



The Law Society

Tackling money laundering suspicious activity reports: prescribed form and manner

The Law Society's response to the Home Office consultation paper

Legal policy

October 2007

The Law Society's response to the Home Office consultation paper 'Tackling money laundering suspicious activity reports: prescribed form and manner'

This response has been prepared by the Law Society, the representative body for over 100,000 solicitors in England and Wales. The Law Society negotiates on behalf of the profession and lobbies regulators, government and others.

The Law Society has previously indicated its support for SOCA's efforts to achieve a more efficient and effective money laundering reporting system by the use of online reports on SOCA's preferred form. It has encouraged and continues to encourage solicitors, many of whom only have a need to make reports on an occasional basis, to use the SARs online form. The Law Society has also indicated that it sees no objection to the introduction of a prescribed form, as envisaged, and as proposed by SOCA (that is, a form that does not include '...any additionally prescribed mandatory fields, other than those already set out in POCA.').

There is, however, an important matter relating to the scope of the proposed preferred reporting form which the Law Society wishes to bring to the attention of the Home Office and SOCA. On page 56 of the consultation document, the intention behind the proposed change is stated, under the heading 'Option 3 – Prescribe the form and manner of reporting':

'HO/SOCA propose the enactment of a SI under s.339 of PoCA to prescribe the form and manner of reporting suspicious transactions by the regulated sector, and by nominated officers outside the regulated sector making an "authorised disclosure" under s.332 of PoCA. The Money Laundering Advisory Committee (MLAC) have already agreed this proposal in principle, and this option will deliver recommendation 3 of the SARs Review.

SOCA would continue to engage with the reporting sector in the ways set out in option 2. This activity would be more effective when supported by a prescribed form and manner.'

It seems, therefore, to be accepted that it would be inappropriate for the requirement to use the prescribed form, with the penalties for failing to use a prescribed form, to be applied to a person who makes a voluntary disclosure. It would, of course, be particularly inappropriate to require the use of the form by a person not employed in the regulated sector who needs to submit an authorised disclosure in order to avoid committing a criminal offence under section 327, 328 or 329.

Throughout the consultation document it appears that the proposal for a prescribed form is aimed at reports by those in the regulated sector, plus MLROs outside the

regulated sector. The only exception provided for is that of 'protected disclosures' under section 337 (see page 58 of the consultation document). There clearly needs also to be an exception for authorised disclosures by those not employed in the regulated sector.

The consultation document (in footnote 2 on page 58) states that 'the number of reporters who would report under section 337 of POCA would be small and could be accommodated'. There is good reason to believe that this is realistic and that the exception would not undermine the objective of achieving a very high percentage of reports on the prescribed form and improving the efficiency of the system. This would also be true if an exception is made in respect of authorised disclosures by persons not in the regulated sector. Firstly, the great majority of authorised disclosures are probably made by those employed in the regulated sector. Secondly, most of those outside the regulated sector who need to submit an authorised disclosure are probably familiar with and would use the prescribed form in any event. (Statistics on 'consent reports' in SOCA's draft annual report give support to this view.)

A further point relates to the final consultation question in Chapter 3:

'Do you think the additional proposals of raising awareness of what constitutes a 'required' disclosure' is necessary/critical to the effective implementation of a prescribed form and manner?'

It is not clear to the Law Society just what the additional proposals are. The Law Society would certainly agree about the importance, before introducing a prescribed form with penalties for its non-use, for all reasonable steps to be taken by the Home Office and SOCA to ensure that all persons who may be affected by the requirement for a prescribed form are made fully aware of that form and the new requirements. The Law Society would itself take steps to raise awareness as, no doubt, would other professional, trade and supervisory bodies.

If a prescribed form is to be introduced, a small amendment should be made under the heading 'Reason for disclosure'. The second offence box currently reads 'Missing Trader, Inter Community (VAT) Fraud'. This should presumably read 'Missing Trader Intra-Community (VAT) Fraud'

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