

Note of the Money Laundering Advisory Committee meeting, 2nd June 2004 at HM Treasury

PRESENT

- Chair: HM Treasury
- Home Office
- Financial Services Authority
- Association of Chief Police Officers
- National Criminal Intelligence Service
- Joint Money Laundering Steering Group and British Bankers' Association
- The Law Society
- Representative large retail financial institutions)
- Consultative Committee of Accountancy Bodies)
- Representative of wholesale financial institutions and investment banks
- Representative of insurance product providers
- Representative of financial intermediaries
- Representative of building societies and small retail banks
- HM Customs and Excise

MAIN AGENDA ITEMS

Strategy and Communications

1. HMT gave a presentation setting out the content and aims of the government's anti money laundering strategy. It was explained that HMT had delayed publishing the Anti Money Laundering Strategy document in order to take on the comments of stakeholders.

2. In the discussion the following points were made:

- There is a problem in communication – both getting the message out to institutions and the public of the benefits of the AML regime, and also with the feedback to industry from law enforcement. The strategy would assist in improving communication.
- The renewed emphasis on a risk-based approach to regulation was welcomed by MLAC. It was particularly important that the forthcoming Third Money Laundering Directive should include a risk-based approach.
- In response to a question about police resources to tackle fraud and financial crime, the Home Office cited the recent adoption of financial investigation within the National Police Plan; the ACPO strategic assessment directed towards money laundering; the new Serious and Organised Crime Agency which will deal in part with organised financial crime; and the increase in the police grant this year. The CCAB and ACPO representatives noted that the higher profile given to financial investigation and money laundering has actually diverted police resources away from the investigation of fraud, although the Fraud Bill was welcomed as improving the response to fraud and would allow for more targets to be set for law enforcement.

Approval of Guidance – (i) JMLSG Guidance Notes 2003

3. HMT set out the latest situation on the approval of the JMLSG Guidance Notes. They had written to MLAC on 15th March requesting comments on the Guidance Notes 2003 (copied at **Appendix A**); only three organisations have commented (see **Appendix B**). The JMLSG has responded in detail to these comments (letter of 1st June 2004).

4. The JMLSG representative explained that the GN2003 were based not only upon UK legislation, but also upon good practice taken from other international standards (e.g. Wolfsberg, Basel and FATF). This meant that the GNs are more than simply a guide to complying with the Proceeds of Crime Act 2002 (POCA) and the Money Laundering Regulations 2003 (MLRs). He said that some of the comments received about the GN2003 concerned differing interpretations of the law, which would be settled, ultimately, by the courts, although in the first instance the JMLSG would look for confirmation of its interpretation of POCA issues to the Home Office, from whom much of the guidance had been derived. [Home Office comment: the Home Office may not be able to give the

confirmation sought] He added that there were areas where improvements could be made in the drafting of the GN2003, but that he would look to the GN2004 to address these points. He made clear that industry did want the guidance to be approved without further delay; it was currently being used widely by industry, which wanted the additional comfort that approval would give.

5. There was some discussion of whether the GNs should have been published before gaining approval. HMT pointed out that the suggested criteria for approving guidance (contained in the letter 15th March 2004) include public consultation, which the GNs had undergone. The lawyers and accountants had already published interim guidance requesting public comment on their guidance. It was therefore a matter for the authors of guidance as to how they handled consultation or publishing prior to approval application. MLAC, and indeed Treasury, should consider all guidance submitted for approval.

6. The JMLSG described their plans for the radical re-write for the Guidance Notes 2004 (GN2004). It is envisaged that the GN2004 will be published late in 2004 and will be a freely accessible web-based product. The JMLSG will still provide a helpdesk function, but may charge for this and any printed versions of the GN2004.

Action point:

7. To expedite the approval of the JMLSG GN2003:

- Home Office, NCIS and Treasury should respond to the JMLSG letter of 1st June within one week, copying in all other MLAC members.
- MLAC members should respond to the secretariat within three weeks with a recommendation about approval of the JMLSG Guidance Notes 2003

Approval of Guidance – (ii) Process and Criteria for Approval

8. MLAC were content for the process of dealing with approval of guidance to be handled as summarised in the 21st May letter from HMT, although the need to retain flexibility was emphasised. It was noted that potentially there could be 25 sets of guidance submitted to MLAC for approval.

9. The different stages of maturity between the established financial regulated sector and the newly regulated non-financial sector were evident in the different sectoral approaches to guidance. For example in distinguishing between information essential to lawful compliance, and that which would be considered beneficial, the JMLSG GNs indicated the usefulness to law enforcement of obtaining dates of birth for applicants for business, even though it is not a legal requirement. However, some of the more recently regulated sectors were intending to have guidance that covered only the legal requirement. HMT stated that membership of MLAC would be valuable in assisting those new sectors as they gain in experience in the AML regime.

10. The JMLSG suggested that other sectors might wish to offer a helpdesk service like the one that they offered.

Approval of Guidance – (iii) Notaries' Guidance

11. MLAC members were reminded that the Notaries had submitted guidance for approval, and that comments were due in to the secretariat by 21st June.

12. The CCAB representative commented that the guidance appeared to be incomplete, not dealing with some subjects, such as legal privilege. She said that some small professional bodies have their own guidance that focuses on niche areas of expertise, but relying on many members also belonging to the ICAEW and thus having access to the ICAEW's broader guidance. HMT replied that submission of guidance must be up to the authors who needed only to be qualified under the legislation to apply for approval (i.e. matching the criteria at POCA s330(8) or MLRs Reg 3(3)). MLAC members should assess any guidance against the criteria for approval and make recommendations as they saw fit.

Action point:

13. MLAC members to respond to the secretariat by 21st June on the Notaries' guidance

Criminal Procedure and Investigations Act (CPIA) and SARs

14. NCIS set out the latest position on their guidance to law enforcement for the protection of a suspicious activity report when relevant to disclosure provisions of the CPIA.

15. In discussion the following points were made:

- The Law Society representative mentioned worries that individual police officers had in the past failed to protect the source of a SAR and should have applied for Public Interest Immunity (PII);
- The representative of large retail financial institutions said that the danger here was one of perception. If a single instance occurs where an individual is identified, then this might cause staff to decide to choose not to make a SAR and risk breaking the law in order to avoid the perceived threat of physical harm.

Action point:

16. Comments from MLAC members to be passed to NCIS by 5th July, and NCIS to report back to MLAC in 6 months time.

Membership of MLAC

17. HMT suggested that the main new non-financial professions and activities recently brought within the regulated sector should be invited to join MLAC. The following were suggested:

- For casinos - Gaming Board for Great Britain
- For high value dealers (also for money service businesses) - Customs
- For estate agents - The two main representative bodies, the National Association of Estate Agents and the Royal Institution of Chartered Surveyors, to share or alternate attendance at MLAC.

18. This was agreed by MLAC, and consideration would be given to the suggestion from John Mair that an expert in communication be invited on an ad hoc basis, and also a representative for education in citizenship to promote AML.

Action point:

19. HMT to extend invitations to GBGB, HMCE and NAEA/RICS. HMT to consider whether other experts should be invited on an ad hoc basis.

BRIEF AGENDA ITEMS

FSA Update

- The FSA outlined the three new initiatives, two of which he hoped would have a direct impact and feed into the JMLSG GNs 2004. The work on identification was proceeding. The regulated sector was not perceived to have a risk-based approach to identification, especially in implementation by counter staff. One major point already emerging from this work was the fact that even false identity documents are useful to law enforcement, both for giving good pattern analysis data, and also providing leads for an investigation.
- Work on what exactly a risk-based approach should be – this is internal to the FSA and designed to improve supervisory understanding.
- Work on targeting by using existing intelligence, and improving the risk assessment process. This work was being conducted closely with NCIS and would allow the FSA to target resources better.

Money Laundering Reporting Task Force

21. The Home Office summarised the latest work from the Task Force so far. Following the interim report to Caroline Flint at the turn of the year, and the Minister's official statement in March, the task force was continuing its work towards a further report before the summer. The Home Office emphasised the importance of communication again, mentioning the work for the Task Force by the Asset Recovery Agency, and also the POCA newsletter published by the Agency. All SARs were now subject to a system of prioritisation at NCIS, and requests for consent were being dealt with quickly.

NCIS Update

22. NCIS said that:

- SAR numbers had increased considerably in the first four months this year when taken against the same period last year.
- Only 10% of non-electronic SARs were being submitted on the preferred form (available on the NCIS website). Electronic SARs take seconds to process, and SARs submitted in hard copy on the preferred forms take a few minutes, the problem came about when otherwise excellent SARs came in on non-standard formats, including simply within letters, and this could then take between 30 minutes to an hour to process. It is vital for speedy operation of the SAR system that the regulated sector uses the preferred form. This would allow the new Intelligent Character Recognition software at NCIS to work efficiently.
- The average time for issuing a consent decision had fallen from 2.9 days in August 2003 to 2.6 days currently. This rise in efficiency should be considered in the light of the much higher number of consent requests currently being handled than was the case last August.
- The new Policy and Liaison Unit would be starting the following week, and should improve the quality of feedback to industry. NCIS was already providing sector specific problem profiles.
- NCIS has given 30 presentations to industry since February.

Third Money Laundering Directive (MLD3):

23. HMT provided an update on the progress towards negotiating the MLD3. They thanked stakeholders who had already passed comments on the draft Commission document issued in March, but was still keen to receive any other comments by early June ready for formal negotiations starting in July, and Treasury would keep stakeholders updated.

24. The large retail financial institutions representative said that Treasury were being very open in the way in which it was handling these negotiations and industry appreciated this approach. The Chairman welcomed this feedback, stating that this was the template that the Treasury used in the negotiations of the Financial Services Action Plan.

25. There being no other matters, the Chairman then closed the meeting.