

CHATTERBOX

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A note from the Editor
Lee Byrne.

2018 represented another significant year of challenge for financial crime professionals, with new and emerging crime threats, and international political, socio-economic change providing an environment that supports criminal conduct.

We learned of some significant examples of alleged criminally collusive conduct by some regulated staff, and gross non-compliance with accepted global standards in others, and this trend will doubtless continue in 2019.

In this update we reflect upon those events that have had a material impact upon the UK, with a clear focus on consolidating some of the most notable developments from 2018 that can be used to inform the 2019 response.

Learning from history is key to looking forward and planning for future challenges. Enjoy!

Part One: Crime Awareness

UK SAR Report (December 2018)

Regulated entities are required to maintain risk assessments, that inform and guide the framework of systems and controls to ensure that the firm is not used by criminals.

A critical part of this framework of controls is the reporting of knowledge and suspicion to the UK financial intelligence unit, so that it can be used to identify, seize and confiscate the proceeds of crime.

The National Crime Agency (“NCA”) published the 2018 summary of reporting from the regulated, and non-regulated sector, in December 2018.

The NCA processed a record number of 463,938 Suspicious Activity Reports, with 22,619 of those requests for a defence

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against money laundering (DAML).

80% of all reports were from banks. There were also 283 threshold variation requests and 28 cases with 40 arrests recorded 28.

As well as prosecuting 1400 money launderers during the year, the legal enforcement agencies 'denied' access to £51,907,067 of funds because of DAML requests.

The actions of one cashier at a branch of HSBC were particularly noteworthy, as a SAR from the cashier led to the identification, and repatriation, of £500 million of 'stolen' funds to Angola!

<http://www.nationalcrimeagency.gov.uk/news/1521-suspicious-activity-reports-annual-report-2018-published>

UK NCA Serious Organised Crime Assessment (May 2018)

On 13th May the UK National Crime Agency released the details of the latest crime threat assessment for the UK.

The report states that "it is likely that previous estimates of GBP 36 billion to GBP 90

billion for all money laundering impacting on the UK are a significant underestimate".

The information held in this report is absolutely fundamental to a firms 'risk assessment, and it is expected that the details are considered in determining the likelihood and impact of criminal conduct.

<http://www.nationalcrimeagency.gov.uk/publications/807-national-strategic-assessment-of-serious-and-organised-crime-2017/file>

Muling

Muling is the use of third parties to move value between accounts. This may be done knowingly as part of the money laundering process, or else is performed innocently by vulnerable persons, such as the unemployed or students.

Data has been released by CIFAS, the UK's fraud prevention service, to coincide with the launch of a joint campaign with Financial Fraud Action UK (FFA UK), the body that leads the fight against financial fraud on behalf of the UK payments industry.

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New E-learning Partner Agreed

We are extremely pleased to now be able to confirm that we have entered in to an agreement with ManchesterCF to provide new online e-learning training in 2019.

Subjects that will be covered include a range of financial compliance risks and what is particularly exciting is that this will provide content for various sectors, including capital markets, private banking and corresponding banking.

In line with our commitment to provide role-specific training, this training has also been prepared to support first and second line roles!

To learn more about our risk and compliance products and services, please contact us at:

<https://www.greatchatwellacademy.com>

The 'Don't Be Fooled' campaign aims to deter young people – in particular, students – from becoming money mules.

According to CIFAS there has been a 75 per cent increase in the misuse of bank accounts involving 18 to 24-year olds during the first nine months of 2017, compared to the same period in 2016.

<https://www.cifas.org.uk/newsroom/new-data-reveals-stark-increase-young-people-acting-money-mules>

Authorised Push Payment Scams (“APP Scams”)

APP scams involve fraudsters taking steps to fraudulently obtain funds by deception.

Using a variety of misrepresentations, including CEO mail fraud, advance fee scams or boiler room and carbon credit sales, the aim of the criminal is to cause the victim to send money to accounts controlled by the fraudster. Of course, under the Faster Payment rules in the UK for example, once the funds have been sent, they cannot be recalled. So, the government has been forced to act, working with the financial sector to protect vulnerable persons and force regulated firms to do more to disrupt this activity.

UK Finance reported 31,510 cases of APP scams on personal accounts in the first six months of 2018 with losses totalling £92.9 million. Financial providers were able to return a total of £15.4 million of these losses.

The APP Scams Steering Group (the Steering Group) have published a draft voluntary code (September).

In December 2018 the FCA published Policy Statement PS18/22. This means that from 31st January 2019 complaints about APP fraud against the Payment Service Provider who received the funds are now subject to FCA DISPUTE rules and are within the scope of the Financial Ombudsman Service.

Protecting clients of regulated service providers, is now as important as protecting the firms assets and client money.

HMRC Top Ten Tax Frauds for 2018

As part of the management of tax evasions risks under the Criminal Finances Act 2017,

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Design and Delivery Inhouse Training Programmes

We are delighted to be engaged with several UK and International firms designing and delivering tailored and in-house programmes of role-specific learning for teams that are big and small.

If you require support in developing your internal employee competence that will help to foster a sustainable growth and effective and efficient compliance performance, we are here to help.

We would welcome the opportunity to discuss your needs and how we might create a solution for you. For further information, please contact us at:

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firms must have in place 'reasonable procedures' to prevent the criminal facilitation of criminal tax evasion by employees and associates of the firm.

As part of the firms' risk assessment, it is therefore helpful of HMRC to have published the details of their 'top ten' tax frauds for 2018.

HMRC's fraud investigations have led to 671 people being convicted over the last 12 months for their part in tax crimes. In addition, HMRC has charged another 919 people and taken on 746 new criminal investigations.

This year's top 10 prosecutions include:

- Import Duty Evasion: an 8-strong tobacco smuggling gang that brought more than 2 million illegal cigarettes into the North East hidden among fridge freezers - its members were jailed for a total of more than 26 years
- Payroll Fraud: a tax consultant, who fled the UK before he could be arrested for his part in a conspiracy to steal £6.9 million from construction workers' pay packets.
- VAT Fraud: father and son tax fugitives who are finally behind bars after being captured in Spain and extradited to the UK.

- Benefit Fraud: the manager of a well-known male stripping troupe, who was sentenced in her absence for tax and benefit fraud and is behind bars after more than a year on the run.
- Gift Aid and Charity: a church leader from Luton who lied about charity donations to fraudulently claim £150,000 Gift Aid repayments, and was jailed for 4 years

Each one provides helpful guidance on red flags to identify tax evasion risks.

<https://www.gov.uk/government/news/hmrc-announces-top-10-prosecutions-of-2018>

Part Two: Regulatory Response UK

UK FATF Mutual Evaluation Report ("MER") 2018

The long-awaited report by the Financial Action Task Force ("FATF") on the status of UK financial compliance controls, as benchmarked to the 40 recommendations, was published in October 2018.

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Online Certified Virtual Currency Programme

This online course aims to demystify the management of virtual currency (VC), also known as virtual assets.

In 2019 we have updated the course to include the risks of Initial Coin Offerings, and delegates will benefit from understanding how to manage associated financial crime risks in time for new regulatory requirements confirmed under the 5th EUD.

The course is delivered in association with the University of Gloucestershire, and students can use the designation 'AdvCertVC' to confirm their qualification.

For further information, please contact us at:

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The report notes that the UK is the largest financial services provider in the world and that there is consequently a significant threat of money laundering and terrorist financing.

But the report asserts that the UK has a strong understanding of these risks, as well as national AML/CFT policies, strategies and proactive initiatives to address them.

The overall assessment appears to place the UK as having the best overall technical and 'effectiveness' report card of sixty other jurisdictions that have already been assessed in the fourth round of MER. The UK does however have work to be done in three areas:

- The UK financial intelligence unit needs a substantial increase in its resources
- The suspicious activity reporting regime needs to be modernised and reformed
- The intensity of supervision must be consistent across all sectors.

We will continue to monitor with interest the outcome from the Law Commission review of the UK SARS regime that was completed in 2018 and the results of the supervision performed by OPBAS over 22 other AML supervisory bodies in the UK.

<http://www.fatf-gafi.org/publications/mutualevaluations/documents/mer-united-kingdom-2018.html>

FCA Supervision Reports and Updates

FCA AML Annual Report 2017/18 (19th July 2018)

In the latest report from the FCA concerning the results and findings from their ongoing supervision of AML controls and effectiveness, the following statement appears to indicate ongoing challenges in the UK:

“We are currently investigating around 75 firms and individuals for AML issues.

Many of these investigations are using both our civil and criminal powers under the Financial Services & Markets Act and the MLRs 2017”.

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Public Workshops

We offer a series of exciting and engaging public financial crime compliance workshops in London and Birmingham that provide delegates with the very latest regulatory news and best practices covering a range of risk and compliance subjects.

All workshops are led by best-in-class facilitators and focus on providing practical solutions to help delegates enhance their professional effectiveness.

For the very latest news and dates, including confirmation of exciting new courses visit

<https://www.greatchatwellacademy.com/solutions/solutions-for-you/public-workshops/certificate-in-conducting-forensic-customer-due-diligence>

Firms might do well to review their systems and controls in these areas, and particularly the ABC controls so that they may at the very least be able to demonstrate the 'adequate procedures' that they have in place to prevent bribery and corruption.

<https://www.fca.org.uk/publication/corporate/annual-report-2017-18-anti-money-laundering.pdf>

FCA 'Dear CEO' letter is issued on 11th June 2018 concerning 'Crypto assets and financial crime'.

"There are many non-criminal motives for using crypto assets. These include using them as high-risk speculative investments or as a means of funding innovative technological development.

However, this class of product can also be abused because it offers potential anonymity and the ability to move money between countries.

You should take reasonable and proportionate measures to lessen the risk of your firm facilitating financial crimes which are enabled by crypto assets."

The FCA state that they expect firms to take steps to

manage the risks on a case-by-case basis, including providing education for their employees.

<https://www.fca.org.uk/publication/correspondence/dear-ceo-letter-cryptoassets-financial-crime.pdf>

Brexit Legislation

The Sanctions and Act 2018 represents new law that will take effect in full when the UK leaves the EU.

The law consolidates existing laws concerning the implementation and management of financial sanctions and also confirms the requirements for British Overseas Territories ("BOTs") to have in place a public register of beneficial ownership for legal entities, no later than 31 December 2020.

BOTs include Gibraltar, Bermuda, Turks and Caicos Islands, Virgin Islands and the Cayman Islands.

UK Court Rulings

In the UK, case law precedents are equally important in defining the

policies that a firm is required to have in place.

During 2018 we noted three cases that were particularly noteworthy.

Case Study One:
UK Test for 'Dishonesty' is changed in Ivey v Genting Casinos (2017)

The Supreme Court of England and Wales in its decision Ivey v Genting Casinos [2017] UKSC 67 ("Ivey") took the opportunity to reassess the approach in criminal cases to determining whether a defendant has acted dishonestly.

The Supreme Court held that the "**Ghosh test**", which excused a defendant who did not know that ordinary and honest people would regard his behaviour as dishonest, should no longer be used.

Dishonesty in criminal cases was previously assessed by reference to a two-stage test (known as the "Ghosh test")

1. Was the defendant's behaviour dishonest by the standards of reasonable and honest people? (an objective standard); and
2. Did the defendant realise that ordinary honest people would have viewed his behaviour as dishonest? (a subjective standard).

If the answer to either of questions was no, the test was not satisfied. This had the result that a defendant who did not understand ordinary standards of honesty should be acquitted. For example, if a defendant genuinely believed it was acceptable to steal from a house whose front door had been left open, and it did not occur to him that others might disagree, he was not guilty of theft.

After this case, part 2 of the 'Ghosh test' is no longer required to be satisfied.

https://www.lexology.com/library/detail.aspx?g=41f18729-bbdd-43ff-90d9-759b56cf915a&utm_source=lexology

Case Study Two: Bribery Act 2010 "Adequate procedures" and self-reporting under the spotlight as jury rejects Section 7 defence.

A UK refurbishment contractor has been found guilty under Section 7 of the UK Bribery Act 2010 ("UKBA") for failure to prevent bribery. The case represents the first time that a jury has considered an "adequate procedures" defence under the UKBA.

Skansen Interiors was charged under Section 7 of the UKBA (failure to prevent bribery) in relation to allegations that Skansen's former managing director paid bribes to secure refurbishment contracts worth £6 million.

As well as filing a suspicious activity report with the UK National Crime Agency, Skansen voluntarily self-reported the conduct to the City of London Police and co-operated with the police's investigation. The UK Serious Fraud Office (the "SFO") encourages companies to self-report misconduct,

potentially in return for more lenient treatment, including a Deferred Prosecution Agreement (a "DPA").

Despite the decision to self-report and cooperate, the CPS pursued a Section 7 charge against Skansen and separate charges against the two individuals involved. Section 7 of the UKBA holds companies strictly liable for failing to prevent bribery by those associated with them.

At trial, Skansen sought to argue that the policies and procedures it had in place at the relevant time satisfied the "adequate procedures" defence available under Section 7(2) of the UKBA.

The jury did not consider that the steps Skansen had taken to prevent bribery were adequate, despite the small size of the company and its limited geographical reach.

<https://globalcompliance.com/adequate-procedures-rejects-defence-20180313/>

Case Study Three: SARS and the DPA; Barrister challenges Nat West Bank and the right to access personal data in a Suspicious Activity Report

A UK barrister, David Lonsdale, held seven accounts with Nat West Bank including a personal account and several for property businesses.

On 10 March 2017, the Bank froze Mr. Lonsdale's joint account held with Mr. Sarmadi for eight working days. This eight-day period appears to reflect the time it would have taken the Bank to seek consent from the National Crime Agency ("the NCA"), following the making of one or more suspicious activity reports ("SARs").

On 27th December 2017, the Bank froze all seven accounts and so Mr. Lonsdale was unable to access any funds. He applied to the courts for access to them.

Nat West did remove the block on the accounts and subsequently issued a notice to close the accounts.

Mr. Lonsdale made a request under the DPA for disclosure of information relating to the SARS and the account closure.

The Bank provided some information, but omitted details relating to the SAR.

At a hearing in October 2018, the application for an order requiring the Defendant to permit inspection of the SARs was granted.

<https://www.bailii.org/ew/cases/EWHC/QB/2018/1843.html>

International Updates and Guidance

European Union Fifth Money Laundering Directive Text Approved

On 14 May 2018, the Council adopted a directive strengthening EU rules to prevent money laundering and terrorist financing.

The directive sets out to close down criminal finance without unduly disrupting the payment systems.

Amending directive 2015/849, it is part of an action plan launched after a spate of terrorist attacks in Europe in 2016. The Parliament approved the agreed text on 19 April 2018.

The main changes to directive 2015/849 include: harmonizing enhanced due diligence requirements for higher risk countries, providing public beneficial ownership registers, and addressing financial crime risks linked to 'anonymous' prepaid cards and virtual currencies.

<http://www.consilium.europa.eu/en/press/press-releases/2018/05/14/money-laundering-and-terrorist-financing-new-rules-adopted/>

Wolfsberg Group

The Wolfsberg Group of 13 of the largest private banks (does not include banks from China and Russia), had a busy year and provided guidance that is both granular and helpful in managing certain financial services

risks.

Correspondent Banking

The Wolfsberg Group published an updated Correspondent Banking Due Diligence Questionnaire. (CBDDQ) and related guidance material. (Completion Guidance, Frequently Asked Questions (FAQs) and Glossary).

The 110 questions of the CBDDQ is far more expansive than the previous version and aims to set an enhanced and reasonable standard for cross-border and/or other higher risk Correspondent Banking Due Diligence, reducing to a minimum, any additional data requirements, as per the Wolfsberg definition and current FATF Guidance.

<https://www.wolfsberg-principles.com/wolfsbergcb>

Country Risk FAQs

On 19th March the Wolfsberg Group published its FAQs on how to manage Country Risk in the context of Financial Crime Compliance.

Country risk is widely used as a factor in customer risk assessment and was first addressed by the Group in the 2006 Risk Based Approach to Managing Money Laundering Risks.

<https://www.wolfsberg-principles.com/sites/default/files/wb/Wolfsberg%20FC%20Country%20Risk%20FAQs%20Mar18.pdf>

United States of America

FinCEN issues advisory notice on Human Rights Abuses Enabled by Corrupt Senior Foreign Political (PEP) Figures and their Financial Facilitators (FIN-2018-A003)

On 12th June the US FinCEN published guidance on how to identify and manage the risks relating to PEPs and their financial supporters.

The advisory notice has been provided for use by U.S. financial institutions to highlight the connection between corrupt senior foreign political figures and their enabling of human rights abuses.

The advisory describes a number of typologies used by PEPs to access the financial system that may be helpful to firms who wish to update their red flag indicators and training.

https://www.fincen.gov/sites/default/files/default/files/advisory/2018-06-12/PEP%20Facilitator%20Advisory_FINAL%20508.pdf

FinCEN Publishes help to identify Iranian sanctions evasion tactics

On 11th October 2018, FinCEN published the 'Advisory on the Iranian Regime's Illicit and Malign Activities and Attempts to Exploit the Financial System' to guide readers on how to identify sanctions evasion.

The advisory describes a number of typologies used by the regime to illicitly access the international financial system and obscure and further its malign activity. It also provides red flags that may assist financial institutions in identifying these methods.

It is worth noting, that earlier in 2018, the US authorities also provided a similar update on North Korean attempts to evade sanctions.

<https://www.fincen.gov/sites/default/files/default/files/advisory/2018-10-11/Iran%20Advisory%20FINAL%20508.pdf>

US withdraws from the Iran JCPOA

Effective from 5th November, the US unilaterally withdrew from the JCPOA.

In response to this measure, the European Union amended the existing 'blocking' regulations that apply to Cuba and extended these to Iran.

The EU Blocking regulations applied from August 2018 and require the following:

1. It requires any EU person to notify the Commission of any effects on the economic and/or financial interests of that person caused by a measure blocked in the Annex to the blocking regulations.
2. Secondly, no judgement of any court or tribunal etc located outside the EU gives effect or shall be recognised or enforceable in the EU in any manner.
3. And, thirdly, no EU person shall comply, whether directly or indirectly or through a subsidiary.

or other intermediary, with any requirement or prohibition unless authorised.

In practice, this means that a firm may breach EU regulations, whilst adhering to US sanctions laws!

Part Three: Enforcement Action

Danske Bank

Denmark's state prosecutor has started a criminal investigation into Danske Bank over allegations the country's biggest lender had been involved in money laundering through its Estonian branch.

The investigation, which follows a similar step by Estonian authorities last week, concerns transactions worth billions of Danish crowns that might have been part of criminal money laundering, Denmark's state prosecutor said.

Danske Bank has admitted to flaws in its anti-money laundering controls in Estonia in the past and has launched its own inquiry.

<https://www.reuters.com/article/danske-bank-moneylaundering/update-2-denmark-to-investigate-danske-bank-over-money-laundering-allegations-idUSL5N1UX4JN>

ING

ING reached agreement with the Dutch Public Prosecution Service and agreed to pay a fine of €675 million and €100 million acknowledging serious shortcomings in the execution of customer due diligence policies at ING Netherlands in the period investigated (2010-2016).

ING has initiated measures against a number of (former) senior employees with broader responsibility for the safeguarding and execution of CDD policies and procedures in ING Netherlands, including holdbacks of variable remuneration and suspension of duties.

<https://www.ing.com/Newsroom/All-news/Press-releases/ING-reaches-settlement-agreement-with-Dutch-authorities-on-regulatory-issues-in-the-ING-Netherlands-business.htm>

IMDB

The IMBD fund was supposed to fund development in Malaysia, however the alleged fraud and theft of funds continues to be the subject of legal action and prosecution around the world.

In December 2018 it was reported that criminal charges have been presented against Goldman Sachs units, as well as former employees Tim Leissner and Roger Ng, for alleged false statements involving \$6.5 billion of 1MDB bond sales that the bank arranged.

Earlier in November 2018, the former Goldman Sachs executive Tim Leissner pleaded guilty to the U.S. Justice Department for conspiring to launder money and pay bribes to Malaysian and Abu Dhabi officials.

Earlier in November 2018, the former Goldman Sachs executive Tim Leissner pleaded guilty to the U.S. Justice Department for conspiring to launder money and pay bribes to Malaysian and Abu Dhabi officials.

The U.S. also charged the bank's former employee Roger Ng, who was arrested in Malaysia.

The alleged 'kingpin' and financier for much of this suggested fraud, Low Taek Jho, is wanted by law enforcement agencies internationally, however his precise whereabouts are still publicly unknown.

The size and scale of the fraud represents one of the largest and significant international financial crimes case studies.

Senior Manager Regime

In December 2018 the FCA published details of their decision notice concerning the findings relating to the conduct of the former CEO of Sonali Bank (UK) Ltd (SBUK), Mohammed Aatur Prodhan. It should be noted that Mr. Prodhan has referred this Decision Notice to the Upper Tribunal (the Tribunal) where he and the FCA will each present their cases.

This notice represents a rare statement of senior management failings and is sure to guide senior management briefings in 2019.

The FCA stated that the enforcement action has been taken because Mr Prodhan:

“Act(ed) without due skill, care and diligence and for being knowingly concerned in a breach by SBUK of its obligations to maintain effective anti-money laundering (AML) systems”

The FCA also noted in their full findings that:

- In 2010 the FCA identified several issues with SBUK’s AML systems and controls
- SBUK gave assurances they would address these issues
- In 2012 SBUK internal auditors found that the AML risk register was out of date and impractical and needed rectification
- This work never took place and so left the bank exposed to potential AML/CFT risks

<https://www.fca.org.uk/news/press-releases/fca-publishes-decision-notice-against-former-ceo-sonali-bank>

Data Security Information Commissioner Office fines and censures Equifax

The UK Information Commissioner’s Office (“ICO”) issued Equifax Ltd with a £500,000 fine for failing to protect the personal information of up to 15 million UK citizens

during a cyber-attack in 2017.

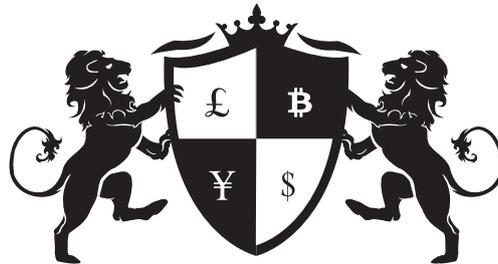
The ICO investigation found that, although the information systems in the US were compromised, Equifax Ltd was responsible for the personal information of its UK customers.

The UK arm of the company failed to take appropriate steps to ensure its American parent Equifax Inc, which was processing the data on its behalf, was protecting the information.

This advice poses significant issues at a time when the cross-cutting threat from cybercrime, and the heightened responsibilities that firms have to keep data secure under the provisions of the GDPR, mean that firms are exposed to even greater scrutiny from customers and regulators, and of course criminal actors.

<https://ico.org.uk/action-weve-taken/enforcement/equifax-ltd/>

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