

# Money Laundering

The monthly briefing service for anti-laundering specialists

## bulletin

## Telling it how it is

“I think the whole idea of a de minimis threshold is nonsense,” **David Blackmore**, Director of Financial Crime at Risk Reward Ltd, snorted when *MLB* raised the Law Society’s continued agitation for it at his office on Moorgate, a stone’s throw from the Bank of England. “They’ve completely lost sight of any terrorism connection. It shows a degree of naivety of how terrorism is financed, which is often by small amounts, such as the UK£8,000 total cost of the 2005 London bombings.”

There are many other areas, of the Money Laundering Regulations 2007 (MLR 2007) rather than the *Proceeds of Crime Act 2002* (POCA), which, he believes, do need attention; third party reliance for customer due diligence is one.

“I’ve not met a single firm – large or small – that has used it.”

Blackmore says the reason is that it is simply too difficult to secure confirmation in writing from the firm relied on that it

accepts responsibility. “If a firm is FSA-authorized, that should be enough I think.”

Equivalence is another bugbear. The authorities should either address the ‘defects’ in the existing EU-sponsored list [how is it possible that Russia is deemed Third ML Directive equivalent?] or publish more on the criteria that decide inclusion in order that firms may form their own view. Treatment of equivalence (beyond the examination of equivalent markets) may well be handled in ‘Part 3 Guidance’, anticipated from the Joint Money Laundering Steering Group (JMLSG). “It would make sense to create a compendium of enhanced guidance, which could also cover sanctions and the *Counter Terrorism Act 2008*, and the sooner the better.”

Politically Exposed Persons (PEPs), another sensitive issue, should be a “standard part” of the MLRO’s annual report: Blackmore contends it would be reasonable to include “broad numbers” rather than identifying details. Prior to this though, “a more workable definition of a PEP is essential and ought to

include UK PEPs, particularly now that Parliament has been brought into disrepute.”

“I’m not sure what the Regulations [MLR 2007] could achieve in the area of enhanced due diligence [EDD].” But PEPs are an obvious candidate for further clarification. There was no chance of a list being issued, he agreed, but the exclusion of domestic PEPs from EDD was “absurd,” especially in light of the MPs’ expenses scandal, in which some honourable members skirted if not stepped over into criminal conduct. The Third Directive requires PEP customers to be signed off by senior management. “The [JMLSG] Guidance says that it should be by a level higher than customer take-on. I think it should be

by senior management and firms may need to re-consider the level, especially in private banking and wealth management.”

Amongst the “unfinished business” for the UK legislature is the consent regime. “Everyone [in

retail banking] is left more or less operating illegally” due to the Government’s “deafening silence,” after consulting in early 2008, on the question of fungibility – the notion that even UK£1 of suspected criminal property in an account may taint all funds held by a client and therefore necessitate a consent SAR to be filed ahead of all subsequent transactions. “It seems as if they’ve buried it in the too hard pile,” says Blackmore.

The recession may well be weakening AML defences in many firms. “Anecdotal evidence suggests that some firms have retrenched investment in training or sought a cheap and cheerful, off the shelf training solution.” Such an approach is “probably worse than useless”; all the evidence from enforcement cases indicates the need for bespoke, tailored training. Staff need to understand the lessons, which, Blackmore says, is only possible through testing. “I advocate targeted, bespoke classroom and/or e-learning, preceded by testing.” Checking the state of knowledge first enables the trainer to determine the gaps in understanding and develop a cost-effective strategy.

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The approach may have helped a few more firms avoid criticism, albeit not in public, after the UK Financial Services Authority (FSA) review of sanctions controls [1] revealed that not many were going “the full mile on ultimate beneficial ownership and control.” There was a mistaken belief that entities are able to rely on others’ sanctions checking when taking on business from other FSA-authorized firms. In trust work, for example, the trustees, settlors, named beneficiaries and ‘protectors’ (a feature of Swiss and Channel Island trusts) should be screened. “Sanctions are a distinct legal regime; there is no risk based approach. The RBA [risk based approach] might, at best, only apply to the frequency with which to check the client base after HM Treasury adds a new target name [to the Consolidated List] or more detail on a current listing.”

Asked to indulge in some blue sky thinking about the (stormy) weather ahead, Blackmore highlighted bribery and corruption, which he thinks will push firms to go deeper with their due diligence on client business: “General descriptors, like ‘sole trader’ or ‘arms dealer,’ will not be enough.” HM Revenue & Customs is at work on ‘Project BRASS,’ little known in the regulated sector, which looks at exports of all kinds of arms and dual-use materials other than weapons of mass destruction (WMD) components. The regulated sector is encouraged to enter the tag ‘BRASS’ on relevant SARs to SOCA, which will copy them to HM Revenue & Customs.

The expanding remit of the MLRO, which, increasingly, takes in not only terrorist financing and sanctions screening but bribery and corruption, proliferation financing, even data security, means, that

“we are in danger of reaching a point of diminishing returns.” Firms that responded to the FSA’s early exhortation to take an holistic approach to financial crime often underestimated the management challenge of bringing it all under one roof. “This is not to say it is a bad concept. So much intelligence is lost if there’s a team dealing exclusively with Court Orders and another dedicated to handling SARs, who only communicate with each other when a Production Order comes in.” It is not just a question of sitting people together, insists Blackmore, it’s about how to organise, manage and debrief in a coordinated way, “The drive for that can only come from the top. There are signs that collateral reputational damage from recent enforcement cases is concentrating minds, but it’s still very patchy in my view”, he concluded.

He believes that some senior management still “don’t get it”; they still see financial crime and related compliance breaches as “just another operational hazard. Weathering a fine of a million [pounds Sterling] now and then is cheaper than employing another 30 people in training, prevention and cure.” Some would argue that such an attitude will only change when a director or other senior manager goes to prison.

## Notes

1. [www.fsa.gov.uk/pubs/other/Sanctions\\_final\\_report.pdf](http://www.fsa.gov.uk/pubs/other/Sanctions_final_report.pdf)

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