

Could Banks do More in the Fight Against Money Laundering?

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Introduction

The purpose of this paper is to examine if banks could do more in stopping laundered money entering into the banking system and if so, to what extent.

Even with the vast array of AML provisions implemented globally, money laundering is still prolific and abuses continue in many forms. The distinction between illicit financial flow and money laundering is blurred and it could be argued banks play a role in this grey and ambiguous area. In the past banks have allowed money laundering to occur through poor AML practices despite a rhetoric that promotes a strong compliance culture to money laundering.²

The strongest evidence that banks are exploited for money laundering and that they should do more to restrict being a vehicle for facilitating the proceeds of crime is in the secrecy and confidentiality laws. This combination provides protection for individuals and corporations to transfer illicit financial capital. Allowing the proceeds of crime into the banks through the combination of the UK and associated territories actually makes up a significant amount of the offshore capital held globally, and the UK and its territories have the highest combined scores of secrecy and lack of transparency.³

The Crown Dependencies which include Guernsey, Isle of Man and Jersey where the Queen is head of state with powers to appoint government officials and Islands' Legislatures are inspected by the UK Ministry of Justice to safeguard against conflict with international obligations or fundamental constitutional principles. This is the same for what is known as Overseas Territories which include Anguilla Bermuda, British Virgin Islands, Cayman Islands, and Gibraltar.

The British Commonwealth territories where the final court of appeal is the Judicial Committee of the Privy Council in London are St Lucia, St Vincent and Grenadine, Antigua and Barbuda, Bahamas, Brunei Darussalam, Cook Islands, Dominica, Grenada, Mauritius and St Kitts and Nevis.

The paradox is that the legal structures such as off-shore banking and the setting up of anonymous shell companies are used by legitimate organisations to maximise their profits, one such example is known as transfer price abuse,⁴ which is currently legal but

¹ The views expressed in this paper are those of the author and do not necessarily represent International Compliance Training Ltd.

² *Undue Diligence How Banks do Business with Corrupt Regimes* (Global Witness, 2010).

³ 'Financial Secrecy Index - 2013 Results' (*Tax Justice Network*, 2013)

<<http://www.financialsecrecyindex.com/introduction/fsi-2013-results>> accessed 11 March 2014.

⁴ Prem Sikka and Hugh Willmott, 'The Dark Side of Transfer Pricing - its Role in Tax Avoidance and Wealth Retentiveness' (2010) 21 *Critical Perspectives on Accounting* 342.

seen as unethical by many.⁵ The same vehicles are also used by criminals to launder money. This has been recognised by the Prime Minister David Cameron in a speech to launch proposals to make beneficial ownership of companies more transparent;⁶ and more recently he re-stated this desire at a UK trade visit to Singapore addressing ‘dirty money’ that is used for the London property market.⁷

UK Banks are obliged to comply with the Money Laundering Regulations 2007,⁸ which is reiterated by the FCA,⁹ and there are requirements under the Proceeds of Crime Act 2002¹⁰ and the money laundering provisions of the Terrorism Act 2000¹¹. This combination confirms the view that financial firms should act as financial policemen or gate keepers.¹² However, despite all these requirements, breaches of AML controls regularly occur and it could be questioned whether a transparent AML policy is required at the very top of the banking industry. It appears there is an absence of an explicit statement, principles and policy with respect to anti money laundering at the International Banking Federation, the European Banking Federation and the British Banking Association. The Banking Standards Review Council¹³ was set up following recommendations by the Lambert Review,¹⁴ which acknowledged that regaining trust in the banking sector was an important priority,¹⁵ and that culture needed to be addressed,¹⁶ but even with the new Banking Standards Board in place, it is not exactly clear their remit, especially set against the FCA, which has similar responsibilities, but with considerable power; although the recent departure of Martin Wheatley as the head of the FCA suggests that the Chancellor George Osborne wants a more harmonious relationship with the banks and the regulators.¹⁷ The sacking of Anthony Jenkins CEO of Barclays,¹⁸ who was brought in to look at the culture at Barclays following the LIBOR scandal, does send signals to the City that there is change in the air.

⁵ Raymond Baker, ‘Illicit Financial Flows: The Scourge of the Developing World’ *Huffington Post* (New York, 7 January 2013) <http://www.huffingtonpost.com/raymond-baker/illicit-financial-flows_b_2427495.html?utm_hp_ref=tw> accessed 7 January 2013.

⁶ ‘David Cameron writes to Britain’s tax havens, calling for transparency’ *The Guardian* (20 May 2013) <<http://www.theguardian.com/politics/2013/may/20/cameron-offshore-tax-havens-transparency>>

⁷ John Aglionby and Cynthia O’Murchu, ‘David Cameron to Tackle ‘Dirty Money’ in UK Property Market’ *Financial Times* (28 July 2015) <<http://www.ft.com/cms/s/0/4d83097a-34ef-11e5-bdbb-35e55cbae175.html#axzz3hBdlU0RK>> accessed 29 July 2015.

⁸ *Money Laundering Regulations 2007* (2007).

⁹ ‘Anti-money laundering - Financial Conduct Authority’ (2014) <<https://www.fca.org.uk/firms/being-regulated/meeting-your-obligations/firm-guides/systems/aml>> accessed 16 April 2015.

¹⁰ Proceeds of Crime Act 2002, Part 7, s330, places a duty on employees to report anyone they know or suspect who is engaged in money laundering.

¹¹ Terrorism Act 2000, ss15-18.

¹² Joan Wadsley, ‘Money Laundering: Professionals as Policemen’ [1994] *Conveyancer and Property Lawyer* 275.

¹³ ‘Banking Standards Board’ <<http://www.bankingstandardsboard.org.uk/>> accessed 17 April 2015.

¹⁴ Richard Lambert, *Banking Standards Review* (2014).

¹⁵ ‘Banking Industry Must Raise its Game’ (*British Standards Board*, 2015) <<http://www.bankingstandardsboard.org.uk/assets/docs/2015/bsb-news-release.pdf>> .

¹⁶ ‘Keynote Speech by Dame Colette Bowe, Chairman of the Banking Standards Board to the London IOSCO Conference’ (*Banking Standards Board*, 18 June 2015) <<http://www.bankingstandardsboard.org.uk/press-releases/>> accessed 20 June 2015.

¹⁷ ‘Wheatley, Cropped’ *The Economist* (25th July 2015) <<http://www.economist.com/news/britain/21659744-britains-chief-bank-basher-fired-government-goes-softer-city-wheatley-cropped>> accessed 29 July 2015.

¹⁸ Philip Augar, ‘Big Choices for Barclays as Jenkins Goes’ *Financial Times* (8 July 2015) <<http://www.ft.com/cms/s/0/28d45690-2556-11e5-bd83-71cb60e8f08c.html#axzz3hBdlU0RK>> accessed 29 July 2015.

Extent and Threat of Money Laundering

Financial crime statistics whilst largely unscientific provide almost a confusing array of figures attributed to dirty money or proceeds of crime,¹⁹ although there have been some attempts to measure the extent of money laundering.²⁰ The United Nations Office on Drugs and Crime (UNODC) estimated proceeds of crime amounted to 3.6% of global GDP, with 2.7% or \$1.6tn being laundered in 2009.²¹ Walker first estimated in 1995 that \$2.85tn was laundered worldwide.²² The figure of 2-5% of global GDP is often quoted and its basis stems from a statement made by the International Monetary Fund (IMF) Managing Director Michel Camdessus in 1998, and would have been in the region of \$1.5tn in 1998,²³ although there was never any qualification of this number that was quoted. Reuter discards the Camdessus estimate, as it was based on expert opinion rather than an IMF study; and he also contests the Walker model suggesting that the methodology is flawed.²⁴ Reuter intimates that focusing on the value of how much money is laundered is diverting the attention away from dealing with the problem. However, without the visibility of the problem it would be difficult to allocate appropriate resources and priority to the issue of money laundering and efforts should continue to make the extent of money laundering more qualified and accepted.

Recent statistics on the extent of money laundering in the UK are difficult to isolate and there are large variations. For example, the Financial Services Authority (FSA) estimated the figure to be between £23bn and £57bn,²⁵ based on the IMF assessment method as described above,²⁶ which is consistent with the amount Harvey suggests, between £19bn and £48bn.²⁷ However, HM Treasury uses a more conservative figure of £10bn, whilst recognising its estimate is much less than the IMF 2-5% of GDP figure,²⁸ was referred to by the House of Lords debate on financial crime in 2011.²⁹

Baker takes the view that banks and governments have an inherent interest to allow money laundering to occur for economic and political stability.³⁰ Indeed, it has been argued that money laundering could be good for the economy through greater availability of credit and increased profits for the financial sector. Ferweda states that 'the literature is still uncertain whether money laundering would have a net positive or negative effect on

¹⁹ Brigitte Unger and Elena Madalina Busuioc, *The Scale and Impacts of Money Laundering* (Edward Elgar Publishing 2007), 12.

²⁰ John Walker and Brigitte Unger, 'Measuring Global Money Laundering: "The Walker Gravity Model"' (2009) 5 *Review of Law & Economics* 821.

²¹ 'Illicit Money How Much is Out There?' (*United Nations on Drugs and Crime*, 2011) <http://www.unodc.org/unodc/en/frontpage/2011/October/illicit-money_-how-much-is-out-there.html> accessed 13 November 2014.

²² John Walker, 'How Big is Global Money Laundering?' (1999) 3 *Journal of Money Laundering Control* 25.

²³ 'Money Laundering: the Importance of International Countermeasures - Address by Michel Camdessus' (*International Monetary Fund*, 1998) <<http://www.imf.org/external/np/speeches/1998/021098.HTM>> accessed 1 October 2014.

²⁴ Peter Reuter, 'Are Estimates of the Volume of Money Laundering either feasible or useful?' in Brigitte Unger and Daan van der Linde (eds), *Research Handbook on Money Laundering* (Edward Elgar 2014).

²⁵ This figure is quoted in Nicholas Ryder, *Money Laundering - An Endless Cycle? A Comparative Analysis of the Anti-Money Laundering Policies in the United States of America, the United Kingdom, Australia and Canada* (Routledge 2012), 74, quoting the Financial Services Authority, 'What is Financial Crime'.

²⁶ 'Money Laundering: the Importance of International Countermeasures - Address by Michel Camdessus'.

²⁷ Jackie Harvey, 'An Evaluation of Money Laundering Policies' (2005) 8 *Journal of Money Laundering Control* 339.

²⁸ *The Financial Challenge to Crime and Terrorism* (HM Treasury, 2007).

²⁹ *Debate on 17th March: Bribery, Tax Avoidance, Corruption and Money Laundering* (House of Lords, 2011)

³⁰ Raymond Baker, *Capitalism's Achilles Heel: Dirty Money and How to Renew the Free-Market System* (John Wiley & Sons 2005).

the economy in the long run'.³¹ Even if this is the case, the link between corruption and money laundering³² leaves the option of not doing anything untenable, as the extent and impact of corruption is widespread and detrimental to society, especially in developing countries such as Nigeria although rich in oil reserves with a GDP of \$521,803bn and ranked 23rd in the world,³³ the majority of the people are living in poverty.³⁴ Unger confirms Baker's evaluation to a degree, by introducing an idea that '*giants wash more*'³⁵ where developed countries that have established financial and legal centres are inherently involved in money laundering also share a symbiotic relationship with their offshore tax havens.

One such giant, HSBC forfeited \$1.2bn in a deferred prosecution agreement to the US Department of Justice (DoJ) for AML violations that involved Mexican Drug Cartels and sanctions abuse dealing with Iran.³⁶ Subsequently, the FCA also imposed oversight on HSBC's operations.³⁷ This example shows the scale of the problem, and many more examples of poor practice continue to emerge.³⁸ The foreign exchange scandal,³⁹ which again demonstrated unethical and possibly illegal behaviour in banks, with Osborne making strong statements that 'tough action', was being taken to 'clean up corruption in the City'.⁴⁰ Banking misconduct is not new and it has been suggested before that activity involving money laundering can undermine governance of banks and corrupt aspects of the financial system.⁴¹ Whistle Blower Herve Falciani revealed through the International Consortium of Investigative Journalists⁴² a range of poor practices that suggested HSBC had been 'complicit with rather than lax'⁴³ in noticing and detecting financial crime in their bank.⁴⁴ Naheem suggests that rather relying on regulation alone to manage money

³¹ Joras Ferweda, 'The Effects of Money Laundering' in Brigitte Unger and Daan van der Linde (eds), *Research Handbook on Money Laundering* (Edward Elgar 2014)s

³² David Chaikin and J. C. Sharman, *Corruption and Money Laundering: a Symbiotic Relationship* (Palgrave Macmillan 2009).

³³ 'Gross Domestic Product 2013' (*World Bank*, 2013) <<http://data.worldbank.org/data-catalog/GDP-ranking-table>> accessed 17 November 2014.

³⁴ Ayodeji Aluko and Mahmood Bagheri, 'The Impact of Money Laundering on Economic and Financial Stability and on Political Development in Developing Countries: The Case of Nigeria' 15 *Journal of Money Laundering Control* 442.

³⁵ Unger and Busuioc, 12.

³⁶ 'HSBC Holdings Plc. and HSBC Bank USA N.A. Admit to Anti-Money Laundering and Sanctions Violations, Forfeit \$1.256 Billion in Deferred Prosecution Agreement' (*US Department of Justice*, 2012) <<http://www.justice.gov/opa/pr/2012/December/12-crm-1478.html>> accessed 20 January 2013. The total amount HSBC agreed to pay was \$1.9bn, which includes \$1.2bn for the DPA, \$665m in civil penalties; \$500m to the office of the Comptroller; and \$165m to the Federal Reserve.

³⁷ 'FSA Requires Action of the HSBC Group' (*Financial Conduct Authority*, 2013) <<http://www.fca.org.uk/news/fsa-requires-action-of-the-hsbc-group>> accessed 8th October 2013.

³⁸ Kara Scannell, 'BNP pleads guilty to sanctions violations and faces \$8.9bn fine' *Financial Times* (London, 30 June 2014) <<http://www.ft.com/cms/s/0/db2daede-009c-11e4-9a62-00144feab7de.html?siteedition=uk#axzz36IZYlqVF>> accessed 2 July 2014.

³⁹ Philip Augar, 'The Forex Debacle – A Scandal to end all Scandals' *Financial Times* (12 November 2014) <<http://www.ft.com/cms/s/0/c32cc892-6a5f-11e4-bfb4-00144feabdc0.html?ftcamp=crm/email/follow/author/Q0fMDA2NTUxOA==&QXV0aG9ycw==/product&#axzz3IwRJ8t6Q>> accessed 13 November 2014.

⁴⁰ 'George Osborne: 'Tough Action to Clean up Corruption.' (*BBC News*, 2014) <<http://www.bbc.co.uk/news/uk-30016262>> accessed 13 November 2014.

⁴¹ Peter J Quirk, *Macroeconomic Implications of Money Laundering* (IMF Working Paper 96/66 1996); Peter J Quirk, 'Money Laundering: Muddying the Macroeconomy' (1997) 2 *Trends Organ Crim* 10.

⁴² 'About the ICIJ' (*International Consortium of Investigative Journalists*) <<http://www.icij.org/about>> accessed 30 June 2015.

⁴³ Tim Bowler, 'Global Views on the HSBC Tax Scandal' (*BBC News*, 2015) <<http://www.bbc.co.uk/news/business-31300712>> accessed 30

⁴⁴ David Leigh and others, 'HSBC Files Show How Swiss Bank Helped Clients Dodge Taxes and Hide Millions' *The Guardian* (London, 9 February 2015) <<http://www.theguardian.com/business/2015/feb/08/hsbc-files-expose-swiss-bank-clients-dodge-taxes-hide-millions?CMP=EMCNEWEML661912>> .

laundering offences, AML compliance needs to be entrenched into the corporate social responsibility approach.⁴⁵

Baker draws attention to the potential complicity of banks in the money laundering process in the US:

*“When it comes to large deposits from overseas, far too many American banks assume a ‘don’t ask, don’t tell philosophy’ ... In fact, the Treasury Department estimates that 99.9 % of the criminal money presented for deposit in the United States is accepted into secure amounts. It’s a sad fact, but American banks, under the umbrella of conflicting American laws and policies will accept money from overseas even if they suspect that it has been illegally obtained.”*⁴⁶

In the UK there has been both independent and regulatory criticism of banks accepting and being used as financial centres where there has been illicit financial flow.⁴⁷ Similarly an inquiry into money laundering by the French Parliamentary Committee also derided the UK regulatory, judicial and banking sectors as not doing enough and that London and the City are:

*“Highly attractive for money launderers....not only a tax, banking and financial haven, but also, unfortunately, a judicial haven in many respects.”*⁴⁸

The proposition is that the UK is a strong financial centre that supports banking and tax management, by virtue of it also being a judicial haven, where international businesses choose the legal system to conduct business due to the level of expertise available and lack of bureaucracy when compared to other jurisdictions.⁴⁹ Each one of these activities supports each other and in the end all of these sectors where both tax affairs can be planned and executed in a robust legal way perversely support illicit financial flow and money laundering.

One example is the number of shell companies designed to hide the true beneficial owner of companies that enable and facilitate both flow of proceeds of crime and tax evasion and avoidance.⁵⁰ Baker contends that ‘Much of the world’s money passes through systems and sites designed to handle illicit proceeds’.⁵¹ Baker continues with strong assertions that also corroborate Unger’s ‘Giant’s wash more’ analogy.⁵²

*“The richest countries are the biggest promoters of lawlessness in international trade and finance. In a process that parades as agreeable enterprise, illegal money in the trillions of dollars flows effortlessly. Furthermore, North American and European countries as well as other states, maintain legal loopholes that encourage illegal inflows.”*⁵³

⁴⁵ Mohammed Ahmad Naheem, ‘HSBC Swiss Bank Accounts -AML Compliance and Money Laundering Implications’ (2015) 23 *Journal of Financial Regulation and Compliance* 285.

⁴⁶ Garry Emmons, ‘Q & A Dirty Money- Raymond Baker Explores The Free Market’s Demimonde’ (*Harvard Business School*, 2001) <<https://www.alumni.hbs.edu/stories/Pages/story-bulletin.aspx?num=3105>> accessed 11 June 2014; also see Loretta Napoleoni, *The New Economy Of Terror: How Terrorism Is Financed* (United Nations Office on Drugs and Crime 2004), 40-41.

⁴⁷ ‘FSA Publishes Results of Money Laundering Investigation, FSA/PN/029/2001 08 Mar 2001’ (*Financial Services Authority*, 2001) <<http://www.fsa.gov.uk/pages/library/communication/pr/2001/029.shtml>> accessed 20 October 2014.

⁴⁸ E Inciyan, M Roche and B Stern, ‘London "is Lax on Money Laundering" ’ [2001] *Guardian Weekly*.

⁴⁹ Alan Yarrow, ‘Why Now is the Time for London to be Proud of its World-Leading Legal Sector’ (*City A.M.*, 9 February 2015) <<http://www.cityam.com/208946/city-matters-why-now-time-london-be-proud-its-world-leading-legal-sector>> accessed 19 June 2015.

⁵⁰ Raymond Baker, ‘The Scale of the Global Financial Structure Facilitating Money Laundering ’ in Brigitte Unger and Daan van der Linde (eds), *Research Handbook on Money Laundering* (Edward Elgar 2013), 191.

⁵¹ Baker, *Capitalism’s Achilles Heel: Dirty Money and How to Renew the Free-Market System*, 339.

⁵² Unger and Busuioic, 12.

⁵³ Baker, *Capitalism’s Achilles Heel: Dirty Money and How to Renew the Free-Market System*, p338-339.

How laundering the proceeds of bribery and corruption occurs and how banks can be used to facilitate this process

It is estimated that \$7.8tn is held in offshore accounts globally,⁵⁴ and certain that part of this figure will represent illicit gains from bribery and corruption from developing countries that have found their way to banks in the UK.⁵⁵ Historically British banks have accepted millions of pounds from corrupt Nigerian Officials, the notorious examples include Sani Abachi,⁵⁶ and James Ibori,⁵⁷ questioning the banks' commitment to preventing and tackling financial crime.⁵⁸ Carr contends that it is actually banking secrecy and the pursuit of profits that allows the disregard of AML legislation, regulations and soft law by banks that the AML provisions are only as good as the banks' ability and desire that enforce them.⁵⁹ The FSA were critical of how UK banks managed high-risk⁶⁰ customers and politically exposed persons (PEPs).⁶¹ Furthermore, they also identified many control weaknesses in AML systems that have seen little improvement since 2001.⁶²

Banking secrecy in Europe is well established in Switzerland, Lichtenstein, Austria, Luxembourg, the Channel Islands and Gibraltar.⁶³ The Swiss Federal Law on Banks and Savings 1934, known as the Swiss Banking Act 1934,⁶⁴ stipulates that clients' details shall remain secret and the revelation of the personal details would constitute an offence punishable with a fine of 50,000 CHF or up to six months of prison. Currently the offence carries a fine of 250,000 CHF and three years of prison. Article 47 states a person will be guilty if he discloses:

*"A secret that is entrusted to him in his capacity as body, employee, appointee, or liquidator of a bank, as body or employee of an audit company or that he has observed in this capacity."*⁶⁵

Switzerland appears first on the rankings from Financial Secrecy Index,⁶⁶ but it is not the Swiss Banking Act 1934 that enables this, as Singapore and Luxembourg have stricter

⁵⁴ *Global Wealth 2011 Shaping a New Tomorrow How to Capitalize on the Momentum of Change* (Boston Consulting Group, 2011), 13.

⁵⁵ Indira M Carr and Robert Jago, 'Corruption, Money Laundering, Secrecy and Societal Responsibility of Banks' [2014] Social Science Research Network, <http://ssrn.com/abstract=2454934>.

⁵⁶ Bonnie Malkin, 'US freezes \$458m hidden by former Nigerian leader Sani Abacha' (*The Telegraph*, 2014) <<http://www.telegraph.co.uk/news/worldnews/africaandindianocean/nigeria/10679487/US-freezes-458m-hidden-by-former-Nigerian-leader-Sani-Abacha.html>> accessed 7 March 2014; also see, 'FSA Publishes Results of Money Laundering Investigation, FSA/PN/029/2001 08 Mar 2001'. Andrew Walker, 'James Ibori-How a thief almost became Nigeria's President' (*BBC*, 2012) accessed 11 March 2014.

⁵⁷ Mark Tran, 'Former Nigeria State Governor James Ibori Receives 13-year sentence' *The Guardian* (17 April 2012) <<http://www.guardian.co.uk/global-development/2012/apr/17/nigeria-governor-james-ibori-sentenced>> accessed 27 July 2013; also see 'London Money Laundering Trial: James Ibori, Victor Attah, Love Ojakovo, Henry Imashekka And David Edevbie Facing 25-Count Indictment' (*Sahara Reporters*, 2011) <<http://saharareporters.com/news-page/london-money-laundering-trial-james-ibori-victor-attah-love-ajakovo-henry-imashekka-and-da>> accessed 27 July 2013.

⁵⁸ *International Thief Thief* (Global Witness 2010), 2

⁵⁹ Carr and Jago

⁶⁰ The FCA suggests high risk customers are those who may be linked to identify high risk money laundering countries or business sectors, and who have complex or opaque beneficial structures un-necessarily. See 'High risk customers under Money Laundering' (*Financial Conduct Authority*, 28 January 2015) <<https://www.fca.org.uk/about/what/enforcing/money-laundering/high-risk-customers>> accessed 19 June 2015.

⁶¹ *Banks' Management of High Money-Laundering Risk Situations* (Financial Services Authority, 2011)

⁶² 'FSA Publishes Results of Money Laundering Investigation, FSA/PN/029/2001 08 Mar 2001'

⁶³ Carr and Jago, 12.

⁶⁴ Swiss Federal Law on Banks and Savings Banks SR 952.0 of 8 November 1934; Status as of 1 January 2009

⁶⁵ *Ibid*, also see the official German version: 'Bundesgesetz über die Banken und Sparkassen'

⁶⁶ 'Financial Secrecy Index - 2013 Results'.

secrecy laws; it is the lack of international corporate transparency on its ownership of companies and other financial vehicles.⁶⁷

The Financial Secrecy Index which is published by the Tax Justice Network, provides a ranking of secrecy jurisdictions globally. If the UK were assessed including its British Overseas Territories, then the UK ranking for secrecy would be first.⁶⁸ The realisation that UK banks could be culpable and provide the financial vehicles to transfer illicit financial capital may be unpalatable, but it is becoming more recognisable.⁶⁹

One of the challenges in this area is that banking and corporate secrecy attracts both legal and illegal foreign capital. There seems to be a sharper focus on this from the international community with respect to corporate reporting,⁷⁰ where corporations take advantage of offshore financial centres and services to minimise their tax liabilities through transfer pricing.⁷¹ The flow of licit or legitimate but potentially unethical capital, for example transfer price abuse has been targeted by both Global Witness,⁷² and Transparency International,⁷³ is appearing on global agendas as a top priority.⁷⁴ The UK banks themselves take advantage of multi-jurisdictional transfer pricing and have also have been criticised and targeted by regulators to clean up their act in a variety of scandals including money laundering.⁷⁵

United Kingdom

The UK's approach to financial crime and money laundering is quite disparate. The primary agency charged with dealing with money laundering is the HM Treasury.⁷⁶ The Crime and Courts Act 2013 established The National Crime Agency (NCA) and abolished the SOCA.⁷⁷ The NCA is also the financial intelligence unit (FIU) for the UK and a sub function, the Economic Crime Command⁷⁸ addresses white collar crime.

The Financial Conduct Authority (FCA) formally the Financial Services Authority⁷⁹ had a statutory objective to reduce financial crime through the Financial Services and Markets

⁶⁷ Patrick Emmenegger, 'The Politics of Financial Intransparency: The Case of Swiss Banking Secrecy' (2014) 20 *Swiss Political Science Review* 146, 151.

⁶⁸ 'Financial Secrecy Index - Illuminating Shady Places' (*Tax Justice Network*, 2014) <<http://www.financialsecrecyindex.com>> accessed 18 November 2014.

⁶⁹ 'British Banks Complicit in Nigerian Corruption, Court Documents Reveal' (*Global Witness*, 2010) <<http://www.globalwitness.org/library/british-banks-licit-nigerian-corruption-court-documents-reveal>> accessed 18th October 2014.

⁷⁰ *Transparency In Corporate Reporting* (Transparency International 2014).

⁷¹ *Death and Taxes: The True Toll of Tax Dodging* (Christian Aid, 2008).

⁷² 'TED Prize Winner Charmian Gooch Announces Global Campaign to Abolish Anonymous Companies' (*Global Witness*, 2014) <<http://www.globalwitness.org/library/ted-prize-winner-charmian-gooch-announces-global-campaign-abolish-anonymous-companies>>

⁷³ *Ending Secrecy To End Impunity: Tracing The Beneficial Owner* (Transparency International, 2014).

⁷⁴ Alvin Mosioma, Subrat Das and Oriana Suarez, 'G20- Time to Halt the Flow of Illicit Money' *Sidney Morning Herald* (18th September 2014) <<http://www.smh.com.au/comment/g20-time-to-halt-the-flow-of-illicit-money-20140917-10hzw3.html#ixzz3DgfGxKUN>> accessed 19 September 2014.

⁷⁵ Will Hutton, 'Banking is Changing, Slowly, but its Culture is Still Corrupt' *The Observer* (16 November 2014) <<http://www.theguardian.com/commentisfree/2014/nov/16/banking-changing-slowly-but-culture-still-corrupt/print>> accessed 18 November 2014.

⁷⁶ *Policy Paper - Preventing Money Laundering* (HM Treasury, 2013).

⁷⁷ Crime and Courts Act 2013, S1; also see 'Crime and Courts Act 2013 - Explanatory Notes - Summary' (*The National Archives*, 2013) <<http://www.legislation.gov.uk/ukpga/2013/22/notes/division/2/>> accessed 12 August 2013.

⁷⁸ 'Economic Crime Command' (*National Crime Agency*, 2013) <<http://www.nationalcrimeagency.gov.uk/about-us/what-we-do/economic-crime>> accessed 9th October 2013.

⁷⁹ The Financial Services Act 2012 enabled a change in the way the UK financial system was managed and provided for a transfer of power from the FSA to the Bank of England where the FSA was dismantled and

Act 2000, but this was amended by the Financial Services Act 2012, that in principle should cover financial crime.⁸⁰ The FCA has a strategic objective to ensure relevant markets function well, and three operational objectives that are protection for consumers; protection and enhancement of the integrity of the UK financial system; and to promote competition in the interest of consumers.⁸¹

The Serious Fraud Office (SFO) also gets involved in high value money laundering cases where there is a link with corruption and fraud.⁸² The UK is seen to have adopted a comprehensive approach to fighting money laundering: it has implemented both the UN and EU legal instruments and is preparing to also implement the fourth EU Money Laundering Directive, although the Law Society has expressed opposition for the requirement for transparency of beneficial ownership.⁸³ However, Cameron amongst others is seen to be leading the requirement for greater transparency in corporations;⁸⁴ and the awareness of how some multi-national organisations manage their financial affairs seems to be becoming more public, the banks being included in this group.⁸⁵

The UK is also a member of the FATF and complies satisfactorily with core and key recommendations.⁸⁶ The National Crime Agency is an active member of the Egmont group;⁸⁷ where financial intelligent units (FIU's) co-ordinate and share information and training with respect to dealing with money laundering.

Part 7 of the Proceeds of Crime Act (POCA) 2002 is the principal money laundering legislation in the UK. A person commits an offence if he conceals, disguises, converts or transfers criminal property; and there is a jurisdictional element where a person would commit an offence if he removes criminal property from the UK.⁸⁸ An offence is also committed if a person is involved in an arrangement where he knows or suspects that he is involved in the facilitation and movement of criminal property on behalf of another person.⁸⁹ This would catch a banker who knowingly transfers laundered money through his bank to other jurisdictions or offshore facilities on the instruction of his client.

The UK is seen as a leader in the field of anti-money laundering practice both from a legislation point of view and from an operational and strategic perspective. A risk-based approach was adopted by the UK in 2003, well before the FATF global introduction in 2007;⁹² and this is contained in the Money Laundering Regulations 2007;⁹³ and the Joint

three new agencies created: The Financial Policy Committee, The Prudential Regulation Authority and the Financial Conduct Authority. See *A New Approach to Financial Regulation* (HM Treasury, 2011).

⁸⁰ S6 of FSMA 2000 that covered the FSA's duty to reduce financial crime has been repealed and the Financial Services Act is not explicit in its approach to Financial Crime. At the same time the Crime and Courts Act 2013 that empowers the National Crime Agency with powers to deal with economic crime, has confused the already confusing approach to financial crime in the UK.

⁸¹ 'FCA - Statutory Objectives' (*Financial Conduct Authority*, 2012) <<http://www.fca.org.uk/about/why-we-do-it/statutory-objectives>> accessed 5 December 2014.

⁸² 'Money Laundering Investigation Opened' (*Serious Fraud Office* 2014).

⁸³ 'Fourth European Money Laundering Directive Proposals Released Today' (*The Law Society*, 2014) <<http://www.lawsociety.org.uk/advice/articles/new-money-laundering-directive/>> accessed 6 November 2014.

⁸⁴ 'David Cameron writes to Britain's tax havens, calling for transparency'; , 'TED Prize Winner Charmian Gooch Announces Global Campaign to Abolish Anonymous Companies'

⁸⁵ *Transparency In Corporate Reporting*.

⁸⁶ *Mutual Evaluation Fourth Follow-Up Report Anti-Money Laundering and Combating the Financing of Terrorism - United Kingdom* (Financial Action Task Force, 2009).

⁸⁷ 'List of Members - Egmont Group' (2014) <<http://www.egmontgroup.org/membership/list-of-members/by-region/europe>> .

⁸⁸ Proceeds of Crime Act 2002, s327.

⁸⁹ *Ibid*, s328.

⁹² 'FATF Guidance on the Risk-Based Approach to Combating Money Laundering and Terrorist Financing - High Level Principles and Procedures' (*Financial Action Task Force*, 2014) <<http://www.fatf->

Money Laundering Steering Group guidance.⁹⁴ The UK does seem compliant with most international, regional and soft law AML stipulations.

Harvey states 'Indeed, the UK is particularly assiduous in the application of its anti-money laundering systems and procedures'⁹⁵ and quotes Levi suggesting the UK as 'the greatest devotee of anti-money laundering provisions within the European Union'.⁹⁶

Whilst the UK appears to have strong AML practices in place, there is serious confusion with respect to the overall UK strategic approach. The repeal of section 6 of FSMA 2000 amended by the Financial Services Act 2012, has effectively taken away the clear financial crime edict from the FCA and replaced it with a more generic strategy to ensure markets work well.⁹⁷ The creation of the National Crime agency and its remit as a FIU under the Crime and Courts Act 2012, and the SFO also having the ability to prosecute cases, makes the UK's approach to money laundering and financial crime overly complicated. Amongst this disparateness is that the British Overseas Territories and Crown Dependencies are seen as key money laundering and illicit financial flow facilitators that puts the UK in a contradictory position.

Banking Standards

It is possible that the most important aspect of tackling money laundering is the least discussed, which is the apparent absence of mandatory AML measures or policies prescribed by the banking industry as a whole. Whether intentional or un-intentional, this contributes to the hypotheses that banks should do more in the fight against money laundering and the flow of illicit financial capital.

Currently there does not appear to be a mandated banking document that provides a collective strategy on preventative measures that banks should adopt, created by banks for banks. The Bank of International Settlements (BIS) represents the interests of 60 member central banks globally that makes up 95% of world GDP,⁹⁸ and to support and act as a bank to central banks to achieve monetary and financial stability and foster international co-operation. The Basel Committee, which is a part of BIS, sets global standards for the prudential regulation of banks, its aims closely aligned to that of BIS,⁹⁹ published guidelines addressing how banks should include money laundering and financing of terrorism within their overall and risk management.¹⁰⁰ The FATF

gafi.org/documents/riskbasedapproach/fatfguidanceontherisk-basedapproachtocombatingmoneylaundryingandterroristfinancing-highlevelprinciplesandprocedures.html> accessed 10 November 2014; also see the updated policy for banks: *Guidance for a Risk Based Approach - The Banking Sector* (Financial Action Task Force, 2014).

⁹³ *Money Laundering Regulations 2007*.

⁹⁴ *Prevention of Money Laundering/ Combating Terrorist Financing - Guidance for the Financial Sector Part 1* (The Joint Money Laundering Steering Group, 2007).

⁹⁵ Harvey.

⁹⁶ Michael Levi, 'Following the Criminal and Terrorist Money Trails' [2003] *Criminal Finances and Organising Crime in Europe*.

⁹⁷ It could be argued the financial crime edict is implicit in the FCA objective to maintain the integrity of the financial markets and also note the FCA still has a remit to ensure firms are not used for financial crime through adherence to its "rules". See 'Enforcing Our Rules and Fighting Financial Crime' (*Finacial Conduct Authority*, 2015) <<https://www.fca.org.uk/about/what/enforcing#>> accessed 31 July 2015; and 'SYSC Senior Management Arrangements, Systems and Controls - 6.3 Finacial Crime' (*FCA & PRA Combined Handbook*) <<https://fshandbook.info/FS/html/handbook/SYSC/6/3>> accessed 31 July 2015.

⁹⁸ 'About BIS' (*Bank of International Settlements*, 2014) <<https://www.bis.org/about/index.htm?l=2>> accessed 16 December 2014

⁹⁹ 'About the Basel Committee' (*Bank for International Settlements*, 2014) <<http://www.bis.org/bcbs/about.htm>> accessed 16 December 2014.

¹⁰⁰ *Sound Management of Risks Related to Money Laundering and Financing of Terrorism* (Bank for International Settlements 2014).

recommendations are fully supported by the Basel Committee and it is clear to see considerable interaction between the two bodies in addressing money laundering issues.

The International Banking Federation (IBF), is the global body that represents the collective views of national banking associations and states on its website that its members include 700 of the top 1000 banks which manage assets over \$31tn.¹⁰¹ With the continuing number of scandals, particularly in the area of money laundering it is surprising to note the absence of a clearly visible global AML policy; the IBF simply state that they work closely with the FATF.¹⁰² Similarly the European Banking Association, a member of the IBF does not have a visible AML policy. It does produce AML reports, the most recent in 2011,¹⁰³ which provides a country-by-country analysis of key AML legislation and regulation. For a European status document, it is out of date with key changes in the AML landscape including the 2012 FAT recommendations¹⁰⁴ and the 4th Money Laundering Directive¹⁰⁵ not being covered. The UK section is included and is similarly out of date as there has not been a report in 2012 and 2013 and refers to the governing body and FIU that deals with AML as SOCA.¹⁰⁶ The EBF hosted a conference on 19th November 2014 titled “Banking for the Future”,¹⁰⁷ did not have a single item on its agenda for money laundering, this is surprising especially with the many cases of banks being fined¹⁰⁸ and pursued¹⁰⁹ with respect to money laundering.

The Banking Standards Review Council, since its set up in 2014, has yet to issue clear guidance on the approach and strategy banks should adopt, apart from stating the obvious that there needs to be more trust¹¹⁰ in the banks and culture needs to change.¹¹¹

Conclusion

Banks are seen as the foundation of a developed country’s economy, where they facilitate growth, provide financial stability and enable free markets. At the same time, banks are the primary places where the proceeds of crime are legitimised. The most convincing argument that establishes the link between illicit financial flow and the culpability of a bank is the combination of banking secrecy law and client confidentiality. In addition the lack of transparency of beneficial ownership of corporate schemes that enable the concealment of proceeds of crime, tax avoidance and evasion through complicated shell companies and offshore financial services, also contributes to the bank’s role in this area.

¹⁰¹ ‘International Banking Federation - About Us’ (*International Banking Federation*, 2014) <<http://www.ibfed.org/about-ibfed>> accessed 28 November 2014.

¹⁰² ‘Financial Crime - Background’ (*International Banking Federation*, 2014) <<http://www.ibfed.org/financial-crime>> accessed 28 November 2014.

¹⁰³ *EBF Anti-Money Laundering Report* (European Banking Federation, 2011).

¹⁰⁴ *International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation, the FATF Recommendations 2012* (Financial Action Task Force, 2012).

¹⁰⁵ Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the Prevention of the use of the Financial System for the Purposes of Money Laundering or Terrorist Financing.

¹⁰⁶ , *EBF Anti-Money Laundering Report*, 235.

¹⁰⁷ ‘Banking for the Future, EBF 2014 Annual Conference’ (*European Banking Federation*, 2014) <<http://www.ebf-fbe.eu/2014-annual-conference/programme/>> accessed 1 December 2014.

¹⁰⁸ ‘Standard Bank PLC fined £7.6m For Failures in its Anti-Money Laundering Controls’ (*Financial Conduct Authority*, 2014) <<http://www.fca.org.uk/news/standard-bank-plc-fined-for-failures-in-its-antimoney-laundering-controls>> accessed 4 December 2014.

¹⁰⁹ Emma Dunkley, ‘Belgian Prosecutor Accuses HSBC of Money Laundering’ *Financial Times* (17 November 2014) <<http://www.ft.com/cms/s/0/1f2a3b56-6e62-11e4-bffb-00144feabdc0.html?siteedition=uk#axzz3JK0N09Yk>> .

¹¹⁰ , ‘Banking Industry Must Raise its Game’.

¹¹¹ , ‘Keynote Speech by Dame Colette Bowe, Chairman of the Banking Standards Board to the London IOSCO Conference’.

It seems quite remarkable that there is not a global standard set by either BIS or the International Banking Federation. The IBF confers to FATF. The European banking association do not have a policy document on AML preventative measures. The BBA in the UK also do not have a specific AML preventative policy document.

The UN conventions have provision to deal with both money laundering and bribery and corruption. The concept of illicit financial flow is becoming more widespread, however the conventions also adequately cover this too.

At the regional level, the 4th Money Laundering Directive addresses the issue of lack of transparency of anonymous shell companies to hide true beneficial owners of corporate schemes designed to avoid tax.

There is considerable literature on the subject of money laundering, and bribery and corruption in isolation of each other. This paper sought to bring those together to show that they are inter-dependant and should be approached together, especially from a preventative and enforcement point of view. The subject of illicit financial flow is becoming more familiar with policy makers and legislative bodies and rests in between bribery & corruption and money laundering. Prior to transfer price abuse, illicit financial flow as a term was normally associated with grand corruption, but the issue of transfer price abuse has brought this subject into the attention of governments as it identifies potential abuses by large organisations of avoiding / evading tax. The same financial vehicles used by large corporations to minimise their tax liabilities are also used by criminals to launder money. The role of banks should therefore be questioned, as they willingly or unwittingly become both facilitators of legitimate financial flows, but also illegitimate financial flows or the proceeds from crime. Illicit financial flows include both the proceeds of crime, but also legal but morally dubious financial flows, the prime example being of transfer tax abuse.

The UN conventions stipulate the money laundering measures that member countries should adopt and the FATF and OECD provide comprehensive soft law guidelines to enable effective AML practice. The EU, through its money laundering directives require member states to comply with various AML provisions that should be impactful towards the fight in reducing or eradicating money laundering. The UK has a comprehensive AML policy and even though it is disparate it follows global AML standards. Yet despite the vast array of international, regional and national AML tools available, it is not clear if there has been any impact on the extent of money laundering, which raises the question whether there should be a different approach to dealing with it, one which should be led by the banks themselves.

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