The Law Society

Response of the Law Society of England and Wales to the consultation issued by the Home Office and HM Treasury on the Action Plan for anti-money laundering and counter-terrorist finance ~ legislative proposals

June 2016

PREFACE

1. The Law Society of England and Wales ("The Society") is the professional body for the solicitors' profession in England and Wales, representing over 160,000 registered legal practitioners. The Society represents the profession to parliament, government and regulatory bodies and has a public interest in the reform of the law.

2. The Society welcomes the opportunity to respond to this consultation.

3. The response has been prepared by the Society's Money Laundering Task Force and Counsel.

4. The Society is the named supervisory authority for solicitors in England and Wales in the Money Laundering Regulations 2007. We also have a public interest role and, as the professional body, also discharge a statutory public interest role on behalf of the profession.

5. The Society supports the government's aim to make the UK financial system a hostile environment for illicit finances, while minimising the burden on legitimate businesses and reducing the overall burden of regulation and is pleased to be able to contribute to this call for information.

6. The Society has a longstanding and distinguished record of working alongside government and law enforcement in the development of AML policy, legislation and working to improve the UK's AML regime.

7. We share the government's commitment to upholding FATF principles and to demonstrating that the UK has an effective AML/CFT regime during its forthcoming Mutual Evaluation (MER).

EXECUTIVE SUMMARY

Introduction

8. The Law Society ("the Society") is committed to supporting the government's aim to tackle money laundering in all its forms. We welcome the opportunity to participate in this consultation. The Society has long been advocating for change in part 7 of Proceeds of Crime Act (POCA), particularly in relation to the operation of the SARs regime. The Society's response to the consultation is set out in the body of our response, but there are a number of general

points to which we would like to draw particular attention to concerning the consent regime and possible changes to it.

9. We are aware of the considerable difficulties faced when considering reform in this area. The Society contributed to the consultation exercise in 2007 entitled: “Obligations to Report Money Laundering: The Consent Regime”. We note that contained in the summary of responses was the statement: “law enforcement and prosecution agencies were virtually unanimous in their view that the consent regime was workable and was working satisfactorily”. Further, government found a “lack of consensus on what the problems of the consent regime are or how they might be addressed in legislation” and accordingly concluded that no changes should be made save for the Home Office Circular 029/2008 clarifying the decision making process in relation to consent requests.

10. In contrast, the 2015 UK National Risk Assessment of money laundering and terrorist financing (NRA) noted a potential weakness in the SARs regime, but it appeared to be largely attributable to the technology underpinning the reporting system.

11. The UK Anti Corruption Plan 2014 confirmed the government's intention to improve the quality and timeliness of reporting to the National Crime Agency (NCA). No reference was made in relation to the need to expand the scope of POCA.

12. It is clear that there are difficulties with resourcing the SARs regime which have contributed to the current proposals. We have long held the view that reform is needed to improve the effectiveness of the regime. However we have difficulty finding a correlation between improving the effectiveness of the SARs regime and removing the defence offered by the consent regime.

Background to the Consent Regime

13. It should be emphasised that when considering the entirety of the SARs regime the distinction between the consent regime and authorised disclosures required by s330 are often blurred. All citizens can commit the offences under ss327, 328 and 329, and can avail themselves of the statutory defence if they make a disclosure. In contrast s330 only applies to those operating in the regulated sector. The vast majority of reports to the NCA do not require consent. According to the Action Plan there were a total of 381,882 SARs filed with the UK Financial Intelligence Unit (UKFIU) during 2014/15 of which 14,672 were consent requests.

14. The defence afforded to those given consent was designed to counteract the far reaching impact of the legislation. The 'all crimes approach' and the low threshold of ‘suspicion’ – unique among AML regimes in the world - necessitated protection for reporters. The protection offered by the consent regime works to offer balance and to avoid over-criminalisation.

Proposals for change to the Consent Regime

15. If the consent regime and the protection afforded are removed without fundamental reform of the primary money laundering offences themselves, it would criminalise vast swathes of ordinary business activity. The definition of suspicion is set so low that it captures circumstances which are possible and more than merely fanciful. In many instances, consent requests are made where there is no evidence or knowledge, to ensure protection against the severe consequences set out in POCA.

16. If the defence were to be removed, we can envisage situations where a regulated professional has a suspicion that the funds that they hold are the proceeds of crime, but they would be compelled to commit an offence in returning funds to the client where they wish to withdraw from acting.

17. It is clear that removal of the consent regime in isolation is not workable. We are pleased to note that this is not the stated intention of the Action Plan, but rather it is to consider the implementation of a new reporting regime which would 'ensure that reporters who fulfil their legal and regulatory obligations would not be criminalised.' It is our view that to maintain balance in the regime it would require the creation of another consent-style reporting system, offering equivalent protection to reporters.

18. We have engaged Counsel to explore potential alternatives if the consent regime were to be removed. One of the potential options identified involves establishing a tiered SARs reporting regime where reporters are required to grade the importance of the SARs they submit. We would be interested in exploring this further, but clearly such a regime would only be viable if accompanied by robust guidance from government.

19. To achieve improvements in the numbers of useful SARs and the overall quality of SARs the test for suspicion would also need to be revised and/or there would need to be substantial revisions to the definition of “criminal property”, possibly coupled with additional exemptions to address circumstances where SARs of little intelligence value are required to be made. Successful reform in this area would ensure that many reports of little or no value to law enforcement would not be made. We appreciate that any

suggested reform which appeared to be liberalising or softening the regime would be politically unpalatable. However it is clear that removing the consent regime and the defence that it provides would leave citizens conducting normal business transactions at substantial risk of committing an offence under POCA, such that the ordinary conduct of business will be severely disrupted.

20. The Society cannot support a disproportionate extension in the scope of criminal liability amplified by a very low threshold for suspicion, particularly when the proposed change appears not to be based on sound policy objectives or the public interest, but rather on the basis that the operation of the current system is considered by the government to be too costly.

RESPONSE

Section 2(a): Public-private partnership

Question 1: The Government is seeking views on the change in focus of the SARs regime from one on transactions to one on the entities responsible for money laundering and terrorist financing.

What benefits are there for the reporting sector in moving the focus of the SARs regime from transactions to entities for tackling money laundering and the financing of terrorism?

21. The Society welcomes the recognition that the SARs regime as currently operated has serious defects which hinder rather than assist the fight against serious crime. However, in the absence of detailed proposals, it is difficult to comment on the effect of the proposed change.

22. We assume that proposals for the change to entity-based reporting seek to address the difficult issue faced by banks in seeking consent for every payment in respect of an account-holder under suspicion. We are concerned that the focus on issues faced by the banking sector obscures the fact that there are other significant problems for non-banking sectors, particularly the professions, where both entity and transaction-based suspicions may arise. It should not be forgotten that the reporting regime does not simply focus on entities which fall into the "customer" category but focuses on whether money laundering is occurring. The following is therefore not clear:

    - How would entity-based reporting work in a circumstance in which an entity had previously been under suspicion but was seeking to conduct

a transaction in which no money laundering appears to be occurring?

- How would it impact access to justice for individuals who may be suspected of having been involved in money laundering?

- If the regime continues to capture regulatory and strict liability environmental offences, how would entity-based reporting work in this context?

- Many entities have at one time or another whether wittingly or otherwise been caught up in a regulatory issue – will these issues be time-barred?

23. Whilst a shift to focusing on an entity may assist in some situations, we believe that the regime must be flexible enough to focus on either an entity or a transaction. Solely focusing on an entity will not adequately deal with the very real issues faced by those outside the banking sector. Further detailed work and consultation will be required in order to ensure that any new proposals are sufficiently clear, particularly in view of the criminal sanctions for non-compliance, and do not result in an increase in reports of limited value to the NCA.

What would be the effect on costs to business in making that shift?

24. In the absence of detailed proposals, it is difficult to comment. However, we suspect that firms may need to completely re-calibrate their systems for accepting business, the costs of which may be substantial, as well as retraining staff. Given the comments above, a thorough analysis should be undertaken in partnership with the non-financial reporting sectors to consider whether this change would provide a proportionate and beneficial outcome in the fight against money laundering.

Question 2: To support that change, the Government is considering removing the current consent regime.

What are the risks in removing the consent regime, and how could these be overcome?

25. The correlation between the shift to entity-based reporting and removal of the consent regime is not clear. Without details of the proposals it is difficult to comment. However, we would be extremely concerned about any removal of

the consent regime without a corresponding change offering an equivalent level of protection to reporters.

26. The substantive sections of Part 7 of POCA create two types of offences, each focused on different conduct. The principal offences seek to restrict and prevent the possession and movement of criminal property. The failure to disclose offences are predominantly focused on 'gatekeepers' and seek to prevent them turning a blind eye to criminal activity by requiring them to report such activity to the NCA.

27. The principal offences operate to criminalise activity where there is only a suspicion of money laundering. It must be remembered that the UK's suspicion-based AML system with its low criminal threshold does not exist anywhere else in the world and exceeds the requirements of EU Directives and those of the FATF[1].

28. It is clear that in order for the removal of the consent regime to be in any way workable, it is either necessary to fundamentally re-shape the principal offences of money laundering or create a new system offering equivalent protection to reporters as is currently afforded by the consent regime.

29. The Society has previously proposed the inclusion of intent and the removal of the concept of benefit in the principal offences as a potential mechanism to reduce limited intelligence value reporting and the frequency with which consent would need to be sought.

30. Intention is a settled concept in English law. The specific intention we proposed was the intention to evade the legal consequences of the predicate offence, which is in line with international instruments. The legal consequences would include being deprived of the criminal property through confiscation orders, civil recovery orders, compensation orders and the like. Where a person in the regulated sector made a timely disclosure of the relevant information relating to their suspicion of money laundering, it would be very difficult to conclude they had the requisite intention.

31. On the other hand, predicate offenders and professional launderers would not make such disclosures as it would expose the predicate offender to criminal sanctions. Law enforcement would easily be able to establish intention in such cases.

[1] Article 6(1) Palermo Convention,
Article 1(3) Fourth Anti-Money Laundering Directive

32. The Society is aware of the current sensitivities around AML in the UK. While London's status as a leading world financial centre is without doubt, it is increasingly facing accusations of concurrently operating as a major global centre for money laundering. While the amounts involved and the extent to which these accusations are correct cannot be known, the UK cannot appear to be softening its AML regime as a result of this review.

33. However, removing the consent regime in isolation would disproportionately extend the criminal liability of the regime in a manner that cannot be justified in terms of public policy or the public interest.

If the current SARs consent regime is replaced, removing the statutory defence for SARs reporters, what legal protections should be available for reporters who unwittingly come into the possession of criminal property?

34. The criminal sanctions for non-compliance with the law are so severe that it is essential that all those with reporting obligations have clarity and certainty as to their obligations. The fact that the money laundering regime attaches to offences which are not serious criminal offences makes the position for reporters even more complex.

35. The only way the balance of the regime could be maintained after the repeal of consent would be for the government to replace it with another defence of equivalent scope. The only defence of equivalent scope would be a defence similar to the one as currently stands. Removing a mechanism only to replace it with another almost exactly the same would be a difficult exercise to justify.

36. Our Counsel concluded that a more realistic response to the aims of the Action Plan would be to preserve the consent defence to the primary money laundering offences, and implement reform of the consent regime as it applies to the regulated sector.

37. One of the potential options identified in this space involved establishing a tiered SARs reporting regime where reporters are required to grade the importance of the SARs they submit. We would however caution that the potential viability of such a regime has not been explored in depth and would certainly not be viable in the absence of robust guidance from government.

38. As stated above, the Society retains its longstanding commitment to work alongside the government, law enforcement and other AML supervisors to improve the UK's AML regime and we are proud of our record in doing so.

39. However, we cannot support a disproportionate extension in the scope of criminal liability amplified by a very low threshold for suspicion, particularly when the proposed change appears not to be based on sound policy objectives or the public interest, but rather on the basis that the operation of the current system is considered too costly.

40. The assumption that only reporters who "unwittingly" come into possession of criminal property would also need consideration. What, for example, of a UK company which acquires a target company which has previously engaged in criminal conduct, with a view to remediation of the target's controls, processes and ethical approach? This would be in the public interest, but the acquiring company would not be acting unwittingly, and without the consent regime the acquiring company would, if it thereby acquires any criminal property, effectively be barred from proceeding. Similarly, professional services firms may be barred from acting in relation to the transaction

What would be the costs to your business of this change?

41. As stated above, removing the consent regime and the defence that it provides would leave ordinary citizens conducting normal business transactions at substantial risk of committing an offence under POCA, such that the ordinary conduct of business could be severely disrupted and could severely impact the attractiveness of the UK to legitimate business entities.

42. It can also be anticipated that an extension of the circumstances in which a firm would commit an offence by continuing to act when it has some level of suspicion about a client (but, given the very low "suspicion" threshold, no clear evidence of criminal conduct), and has reported those concerns, is likely to increase the extent of the "de-risking" phenomenon. Individuals or entities who have been subject to negative media allegations, who have engaged in unexplained/unusual transactions, or perhaps who are regarded as posing a particularly high risk, may in practice be cut off from the financial or professional services, where there is a suspicion but no proof. This raises access to justice concerns, but the impacts would go far beyond this. The de-risking phenomenon is a result, inter alia, of concerns about regulatory enforcement; it appears reasonable to suppose that the effect of converting transactions which are currently lawful (if consent is granted) into serious criminal offences would exacerbate this effect

43. Unless equivalent protections are built into the regime, it is likely that the role of Money Laundering Reporting Officer (MLRO) will become even more unwelcome and difficult than it is currently. This will lead to a further scarcity of MLROs across all sectors, but particularly in the legal sector.

44. These costs are difficult to quantify but appear likely to result in increased expenditure by regulated firms across the board and potential damage to the UK economy.

Question 3: Should a reformed SARs regime include powers for law enforcement agencies to direct reporters to take certain actions, including maintaining a customer relationship, and provide legal cover for the reporter to do so?

45. Given solicitors' ethical and professional obligations, as well as the potential risks to personal safety, legal cover is not sufficient in these circumstances. We strongly oppose any absolute obligation on a reporter to maintain a client relationship. As an additional point, as the details of any such arrangement would remain confidential, there is a risk to the reputation of the reporter in the eyes of the public, which could also cause significant financial damage.

Question 4: The Government is proposing to provide legislative cover to support better data sharing within the private sector.

What legislation and guidance needs to be in place to allow effective sharing of information between private sector firms in order to prevent and detect financial crime?

46. We are concerned that elements of this consultation have not given proper consideration to the needs of the non-banking sectors, which are equally subject to the regime. We strongly believe that the principal dialogue should be between law enforcement and the private sector and that information sharing across sectors merely supplements that dialogue.

47. Some general challenges arise in the form of competition law provisions which criminalise certain types of behaviour. Article 81 of the EC Treaty and the Chapter I prohibition contained in the Competition Act 1998 both prohibit, in certain circumstances, agreements and informal arrangements which prevent, restrict or distort competition. These provisions are potentially enough to capture information sharing and discussions around entities if there is an informal agreement to only provide services to that entity on certain defined terms. Some clear assurance as to the legality of information-sharing in these circumstances would need to be given by the government.

48. Any information sharing provisions should be permissive rather than imposing requirements so that organisations can manage other associated concerns such as legal professional privilege or the risks to personal safety.

What benefits would you see from having the ability to develop SARs in partnership / report jointly with other private sector entities?

49. The Society believes that this right currently exists. We understand that some law firms have submitted joint reports with clients and other advisers and believe that this can work to increase efficiency.

50. If there are concerns around this point, we would suggest that some guidance be issued in respect of the circumstances in which it can be carried out.

What can we learn from the U.S. experience of data sharing between private sector entities under the s314 of the USA PATRIOT Act?

51. S314 applies to financial institutions only. Unless the government plans to widen its scope this question is not of primary relevance to us.

Question 5: Under the EU 4th Anti-Money Laundering Directive (4AMLD), Financial Intelligence Units are required to have a power to request further information in relation to a SAR.

52. Initial information gathering will be much improved when the NCA is adequately resourced to provide a new reporting form and IT system which is fit for purpose for all types of reporters. The form should be redesigned to clearly identify the areas which the reporter needs to cover off (if known), for example, details and whereabouts of the suspect, location of criminal property and reason for suspicion.

53. A lawyer who submits a report has already performed an assessment of whether the information is subject to privilege. However, there may be other information on their file which is subject to confidentiality and legal professional privilege which has not been included. In this case, any further request for information would have very little use or impact as privilege could not be overridden and a lawyer would be unable to furnish information in response to any such request.

How should such information be gathered, and should it be regarded as part of the overall SAR?

54. Article 32, paragraph 3 of 4AMLD states that FIUs *"...shall be able to obtain additional information from obliged entities"*.

55. Powers already exist to enable further information to be obtained. S2 of the Serious Crime Act inserts provisions into POCA so that the court may order any third party who may have an interest in the defendant's property to provide any information it needs to make a determination. This power might be used, for example, where it is alleged that a third party owns a part share in a property. The court may draw an inference from any failure to comply with such an order.

56. Also under s345 of POCA, the judge may, on an application made to him by an appropriate officer, make a production order if satisfied that each of the requirements for the making of the order is fulfilled. The purpose of this is to gather evidence to assist a confiscation, money laundering or civil recovery investigation. S7 of the Crime and Courts Act 2007 already also operates to provide protection from breach of confidentiality in respect of information disclosed to the NCA for the purpose of the exercise of any NCA function.

57. Obviously further information can be requested and it could be disclosed on a voluntary basis, as is the case now. However, giving powers to request further information to a government agency, rather than the judiciary, could lead to fishing expeditions, exercise of the power by inexperienced people, an abuse of the power and an erosion of the rights of the suspect.

58. Any further obligatory disclosure must therefore be subject to some form of judicial scrutiny.

59. We would also query:

- How prescriptive would the request for information be?
- What would be the criteria for a request for further information and how would this be objectively assessed?
- Would the information be requested for intelligence or evidential purposes?
- In which circumstances would a request be appropriate if a production order is not appropriate?
- How far would a recipient be expected to go to comply; would it only apply to information already available to them?
- What would the timescale be for compliance and note also the cost implication on businesses in relation to preparation of a response?

- What right and method would there be to challenge the request; if only judicial review this could lead to costly litigation.
- Would there be statutory immunity for breach of confidentiality?

Question 6: The Government wants to support the financial sector in dealing with suspected proceeds of crime held in suspended bank accounts.

What new powers are required to allow the criminal funds held in UK bank accounts to be forfeited more easily?

60. We have no comment to make on this question.

What safeguards should be put in place around any new powers in order to protect innocent account holders?

61. In the event that any new powers of this kind are implemented we would seek to ensure that appropriate safeguards were put in place to protect lawyers' pooled client accounts against any resultant disproportionate or unlawful actions by banks or law enforcement.

In uncontested cases, should administrative forfeiture be permitted, in the same way that POCA already enables the administrative forfeiture of cash?

62. We have no comment to make on this question.

Section 2(b): Enhanced law enforcement response

Question 7: What do you see as the benefits of introducing a power to require individuals to explain the sources of their wealth?

63. Unexplained Wealth Orders appear to be able to be made even when there is no substantial proof that the property in question is connected to crime. We would have concerns about the human rights implications of a reversal of the burden of proof, which should fall on the prosecution.

64. We note that a similar offence was introduced in Australia in 2000 which has encountered some significant push-back from the courts. We also note that some NGOs have suggested that such orders should only apply to PEPs as defined by the FATF.

65. Any such system would require judicial scrutiny to be acceptable.

Question 8: Would you see a benefit in a linked forfeiture power where the explanation is not satisfactory or no explanation is provided?

66. This process already exists in the form of a cash seizure whereby an accused must prove their cash is not the proceeds of crime or it can be seized**.**

Question 9: What benefit would you see in an illicit enrichment offence, targeting those who use their public position to enrich themselves?

67. The Society sees little value being added by the imposition of an illicit enrichment offence. Such activity is already covered by POCA and if restricted to those who use their public position, by the PEP provisions in the Money Laundering Regulations 2007. We would have concerns about the human rights implications of a reversal of the burden of proof, which should fall on the prosecution.

68. Illicit enrichment legislation, it could be argued, serves to abuse the rights of defendants. Particularly since there appears to be no basis for distinguishing between UK and non-UK persons in this regard, these impacts appear to be precisely what section 30 of the Bank of England and Financial Services Act 2016 ("BoE Act") seeks to avoid. Careful consideration would also need to be given to how this approach would be reconciled with Recital 33 of 4MLD (which is referenced in the BoE Act), which provides that the requirements relating to PEPs are of a preventative and not criminal nature, should not stigmatise PEPs, and that refusing a business relationship with a person simply on the basis of PEP status is contrary to the letter and spirit of 4MLD.

69. As alternative measures already exist to achieve these ends (such as financial disclosure and tax evasion legislation) that do not serve to violate human rights we would prefer that these means were explored first.

What are the potential impacts on business?

70. Such legislation may also have the unintended consequence of accelerating the de-risking already being seen in the regulated sector. The regulated sector, unwilling to risk being seen as assisting in this crime, may be forced to ask even more intrusive questions, particularly of PEPs and their families, to ascertain that none of their assets are tainted by such ‘enrichment’.

Question 10: The Government is considering the introduction of a power to enable the Government to designate entities of primary money laundering concern.

71. If entities are designated of money laundering concern, we would like to understand how this would dovetail with the sanctions regime. UK banks are already confirming by recent actions that their risk appetite is narrower than the sanctions regime so would be likely to avoid processing transaction payments for entities on this list. That effectively means they will be sanctioned, but without the associated due process, as law firms and other professional services firms will not be able to advise them. We would want to know what the impact would be on professional service providers who provide what they consider to be legitimate services to a designated entity. We would expect that access to justice services, for example, contesting a designation, would be permitted.

72. We would also make the observation that 'designation of money laundering concern' seems very wide. There is no indication in the Action Plan as to the associated evidential requirement or burden of proof.

73. It is unclear in the Action Plan whether the government intends to designate domestic entities, foreign entities (or both) or whether they intend to designate foreign jurisdictions as has been the case in the US.

What benefit would such a power provide?

74. If this were to be used to designate entities outside the UK there could be some benefit in assisting with performing CDD.

What would be the impact of such a power on firms in the regulated sector?

75. It is unclear what the expectation of a person operating in the regulated sector would be if they came across such a designated entity. We do not know what additional information, if any, would be provided to explain why they are so designated. We would question whether, if it applies to UK entities, where sufficient evidence exists to indicate an entity is a money laundering concern, why existing tools such as freezing orders are not appropriate.

What legal recourse should be available for designated entities who wish to challenge their designation?

76. As explained above, we would expect that access to justice services, for example, contesting a designation, would be permitted by designated entities.

77. We would also expect the courts to be the final arbiter of the legitimacy of a designation or otherwise.

What can the UK learn from the U.S. experience of using section 311 of the USA PATRIOT Act?

78. S311 Orders have only been used 23 times in total since 2011 including four times against specific jurisdictions. These numbers are not indicative of a measure which has had a large impact on the US AML regime.

What would be the costs to your business?

79. It is difficult to predict with so little information on the proposed mechanics of the regime being outlined in the Action Plan**.**

Question 11: What benefit would you see in the provision of a power, similar to the provisions for cash seizure, to allow seizure and forfeiture of other forms of readily moveable property such as high value jewellery or precious metals?

80. We can see the potential benefits to law enforcement of the provision of such a power. It is difficult to comment in the absence of detail but as long as it is subject to proper judicial oversight we have no objections in principle to such a power.

Question 12: What benefit would you see in enabling the administrative forfeiture of the proceeds of crime in uncontested cases, following an initial hearing at a magistrates' court?

81. Whilst we understand the desire to have the ability to designate entities as being of money laundering concern, any such powers need to be carefully considered.

82. We would not wish to see powers equivalent to those under s311 of the US Patriot Act for the following reasons:

    - FinCEN, the agency which is delegated with the task of implementing s311 sanctions need only find "reasonable grounds" for concluding that a foreign country, financial institution, type of account, or class of transactions is a "primary money laundering concern."

    - Although FinCEN can designate an entity, and can select one of five "special measures" listed in s311 to sanction the entity, the consequences of a designation alone are severe and there is no absolute requirement to implement any of the special measures. A designation alone may cut off an entity from the financial system.

83. It is also worth highlighting that the very wide powers in other sections of the Patriot Act have come under heavy criticism. A 2007 report by the Inspector General of the Justice Department found "widespread and serious abuse" of authority by the FBI under the Patriot Act and many of those FBI cases involved people with no clear connection to terrorism. Whilst these abuses did not specifically relate to s311, we would be very concerned about additional far reaching powers. Once an entity is designated, the reputational damage will already be done so a post-designation challenge may be too little too late.

84. A 2008 report by the US Government Accountability Office (GAO) noted a representative of an unnamed targeted bank told the GAO that the bank lost approximately 80 percent of its business as a result of its designation. We believe therefore that an entity should be able to raise a challenge prior to the actual designation to allow its case to be presented and to guard against errors, which could have devastating effects on the entity and its employees.

85. Accordingly, it is important to understand on what basis an entity could be designated as a primary money laundering concern (and why, existing tools such as freezing orders would not be appropriate in the circumstances).

Should a limit be set on the value of property that could be administratively forfeited, and what should that limit be?

86. We do not support the imposition of an administrative forfeiture mechanism akin to the US Patriot Act for the reasons outlined above**.**

Question 13: If we amend the investigative powers within POCA so they can be sought earlier in the investigative process, and make applications and administration more flexible, what would be the impact on your business?

87. We have no comment to make on this question.

Question 14: In addition to the proposals in this Action Plan, are there additional powers that UK law enforcement agencies should have to tackle money laundering?

88. Rather than additional powers, more resources should be made available and be applied where a real need exists, for example:

- Specialist anti-money laundering officers/teams on the ground in each police force and local, regional and national co-ordination.
- Improved reporting software and a redesigned form which is fit for purpose to produce clear and useful SARs.
- Removal of obligation to report regulatory SARs (for example, failure to register with Information Commissioner) from the system so NCA's time can be spent assessing the useful serious intelligence.
- Appropriate training to ensure there are specialist officers at NCA or civilians with legal/anti-money laundering expertise.
- Helpdesk resources at NCA to assist reporters or potential reporters (although not to provide legal advice).
- Information sharing relating to existing non-sensitive intelligence, convictions, confiscation and restraint orders, which could be accessible to the private sector via NCA.

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