



UK AML guidance update: Tougher enforcement to be taken?

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Key takeaways

- On 17 May 2024 the National Crime Agency (NCA) published updated guidance clarifying certain terms and indicating that a more aggressive stance is being taken to target money laundering.
- The guidance is aimed at reporters of suspicious activity reports (SARs) and reinforces a more stringent scrutiny of SARs, with the threat that a defence may be refused.

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What is a SAR?

SARs are often submitted by those in the regulated sector including professionals such as solicitors, accountants and estate agents. However, they can be submitted by anyone who has knowledge, suspicion or belief that another person is laundering money or financing terrorism and would like to obtain a defence. These individuals are considered a vital source of intelligence. Crucially, SARs provide information and intelligence from the private sector that would otherwise not be accessible to law enforcement.

The SAR regime is administered by the United Kingdom Financial Intelligence Unit (UKFIU) of the NCA to prevent and disrupt money laundering and to counter the financing of terrorism. One of the core functions of the UKFIU is the processing of requests for a defence.

An individual may request a criminal defence against money laundering (DAML) from the NCA where they:

- i. Suspect or know that property is criminal; or
- ii. Suspect or believe that something is or may be terrorist property; or
- iii. Intend to carry out an activity which they anticipate could result in them committing a principal money laundering or terrorist financing offence.

DAMLs and DATFs

A person does not commit a principal money laundering offence if they have received a DAML from the NCA. A DAML should only be requested by an individual when there is a risk of handling the proceeds of

crime and they require a defence for doing so.

The NCA cannot grant a DAML for offences such as tipping off (section 333A) or prejudicing an investigation (section 342). Only the principal money laundering offences under sections 327 to 329 of the Proceeds of Crime Act 2002 (POCA) are applicable.

It is vital that companies implement anti-money laundering (AML) measures across the business to ensure compliance with legal requirements to protect their reputation and maintain the trust of their customers and stakeholders.

The most effective AML frameworks typically involve a risk-based approach that allows organisations to allocate resources where they are most needed. This often includes conducting risk assessments to identify potential vulnerabilities, implementing appropriate controls to mitigate highlighted risks, and then carrying out ongoing monitoring and reviews of the effectiveness of the measures in place.

A strong AML strategy that includes regular due diligence and robust regulatory obligations is essential in today's complex and heavily regulated environment. Where appropriate measures are not demonstrated, the UKFIU is reluctant to grant DAMLs and may even escalate the matter to the applicable regulatory body for further consideration.

In order to request a DAML, a reporter should submit a SAR via the [NCA SAR Portal](#), including all relevant information to enable the UKFIU to review the request.

Once submitted, the SAR then enters the notice period (seven working days), during which time the UKFIU assesses the information and determines the appropriate response. The main objective is to identify whether there is likely to be any law enforcement action in response to the known or suspected activities. If no response is received by the end of the notice period, a defence is afforded.

Similar to a DAML, a defence against terrorist financing (DATF) is where a disclosure is made to the NCA under section 21ZA Terrorism Act 2000 (TACT) because the reporter suspects that the property they intend to deal with may be criminal property and by dealing with it they risk committing a terrorist financing offence under sections 15 – 18 of TACT.

The principal terrorist financing offences include fundraising for the purposes of terrorism (section 15) and the use and possession of money or other property for the purposes of terrorism (section 16).

A reporter may submit a DATF where they wish to request a defence to one of the offences before dealing with the potentially criminal property. In cases where 'appropriate consent' is granted from the NCA, the reporter does not commit one of the offences.

Updated guidance

Following repeated misinterpretation on the meaning of consent, the NCA has confirmed that it will no longer use the term consent and instead use the terms 'defence to a money laundering offence' or 'defence to a terrorist financing offence' (DAML/DATF). This is to make clear that the process is not a substitute for taking a risk-based approach or fulfilling regulatory and legal responsibilities.

In addition to a granted letter or not receiving any response by the end of the notice period, potential outcomes following receipt of a SAR defence request include the case being closed due to a lack of information and the reporter receiving a refusal letter.

- **Case closed due to lack of information**

Where requests do not include sufficient information, the UKFIU may contact the reporter and inform them that the case is closed without further consultation. In other circumstances an individual may be requested to provide additional information in writing within two working days or the case may be closed.

In the event that the case is closed, the individual will need to resubmit a request for it to be considered again.

- **Refusal letter received**

In relation to POCA cases, the guidance states that there is no defence until either a granted letter is provided or the end of the 31 day moratorium period.

The moratorium period begins on the day of refusal and ends after 31 calendar days. During this period, law enforcement may get in touch regarding any investigation, for example to serve production orders, property freezing orders and restraint orders in relation to the matter. Continuing to transact following a refusal letter risks committing a prima facie money laundering or terrorist financing offence.

Albeit these are less substantive changes, they appear to indicate that there will be more scrutiny of SARS, DAMLs and DATFs, as well as more refusals, and consequently an increased likelihood of law enforcement investigations.

If you have any concerns about the above and how anti-money laundering, fraud, bribery or corruption may impact you or your business, please do not hesitate to contact us.