sectors.</td>
<td>International cooperation delivers appropriate information, financial intelligence, and evidence, and facilitates action against criminals and their assets.</td>
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<tr>
<td></td>
<td>Money laundering threats are detected and disrupted, and criminals are sanctioned and deprived of illicit proceeds. Terrorist financing threats are detected and disrupted, terrorists are deprived of resources, and those who finance terrorism are sanctioned, thereby contributing to the prevention of terrorist acts.</td>
<td>Supervisors appropriately supervise, monitor and regulate financial institutions and DNFBPs for compliance with AML/CFT requirements commensurate with their risks.</td>
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<tr>
<td></td>
<td></td>
<td>Financial institutions and DNFBPs adequately apply AML/CFT preventive measures commensurate with their risks, and report suspicious transactions.</td>
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<td>Legal persons and arrangements are prevented from misuse for money laundering or terrorist financing, and information on their beneficial ownership is available to competent authorities without impediments.</td>
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<tr>
<td></td>
<td></td>
<td>Financial intelligence and all other relevant information are appropriately used by competent authorities for money laundering and terrorist financing investigations.</td>
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<tr>
<td></td>
<td></td>
<td>Money laundering offences and activities are investigated and offenders are prosecuted and subject to effective, proportionate and dissuasive sanctions.</td>
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<tr>
<td></td>
<td></td>
<td>Proceeds and instrumentalities of crime are confiscated.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Terrorist financing offences and activities are investigated and persons who finance terrorism are prosecuted and subject to effective, proportionate and dissuasive sanctions.</td>
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<tr>
<td></td>
<td></td>
<td>Terrorists, terrorist organisations and terrorist financiers are prevented from raising, moving and using funds, and from abusing the NPO sector.</td>
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<tr>
<td></td>
<td></td>
<td>Persons and entities involved in the proliferation of weapons of mass destruction are prevented from raising, moving and using funds, consistent with the relevant UNSCRs.</td>
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*Source: FATF, ‘Methodology for Assessing Technical Compliance with the FATF Recommendations and the Effectiveness of AML/CTF Systems’, p. 16.*
I. The FATF Evaluation is Over, Now it’s Time for a Strategy

CRAMMING FOR THE exam, it would seem, has been worth it. The 2018 MER concluded that “the UK has implemented an AML/CFT system that is effective in many respects” and has been significantly strengthened since its last evaluation in 2007.

Although this is a subjective assessment of the state of play, the UK government’s response has been to crow, greeting the publication of the report with a press release titled ‘UK Takes Top Spot in Fight Against Dirty Money: New Report from the Financial Action Task Force Ranks the UK World-Leading in the Fight Against Illicit Finance’. It is notable that the tone of this press release deviates from that of FATF: ‘The United Kingdom has a well-developed and robust regime to effectively combat money laundering and terrorist financing. However, it needs to strengthen its supervision, and increase the resources of its financial intelligence unit’.

The fact that the UK has achieved the highest aggregate score of any country evaluated in the current round of assessments (a total of 66 countries as of 10 January 2019) has stunned many, including the authors of this report and several NGOs. Some in UK government circles have even (privately) shared their surprise at the results with the authors.

The UK sits at the centre of the global money-laundering web, the preferred destination for those seeking the tools, skills and assets with which to hide the proceeds of kleptocracy, corruption

and organised crime. With a chronically under-resourced response, particularly with regards to staffing of the UKFIU, as the 2018 MER indicates, how can the UK have done so well?

Skilful sleights of hand, in policy terms, undoubtedly play a significant role. Government officials have worked tirelessly to develop policies and legislation that have caught the assessors’ eyes. In reviewing the 2018 MER, it is striking how many references are made to initiatives born in the last three years.

For example, the Joint Money Laundering Intelligence Taskforce (JMLIT)\textsuperscript{16} is heralded as ‘an innovative model for public/private information sharing that has generated very positive results since its inception in 2015 and is considered to be an example of best practice’.\textsuperscript{17} The Office of Financial Sanctions Implementation was established in 2016 to help ‘ensure that financial sanctions are properly understood, implemented and enforced in the United Kingdom’.\textsuperscript{18} In 2017 the UK’s Money Laundering Regulations were updated and the Criminal Finances Act was passed by Parliament. And in 2018, OPBAS was set up ‘to strengthen the UK’s anti-money laundering (AML) supervisory regime and ensure the professional body AML supervisors provide consistently high standards of AML supervision’.\textsuperscript{19}

Alongside these structural and legal developments, the blizzard of action plans, strategies and international initiatives, including the publication of the 2016 AML Action Plan\textsuperscript{20} and the hosting of the 2016 Anti-Corruption Summit in London, have sought to make the case that, at least on paper, the UK’s response is consistent with FATF’s high-level objectives on effectiveness (see Figure 1).

In this regard, as the 2018 MER notes, the country would appear to be a model student, with ‘a robust understanding of its ML/TF [money laundering and terrorist-financing] risks’.\textsuperscript{21} Furthermore, the UK is actively pursuing money-laundering and terrorist-financing investigations and prosecutions and subjecting all entities within the FATF’s definition of financial institutions

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\textsuperscript{16} The UK’s public–private information-sharing partnership between law enforcement and the major banks.
\textsuperscript{21} FATF, ‘United Kingdom Mutual Evaluation Report December 2018’, p. 3.
and ‘designated non-financial businesses and professions’ (DNFPBs) to comprehensive AML/CFT requirements.

A Matter of Prioritisation

But do these findings, whether challengeable or not, reflect in aggregate a holistic system which protects the UK financial system and broader economy from the considerable threats – as detailed by the FATF – it faces? Which areas should the UK government prioritise to demonstrate to the sceptics that its strategy is sound? What actions will ensure that partners around the world – who see the UK as central to their own financial crime challenges – notice real change? Most importantly, what steps will ensure that the criminals, kleptocrats and corrupt officials who have availed themselves of the UK’s financial and professional services no longer see the country as a destination of choice?

Starting at the policy/political level, the recent publication of the government’s SOC Strategy 2018 was accompanied by a foreword from the Home Secretary noting ominously that ‘serious and organised crime is the most deadly national security threat faced by the UK’. The range of threats contained in its 70 pages – from child sexual exploitation and drugs and firearms smuggling, to cyber attacks and money laundering – was extensive.

However, this strategy was abundant in rhetoric and lacking in detail. The first priority for the UK government should be to refine this disparate strategy into headline short, medium- and long-term objectives in the field of AML and asset confiscation, and translate these into new (and publicly available) AML and Asset Recovery Action Plans, on which ministers are held to account through an annual progress report to Parliament.

Recommendation 1: Refresh and publish the AML and Asset Recovery Action Plans and provide annual reports to Parliament setting out progress.

This last point is important – as seen with past AML initiatives, a lack of oversight and accountability often translates into a lack of action. One way to achieve this accountability would be the appointment of an Independent Commissioner for Economic Crime, a concept which is working well in the fight against modern slavery.


22. Ibid., p. 6.
23. Ibid., p. 5.
Moving into the more tactical aspects of the UK’s response, the SOC Strategy 2018 proposes three ways in which the UK can meaningfully enhance its ability to meet its objective on financial crime: public–private partnerships; data, intelligence and analysis; and enforcement. The UK’s proposed solution to driving forward many of these priority areas is the creation of the National Economic Crime Centre (NECC).\(^{26}\)

Formally launched in October 2018, the NECC is a multi-agency unit,\(^ {27}\) including private sector partners, housed within the National Crime Agency (NCA) and operating under its enabling powers, but led by its own Director General (DG). The NECC has been established to ‘act as the national authority for the UK’s law enforcement response to economic crime, drawing on operational capabilities in the public and private sector’.\(^ {28}\)

The NECC’s main role will be to ‘drive how UK law enforcement tasks and co-ordinates activity’.\(^ {29}\) With reportedly no on-the-ground operational officers of its own,\(^ {30}\) it will be interesting to see whether UK police chiefs operating under tight budgetary conditions are willing to accept direction and tasking from this new body or whether the NECC’s DG will be forced to resort to relying on the NCA’s coercive tasking powers.\(^ {31}\)

To support the NECC in building the solid reputation it needs to task by consent, it is essential that its role is seen to add value. The decision to house the JMLIT group within this structure helps. However, it is essential that the NECC is equipped with a strong intelligence and data-analysis function of its own to ensure its taskings are seen to come from a strong knowledge base.

Plans set out in the SOC Strategy 2018 to establish a new National Assessment Centre and National Data Exploitation Capability\(^ {32}\) to improve the intelligence picture in relation to serious organised crime across the board are welcome. But, without a well-resourced dedicated intelligence function, the NECC will struggle to gain the position of expertise within the UK law enforcement community that it needs to operate effectively.

A NECC with a strong intelligence and data-analysis function will do much to rectify the fact that the UK has historically been a global laggard in the use of data and analytics to fight financial crime, struggling to demonstrate the situational awareness that would allow for the creation...
of a targeted and systematic response to financial crime based on data and analysis. Coupled with the need, identified in the 2018 MER, to update both the technological and analytical model of the UKFIU, this report recommends that investment in intelligence resources should be a priority for the NECC.

**Recommendation 3: Prioritise funding of human and technological intelligence capabilities within the NECC.**

Finally, the issue of enforcement, a fundamental component of any AML strategy, must be considered. As CFCS research has previously noted, the fragmented and uneven nature of the UK’s AML supervisory landscape is sub-optimal. As the FATF notes, ‘major improvements are needed to strengthen supervision and implementation of preventive measures’. The creation of OPBAS, the so-called ‘supervisor-of-supervisors’, is an attempt to ensure greater consistency and coordination within the supervisory response, but there is a question as to whether this is a sticking plaster rather than a solution to a fragmented system, which has grown organically rather than strategically. It is essential that OPBAS is given the political support it needs to implement much-needed changes in the UK’s AML supervisory environment, including the removal of inadequate supervisors where needed.

Furthermore, at a law enforcement level, the government promises investment in financial investigation and asset recovery capabilities, areas that various aspects of CFCS research over the past four years have found to be dramatically neglected since the onset of austerity, despite their centrality to tackling financial crime. Reversing these declines in the UK policing landscape and investing for the future should form a fundamental part of the UK’s future strategy for tackling money laundering and financial crime in its myriad forms.

**Conclusion**

Over the past four years, the UK’s response to financial crime has been dictated by the impending FATF assessment. Although the assessment heralded a welcomed concentration of minds and brought about changes which might not have otherwise occurred, there is a risk that the efforts to unravel the ‘wicked problem’ will reverse now that the spotlight on the UK has dimmed. The UK must ensure that the momentum and focus that has been evident in the run-up to the

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evaluation is not lost and that the plans and strategies put forward by the government turn into action and results.

This report suggests that priority should be given to turning the slew of high-level strategies into meaningful and monitored action plans; that new structural innovations in the system, such as the NECC, should prioritise intelligence development through investment in technological and human resources; and that a re-emphasis should be placed on enforcement, both at the supervisory and criminal justice levels.

In hindsight, preparing for the evaluation was the easy bit; now the hard work begins.
II. How Effective is the UK’s Anti-Money Laundering Regime, Really?

According to the 2018 MER, the UK has a sophisticated legal and institutional framework for combating money laundering. Yet, the UK government estimates that either ‘tens’ 37 or ‘hundreds’ 38 of billions of pounds may be laundered through the UK each year. The methodology on which these assessments is based is opaque and such estimates are often based on disputed methodology from the United Nations Office on Drugs and Crime (UNODC), 39 but known instances of billions being transferred in suspicious circumstances, such as the transfers for which the Financial Conduct Authority (FCA) fined Deutsche Bank in 2017, 40 give an indication as to the potential scale of the problem.

Whatever the true figure, with the apparent contradiction between the 2018 MER and the results on the ground, an understanding of the effectiveness of the UK’s AML regime, both in terms of identifying the threat and responding to it, is central to locating areas for improvement and allocating resources accordingly.

What Does ‘Good’ Look Like?

Key to establishing the effectiveness of AML measures is establishing the objectives of the AML regime. As the term suggests, the primary deliverable of the AML regime should be reducing the amount of money laundered. It is the gap between this aspiration and the prevailing situation in the UK that gives rise to concerns about the UK AML regime’s effectiveness, despite the favourable assessment by the FATF assessors.

Yet, is this description of what the regime seeks to achieve too simplistic? Indeed, there was a time when not a single penny was laundered in the UK. That was, of course, before 1986 –

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the year when the offence of money laundering was first introduced in the UK by the Drug Trafficking Offences Act 1986.\textsuperscript{41}

This does not mean that the situation was benign before this time; money laundering appeared on the statute books because of a growing global consensus that by adding money-laundering offences to the armoury, governments could undermine the profitability of crime by achieving the following reasonable objectives of AML regimes writ large:\textsuperscript{42}

- Reducing the incidence of domestic predicate offences due to them becoming less profitable.
- Deterring criminals from overseas from laundering their cash through the jurisdiction.
- Facilitating criminal prosecutions by generating financial intelligence.

Measuring whether these objectives have been achieved is notoriously difficult.\textsuperscript{43} The challenges of measurement necessitate a set of less conceptual, more concrete indicators of how well a country is doing in fighting money laundering. This is the approach taken by FATF, which distinguishes between an overarching high-level objective, three intermediate outcomes and 11 immediate outcomes (IOs), with countries being assessed against the latter (see Figure 1).\textsuperscript{44}

The 2018 MER has judged the UK to be either highly or substantially effective in achieving eight out of 11 IOs.

By way of comparison, from among the 66 countries whose notional ‘effectiveness’ has been assessed by FATF under the new standards, the UK’s ratings are the most positive, with the US a close second. For example, Spain and Italy have also achieved ratings of high or substantial effectiveness in relation to eight IOs, but Spain was only highly effective with regard to one IO, while Italy did not receive a single ‘high effectiveness’ rating.\textsuperscript{45}

So, viewed from a comparative perspective, the 2018 MER paints a flattering picture of the effectiveness of the UK’s AML efforts. Yet the scale of money laundering assessed to be occurring in practice through the UK’s economy\textsuperscript{46} demonstrates that ‘effectiveness’ in fulfilling FATF’s

\textsuperscript{41} ‘Drug Trafficking Offences Act 1986 (UK)’.
\textsuperscript{44} FATF, ‘Methodology for Assessing Technical Compliance with the FATF Recommendations and the Effectiveness of AML/CTF Systems’, p. 13.
\textsuperscript{45} FATF, ‘Consolidated Assessment Ratings’.
IOs in aggregate does not necessarily translate into real-world effectiveness in achieving the overarching objectives of an AML regime, as set out above.

**Table 1:** UK Ratings in FATF 2018 Mutual Evaluation Report

<table>
<thead>
<tr>
<th>FATF Immediate Outcomes</th>
<th>UK’s Rating</th>
</tr>
</thead>
<tbody>
<tr>
<td>IO1: Understanding of money-laundering and terrorist-financing risks</td>
<td>High effectiveness</td>
</tr>
<tr>
<td>IO2: International cooperation</td>
<td>Substantial effectiveness</td>
</tr>
<tr>
<td>IO3: Adequate supervision of regulated financial and non-financial institutions</td>
<td>Moderate effectiveness</td>
</tr>
<tr>
<td>IO4: Application of adequate preventive measures by regulated financial and non-financial institutions and reporting of suspicious transactions</td>
<td></td>
</tr>
<tr>
<td>IO5: Prevention of the misuse of legal persons and arrangements</td>
<td>Substantial effectiveness</td>
</tr>
<tr>
<td>IO6: Use of financial intelligence for money-laundering and terrorist-financing investigations</td>
<td></td>
</tr>
<tr>
<td>IO7: Investigation and prosecution of money laundering</td>
<td>Substantial effectiveness</td>
</tr>
<tr>
<td>IO8: Confiscation of proceeds and instrumentalities of crime</td>
<td>Substantial effectiveness</td>
</tr>
<tr>
<td>IO9: Investigation and prosecution of terrorist financing</td>
<td>High effectiveness</td>
</tr>
<tr>
<td>IO10: Prevention of the abuse of non-profit organisations for terrorist financing</td>
<td>High effectiveness</td>
</tr>
<tr>
<td>IO11: Prevention of the financing of nuclear proliferation</td>
<td>High effectiveness</td>
</tr>
</tbody>
</table>


Viewing the ‘value’ of an AML regime in these arbitrary ‘league table’ terms, as the UK government press release did, is too simplistic – FATF’s laudable attempt to measure a concept as nebulous as ‘effectiveness’ via a linear assessment process could be said to paint an unrealistic picture of a country’s effectiveness, especially when the evidence to prove this point comes in the form of repeated global money-laundering scandals in which the UK’s financial system is regularly implicated. Furthermore, it should be noted that this ‘league table’ is a UK government invention rather than FATF’s; FATF report ratings through an agnostic ‘consolidated ratings’ system.

While this report does not suggest a better or more scientific way of measuring the ‘effectiveness’ of a domestic AML regime, this being perhaps an impossible task, it does strongly challenge any presumption of effectiveness based purely on numbers of highly or substantially effective FATF ratings. In fact, the UK’s place at the top of this invented ‘league table’ leads to question whether the IOs on which it was less favourably rated have a more substantial impact on the efficacy of the regime overall.

Are All IOs Created Equal?

A country’s own understanding of the risks they face is FATF’s first requirement, and is one the UK is deemed to be excelling at. The assessment of risks also infuses FATF’s evaluation of effectiveness in relation to various IOs. However, as the UK experience shows, the combination of high risks and even moderate effectiveness in some key areas can hamper the ability of the overall regime to deliver results.

By way of example, the UK’s top money-laundering threats include so-called ‘high-end money laundering’, which often involves the abuse of professional services, such as lawyers and accountants. Despite this identified threat, the UK received a ‘moderately effective’ rating for IO3 due to its fragmented supervisory response to this high risk covered by 25 AML supervisors (see Chapter III) and an often adversarial relationship between government and the professions in question. Weakness in this fundamental area (AML supervision – explored below) arguably undermines the systemic effectiveness of the UK’s AML response overall.

Similarly, it could be argued that a strong scoring in IO6 (use of financial intelligence) is essential to the overall effectiveness of an AML regime, and that this is intrinsically linked to the effective supervision which drives intelligence reporting by the regulated sector in the first place. Arguably, the UK’s combination of lower scores in IO3 and IO6 serves to undermine the overall effectiveness of the system, in such a way that would not necessarily be the case in the event of poorer ‘effectiveness’ in other areas.

Conclusion

Significant financial crime risks in relation to high-end money laundering, combined with a less-than-overwhelming response in some key areas of the AML regime, such as use of financial intelligence (IO6) and AML supervision (IO3), go some way towards explaining the gap between the UK’s claim to be at the top of the FATF ‘league table’ and the lack of results in terms of a genuine impact on money laundering in practice. This poses the question: are all IOs created equal?


50. See Wood et al., ‘Known Unknowns’.

51. For views on links between AML supervision and intelligence provision, see Ibid., pp. 13–22.

52. Such as IO10 (abuse of charities) and IO11 (nuclear proliferation), where UK effectiveness was deemed to be high.
In short, the UK’s weakness in two fundamental areas drags down the overall effectiveness of the system in real terms, demonstrating the complexity and interdependencies that make money laundering a ‘wicked problem’. In the past three years, the UK government has shown a steady determination, at least at the political level, to address money laundering. However, it is essential to focus on the fundamentals of the regime – intelligence and supervision – if the system is to be effective as a whole. As the Home Office and HM Treasury continue with their work to build a better evidence base for tackling financial crime, a focus on the big picture and the genuine (as opposed to theoretical) effectiveness of the AML regime is necessary.

**Recommendation 4: Prioritise addressing deficiencies in the AML supervisory regime and use of financial intelligence over the next three years to improve systemic effectiveness overall.**
III. AML Supervision of Professions in the UK: Significantly Deficient or Necessarily Complex?

Despite much study, discussion and consultation over recent years, the UK’s AML supervisory landscape remains complex and fractured. In addition to the three statutory supervisors – the FCA, the Gambling Commission and HMRC – there are still no fewer than 22 professional bodies directly supervising their members in the legal and accountancy services sectors.53

FATF’s 2018 MER scored the UK ‘moderately effective’ on supervision generally (IO3). Setting aside the improvements needed in the FCA’s supervisory role, characterised as having ‘significant weaknesses’ in the 2018 MER,54 this chapter focuses on rethinking the UK’s response to non-financial sector AML regulation, currently led, in the main, by professional bodies as opposed to the UK government. Sufficiently concerned about significant deficiencies and lack of consistency in professional body supervision, the government created an extra layer of complexity in the form of the OPBAS, which is charged with improving standards of AML professional body supervision. In recent evidence to the Treasury Committee, the Economic Secretary to the Treasury described this arrangement as ‘necessarily complex’,55 without elaborating on the imperative need for complexity in supervisory arrangements.56

While recognising that the OPBAS is in the early months of operation, the FATF evaluators found that the UK must continue its efforts to address the ‘significant weaknesses’ in supervision by the 22 legal and accountancy sector supervisors,57 which range in size from large well-known bodies, such as the Law Society and the Institute of Chartered Accountants in

53. These are non-governmental, self-regulatory bodies given responsibility under the Money Laundering Regulations 2017 for supervising AML compliance within their sectors. See ‘Sanctions and Anti-Money Laundering Act 2018 (UK)’.
56. In fact, a number of FATF peers, such as Spain, have adopted a unitary approach to AML supervision, with one body charged with supervising all AML sectors. While not necessarily a ‘better’ approach, this suggests that such a multi-handed approach is not ‘necessary’.
England and Wales, to much smaller bodies comprising accountancy or taxation technicians and book-keepers.

If a system is simultaneously both complex and deficient, consideration must be given to at least the possibility that a root cause of deficiency may be the underlying complexity. The OPBAS focus on consistency may suggest that the current arrangements promote (or, at least, permit) an inconsistency that does not lend itself to an effective regime.

However, different bodies could theoretically undertake their AML supervision in vastly different ways, provided these were appropriate to their supervised populations and the risks they pose. If the aim was to simply impose a homogenous approach to AML supervision across the board, then the argument to retain 22 separate bodies and create a new ‘supervisor of supervisors’ seems weak.

As regards the statutory supervisors, two of these – the FCA and the Gambling Commission – have fairly obvious AML supervision remits. Broadly speaking, they supervise those firms that fall under their wider regulatory remits. The role of HMRC in supervising a miscellany of money service businesses (MSBs), estate agents, unregulated accountants, trust and company service providers is less obvious, and questions have been asked (not least by HMRC senior management themselves) if it is entirely appropriate for a tax body, charged with raising revenue for the government, to have an AML supervisory role.

Unsurprisingly, on closer questioning by the Treasury Committee in October 2018, HMRC rolled back on this suggestion and professed that this role is a priority for them. They have aligned their AML supervision role with their investigative efforts in counter-fraud and AML, although there is no direct cross-subsidy of these activities, and HMRC is seeking to increase the fees it charges for AML supervision to upscale their efforts further. Criticisms of their previous supervisory stance, such as a lack of transparency, have also been addressed through the publication of HMRC’s first money-laundering supervision report in May 2018.

58. Those accountants which have chosen not to come under the purview of one of the 15 self-regulating bodies supervising different areas of the accountancy profession.
HMRC has pushed back quite hard against a label of ‘supervisor of last resort’,\(^{62}\) suggesting that for some sectors, such as MSBs, they are the first resort.\(^{63}\) In the same evidence to the Committee, it was said that ‘for the sectors that do not fit with anyone else, we are the place the Government come to ask us to deal with them’.\(^{64}\) This may or may not be a description of ‘last resort’, but it certainly implies a lack of strategic thought as to who is best equipped to supervise whom, or a nuanced approach to risk-based supervision, such as ensuring the highest risk entities in the professions are supervised by the body best suited to mitigating those risks.\(^{65}\)

It remains a fact that whether certain professionals fall under the supervision of HMRC or a professional body is, to an extent, a matter of choice. An individual offering accountancy services, not a ‘reserved term’ in the UK,\(^{66}\) could decide to belong to a professional body or not, and, to a degree, has a choice of professional bodies to choose from.\(^{67}\) The potential for regulatory arbitrage, based either on cost or perceived effectiveness of AML supervision, is clear. It will be a significant challenge for the OPBAS, which has no remit over HMRC, to address this issue.

However, there are theoretical benefits to HMRC carrying out this role. It has access to a wide range of criminal intelligence and financial information about individuals and companies that is simply not available to the professional body supervisors. HMRC also has experience in assessing risk across large populations and applies these techniques to their AML supervision, using no fewer than 97 risk rules to assess firms for compliance generally, including tax compliance.\(^{68}\)

In theory, then, one might expect this to be a significantly more effective approach than that witnessed by professional body supervisors, particularly the smaller ones. However, the FATF assessors did not find this to be the case and concluded that HMRC needed to review its supervisory engagement model to ensure that it properly takes into account money laundering and terrorist financing when risk-rating firms are subject to their supervision.\(^{69}\)

This is not to say that the 2018 MER assessed professional body supervision to be ‘effective’ in comparison to that of HMRC. On the contrary, among those deficiencies identified was a lack


\(^{63}\) York, ‘Oral Evidence to Treasury Select Committee Inquiry on Economic Crime’.

\(^{64}\) Ibid.

\(^{65}\) If that is a ranking that can, should or will be identified, perhaps by OPBAS.

\(^{66}\) Anyone can practice as an accountant. Membership of a professional regulatory body is not mandated and no formal qualifications are needed before you can provide accountancy services.

\(^{67}\) There are 13 accountancy bodies listed under the Money Laundering Regulations 2017 as authorised professional body AML supervisors.


\(^{69}\) Ibid., p. 12.
of sophistication in risk models, with a ‘concern that professional body supervisors base their supervisory attention on firm size, rather than a more nuanced understanding of the sectoral risks in line with the NRA [National Risk Assessment] or other risk assessments’.  

Box 2: Risk Identification – Theory Versus Practice

The OPBAS Sourcebook lays out a theoretical approach to risk identification, including the process of clustering, whereby members of a professional body that share similar characteristics, and therefore similar risks, are identified. The Sourcebook provides two illustrative examples:

- Solicitors specialising in commercial property law.
- Sole-trader book-keepers catering to small businesses in East Anglia.

The second of these examples poses some interesting questions – are small businesses in East Anglia, and the book-keepers that serve them, more or less risky than those in (for example) West Mercia? What sorts of empirical evidence can be used by professional bodies to make such judgements when adopting their risk-based approach to supervision?


However, previous CFCS research has suggested that access to the information which would allow professional body supervisors to take this more nuanced approach to risk assessment is constrained.  

A key role for the OPBAS will be to promote this flow of intelligence and information from law enforcement and government to the professional bodies, allowing them to implement an approach to supervision based on a common understanding of the threat picture. But again, this poses challenges. Many professional bodies do not have the structures, resources or, in some cases, the desire to become intelligence-led supervisors. Will the launch of the first OPBAS annual report in spring 2018 raise the spectre of removal of some supervisors from the list on this basis?

70. Ibid., p. 132.
71. See Wood et al., ‘Known Unknowns’.
Conclusion

AML supervision of the DNFPB sectors in the UK has long been recognised as a weak link – whether through the professional bodies or by the statutory supervisor, HMRC. Emergence on the horizon of the OPBAS in 2018 was a welcome recognition of the need for change, albeit with an opportunity missed to examine the effectiveness of HMRC’s AML supervisory approach.

As the OPBAS comes to the end of its first-year activity of visiting all the professional body supervisors, identifying immediate issues and agreeing action plans with them, it remains to be seen how bold an approach OPBAS will take with supervisors it finds either unwilling or unable to play a strong enforcement (as opposed to supportive) role in improving AML compliance among their supervised population. Whatever the approach, the launch of the OPBAS annual report will be the first time there has been a considered view of the actual state of play of AML supervision across the professional sectors and a step towards creating a level playing field in non-financial sector AML supervision.

But what of the role of HMRC? This chapter strongly supports giving adequate consideration to both the appropriateness and adequacy of the statutory supervisor’s role in supervising some parts of ‘the professions’. Creating a level playing field contiguous to a quagmire will cause resentment at best and regulatory arbitrage at worst.

**Recommendation 5: Provide an independent assessment of HMRC’s AML supervisory activities, alongside work OPBAS is undertaking in relation to professional body supervisors.**

Undoubtedly, while the landscape for non-financial sectors is considered and potentially reconfigured, the unhelpfully broad characterisation of these sectors by law enforcement as ‘professional enablers’ of money laundering will continue.73 Although progress is being made on cooperation and collaboration at the working level, there is seemingly still a way to go until they are primarily considered part of the solution, rather than part of the problem.

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IV. Public–Private Information Sharing: Foundations for the Future

Effective information sharing is one of the cornerstones of a well-functioning AML/CFT framework. This statement from the FATF in its 2017 guidance on private sector information sharing is easy to agree with in principle, but more difficult to effect in practice, particularly regarding public–private information exchange.

The UK, however, has been keen to promote the extent to which it has been able to square this particular circle, through its pioneering of the public–private financial information-sharing partnership (FISP) model. To an extent, the UK’s pride in this regard is merited – the establishment of the JMLIT in 2015 arguably marked the starting point for a global paradigm shift in the balance of ownership between the public and private sectors as regards the operational response to financial crime.

While the compliance-driven ‘conventional’ SARs regime, with its one-way flows of information, placed this ownership squarely in the hands of the public sector, these partnerships, now established in the UK, the US, Hong Kong, Australia and Singapore have, it could be said, de facto delivered a shared ownership model, at least with regard to their member institutions.

As recognised by the 2018 MER, the JMLIT is a benchmark for public–private information sharing, achieving results unimaginable under the conventional SARs regime. This is in no doubt. However, the successor to acclaim is often complacency. To avoid this trap, and to build on previous CFCS research in this field, this chapter proposes that the UK’s public–private intelligence exchange model, including but not confined to the JMLIT, should evolve along three fundamental lines:

• Expanding the perimeter: taking the model to the wider regulated sector.
• Firming the legal foundations: strengthening the information-sharing gateways.
• Accommodating divergent policy goals: finding the right balance between financial crime and data privacy obligations.

Expanding the Perimeter

To date, the JMLIT has been an exchange mechanism confined to the financial sector. Plans to expand the concept to the wider regulated sector, including lawyers and accountants, as announced in the SOC Strategy 2018, are, on paper, a step in the right direction. However, this expansion requires more thoughtful consideration.

The limited size and defined scope of the JMLIT is clearly one of the factors behind its success;\(^7^8\) the mechanism has built a strong culture of personal trust and has avoided bureaucratic inertia. However, it is essential that the government finds a means of drawing on the knowledge and expertise of professional service providers (such as lawyers, accountants and estate agents) rather than remaining at loggerheads with them, as has been the case to date. However, as noted in a 2018 CFCS report:

> 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 [small and medium-sized enterprises] and micro-businesses. This makes identifying a manageable number of actors to engage in such a mechanism problematic and sustainable resourcing difficult.\(^7^9\)

Finding a way of introducing the concept of rapid and dynamic two-way information exchange with these sectors is essential, but CFCS research suggests that simply expanding the JMLIT is not necessarily the answer. It is important that the involvement of these professions drives better understanding of the diverse nature of these sectors as a whole, rather than simply engaging with larger firms, as the JMLIT model largely favours. Previous CFCS research has suggested better use of the NCA Specials programme\(^8^0\) as a potential route to this.\(^8^1\)

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78. The JMLIT is currently confined to the financial sector. Its membership is predominantly the larger, global banks. For more information on JMLIT membership, see NCA, ‘Joint Money Laundering Intelligence Taskforce (JMLIT)’.
81. Wood et al., ‘Known Unknowns’.
Firming the Legal Foundations

‘Legislative clarity’ has been identified as a key foundation of an effective FISP. The JMLIT’s operating model relies on pre-existing legal gateways, which, while being used effectively to date, were not specifically designed with the JMLIT construct in mind. Now that the concept has been proven and the JMLIT is regarded as a staple feature of the UK’s AML armoury, it is time to look at developing its legal foundations to allow for growth and greater effectiveness.

First, it could be said that the Criminal Finances Act 2017 was a missed opportunity; although it put in place provisions to allow bank-to-bank information sharing, it set the bar at which this sharing could commence at the point of suspicion. Examples noted in analogous powers in the US show the value of allowing pre-suspicion sharing under government oversight, to allow for case building from the ground up rather than relying on the SARs regime as an intermediary.

Second, the primary information-sharing gateway used for the JMLIT, namely Section 7 of the UK Crime and Courts Act 2013, was employed through operational exigency rather than design, there being no ready legislative vehicle available at the time. The expansion of the concept to a wider selection of participants provides new impetus for a review of whether this gateway allows for the breadth and scale of information sharing needed to support the UK’s AML goals.

Recommendation 6: Review the legislative information-sharing pathways between JMLIT members and consider building fit-for-purpose gateways to support the operating model.

Accommodating Divergent Policy Goals

A 2017 FATF report on private sector information sharing noted the extent to which tensions between financial crime and data privacy obligations have yet to be resolved, in noting that ‘[d]ifferences in DPP [data privacy and protection] laws across jurisdictions may create implementation challenges, particularly for the private sector in sharing information’.

Considering the JMLIT’s information-sharing gateways, as recommended above, will inevitably necessitate a wider conversation by policymakers on this point. In fact, FISPs globally have shone a spotlight on one of the growing perversities of the current global AML regime: that although global financial institutions are often the only players able to see a cross-jurisdictional picture of suspected criminality, they are frequently, due to data privacy obligations, forced to

83. ‘Criminal Finances Act 2017 (UK)’, Section 11.
84. ‘Patriot Act 2001 (US)’, Section 314(b).
85. ‘Crime and Courts Act 2013 (UK)’, Section 7. This is the broad information-sharing gateway for information sharing with the NCA rather than a gateway specific to financial crime information sharing.
break up this global picture into domestic packages for reporting in individual jurisdictions; this demonstrates the problem of having to rely on domestic responses to a global phenomenon.

It is clear that data privacy restrictions are there for good reason. Recent scandals involving the use of global data by multinational companies have heightened public concerns in this regard.\(^87\) However, under the FISP ‘shared ownership’ model of AML, the balance between these two important objectives requires consideration.

If it is understood, through JMLIT and analogous models, that the private sector holds most of the data needed to tackle a crime which is increasingly global in nature, then reporters must be empowered to provide that data in its fullest form, albeit within necessary confines to protect the rights of the individual.

While the UK has made some progress in this regard under the Money Laundering Regulations 2017 (MLRs 2017)\(^88\) there is a need for the UK to lead the charge in affecting the necessary conversation on the balance between financial crime and data privacy objectives at a global level. Doing so on such a sensitive subject is, however, not without its challenges.

With the emergence of increasingly multi-jurisdictional global money-laundering scandals,\(^89\) finding a way to accommodate these competing policy goals and thus allowing the private sector to legally share the full picture is no longer a ‘nice to have’. Although the authors accept this is as an inauspicious time to do so (given public concern about private sector data abuse), as a strong voice on the global stage the UK is well placed to support FATF’s efforts to champion a global conversation with data privacy advocates in this regard.\(^90\)

**Recommendation 7:** Support FATF efforts to champion a conversation, at the global level, regarding the balance to be had between data privacy and financial crime policy objectives.

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88. The MLRs 2017 made clear, for example, that processing information for the purposes of customer due diligence is ‘in the public interest’ as regards the Data Protection Act definition. See ‘The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (UK)’.

89. For example, see Gronholt-Pedersen, ‘Danske Money Laundering Whistleblower Labels UK Structures a “Disgrace”; Harding, ‘The Global Laundromat’.

Conclusion

The UK gained well-deserved credit for its role in revolutionising public–private AML information sharing under the JMLIT model. However, this does not mean that it should enter a period of stasis. Moving away from a ‘JMLIT for the non-financial sectors’ model towards a more fit-for-purpose response, underpinned by information-sharing gateways by design rather than default, is important. However, without effecting the difficult conversation between the financial crime and data privacy lobbies, the need to take the concept to a global level will remain a pipe dream. This chapter urges the UK government to re-energise its efforts to support FATF’s efforts in this regard.
V. The Next AML Frontier: Regulating the Virtual Asset Economy

As the 2018 MER recognised, recent initiatives of the UK government, such as the OPBAS, are likely to enhance the implementation of the UK’s AML regime in the near future. However, AML measures can produce a ‘balloon effect’, whereby efforts to tackle illicit financial flows in some sectors may encourage criminals to exploit vulnerabilities in others.

As a result, the effective mitigation of financial crime risks is not limited to robust supervision and enforcement of the existing framework. Rather, implementation efforts should go hand-in-hand with an ongoing review of that same framework, lest it become outdated. Does the AML regime sufficiently address vulnerabilities of sectors that have emerged outside its traditional perimeter? If not, what is the most effective response to those vulnerabilities?

Findings of the 2018 Mutual Evaluation Report

The virtual asset economy is the latest and most prominent example of a sector posing new money-laundering vulnerabilities that call for a clarification or extension of the AML regime. In fact, at the same plenary meeting at which the FATF adopted the UK’s 2018 MER, it also revised its Recommendation 15 to state that virtual asset service providers should be required to comply with the relevant measures called for in the FATF Recommendations. This was followed by a commitment by G20 leaders in November 2018 to ‘regulate crypto-assets for anti-money laundering and countering the financing of terrorism in line with FATF standards’.

91. Virtual assets are defined in the FATF Recommendations as ‘a digital representation of value that can be digitally traded, or transferred, and can be used for payment or investment purposes. Virtual assets do not include digital representations of fiat currencies, securities and other financial assets that are already covered elsewhere in the FATF Recommendations.’ See FATF, ‘International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation: The FATF Recommendations’, updated October 2018, p. 124.

92. Recommendation 15 relates to ‘New Technologies’. It previously referred only to new products and services within the existing regulated sector.

Under the FATF mutual evaluation procedures, countries are assessed against the standards in place at the time of the on-site visit. Accordingly, the 2018 MER does not discuss the UK’s technical compliance with the revised Recommendation 15.94

Unlike technical compliance, however, the effectiveness of an AML regime is assessed in a more flexible way. In essence, countries need to demonstrate that they have an understanding of their money-laundering and terrorist-financing risks, and have taken action to mitigate those risks. This means that, regardless of specific FATF technical recommendations on virtual assets, UK authorities were expected, during the evaluation process, to have considered related risks and responded accordingly.

The 2018 MER notes that UK authorities have identified emerging risks posed by virtual assets and intend to regulate virtual asset exchange providers in line with the EU’s 5th Anti-Money Laundering Directive (5MLD).95 On that basis, the FATF recommends that the UK should ‘[c]ontinue to develop an understanding of emerging risks (such as virtual currencies) and intelligence gaps, and take appropriate action’.96

Which Parts of the Virtual Economy Should be Regulated?

A central question that the UK government will have to consider at the outset is the scope of regulations designed to mitigate risks associated with virtual assets. 5MLD requires member states to apply AML regulations to providers that offer exchange services between virtual assets and fiat currencies (‘fiat-to-virtual exchanges’),97 and to custodian wallet providers (entities that safeguard private cryptographic keys on behalf of their customers, to hold, store and transfer virtual assets).

Bringing fiat-to-virtual exchanges within the scope of AML regulations will go beyond making it easier to take action against exchanges whose main selling point is the absence of customer due diligence. It will also allow those exchanges that are committed to AML objectives to more effectively contribute to those objectives, for example through information-sharing mechanisms that have been designed for regulated entities.

94. This point will be addressed at a later date when the UK seeks re-ratings on other recommendations.


97. In essence ‘cashing out’ virtual currencies into standard, useable money.
However, there is a growing consensus – as FATF’s new definition of ‘virtual asset service provider’ confirms – that regulating fiat-to-virtual exchanges will not be sufficient. Instead, the FATF opted for a broad definition to also include businesses that exchange between one or more forms of virtual assets (‘virtual-to-virtual exchanges’) or transfer virtual assets on behalf of another person. Along the same lines, the UK government’s Cryptoassets Taskforce\(^98\) announced in October 2018 that ‘the government intends to broaden the UK’s approach to go beyond the SMLD requirements’ and that it will consult on whether to apply these regulations to overseas entities providing these services to UK customers.\(^99\)

The scope of the regulatory response should also reflect that criminal groups or sanctioned parties may use virtual assets to both launder and generate funds, whether through illegal or legal means. For example, since 2017, South Korea’s National Intelligence Service has attributed several hacks of virtual currency exchanges to North Korea,\(^100\) suggesting that Pyongyang is increasingly looking at virtual assets as a source of revenue and a tool to evade sanctions.

While the opportunities to purchase goods or services in virtual assets are still limited today, policymakers and regulators should be prepared for the likely development of criminal modus operandi that rely on virtual assets from end to end. The US indictment against agents of Russia’s central military intelligence unit, the GRU,\(^101\) asserts that the virtual assets allegedly used by agents to purchase servers had been obtained in part through mining bitcoins.\(^102\) As of today, mining pools that allow several users to jointly mine bitcoins are not subject to consistent transparency requirements regarding their investors and beneficiaries.

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98. A UK government taskforce consisting of HM Treasury, the FCA and the Bank of England set up to assess the threats and opportunities of cryptocurrencies for the UK.


101. GRU is the English translation of the Russian acronym ‘ГРУ’.

How Should Actors of the Virtual Economy be Regulated?

Clarifying which parts of the virtual economy present money-laundering vulnerabilities is a critical first step. However, deciding how best to address those vulnerabilities is equally important and possibly more complex. In particular, as the effectiveness of the current AML regime is being increasingly questioned, new sectors such as virtual assets offer a welcome opportunity to consider innovative approaches, rather than simply extending existing rules to a new set of actors.

A key factor to consider when designing a tailored response to the money-laundering risks associated with virtual assets should be the sector’s own experience in recent years. As the virtual asset community was determined to enhance the reputation of virtual assets and gain the public’s (and financial institutions’) trust, many exchanges have invested in innovative AML approaches.

In the absence of regulations, the response of exchanges was not shaped as much by the need to follow specific processes for purposes of compliance, but rather by the objective to ensure effective risk mitigation. Transaction-tracing tools that allow exchanges to determine if virtual assets might be associated with criminal activity are one example of innovative approaches that might not have been as widely adopted if the sole objective had been to comply with pre-existing obligations. It will therefore be essential for policymakers to preserve an outcome-focused approach to AML in the sector, which focuses on real world outcomes rather than compliance for compliance’s sake, when introducing regulations.

In addition, as one of the primary roles of AML regulations is to strengthen financial investigations into the underlying criminal activity, regulations should as much as possible be tailored to the relevant predicate offences. While virtual assets are increasingly used by criminals other than cyber criminals, they continue to be particularly prevalent in the laundering of the proceeds of cybercrime (including ransomware and ‘cryptojacking’). Accordingly, policymakers should ensure that AML regulations applicable to the virtual economy are well suited for such predicate offences. This could, for example, include strengthening the role of cyber-related indicators such as IP addresses or device IDs in customer due diligence or SARs.

Conclusion

When responding to FATF’s recommendation to take ‘appropriate action’ in response to risks associated with virtual assets, UK authorities should not only consider the specific challenges associated with the decentralised and rapidly evolving nature of the virtual economy, but also recognise the opportunity to update AML regulations based on lessons learned from other sectors and a new crime landscape.

Recommendation 8: On bringing the virtual asset economy under the purview of the AML regime, ensure that provisions are tailored to the new regime, rather than simply extending existing provisions.
VI. No Place for Dirty Money: Tackling the Proceeds of Corruption in the UK

During his closing remarks at the UK’s Anti-Corruption Summit in May 2016, then Prime Minister David Cameron stated that the world had ‘come together in a coalition of the committed to expose, punish and drive out corruption’, and that it would be ‘political will – not just from words but from actions – that will make a difference’.104

The 2018 MER is peppered with references to the UK’s sizeable exposure to the threat emanating from the proceeds of corruption being laundered through the jurisdiction. In particular it notes that ‘the UK faces a significant risk of ML [money laundering] in relation to foreign corruption proceeds’.105 It is therefore pertinent to consider the extent to which the UK’s commitments have been followed up with actions in the nearly three years since the Summit.

While the 2018 MER notes that ‘[t]he UK has prioritised the fight against corruption and has a robust legal framework in place through the Bribery Act’,106 it is important to consider whether political prioritisation and new powers, such as Unexplained Wealth Orders (UWO)107 and the introduction of a UK public register of beneficial owners, will have an impact in real rather than symbolic terms. In 2019, what should the next phase of the UK’s response to tackling the proceeds of corruption look like?

The Current Framework

The UK Bribery Act 2010 marked a significant overhaul of UK anti-corruption law, which had seen minimal development over the course of a century.108 This was followed by the Criminal Finances Act 2017,109 which brought in measures further strengthening the UK’s ability to tackle money laundering, corruption, tax evasion and terrorist financing.

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106. Ibid., p. 22.
107. ‘Criminal Finances Act 2017 (UK)’, Chapter 1.
109. ‘Criminal Finances Act 2017 (UK)’, Chapter 1.
The UK’s strategic response to corruption was initially founded within the Anti-Corruption Plan 2014,\textsuperscript{110} which outlined the adoption of the ‘four Ps’ approach\textsuperscript{111} to prosecute and disrupt individuals engaged in corruption (pursue); prevent people from engaging in corruption (prevent); increase protection against corruption (protect); and reduce the impact of corruption where it takes places (prepare).\textsuperscript{112}

The Action Plan precipitated the UK’s Anti-Corruption Summit 2016, which brought together 43 governments and six international organisations, culminating in the signing of the Global Declaration Against Corruption.\textsuperscript{113} The UK government additionally committed to the publication of its own comprehensive and robust Anti-Corruption Strategy by the end of 2016.\textsuperscript{114} This was fulfilled (albeit a year late) with the arrival of the 2017–2022 Anti-Corruption Strategy, outlining the UK government’s strategic vision towards three long-term outcomes:

- ‘Reduced threat to our national security, including from instability caused by corruption overseas.’
- Increased prosperity at home and abroad, including for UK businesses.
- Enhanced public confidence in our domestic and international institutions.’ \textsuperscript{115}

Among other things, relating the laundering of corruption proceeds, the UK government committed introducing UWOs, creating public beneficial ownership registers for UK and foreign companies, and reviewing the effectiveness of the law on whistle-blowing.\textsuperscript{116}

With the road clearly signposted, it is now possible to assess the current state of play, and the extent to which the high expectations have matched up with reality.

\textsuperscript{111} The ‘four Ps’ model for tackling strategic security threats emanated from the UK’s ‘CONTEST’ strategy adopted in the counter-terrorism policing world. This ‘four Ps’ model has since been adopted as a UK government framework for tackling organised crime and corruption.
\textsuperscript{112} HM Government, \textit{UK Anti-Corruption Plan}.
Unexplained Wealth Orders

With the passing of the Criminal Finances Act 2017, the UK introduced the UWO, a new investigatory tool linked to existing civil confiscation powers in Part 5 of the Proceeds of Crime Act 2002 (POCA) to aid seizure of unlawfully obtained assets in the absence of a criminal conviction. Targeted at ‘politically exposed persons’ or those involved in serious crime, a UWO requires individuals to explain the source of their wealth to enforcement authorities if there are reasonable grounds to suspect a discrepancy between their stated and genuine income. Where they fail to do so, this provides the state with strong evidence to support their case that the assets have been unlawfully obtained.

The UK’s first UWO was issued in February 2018 against Zamira Hajiyeva, the wife of a jailed Azerbaijani state banker, who was asked to explain the purchase of £22 million in UK property. Given the legal challenges that are underway and the fact that this is the first and only time a UWO has been used to date, it is difficult to judge the potential long-term impact of UWOs on the UK’s drive against corruption proceeds. Indeed, against a backdrop of an estimated £4.2 billion in suspicious wealth tied up in London property, the benefits of this first order (if successful) may be largely symbolic.

Nevertheless, the UK government must be commended for legislating for UWOs as a useful additional tool in the counter-corruption armoury, which at the very least, may have a deterrent effect. To ensure that they are a success, however, UWO’s must be supported with genuine political will and resources to train prosecutors and financial investigators to use Part 5 POCA provisions, otherwise they will remain merely a gesture on the statute books.

Recommendation 9: Provide training to prosecutors and financial investigators on the use of Part 5 (civil confiscation) Proceeds of Crime Act (POCA) powers in furtherance of their objective to expand use of UWOs.

118. Part 5 of the Proceeds of Crime Act 2002 allows for the confiscation of unlawfully obtained property in the absence of a criminal conviction. Commonly known in the UK as ‘civil recovery’ and internationally as ‘non-conviction based asset forfeiture’.
119. An individual who is, or has been, entrusted with prominent public functions by an international organisation or by a state other than the UK or another EEA state, or a family member, close associate, or person otherwise connected with such an individual. See ‘Proceeds of Crime Act 2002 (UK)’, Section 326B(7).
120. Metro, ‘Jailed Banker’s Wife Who Spent £16,000,000 At Harrods Can Finally Be Named’, 10 October 2018.
Beneficial Ownership Registers

Another key promise from the Summit was to increase transparency by introducing public registers of company beneficial ownership information for all UK companies, in addition to creating a public register of foreign companies who own or buy property in the UK. The first pledge was fulfilled in June 2016, with the creation of the People with Significant Control Register by the Department for Business, Energy, and Industrial Strategy, which can be found on the UK’s Companies House online registration system.

This is a positive step; however, it is not without design flaws, the most glaring of which is the fact that the accuracy of information submitted to the register is not being checked. Global Witness demonstrated this point effectively, through an investigation that revealed 4000 beneficial owners in the UK listed under the age of two, including one who was not yet born.\textsuperscript{122} It is crucial that the government acts immediately to address this gaping methodological weakness, to save the new tool from being effective only in principle rather than in practice.

A public register of foreign companies, which would in theory target those cases of grand corruption that rely on anonymous shell companies to launder illicit wealth, has not been created. It is disappointing that the government has not yet fulfilled this commitment. However, in July 2018 the UK government published a Draft Registration of Overseas Entities Bill,\textsuperscript{123} with an operational register now scheduled for 2021. Despite slow progress, this will be one to watch.

Whistle-Blowers

Throughout the Anti-Corruption Summit and within the 2017–2022 Anti-Corruption Strategy, the government made explicit its commitment to do more to protect whistle-blowers, which included a review of the effectiveness of recent legislative changes. This review has begun, and is expected to be finalised by the end of 2019.\textsuperscript{124} It is important that the government completes this work, based on extensive evidence that whistle-blowers are often essential in exposing corruption and the scale of associated money laundering.\textsuperscript{125}


Conclusion

It would be unfair to suggest that no progress has been made since the 2016 Anti-Corruption Summit; the UK government made good on its promises to introduce UWOs and a public register for UK companies. This suggests a willingness from the government to enact certain commitments.

However, these actions in isolation will not provide a wholesale solution. Moreover, the momentum that existed in May 2016 appears to have faded, dependent as it was on David Cameron’s personal commitment to the issue. As numerous UK government commitments remain outstanding, and with leadership that is markedly less vocal on tackling the proceeds of corruption at home and overseas, we are left wondering what comes next.

Illicit personal enrichment via corruption and abuse of political and official office continues to be revealed worldwide. The UK’s position as a destination of choice for placing the proceeds of this wealth is alarming. The UK government must therefore restate its commitment to tackling the proceeds of grand corruption, by matching political rhetoric with resources for law enforcement and prosecutors. To paraphrase David Cameron, the UK must show political will through action – not simply words.
VII. Financial Intelligence: An Under-Tapped Resource

The UK is not short of sources of financial intelligence to support its AML and asset confiscation efforts. Between 2006 and 2014, the UK accounted for 36% of all SARs filed in the EU.²⁶ Although SARs are but one form of financial intelligence, their growing number (over 600,000 were filed in the UK between October 2015 and March 2017)²⁷ means that they are one of the most valuable assets available to law enforcement.²⁸

To what extent, however, is the UK making the most of this bountiful resource? According to the FATF evaluators, this was one area where the UK was less deserving of a glowing scorecard; the UK was rated only ‘moderately effective’ in relation to IO6 (use of financial intelligence).

In particular, the 2018 MER noted the need for improvements to the role and function of the UKFIU – an area which the UK government has itself highlighted as in need of more resources.²⁹ However, previous CFCS research diverges from the FATF assessors’ findings regarding the extent to which financial intelligence is integrated into the policing response, particularly in relation to serious and organised crime.³⁰ This chapter considers both of these issues.

The UKFIU

The FATF methodology poses the question ‘[t]o what extent is FIU analysis and dissemination supporting the operational needs of competent authorities?’.³¹ That the UKFIU did not fare well under the scrutiny of the FATF assessors in this regard came as little surprise. As noted by the assessors, ‘the limited role of the UKFIU calls into question the quality of financial intelligence available to investigators’.³² The 2018 MER pointed to the need for substantial reform to ensure that the wealth of financial intelligence available to the UK is used to its full potential.

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²⁸. Albeit with concerns about SARs quality and quantity from some professions, particularly the DNFPB sector.
³⁰. Wood, ‘Every Transaction Leaves a Trace’.
Based on the findings of the 2018 MER and previous CFCS research, this chapter analyses necessary reforms along three lines:

- Investment in human resources
- Reform of the distributed UKFIU operating model
- Advancements in technology

**Investment in Human Resources**

Despite assurances to assessors during the 2007 FATF evaluation that investments would be made in the UKFIU, over a decade later the UKFIU remains woefully under-resourced, particularly with regard to its ailing IT platform. The 2018 MER highlights that staffing numbers in the UKFIU decreased from 97 in 2007 to 80 in 2018. Breaking down these numbers further, the extent to which the UKFIU fails to ‘support the operational needs of competent authorities’ is clearer still; of these 80 staff, only four perform strategic analysis and only nine undertake tactical analysis. The reasons behind the UK government’s failure to heed these repeated recommendations are unclear.

The NCA has periodically defended this inadequate staffing level by citing its ‘distributed analysis model’. This position is no longer defensible. While an ideal staffing complement is hard to define, as a minimum, UKFIU staffing should reach the 200 staff mandated by the last public review of the UKFIU in 2006 under the Lander Review. Furthermore, recruitment should focus on gaining skilled analytical staff that the UKFIU currently lacks.

**Recommendation 10: Increase UKFIU headcount to 200 as promised during the 2007 FATF evaluation.**

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133. See Wood, ‘Destination 2018’.
135. FATF, ‘Methodology for Assessing Technical Compliance with the FATF Recommendations and the Effectiveness of AML/CTF Systems – Immediate Outcome 6 (Financial Intelligence)’, October 2018, p. 106.
Reform of the UKFIU Operating Model

The UKFIU has partially defended its low staffing position through advocating for a distributed model of SARs analysis. Under this model, responsibility for analysing SARs is dispersed among the UK’s police forces, who have controlled access to the SARs database.¹³⁸

Placing SARs directly in the hands of local law enforcement is a sound policy choice, as it reduces the risk of time-critical intelligence, such as information on the movement of terrorist funds, remaining unactioned.

However, with growing numbers of SARs and ever-more complex, cross-jurisdictional money-laundering schemes emerging, the argument in favour of this decentralised model no longer passes muster. As noted by the assessors, ‘the UKFIU misses the opportunity to search for criminal activity that might otherwise be missed by LEAs [law enforcement agencies] which mine the SARs database for issues linked to their own geographical or operational remits’.¹³⁹

Furthermore, outsourcing SARs analysis almost wholesale to police forces who have been under significant budgetary pressure since 2010 requires a rethink; bolstering capacity at both the national (UKFIU) level and local (police) level is important, as explored further below.

While SARs access should not be removed from police forces, SARs analysis should be a core role, rather than a peripheral one, for the UKFIU. In looking to models for inspiration, the UK should look to widely acclaimed FIU models of other FATF members, such as Spain and Australia.¹⁴⁰

Advancements in Technology

Staffing and reform initiatives need to be matched with commensurate investment in analytical technology to underpin the effort. Over the past decade, the UKFIU has been trying to fight a 21st Century problem with 20th Century IT. This is particularly worrying regarding the SARs database (known as ‘ELMER’), which underpins the UKFIU’s work, as concerns about its fitness for purpose have been repeatedly raised.¹⁴¹

Recommendation 11: Expedite plans to update or replace the ELMER database.

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¹³⁸. Usually via the local force financial intelligence unit, or analogous body.
The FATF assessors pointed to the need for the UKFIU to substantially update its analysis software, to ensure sophisticated screening and more automated checks against other databases – a problem writ large for law enforcement where different databases rarely interface and integrate well. However, it is clear that this technology cannot be simply co-opted from other parts of the public sector; the financial sector has invested significantly in both analytical artificial intelligence and machine-learning technologies in its fight against money laundering. The public sector should follow suit. However, this technology comes with a hefty price tag; it may be time to consider seeking private sector funding to bolster the UKFIU capability, either on a voluntary basis or via a mandatory levy, the latter of which would be difficult to apportion fairly across a wildly divergent regulated sector.

Use of Financial Intelligence in Policing

The 2018 MER speaks glowingly about the extent to which ‘LEAs at the national, regional and local levels integrate the use of SARs and other financial intelligence into their standard practice’. This surprising finding was at odds with CFCS research from 2017, which concluded that the use of financial investigation (a discipline drawing heavily on financial intelligence) in UK policing has been under-exploited outside specialist financial crime circles.

The UK government itself, in the SOC Strategy 2018, has recognised the extent to which financial investigation is underused and committed to using Her Majesty’s Inspectorate of Constabulary and Fire & Rescue Services to review use of financial intelligence as part of the Police Effectiveness, Efficiency and Legitimacy inspections in 2018/19.

This, and wider measures announced in the SOC Strategy in relation to financial investigation more broadly, will go some way to ensuring that SARs, as one of the primary outputs of the AML regime, are put to better use. However, there is more that can be done.

One of the primary benefits of SARs is their ability to alert law enforcement to previously unidentified criminality. Having a strengthened UKFIU will come to nought if local policing capacity, currently stymied by budgetary cuts, is not addressed. Under current budgetary constraints, local forces have a limited ability to proactively ‘mine’ the SARs database for leads. One way to deal with the shortfall may be to establish proactive SARs data-mining units within the Regional Organised Crime Unit (ROCU) network structure to ensure that actionable intelligence leads are not left to languish.

143. Ibid., p. 48.
144. Wood, ‘Every Transaction Leaves a Trace’.
**Recommendation 12: Establish proactive SARs data-mining capabilities within the Regional Organised Crime Unit (ROCU) network.**

With such a resource in place, a newly bolstered UKFIU would be better placed to work jointly with such teams to carry out a ‘deep dive’ analysis of particular strategic problem sets to support the National Control Strategy\(^{148}\) – work which would be difficult to coordinate with 43 different police forces.

But this response only provides part of the solution; much of the problem, as highlighted by CFCS research,\(^{149}\) is a cultural disinclination towards financial intelligence as part of the mainstream policing response. The ability of central government to change policing culture is limited – this change must come from policing itself.

**Conclusion**

The 2018 MER demonstrates the extent to which the UKFIU model, as it stands, is at breaking point, leading to an under-exploitation of a valuable resource. While other areas of the UK AML regime have been seen to be working well, the UK government would do well to remember that unless SARs reporting is fully analysed and actioned, both by the UKFIU and by UK policing, improvements in other areas of the UK’s AML regime, such as AML supervision, are an exercise in futility.

\[^{148}\] The UK’s primary organised crime threats, including money laundering, are assessed annually in the National Strategic Assessment of Serious and Organised Crime; see NCA, ‘National Strategic Assessment of Serious and Organised Crime 2018’. The response to the identified threats is then set out in the National Control Strategy, which is not available to the public.

\[^{149}\] Wood, ‘Every Transaction Leaves a Trace’.
Conclusion

THE IMPENDING FATF evaluation certainly did a good job of focusing the attention of policymakers on some of the weaknesses in the UK’s AML armoury. A theme running through this Whitehall Report is one of promise and potential, but with the slew of initiatives announced in the run-up to the evaluation, there is a need for a ‘wait-and-see’ approach to assess whether these initiatives will deliver on their intention and have impact on financial crime in practice rather than only in theory.

The authors argue, however, that the UK’s invention of a ‘league table’, in which it placed itself at the top, is hubristic and that the 2018 MER, while noting evident weaknesses in some areas (such as AML supervision and the UK FIU), missed opportunities to drive change in others (such as law enforcement and the use of financial intelligence). Overall, any conclusion that numbers of highly or substantially effective ratings in a FATF MER can necessarily equate to an ‘effective’ AML regime overall need tempering – as the authors note, not all IOs are created equal. Unravelling the ‘wicked problem’ of money laundering requires equal and coordinated action across all fronts – not just some.

Now that the focal point of the assessment has passed, it will be incumbent on think tanks, academics, the media, and civil society to maintain the spotlight on these initiatives to ensure that the words do indeed translate into action. This will be particularly true in a post-Brexit era where the UK’s need to appear ‘open for business’ may put pressure on policymakers and practitioners to take a less stringent approach to applying regulation across the board, including in the realm of AML.

On this basis, this Whitehall Report seeks to highlight areas which the government should prioritise over the coming three years to make the system effective in practice as well as on paper.

To improve its strategic response, it is important that the UK government has a plan and sticks to it. On this basis, the government needs to review – and publish – refreshed AML and Asset Confiscation Action Plans and commit themselves to reporting to Parliament, either directly or via a new Independent Commissioner for Economic Crime, on an annual basis. Ways to improve the quality of AML supervision and financial intelligence exploitation should be at the top of the government’s mind when formulating these plans.

To improve its preventative response, the government should commit to an independent review of HMRC’s role as an AML supervisor alongside the work already being undertaken by the OPBAS to improve the quality of professional body supervision.

Additionally, the government should ensure that it adequately supports the JMLIT by ensuring that information-sharing pathways are fit for the future. It should also provide a voice on the
international stage advocating for a discussion, if not reform, of the balance between financial crime and data privacy policy objectives, a key barrier to cross-border information sharing.

In considering its response to emerging new horizons in AML regulation – the ‘virtual asset economy’ – the UK government should avoid the temptation to simply extend an existing model to a vastly different (potential) threat, by implementing a new regulatory front by design rather than by default.

As regards front line disruptive efforts, in considering its response to the threat of corruption proceeds entering the UK economy, the UK government should ensure that useful new measures – such as the UWO – are backed with additional training and funding for prosecutors and financial investigators rather than being left to languish on the statute books.

Importantly, the government should expedite its plans for a full-scale remodelling of the UKFIU and the UK’s use of SARs more generally by properly staffing the UKFIU, advancing plans to update its supporting database (ELMER) and ensuring regional policing units are properly resourced to mine SARs data to its full potential.

In short, the UK government should be cautioned against too much self-congratulation on the 2018 MER findings against a backdrop of multiple billions being laundered through the UK economy and key gaps in its AML armoury. This report serves to maintain the pressure to make meaningful, rather than symbolic, progress.

12 Recommendations for Policymakers

Policy and Coordination: ‘Policy, coordination and cooperation mitigate the money laundering and financing of terrorism risks’ – FATF Intermediate Outcome 1

Recommendation 1: Refresh and publish the AML and Asset Recovery Action Plans and provide annual reports to Parliament setting out progress.


Recommendation 3: Prioritise funding of human and technological intelligence capabilities within the NECC.

Recommendation 4: Prioritise addressing deficiencies in the AML supervisory regime and use of financial intelligence over the next three years to improve systemic effectiveness overall.

150. FATF, ‘Methodology for Assessing Technical Compliance with the FATF Recommendations and the Effectiveness of AML/CTF Systems’. All references to the Immediate and Intermediate Outcomes are from this document.
Prevention and Detection: ‘Proceeds of crime and funds in support of terrorism are prevented from entering the financial and other sectors or are detected and reported by these sectors’ – FATF Intermediate Outcome 2

Recommendation 5: Provide an independent assessment of HMRC’s AML supervisory activities, alongside work OPBAS is undertaking in relation to professional body supervisors.

Recommendation 6: Review the legislative information-sharing pathways between JMLIT members and consider building fit-for-purpose gateways to support the operating model.

Recommendation 7: Support FATF efforts to champion a conversation, at the global level, regarding the balance to be had between data privacy and financial crime policy objectives.

Recommendation 8: On bringing the virtual asset economy under the purview of the AML regime, ensure that provisions are tailored to the new regime, rather than simply extending existing provisions.

Disruption: ‘Money laundering threats are detected and disrupted, and criminals are sanctioned and deprived of illicit proceeds. Terrorist financing threats are detected and disrupted, terrorists are deprived of resources, and those who finance terrorism are sanctioned, thereby contributing to the prevention of terrorist acts’ – FATF Intermediate Outcome 3

Recommendation 9: Provide training to prosecutors and financial investigators on the use of Part 5 (civil confiscation) Proceeds of Crime Act (POCA) powers in furtherance of their objective to expand use of UWOs.

Recommendation 10: Increase UKFIU headcount to 200 as promised during the 2007 FATF evaluation.

Recommendation 11: Expedite plans to update or replace the ELMER database.

Recommendation 12: Establish proactive SARs data-mining capabilities within the Regional Organised Crime Unit (ROCU) network.
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