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UK anti-money laundering authorities report record numbers of reports

UK anti-money laundering (“AML”) authorities are receiving more Suspicious Activity Reports (“SARs”) than ever. The numbers of cases in which they are being asked to give clearance for transactions to proceed increased by over 50 per cent in 2018/19. These are the headlines emerging from the annual report of the UK Financial Intelligence Unit (“UKFIU”), the part of the UK National Crime Agency (“NCA”) responsible for receiving, analysing and acting upon SARs.

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The report (released on 6 November) also gives the clearest indication yet of how often enforcement authorities are using new powers giving them longer to decide whether to take action following the filing of SARs (and suggests that this is contributing materially to large increases in amounts frozen). On a practical note, it confirms that, despite recent injections of resources into the UKFIU as part of a programme of reform, turnaround times for SARs remain relatively high.

SARs in the UK – The numbers for 2018/19

- 478,437: Total number of SARs made (3.1 per cent increase on 2017/18)
- 34,543: Total number of SARs made in which reporters sought a defence against money laundering offences (“DAML SARs”) (52.7 per cent increase on 2017/18)
- 1,332: Total number of DAML SARs in which UKFIU refused requests for a defence against money laundering offences (3.9 per cent of DAML SARs)
- £131,667,477: Total amount frozen as the result of SARs made (153.7 per cent increase on 2017/18)
- 70: Number of times UK enforcement authorities obtained extensions to the time to decide whether to take action following the filing of SARs (the “moratorium period”)
- 5.12: Average turnaround time for responses to reporters following receipt of SARs by UKFIU (18.5 per cent increase on 2017/18)
- 118: Number of staff dedicated to handling SARs within UKFIU (47.5 per cent increase since 2018)

What is behind the increases?

The report does not suggest why numbers of SARs, and in particular DAML SARs, have increased. Some factors which may be contributing to the changes include:

1. Businesses are having to make difficult judgements about investing or becoming involved in activities which may be legal in one jurisdiction but illegal in another, or whose legal status remains unclear. In particular, uncertainty around investment opportunities in the legal cannabis industry outside the UK and activities connected with cryptocurrencies, set against the low threshold for reporting, are leading businesses to conclude, increasingly frequently, that filing a DAML SAR is the most prudent course of action.

2. There remains a clear focus on taking enforcement action against businesses and individuals within them (particularly those operating within the regulated sector for the purposes of the UK AML regime) where they fall short of expected standards. Some of the most substantial fines imposed by the Financial Conduct Authority (using its powers under both financial services and AML legislation) have related to AML compliance issues. It remains committed to taking decisive action in this area, including against individuals responsible for AML compliance within firms. Increased levels of defensive reporting may be a by-product of this intensification in enforcement activity.
3. Although the report does not contain details of how often arrangements contained in the Criminal Finances Act 2017 facilitating greater information-sharing between firms in the regulated sector are being used or whether they have had any effect on total numbers of SARs submitted, these developments could account (at least in part) for increases in the numbers of DAML SARs.¹ This development, which formalised already well-established arrangements under the Joint Money Laundering Intelligence Taskforce, may provide information tipping the balance in favour of reporting matters to the UKFIU.

The report attributes the very significant increases in amounts frozen following the filing of SARs to the introduction of account freezing orders and the new power for enforcement authorities to apply to the court to extend the moratorium period to a total of up to six months.²

What are the practical issues following filing of SARs?

The report seeks to emphasise how the UKFIU has handled the substantial increases in its workload over the past year. It is at a relatively early stage of a programme of reform involving substantial investments in resources and IT systems and closer engagement with reporters that it is hoped will, over time, result in significant improvements.

For now at least, turnaround times for SARs are as high as they have ever been (at 5.12 days on average). Periods of hiatus of this length, combined with the need to avoid falling foul of tipping-off provisions, continue to present substantial commercial and practical challenges for reporting businesses. The UK courts have sent a clear message that they will be slow to accelerate decision-making following the filing of SARs, even where the collateral impact on businesses is severe.³

A separate issue acknowledged by the report is that a significant proportion of DAML SARs (approximately eight per cent in 2018/19) are closed with no decision made as to whether the entity making the SAR has a defence against money laundering offences.⁴ This may occur for a range of reasons, but there has been an observable increase in recent years in the numbers of cases in which the UKFIU requests additional, specific information following the filing of DAML SARs. In some cases, it may not be possible for the reporter to satisfy these requests, for example, when the timing or amounts of receipts which may constitute “criminal property” for the purposes of UK AML legislation may not be readily ascertainable. This is a particular issue in cases where DAML SARs are filed in respect of transactions and investments (particularly indirect investments) concerning “grey” areas such as those mentioned above.

The report also recognises that SARs are not filed in a vacuum. Perhaps partly in response to well-publicised cases concluded during the period covered by the report, it notes that SARs and/or underlying documents may be disclosable in

¹ Section 11, Criminal Finances Act 2017, which introduced new section 339ZB, Proceeds of Crime Act 2002 (“POCA”).

² The “moratorium period” is the period allowed to authorities to decide which action in respect of matters reported to them (sections 335 to 336D, POCA) if “appropriate consent” has been refused during the “notice period” – i.e. the seven-working day period following the filing of a DAML SAR (section 335, POCA).

³ See, for example, *National Crime Agency v N* [2017] EWCA Civ 253.

⁴ The report states that 2,695 cases were closed in respect of DAML SARs filed in 2018/19 (equivalent to 7.8 per cent of all DAML SARs filed) compared to 2,015 in 2017/18 (equivalent to 8.9 per cent of all DAML SARs filed).

separate litigation (whether criminal or civil proceedings pursued by those authorities or claims pursued against the reporter by customers or others).⁵ For the first time, the UKFIU has given details of the number of cases in which it provided input into whether these documents should be disclosed. It does not provide a breakdown of how many of the 122 queries it received and assessed came from prosecuting authorities and how many came from reporting entities, but has underlined its expectation that reporting entities will use underlying material rather than SARs to defend civil claims made against them.

What next for the UK SARs regime?

The report strikes a positive note about investments in IT and human resources and engagement with those who file SARs. The UKFIU's stated intention, in taking steps to implement "near-term" improvements by late 2020 and a more comprehensive overhaul by 2023/24 to address the findings of a review by the Law Commission, is to reduce the volume and improve the quality of SARs filed and equip itself with adequate and appropriate resources.

As we noted in our [Alert](#) analysing the UK Government's Economic Crime Plan (released in July 2019), changes to the SARs regime are taking place against an uncertain backdrop. For example, although it does not currently seem that changes will be made to the reporting thresholds set out in UK AML legislation, the UK Government has not yet indicated its response to the call for evidence issued in 2017 in relation to the extension of corporate criminal liability. Any extension beyond offences relating to bribery and the facilitation of tax evasion would be likely to stimulate further increases in the numbers and complexity of SARs filed.

⁵ See, for example *Lonsdale v National Westminster Bank PLC* [2018] EWHC 1843.