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Reducing economic crime in the property sector

RECOMMENDATIONS FOR REFORM | POSITION PAPER

July 2023

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Purchasing property in the UK is a common method that can be used by serious organised criminals to launder the proceeds of criminal activity.

The sheer size of the property market in the UK and the high value of property assets means that extremely large amounts of criminal funds can be 'cleaned' in a single transaction.

This position paper includes recommendations that the UK Government should include in future economic crime legislation as well as other plans and reforms to reduce economic crime in the property sector.

UK PROPERTY SECTOR

The sales and lettings sectors, property auctioneers and high value dealers are all attractive targets for those looking to launder money. Both small and large agencies are susceptible to criminal activity. The London property market and the wider UK housing market are highly attractive options and are both affected by financial crime. While the property sector remains largely unregulated, and without minimum standards to operate, the industry is vulnerable to attack.

SCALE OF ECONOMIC CRIME

According to the House of Commons Treasury Select Committee, economic crime is estimated to run into tens of billions of pounds, potentially hundreds of billions, and is rapidly growing. Given that property is such an attractive target, property is involved in a large percentage of this crime, which costs the UK Government an estimated £37 billion every year.¹

IMPACT OF MONEY LAUNDERING

Property bought with laundered money often sits empty, taking homes away from the market that could be used for families and having a further negative impact on the wider community. To maintain integrity in our housing market it is vital to know who the ultimate owner of a property is.

COMPLIANCE

For the property industry the ability for agents to comply with regulations differs depending on the size of the business. Some larger property agency businesses have financial services divisions whilst smaller agency businesses are unlikely to have dedicated compliance teams.

In the case of a larger property agency business, despite having a financial services division, they are unlikely to have the same level of defences, processes and resilience as a bank or financial institution to protect themselves against financial crime. This leaves these businesses vulnerable to criminals seeking opportunities to launder money.

In contrast, a small agency may only have a handful of staff. This affects smaller businesses in two ways. Firstly, they have limited capacity to train their workforce. Secondly, they are dealing with an increased workload due to the associated volume of administration and higher level of due diligence that the Money Laundering Regulations require.

PROPERTY AGENTS

Estate agents operating across the UK and letting agents in England and Northern Ireland are unregulated, which means anyone can set up a business. To work in the sector there are no minimum standards and there is no statutory regulation to ensure agents are suitably qualified.

Additionally, agents who are not members of a professional body do not have to meet minimum competency standards. This can make estate agents a target for criminal activity. It also means that consumers are potentially dealing with someone who does not understand the technicalities involved in buying and selling property, nor understand how to analyse the level of risk to their business of money laundering or terrorist financing.

Key recommendation:

Regulate property agents

On 18 July 2019, the Regulation of Property Agents (RoPA) working group produced a report setting out recommendations for a new regulatory framework focused on estate agents in the UK and letting and managing agents in England. The proposals included ensuring everyone in the industry is licensed, adheres to a strict code of practice, and holds (at least) a Level 3 qualification. The UK Government must implement the recommendations.²

MONEY LAUNDERING SUPERVISION

It's an offence to trade as an estate agent unless you're registered with HM Revenue and Customs (HMRC) for AML supervision.³ The Fifth Money Laundering Directive expanded the scope of regulated businesses for AML supervision within the property sector to include the letting agency sector but only for high value transactions with a monthly rent of EUR 10,000 or more.

SUPERVISION

HM Treasury appoints AML supervisors to ensure compliance with the requirements of the Money Laundering Regulations. The UK has 25 supervisors: three statutory supervisors (the FCA, HMRC and the Gambling Commission) and 22 legal and accountancy Professional Body Supervisors (PBSs).

Having 25 PBSs, ranging from large public organisations to small professional bodies, this is leading to confusion, a varying quality of supervision as well as a lack of standardised guidance. HMRC, currently the supervisory authority for seven business sectors, issuing separate guidance for each specific business type is potentially overburdened. PropertyMark would suggest the consolidation of supervision, with fewer supervisory bodies, particularly around the Accountancy and Law Sectors and the creation of more sector specific PBSs.

Key recommendation:

Consolidation of supervision with fewer supervisory bodies

Consolidate supervision across sectors with fewer supervisory bodies, who would be more sector specific.

HM REVENUE AND CUSTOMS

Anti-money laundering penalties imposed by HMRC are not broken down by sector and it is not known how many agents have been fined since HMRC took over anti-money laundering regulation from the Office of Fair Trading in 2014.⁴ HMRC must be empowered and resourced to carry out more prosecutions which then act as a greater deterrent for businesses to trade without registering with a supervising authority.

Key recommendation:

Publicise enforcement

HMRC should publish sector specific fines and enforcement activity to act as a greater deterrent against money laundering and criminal activity.

ROLE OF PROFESSIONAL BODIES

Professional bodies should expand their roles to take on anti-money laundering supervision rather than relying upon HMRC to act as a regulatory body for several diverse sectors. Self-regulatory bodies acting as supervisors understand their sectors and gather information about developing risks and anti-money laundering methodologies.

OFFICE FOR PROFESSIONAL BODY ANTI-MONEY LAUNDERING SUPERVISION (OPBAS)

Estate agents do not handle the transfer of money so there needs to be a more integrated approach with financial institutions, mortgage advisers, solicitors and property agents working together to gather relevant information. For instance, creating links with supervisors overseeing solicitors and accountants who are also involved in the property purchasing process will help to ensure that knowledge is being shared and checks are being carried out.

Through greater co-ordination we believe that the different actors involved in the transaction are more likely to flag pinch points or review critical events to prevent illicit purchases from taking place. OPBAS should focus on specific sectors and facilitate the exchange of ideas to counter money laundering. For instance, supervisors with an interest in a topic or process relating to money laundering and property could work together to share information. This is something which could produce more productive outcomes for law enforcement.

Key recommendation:

OPBAS to facilitate the exchange of information

The Office for Professional Body Anti-Money Laundering Supervision to facilitate and report on the exchange of information between supervisors within and across different industries.

ENFORCEMENT

Fines are an effective deterrent, and we know of several agents who have been fined by HMRC. A strong approach to enforcement and prosecution for non-compliance is essential. Currently, property agents need to keep records of suspicious activity reports and any other internal or external reports and decisions as well as Customer Due Diligence checks and business transactions for at least five years. Those agents found to have broken the law can face unlimited fines from the National Crime Agency (NCA) and HMRC and imprisonment depending on the crime.

Key recommendation:

Ring fence fines for further enforcement

The National Crime Agency (NCA) and HMRC should be able to retain fines with money ring fenced for investment in enforcement activity.

CUSTOMER DUE DILIGENCE

Under the Money Laundering Rules, property agents must be able to prove the identity of both the buyer and seller, and any beneficial owner of the customer, to the property sale.

For property agents, Customer Due Diligence means taking steps to identify their customers and checking they are who they say they are. The level of due diligence depends on the agent's risk assessment of each customer. It is a cumulative process and means obtaining the customer's: Full name; Official documentation which confirms their identity (preferably a form of photo ID); Residential address and date of birth; Details of any resulting beneficial owners.

Whilst the beneficial owner is likely to own or control the customer, it may also be the person on whose behalf a transaction or activity is carried out. The level of due diligence is down to the agent to decide, but if the agent has any doubts about a customer's identity, they must cease activities with them until doubts are resolved.

ENHANCED DUE DILIGENCE

Enhanced Due Diligence often involves seeking a better understanding of the source of funds, requiring the payment to be carried out through an account in the customer's name with a bank subject to Customer Due Diligence measures and senior-management approval. Agents must also apply Enhanced Due Diligence on a Politically Exposed Person (PEP). These are individuals that are entrusted with prominent public functions (senior political figures or their immediate family and close associates), held in the UK or abroad. Their position may make them vulnerable to corruption.

However, most property agents or senior managers will not know how to define a middle-ranking or more junior official to distinguish whether enhanced due diligence is necessary. Property agents need more support in how to establish the necessary mechanisms to carry out enhanced due diligence and be able to recognise whether a customer is a Politically Exposed Person.

Key recommendation:

HM Treasury to introduce an easily accessible PEP list

To support agents, HM Treasury should issue an easily accessible Politically Exposed Person (PEP) list and advertise it widely. This is even more important now that there is no longer a distinction between a domestic or foreign PEP.



PRIVATE RENTED SECTOR

By not extending the Money Laundering Regulations to include lettings activity the property sector is vulnerable to criminal activity. In the last 15 years the size of the private rented sector has grown. For instance, in England alone according to the English Housing Survey 2019–20 just over 4.4 million households live in the private rented sector, which is 19% of all households. Furthermore, the UK Government estimate that there are 19,000 letting agents in England.⁵

Unlike estate agents, letting agents hold a significant amount of money from deposits, rents and service charges which highlight the opportunities for cash payments to be made. For example, a letting agent had a tenant explain that they could not pay through a bank account but was able to pay 12 months' rent in advance, in cash. This amounted to £26,000. Although it is best practice to do so and letting agents operating in England must carry out Right to Rent checks, they have no statutory obligation to carry out Customer Due Diligence. Alarming, in circumstances as outlined above, letting agents would not be committing a criminal offence by not submitting a Suspicious Activity Report.

It is relatively easy for someone to obtain a rented property and then use it for a cash-based business. Individuals may then subsequently use criminal money to buy property and/or launder money through various layers of activity. This is highlighted by the case of Aqeel Khan who in December 2014 used profits from laundering millions of pounds for criminals and conned financial institutions to fund a property portfolio and buy a fleet of luxury sports cars. Mr Khan's network included his brother who controlled and co-ordinated the distribution of cash into third party bank accounts. He then used one of his employees to launder money through his accounts and had property assets put into his name.⁶

AML AND CLIENT MONEY PROTECTION

De-risking by banks, in response to the Money Laundering Regulations is preventing a growing number of estate and letting agents from opening client accounts and existing agents with comprehensive trading history are having accounts closed. Conversely, letting agents in England, Wales and Scotland must adhere to Client Money Protection rules that require estate and letting agents to hold client money in a correctly designated client account. This is putting businesses at a disadvantage and making it harder for them to operate.

Banks are asking letting agents to carry out Customer Due Diligence to the level as set out in the Money Laundering Regulations when all letting agents are not legally required to do so. Consequently, letting agents find it very difficult to open client accounts with no legal requirement for all letting agents to register with HMRC for Anti-Money Laundering Supervision. This makes it very difficult for letting agents to adhere to the Client Money Protection rules.

Where letting agents hold a tenancy deposit and can't put that money into a client account, they are in breach of Tenancy Deposit legislation. If letting agents are also brought under the scope of Money Laundering Regulations this would provide banks with the reassurance they need, that the property sector is being policed correctly and clarity on where the money is coming from. Consequently, this would reduce a barrier that can make it hard for estate agents and letting agents to operate.

Key recommendation:

Money Laundering Regulations should include all letting agents

Money Laundering Regulations should include letting agents and landlords to reduce the risk of cash payments being used to 'clean' dirty money. The UK Government should remove the EUR 10,000 monthly rent threshold and set this at zero to create consistency and cover all tenancies let in the private rented sector.

SUSPICIOUS ACTIVITY REPORTS

Under the Regulations there is a requirement to have a nominated person within the property agent's business to act as a Money Laundering Reporting Officer (MLRO) and a Deputy, where applicable. Alongside this, the legislation requires a senior member of the management team to be appointed as being responsible for compliance with the regulations.

When an estate agent knows or suspects another person is engaged in money laundering (whether a transaction has taken place or not) they must raise an internal report. This report needs to go immediately to the MLRO who needs to assess whether there are grounds to pass to the NCA. The NCA will then determine whether the agent can proceed with the transaction.

In the period April 2019 and March 2020, 861 SARs were filed by estate agent businesses and in the period April 2020 to March 2021 this figure had dropped to 680 SARs submitted by estate agents.⁷ Considering, the UK Government estimates that in February 2020 there were 82,830 residential property transactions, a higher proportion of SARs would be expected.⁸

The current guidance on how to submit a SAR is 30 pages long and the process is clunky and involves using drop down lists and codes.⁹ Furthermore, a lot of the information seeking to be collected is geared towards financial institutions such as asking for bank account details which sales agents won't always know depending on when suspicion is formed.

A simplified route for estate agents when making a SAR would be more helpful and involve priority and non-priority reporting. Ultimately, a property transaction is fast moving, and agents need a quick response to SARs that have been submitted—currently no response is provided—it is easier for financial institutions to wait for a response. The NCA need to be responding within 48 hours for the process to work for the property sector.

Key recommendation:

Improved guidance for SARs reporting

Guidance from HMRC should include real life examples from property agents who have given Suspicious Activity Reports to the NCA to illustrate the process and explain the steps required. This would help to better explain to staff and MLROs about how long the process can take and what the outcomes can be.

SAR is the name given to a report sent to the NCA. The report identifies individuals who you, or an employee suspects may be involved in laundering money. The suspicion is that the funds or property involved in the transaction is the proceeds of crime or is linked to terrorist activity.

Key recommendation:

SARs to include priority and non-priority reporting

The process for submitting a SAR should include priority and non-priority reporting to the NCA to allow for greater detail being provided as well as more initial reports filed.

The SAR will detail the exact nature of the customer relationship and the transaction or activity that has given rise to the suspicion of money laundering. The filing of SARs is one area where estate agents can drive improvements and help lead to a reduction in the number of criminals who target the sector.

Key recommendation:

Introduce a standard SAR form for the property sector

Develop a standard form for a SAR tailored to the property sector.

Estate agents need clear guidance from the UK Government that is simple, quick and easy to apply. Information such as fact sheets, flow charts, best practice guidance, dedicated areas on websites and webinars will benefit estate agents and help reduce the time it takes agents to put in place, controls and procedures to anticipate and prevent money laundering or terrorist financing. Providing compliance staff with both structured training to help them feel confident about reporting, and access to the right technology and data to build a full picture of the suspicious activity, is the only way that reporting will increase.

REGISTER OF OVERSEAS ENTITIES

Property is a high-risk sector for money laundering because any foreign company can buy property in the UK without having a presence in the country.

In March 2022, the Economic Crime (Transparency and Enforcement) Act introduced powers for the UK Government to create a public register of the beneficial owners of overseas entities that own property or land in the UK.

A public Register of Overseas Entities is important because criminal funds can be concealed and made to look legitimate through an untraceable 'company' and subsequently the purchasing of property. When property agents try to determine the true, or 'beneficial' owners, they find only documents listing shell companies. The Register must enhance the current anti-money laundering regime in the UK and not work in isolation. Unless the information on the Register can be verified, strengthening existing rules for property agents, it will become a box ticking and futile political exercise that does not contribute to the fight against money laundering and terrorist financing.

Key recommendation:

Real time reporting and 'live' information updating the Register of Overseas Entities

The UK Government must ensure that the Register of Overseas Entities is updated in real time with 'live' updates as is the case with the company register held by Companies House. Without reducing the timeframe for updates this is likely to give rise to criminal offences, limit the accuracy and reduce confidence in the Register. Companies House must be adequately resourced to ensure they can verify information that is provided, and the Register of Overseas Entities is accurate.

Through the registration process, Companies House must be able to make checks and ensure documents and the information are legitimate. Without sufficient resource Companies House could relax standards for certifying information, and there could be a repeat of issues that arose in 2008.

In 2008, data management firm, Datanomic, cross referenced Companies House data with information on high-risk individuals and found that 1,504 disqualified directors were being allowed to run other UK companies.¹⁰

Key recommendation:

Property agents must be able to legally rely on the Register of Overseas Entities

HM Treasury must amend the Money Laundering Regulations to ensure that property agents can legally rely on verification of beneficial owners on the Register of Overseas Entities as part of their own Customer Due Diligence.

UK Government must work directly with Land Registry and HM Revenue and Customs about the implications on regulated sectors. This will not only improve the verification of data through cross-referencing, but it will also provide equivalence to overcome criminal property transactions. Through data cross-referencing, property agents, finance professionals and solicitors will have the ability to report discrepancies in Customer Due Diligence findings.

Key recommendation:

Land Registry must be linked with the Register of Overseas Entities

Through a technical development Land Registry detail must be linked with the Register of Overseas Entities to determine property ownership. This is important because agents will start with the title deed once instructed (because agents deal in property addresses) and will help to speed up and verify the process.

For security reasons some owners won't want to be identified where they have residence. In order to remove security and privacy concerns for certain individuals, supervised businesses for anti-money laundering should be provided with different access levels where specific information is not made public.

The British Overseas Territories must open their registers of beneficial ownership. This would allow property agents, to know who is behind companies, and stop people being able to hide illicit activities behind them. For these registers to work, they will need extra resources. They will also need policing to make sure the data provided is accurate as well as tough sanctions in cases where the information is wrong.

Key recommendation:

British Overseas Territories must open their registers of beneficial ownership

This would allow property agents to know who is behind companies, and stop people being able to hide illicit activities behind them.

SOURCES

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Recommendations

UK PROPERTY SECTOR

- UK Government to widen the scope of money laundering supervision to include all letting agents.
- UK Government to regulate letting agents in England and sales agents across the UK.

COMPLIANCE

- HM Treasury to introduce an easily accessible Politically Exposed Person (PEP) list.

SUPERVISION

- Office for Professional Body Anti-Money Laundering Supervision (OPBAS) to facilitate and report on the exchange of information between supervisors within and across different industries.
- HM Treasury to consolidate supervision across sectors by reducing the number of supervisory bodies, who would be more sector specific.

ENFORCEMENT

- HMRC should publish sector specific fines and enforcement activity to act as a greater deterrent against money laundering and criminal activity.
- National Crime Agency (NCA) and HMRC should be able to retain fines with money ring fenced for investment in enforcement activity.

SUSPICIOUS ACTIVITY REPORTS

- UK Government to develop improved guidance for Suspicious Activity Reports.
- Suspicious Activity Reports to include priority and non-priority reporting.
- Develop a standard form for Suspicious Activity Reports tailored to the property sector.

REGISTER OF OVERSEAS ENTITIES

- Real time reporting and 'live' information updating the Register of Overseas Entities.
- Property agents must be able to legally rely on verification of beneficial owners on the Register of Overseas Entities as part of their own Customer Due Diligence.
- Land Registry detail must be linked with the Register of Overseas Entities to determine property ownership.
- British Overseas Territories must ensure they have publicly accessible registers of beneficial ownership.