

Law Commission calls for new advisory board on anti-money laundering

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The Law Commission has published a report on anti-money laundering and the suspicious activity reports (SARs) scheme. It finds the submission of low-quality SARs are undermining the regime, frustrating law enforcement's efforts to investigate and prosecute crime. To resolve this, the Law Commission calls for the creation of an advisory board, along with a SARs online form and new statutory guidance. Lawyers at Clifford Chance, Herbert Smith Freehills, Arnold and Porter, BCL Solicitors and Kingsley Napley comment on the report, adding the proposals are 'limited' but 'sensible and welcome'.

The Law Commission sets out its findings and recommendations in its report, 'Anti-Money Laundering: the SARs Regime', published on 18 June 2019. The recommendations focus on improving the quality and value of reports.

John Binns, partner at BCL Solicitors, says:

'The Law Commission has set a somewhat difficult, some would say impossible, task, to solve the problems of the consent regime without making any changes to the statute. To make it more difficult, those problems were defined from a number of different angles, including the NCA's desire to have "higher quality" SARs, and the need from the regulated sector for a more streamlined, user-friendly reporting system.

'In the circumstances, a renewed focus on guidance and monitoring of SARs, while certainly welcome, is perhaps no more or less than we should have expected from the exercise.'

Susannah Cogman, partner at Herbert Smith Freehills, adds:

'The Law Commission consultation was quite narrowly scoped, and its proposed reforms were limited. The fact that this exercise will not lead to a fundamental overhaul of the reporting regime is no surprise. That said, there are some changes of detail which are welcome.'

The Law Commission's findings

The Law Commission says 470,000 SARs were submitted in 2018-19. This is the highest number of reports received in a single year—double that of 2008-09.

The Law Commission's research finds a significant number of reports are 'of low quality and can contain limited, or even no, useful intelligence'. This can negatively impact law enforcement as money and time is wasted on processing these reports.

The Law Commission finds the large volume of low-quality SARs being submitted is due to:

- 'criminal property' being broadly defined in [section 340](#) of the Proceeds of Crime Act 2002 ([POCA 2002](#)) and requiring the reporting of suspected laundering of the proceeds of any criminal conduct
- unclear definitions of key terms
- defensive reporting by officials being encouraged due to the threat of individual criminal liability

Jonathan Grimes, partner at Kingsley Napley, says:

'The report confirms a problem that has been well known for several years—defensive reporting increasing the number and diminishing the quality of reports made to the UK Financial Intelligence Unit (UKFIU). The burden on business and the limited benefit to law enforcement from the vast number of reports currently made is an issue that requires addressing as a matter of urgency—as the report recognises.'

Recommendations

Recommendations of the Law Commission include:

- the core of the current regime is retained
- the creation of a new advisory board made up of experts from the public and private sector—overseeing the drafting of guidance and advising the secretary of state on improvements and emerging threats
- the creation of an online SAR form—making the reporting process easier and promoting consistency
- statutory guidance being issued by the secretary of state—reducing confusion and uncertainty around the process

Kathleen Harris, partner at Arnold and Porter, says:

'In my view, the proposals are sensible and welcome. They offer the opportunity for practical advice to be given effectively to the individuals and companies affected by the guidance so that they fully understand the legislation and issues that can arise. By having contributions from experienced professionals in the relevant sectors, it allows for the production of guidance that should be thorough and help with the overall aim to reduce and/or eradicate the harm caused by money laundering in the UK.'

Cogman at Herbert Smith Freehills adds:

'Given the potential significance of the proposed guidance, and the need for it to be practical and flexible, the involvement of both the public and private sector in the Advisory Board is also of fundamental importance. Helpfully, the Law Commission has reflected on the feedback provided regarding its more controversial proposal to effectively move from a subjective threshold to "reasonable ground" test for certain types of reports, which has been modified to a proposal calling for further empirical review in this area.'

But, Michael Lyons, partner at Clifford Chance, warns:

'The risk remains that those in the regulated sector will continue to exercise caution when considering whether to submit a SAR, given the considerable risk of personal liability that follows from a failure to do so when required.'

The Law Commission additionally offers recommendations on ringfencing. Grimes at Kingsley Napley says:

'The report also identifies another problem in the current system, namely, the impact on business and individuals in circumstances where banks freeze accounts in response to suspicious activity—which may be a single low value transaction.

'The current regime makes it incredibly difficult to bring any challenge to this process—or even to discover the reason for an account being frozen. As the report notes, even once the restriction is lifted, banks focussed on "de-risking" will frequently terminate the accounts of affected clients, who will invariably find it an uphill struggle to obtain alternative banking facilities.

'The report recommends a more proportionate approach, such as the ringfencing of specific suspected criminal property rather than freezing entire accounts, to avoid the significant stress and hardship that can result from the current approach.'

Sources:

[Anti-money laundering: the SARs regime report](#)

[Anti-money laundering project details](#)

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