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UK is failing in the fight against money laundering Tougher rules have garnered no prosecutions — yet

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Commentators suggest that the complicated nature of investigations could account for the delays in bringing charges

Revelations that not a single prosecution has been brought under supposedly beefed-up money-laundering regulations have triggered cynicism over government claims to be cracking down on economic crime.

A week ago Eversheds Sutherland, a City law firm, revealed details from a freedom of information request to the Home Office. They showed that there had been no prosecutions under the regulations between inception in June 2017 and October last year.

That startling fact came against the backdrop of a House of Commons treasury committee report published last week that issued a damning verdict on the UK's "highly fragmented" anti-money-laundering supervision regime.

That fragmentation, said the MPs, meant that the government's grip on the scale of economic crime in the UK was "very uncertain". Estimated values ranged from the tens of billions of pounds to the hundreds of billions.

Ministers "should provide a more precise estimate so that the response can be tailored to the problem," said the committee's report.

Indeed, MPs were not alone in their concern. This month the campaigning group Corruption Watch claimed that in the decade since the global financial crisis, the US has brought significantly more

financial crime prosecutions. Its report said that, while the UK had “not brought a single successful criminal prosecution against a bank for Libor, Forex, misselling of toxic mortgages or money laundering and sanctions violations”, there had been about 20 in the US in that time.

The position specifically relating to money-laundering prosecutions contrasted even more starkly: Corruption Watch said that in the past decade the US had brought 34 times more than the amount UK prosecutors had instigated.

Those figures prompted Susan Hawley, a director at Corruption Watch, to issue a harsh verdict: “Big businesses and banks are effectively above the law when it comes to fraud and money laundering in the UK. Until the government implements corporate liability reform, the UK’s prosecutors will remain toothless in the face of major corporate financial crime.”

The prevailing view among white-collar crime specialists, says Ruth Paley, the Eversheds lawyer who drafted the freedom of information request, is that the prosecution statistics amassed since the tougher rules were implemented “do not sit easily with the UK government’s assertions that it is successfully cracking down on economic crime and bringing money launderers — and those professionals who facilitate money laundering — to book”.

Alun Milford, the former general counsel at the Serious Fraud Office who in January joined the partnership at Kingsley Napley, added that the figures “should serve as a challenge to regulators to reassess and recalibrate their approach to prosecution as a means of enforcement”.

However, the situation might not be as desperate as the naked figures initially suggest. Lawyers point out that last year’s annual report from the Financial Conduct Authority (FCA) revealed it had more than 500 open enforcement investigations, including 86 involving potential financial crime enforcements.

Observers suggest that it is likely that in some of those cases the FCA will be investigating possible breaches of the money-laundering regulations, but it is not yet ready to bring charges in such complicated investigations. The average length of 2017-18 concluded FCA enforcement cases that resulted in an agreed settlement was more than 32 months, the figures show. That is a significant increase from an average of slightly more than 23 months over the previous 12 months.

Lawyers point out that, for its part, the FCA prefers to use its regulatory enforcement powers rather than bringing criminal prosecutions for money-laundering breaches, because the civil standard of proof is easier to reach than the criminal standard.

Civil law regulatory investigations tend to be quicker and cheaper, requiring less manpower. And while jail time does not lie at the end for those found to have breached the rules, Paley says that the investigations “can still result in significant financial penalties — likely to be far in excess of comparable to the criminal financial penalties available at the sentencing stage for breaches of the money-laundering regulations”.

Jeremy Summers, a business crime partner at Osborne Clarke, agrees that a more subtle reading of the money-laundering prosecution figures is required. “The regulations could in fact be working with people complying with them as required and so not putting themselves at risk of prosecution for failing to do so,” he says. Alternatively, he points out that “the regulations were not retrospective and so any breach may have taken time to occur, and will have taken time to be detected”.

Likewise, John Binns, a partner at BCL Solicitors, throws politics into the analytical mix around the prosecution figures. “The snap 2017 general election truncated the period between publication and

implementation, so there had to be a bedding-in period to allow people to get used to them," he says.

Binns is confident that "prosecutions will doubtless follow before long, but they will need to be in the right cases, where it's proportionate to take a breach to court".

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