Call for Evidence

Gentlemen,

I am not going to try and address all the issues because its way beyond my compass. May I draw a comparison with this legislation and the requirement to have a statutory audit for all limited company accounts. Way back in the mists of time all limited companies had to have a statutory audit. Frankly everybody with common sense saw this as ridiculous. It has taken years to get to a more sensible regime although we aren't in my opinion entirely there yet.

I return to the matter in hand ie the review. I decided to move to section A on page 45 'the governments objectives' and relate it to my personal experience. Bear in mind we are a small accountancy practice. Our requirements are that we cannot act for clients until we have their ID and more recently even if we have been acting for the clients for many years we are now required to get there ID as well. This can be disruptive and obstructive and is time consuming. In truth if you have been acting for someone for several years with HMRC etc then if they aren't who we think they are then they will easily fake their ID to keep the myth going. Is the theory that a person will come and seek our advice and then commit an offence under the legislation and we could not then report them because we would not know who they are. This seems a little unreal.

It's not clear to me how this assists any of the three objectives listed in section A.

• deter crime and terrorism in the first place – by increasing the risk and lowering the reward faced by perpetrators;
• detect the criminal or terrorist abuse of the financial system; and
• disrupt criminal and terrorist activity – to save lives and hold the guilty to account.

These are all laudable aims but they all sound a million miles away from my reality. The legislation has been turned into a reporting tool for HMRC.

Our reporting experience is where we suspect a client has failed to comply with the tax legislation maybe paye regs or vat. We tend to act for clients, in general, for several years so there is a history of communication with themselves and the tax authorities. These people may from time to time fail to comply with the tax system (which of course is a crime) and these will be reported but I am not sure that was the objective. If it was to pick up the lapses in complying with the tax legislation then it should be stated clearly as one of the Governments objectives because people don't equate not paying the right amount of tax as a crime.

I suppose I am not clear as to the effectiveness and proportionality of the legislation from my perspective there maybe a few reports concerning real/possible tax issues. But one of the guiding principles 'making maximum impact on the criminal and terrorist threat' just does not fit with my experience. How does one equate this principle with reporting a client for claiming £50 too much vat!

In conclusion I think the legislation is really aimed at terrorists and tax evasion on a significant scale. What that scale is I wouldn't care to say but the fact this legislation affects our dealings with Mrs Smith who wants her tax return doing says it all.
NCIF
Positive about Gambling

Response
To
HM Treasury
Review of the Money Laundering
Regulations 2007

1. The NCIF agree that the scope of current regulation is appropriate. However, the NCIF would like the Commission to change the regulations with regard to low stake/high win. At present we are required to take ID from any person who losses or WINS over the Threshold amount. We clearly agree that if they lose we should be taking this ID; however if they win we believe that the risks of actual money laundering and/or criminal spend to be minimal and they should not have to produce ID. (example - player enters the casino and risks/bets £50 and wins £3,000). The spirit of the legislation was surely aimed at capturing valid ID where the actual cash buy-in at the tables or the cash desk is at or exceeds the current threshold.

2. The NCIF agree the level is proportionate; however, advice regarding domestic PEPs should be included.

3. We view the use of 3rd party due diligence as an important part of a more complete package of information about customers. The NCIF request that operators be permitted to share information regarding a customers’ source of funds, we believe this is crucial for operators and investigators alike.

To allay any concerns about the security of this information sharing, the industry would not be opposed to an additional ‘fit and proper’ test for those tasked with this responsibility.

4. The NCIF agree that the current requirement for procedure, policies and record keeping are appropriate.

5. We hope that these Regulations will be exercised by the Gambling Commission with discretion.

6. The Regulation system in place is adequate.

7. Our main comment is that the financial threshold for identification in the 3rd directive is €3000 (for casinos) and the UK has reduced this to €2000. The NCIF supports an increase to €15,000 in line with the banking industry. At the very least the threshold should be compatible with the rest of the Casino Industry in the EU. If HMT are not prepared to raise the threshold to that recommended by the 3rd EU Directive we ask that it provides supporting evidence to demonstrate why it has chosen to adopt a lower figure.

8. Consultation between the Casino Industry HMT/DCMS has been almost non-existent for the last 2 years. This has caused considerable difficulty especially as there has been an accompanying dearth of guidance from the Gambling Commission.

9. Guidance from both Regulators and Government is an extremely important part of the ability of the industry to remain compliant.
10. The guidance is not always easy to comply with given that financial transactions are instant and unplanned with the Casino Industry.

11. They are generally considered appropriate however, it is apparent that domestic PEPs may have to be classified in the PEPs regime.

12. There is no question that sector specific and tailor made Guidance would be very helpful in assisting the Industry to produce policies and procedures.

13. As previously stated consultation and subsequent guidance support has been patchy.

14. Support and assistance from Regulators has been very limited. In fact the level of expertise, especially within the casino context has been particularly poor.

15. No feedback or enquiry channels currently exist with the Industry Regulator.

16. Individual supervisors with the Gambling Commission have individual views about not only the subject of Money Laundering but also about the implementation of policies and procedures. This is very unhelpful especially for businesses with multi-sites.

17. All business within the umbrella of NCIF is compliant with current regulations and is very supportive of their general thrust.

   We cannot comment on processes for identifying non-compliant firms. The Gambling Commission make Money Laundering a part of their supervision visits, it is impossible for us to comment on their effectiveness.

18. Supervisors have not, as yet, set out the penalties and sanctions for non-compliance. There is no justification for additional powers given an already compliant industry.

19. All businesses within this industry are licensed and registered.

20. None that we are aware of. However it should be pointed out that the Gambling Commission's current stance is that they will allow Industry to set up a risk based approach and then asks businesses to justify their position after its implementation. This is not a particularly helpful position for operators.

21. Please note comments in Q3 regarding our current inability to use 3rd party due diligence.

22. We have no comment.

23. Please see additional comments at Q3.

24. These are not causing difficulties for the Industry. However the costs to business are significant and burdensome, regular screening of customers (EDD) for PEP's, SANCTIONS and FINANCIAL CRIME links equates to start up costs with most providers ranging from £45,000 to £65,000. Year two costs between £20,000 - £35,000. This is largely dependent on the amount of customers and the chosen frequency of screening. Additional costs associated to the above - circa £5,000 per annum for around three licences to access negative information database. Use of Experian or similar front end CDD tool - circa £20,000 at start up, and further development costs - an average cost of £1,000 per month for searches carried out. Companies House - average £50 per month sometimes higher. There are other costs incurred by operators for deeper screening - these costs vary and can be expensive. Employment of extra staff and staff hours to conduct regular CDD/EDD/ screening and monitoring and compliance with Gambling Act 2005 (a legal requirement) - minimum £60,000). Furthermore, in relation to costs, what has been outlined is basically the CAPEX costs and not the manpower costs (which will be difficult to quantify), but will be large.

25. Little feedback about Industry experience is fed back to Supervisors or Government agencies. There is little in the way of a conduit except for the participation of the SOCA 'vetted' group. Please see comments at Q14, 15.

26. Customers, especially those from outside the EU, find UK laws on identification, threshold limits and access completely bewildering. They see the Industry as part of a
wider leisure experience and do not understand restrictions placed on their entertainment. This is particularly pertinent when ID is required for low stake gambling which yields a prize of €2000 or more. HMT must recognise that land based casinos have evolved a great deal in recent years and that a substantial number of venues are considered to be entertainment/leisure destinations with some offering conferencing facilities as well.

27. There are significant financial implications connected to any requirement to inform customers about the need to impose identification criteria upon them. In terms of Money Laundering in the Casino Industry, I believe the strongest deterrent is the licensing of operators and their employees. The Regulators to some extent merely support this.

28. There is little evidence of Money Laundering within the UK Casino Industry. In that context the Regulators and supervisory expense of ensuring this continues is probably excessive.

There will always be Money Laundering, as defined by the Proceeds of Crime, in practically every Industry in the country. How effective the regulations are in combating this is not easily quantified.

29. As an Industry we believe that we are talked at and not talked to about the whole issue of Money Laundering. The Industry remains committed to assisting Regulators, especially those tasked with identifying Money Launderers.

However we do expect to be given a bigger voice in the formulation of any further procedures or regulation that directly affects the Casino Industry.

Dec 1st 2009
Summary of Questions in Part A

Questions about the Regulations

1. To what extent is the scope of the Regulations and their application to business activity appropriately risk-based?

It is impossible to fully address the risk-based nature of the Regulations without considering the Proceeds of Crime Act (2002) (POCA) given the interrelationship between POCA and the Regulations, i.e. the overlap between section 330 & 331 of POCA and the application of the Regulations. The offences in Part 7 of POCA are not risk based, which significantly damages the credibility of adopting this approach to the AML regime. Crucially the application of criminal sanctions under POCA, and for breaches of the ML Regulations, are more likely to encourage a risk adverse approach than a risk based approach.

The sectors and activities which attract the application of the ML Regulations are closely defined and not risk based, and this is appropriate and welcomed because it provides certainty. The application broadly tend to follow the Recommendations of the Financial Action Task Force (FATF). Having said that although the FATF has not explicitly defined whether their intention is for the Recommendations to apply to residential property or commercial property, or both, the UK’s ML Regulations apply to both.

We would like to encourage a review of which sectors and activities are covered by the Regulations as we are unsure whether the current application reflects modern as well as traditional methods of money laundering. For example, whilst estate agents must comply with the Regulations the Regulations do not usually apply to lettings agents. We find this difficult to understand given the potential value of Customer Due Diligence (CDD) undertaken by lettings agents on their landlord clients. It’s possible that if CDD were made compulsory for lettings agents this could help prevent the problem of landlords having their properties’ title stolen by tenants. We would be grateful for clarification as to why lettings agents have been made exempt both by international and UK policy makers. Many property firms provide a portfolio of services, including sales and lettings.

There may be some activities where it would be appropriate to apply a limited number of Regulations. In other words it may be possible to change from the current all or nothing application of the Regulations to a more risk based application.

In our view it is misleading to exaggerate the relevance of the risk-based approach to the Regulations. In reality the risk-based element of the current Regulations is limited, and therefore any mitigation of the burden of the Regulations is also limited. We would like to highlight, or comment upon, the following Regulations in particular.

- CDD and beneficial ownership

The identification element is prescribed at 25%, but the verification element is risk based.

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1 If a lease is sold for consideration (as opposed to limited to the payment of rent) there is an argument that this is covered by the Estate Agency Act 1979, and therefore falls within the scope of the Regulations. However, leases are very rarely sold for consideration.

2 Tenants may receive correspondence from the Land Registry addressed to their landlord, and if the landlord doesn’t have a mortgage on the property the tenant may be able to falsely register their rented properties in their own name.
• Checks on existing customers

• Timing of verification

In limited circumstances verification may be completed during the establishment of a business relationship if this is necessary not to interrupt the normal conduct of business and there is little risk of money laundering or terrorist financing occurring. We are unsure whether the second part of this test is that there is little risk of money laundering or terrorist financing occurring at all as a result of the transaction, or whether the test is that there is little risk of money laundering or terrorist financing occurring during the delay before verification is performed. However, whatever the correct interpretation this flexibility is inadequate for property agents for the following reasons.

Estate agents are under an obligation to undertake CDD on their clients, who are usually sellers. This obligation applies whether or not the agent successfully sells the client’s property, even though the money laundering risk only occurs if there is an actual sales transaction. For this reason the ideal risk-based approach to the timing of CDD for estate agents is at the earliest once a sale is agreed, or perhaps only when the transaction is being processed by which time financial institutions and lawyers can undertake the necessary checks.

• Training

Although this Regulation is drafted prescriptively, in effect the lack of a definition as to who is a ‘relevant employee’, and the lack of prescription about how often training is repeated, means that the regulated sector can approach training on a risk-based basis, and we support this approach.

• Enhanced Due Diligence

Regulation 14 is confused because it refers to the risk based approach and then requires the regulated sector to take specific and adequate measures to compensate for the higher risk for defined categories of customers.

It is extremely challenging for estate agents to identify who may be a Politically Exposed Person (PEP). PEPs or their families or associates may have an interest in properties of a range of values anywhere in the UK. Clearly it would be incompatible with the risk based approach to require all agents to check whether any of their clients is a PEP, but it is difficult to think of an alternative effective approach.

• Reliance

Who can be relied upon is not risk-based. In the UK at present estate agents cannot be relied upon although we are hoping that the introduction of the OFT as AML supervisor for estate agents will lead to a review of this situation, and therefore to less duplication of CDD checks in property transactions. Estate agents in different countries can have a mutual customer and it would be helpful if estate agents could rely on each other. We would appreciate HMT’s support in securing the necessary amendment to the Third Money Laundering Directive to make this possible. FATF Recommendation 24 (b) seems to have been fulfilled by the appointment of the Office of Fair Trading (OFT) as supervisor since 15 December 2007.

• Record keeping

It may be that ‘supporting records’ can be defined in a way that ensures that the records of use to law enforcement are kept, but that unnecessary records can be discarded and therefore storage costs reduced. A relevant factor may be the assistance that financial institutions can provide in providing
reliable documentation relating to financial transactions. Is it proportionate for these records to be duplicated by others?

2. To what extent are the Customer Due Diligence (CDD) requirements set out in the Regulations a proportionate response to the threat from money laundering?

Please see our comments on Enhanced Due Diligence in our response to Q1.

Although one of the objectives of customer identification (as part of CDD) is to provide law enforcement with information which may assist them with progressing their investigations we are uncertain whether the value to law enforcement outweighs the cost and inconvenience to the honest majority, especially given the proliferation of false identification documents and law enforcement’s increasing use of social networking websites and other modern methods to track down offenders.

At one time the regulated sector was required to obtain photographic identification but this was eventually changed because this was of little or no value to law enforcement. We hope that a similar review can now be made of how frequently these checks and records materially assist law enforcement.

The checks are of little value to estate agents because:

- If a criminal wants to use a false identity they are likely to have prepared themselves by obtaining false documents which are impossible for estate agents, or for law enforcement, to detect; and/or
- Any discrepancies are more likely to come to light in the course of the transaction than as a result of preliminary checks.

If the requirement for identity checks continues, to make the exercise more worthwhile for all concerned law enforcement must share up to date information about the latest techniques being used by forgers with regulated firms.

3. To what extent are Customer Due Diligence (CDD) requirements effective in the fight against money laundering?

To achieve a number of the regulatory outcomes sought by the legislation money launderers must not be able to access services. The principle here is that money launderers dishonest intentions should come to light because of the checks made by the regulated sector, and if appropriate money launderers will be denied services because either:

- The regulated firm themselves refuses to provide services; or
- If the regulated firms seeks appropriate consent in relation to a transaction being attempted by a money launderer it will be refused by the Serious & Organised Crime Agency (SOCA).

It would be interesting to know how many recent money laundering cases have involved the regulated sector being misled about their customers’ identity? If this isn’t a significant ongoing problem the checks are unnecessary. Similarly if this is an ongoing problem the time may be right to consider other approaches, e.g. a crack down on forged documents, and limiting the ability of people to change their name by deed poll.

4. To what extent do the record keeping and policy and procedural requirements upon Regulated Firms support their anti-money laundering efforts?

Because of the proliferation of high quality forged documents we are not aware that keeping records has assisted our members in any way with their anti-money laundering efforts.
The record keeping requirement doesn't prevent money laundering. Its only use is for audit purposes, e.g. for the MLRO or AML supervisor to review to assess whether employees have been undertaking the necessary checks.

We unaware of our members placing reliance on others to keep records, and this may reflect the fact that agents are usually the first party to be involved in property transactions.

As regards policies and procedures, we believe that any legal entity bigger than a sole practitioner should have some written documentation to support their approach, but we question whether the level of prescription in Regulation 20 is necessary or helpful, e.g. whether there is necessity for policies and procedures. In general we feel that Regulation 20 unhelpfully over complicates this area.

5. To what extent do the Regulations provide Supervisors with appropriate compliance monitoring and enforcement powers and penalties to deter non-compliance?

This question is best answered by AML Supervisors, but we would have thought that the powers to create registers without consultation with the affected sectors, coupled with powers to require the provision of information, powers of entry and inspection without warrant, and powers of prosecution, should be severe enough to deter non compliance.

6. To what extent do the Regulations provide for a suitable system of registration and 'fit and proper' testing to be established and carried out on a risk basis?

The OFT was appointed as AML supervisor for estate agents on 15 December 2007 when the Regulations first came into force, and on 31 July 2009 the OFT opened a compulsory register of estate agency firms which costs £115.00 per premises, with a cap of 20 offices for large firms. The OFT believes that around 9600 premises will need to register in total, and this will create significant revenue. It can be a criminal offence for estate agency services to be provided after 31 January without registration.

The OFT did not formally consult with estate agents about the development of their register, and they have not developed an Impact Assessment which focuses on costs and benefits. We do not understand how this can be compliant with the spirit of the government’s better regulation principles. We are also concerned that the decision to use resources to compile a register may be breach of the policy of the Supervisors Forum which deals with effective allocation of resources: http://www.fsa.gov.uk/pages/About/What/financial_crime/pdf/amlsf_mar08.pdf

We understand that the OFT intends consulting about future fees in early 2010 and we strongly believe that this opportunity should be used to undertake a thorough review of the underlying issue of whether a register is necessary as:

- In itself a register is not a tool to prevent money laundering;
- In any event registers of estate agency firms are held by the approved redress schemes for the purposes of the Consumer Estate Agents Redress Act;
- The costs of establishing a register could have been drastically reduced if the OFT has accepted the NFOPP’s offer to share membership data provided NFOPP members benefitted from a discounted fee.

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2 The OFT belongs to this Forum.
Although legally the deadline for registration is 31 January 2010, because of the OFT’s processing time the OFT has advised agents to submit their applications for registration by 18 December 2009. Despite this deadline, and constant requests by the professional bodies including the NFOPP, the OFT have not clarified their policy on regulatory overlaps which is critical in determining whether or not firms need to register, e.g. property firms who provide financial services are supervised by the Financial Services Authority (FSA), so do they need to register with the OFT? We have heard of individual firms in this situation being told that they only have to advise the OFT of their position but we are concerned by this approach because of the possibility of criminal offences being committed after 31 January. On the other hand property firms may have registered when this was unnecessary and we are unsure how proactive the OFT intends to be about returning unused registration fees. Overall we disappointed and surprised that these issues weren’t resolved before the OFT’s register was opened, especially as the Supervisors Forum are well aware that regulatory overlaps have required detailed consideration for other sectors.

The OFT’s register isn’t linked with a ‘fit and proper’ test, and this is consistent with the lack of a coherent or comprehensive regulatory structure for estate agents.

7. Are the requirements of the money laundering Regulations compatible with and complementary to the requirements of a) other aspects of the UK’s broader anti-money laundering regime/legislation and b) international standards/practices?

a) For the reasons we have outlined above we struggle with the link between CDD in the Regulations and actual or suspected money laundering for the purposes of POCA. Even if this link is so strong it makes CDD of all customers a proportionate requirement, we are unsure that the regulated firms or law enforcement can detect false identities in any event, or that the records kept by the regulated sector are of assistance to law enforcement.

b) The Regulations may be compatible with FATF, but a number of FATF’s member countries haven’t implemented the Recommendations, e.g. the US and Canada haven’t applied the FATF’s preventative measures to realtors.

8. How well does HMT engage with you in developing the Regulations and are the requirements of the Regulations clearly communicated?

Supervisors and Regulated Firms cannot develop the Regulations.

Although in theory the government can develop the Regulations this is severely limited by the determination of the British government to fully implement the FATF Recommendations and the European Money Laundering Directives. In our view UK specific factors shouldn’t necessarily be less important than international compliance.

Unfortunately even if an amendment is agreed with HMT there are other limitations which prevent amendments being made, e.g. Scottish Home Reports have now been in force for 12 months, but the agreed amendment to the Regulations has not yet been made.

Although the equivalence of jurisdictions for the purposes Regulations is isn’t an area of particular relevance to our members, in our view the reference to the risk based approach in the equivalent jurisdiction list produced by the EU Committee on the Prevention of Money Laundering and Terrorist Financing was unhelpful for regulated firms.
Questions about Guidance

We are working on refreshing the current NAEA/RICS guidance for members which is now out of date. The refreshed guidance will be addressed to all members of NFOPP divisions, RICS, and the Association of Relocation Professionals.

9. To what extent does Guidance promote both an effective and proportionate approach to anti-money laundering?

Guidance is an important tool, especially if it is tailored to the requirements of different sectors. The method of formal approval of guidance by the Secretary of State should be refined and expedited.

As far as we are aware sales agents don’t have problems with ‘acting in the course of business.’

The view that all property transactions are high risk is unhelpful to encouraging a risk-based approach. However, we aim to provide refined guidance which acknowledges that different transactions, customers, and clients, pose different levels of risk. Please see our response to Q19.

10. How clear and consistent is Guidance including whether Guidance is consistent for those sectors where more than one supervisor exists and generally across sectors?

Our understanding is that the Supervisors Forum has determined that there will never be more than one supervisor, however see our response to Q6 in relation to the current problems of multiple regulators for property firms.

The guidance produced by the Joint Money Laundering Steering Group (JMLSG) tends to be reflected in the guidance produced for different sectors, especially the JMLSG’s guidance on customer due diligence, e.g. it is reflected in the OFT’s Core Guidance which applies to real estate agents.

11. In what ways does Guidance assist with a risk-based implementation of Customer Due Diligence (CDD) measures within your sector?

Guidance a key and first point of reference which transforms difficult legal concepts into digestible help. Guidance should outline risks and warning signs, but it cannot dilute prescriptive legal requirements. In other words guidance cannot remedy inappropriate or blunt legislation.

12. In what ways does Guidance assist and support Regulated Firms’ anti-money laundering policies and procedures?

Guidance may support compliance with the Regulations, but in general we are uncertain of the value of the policies and procedures requirement, see our response to Q4. Policies and procedures are not recommended by the FATF.

In our view Guidance should not encourage requirements over and above best practice.

Whether the guidance aids stakeholders understanding depends upon whether the public is a stakeholder for these purposes. See our response to Q27.

13. How is Guidance made accessible and are there opportunities to engage in its formulation?

We plan to make our refreshed guidance available on the public facing side of our web site.
Questions about Supervision

14. To what extent does the supervisory framework support an effective, risk-based anti-money laundering regime and compliance with the Regulations?

It is a pity that the new AML supervisory framework for estate agents has lost credibility with the sector at an early stage because the OFT's register. Nevertheless we hope that the OFT will facilitate improved sharing of specific intelligence by law enforcement with regulated firms, via the professional bodies including the NFOPP.

15. In what ways do Supervisors communicate and engage with the firms they regulate to ensure a sound understanding of legal duties and responsibilities under the Regulations?

The OFT holds events for real estate agents, publishes guidance, and keeps in contact with the relevant membership bodies, including with the NFOPP.

16. How do Supervisors ensure a consistent approach to compliance monitoring and enforcement is taken across the anti-money laundering regime?

The document we have referred to in our response to Q6, entitled ‘A risk based approach to AML supervision in the UK’ was published in March 2008 and it is a key policy document in terms of consistency amongst different supervisors. Up until now the OFT have been focussing on developing their AML register, but we understand that in the new year they will be undertaking more active compliance activities, on a risk basis.

17. To what extent is Supervisors’ monitoring of compliance targeted, proportionate and risk based?

See our response to Q16.

18. How effective and proportionate is the enforcement regime?

The threat of criminal sanctions and searches is disproportionate, and unfortunately prevent a true partnership approach, and also encourage a risk-adverse approach not a risk-based approach.

19. In what ways could the registration process for Regulated Firms be improved?

We are interested to note that registration was not made mandatory for estate agents by the Regulations, but left to the OFT’s discretion, because estate agents are not considered a higher risk sector. This does not seem to square with the reluctance to allow others to rely on estate agents, see our response to Q1.

Questions about Industry Practice

20. Are there barriers to implementing risk-based policies in practice? If so, what are they?

Implementing a risk-based approach in an organisation, especially a relatively large organisation, is challenging because relatively junior or inexperienced staff who are not AML specialists must make crucial decisions based on their own judgment. For this approach to work these staff must be empowered to make decisions and have the appropriate level of support. The government’s decision to impose severe sanctions for breach unfortunately encourages a risk adverse approach, not a risk based approach.
21. During the process of customer due diligence (CDD), how are risks (in terms of likelihood and impact) taken into account to decide the type of due diligence that will be undertaken?

We encourage our members to individually assess the risks posed by all of the transactions they handle.

A particularly difficult area for property agents is checking beneficial ownership. This is an area where commercial considerations may come into play, and the problems are aggravated by the limitations of estate agents relying on other estate agents, see our response to Q1.

22. To what extent do the Regulations support or complement Regulated Firms’ ‘business as usual’?

It is helpful to start with assessing the risks posed by the parties estate agents usually deal with:

- The risk which sellers pose for estate agents is the risk of perpetuating historic money laundering because the seller’s original purchase was funded illegally. Sellers can also become buyers.

- The risk that buyers pose to estate agents is whether their transaction represents new money laundering, however the fact remains that the majority of funds involved in transactions are mortgage funds legitimately sourced from financial institutions.

Estate agents usually act for sellers therefore buyers are usually the party subject to CDD. In order to address the money laundering risk posed by sellers in theory agents should ask them how they originally purchased their property, including their original financing arrangements, plus enquiring as to the provenance of funds the seller has used to pay any mortgage. Undertaking CDD on sellers and asking for this historical information does not support business as usual.

Although estate agents who act for sellers don’t need to undertake CDD on buyers undertaking these checks may support business as usual as agents may be under an obligation to protect their seller clients by making checks on buyers, including asking buyers how they intend to fund their purchase. However, buyers are very likely to be subject to CDD by others in the regulated sector, including their financial lending institution and lawyer.

If lettings agents were brought into the scope of the Regulations their clients would be landlords. As indicated in our response to Q1, if lettings agents were required to undertake CDD on landlords and this could be extended to checks on the landlords’ ownership of the property they wish to rent out, this would be in landlords’ interests as it could help detect theft of property titles.

23. Are “fit and proper” tests being conducted in an effective and proportionate manner?

See our response to Q6.

24. How easy or difficult is it to comply with reporting and record keeping obligations?

Compliance with the reporting obligations by estate agents requires management of the appropriate consent requirement. Although SOCA’s management of this requirement has significantly improved the statutory requirement itself doesn’t fit particularly well with fast moving property transactions.

25. What forms of communication and engagement take place with stakeholders, from government agencies through to customers?

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4 Although this is recommended as best practice in the guidance produced by RICS/NAEA.
The OFT communicates with estate agents, including by harnessing the assistance of the relevant professional bodies including the National Association of Estate Agents (NAEA) which is a division of the NFOPP. The NAEA is a member of the government’s Money Laundering Advisory Committee, and the NAEA also has a relationship with SOCA.

We are less confident that information is provided to estate agents’ customers about the AML regime. We are aware this was attempted by the financial services sector a number of years ago.

Questions about the Customer Experience

26. How proportionate do you believe the Regulations appear once they reach the customer?

We anticipate that customers do not know why estate agents check their identity, particularly as identity checks are increasingly common place in numerous spheres.

Most agents deal with clients in relation to specific transactions and not on a continuous basis, and therefore repeat checks in the context of an ongoing relationship are irrelevant for estate agents.

The duplication of CDD in property transactions is disproportionate. Property transactions are likely to involve a number of parties covered by the Regulations; agents, lawyers, lending institutions, and perhaps accountants. The current position is that these other parties cannot rely on agents even though the agent is likely to be the first party the customer instructs in a transaction. We believe that the reliance provision in the Regulations should be altered so that the party being relied upon and party placing reliance share responsibility. See our response to Q1.

27. Are you able to provide customers with access to information and resources to check what information is needed from them and why?

We believe the government should produce this material given these requirements have been imposed by government through legislation.

Questions about the Regime

28 To what extent do the Regulations, the accompanying Guidance, the supervisory framework and industry practice (the Regime) provide an effective tool in the fight against money laundering?

Law enforcement, including the confiscation authorities, are best placed to answer this question, but as regards to international comparisons we are aware that many other countries have not implemented AML requirements for agents, including in the US and Canada.

If the intention of agreeing AML/CTF requirements internationally was to prevent the possibility sophisticated money launderers from jurisdiction shopping, this aim has not yet been achieved.

29. To what extent are the Regulations, the accompanying Guidance, the supervisory framework and industry practice (the Regime) a proportionate response to the risk of money laundering in the UK?

The NAEA is a member of the International Consortium of Real Estate Agents (ICREA). ICREA is a member of the FATF’s expert group looking at reliance, and ICREA has suggested that Recommendation 9 is amended so that the party being relied upon and the party placing reliance share responsibility.
The threat of criminal sanctions specifically aimed at businesses and professions, including Nominated Officers (MLROs), is disproportionate, and act as a disincentive to applying the risk based approach.

30. Would you say that all relevant stakeholders are able to participate in the development of the Regime?

Whilst the efforts to engage since the implementation of POCA and the subsequent implement of the Regulations have been vigorous and sustained, the fundamental difficulty is that a true partnership approach is not compatible with criminalisation.
Dear Sir/Madam,

National Pawnbrokers Association response to Review of Money Laundering Regulations 2007

Introduction
The National Pawnbrokers Association welcomes the opportunity to respond to the Review of Money Laundering Regulations 2007. Before commenting on the specific points in the Review relevant to pawnbroking, it might be useful to explain how pawnbroking works and how the National Pawnbrokers Association (NPA) represents its members.

How pawnbroking works

Like a bank a pawnbroker earns income on the interest that is charged on the loan secured by a pledged item. In order to accept goods into pawn a pawnbroker makes an on-the-spot valuation of the goods, which will depend on various factors such as the condition of the item, the gold price and the attainable price at public auction. The customer (who usually has to provide identification) and the pawnbroker will agree the sum to be advanced and the pawnbroker presents the customer with a completed CCA regulated document outlining the basis of the agreement. The item to be pawned will be of much greater value than the sum loaned. The customer is given a Pre Contract Information. Having decided to go ahead with the transaction the borrower then signs the actual agreement which is an A4 document with details of his/her rights and protection under the Consumer Credit Act 1974 and the terms and conditions of the loan. The customer also receives as part of the document itself a pawn-receipt for presentation when redeeming the goods. This is a very personal business and pawnbroking staff talk to customers all the time about how pawnbroking works.

The agreement is usually (and always a minimum) of six months and the customer is entitled to redeem the property by payment of the original sum plus the monthly amount due at any time during the contract period. When the loan and the interest are repaid, the goods are returned to the customer. If the customer has not repaid the loan at this time and the loan was over £100 he will receive a notice that the property is due to be sold giving him a further statutory period of 14 days in which to redeem (the customer will normally have the option at the end of the contract to renew the loan by the payment of the interest only and rewriting a fresh agreement).
If the customer does not renew or respond to the notice served, the pawnbroker may take steps to dispose of the goods. Having served the notice of the intention to sell the goods the pawnbroker must obtain the true market value on the date of sale, which ensures a fair price is obtained for the customer. Where the proceeds of the sale are greater than the amount due to the pawnbroker, the balance is due back to the customer. Contrary to popular myth, only where the loan was for less than £75 (and the contract period six months) does the pawnbroker gain title to the goods where the customer has not repaid the loan. Again, contrary to what many people believe the pawnbroker does not wish to gain title to the property as he is in the business of lending money and he wishes far more to see the loan repaid without needing to resort to the sale of the property. This way, not only is the debt cleared in full but also the customer is happy to return again at some stage in the future. There exists a very high volume of repeat business (circa 65%) - nearly always with the same security.

Walking into a pawnbroker’s shop today you could be forgiven for thinking that you had just walked into a bank or building society. Pawnbroking is now a serious alternative to using the services of a high street bank. Customers recognise that borrowing money against goods they already own is an affordable alternative to a bank overdraft or other type of loan.

A pawnbroker will lend as little as £5 in one easy, quick transaction that requires no lengthy meetings or form filling. The average loan is £120. The credit check takes the form of valuing the item brought into pawn.

Short-term cashflow is the reason most people use a pawnbroker, where convenience, friendliness and speed of service are quite unrivelled. In addition, it must be noted that pawnbroking does not increase an individual’s personal indebtedness as payment of the loan is made if the customer defaults, by the pawnbroker exercising his statutory power of sale over the property. Whilst a pawnbroker is entitled to pursue a customer for any shortfall once property has been sold, in practice this never happens and when the pawnbroker writes his statutory notice of the result of sale he points out that any further sums are not due to be paid (the pawnbroker may nevertheless offset a surplus on the sale of one pledge against the deficit on another).

As you will understand from the description above, the money flows the ‘wrong way’ in respect of money laundering.

The National Pawnbrokers Association

The NPA was established in 1892 and is the Trade Association representing pawnbrokers in the UK. Membership is voluntary, and today some 950 shops are members out of a total number of circa 1,450. The NPA Council comprises up to 12 individuals who have to be practising pawnbrokers, assisted by a Chief Executive and his/her staff. The Officers of the Council (President, Vice President, Past President and Treasurer) are elected into office each year and Members of the Council serve for three years before re-election. If there are more nominations than there are seats for any of the positions, a ballot takes place in accordance to the rules of the Association. There are a mixture of independent shops and the large chains of pawnbrokers serving on the Council to reflect the views of all members.

Members join the NPA primarily to ensure that they are compliant with all the rules and regulations in relation to pawnbroking. All new independent members are vetted before they may join and the Association has a Code of Conduct to help ensure that standards are kept high. We are told by the Financial Ombudsman Service (who started covering pawnbroking in April 2007) that they received only four complaints in the last year from pawnbrokers. Citizens Advice were also quoted recently to have no problems with the industry. I am not aware of any problems in respect of money-laundering where genuine pawnbrokers are concerned.

All NPA members have access to the Pawnbrokers Guide, which gives them information about how to be compliant, and they also may ring a Helpline if they have a specific question about their business.
Additionally, there is The Pawnbroker magazine, which they receive four times a year and an annual Conference to keep them informed of any changes in the law or regulations.

Pawnbroking customers

The majority of pawnbroking customers fit the following profile:

- 57% female
- 60% under 40 years of age
- C2, D socio-economic group

Source: Pawnbrokers and their Customers, Kempson October 2003

Many are in low paid or part-time work or on benefits.

Response to Review

Q1. As mentioned previously, the vast majority of customers entering into a pawnbroking agreement are low paid and are looking to borrow money for the short-term. Bearing that in mind it is very hard to understand why pawnbroking is covered by anti-money laundering regulations at all.

It could be argued that the pawned item could have been stolen and therefore subject to the Proceeds of Crime Act which also form part of these regulations. However, it is not in the pawnbrokers interests to take in stolen property and they do take a number of measures to deter criminals from ever coming in to the shop. The reason they do not wish to take in stolen property is that the pledge item is their security that the loan will be paid back. If stolen property is unwittingly taken in, there is a good chance that it will be picked up by the Police and the chances of the loan then being repaid are virtually nil. If someone comes into the pawnbroker with stolen goods they have to show current ID and almost certainly will be filmed handing over their ill-gotten gains. Very few criminals wish to have prima-facie evidence of their crime which can be used to convict them of an offence. If the pawnbroker is at all suspicious that the item before him has been stolen they will not accept the item into pawn and is very likely to inform the local Police. The vast majority of pawnbrokers have very good relations with the Police and want a positive relationship with them. The amount of stolen property taken in is therefore minimal and we believe that the amount of bureaucracy required to comply with the money laundering regulations far exceeds any benefits.

Pawnbrokers have to keep meticulous records and most have bespoke pawnbroking software to help them keep track of the business and their customers. "Knowing your customer" is an important part of being a pawnbroker, because as explained above, they need to be sure that the loan will be repaid. For this reason, the pawnbroker will ask for ID and keep a record of names, addresses and supporting documents. This is an important part of his/her business and they would be doing this anyway irrespective of the Money Laundering Regulations.

The NPA recommendation would be to exempt pawnbroking from these regulations as they serve no useful purpose, but do add to the costs of the industry.

Q14. There appears to be some confusion amongst some NPA members about whether they need to register for Money Laundering. We have supported the OFT in putting articles into The Pawnbroker magazine and also gave them a list of members so that they could identify those that need to be registered. Despite that the NPA office receives many calls from members unsure about what they have to do.
Q 15. One frequent complaint is that when companies report suspicious activity, there is usually no further communication from the authorities back to the company about the outcome of their investigations. All the information appears to only go one way and it appears to be an unsatisfactory state of affairs. Some feedback to the company would be helpful and encourage more co-operation.

The other issue that is less common, but nevertheless is important is the unhelpful and officious attitude of some enforcement officers. When one of our members was inspected he asked the officer about how he could reasonably be expected to check on whether a cheque presented to him was part of proceeds of crime. The answer he was given was that the officer would not answer the question because they represented ‘enforcement’ not ‘compliance’. We believe a more collaborative and helpful approach would benefit everyone.

Q 19. It seems peculiar that the OFT are also a supervising authority, whilst HMRC have a lot more experience in this area. Our recommendation would be that HMRC takes over as the one supervising authority.

As recommended earlier, the NPA recommends that pawnbroking is exempt from these regulations as they cost a huge amount of money to administer with virtually no benefit as a result.

Yours faithfully,

Des Milligan
Chief Executive
Review of Money Laundering Regulations 2007

We are the London office of an international law firm, which, among other things, advises regulated firms on the regulations.

While we will leave representative bodies to reply more broadly on the regulations, we wish to raise regulation 15(1). This requires credit and financial institutions to apply, in respect of their branches and subsidiary undertakings located outside the EEA, measures at least equivalent to the regulations.

On the face of it this applies to any subsidiary undertaking, for example, a non-EEA shoe manufacturer. However, we doubt that this is the intention and we think that it would not be applying equivalent measures to apply the regulations to entities that, had they been in the EEA, would not themselves have been subject to the Third Money Laundering Directive.

The regulations go beyond the Directive and "goldplate" Article 31. The Article applies to "majority-owned subsidiaries". The regulations have 'lost' the reference to majority-owned and apply not just to subsidiaries but to subsidiary undertakings.

As Article 31 was amended in the course of its legislative passage to limit its application to credit and financial institutions, it may be that what the EU had in mind was subsidiaries that are themselves credit or financial institutions, such as part of a bank's banking network.

So, in this regard, the regulations go beyond the scope of the Directive and are not proportionate in their effect. Further, by linking the definition of subsidiary undertaking to section 1162 of the Companies Act uncertainty is introduced. Where section 1162 (4)(a) applies, it is expressly stated that paragraph 4 of schedule 7 (which applies to section 1162 (2)(c)) is not to be read as affecting the construction of section 1162 (4)(a). We understand that when the concept of subsidiary undertaking was introduced this was to address off balance sheet financing and was not extended to other areas of the companies acts, which would have introduced uncertainty in areas where there are criminal offences. By using the definition in the context of regulation 15 that is exactly what has happened; uncertainty in an area that has criminal offences for non compliance.

regards,
Alasdair Gordon

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OFFICE OF FAIR TRADING RESPONSE

REVIEW OF THE MONEY LAUNDERING REGULATIONS 2007
HM Treasury's Call for Evidence

Introduction

1. The Office of Fair Trading (OFT) is a Supervisory Authority under the Money Laundering Regulations 2007 (The Regulations). Businesses supervised by the OFT are either estate agents or consumer credit financial institutions (CCFIs). CCFIs are consumer credit lenders who are not authorised by the FSA or supervised by HMRC as a money service business (MSB). Until the end of registration numbers are unclear but we have estimated that 5,000 to 10,000 CCFIs and 9,600 estate agency firms (with 14,400 branches) will be active in the estate agency market at the close of the six month registration period (January 2010) and be required to register with OFT.

2. The Regulations provide that monitoring and enforcement powers may be shared with Local Authority Trading Standards Service (LATSSS) under arrangements to be agreed with Local Authorities or representatives acting on their behalf.

3. The Regulations provide the OFT with the discretion to create a registration system for those businesses we supervise and the main focus of our work in 2009/10 has been the successful launch and operation of registration. Registration will provide the income necessary for the AML regime to move to self funding status over the year and provide information to allow the OFT to develop a risk based compliance regime.

4. The AML interim compliance approach has aimed to
   - raise awareness of our supervised population of the Regulations and of the need to register with us
   - respond to complaints and intelligence received regarding allegations of non-compliance with the Regulations by individual firms
   - provide advice and guidance to businesses.
5. With our focus on registration the OFT has not carried out any inspections this year and on the basis of information received has advised three firms of the requirements under the Regulations. The OFT’s longer term AML strategy will be considered once we have a clearer idea of the number and make up of our supervised population. This will also be informed by the responses we receive following a formal consultation to take place in January next year.

6. Whilst the OFT welcomes this opportunity to provide evidence to HMT for the review of the Regulations it should be noted that many issues have only come to light as we have progressed the regime. As we are at a very early stage our information may only cover some areas in any depth.

**The Regulations**

7. The OFT supervises CCFIs and estate agents under Regulation 23(1)(b) of the Regulations. Since the OFT began registering its supervised population it has identified a number of business models that do not appear to be dealt with under the Regulations. These have already been raised with HMT and so will not be addressed in this response document.

8. Although the OFT has operated an interim supervisory regime we have identified a number of areas where change would assist in compliance work:

9. **Require policies and procedures to be kept in writing** - Regulation 20 requires businesses to have risk based procedures and policies in place. The Regulations do not specify that businesses should keep such procedures and policies in writing but this is clearly the best evidence that such policies and procedures exist and of their content. Failure to provide details to the OFT on request may trigger the need for a visit. This then makes it resource intensive to test whether a business has these in place, that they are sufficient to meet the requirements of the Regulations and that they are known and acted on throughout the structure. We recommend a change to Regulation 20 to say that policies and procedures must be in written form. We contend that this does not represent an additional burden on businesses as they will need to be in place and we are just confirming the form it needs to be in. Nor do they need to be extensive and may be proportionate to the size and complexity of the business. This change will improve our compliance and education efforts to support businesses to get their risk based approach and procedures and policies correct. In addition, we have been advised that some Schedule 3 supervisors
will require these to be in writing via their codes etc and so to amend this aspect of the Regulations will allow a more consistent approach across all Supervisors.

10. Cancellation for non-payment of the annual fee - In order for the OFT's AML regime to remain solvent, those on its register must pay their fees in a timely manner. Adequate funding is essential if the OFT is to be an effective Supervisory Authority but legal advice indicates that the drafting of Regulation 34(7) does not reflect its intention of allowing the OFT to cancel a registration in the event that the fee (or required information) is not provided. Currently the paragraph reads that cancellation is only available as an option where the OFT 'would have had' grounds to refuse an application on registration. This wording covers the situation where information comes to OFT's notice after registration that would have entitled it to refuse the initial registration, for example, evidence of the provision of false information but importantly it does not cover non-payment of fees only becoming due subsequently.

11. Extending third party reliance – Regulation 17 provides for businesses to rely on the customer due diligence (CDD) checks carried out by other specified businesses. This is potentially a useful provision which prevents duplication of CDD and relieves the burdens on business. Debt purchasers (who are CCFIs) buy debts from the initial lenders in order to collect those debts and they rely on the CDD checks carried out by those initial lenders. Currently they can only legally rely on these checks under the Regulations when carried out by an authorised person such as a bank. However, they also purchase many debts from finance companies who the OFT also supervise but these are not listed under Regulation 17(2). The OFT sees no reason why these lenders should not be included as they are subject to the same rules as the authorised persons under the Regulations and so recommends that the Regulation 17(2) is extended to include CCFIs.

12. Information gateways – The Regulations do not provide any clear gateways for Supervisors to share information. Sharing information is particularly important for the OFT due to the number adjoining areas of responsibility with Schedule 3 supervisors\(^1\) and overlapping areas of responsibility for the public sector

\(^1\) For example, estate agency work, which in general is supervised by the OFT, can be carried out by solicitors and supervised by their professional bodies or carried out on the same premises as businesses supervised by the Council for Licensed Conveyancers

Office of Fair Trading HMT Call for evidence
supervisors. Greater clarity would help us, for example, to carry out data matching exercises. This would be aimed at ensuring for instance that businesses already registered as MSBs with HMRC were not contacted by the OFT having correctly failed to register with us. This would also relieve burdens on businesses such as payday lenders and pawnbrokers. It would improve our supervisory efficiency and reduce costs as it would allow us to reduce the number of businesses that we would contact who were not covered by our regime. We could deal with supervisory overlaps more effectively where they involved High Value Dealers for whom HMRC must maintain a register as we could share any information we collect with HMRC.

13. Application of 'no effect' – Currently where an application for registration is not accompanied by the fee levied under Regulation 35 or fails to provide the information specified the OFT has to go through the 'Minded to refuse' process. This is a timely and resource intensive process the cost of which will be borne by the industry. It provides for a scenario where a business that has failed to provide its fee along with its registration form could appeal to the First-Tier Tribunal (Consumer Credit). This is not a scenario which would be repeated in respect of an application for a consumer credit licence under the Consumer Credit Act 1974 (the CCA). The CCA allows for applications that are not accompanied by the correct fee or information required on the form to be made of 'no effect'. This is as though the application was never made and so allows it to be dealt with by a simple administrative procedure. The OFT would recommend that changes are made to the Regulations to allow us to process registrations with missing information and/or which are unaccompanied by the correct fee in a similar fashion. This will allow us to deal with registrations where the business refuses or continually fails to provide the information quickly and simply thus reducing costs on business that do provide the necessary information and/or fees. This is an issue the OFT raised when commenting on the Regulations when in draft. Real life experience of registration has highlighted for us the practical implications for the OFT and business of a formal, high level process.

14. In response to question 4 the OFT considers that retaining details of documents pertaining to customer due diligence checks for 5 years is appropriate. However, we would question whether keeping only the details of the documentation used is sufficient. Should the documents be fraudulent it would be helpful to SOCA and the police to have a copy of the photo ID itself or other identification evidence relied on which may enable them to identify the
NOT PROTECTIVELY MARKED

individual concerned. Should this be considered too burdensome for business it may be that this could be applied on a risk basis.

Supervision

15. The OFT seeks to comply with the Regulators Compliance Code (the Code) in all its compliance work including AML. During the interim compliance regime the OFT has focused on taking a positive and proactive approach towards ensuring compliance by helping and encouraging business to understand and meet regulatory requirements more easily.

Guidance and Communication

16. The OFT is committed to working with stakeholders to produce clear and meaningful guidance in order to assist business with compliance. We have issued core guidance for estate agents and CCFIs on their obligations under the Regulations and have also worked with the Serious Organised Crime Agency (SOCA) to produce guidance for estate agents to assist them in identifying risks to their business and the reporting of suspicious activity.

17. The OFT also seeks to work with trade associations and representatives of small businesses and our guidance been produced in consultation with these groups. In working towards the full regime it is intended that we will consult more widely on our core guidance in the future. We are also working to identify how best to provide relevant and targeted advice and guidance. For example, we have drafted sector specific guidance on the reliance on third party information for debt purchasers as a result of discussions with the Credit Services Association.

18. The Regulations, and other associated legislation, along with our published policies, guidance and advice are available to business on our website at www.ofr.gov.uk/mlr. These documents are also available on request via our telephone helpline 020-7211-8200. The helpline provides advice to business, LATSS, the Police and other stakeholders. Currently it is primarily assisting business on deciding whether they are required to register with the OFT but advice on all aspects of compliance is available.

19. We have also worked to raise awareness of the Regulations in other ways. We have:

Office of Fair Trading

HMT Call for evidence
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- worked with stakeholders such as the Consumer Credit Association and the Finance and Leasing Association to give presentations to their members
- raised awareness of the Regulations through, for example, presentations for estate agents organised by OFT and LATSS
- attended conferences such as SOCA Payback conferences and the Association of Relocations Agents
- provided articles for trade press.

20. In addition to raising awareness of AML requirements among our supervised community, registration is being supported by a communications campaign to alert businesses to the need to register and to maximise the numbers of businesses registering. This has included contacting business direct by writing to those businesses we have been able to identify advising them of the opening of registration. Once registration is complete we will be able to email notifications/updates to identified groups of individual businesses who have provided the email address of their Nominated Officer, other businesses will receive the information by letter.

21. The OFT keeps in contact with business representatives via email and meetings and in some instances has been in extensive dialogue with them providing information and guidance on the OFT’s views.

Consistency of Approach

22. In creating a number of Supervisory Authorities the Regulations reduce the need for a visit from an additional regulator and so comply with Hampton principles. The OFT already has a duty to enforce and also administer the licensing provisions under the CCA and the Estate Agents Act 1979. Although there are 28 supervisors under the Regulations the OFT has not found difficulty in working with this number as it has experience of sharing responsibilities under a number of other pieces of legislation with 200 other regulators in the form of LATSS.

23. The OFT is an active member of the Anti-Money Laundering Supervisors’ Forum and, in particular, is building close links with other Supervisors whose population either overlaps or abuts those supervised by the OFT. In particular, regular meetings of the public sector regulators take place and ad hoc meeting
with other supervisors in order to agree a common position or interpretation. This has allowed us to produce frequently asked questions on 'Who is my Supervisor?' and provide greater clarity for business.

Risk Based, Proportionate and Targeted

24. When delivering its risk-based approach to the Regulations, the OFT will apply the Regulators Compliance Code standards and ensure our decisions adhere to the Five Principles of Good Regulation as espoused by the Better Regulation Task Force.²

25. To date the OFT has adopted an interim supervisory regime with an emphasis on raising industry awareness of, and compliance with, the Regulations. This interim approach is not a viable long term approach for OFT supervision given that the Regulations require the OFT to effectively monitor the relevant persons for whom it is a supervisory authority.

26. The introduction of a more targeted supervisory model is therefore proposed. This would involve the elements of the interim supervisory approach while including a level of random sampling to monitor and test whether registered businesses are fulfilling their obligations under the Regulations. Random sampling would allow an initial assessment of risk that would enable the OFT to better target enforcement activities.

27. The OFT will build an understanding of the exact nature of risk within the estate agent and CCFI markets over the next year or two. This will begin with its consultation in January along with an initial assessment of risk which is planned by undertaking a level of random sampling to test whether registered businesses are implementing the required anti-money laundering controls.

28. A more comprehensive risk assessment of the supervised sectors and identification of where risks of non-compliance or regulatory outcomes are greatest will be made possible as the OFT begins to engage more directly with its supervised population. The OFT will keep under review its risk based


Office of Fair Trading HMT Call for evidence
approach to ensure that it takes into account, amongst other things, changes to markets, working practices and legislation.

29. The OFT believes that the current range of powers provided under the Regulations allow us to be efficient and effective supervisors. If we are to work with LATSS in the future, retaining the power to prosecute as the ultimate sanction will allow them to play a full part as a supervisor under the Regulations as they are not able to apply civil penalties.

Registration

30. The OFT has exercised its discretion to maintain a register of businesses it supervises. We consider that registration is the best mechanism for effectively facilitating our functions under the Regulations as it will address the key risk areas for OFT and provide the best means of securing the income required from business to pay for the regime.

31. The OFT is in the middle of its initial six month registration period. We have advised as many of those businesses that we supervise as possible of their need to register. We have written directly to businesses from lists that we obtained at the start of registration and we have recently sent a reminder postcard. We will send a final reminder in January prior to the end of registration. We have endeavoured to update our mailing list throughout this period.

32. We are aware that a significant number of businesses we supervise have no internet access. Currently forms can be downloaded from our website but registration cannot take place on-line. We will be consulting stakeholders on this point to ascertain whether this is a suitable way forward in the future.

Industry Practice

33. CDD measures will often meet the requirements of CCFIs for anti-fraud purposes. Knowing who their customers are and where they live allow them to assess their creditworthiness which is an aspect of fitness to hold a licence under consumer credit legislation. However, such measures are not necessary for estate agents who often see this as an additional burden.

34. Record keeping has been covered previously.

Office of Fair Trading

HMT Call for evidence
35. It is clear from our discussions with business, and estate agents in particular, that many consider compliance with the Regulations to be a 'tick box' matter covering only CDD measures. They fail to understand that 'suspicious' may arise during the course of any part of their supervised activity. Many have stated that they do not need to make SARs as they do not enter into business with anyone they think is suspicious.

36. Third party reliance has been covered previously.
Keith,

I'm sure that all of the documentation was fine - just too much. I haven't got time to tidy this up so I will just bash some thoughts in.

I can't be sure which regulations are causing which problems but I can highlight a few of our biggest problems.

To try and keep the business afloat I have been working 12 hour days 6 and sometimes 7 days a week for the past several months so I can't devote more than 30 minutes to a reply - so an online survey would have been easier.

I realise that I have just admitted to breaking the Working Times Directive - but I either do that or loose my home. Fortunately I replied to this from my personal account otherwise I would have broken regulations about not including Company Registration Information etc. in the footer.

I started in business as an IT consultant in 1993 but have had to withdraw from that area recently. There are many difficulties at the moment but one of the most frustrating is that some companies are now insisting that I turn up in person at their head office to have my passport photographed for their records. This is despite the fact that we are employed by our own limited company and have worked with some of these companies for over a decade. I live in Leeds so being asked to pop down to London to have my passport photographed is both insulting and unfeasible on a regular basis. It also opens me up to the risk of identity theft.

Recently we have been re-focusing our business to make money on the internet. This is mainly so that we don't have to employ people anymore because we see it as too big a risk under current legislation. Receiving money on the internet is also proving to be a problem. Simple acts like setting up a merchant account or even a simple PayPal company account are fraught
with new difficulties because of anti money laundering legislation. The larger companies look for simple, generic and cheap ways of complying with the legislation - like entering your credit card details to verify an address. As a limited company we don’t have a credit card - our bank won’t issue a credit card for the type of account we have (money laundering legislation we are told) so it looks like we will have to change bank or account or something.

Some of the above are petty complaints but the cumulative effect of all of the legislative hurdles that we face means that fighting the government rules is far away out single biggest problem. We also have no way of knowing what other regulations we are breaking so we can’t quantify risk - if the Attorney General can’t keep track of them all what hope do we have?

The amount of tax that we pay is now about one thirtieth of the amount we were paying in the late 1990s. If the current rate of regulation creep continues we will definitely be looking at moving the business overseas when the recession is over - this was part of our reasoning when we re-focused on the internet.

Regards,

Paul Magson.

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Subject: RE: Have your Say: Review of the Money Laundering Regulations 2007
Date: Thu, 22 Oct 2009 13:35:40 +0100
From: MLR.Review@hm treasury.gsi.gov.uk
To: paulmagson@hotmail.com
CC: regulations@bis.gsi.gov.uk

Dear Mr Magson

Thank you for your email. It may be helpful to explain that we recognise that not every potential respondent may be able to respond in detail to the whole of the paper we published, but we are anxious to hear from businesses of all sizes who should respond in the way that makes most sense to them. There is otherwise a danger that the views of, for example, smaller firms are overlooked.

I'm sorry if the documentation was unhelpful; the call is published in two versions, part A is for - in a nutshell - practitioners and part B is for customers. We certainly considered a number of other options for the review such as an on-line form, but that would itself be a potentially very large undertaking and would divorce the questions from the related commentary.

In conclusion, we realise responding to these exercises itself imposes burdens on business, but given your views and the experience you have summarised it would be helpful for us to know a little more about your specific experience and about your business - the latter is to help us to better understand what we are told.

Keith Davis, Policy Adviser, Money Laundering, Financial Crime Team, HM Treasury,
020 7270 5358
Room 3.16, 1 Horse Guards Road, London SW1A 2HQ

-----Original Message-----
From: Paul Magson [mailto:paulmagson@hotmail.com]
I have a lot of complaints about these regulations - mainly to do with the amount of extra bureaucracy that we have to deal with now.

There are now one or two areas of business that we have had to withdraw from because we didn’t have time to deal with the extra hassles that this and other new regulations have imposed on us.

I have spent 15-20 minutes scanning through the various documents that that you expect us to go through (http://www.hm-treasury.gov.uk/fin_crime_review.htm) and I can’t give it any more time. You seem to expect us to find the document that is relevant to us, print it off, fill it in, scan it and email it back to you together with another completed Word document.

Why not just have a simple online form?

Dear Small Firms Consultations Database Member

Review of the Money Laundering Regulations 2007

Last week HM Treasury announced a review of the Money Laundering Regulations 2007. The review is being conducted with support from colleagues at the Better Regulation Executive in BIS.

If you work with or have been affected by the Money Laundering Regulations 2007 the review team is keen to hear from you. They want to gather views and evidence from all sectors - those regulated by the legislation as well as those affected by it in their day to day deals with regulated firms.

The review seeks to capture views on how the regulations are designed as well as how they work in practice, in terms of how effective and proportionate they are and how much engagement there has been.

The review will focus on the full scope of the 2007 Regulations (not simply changes made in 2007), on guidance, and on other communication and engagement with stakeholders. The review will also consider supervisory arrangements, industry practice and the customer experience under the regulations.

For more information, please go to the HMT website where you can also download a copy of the Call for Evidence.

http://www.hm-treasury.gov.uk/fin_crime_review.htm

Contact:

Responses to or questions about the review, including expressions of interest in attending a consultative event, should be sent to:

MLR.Review@hm-treasury.gsi.gov.uk

The Call for Evidence closes on Friday 11th December 2009.
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Response to Section 9: Questions about the Regime

Question 28 To what extent do the Regulations, the accompanying Guidance, the supervisory framework and industry practice (the Regime) provide an effective tool in the fight against money laundering?

The extent to which any or all aspects of the Regime facilitate the deterrence, detection and reporting of suspected money-laundering activities.

Critics have drawn attention to the inability to measure impact of counter-measures on either money laundering or predicate crime. Certainly, there has been an increase in prosecutions brought under POCA with, in 2007, 2281 prosecutions and 1330 convictions for money laundering. And interviews with law enforcement indicate that the only thing that stops this number from being higher is a lack of resources. The concern, however, lies with the interview evidence that it is costly, time consuming and resource intensive to bring prosecutions for money laundering. But these are still small numbers if we consider that in the same year, 2007, the number of recorded crimes for fraud and drugs, as an example, was 411,000.

Earlier research led me to conclude that extreme care has to exercised to avoid fiscal incentivisation of criminal legislation. Interestingly, asset recovery is viewed as a performance measure for some law enforcement agencies particularly, because it is so easy to measure. Of concern is the absence of proof that such sums actually exist to be recovered. And indeed that estimates that are used in official documents appear to be based on somewhat naive and extremely unsophisticated extrapolation. For example, HM Treasury (2007) points to a study of a ‘sizeable sample’ of the 200,000 annually reported SARs which indicated a median value of £10,000 and a mean of £35,000 for each one. This document notes further that around 40% of the SARs relate to transactions that are genuinely suspicious and then, by simple multiplication, suggests that they reveal £2-3 billion of laundered money (40% of 35,000 * 200,000). Evidence that I have previously obtained from ARA and the Home Office indicated that amounts being recovered were frequently far more modest sums. For example, although there has been an increased in the number of payments into JARD from confiscation orders the range in sums involved is significant. Taking data from 2005/6, size of individual payments ranged from £0 to just under £1 million. Of significance was that the average payment size was just under £8,000 and more telling that the median confiscation was only £300. Most recent data from SOCA indicates that the total value of cash, restraint and confiscation orders increased substantially from £69 million in 2007/8 to £188.9 million in 2008/9 but, as the vast majority of this is due to restraint orders it is not clear if these funds have actually been recovered and remitted into the consolidated fund.

Question 29 To what extent are the Regulations, the accompanying Guidance, the supervisory framework and industry practice (the Regime) a proportionate response to the risk of money laundering in the UK?

How well the costs and benefits of the Regulations are understood.

The recent and continued expansion of legislation which, at each turn, has widened the underlying definition of the phenomena (van Duyne, 2003; Harvey, 2005; Levi and Reuter, 2006; Sproat, 2007) contains no real analysis of the costs and benefits or of effectiveness of such measures.

The impact studies in relation to anti-money laundering legislation purport to apply cost/benefit principles. However, costs were and have been significantly underestimated and based on questionable data and assumptions. For example, the 1993 cost estimates appear
to have been based on a survey of 1,000 institutions, however, only 60 responded, less than 10 commented on costs and only one attempted to quantify them. Without doubt it is difficult to accurately judge the true costs of compliance, from work that I have carried out I get the distinct opinion that given nothing can be done about it, firms would rather not divulge the size of this business overhead. In a survey of compliance officers facilitated by IMLPO (approx 30% response rate), that I conducted in June of this year over a range of institutions, estimates of the size of the AML budget ranged from ‘millions’ to a rather worrying zero supported by the statement that compliance was ‘done as additional tasks outside company time’ with the majority reporting in the £100,000 to £200,000 range. The extent to which such cost is reasonable obviously compares to the size and turnover of the regulated institution.

Benefits flowing from the legislation appear simply to be reputation and integrity of the financial system. Splendid objectives and supported by us all. Reputation is something that remains wholly unquantifiable until lost. We only have to think of how badly rocked confidence in the financial system has been over the past couple of years and from sources entirely different to money laundering.

**Whether enforcement powers and their application are appropriate to levels of compliance and risk.**

Banks in particular will be compliant with legislation due to concern over reputation, certainly, but more probably due to their desire to avoid regulatory censure. Much has also been said about the level of reporting, particularly from financial institutions. Favarel-Garrigues, Godefroy and Lascoumes (2008) observe that banks are asked to identify proceeds of crime, when all they can actually and properly observe are account transactions. Of course, the money flows associated with such transactions lack any helpful colour coding determined by its providence – it is simply money to be used in the normal asset building activity of the institution. The result is that they can only identify what might appear unusual. Suspicion is inherently a subjective concept, the assumption underpinning this approach however, is that unusual must by definition be suspicious. That said, a survey of compliance officers facilitated by IMLPO (approx 30% response rate), that I conducted in June of this year over a range of institutions, indicated in response to a question about ability to identify suspicious rather than just unusual activity, that while 4 out of 10 respondents said they could do that, the majority were unable to or were unsure.

The attempt to reduce cost by introducing a more risk-based approach simply introduced greater vagueness and more uncertainty and transferred responsibility for rule interpretation from the regulator to the financial institutions and to their perception of risk. Faced with the spectre of sanction for failing to report, anything unusual will be reported resulting in what Demetis and Angell (2007) refer to as ‘false-positives’. More worrying is the tendency of firms to see reporting as absolving them of their responsibility, reporting everything that might appear merely unusual in order to achieve the regulatory equivalent of ‘covering their backs’. Such that we have the ludicrous situation of banks using the number of SARs submitted to the regulators as an internal measure of performance. Or indeed of one bank being told that for their size they were failing to submit a sufficient number of reports.

The IMF staff working paper by Takats (2007) uses a theoretical exploration of the agency problem, to conclude that excessive fines (drawing, I presume on experience in the US) force banks to report transactions which are less suspicious; interestingly, in such situations he argues for a reduction in fines for non-compliance supported by levying of reporting fees – charging banks to submit SARs. I wonder what would happen if this were employed in the UK.
However, bankers are and will always be bankers and not police, thus compliance becomes an objective in its own right protecting against the risk of regulatory sanction, and thus becomes a more dominant objective than protecting against the risk of criminal contamination. Thus the role is switched to one of protecting the institution and creating the impression of engagement and of being seen to do the right thing. But for the commercially conscious institution this has to be done with the least cost and by employing people into roles that understand and can support the status quo. It thus becomes irrelevant as to whether the guesses and assumptions made over the volume of laundering are correct as those employed within the sector will seek to justify the costly existence of a host of anti-laundering solutions. This is achieved by constantly seeking positive reinforcement of the threat to justify the continued importance of their function as justification for the cost. We are now in a position where so much has been committed to this particular approach, that it becomes difficult to consider alternative structures for dealing with money laundering, betraying something of a “sunk cost bias” towards the status quo. One respondent to some earlier work noted that they did not wish to draw attention to the amounts being spent on compliance as this would ‘result in a small revolt internally’. Whilst another noted that: “spending on compliance is now like an escalator – constantly going up”. As such, the machinery of compliance becomes self generating, clearly no financial institution wants to be told that the money spent on AML compliance is not money well spent.

Investment in systems and procedures is viewed as providing concrete evidence of an institution’s commitment to fulfilling obligations. There a curious finding from the survey that I had already observed from previous work. I had supposed that in terms of reputation one would expect banks would wish to demonstrate the solidity of their AML policies to the outside world. However, 60% of respondents said that their institution made no disclosure in their report and accounts or in the CSR reports over money laundering compliance activity. So such expenditures are not exploited to commercial advantage, or more likely as not seen to produce any such advantage. To a large extent the population in general is unaware of the subject and only concerned that the bank looks after their money, pays interest when due and repays as appropriate – they do not care who else maintains accounts there.

**How the proportionality of the Regime in the UK compares internationally.**

For each addition to the legislation, the UK regulated sector risks competitive disadvantage as other regimes are less assiduous in interpretation of and adherence to an international regulatory framework.

**Question 30 Would you say that all relevant stakeholders are able to participate in the development of the Regime?**

*How extensive and regular the communication is across the Regime and between all levels of the Regime and the opportunity is for Stakeholders subject to the Regulations to input into their development.*

Whilst it is perfectly in order for the authorities to anticipate and pre-empt criminal action that might have a detrimental impact on society, there is still the overarching requirement for prudence and appropriate and careful balancing of costs against benefits with each change in legislation. AML is snaring some criminal activity that may (and I emphasise may) not have been successful with existing criminal legislative framework. But evidence suggests (and this is true of a number of other countries in Europe) that it is the small time criminals lacking in sophistication that had been caught. Rather than expand the existing framework, drawing more into the regulated sector, to respond to the latest notion of where laundering in occurring let us pause to draw breath and reflect on whether this approach is indeed the right one.
Rather than asking how well it works (Levi and Reuter, 2006, p. 365 and Reuter and Truman, 2005, p. 56) let us more appropriately ask “does it make any difference”. The constantly widening scope of what constitutes money laundering confuses what is actually being counted and by definition precisely what it is we are trying to measure and, by use of legislation, control.

It is essential that we remain objective and that our vision is not clouded by high emotions. Given such an evidence free area, it is beholden to academics to establish proper frameworks for analysis to understand the extent of money laundering and, explicitly to test these assumptions. It is also beholden to the authorities to listen.

Comments on any other issues relating to the Regulations not covered by our questions, as well as suggestions for alternative routes of enquiry, are welcomed.

I make the following general observation.

Rather than fact based legislation there would appear to have been a tendency to legislate to be “seen to be doing something” rather then by an objective understanding of its impact on predicate crime or indeed in being able to reduce money laundering. There appears to be an untested hypothesis that separating the criminal from the benefits of his lifestyle will reduce the attractiveness of his chosen occupation and that the imposition of regulation increases both the costs of laundering and the probability of detection and conviction. Such arguments continue to be presented despite increasing evidence that they do not hold in practice (Aldridge 2003; van Duyne 2005; Reuter and Truman, 2008; and Harvey and Lau 2008). Underpinning current views of AML is an untested a priori assumption of a positive inverse relationship between anti-money laundering legislation and predicate crime.

arveyH

References:


H M Treasury (2007), The Financial Challenge to Crime and Terrorism, February


Response to HM Treasury on Money Laundering Regulations
Professor Michael Levi, ESRC Professorial Fellow, School of Social Sciences, Cardiff University

Although I have been engaged in money laundering research episodically since 1988 and other financial and organised crime research since 1972, I claim no special expertise on the details of the ways in which AML has responded to the 2007 Regulations. I will content myself with some brief, more general analytical comments to re-frame somewhat the useful questions asked by this thoughtful HM Treasury exercise. My comments start from the premise that greater accountability and transparency within the financial and allied systems is not inherently a bad thing, but that we need to establish more clearly what are the benefits (and costs) of regulatory and criminal justice interventions.

The threat from money-laundering has not been analysed with any clarity, nor is it plain what the impact of AML is on

1. The levels of different sorts of criminal activity;

2. Different ways of organising crimes (for which the binary division between ‘organised’ and ‘unorganised’ crime is very unhelpful) or

3. Criminals’ willingness to embark on, continue in or desist from criminal careers.

Although risk-based are more sensible than rule-based approaches, what evidence do we have of the risks of some rather than other forms of laundering to enable regulated persons to make rational decisions on a relatively consistent analytical basis? My discussions with regulated persons are intermittent and not with a random or stratified sample, but if they are generalisable, it seems clear that the ‘risks of laundering’ in practice consist (in order of priority) of (a) expected risks of interventions/sanctions from regulators, (b) expected negative publicity for regulated firms, and (c) expected direct or indirect losses (including following civil lawsuits for constructive trust) from handling transactions for particular customers and third parties. In recent football club takeover cases (e.g. Portsmouth, Notts County, plus the earlier Leeds United insolvency), the weaknesses of the controls on beneficial ownership are manifest, in relation both to bankers and solicitors. The issue of how much effort regulated firms are expected to put into the identification of beneficial owners remains an issue of some anxiety, not just for PEPs but for normal corporate activity and sports activities. This might be achieved by some ‘cold case review’ system into corporate collapses, scandals and SOCA-level cases.

As far as proportionality is concerned, it is not self-evident what the appropriate balance is. This needs to be tied to the harm matrices developed by the Home Office, NFA and SOCA at some stage, but the regulated person is unlikely to be in a position to judge what the harm times probability quotient is against which the costs should be weighed. Although the legitimacy of the regime in the eyes of regulated persons is important – and the questions posed in this consultation are entirely appropriate - we know very little about how serious criminals and professional money launderers see the regime (though see Levi and Reuter, 2006, 2009; Matrix, 2007; Webb and Burrows, 2009); and we know relatively little (e.g. by social surveys) about how the general public – banked and unbanked; remittance senders and locals – see the different components of regime. On
the latter, it may be (as is common with media accounts in every sphere) that poor discretionary decisions by financial institution staff receive disproportionate negative publicity. As for effectiveness, the marginal benefit of the AML regime for improved asset recovery as well as prevention has not been systematically reviewed. Feedback to the FIU from law enforcement agencies about the use made of SARs and the benefits thereof remains episodic, and therefore feedback from the FIU to industry sectors will inevitably be partial, even though greater outreach efforts have undoubtedly been made than had been the case previously.

A core tension in the penalty regime is between (a) giving credit to firms that self-report errors and staff misconduct and (b) giving a symbolic punishment that will (i) reflect past/potential harmfulness, (ii) enhance internal AML resources and/or (iii) show relevant audiences that the regulators are being active. The jurisprudential basis for such balancing acts between objectives remains underdeveloped. Without some 'mystery shopping' of apparent money laundering before and after sanctions, it is difficult to know what is the effect thereof, except in terms of stakeholder legitimacy perceptions and internal compliance resources. However fair or unfair, it seems plain that high-profile sanctions give MLROs greater resources and status within firms, as the attention of directors and CEOs within the sector is obtained as a consequence of condign punishment or deferred prosecutions/other sanctions that require enhanced supervision. (The US DoJ approach to transnational bribery cases is a classic example.)

The document restates the regulatory outcomes sought by the legislation in the following terms:

- To provide a disincentive to crime by reducing its profitability;
- To provide a disincentive to crime by reducing the pool of money available to finance future criminal activity;
- To aid the detection and prosecution of crime;
- To protect the integrity of the financial system and reputation of UK business; and
- To avoid economic and competitive distortions.

The evidence base is poor on the impacts on any of these outcomes. The media and political pressure for ever-larger sums as ‘estimates’ of levels of laundering often rests upon the conflation of criminal turnover, criminal profits and criminal savings.

A recent British interview-based study of drugs dealers suggests the following pattern of expenditure and laundering (Matrix Research and Consultancy, 2007: 39):

<table>
<thead>
<tr>
<th>Use of profit</th>
<th>Often</th>
<th>Sometimes</th>
<th>Never</th>
<th>Non-response</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Profits spent on lifestyle</td>
<td>68</td>
<td>2</td>
<td>5</td>
<td>29</td>
<td>104</td>
</tr>
<tr>
<td>Profits reinvested in drug trafficking</td>
<td>48</td>
<td>1</td>
<td>7</td>
<td>48</td>
<td>104</td>
</tr>
<tr>
<td>Profits invested in property or other assets</td>
<td>25</td>
<td>12</td>
<td>29</td>
<td>38</td>
<td>104</td>
</tr>
<tr>
<td>Profits laundered through legitimate business</td>
<td>19</td>
<td>2</td>
<td>39</td>
<td>44</td>
<td>104</td>
</tr>
<tr>
<td>Profits spent on drug habit</td>
<td>17</td>
<td>11</td>
<td>10</td>
<td>68</td>
<td>104</td>
</tr>
<tr>
<td>Profits spent elsewhere</td>
<td>8</td>
<td>8</td>
<td>48</td>
<td>40</td>
<td>104</td>
</tr>
</tbody>
</table>
Some dealers stressed that they “did not do anything flashy with their earnings”, e.g. “just spending the money on the kids...and paying the mortgage”. The information collected pointed to unsophisticated money laundering techniques with a tendency to use friends and family, for example by investing in their businesses or bank accounts. One interviewee reported establishing a fraudulent painting and decorating business and buying winning betting slips that he cashed at betting shops across the country. One freelance hauler involved in the drugs trade reported that his boss would specifically identify a firm in financial trouble but who still had regular consignments coming into the country. He then went round and offered them a part of a deal so he could use their legitimate consignment as a front to enable a drugs importation.

How should the effectiveness of the AML regime be assessed? Money laundering itself is only the intermediate target of the regime; the true target is instead the volume of predicate crimes, perhaps weighted in terms of their harmfulness. Reduction in the volume of the money laundered (which is hard to measure) is not a conceptually strong measure of the effectiveness of the regime; subtler outcome measures are needed. Levi and Reuter (2006) examine the problem of finding such measures to reduce crimes other than terrorism and bribery/kleptocracy, since the bulk of AML activities have been devoted to such criminal activities as trafficking/selling drugs, other illegal markets, and (to some extent) white-collar crimes.

In terms of crime control, the AML regime may generate two other benefits. First, part of the social appeal of proceeds of crime confiscation is the public satisfaction that offenders are denied the fruits of crime. Seizure and confiscation/recovery of funds generates revenue for the government, and the incarceration of those who conspire to make the profits of crime appear legitimate punishes some higher-level offenders. The seizures attack the negative role models offered by offenders living ‘high’ without legitimate earnings to support them. Research in Europe finds illustrations of law enforcement officers stressing the pain that asset confiscation brings to offenders, both in absolute terms and compared with at least European levels of imprisonment (Levi and Osofsky 1995; Nelen 2004; Matrix, 2007); though plausible, this has not been independently verified on a broader range of offenders, nor is it clear how it impacts upon the willingness of these or other offenders to commit crimes in the future. Given the stakes that financial and legal professionals have in maintaining their employment and licences, they may be relatively deterreable (Middleton and Levi 2005; Nelen and Lankhorst 2005); i.e. unless they are being blackmailed/threatened or unless they/their firms are at serious risk of going bust anyway, modest expected risks of apprehension and punishment may be enough to discourage many from participating. In some instances the only way to apprehend those principal offenders who separate themselves from the predicate offenses is to convict them of money-laundering offenses associated with predicate crimes that have been committed by others. Such cases show that the law with respect to a wide range of predicate crimes applies to everyone.

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1 These are supported by the author’s interviews with UK law enforcement personnel, 2002-2009.
However it is also important to think about what the AML system does not impact on. Since scrutiny of sources of criminal earnings for low earners is limited, it is probably only criminal incomes of more than perhaps £30,000 annually that create a need for concealing the source of the revenues. Thus unless the AML processes stop all bigger league criminals from importing drugs or committing frauds, most offending by volume will be unaffected. However it seems unlikely that laundering is such a scarce skill that incarcerating a few hundred will have a major impact on availability of laundering. The rise of artificial tanning and nail parlours in the UK, plus the more traditional food outlets, is an illustration of cash-hiding self-laundering potential, especially since tax agencies do not profit from and are not set up to investigate over-reporting of taxable income. Although professional money launderers certainly exist, they are surprisingly infrequent in reported cases. Terrorist financing cases also seem to involve people who belong very much to the cause rather than being mere commercial launderers: the latter, after all, might be more likely to trade in their sources in exchange for liberal official treatment of their own past and future delinquencies.

This is important for policy purposes. The rationale behind the current AML regime involves the implicit assumption that the regime provides tools to apprehend and punish a set of actors who provided a critical service for the commission of certain kinds of crime and who had previously been beyond the reach of the law—an assumption that makes the market model a useful heuristic device for analyzing the effects of laws and programmes. However, if money laundering is mostly done by predicate offenders or by non-specialized confederates, then the regime accomplishes much less. The market-model concept is a strained analogy, if most laundering is done by amateurs who are not regular players.

In short, AML performance measures are difficult to develop, since they would have to link the AML actions to changes in the predicate crimes: this is hard enough in the case of drugs, on which evidence is best, though one might expect bank detections and SARs to be more accurate for frauds. High-level dealers, the only ones who need money-laundering services, account for no more than 25 percent of total drug revenues. Assume that in the current regime money launderers charge customers approximately 10 percent of the amount laundered. Now assume that an improved system raised the price for money-laundering services by half, to 15 percent. The result would be an increase in the price of drugs of only 1.25 percent, far too small to be picked up by existing monitoring systems. This is not an argument that money-laundering controls are ineffective or are not cost-effective; only that their success cannot be empirically assessed by examining prices and quantities in drug markets.

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2 Though the UK POCA cash regime, which has progressively reduced to £1,000 cash holdings, impacts on those 'earning' less than £30k p.a., which might encompass people above local user-dealer level and those without significant licit earnings who are seeking to buy licit or illicit goods for cash or to gamble, etc.

3 Though the HMRC’s Criminal Taxes unit is welcomed

4 In Dutch organized crime investigations in 2004, a third of those under investigation were described as having laundering as their primary and another third as secondary aspect of their criminal work: the significance of laundering to the final third was unknown (personal communication). However there is a relative lack of sophistication in those laundering schemes that make it through to final conviction after appeals.
Improving Criminal Justice System Performance

AML regimes might have two other benefits in addition to controlling crime: improving the efficiency of the system or catching offenders who otherwise would escape. A conceptual and paper analysis by Cuéllar (2003) on the US agrees that such regimes might have improved efficiency in drug control and in reducing a few related criminal activities, but argues that they have failed in the second area. The principal use to which the US AML regime has been put has been to increase the penalties with which prosecutors can threaten predicate offenders. The regime has had modest success in apprehending professional money launderers or high-level criminals. In Europe, there has been some activity against professionals such as lawyers as well as against bankers – though more by regulatory than criminal sanctions - but the extent to which this has incapacitated crime networks, reduced the variety of their offending or reduced the scale of their growth as ‘criminal organizations’ remains unknown and largely unanalyzed, at least publicly. There are limits in the extent to which the police (or, for that matter, given rules about tipping off, regulated persons) can pursue the rationale behind suspected transactions without interviewing suspects. However, greater attention to beneficial ownership of assets should logically help with asset recovery compared with post-arrest or even post-charge financial investigations that were commonplace before – in this sense, AML has an influence on law enforcement methodologies, from drugs to Grand Corruption. Thus, the UK regime since the Proceeds of Crime Act 2002 introduced a conviction-to-grave process of financial self-reporting by offenders, in which provable lying by them introduces extra risks. In terrorism investigations, though few money-laundering reports may have triggered preventative interventions against pending attacks, financial investigations are deemed useful for tracking movement and associates (see Biersteker and Eckert, 2007).

It is generally agreed that there is scope for better use of data generated by the AML system. Greater skilled commitment to financial investigation and adjudication is likely to improve criminal justice and disruption yields, whatever effect this may have on levels of offending of different kinds. There are many individual cases in which SARs have added to (or, more rarely, stimulated) investigations and proceeds of crime recoveries (Gold and Levi, 1994; Fleming, 2005; Lander 2006; SOCA, 2007, 2009; see also Harvey, 2008).

The paucity of cases against stand-alone launderers and investigations that have their origin in money-laundering information supports the criticism that the AML regime has brought in few new offenders. There are no systematic data on the origins of cases against major criminals such as principal drug dealers, so it is impossible to tell whether more of them are being captured through money-laundering laws and investigations. Furthermore, where current Heads of State or their families are involved in Grand Corruption (including embezzlement and, sometimes, illicit trafficking and other major crimes also), it is far from obvious to whom either domestic or foreign institutions should report to without fear of retaliation, or who has sufficient motivation and capacity to take serious action. In this respect, the national Financial Intelligence Unit model, like most national crime

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3 Though the enforcement of this regime depends on monitoring resources, SOCA activism in pursuing such cases, and judicial responses to them.
investigation and prosecution models, breaks down when confronted with key elites, even where they have no formal immunity for acts performed in office.6

Finally, whatever the gains from money laundering controls, there are also a variety of costs that need to be considered. Reuter and Truman (2004) offer a very rough estimate of $7 billion for the costs of the U.S. AML regime in 2003. That figure includes costs to the government ($3 billion), private sector ($3 billion) and the general public ($1 billion). However it does not include two potentially important cost elements: the effect on the international competitive position of business sectors subject to AML rules (which should diminish towards zero if the IMF/EU inspection regime works properly), or the costs of errors, including the costs to people wrongly listed as financiers of terrorism.7 There has been a rise in demand for Money Laundering Reporting Officers and escalating use of expensive software that tries to identify “suspicious transactions” on the basis of pattern analysis, though whether these are truly ‘criminal risk-based’ or more ‘regulator risk-based’ is unknown.

REFERENCES


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6 This is not uniquely a problem for the countries of the South, especially those in Africa: scandals engulfed Prime Minister Berlusconi (Italy) and President Chirac (France) while in office, as well as – at a more modest level – former German Chancellor Kohl. In the wealthier as well as some poorer countries, many of these scandals involve campaign finance – the next frontier in the struggle against corruption via GRECO and UNCAC.

7 The British Bankers Association estimates that British banks spend $400 million annually on AML compliance (The Economist 2005). See also Harvey (2008).


http://www.publications.parliament.uk/pa/cm200607/cmselect/cmpubacc/391/391.pdf


Review of Money Laundering Regulations  
Financial Crime Team  
HM Treasury  
1 Horse Guards Road  
London SW1A 2HQ

11th December 2009

Dear Sir,

I am writing on behalf of the Remote Gambling Association (RGA) in response to the above review and in particular the call for evidence under Part A.

By way of introduction I should explain that the RGA is a trade association that represents most of the world’s largest licensed, and stock market-listed remote gambling companies and provides the industry with a single voice on all the issues of importance to regulators, legislators, and key decision makers around the world. Further information can be found at www.rga.eu.com.

Most of our members hold online casino licences within the EU and therefore form part of the regulated sector and are subject to regulations flowing from the EU Money Laundering Directive. Although at present, for fiscal reasons, none of our members operate online casinos from Britain this may not always be the case and therefore we have taken a close interest in the issues that you are currently addressing.

As such we did not think it appropriate to answer the particular questions that have been posed and instead we have focused on what we believe to be an important point of principle which we believe it would be prudent for you to take on board if the revised regulations are to be future proofed.

That principle is to devise a regime that is specific for the online gaming sector. Historically, the anti-money laundering regulations have been designed with the main aim of addressing the financial services sector. Slight variations have been made for certain other sectors, but we feel strongly that while these provide a
firm basis for regulation they do not adequately reflect the realities of the international online gaming market.

We have done a lot of work in this area with regulators in other jurisdictions, but this review does provide the UK with an opportunity to set a powerful lead by giving some thought to a dedicated regime for online gaming.

It is appreciated that this will not be a priority for HM Treasury, but as a minimum we would ask that you put down a marker publicly that this is something worthy of future consideration that you would be willing to discuss with the industry over a longer timescale than this review enables.

We hope you will agree that this should be the case and we look forward to meeting officials at HM Treasury to take this forward.

This letter is copied to David Lewis, HM Treasury, Head of Anti-Money Laundering Policy, Financial Crime Team; and Xavier Lopez del Rincon, Economic Advisor, Better Regulation Executive, Department for Business Innovation & Skills,

Yours faithfully

Clive Hawkswood
Chief Executive
31. How satisfactory is your experience in situations where you believe you have come into contact with the Regulations?

Moderate satisfaction, but as UK non-residents living in France and with having some capital funds retained in the UK, that incurs specific problems for the providing to UK firms of ‘proof of identity’ documents for accounts and funds management.

32. How easy is it to provide acceptable forms of identification to the businesses you deal with?

As UK non-residents, difficult, inconvenient and costly if they have to be issued from France.

33. How often and in what contexts have you been asked to provide repeat information to businesses with which you have an ongoing relationship?

By some firms, apparently quite randomly, in no obvious context and totally unconnected with account activity. In some instances, proofs of identity and permanent address have been demanded even for contractual relationships of long duration, (viz., pre-dating Jan. 2004) e.g., Abbey-Santander (formerly as National & Provincial) : a contract of 24 years; Halifax Bank/Shares Services : a contract of more than 20 years. That would seem to be quite bizarre as their perceived needs for our proofs of identities and permanent address has not presented any apparent obstacle to their issuing of correspondence related to the accounts, or to their billing of their account management charges!

By others firms, no requests received to date.

34. If you have had to provide information to establish beneficial ownership, how straightforward was that process?

As UK non-residents, relatively complex if to be issued from France. Usually quite straightforward during visits to the UK, providing actions required can be transacted as ‘over-the-counter’ procedures at, say, a local branch office. With Halifax, that process failed miserably as ‘joined-up thinking’ between the different sectors of their business did not seem to feature in their procedures!
35. How does your customer experience compare across different sectors, between different sized firms and internationally?

Generally similar, although larger firms seem to apply varying interpretations to the regulations and, accordingly, apply their own differing though specific sets of rules and demands to enforce their interpretations of the Regulations. Our only ‘international’ experience was in June 2004 when we retired to France, that proving to be quite straightforward, probably because all transactions were validated by our notaire, the French estate agent and the UK money broker.

36. How easy do you find it to check what information is needed from you and is it clear to you why the information is needed

Not easy to check, but the reasons for the demands for information is usually provided.

Many large firms seem to fail to specify exactly what proofs of identity they can, or are willing to, accept, in what format the documents would be acceptable and, if as copies, whether or not those copies should be in a ‘certified’ format. Those firms demanding certified copies of documents take no account of the difficulties for UK non-residents, or the incurred costs associated with obtaining bona fide certification. Some firms insist they can only accept original documents, regardless of risks and inconveniences connected with that. That presents UK non-residents with specific difficulties. Not least is that of security risks connected with conveying ‘sensitive’ documents (passports, driving licences, etc.) via postal systems, most of which (often due to employee high turnover) are inherently insecure, regardless of which mode of post (registered, etc.) is used. (Registered post can be especially insecure because its very status draws attention to the potential value of packages.) It hardly needs stating how the loss or theft of ‘originals’ of such critical documents would be especially unpropitious for an UK non-resident.

To comply with demands for ‘certified’ copies of documents, whilst at the same time mitigating risk of loss or theft of such sensitive documents, we offered proofs of identity issued by the UK firm of Chartered Accountants which attends to our current UK income tax affairs. That firm has attended to all of our UK business and personal taxation matters for more than 20 years, but some firms deemed that procedure to be unacceptable. That would seem to be a quite inappropriate rebuff of trustworthy UK professional status and of an UK based professional practitioner. Furthermore it is an illogical rejection of a superior system for identity verification.

Paradoxically, it would seem to be especially remarkable that any UK firm could accept as bona fide copies of proofs of identity, documents which had been certified by a third party outside of the UK. That is especially so because there would seem to be no meaningful process for the verification of the probity of a certifying third party. Similarly, there would seem to be no meaningful process to test the validity of documents ‘certified’ by a third party outside the UK.

Given that identity theft is now a major criminal activity, one must comment that any procedure demanding the conveyance of ‘sensitive’ identification documents (either ‘originals’ or ‘copies’) via postal systems would seem to be highly inappropriate. That would seem to be a paradox, given that the intended purpose is that of minimising the potential for criminal activity and money laundering. Indeed, one must remark on how the proof of identity procedure does, in its self, seem to be quite illogical and one which is fraught with potential risk of identity ‘fraud’ for both firm and client alike.
37. Overall, based on what you understand about why the Regulations exist, and the kinds of procedures Regulated Firms have in place, do you feel that the burdens they impose on you are reasonable?

Although why the Regulation exists is fully understood, as UK non-residents, we feel the procedures can impose specific and sometimes unnecessary burdens. This is especially so when proofs of identity are demanded for contractual relationships that have been in place since long before any of the Regulations came into being. (Our reading of the relevant HMRC web page suggests that, as a general rule, identity verification need be made only when a contractual relationship commenced on or after 01 January 2004.)

Notwithstanding all of that, it would seem that some firms are also using the Regulations to deny access of UK non-residents to certain products and services. However, it is unclear whether that results from inadequate staff training and understanding about application of the Regulations, or misapplication of the Regulations by firms or, in some instances, a perceived need to comply with UK tax regulations. However, it would seem unlikely that a client would be denied access to more beneficial investments as a deliberate policy. Whatever may be the case, the result for UK non-residents is that they are often inordinately burdened by apparently inappropriate and insensitve application of the Regulations by some firms. Because of that, access to investment products which should otherwise enable UK non-resident investors to optimise their UK based investments, is seriously restricted. The result is that even though identity and beneficial ownership of a contract are often clearly defined by a current and long-term contractual relationship, many non-resident UK investors are unable to readily re-align their investments between products. Of course, it is fully understood that proof of identity must essentially be provided when a totally new contractual relationship is entered into with a firm and/or when an on-going relationship does not exists between a client and that firm.

Given that the Regulations are intended to reduce the potential for money laundering and use of criminally generated funds, one has to conclude the ‘Regulations’ have become merely another bureaucratic monstrosity which now effectively over burdens not just honest investors but also those firms who have to administer the procedures.

It hardly needs saying how, whatever regulations are imposed, criminals always seem to be able to circumvent the ‘system’ and to be one step ahead of law enforcement. In that respect, given the profligacy of identity and document thefts and the ease with which any number of low cost counterfeit documents can be obtained by those of criminal intent, the supply of ‘proofs of identity’ presents no problem or barrier to those inclined to commit nefarious activities. Of course, such criminal activity may eventually be detected and, in a few instances, the miscreants may even be apprehended. However, the mentality of malefactors is such that they usually feel secure in the knowledge of their detection being improbable. They also gain confidence from their knowledge that the potential gains from their nefarious activities will far outweigh the risks needed to be taken and that any resulting punishment if they are caught, if that is ever, will not reflect the gravity of their offences. Indeed, unlike most of us, thoughts or concerns about detection and detention are rarely prominent in the reasoning of the criminally inclined.

One must therefore conclude that rather than being an effective crime deterrent, the objective of the Regulations fail in that it is yet again ‘ordinary’ persons who are the burdened, the financially disadvantaged and are being inconvenienced rather more so than are the criminals.
Review of the Money Laundering Regulations 2007
Financial Crime Team
HM Treasury
1 Horse Guards Road
London
SW1A 2HW
By post and email
10 December 2009

Dear Sirs

Review of the Money Laundering Regulations 2007

I am responding on behalf of the Royal Institution of Chartered Surveyors (RICS) to the HM Treasury review of the 2007 Money Laundering Regulations.

The Royal Institution of Chartered Surveyors
RICS is the world's leading professional body on all aspects of land, property, construction and the associated environmental issues. An independent, not-for-profit organisation governed by Royal Charter, it regulates, represents and promotes over 160,000 Members in 120 countries worldwide.

The regulatory arm of RICS operates an arms-length, principles and risk-based regulatory regime which adheres to the five principles of better regulation. RICS currently regulates approximately 10,000 firms.

Summary
The key points of RICS' submission are:

1. The anti-money laundering (AML) regime is disproportionately focused on the European system of property and finance.

2. Estate agents do not hold clients' money and see very few instances of suspicious activity. They therefore pose a low risk of being used to launder money.

3. The property transaction has oversight from estate agents, banks and lawyers leading to redundant checks and disproportionate regulation.

4. Letting agents and property managers hold clients' money but fall outside the regulated sector.

5. OFT's approach to the supervision of estate agents is neither proportionate nor risk-based and does not take account of the regulatory landscape.
Questions about the Regulations

The current money laundering regulations apply to estate agency services as defined by the 1979 Estate Agency Act; this means that the activity of buying or selling property on behalf of a client is included within the regulated sector, but letting or managing property is excluded. At present, money laundering regulation in the property sector is inversely proportionate to the levels of risk in each area of work. RICS believe that few estate agents in the UK hold clients’ money and very rarely see any suspicious activity in the course of their work. To discover whether this was the case, RICS commissioned independent market research which is included in appendix 1. Key results of the research are included within boxes in the body of this submission.

Estate agents and clients’ money

Estate agency in the UK differs greatly to that in Europe. The European notarial system for property transactions entails the person marketing the property also having a role in the legal transaction and responsibility for the exchange of funds.

Market research showed that 99% of estate agents in England and Wales do not hold clients’ money in respect of their estate agency work.

In the UK it is extremely rare for estate agents to be involved in the financial aspect of the property transaction. As research performed by RICS shows, only 1% of estate agents hold clients’ money for their estate agency work. The estate agent’s function is principally to market the property and bring together the different parties in the property chain. The transfer of title and funds is handled by the lawyer or conveyancer and the funds transferred via the bank or building society, each of which are subject to the money laundering regulations.

The client of the estate agent

There is a general misunderstanding over which party in a transaction is the customer of the estate agents. Consumers often wrongly believe that the agent acts as a broker and represents both the buyer and seller. The estate agent acts only for the seller of the property, meaning that this is the person which they identify under the customer due diligence (CDD) requirements. The exception to this is for buying agents who act for a purchaser to find a property or properties, however this is a much less common and a rather specialised business model. Generally then, if a property has been used to launder money, this will have already taken place by the time the estate agent comes to market the property.
Suspicious activity
The fact that estate agents do not get involved with the financial side of the property transaction and act for the seller means that it is unusual for them to come across suspicious activity.

Market research showed that 99% of estate agents had not had any suspicions of money laundering as part of their estate agency work.

Suspicious activity reports (SARs) submitted by the estate agency sector have been historically low since the industry came within the regulated sector. This has tended to be viewed by law enforcement as a result of estate agents being unaware of their obligations to report. RICS believes that the trend for low levels of SARs in the estate agency sector is due to the fact that estate agents rarely see suspicious activity in the context of this work. This is reflected in the fact that the number of SARs submitted by estate agents has gone down in the previous year from 176 in 2007-2008 to 135 in 2008-2009 in response to the lower of levels of transactions rather than going up with increased awareness of the regulations. The low level of consent SARs in the sector most likely reflects the fact that suspicious activity noticed was incidental to the role of the agent and not involving their client.

Lettings and property management
Conversely, in the lettings and property management sector, agents do hold clients’ money in the form of rent and service charge accounts. There tends to be no legal oversight of a lettings agreement, however these can involve a large transaction, sometimes in cash. In areas such as London, the levels of rent and deposit required to be paid in advance can amount to a large sum.

A risk-based approach
In conclusion, RICS believe that the regulations as they stand do not target risk within the property sector due the low level of risk that we believe is posed by estate agents who are within the regulated sector, compared to the higher level of risk posed by letting and managing agents who fall outside of the regulated sector.

Whilst it might be appropriate in some European countries for estate agents to fall with the scope of the money laundering regulations, we believe that it is not appropriate in England and Wales. In the case of letting and managing agents, there should be industry-lead action to mitigate the risks of money laundering posed by the sector.
Questions about supervision

Supervision estate agents
Better regulation principles require legislators to take into account the regulatory landscape. In the case of property, RICS is a statutory regulator in a number of areas and currently regulates approximately 10,000 firms as part of a comprehensive regulatory regime which adheres to Hampton principles of better regulation. Estate agency firms are already subject to duplication of regulation for different aspects of work leading to unacceptable levels of regulatory burden for a sector which is bearing significant hardship during the current economic downturn.

If permitted, RICS could supervise its estate agency firms as a part of it current regulatory regime meaning that firms would not be subject to duplicate regulation. At present, the wording of the EU Directive prevents estate agents from being regulated by a non-governmental body. However if estate agents are to remain within the regulated sector we would strongly urge Treasury to renegotiate on this point to allow RICS to become a designated professional body within this sector. We would be happy to have further discussions with Treasury on this point.

Supervision by OFT
Under the current regulations, estate agents are supervised by the Office of Fair Trading (OFT) who are currently seeking to implement a registration exercise for firms. Although the regulations permit OFT to register supervised firms, they do not require registration. In summer 2009, RICS made a Freedom of Information request to OFT to determine how the decision to register estate agency firms was reached. From the response to the request it would appear that OFT took limited, and in our view, inadequate steps to assess the level of risk posed by estate agency firms and that the ‘do nothing’ option was not fully considered. Had RICS been consulted on the decision to register firms, we would have recommended a pilot study to determine the levels of risk in the different estate agency models and possible targeted monitoring and a ‘polluter pays’ approach based on the results of the pilot. Our own research demonstrates that a targeted, small-scale solution is required to manage the real risk to the MLRs, and to avoid disproportionate, burdensome and ineffectual regulatory processes.

Registration by OFT
Leaving aside whether it is appropriate to register estate agency firms, the method of registration itself is labour-intensive and costly, both to firms and presumably to the OFT. All residential estate agents are already required to register with one of the two OFT-approved Ombudsmen under the Consumer, Estate Agents and Redress Act. Given that lists of residential estate agents are held by bodies that the OFT have approved, it is surprising that the OFT has chosen not to use the data already available and instead have embarked on a labour-intensive, paper-based system for registration. Although the requirement to join an Ombudsman does not apply to
commercial agents, lists of commercial estate agents are held by RICS and NAEA, which have been offered to OFT. Between these current existing registers OFT could have gained the details of the majority of the sector and then focused on registering the few remaining unlisted agents, saving the time of regulated firms and the OFT as well as a considerable amount of money again, both for estate agents and OFT.

Questions about the consumer experience
Currently, the regulations are burdensome to the consumer who is undertaking a property transaction. The consumer will need to go through CDD checks by the estate agent, the lawyer or conveyancer and possibly the bank or building society. This tripling of checks is costly and time-consuming. In addition to being a nuisance to consumers, the regulations lose credibility as there is no value – to either the consumer or the probity of law – of this duplication.

I hope that the above comments are useful to you, but if you would like to discuss them further, please do not hesitate to contact me.

Yours faithfully

[Signature]

Steven Gould
Director of Regulation
RICS Regulation
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E sgould@rics.org W www.rics.org

Attachments: Appendix 1- Market research into estate agency firms
Market Research Findings

RICS

Estate Agents Study

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November 2009

Prepared by

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http://www.researchbydesign.co.uk
## Contents

**Section 1: RICS Estate Agents Study**

1.1 Background .............................................................. 1
1.2 Objective ................................................................. 1
1.3 Methodology ............................................................ 1

**Section 2: Survey results** .................................................. 3

2.1 Survey results ........................................................... 3
  2.1.1 Holding clients’ money ........................................... 3
  2.1.2 Suspicious activity ............................................... 3

2.2 Firm profile .............................................................. 3
2.3 Sample profile .......................................................... 5

**Appendix**
Section 1: RICS Estate Agents Study

1.1 Background

The Office of Fair Trading (OFT) is the designated supervisory authority for estate agents for money laundering purposes. Under the 2007 Money Laundering Regulations, estate agents\(^1\) are required to register with the OFT and maintain procedures to prevent money laundering. The primary aim is to reduce the possibility of legitimate businesses being used for money laundering or terrorist financing. The OFT has powers to impose financial penalties and/or bring prosecutions under these regulations.

Registration is compulsory and must be completed by 31st January 2010. Conducting business as an estate agent after this date without being registered is an offence and could result in prosecution. Registration costs £115 per branch; the rate is the same for every additional branch office up to 20, with the total fee capped at £2,300.

RICS Regulation is responsible for ensuring that RICS members and firms comply with the requirements of RICS’ Rules of Conduct. These define the professional, ethical and business standards which are expected of RICS members and firms. RICS also acts on behalf of its membership in engaging with government when policy is introduced or altered.

RICS believe that estate agents in the UK hold very little clients’ money, unlike their foreign counterparts and thus present a low level of risk regarding money laundering. It therefore commissioned Research by Design to undertake a short survey to discover whether this is the case.

1.2 Objective

The principal aim of this study is to determine the extent to which estate agents hold clients’ money and what levels of suspicious activity are noticed by estate agents.

1.3 Methodology

Two audiences were identified for this project. Firstly, RICS firms identifying themselves as estate agents in their most recent annual return and secondly, estate agents that are not regulated by RICS. RbD proposed this second audience in order to determine whether their practices are similar to those of RICS members and thus potentially avoid any criticism that RICS members might not be fully representative of all estate agents.

Reflecting the different audiences involved and the quality and comprehensiveness of the data available for each, two survey methodologies were employed. Firstly, an online survey was conducted amongst RICS firms. Data was sourced from RICS’ PRISM database where firm details are predominantly accurate and kept up-to-date. Each potential participant received an e-mail invitation to the survey with those who did not complete the survey receiving an email

\(^{1}\) Includes residential and commercial estate agencies, relocation agents and property finding services.

JN9047 26 November 2009

Research by Design Ltd
reminder four days later. In total, 700 member firms were invited to participate in the online phase of the study.

In order to secure interviews with non RICS members, RbD conducted a telephone survey using estate agent data purchased from an approved sample provider. This data was de-duplicated against the RICS data to ensure that duplicate firms were not present across the two data sets.

The table below presents a breakdown of the interviews achieved in both phases of the study during the survey fieldwork period: November 3rd to November 10th 2009.

<table>
<thead>
<tr>
<th>Audience</th>
<th>Methodology</th>
<th>Interview target</th>
<th>Interviews achieved</th>
</tr>
</thead>
<tbody>
<tr>
<td>RICS sample</td>
<td>Online survey</td>
<td>100</td>
<td>198</td>
</tr>
<tr>
<td>Other estate agents</td>
<td>Telephone survey</td>
<td>100</td>
<td>102</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>200</strong></td>
<td><strong>300</strong></td>
</tr>
</tbody>
</table>
Section 2: Survey results

2.1 Survey results

2.1.1 Holding clients' money
- 99% of firms do not hold clients' money in respect of estate agency work.
- Two firms claim to hold clients' money and their profile is summarised below:

<table>
<thead>
<tr>
<th></th>
<th>Firm 1</th>
<th>Firm 2</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sample origin</td>
<td>RICS sample</td>
<td>RICS sample</td>
</tr>
<tr>
<td>Number of offices</td>
<td>1 office</td>
<td>2-5 offices</td>
</tr>
<tr>
<td>Value of money held</td>
<td>£2</td>
<td>£125,000</td>
</tr>
<tr>
<td>No. of clients holding money for</td>
<td>-</td>
<td>200</td>
</tr>
<tr>
<td>Staff employed</td>
<td>1</td>
<td>20</td>
</tr>
<tr>
<td>Type of estate agency work undertaken</td>
<td>Commercial</td>
<td>Residential &amp; Commercial</td>
</tr>
<tr>
<td>Role of firm in estate agency work</td>
<td>Selling and buying</td>
<td>Selling</td>
</tr>
</tbody>
</table>

2.1.2 Suspicious activity
- 99% of firms have not come across any instances of suspicious activity in the course of their estate agency work.
- Two firms state they are aware of money laundering taking place in their estate agency work within the last two years. Neither supplied further evidence pertaining to the number of instances encountered.

2.2 Firm profile

There is a significant difference in the types of estate agency work undertaken by the two sample groups. Over four in five firms sourced from the RICS database undertake solely commercial estate agency work; just 5% undertake residential work exclusively.

Amongst estate agents that are not RICS firms 74% undertake residential estate agency work whilst just 2% exclusively undertake commercial work.

² Denotes not stated

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Research by Design Ltd
RICS firms are significantly more likely to engage in both buying and selling properties for their clients (77%) when compared against those that are not RICS firms (29%).

Seven in ten firms that are not currently RICS members concentrate solely upon selling properties for their clients. 18% of RICS firms do likewise.
## 2.3 Sample profile

**Number of estate agency offices that firm operates**

<table>
<thead>
<tr>
<th></th>
<th>RICS sample</th>
<th>Other estate agents</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 office</td>
<td>89%</td>
<td>76%</td>
</tr>
<tr>
<td>2-5 offices</td>
<td>10%</td>
<td>23%</td>
</tr>
<tr>
<td>6-10 offices</td>
<td>*%(^3)</td>
<td>-</td>
</tr>
<tr>
<td>11 or more</td>
<td>*%</td>
<td>1%</td>
</tr>
<tr>
<td>Base:</td>
<td>169</td>
<td>101</td>
</tr>
</tbody>
</table>

**Number of staff (including Principals) firms currently employ (Consultants are included if they are regularly employed)**

<table>
<thead>
<tr>
<th></th>
<th>RICS sample</th>
<th>Other estate agents</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>30%</td>
<td>2%</td>
</tr>
<tr>
<td>2</td>
<td>16%</td>
<td>12%</td>
</tr>
<tr>
<td>3</td>
<td>12%</td>
<td>22%</td>
</tr>
<tr>
<td>4</td>
<td>10%</td>
<td>15%</td>
</tr>
<tr>
<td>5 – 10</td>
<td>20%</td>
<td>41%</td>
</tr>
<tr>
<td>11 or more</td>
<td>10%</td>
<td>8%</td>
</tr>
<tr>
<td>Base:</td>
<td>165</td>
<td>100</td>
</tr>
</tbody>
</table>

\(^3\) Denotes less than 1%

JN9047 26 November 2009  
Research by Design Ltd