



THE GOVERNMENT REPLY TO  
THE NINETEENTH REPORT FROM THE  
HOUSE OF LORDS EUROPEAN UNION COMMITTEE  
SESSION 2008-09 HL PAPER 132

# Money laundering and the financing of terrorism

**Presented to Parliament  
by the Secretary of State for the Home Department  
by Command of Her Majesty**

**October 2009**



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**MONEY LAUNDERING AND THE FINANCING OF TERRORISM**

**The fora for international cooperation**

**The Financial Action Task Force (FATF)**

**184. We regret that a senior official from the secretariat of the FATF was not permitted to give us oral evidence on the organisation and current activities of the FATF. (paragraph 31)**

The Government understands the frustration of the Committee that they were not able to receive oral evidence from the FATF Secretariat, and assures the members that Government officials encouraged the Secretariat to give evidence. However, the FATF Secretariat has 32 member countries to serve, as well as its numerous observers and associate members. Therefore its general policy, which has been applied previously, is that it does not pronounce on policy areas, or appear in front of legislative committees. The President leads FATF policy, and the Committee were able to speak to the former FATF President Sir James Sassoon under the recent UK presidency. The President at the time of the Committee evidence sessions was based in Brazil so would not have been able to attend.

**185. Since the Government accept that they are accountable to Parliament for United Kingdom membership of the FATF, they should find a more systematic way to report to Parliament on FATF developments. Written statements after each plenary session would be a start. (paragraph 32)**

In line with the Committee's recommendation the Government will submit the Chairman's summary to Parliament following each plenary session, commencing in October 2009.

The FATF has taken considerable steps in recent years to improve its accountability to the political representatives of its member countries. These have included instituting an annual report to ministers and convening a ministerial meeting in April 2008 under the UK Presidency, which agreed the revised mandate of the organisation. However, we accept that more remains to be done, and the UK continues to work towards improving the accountability of the FATF. Recent G20 interest in FATF work has had a positive effect on the accountability of the organisation, and a report to G20 Ministers and Central Bank Governors was issued in August. This outlined the progress made towards fulfilling the requests made of the organisation in the communiqué of the London summit in April 2009, and also detailed the work being undertaken in response to the financial crisis.

**Cooperation at EU level**

**186. Nearly eight years after the signature of the 2001 Protocol to the Convention on Mutual Assistance in Criminal Matters it is not yet in force for five Member States, so that there is still no full cross-border cooperation even on obtaining details of bank accounts. This is a situation which the EU Counter-terrorism Coordinator described as "shocking". We think this is not too strong a word. (paragraph 36)**

The 2001 Protocol to the Convention on Mutual Assistance in Criminal Matters has been in force for the UK since 13 June 2006. The Protocol enhanced existing arrangements for mutual legal assistance between Member States by allowing for the provision of banking information between countries in order to help combat crime. The UK fully

supported the implementation of the 2001 Protocol and is currently able to seek and provide banking information to all EU Member States and several states outside the EU. The Home Office is committed to the provision of international mutual legal assistance in combating financial crime and will continue to press for the ratification of the protocol by all EU Member States.

**187. The Government should satisfy themselves that the United Kingdom is in a position to provide these forms of cooperation in a timely and effective manner, and should press other Member States to do likewise.(paragraph 37)**

The Government recognises the importance of dealing with international requests for mutual legal assistance in both a timely and effective manner. The UK, through its central authorities, is committed to providing assistance in the most expedient manner possible. The UK central authorities work closely with partner organisations to ensure proper attention is given to dealing promptly and effectively with requests and that requests are prioritised appropriately in order to meet the needs of requesting states. The UK continues to work with Member States to ensure that UK requests for assistance are dealt with as quickly and effectively as possible.

**188. It is deplorable that negotiations for an agreement on mutual legal assistance, begun nearly eight years ago and concluded over six years ago, should still not have resulted in an agreement which is in force between the EU and the United States. We hope the Government will press ahead urgently with the ratification of the United Kingdom's bilateral agreement, and encourage other Member States to do likewise. (paragraph 40)**

The EU-US Agreement aims to enhance judicial cooperation between EU Member States and the US. The UK fully supports this aim and ratified its related bi-lateral instrument with the US on 6 July 2009. This updated our 1994 bilateral treaty and will ensure that our longstanding excellent working relationship with the US on MLA will continue to flourish. The formal exchange of bilateral instruments of ratification for the EU-US Agreement is expected to be in autumn 2009, with the Agreement's entry into force likely to be early 2010.

### **The Council of Europe**

**189. The Government must hasten the procedure for United Kingdom ratification of the Second Additional Protocol to the 1959 Council of Europe Convention on Mutual Legal Assistance in Criminal Matters. (paragraph 42)**

The UK is fully supportive of the aims of the Second Additional Protocol and is continuing to move towards ratification. Prior to ratification being possible a small amount of secondary legislation will be required and the Home Office hopes to bring this forward as soon as is possible after Parliament returns. The UK should be in a position to ratify the Second Additional Protocol towards the end of 2009. The UK continues to offer a wide range of mutual legal assistance to all countries and is fully committed to providing assistance in a timely and effective manner in order to help combat crime.

**190. We doubt whether there was ever any good reason for the delay in signature by the United Kingdom of the Warsaw Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism; certainly there is now no reason for any further delay. Still less do we see why a further 18 months should be needed before ratification. (paragraph 47)**

**191. The failure to sign and ratify the Warsaw Convention sends out a negative message about current United Kingdom commitment to the prevention and control of money laundering and the financing of terrorism. If the United Kingdom is to preserve, let alone enhance, its reputation in this sphere, Ministers must demonstrate the priority they attach to this by setting a clear timetable for signature and ratification. (paragraph 48)**

The Government supports the aims and objectives of this Convention. We already have robust legislation and other measures in place which demonstrate our strong commitment to combating money laundering and the financing of terrorism and to seize and confiscate the proceeds of crime.

The Government's policy is not to sign a treaty or Convention without a reasonably firm intention to ratify. As explained in the Home Office evidence to the Committee, we have not signed the Convention to date for two main reasons. Firstly the House of Lords EU Scrutiny Committee had concerns over the European Commission's proposal to sign the Convention on behalf of the Community; this raised issues over the division of competence between the EC and individual Member States. We did not get final Scrutiny Clearance until 25 February this year. Secondly, we have had specific concerns with Article 47 of the Convention on the postponement of suspicious transactions by the Serious Organised Crime Agency (SOCA) at the request of another Member State's Financial Intelligence Unit (FIU).

Article 47 provides for international co-operation on the postponement of transactions. It requires provisions to be put in place by States to permit urgent action to be initiated by an FIU at the request of a foreign FIU to postpone a suspicious transaction if they are satisfied that it is related to money laundering or terrorist financing, and it would have suspended the transaction had it been reported domestically.

The UK FIU, which sits within SOCA, does not have this power, in either domestic or international cases. SOCA acts in response to notifications from financial and other relevant institutions (the regulated sector), and individuals. Financial institutions, and others, can approach SOCA for consent to proceed with a transaction by filing a Suspicious Activity Report. By obtaining consent from SOCA no offence is committed if they proceed with the transaction. However SOCA is unable to actually prevent, freeze or suspend the transaction. It is for the financial institution to decide whether to proceed with a transaction or not.

Our concerns about Article 47 relate, in part, to the fact that there is no domestic power for SOCA to postpone or suspend a transaction. It would therefore be incongruous to allow for a power in relation to foreign requests. If we were to implement Article 47 we would have to do so in a way that also allowed domestic requests for transactions to be halted – e.g a request to SOCA from a police force. However this would radically change the anti-money laundering provisions in Part 7 of the Proceeds of Crime Act (POCA) by extending its scope.

The Government is still considering its position on Article 47. Nevertheless our aim is to sign the Convention in the very near future with ratification to follow. In the meantime, if the authorities in a foreign country believe that there are assets here deriving from criminal acts there, the external requests procedure available under an Order in Council made under Section 444 of POCA provides a means to get the assets frozen pending the making of a confiscation order in the UK court in respect of those assets.

## United Nations Cooperation

**192. We believe the case of Kadi and subsequent cases demonstrate the need for human rights enhancements at UN Security Council level when the Sanctions Committee is considering whether to impose sanctions on persons or bodies, or is responding to requests for de-listing. The Government should press for United Nations practice to evolve in a manner consistent with the jurisprudence of the European Court of Justice. (paragraph 54)**

The Government is committed to retaining effective UN counter-terrorist sanctions which enable the disruption of terrorist activity on a much greater scale than would be possible through domestic sanctions alone.

However the Government agrees with the Committee's conclusion that there is scope to further improve the transparency of decisions made by the Sanctions Committee and the effectiveness of the de-listing appeal process.

As the Committee notes, UN practice in this area is evolving to reflect the challenges it has faced and the concerns of the ECJ on respect for fundamental rights. The UK was instrumental in pursuing the reforms negotiated in UN Security Council Resolution 1822 (2008) which requires the Sanctions Committee to provide a narrative summary of the reasons for listing individuals or entities. However, as the Committee has recognised, there is a need to further reform UN sanctions procedures. The UK will reflect and engage with other UN partners on what further improvements might be made to the regime when it comes up for review at the end of the year.

In addition the UK supports the efforts being taken within the EU to improve sanctions and transparency in relation to the EU's implementation of UN counter-terrorism sanctions. We welcome the political agreement reached by the Council in July on a Regulation amending Council Regulation 881/2002 and hope that this can be formally adopted following consultation of the European Parliament in the early autumn.

## Financial Intelligence Units and FIU.NET

**193. We agree with the Commission that it is essential to strengthen operational cooperation among EU FIUs, and to eliminate the problems which administrative FIUs have with the exchange of information. We urge the Government to work towards this end. (paragraph 59)**

**194. FIU.NET should be a priority project, but we are far from convinced that this is yet the case. Since all Member States are bound by the FIU Decision to have FIUs exchanging information in a secure manner, all should participate in FIU.NET. (paragraph 64)**

**195. If the United Kingdom is indeed committed to making FIU.NET work, the Government must take active steps to give it the necessary sophistication. (paragraph 65)**

**196. If FIU.NET is to continue to be financed from the EU budget, the Commission needs to manage it more proactively and to ensure that it provides value for money to the Member States which participate in it. (paragraph 66)**

The diverse nature of FIUs across the EU is well known to the Commission and is regularly discussed in the EU-FIU Platform. Individual countries with administrative FIUs are best placed to address issues around information exchange as it relates to legal positions in their countries. However, the Government, and the UKFIU within it, will

continue to urge countries with administrative FIUs to take steps to improve information exchange and will provide the necessary support for those who wish it.

The Government is committed to developing FIU.NET into a useful tool. The UK supports the development of FIU.NET because of its potential to provide a more sophisticated approach to case management which will allow for better exchange of information between EU FIUs.

The active steps that the Government will take to give FIU.NET the necessary sophistication are:

- continuing to part fund the initiative;
- providing practical guidance and advice;
- continuing to sit on the Board of Partners and using this position to drive strategic direction and to drive forward any necessary changes;
- fully supporting the proposal to migrate FIU.NET from the Dutch Ministry of Justice to Europol; and
- encouraging wider participation in FIU.NET by other EU Member States.

The Government welcomes the Committee's recommendation regarding the Commission's management of the FIU.NET budget.

#### **Confiscation of the proceeds of crime**

**197. The review of the FATF Recommendations is a good opportunity to reexamine, not just the text of Recommendation 38, but the manner in which it is implemented, and the way in which compliance is measured. (paragraph 72)**

We welcome this conclusion of the Committee, which recognises that improving international cooperation in confiscating the proceeds of crime is paramount in ensuring a confiscation regime with truly global reach. To this end, the UK initiated a project in the FATF in October 2008, with the following mandate:

*“(i) Examine the enforcement of foreign restraint and confiscation orders and problems encountered in this area; (ii) Identify best practice for the management of confiscated/seized or frozen assets and effective international cooperation in asset sharing; (iii) Increase awareness of confiscation techniques; (iv) Identify issues for further consideration to enhance international cooperation in this field.”*

This ongoing project is focusing on key problematic areas including the initial tracing of criminal proceeds of crime, non-conviction based asset recovery, interim measures such as freezing and restraint, and international co-ordination and asset sharing. It has participation from many FATF countries, and specialist expertise in asset recovery from institutions and organisations such as the World Bank, Camden Asset Recovery Inter-Agency Network and the United Nations Office on Drugs and Crime. The project has delineated its work according to the provisions of FATF Recommendations 3 and 38, and will suggest best practice to improve international co-operation in these areas. The project is chaired by the UK (Home Office) and the Dutch and is due to present its final report in February 2010.

In addition, Recommendation 38 is among the international cooperation recommendations that the FATF has decided to examine in advance of the fourth round of mutual evaluations. This process will review whether the standard is set sufficiently high, and to consider the possibility that evaluation results to date may not properly and fully reflect potential



difficulties, particularly with respect to effective and practical implementation. The preparations for the next round of evaluations also involve extensive consideration of how to enhance the assessment of the effectiveness of an assessed country's AML/CFT regime, and the actual performance of countries in relation to Recommendation 38, which currently only requires that countries have the authority to act on requests to freeze, seize and confiscate property, will become a more significant part of the assessment process.

**198. We commend the Commission for its efforts to increase cooperation among Member States over confiscation of the proceeds of crime. We urge the Government to take a lead in driving this agenda forward with renewed vigour. (paragraph 74)**

The Government will continue to take a leading role in driving the agenda on confiscation issues, both bilaterally within the EU and in wider fora such as FATF. The UK-initiated project on international co-operation on confiscation matters, under the auspices of FATF, described in the response to the Committee's recommendation at paragraph 197 of the Report, is an example of our activity in this area. The study brings together a number of key international stakeholders in this field, including the EU, with whom the UK is also working closely with in various other contexts.

In addition the Government's new serious organised crime strategy, "*Extending Our Reach: A Comprehensive Approach To Tackling Serious Organised Crime*" (Cm 7665), which was published in July signalled a new approach to tackling international criminal finances. In implementing the Strategy the Government will:

- Strengthen the cross-government forum on international crime
- Work more closely with European and international partners
- Lobby to reform the FATF to strengthen its capability as an international anti-money laundering body and increase its focus on preventing the harm caused by organised crime
- Pursue the international assets of UK-based criminals
- Encourage our international partners to do more to assist the UK in asset recovery.

In the context of negotiations on the next JHA work programme, to be agreed in December, the Government is pushing to increase EU cooperation and information sharing to improve seizure of criminals' assets and to combat money laundering and terrorist financing, as well as increased use of recovered asset sharing agreements amongst Member States.

#### Asset sharing agreements

**199. The Government should give higher priority to the negotiation of bilateral asset sharing agreements with non-EU countries not already involved. (paragraph 78)**

The Government welcomes the Committee's findings on the importance of asset sharing agreements. As the Committee noted, the UK can already reach ad hoc arrangements in individual cases to share assets with partners and has done so on occasions, for example with the authorities in Jersey and in Luxembourg. In practice however formal asset sharing agreements appear to do more to encourage confidence. Agreements are already in place with USA, Canada, Colombia and Jamaica.

As a priority, the UK is also working to enter into asset sharing agreements with a number of non EU jurisdictions, building on the already established agreements. Mutual Legal Assistance Treaties containing asset sharing provisions have recently been concluded

and signed with Brazil, Libya and Vietnam and await ratification. Similar treaties are currently being negotiated with other countries.

**200. The Framework Decision on the mutual recognition of confiscation orders was due to be transposed into national law by 24 November 2008. The United Kingdom is among the States which have failed to do so. The Government must take immediate steps to remedy this. Given the importance of the Framework Decision, the Commission must adopt a robust stance in monitoring its effective implementation by all Member States, and react swiftly should delays or problems arise. (paragraph 80)**

The recovery of the proceeds of crime, whether through criminal confiscation procedures or civil recovery, is a priority for the Government. The Government also recognises the importance of international co-operation in the seizing, freezing and confiscation of criminal assets. The Government therefore fully supports the 2006 Framework Decision on the mutual recognition of confiscation orders and intends to implement it as soon as practicable.

We already have strong legislation in place which provides for international co-operation in both the freezing and confiscation of criminal assets. Improved international cooperation was a stated Government aim expounded in the 2000 Cabinet Office report, *Recovering the Proceeds of Crime*. The Proceeds of Crime Act 2002, and supporting Orders in Council, provide for international co-operation in a streamlined and robust manner and these measures have been fully in place since the beginning of 2006. None of our fellow Member States has criticised the effectiveness of the existing provisions. We are not aware of any cases where requests from EU Member States in relation to confiscation orders have been refused. Equally we do not believe that Member States have had difficulties in processing requests from the UK for assistance in confiscation matters under the present arrangements.

We shall report by November this year to the EU Commission the extent to which the UK has taken measures to comply with the Framework Decision. This is a technical process which the Government is currently conducting to both identify existing legislation and other measures that implement the Framework Decision as well as potential gaps, together with options to address those. Separate UK legislation is likely to be required. A detailed analysis of the Framework Decision to assess where primary legislation is needed to give effect to this Instrument is being carried out urgently.

In the meantime, we can and do successfully work with and assist our international partners in confiscation matters.

We look forward to promoting effective use of asset sharing in individual cases under the Framework Decision. For the present the UK can operate informal asset sharing arrangements with Member States.

#### Civil recovery

**201. Article 23(5) of the Warsaw Convention, which requires mandatory cooperation between States on civil recovery, is yet another reason, if one were needed, why the United Kingdom should ratify the Convention without delay. (paragraph 89)**

**202. The Government should give the highest priority to international cooperation on the confiscation of the proceeds of crime, whether by post conviction criminal confiscation or by civil recovery. (paragraph 91)**

The Government's position on the Warsaw Convention is set out in its response to the Committee's recommendations in paragraphs 190-191 of their Report.

The Government welcomes the Committee's strong support for the civil recovery of property which is or represents the proceeds of unlawful conduct and agrees that high priority should be given to international co-operation on the recovery of the proceeds of crime whether by confiscation following a conviction of a criminal offence or by civil recovery. The Government is working with the asset recovery community to drive forward activity to recover assets and benefit held overseas.

The Government introduced radical new powers to recover the proceeds of crime through civil proceedings, without the need for a criminal conviction, in the Proceeds of Crime Act 2002. In doing so the UK looked at similar civil forfeiture regimes in the USA, the Republic of Ireland, Australia and South Africa.

The UK has a robust civil recovery scheme in place and is a strong advocate of civil recovery as a powerful tool in attacking criminal finances and combating the harm from money laundering. That is why, in merging the Assets Recovery Agency with the Serious Organised Crime Agency in the Serious Crime Act 2007, the Government not only transferred ARA's civil recovery powers to SOCA but took the opportunity to extend these powers to other enforcement authorities, namely Crown Prosecution Service, the Revenue and Customs Prosecutions Office, the Serious Fraud Office and the Public Prosecutions Service of Northern Ireland. In its first year of using civil recovery powers SOCA recovered £16.7 million compared to £7.7million in ARA's last year of operation (SOCA Annual Report 2008-09). In addition the Serious Fraud Office successfully used these new powers to recover £2.3million in a case in 2008-09.

The merits of civil recovery as a means of tackling the finances and profits of organised criminals were also recognised in the Government's new Serious Organised Crime Strategy, *"Extending Our Reach: A Comprehensive Approach To Tackling Serious Organised Crime"* (Cm 7665), which was published in July.

There are a number of key civil recovery actions which we will take forward under the new strategy. For example, we will:

- target the UK-based assets of international criminals by making more forceful use of civil recovery powers
- lobby for increased international recognition of the UK's asset recovery powers and make better use of our existing asset sharing agreements
- encourage our international partners to do more to assist the UK in asset recovery and reciprocally support them as effectively as we can
- explore legislative options for rebalancing the burden of proof in civil recovery cases
- undertake a review to explore wider operational and procedural opportunities to improve the efficiency and effectiveness of civil recovery.
- produce practitioner guidance to facilitate the use of civil recovery powers; and
- learn from best practice in other European civil recovery regimes.

However as the Committee noted, the UK is one of only a few countries in the world with a civil recovery (non-conviction based confiscation) regime in place. The issue is a complex one; however in short we understand that non-conviction based forfeiture is not compatible with a number of civil code jurisdictions both within EU Member States and

beyond. Recognition of civil recovery may therefore require legal changes on the part of some jurisdictions, necessitating significant political will on their part. This is likely to take considerable time to implement.

In terms of a long-term solution, the UK is taking a leading role in supporting projects which educate partners on the workings of civil recovery legislation and explaining how it is ECHR compliant in order to effect a step-change in political will on this issue. For example, the UK is a leading partner in an EU working group, with the support of the Commission. The UK is also currently contributing to a G8 Italian-led project with the USA to explain how civil recovery operates. Furthermore, SOCA has contributed extensively to the Stolen Asset Recovery (StAR) initiative guidance manual 'A good practice guide for non-conviction based asset forfeiture' and will continue to support initiatives aimed at reducing barriers to and sharing best practice in civil recovery. As well as aiming to achieve recognition of non-conviction based forfeiture in European countries, where this may not be possible with certain countries, it may instead lead to alternative solutions, such as finding synergies between the UK civil recovery regime and in-country criminal confiscation processes.

In the medium-term we are working with certain jurisdictions to find alternative solutions to full recognition which have the same impact on the criminal of removing the proceeds of unlawful conduct, even where this does not result in a return of the proceeds to the UK.

**203. We welcome the suggestion of the Executive Secretary of MONEYVAL that the Council of Europe may press the merits of civil recovery in the review of the FATF Recommendations. We trust that the Government will support such a move. (paragraph 92)**

The Government agrees with the recommendation of the Committee and will support any initiative of the MONEYVAL Secretariat to give civil recovery greater prominence in the review of the international cooperation standards currently underway. Such an initiative would support the outcome of the confiscation project mentioned in response to the recommendation at paragraph 197 above, and ensure that the FATF raises its expectations around countries performance and international cooperation in civil recovery.

The UK has recently been appointed by the FATF president to serve as 'expert' full members of MONEYVAL for a two-year period. At the forthcoming meeting we will participate in an initial discussion on international cooperation in matters of civil recovery. We are hopeful that our participation in both MONEYVAL and the FATF will enable us to effectively support this important initiative.

**204. Cooperation in relation to civil recovery must be given much greater prominence in the current FATF review of its standards and the associated methodology for assessment of its members, so that failure to provide this would have a significant negative impact on compliance ratings for the countries concerned. (paragraph 93)**

As previously noted, the review of Recommendation 38 presents an opportunity to broaden the scope of the FATF requirements in relation to civil recovery, and to develop more specific requirements with respect to the enforcement of foreign non-criminal confiscation orders. Through our joint chairmanship of the FATF working group leading this review, we will retain oversight of this process.

**205. The Government must devise an overall strategy for the conclusion of bilateral agreements with third countries, including asset sharing provisions, and**

**press for their early negotiation and for their timely and effective entry into force. (paragraph 95)**

As previously noted, the UK continues to promote civil recovery wherever possible, and we will seek to identify opportunities to enhance co-operation in this area at working group level and beyond, both in the EU and wider world sphere, including through the FATF Confiscation Project, and through engagement with the World Bank/UNODC Stolen Asset Recovery Initiative (StAR).

Working with SOCA we have finalised a model agreement relating to mutual assistance in civil recovery matters, including asset sharing measures, which we will use for bilateral agreements with individual countries. We hope to finalise the first bilateral agreement shortly with another jurisdiction and will use this as the basis for further work with other amenable jurisdictions.

**The private regulated sector**

**Suspicious Activity Reports (SARs)**

**206. Failure to report a suspicious transaction based on a minor criminal offence should not be prosecuted; and this should be achieved, not by a decision that in a particular case prosecution would not be of public benefit, but by amending the law so that such a transaction would not need to be reported. (paragraph 109)**

**207. Consideration should therefore be given to amending the Proceeds of Crime Act 2002 to include a *de minimis* exclusion. (paragraph 110)**

In its Report the Committee noted that the Government had adopted the “all crimes” approach as regards the obligation to report suspicions of money laundering to the authorities. In their evidence to the Committee both the British Bankers’ Association and the Institute of Chartered Accountants in England and Wales supported the current “all crimes” approach in the Proceeds of Crime Act 2002. In addition the Government notes that in his evidence the Executive Secretary, MONEYVAL, on behalf of the Council of Europe, subscribed to the “all crimes” approach.

The Government and Parliament took this approach when the Proceeds of Crime Bill was being debated. The main reasons for the “all crimes” approach are:

- that there may be very little correlation between sums laundered and the seriousness of an offence. Reports on the laundering of small amounts can help solve serious crime
- that the introduction of a *de minimis* monetary threshold would be easy for launderers to circumvent through “smurfing” – splitting money into sums coming below the threshold to avoid detection
- that having a threshold linked to serious crimes only relies on a person (e.g a bank clerk) being able to distinguish between serious crime and other crime in identifying the source of criminal property.

The UK SAR regime is a risk-based system; suspicious activity (rather than transactions) is fundamental to this system – irrespective of value. We believe that the intelligence value of reports submitted on this basis is far greater than those submitted on the basis of a minimum threshold where there is no critical assessment by the reporter. We consider that the suspicious activity regime provides a focussed approach to identifying proceeds of crime (and terrorist finance) activity.

Threshold-based reporting would encourage reporters to reduce or waive scrutiny of those transactions which fall below the threshold level (if there is no mandatory requirement to report) and thereby miss valuable intelligence opportunities. Experience shows that the practice of ‘smurfing’ or ‘structuring’ has been adopted by criminals to avoid arousing suspicion (for example by breaking down large deposits into smaller amounts). Evidence from this has been seen in the UK and has led to the cash seizure threshold level (“the minimum amount” in section 303 (1) of POCA) being reduced from £10,000 to £5,000 and most recently to £1,000.

Further, there is no hard evidence to demonstrate a link between the size of transaction and the level of criminal activity in which a particular subject might be involved (terrorist finance typologies reinforce this point).

In the Government’s view it is right that the criterion should be one related to the threat of money laundering i.e. the capability of an offence to generate considerable profits. That might not in every case be the same as an offence designated as “serious” for instance by reference to its maximum sentence and might unjustifiably exclude potentially profitable regulatory-type offences which the all-crimes approach catches.

Reports that look trivial to the disclosing institution may look very different from the perspective of SOCA and law enforcement who have access to a range of other intelligence. An apparently trivial report may in fact be the tip of a much bigger criminal enterprise. The true picture of criminality can only be seen from the sum of the parts. A mandatory exclusion based on value or a potential offence would inhibit investigative and information gathering powers.

It should also be noted that the three examples of offences given in The Law Society’s evidence, as set out in paragraph 104 of the Committee’s report, could be areas that would be of interest to a law enforcement agency in particular circumstances. While the direct criminal proceeds might not be large (or at least presumed not to be large) the breaches may point to wider criminal activity, with larger proceeds and more importantly bigger harms.

The reporting of money laundering that only related to serious offences would create further difficulties. This proposal relies on being able to distinguish between “serious crime” and other crime in the context of identifying the source of criminal property. This is not possible in many cases. In many cases the person required to make a disclosure (such as a bank clerk) might suspect that the funds derive from crime, without knowing or suspecting any specific crime.

In any event, *even if practicable*, such proposals would fundamentally change the Government’s all-crimes approach to money laundering itself. There is a choice to be made between having a threshold linked to serious crimes only, thus reducing the number of reports to be made to SOCA but losing some helpful material in the process, or requiring the reporting of all crime, providing all the relevant intelligence but at the expense of a larger number of reports to be made. The Government prefers the all-crimes approach. If any transactions or assets are suspect, it is only right that they should be reported.

An amendment to the legislation to exclude the need to report technical breaches or regulatory-type offences would again require the person making the disclosure to be able to identify the type of criminal conduct that generated the criminal funds. It could also create a large loop-hole if a person, who would otherwise be obliged to report, could lawfully argue that, although he had been suspicious, he had no grounds for basing that

suspicion on any particular predicate offence and therefore could not conclude that the criminal conduct involved was of a type that needed to be reported.

The Committee will wish to note that the Government introduced a cash reporting threshold in limited circumstances with amendments to POCA in section 103 of Serious Organised Crime and Police Act 2005. These provisions apply to deposit taking bodies in the banking sector. Section 103 amended the 3 principal money laundering offences in sections 327-329 of POCA and inserted a new section 339A on threshold amounts. Under section 327-329, a bank or other deposit taking body needs to make a disclosure to SOCA to obtain consent before proceeding with certain transactions suspected of involving criminal property. The amendments in the 2005 Act allow deposit-taking bodies, in certain circumstances, and where the amount is below the threshold of £250 or such other greater amount as is specified, to continue operating accounts without the need to seek consent in each case. These amendments, however, are consistent with maintenance of the “all crimes” reporting requirement in POCA. It is irrelevant what the predicate offence is; the only point at issue in these limited circumstances is whether the amount of money goes above the threshold amount.

The Government remains of the view that we should maintain the “all crimes” approach for the reasons set out. It is also our view that the use of prosecutorial discretion in this area is valid and important, as it provides a far more flexible and responsive means for setting the boundaries of what is and what is not criminal conduct worthy of prosecution. The Home Office will continue to work with the Law Society on this issue, as suggested in paragraph 2.12 of their supplementary memorandum.

#### Consultation with the private sector

**208. We agree with the recommendation of the EU Counter-terrorism Coordinator that the Commission and Member States should consider steps to increase the effectiveness of public-private cooperation on countering terrorist financing, and we urge the Government and the Commission to take it forward. We believe this applies equally to AML. (paragraph 113)**

The Government places a high priority on promoting engagement with the private sector and supports a number of public-private groups on AML/CFT issues. A working group established by the FSA, and made up of experts from the private sector, law enforcement, government and regulators has made a number of recommendations that we are working to implement. These include: sharing threat assessments on terrorist finance with the private sector; providing operational debriefs from law enforcement agencies; and a coordinated communications programme. We have recently shared our thinking on these measures to strengthen the effectiveness of public-private cooperation on countering terrorist financing with the EU Counter-terrorism Coordinator. We will support the Commission in its efforts to apply these recommendations at the EU level.

#### Feedback

**209. We urge SOCA to intensify its dialogue with the private sector in order to improve the practical utility of its guidance, and so to ensure better focus on matters of real importance. (paragraph 118)**

**210. It is only by being provided with increased levels of case by case feedback that the regulated sector will be persuaded of the value of the efforts it puts into the SARs regime. (paragraph 122)**

**211. Where it is clear that particular SARs have contributed to the success of an AML or CFT operation, and that feedback on this can be given to the originator of**

**the SARs without compromising operations, SOCA should make it the practice to do so in selected cases where they believe that this will demonstrate the importance of providing such reports. (paragraph 123)**

The Government and SOCA acknowledge the calls for more detailed feedback and guidance to the reporting sector and recognise that reporters need to see results from the time and resources they expend inputting information into the suspicious activity reports (SARs) system. The UKFIU is constantly seeking to improve the quality of its support to the private sector and to intensify the dialogue between all parties in the regime. Recently a number of key UKFIU documents have been added to the SOCA website<sup>1</sup> (the UKFIU Communications Strategy, the KPMG/SOCA Survey on the 'Hard to Reach' firms and the survey's results), which set out the UKFIU approach to feedback and work that has taken place on this issue.

The UKFIU's dedicated Dialogue team works exclusively with SARs regime participants and providing guidance/feedback to the private sector is a key part of the team's work. Feedback is delivered in a number of ways (including targeted communication products, conferences, SOCA Alerts, and the SARs Annual Report) which were outlined to the Committee in follow-up evidence submitted in April 2009.

Additionally, the Dialogue team distributes to all end users a Twice Yearly Feedback Questionnaire (TYFQ) and the data collected is used in a number of ways to provide feedback to the reporting sector. The TYFQ data is used to share perspectives on the use of SARs with regime participants, to share and encourage best practice amongst reporters and end-users, and to provide a feedback mechanism for the UKFIU on the operation of the regime. This year's SARs Annual Report, (to be published by early November 2009), will provide case studies and other useful indications of feedback from the end users of SARs over the period from October 2008 to end-September 2009.

New and improved ways of delivering feedback are always being considered within the UKFIU. A new initiative to be launched this year is the introduction of one-to-one guidance on how to submit a SAR for all first-time reporters. Upon registering with SAR Online, all new reporters will receive an email thanking them for registering and providing them with pertinent information on how SOCA operates the SARs regime, how to submit good quality SARs, the use of the glossary codes, direct contact details and so forth. The first SAR submitted by a reporter will be examined by SOCA and relevant feedback provided directly to the reporter regarding the quality of the SAR. In this way, SOCA intends to engender a positive relationship from the outset with all new participants in the SARs regime and bring about an improvement in the quality of reporting.

SOCA's commitment to continuously improving the levels and quality of feedback it provides to reporters includes case-by-case feedback where possible. To this end, SOCA will endeavour to provide feedback in selected cases to the originator of a SAR where it is clear that a particular SAR has contributed to the success of an AML or CFT operation, as recommended by the Committee.

An example of the UKFIU currently providing feedback on individual cases is in the form of "Feedback Reviews" which it produces for the largest reporters of SARs on an annual basis. In 2008, the top reporters, who between them submitted 65% of all SARs, received individual Feedback Reviews which contained feedback on the SARs the institution had submitted over the year, including some case-by-case feedback on successful cases. The Feedback Review gives details of SAR outcomes that the relevant law enforcement agency has agreed may be shared. The information contained in the Review is strictly for the individual reporter concerned and is limited to a restricted

<sup>1</sup> [www.soca.gov.uk](http://www.soca.gov.uk)



audience. Reporters have said they find this form of feedback useful and the UKFIU is looking to expand this feedback mechanism to include other reporters.

In addition, all consent SARs receive a response, which in the period Oct 2007 to Sept 2008 was 6.3% of all SARs submitted. Therefore approximately two-thirds of the reporting sector currently receives some form of case-by-case feedback.

Work to refine the effectiveness of feedback to the reporting sector in the future will continue to be taken forward. New and improved ways of delivering feedback will be a stated aim in the UKFIU's three year strategy which will be published in the SARs Annual Report 2009.

### **Cost/benefit analysis**

**212. It is vital that SOCA should make a serious attempt to calculate the cost/benefit of the reporting of suspicious activities by the United Kingdom private regulated sector. The Government must similarly press international bodies to provide a rigorous cost/benefit analysis. (paragraph 128)**

The Government recognises the importance of the application of cost/benefit analysis (CBA) to the anti-money laundering and counter terrorist financing regime. At the recent FATF plenary meeting in June 2009, the UK was instrumental in securing agreement to a proposal on including cost-effectiveness analysis as a routine part of the policy-making process, which will require the FATF to consider the cost implications of any policy changes it makes in the future. This is particularly timely given the commencement of work to review certain of the standards in preparation for the fourth round of mutual evaluations.

The Government will examine the cost/benefit picture of compliance with the Money Laundering Regulations in the forthcoming Treasury review, and we will continue to engage with key stakeholders to review the costs and benefits of the reporting regime to maximise its effectiveness and proportionality.

Our aim is to increase the value and impact of the SARs regime. To this end SOCA is actively working to increase the benefits extracted by end users through a variety of ways. The objective is to achieve a system that balances:

- The costs to reporters and to other agencies
- The need to address the threats to the UK from crime and terrorism, and
- The opportunities that the system offers to reduce harm and recover the proceeds of crime.

**213. We commend the Commission for commissioning a review of the cost of compliance with financial services regulation, recognising the importance of attempting to estimate the burden of compliance. We hope they will take this work forward, in particular to see whether the benefits of compliance justify the burden. (paragraph 129)**

[No Government reply required.]

### **Is the burden on the private sector disproportionate?**

**214. One matter to which we expect the Treasury to pay particular attention in their review of the burden on the private sector is whether this burden does, as has been claimed, put the regulated sector at a competitive disadvantage compared to other countries. (paragraph 132)**

The Government is aware that AML requirements place burdens upon regulated firms and has sought to minimise these wherever possible, whilst maintaining a robust and effective regime. Key to this has been the UK's implementation of a risk-based approach to implementation, which has included the adopting all of the simplifying derogations within the EU's Third Money Laundering Directive.

As the report noted, HM Treasury, with the assistance of colleagues from the Better Regulation Executive, is preparing to undertake a Review of the Money Laundering Regulations, 2007. It is intended that the Review will consider all aspects of the Money Laundering Regulations 2007, and will seek evidence of aspects that work well and areas that might be improved. The review will consider evidence in relation to the three guiding principles of the UK's financial crime strategy: effectiveness, proportionality and engagement. The extent of any differences of approach to the implementation of the Third Money Laundering Directive between the UK and other jurisdictions will be addressed as part of that review.

### **Third country equivalence and simplified customer due diligence**

#### **215. We believe that the Government must provide a definition of equivalence, and allow the regulated sector to rely on the list of equivalent countries. (paragraph 137)**

The concept of equivalence is established within the EU's Third Money Laundering Directive and the Government believes there is value in maintaining a common understanding on this subject. The EU-wide nature of the common understanding is important; it supports efforts to both achieve common business standards across Europe on AML/CTF and promotes the overall effectiveness of EU measures by reducing vulnerabilities that may be created by varying national standards.

Furthermore, the Government believes that whilst firms may rely on equivalent jurisdictions they must do so as part of a general application of a risk-based approach to money laundering policies. It is right that firms should take a comprehensive view of risk in this area and so should consider other relevant factors (such as the complexity of products involved, or any suspicious activity) when determining the appropriate level of customer checks. It is not sufficient merely to rely on another regulated business in an equivalent jurisdiction.

However, the Government notes their Lordships' recommendation and the underlying concerns expressed by some regulated businesses during evidence submission. The issue of the effectiveness of current equivalence provisions will be considered as part of HM Treasury's upcoming Review of the Money Laundering Regulations. HM Treasury will consider its position in light of information received during the Review. It will also input any relevant information on this subject into the EU's review of the Third Money Laundering Directive.

#### **216. The Government should press for tough and clear published EU criteria for States to be granted third country equivalence status, and for a set procedure for them to apply for inclusion in the list, and for handling such requests. (paragraph 139)**

The criteria for inclusion within the EU's current common understanding are based primarily upon performance against the Financial Action Task Force's 40 + 9 recommendations for anti-money laundering and counter-terrorist financing. The Government thinks that it is necessary for equivalence criteria to continue to be based upon these international and widely recognised standards. However, the Government

does agree with the report's recommendation that these criteria might be more clearly communicated and will continue to press for the achievement of this. Therefore the Government will write to the Commission to suggest that the issue is added to the agenda of a future AML Committee meeting.

Third Countries are currently able to apply, through Member States or the European Commission, for consideration to be granted equivalent status. The Government agrees, though, that in line with the potential for increased clarity over criteria, a more formally established procedure for third country consideration might be useful, and will press for consideration of this.

### **Non-cooperative countries and territories: enhanced customer due diligence**

**217. There is a need for greater harmonisation of approach within the FATF when, as with Iran, counter-measures are called for. The Government should press for this in the present FATF review of the International Cooperation Review Group process. (paragraph 145)**

As the Committee rightly notes, the FATF's revision of its process for dealing with jurisdictions of concern presents an opportunity to revise its approach to countermeasures. In addition, the preparations for the fourth round of mutual evaluations will consider whether the FATF ought to be more explicit in its requirements for the actions countries should take in dealing with jurisdictions that have adequate/inadequate implementation of the FATF standards. This work will consider whether the FATF ought to have a more harmonised approach to the implementation of countermeasures. In our view, it is not necessarily important that the measures taken by countries are uniform, but that each member takes some meaningful action aimed at reducing the overall risk to their national, and the international, financial system. This work ought to be completed by February 2011, which is the earliest date that countermeasures could be imposed on those jurisdictions under review in the revised ICRG process.

In the short term, the current Dutch presidency of the FATF has made it a priority to consider whether the currently suggested counter measures are sufficiently effective, if further alignment of members' policies could be achieved or whether additional counter measures should be added to the existing toolbox of measures that are given as 'examples' in the methodology under Recommendation 21. The UK is committed to working with the presidency to achieve this outcome, especially with respect to the current FATF call for countermeasures to be imposed against Iran.

The UK has been at the forefront of discussions within the European committee on anti-money laundering issues to explore a common EU approach to countermeasures. Such an approach would significantly increase the impact of countermeasures, not least by sending a stronger signal to the jurisdiction concerned. However, such action is not easy to secure, as countries have different legislative frameworks and different considerations such as volumes of business to take into account when enacting such measures. We continue to discuss this with our European partners, with the aim of securing greater coordination.

### **Current Threats**

#### **Alternative remittance systems**

**218. It must be right that Hawala and other alternative remittance systems should always be treated as a money service business like any other more formal money service businesses. The Payment Services Directive should ensure that this happens across the EU. (paragraph 154)**

The Government has adopted a dual regulatory approach within the UK so that whilst by virtue of the Payment Services Directive FSA are responsible for the regulation of Hawala operators in relation to conduct of business and consumer protection issues, HMRC has retained its role as the supervisor of this sector in respect of compliance with the Money Laundering Regulations. This maintains the link between Hawala operators and other types of MSB such as Bureaux de Change and cheque cashers and enables HMRC to build on the eight years experience it has in supervising this sector.

As the committee notes, the Payment Services Directive intends to “bring all persons providing remittance service within the ambit of certain minimum legal and regulatory requirements.” The deadline for the transposition of this directive is November 2009, and this should improve the regulation of Hawala businesses across the EU.

**219. However we believe that by its nature Hawala is more susceptible to misuse, and that particular care needs to be taken to ensure that money service businesses and money transmission agents are made aware of their responsibilities, and comply with them. This will involve making information and instructions available in a wide variety of languages. (paragraph 155)**

The committee is aware that HMRC publishes notices in a variety of languages to the customers of money service businesses to make them aware of the reasons they are required to produce identification when sending money overseas. HMRC are willing to advertise the extension of this service to other languages should there be a demand. The Department’s present policy is to make public notices that are aimed at businesses available only in English and Welsh. The cost of translating guidance material into other languages is significant and would result in increased renewal fees for all businesses.

**220. The United Kingdom has considerable experience in regulating Hawala; we recommend that the Government should actively share this experience with their EU and FATF partners, and seek to ensure that no vulnerabilities in these systems are overlooked. (paragraph 156)**

HMRC has worked with overseas counterparts in a number of countries to improve regulation of the Hawala sector worldwide. For example, HMRC have recently presented to Indonesian and Malaysian regulators on the UK approach to regulating informal money transmitters in order to assist both countries in developing more effective supervision.

Treasury-approved HMRC public notices are available to EU and FATF colleagues via the internet and HMRC will continue to vigorously support UK government initiatives to improve supervision of this sector globally. HMRC has recently contributed to FATF guidance on the risk-based approach for the money service business sector, and was able to give numerous practical suggestions based on its experience in dealing directly with the smaller firms within the sector. Due to their suggestions, the FATF recommended that the published guidance be transposed into a shorter and more user-friendly format by national regulators to encourage smaller outfits to read and comply with them.

#### **The global economic crisis**

**221. Measures taken to mitigate the impact of the economic crisis should not adversely affect AML/CFT controls, and should be scrutinised to make sure that they do not. Nor should such measures divert resources away from AML and CFT. (paragraph 162)**

The Government welcomes the conclusion of the Committee, and has taken care to ensure that its national response to the financial crisis does not have a negative impact on AML/CFT controls. In particular, the recapitalisation of UK banks ought to have a positive

effect on their AML/CFT controls, as the additional scrutiny of Government ownership puts pressure on the banks to demonstrate to their largest shareholder (HMG), the media, Parliament and the markets, that they are fully in compliance with best practice in this area. Furthermore, in our role as president of the G20, we have driven the international agenda on improving adherence to standards of financial regulation, including in the area of AML/CFT. The G20 tasked the FATF with improving the assessment of compliance with its standards, and revising its procedures for dealing with non-cooperative jurisdictions. Such action has ensured that the financial crisis has become an opportunity to improve global compliance with the FATF 40+9.

In February 2009, the FATF initiated a 'financial crisis project', which is examining the impact of the financial crisis on patterns of money laundering and terrorist financing, as well as existing vulnerabilities that the crisis has exposed more sharply. In addition, this project is examining the impact of national measures to mitigate the impact of the financial crisis, as questions have been raised around the opportunities for abuse by criminals of fiscal amnesty legislation that has been enacted by some states, including FATF members.

### Piracy

**222. We have received no evidence to suggest that the payment of a ransom should be made a criminal offence, and we do not suggest that the law should be changed. (paragraph 164)**

The Government welcomes this recommendation.

**223. It is important to know whether the proceeds of piracy are being used for terrorist financing, and if so the order of magnitude of the sums involved. The Government must take the initiative, if possible in concert with other interested States. (paragraph 167)**

The Government sees this as a serious issue, and has examined intelligence for evidence of links between piracy and terrorism at the highest level. To date we have no evidence that terrorists are using piracy as a means of raising funds, but the committee should be assured that we will continue to scrutinise incoming intelligence to ensure this picture remains accurate

**224. We urge the Government to raise this issue with their EU partners and in the FATF with a view to establishing the extent of the link between the proceeds of piracy and terrorist financing, and to warning members of the FATF about these risks. (paragraph 168)**

In accordance with the recommendation made by the Committee, the Government has begun preliminary discussions with FATF members on whether their intelligence indicates that the proceeds of piracy are being used to finance terrorism. Previous multilateral discussions on the utility of an FATF statement highlighting the risks posed by the proceeds of piracy concluded that such a step was not appropriate on the basis of the intelligence then available, but we will review whether to make a further request for the issuance of such a statement if further intelligence comes to light.

**225. The Government should consider raising in the FATF the question whether a joint typologies exercise between the FATF, the Middle Eastern and North African FATF and the Eastern and Southern Africa Anti-Money Laundering Group would be of use. (paragraph 169)**

FATF typology exercises tend to rely on open source material, in particular, prosecutions for their evidence base. The FATF does not have intelligence capabilities, and currently there is insufficient public information about the laundering of the proceeds of piracy to make a typology worthwhile at this point in time. We will continue to explore the appetite amongst FATF delegations for supporting a FATF project on the concealment and movement of the proceeds of piracy as further information comes to light.

We are also exploring other opportunities to engage regional governments on the issue, and have been working with the US to convene a meeting on piracy-related assets and piracy-support networks following the UN Contact Group on Piracy, in September. Such a meeting would necessarily focus on practical levers that could be used to disrupt the financial flows and make it harder for pirates to move, store and spend ransom money, and we hope will increase the willingness of participants to improve intelligence sharing, which will be a key driver of progress.

**226. In every case of piracy where a ransom has been demanded and the payment is being assembled in the United Kingdom, those involved have in our view a duty to seek consent for the payment of the ransom. Not to do so is likely to result in the commission of a criminal offence. We regard it as an abdication of responsibility by the Home Office to suggest otherwise. (paragraph 173)**

The Government recognises the Committee's concerns and accepts that the assembling and payment of a ransom may in some circumstances lead to the commission of a money laundering offence under POCA, or a terrorist finance offence under the Terrorism Act.

The Committee has expressed concern about our previous statement that in the circumstance where consent was not sought in relation to a ransom payment and money was paid that was in all respects legal until it reached the hands of the pirates, a prosecution for money laundering would be unlikely to be regarded as being in the public interest. The Government is concerned that such a statement should not be misconstrued as a prior announcement as to the exercise of prosecutorial discretion. It is of course exclusively a matter for the independent prosecution authorities to consider each case on its merits, and to apply the tests of evidential sufficiency and public interest as set out in the Code for Crown Prosecutors.

We do not believe that it is for the Government to tell a person in what circumstances to seek consent from SOCA. Our view remains that decisions on whether consent is required should be made on a case-by-case basis.

It remains the case that if a person knows or suspects that they are dealing with criminal property then they should submit a SAR. If the reporter wishes to obtain the statutory defence in respect of carrying out that activity then they must obtain consent. If they are concerned about jeopardising the secrecy of ransom negotiations by reporting or seeking consent, it is possible that they may have a reasonable excuse for not seeking consent until after the transaction, although of course the final determination of what constitutes a reasonable excuse in any case is a matter for the courts.

We have considered whether the Government should issue guidance to the regulated sector on this issue but have concluded that it would not be appropriate to do so. It is for the institutions to determine whether to seek consent if they suspect money laundering or terrorist finance, not for the Government or SOCA to tell them. In any case, we are not aware of any demand from the firms for central guidance other than that which already exists, as produced by the Joint Money Laundering Steering Group.

## **The SARs database: data protection issues**

### **227. The FATF Recommendations do not require information on the ELMER database of SARs to be made available other than in connection with serious crimes. Access for other purposes should be on request to SOCA. (paragraph 182)**

SARs received by the UKFIU and stored on the SARs database known as ELMER are submitted in line with the “all crimes” approach to money laundering as set out in the Proceeds of Crime Act 2002. As set out elsewhere in this response, the Government considers this approach to be appropriate and effective.

FATF recommendation 1 sets out the minimum standard by which countries should define predicate offences. As such it recognizes that countries can go further, as the UK does.

The Government considers it important to maximize the use of SARs in line with the all crimes approach, but to provide assurance that access by law enforcement agencies is appropriate. As a result there are significant (but appropriate) limitations placed on those that wish to use SARs, to ensure that only staff from appropriate public bodies that are adequately trained in the use of financial intelligence are able to access the database. Further limitations and controls would inhibit the value derived from the regime and be at tension with the all crimes approach.

### **228. The Information Commissioner should review and report on the operation and use of the ELMER database, and should consider in particular whether the rules for the retention of data are compatible with the jurisprudence of the European Court of Human Rights.**

SOCA has invited Christopher Graham, the Information Commissioner, to meet with members of its Board and would welcome the opportunity then to discuss taking this recommendation forward.



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