ECC0055

Written evidence submitted by UK Anti-Corruption Coalition, Transparency International UK

Introduction and summary

In March 2018, the Treasury Committee launched an inquiry into economic crime to examine the anti-money laundering regime, the sanctions regime, and the impact of economic crime on consumers. In its report, it acknowledged that a fragmented approach to anti-money laundering supervision was putting the UK at risk of economic crime.[1]

Since then, there has been encouraging evidence that there is political will to take these concerns seriously. For example, the UK Government has announced planned reforms to Companies House, plans to create a register of overseas beneficial owners of UK property, tasked the Law Commission with reviewing the problematic 'identification doctrine' in corporate liability laws and, after much delay, published the response to its call for evidence on this topic. There has also been progress in tackling the UK's Overseas Territories role in global economic crime, with a number of territories announcing their intention to implement public beneficial ownership company registers.

The Committee should ensure that the UK Government follows through on these announcements as, without legislation, these changes will not deliver the impact that is urgently needed. It is imperative that legislation is brought forward to secure these changes at the earliest possible point or, in the case of the Overseas Territories, adequate support and encouragement is given.

The Committee should also ensure that the UK Government takes more robust action on reforming the UK's failing AML supervisory regime. Although problems were noted in the Treasury Committee's last report, this remains a blind spot for Government action. The FinCEN Papers have highlighted the extent to which businesses in regulated sectors have continued to process suspicious transactions. Ensuring proper AML supervision and accountability for wrongdoing should be seen as a priority issue if the Government wishes to address the problem effectively and minimise the significant reputational damage caused by the FinCEN Papers.

This submission will address the UK Anti-Corruption Coalition's[2] concerns in four sections, which consider (1) the impact of the FinCEN Papers, (2) the abuse of companies in the UK and Overseas Territories for money laundering, (3) the inadequate supervisory system for sectors at high-risk of economic crime, and (4) the problems of insufficient accountability for corporate criminals and justice for the victims of economic crime.

To address the risks we outline in our submission, we make the following recommendations to the UK Government.

To address the abuse of UK companies for money laundering:

- The Government should ensure that legislation is brought forward at the earliest possible moment for the proposed reforms to Companies House, which will ensure it can verify the data it receives and support investigations into suspicious activity.

[1] Treasury Committee (2019) *Economic Crime – Anti-money laundering supervision and sanctions implementation.*

[2] The UK Anti-Corruption Coalition brings together eighteen of the UK's leading anti-corruption organisations who, through their work, witness the devastating impact of corruption on society in the UK and abroad.

- Include the introduction of a cap on the number of directorships that a single individual hold within this legislation.

- This legislation should be used to deliver on the Government's previous commitment to introduce a public register of the beneficial owners of overseas companies owning property in the UK, which is also a key economic crime risk area. As Companies House would also be responsible for this register, the legislation should seek to offer coherent, comprehensive reform to ensure Companies House is best placed to tackle economic crime in the UK.

- Increasing company incorporation fees would offer a clear and sustainable option for financing these reforms, ensuring that HM Treasury can deliver much needed changes without straining its budget.

To encourage the Overseas Territories to address their role in global illicit financial flows:

- The UK Government, including the Exchequer Secretary to the Treasury, should continue to take a proactive role in encouraging the relevant Overseas Territories to implement publicly available beneficial ownership registers by the 2023 deadline.

- The UK Government should lead by example on the international stage by joining the Beneficial Ownership Leadership Group and implementing the Beneficial Ownership Transparency Disclosure Principles.

To fix the inadequate supervisory system for sectors at high-risk of economic crime:

- There should be a comprehensive, participatory and timely published review of the AML regime, examining whether the government has achieved its stated goal of enhancing supervision outlined in the Economic Crime Plan, the strengths and weaknesses of existing risk-based approaches, the desirability of the SARS-type approach, and the impact of the existing system on low-income consumers.

- Strengthen the ability of supervisors to provide a credible deterrent by ensuring they have all the necessary powers, sanctions, resources and transparency arrangements in place. The range of different regulators means that these will vary. For example, private supervisors do not have access to criminal prosecution powers.

- Protect the independence of AML oversight and remove conflicts of interest by ensuring that professional body supervisors are institutionally separate from their promotional and commercial activities.

- Remove weaknesses in the AML supervisory regime by stripping duties from bodies failing to comply with the principles of effective and proportionate supervision.

- Ensure that the police and supervisors pursue egregious breaches of the Money Laundering Regulations 2017 through criminal prosecution.

- Ensure that there is independent representation from outside of the private sector on the Economic Crime Strategic Board.

To ensure sufficient accountability for corporate criminals:

- Abandon the unnecessarily restrictive and outdated 'identification doctrine', which is currently being reviewed by the Law Commission and is due to publish an options paper towards the end of 2021.

- To ensure accountability can be achieved in the meantime, the UK should urgently implement a 'failure to prevent economic crime' akin to those successfully used for bribery and tax evasion in the UK Bribery Act 2010 and Criminal Finances Act 2017 respectively, ensuring extensive consultation with the private sector during the development of this guidance.

- Serious consideration should be given to the introduction of an individual failure to prevent economic crime offence for senior managers where a company is found guilty of that offence, or enters into a Deferred Prosecution Agreement (DPA). Prosecutorial bodies should also be given the power to apply to courts for disqualification orders for directors who were in charge of a company at the time that criminal conduct occurred in cases of company convictions or DPAs, and where directors would not otherwise be subject to the criminal law.

To ensure justice for the victims of economic crime:

- Disaggregate asset return data so that annual reporting on assets returned in relation to corruption can be done.

- Ensure that the UK's asset recovery strategy is an opportunity for embedding the Global Asset Recovery Forum (GFAR) principles across all types of returned assets and that there is a formal process for signing off that these principles have been adhered to.

- Commit to ensuring that returned money is spent on social projects that benefit the poorest, who are often those most harmed by corruption, and that there is independent post-return monitoring.

- Ensure civil society engagement is meaningful and considered at an early stage to ensure it can be effective.

- Embed greater transparency in the asset recovery and return process, in particular by ensuring court hearings and documents relating to corruption are in the public domain and full statements about assets to be returned are made well in advance of the return.

- Commit to learning from best practice in asset return.

Section 1: The impact of the FinCEN Papers

The FinCEN Papers have highlighted an open secret - that the UK's financial sector and its Overseas Territories plays a far too prominent role in the global flow of illicit wealth. 3,282 British companies were named in the FinCEN Papers, which is the highest of any country in the world.[3]

What the FinCEN Papers have made clear is that the UK and its Overseas Territories role in global money laundering cannot be dismissed as the responsibility of one 'bad apple' or one poorly

[3] BBC News (21 Sep 2020), 'FinCEN Files: One of the world's 'dodgiest addresses' is in leafy Hertfordshire'.

regulated sector. The weaknesses in the UK's and Overseas Territories' defences against dirty money are both serious and numerous:

1) *The abuse of companies for criminal and corrupt purposes*

- **UK companies**: The majority of UK firms flagged in the FinCEN Papers were Limited Liability Partnerships and Limited Partnerships, most of these formed by a small number of company formation agents.[4] More than 100 companies in the leaked SARs were registered at one address in Hertfordshire, which the US Treasury believes is one of the 'dodgiest' in the world.[5]

- **The role of the Overseas Territories**: At least 20 per cent of the reports contained a client with an address in one of the world's top offshore financial havens, the British Virgin Islands.[6] This mirrors the British Virgin Island's overrepresentation in previous leaks, with 50 per cent of shell companies uncovered in the Panama Papers in 2016.[7]

2) *An inadequate system for supervising sectors at high-risk of economic crime*

- **Regulated sectors failing in their AML duties**: The UK branches of JP Morgan, HSBC and Barclays were all identified as being involved in processing suspicious transactions in the FinCEN Papers.[8] For example, HSBC has been accused of allowing fraudsters to transfer millions of dollars though its banks despite knowing about the scam and having been recently fined $1.9 billion in the US for money laundering.

3) *Insufficient accountability for wrongdoers and justice for victims*

- **Inadequate UK corporate liability law:** The FinCEN Papers reveal that an associate of President Putin may have moved millions through Barclays to avoid sanctions.[9] However, the chances of prosecution are low – in February 2020 a Serious Fraud Office case against the same bank was dismissed because of an ability to find a 'directing mind and will'.[10] Reform is urgently needed to ensure accountability for wrongdoing.

- **Asset recovery:** Economic crime is not victimless – for example, the FinCEN Papers revealed that JPMorgan moved money for individuals and companies tied to the large-scale looting of public funds in Malaysia, Venezuela, and Ukraine.[11] Stolen wealth often ends up in the UK and it is crucial that effective mechanisms are in place for its accountable return to affected communities.

Anti-corruption organisations have been highlighting their concerns about these weaknesses for years and it is now apparent that others have reached the same conclusion, with the FinCEN Papers revealing that the US Treasury considers the UK a 'higher-risk jurisdiction'.[12] Just as the UK looks to build new trade relationships with partners around the world, our reputation as a safe place to do business is fast being replaced with one as a safe haven for dirty money.

[4] Transparency International UK (24 Sep 2020), 'What the FinCEN Files tell us about the UK's role as an enabler of corruption and money laundering – and what needs to change.'
[5] BBC News (21 Sep 2020), 'FinCEN Files: One of the world's 'dodgiest addresses' is in leafy Hertfordshire'.
[6] ICIJ (20 Sep 2020), 'From a jumble of secret reports, damning data on big banks and dirty money'.
[7] Transparency International UK (14 Oct 2016), 'British Virgin Islands: Have they cleaned up since the Panama Papers?'
[8] BBC News (20 Sep 2020), 'FinCEN Files: HSBC moved Ponzi scheme millions despite warning'
[9] BBC News (20 Sep 2020), 'FinCEN Files: Sanctioned Putin associate 'laundered millions' through Barclays'.
[10] Financial Times (9 March 2020), 'Barclays: the legal fight over a company's 'controlling mind''.
[11] ICIJ (20 Sep 2020) 'Global banks defy US crackdowns by serving oligarchs, criminals and terrorists.'
[12] BBC News (21 Sep 2020), 'FinCEN Files: All you need to know about the documents leak'.

Yet the impact of the FinCEN Papers goes beyond our external reputation; they extend to the integrity of the UK's democracy. For example, the leaks revealed that Vladimir Chernukhin, the husband of Lubov Chernukhin, who has donated £1.7 million to the Conservative Party was secretly funded by a Russian oligarch with close ties to Putin.[13] Reports by both the Intelligence and Security Committee and the Foreign Affairs Committee have already highlighted the serious risks corrupt wealth pose to the safety of our citizens, the health of our democracy, and the integrity of our businesses.[14]

Fixing these problems means addressing the various weaknesses outlined above. This means that the UK Government must take steps to tackle the abuse of UK companies for economic crime and encourage the Overseas Territories to do the same, radically overhaul the UK's failing AML supervisory system, and ensure that there are meaningful measures in place to deter or prosecute economic crime and return stolen assets to victims. We outline each of these areas in more details below.

Section 2: The Abuse of Companies for Corrupt and Criminal Purposes

Section 2.1 The abuse of UK companies and the work of Companies House

The UK is currently failing to prevent companies registered here being formed by and sold to money launderers. In particular, the services offered by Trust and Company Service Providers (TCSPs, which are also known as company formation agents) are wide open to abuse by these actors. TCSPs set up companies, often with few questions asked, which enable the corrupt and criminal to distance themselves from the origins of their stolen wealth. The UK's reputation for the rule of law and a safe business environment has made its companies particularly attractive to those looking to abuse the system.

The FinCEN Papers underscored how frequently UK companies are abused as vehicles for economic crime, however these revelations only serve to emphasise what civil society groups had already found through their own research. For example, Transparency International UK identified 766 UK corporate vehicles alleged to have been used in 52 large scale corruption and money laundering cases approaching £80 billion in 2017.[15] Around half of these 766 companies were **based at just eight UK addresses**. An update to this research in 2019 found that the number of UK companies found to have engaged in corruption and money laundering is now 929, amounting to £137 billion in economic damage.[16]

To address these issues, reform of and better resourcing for Companies House is essential. The Treasury Select Committee recognised this itself in 2019, stating that, "There must be no weak areas in the UK's systems for preventing economic crime. At present, Companies House presents such a weakness."[17]

A better resourced, more proactive Companies House

[13] BBC News (20 Sep 2020), 'FinCEN Files: Tory donor Lubov Chernukhin linked to $8m Putin ally funding'.
[14] Intelligence and Security Committee (2020) *Russia*; Foreign Affairs Committee (2018) *Moscow's Gold Report: Russian Corruption in the UK.*
[15] Transparency International UK (2017) *Hiding in Plain Sight: How UK companies are used to launder corrupt wealth*.
[16] Transparency International UK (2019) *At Your Service: Investigating how UK businesses and institutions help corrupt individuals and regimes launder their money and reputations.*
[17] Treasury Committee (2019) *Economic Crime – Anti-money laundering supervision and sanctions implementation.*

Companies House currently monitors around four million firms' compliance with the Persons of Significant Control (PSC) register, which records the beneficial owners of companies. However, it **lacks the powers and resources needed to monitor and verify the data on the UK company register**, both of which are critical for rooting out the shell companies using false and misleading data to obscure the identity of individuals who are laundering money. Significant evidence exists to suggest this does indeed happen:

- Research from Global Witness in 2019 found that 6,711 companies are controlled by a beneficial owner who themselves control over 100 companies, suggesting likely use of illegal nominee directors.[18] They also found that 487 companies are part of circular ownership structures, 336,244 companies simply say they have no beneficial owner (which is permissible if no individual owns more than 25 per cent), and that 8,872 companies name another foreign company as their ultimate owner which is unlikely to be listed on a stock exchange.
- Transparency International UK identified 17,000 legal entities controlled by at least one individual or company that acted as an officer for Limited Liability Partnerships (LLPs) found to be involved in economic crime.[19] More than 5,400 of these shell companies remain active. 6,073 of these shell companies were registered at just 10 addresses, suggesting that the same TCSP formed and managed them.

Encouragingly, the UK Government announced the following reforms in September 2020[20]:

- Introducing identity verification checks for all directors, people with significant control, and those filing information on behalf of a company.
- Companies House will require evidence of checks carried out by regulated professional services providers submitting information on behalf of clients.
- Giving Companies House the powers to query, investigate and remove false information.
- Only regulated Trust and Company Service Providers will be able to incorporate entities at Companies House once these changes are made.

These new proposals represent a significant step forward in tackling the UK's role as a facilitator of global corruption, however it is essential that they are introduced as soon as possible and backed up with sufficient resourcing. The Royal United Services Institute noted that the UK's company incorporation fee of a mere £12 is unusually low.[21] Raising the fees for company incorporation could therefore provide a sustainable revenue stream to cover the costs of these reforms.

We would also urge the Government to also introduce a cap on the number of directorships that a single individual can hold, as holding a high number of these can be a red flag. It would be a missed opportunity to bring in a number of important reforms but leave this change out.

Our recommendations:

[18] Global Witness (6 May 2019), 'Getting the UK's house in order'.
[19] Transparency International UK (2019) *At Your Service.*
[20] Department for Business, Energy and Industrial Strategy (18 Sep 2020), 'Reforms to Companies House to clamp down on fraud and give businesses greater confidence in transactions'.
[21] Helena Wood (29 Sep 2020), 'Clamping the Wheel of the Money Launderers' 'Vehicle of Choice': Reform of the UK Company Registry', *Royal United Services Institute*.

- The Government should ensure that legislation is brought forward at the earliest possible moment for the proposed reforms to Companies House, which will ensure it can verify the data it receives and support investigations into suspicious activity.

- Include the introduction of a cap on the number of directorships that a single individual hold within this legislation.

- This legislation should be used to deliver on the Government's previous commitment to introduce a public register of the beneficial owners of overseas companies owning property in the UK, which is also a key economic crime risk area. As Companies House would also be responsible for this register, the legislation should seek to offer coherent, comprehensive reform to ensure Companies House is best placed to tackle economic crime in the UK.

- Increasing company incorporation fees would offer a clear and sustainable option for financing these reforms, ensuring that HM Treasury can deliver much needed changes without straining its budget.

Section 2.2: The Overseas Territories and the importance of public beneficial ownership registers

The abuse of companies for economic crime is not only a problem for the UK. The secrecy afforded by companies registered in some of the UK's Overseas Territories is facilitating economic crime on a global scale, allowing corrupt individuals to hide their financial activities and making it difficult for law enforcement agencies and others to detect the origins of their illicit wealth. Transparency about the beneficial owners of these companies is an important part of the solution to this problem.

It is also crucial to note that the abuse of secretive company structures is not a problem for all Overseas Territories and that many do not have a large financial sector.[22] The UK Government should be sensitive to these differences and ensure it avoids a 'one-size-fits-all' approach, as well as taking an encouraging tone that is mindful of the history of the UK's relationship with these communities.

Certain Overseas Territories are prevalent in research into large-scale corruption:

- A World Bank study which reviewed over 200 instances of large-scale corruption between 1980 and 2010 found that anonymously-owned companies were used in 70 per cent of these cases.[23] The UK's Overseas Territories and Crown Dependencies topped the list of places to set up these companies. Broken down by jurisdiction, the British Virgin Islands (BVI) was second-most popular, the Cayman Islands the ninth, Bermuda and Jersey joint eleventh and the Isle of Man nineteenth. The UK itself came fifth.

- Transparency International UK identified 176 UK properties worth £4.4 billion that have been bought with suspicious wealth.[24] Of the 108 of these that are owned by companies with an identifiable jurisdiction of incorporation, 90 per cent are owned by companies incorporated in the British Virgin Islands.

[22] See Open Ownership (Nov 2020), 'New Support for UK Overseas Territories to publish beneficial ownership data.'
[23] Stolen Asset Recovery Initiative (2011) *The Puppet Masters: How the corrupt use legal structures to hide stolen assets and what to do about it*, Appendix B.
[24] Transparency International UK (2017) *Faulty Towers: Understanding the Impact of Overseas Corruption on the London Property Market*.

The FinCEN Papers underscored this problem once more; at least 20 per cent of the reports involved a client registered in the British Virgin Islands. To have the most impact, the UK Government should focus its attention on supporting in the British Virgin Islands, the Cayman Islands, and Bermuda to set up public central registers of beneficial ownership.

The introduction of public beneficial ownership registers

The UK Government is obliged to provide "all reasonable assistance" to the Overseas Territories in the establishment of public beneficial ownership registers, according to the Sanctions and Anti-Money Laundering Act (SAMLA) 2018.[25] If the Overseas Territories fail to introduce beneficial ownership registers by 31 December 2020, SAMLA requires the UK Government to prepare a draft Order in Council requiring the Overseas Territories to introduce registers.[26]

These regulations were passed in light of the Panama Papers and other scandals, but the findings in the FinCEN Papers highlight that more work is still to be done. There have, however, been positive changes over the past year - nine Overseas Territories have now announced their intention to build publicly accessible registers of the beneficial owners of companies registered in their territories. Three of the most highest-risk territories - the British Virgin Islands[27], the Cayman Islands[28], and Bermuda[29] - have committed to implementing registers.

This is a positive development, however the British Virgin Islands' caveated statement emphasises that "this undertaking is subject to our reservations which include that the format must be in line with international standards and best practices as they develop globally and, at least, as implemented by EU Member States."[30] To secure meaningful change, the UK Government should do all it can to convey the importance of well-designed, comprehensive registers, whilst maintaining the highest standards at home to avoid being accused of hypocrisy.

Our recommendations:

- The UK Government, including the Exchequer Secretary to the Treasury, should continue to take a proactive role in encouraging the relevant Overseas Territories to implement publicly available beneficial ownership registers by the 2023 deadline.

- The UK Government should lead by example on the international stage by joining the Beneficial Ownership Leadership Group and implementing the Beneficial Ownership Transparency Disclosure Principles.

Section 3: An inadequate system for supervising sectors at high-risk of economic crime

Section 3.1 The work of OPBAS and the professional body AML supervisors

[25] Sanctions and Money Laundering Act 2018, Section 51.
[26] Ibid.
[27] Government of the British Virgin Islands (22 Sep 2020), 'BVI Premier Reiterates Territory's Commitment to an Appropriate Framework for Publicly Accessible Registers'.
[28] Government of the Cayman Islands (9 Oct 2019), 'Statement by the Government of the Cayman Islands on a public beneficial ownership register for companies.'
[29] Government of Bermuda (17 July 2020), 'Public Register of Beneficial Ownership'.
[30] Government of the British Virgin Islands (22 Sep 2020), 'BVI Premier Reiterates Territory's Commitment to an Appropriate Framework for Publicly Accessible Registers'.

Anti-money laundering regulations should be a bulwark against dirty money entering the UK economy. The Money Laundering Regulations 2017 impose requirements on certain industries to help identify corrupt suspicious wealth. These focus on industries which are at high-risk of money laundering such as those dealing with high-value goods or banks, lawyers, accountants, estate agents and TCSPs. Anti-money laundering supervisors are then tasked with supervising whether businesses in these regulated sectors comply with these regulations.

However, our system is clearly failing, with the National Crime Agency estimating that more than £100 billion in illicit funds impacts the UK each year.[31] The FinCEN Papers also revealed specific instances of how regulated businesses have failed in their duties and the inadequacies of the current regime, with several UK branches of banks processing suspicious transactions despite the risks, Suspicious Activity Reports (SARs) being made long after they should have been, and numerous rogue TCSPs continuing to operate despite research highlighting their role in economic crime.

These examples reflect a wider problem with compliance among regulated businesses:

- Research from Transparency International UK into data from 'Laundromats' used to move hundreds of billions of pounds from the Former Soviet Union showed that **clients at 72 UK banks sent or received over £570 million in suspicious funds** between 2003 and 2017.[32] Clients at just 10 banks were responsible for sending and receiving more than 90 per cent of these funds.

- **Almost 50 per cent of businesses subject to a money laundering compliance review by HMRC were found to be 'non-compliant'**, with HMRC acting as the AML supervisor for a range of activities, from estate agency to company formation, as well as the sale of high value goods.[33]

- A review of 59 law firms providing trust and company services by the Solicitors Regulation Authority (SRA) – an AML supervisor for part of the legal sector – resulted in **just under half being subject to disciplinary proceedings for insufficient AML procedures**.[34]

- An FCA study of 19 firms found some remained unaware of money laundering risk through capital markets.[35] Furthermore, research from the Centre for the Study of Corruption has found that regulated professions sometimes find their precise responsibilities unclear.[36]

It is clear that urgent action is needed to address these issues and understand why they have arisen.

Weaknesses in the UK's system for supervising AML compliance

These problems can, in part, be attributed to the UK's inadequate and ineffective system for ensuring regulated industries comply with AML regulations. As is evident from the examples above, too many businesses are failing in their duty to detect corrupt wealth and report it to the relevant authority.

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[31] National Crime Agency (May 2019), 'National Economic Crime Centre leads push to identify money laundering activity'.
[32] See Transparency International UK (2019) *At Your Service*.
[33] HM Treasury (2019), *Anti-money laundering and counter-terrorist financing: supervision report 2017-18*.
[34] Solicitors Regulation Authority (7 May 2019), 'Review shows too many law firms falling short on anti-money laundering.'
[35] Financial Conduct Authority (2019) *Understanding the money laundering risks in the capital markets: Thematic review TR19/4*
[36] Boussalis, C., Feldman, Y., & Smith, H. E. (2018). Experimental analysis of the effect of standards on compliance and performance. *Regulation & Governance*, *12*(2), 277-298;
Feldman Y. (2014) Behavioral Ethics Meets Behavioral Law and Economics. In: Zamir E, Teichman D (eds) *The Oxford Handbook of Behavioral Economics and the Law*, pp. 213–240. OUP, New York.

Yet the responsibilities for these failings also lie with AML supervisors, who should hold businesses to account when they fail in their AML duties and act as guidance bodies for those looking to improve. Despite this, **most supervisors fail to meet basic good standards of good governance and effective supervision**, with a disjointed system of 25 different AML supervisors weakening the UK's defences against dirty money. With 14 supervisors for the accountancy sector alone, it is unsurprising that the system is so ineffective.

Research has shown a worryingly inconsistent record on compliance across regulated industries.

- Research carried out by the Office for Professional Body AML Supervisors (OPBAS) in 2018 raised real questions about the quality of supervision and possible conflicts of interest for AML supervisors.[37] For example, it found that 23 per cent of relevant professional body supervisors undertook no form of AML supervision and that 18 per cent had not fully identified their supervised populations. It also found that 62 per cent of accountancy supervisors had overlap between regulatory and advocacy functions.

- In the TCSP sector, HMRC, the Financial Conduct Authority, and 22 non-public body supervisors have responsibility for supervision, resulting in low levels of compliance in a sector which this submission and HM Treasury's National Risk Assessment have identified as a high-risk area for money laundering. Transparency International UK and associates at the Royal United Services Institute have criticised this inadequate approach.[38]

- Analysis from Spotlight on Corruption has identified that, despite being designated as one of the lowest risk sectors by both HM Treasury and the Financial Action Task Force (FATF), the Gambling Commission is undertaking a far greater quantity of investigations than any other supervisor.[39] In 2018-19, the Gambling Commission brought 31.25 investigations per 100 businesses it supervises whereas the Financial Conduct Authority brought only 0.56 despite supervising a far higher-risk sector.

- Insufficient and opaque civil sanctions also mean that there is little deterrent for businesses who fail in their AML duties. In 2020, OPBAS found that 41 per cent of professional body supervisors did not take any enforcement action in their reporting period.[40] FATF also noted that the Financial Conduct Authority should increase the number of sanctions, on both firms and individuals, to create a credible deterrent.[41]

While OPBAS has identified some improvements over the past year, they still have significant concerns.[42] A radical overhaul of the UK's AML system is urgently needed to address these failings and recognition that a system designed over twenty years ago may no longer be fit for purpose. While there has been progress on addressing other economic crime risk areas, this appears to be an ongoing blind-spot.

Our recommendations:

[37] OPBAS (2019) *Themes from the 2018 anti-money laundering supervisory assessments.*
[38] See Transparency International UK (2015) *Don't Look, Won't Find* and *At Your Service* (2019); Helena Wood (Apr 2020), 'Survival of the Fittest: The UK's Anti-Money Laundering Supervisory Regime', *Royal United Services Institute*.
[39] Spotlight on Corruption (Nov 2020) 'Anti-Money Laundering Supervision: Is it working?'.
[40] OPBAS (2020) *Progress and themes from 2019*.
[41] Financial Action Task Force (2018) *Anti-money laundering and counter-terrorist financing measures – United Kingdom*, Fourth Round Mutual Evaluation Report, FATF, Paris.
[42] OPBAS (2020) *Anti-Money Laundering Supervision by the Legal and Accountancy Professional Supervisors: Progress and themes from 2019*.

- There should be a comprehensive, participatory and timely published review of the AML regime, examining whether the government has achieved its stated goal of enhancing supervision outlined in the Economic Crime Plan, the strengths and weaknesses of existing risk-based approaches, the desirability of the SARS-type approach, and the impact of the existing system on low-income consumers.
- Strengthen the ability of supervisors to provide a credible deterrent by ensuring they have all the necessary powers, sanctions, resources and transparency arrangements in place. The range of different regulators means that these will vary. For example, private supervisors do not have access to criminal prosecution powers.
- Protect the independence of AML oversight and remove conflicts of interest by ensuring that professional body supervisors are institutionally separate from their promotional and commercial activities.
- Remove weaknesses in the AML supervisory regime by stripping duties from bodies failing to comply with the principles of effective and proportionate supervision.
- Ensure that the police and supervisors pursue egregious breaches of the Money Laundering Regulations 2017 through criminal prosecution.
- Ensure that there is independent representation from outside of the private sector on the Economic Crime Strategic Board.

Section 4: Insufficient accountability for corporate criminals and justice for victims

Section 4.1: Corporate liability for economic crime

Developing a more robust system for AML compliance is critically important to ensure businesses abide by the responsibilities set out in the Money Laundering Regulations 2017. It is equally important to ensure that there are proper measures in place to prosecute those who egregiously disregard these responsibilities and commit economic crimes, particularly as the UK looks to establish itself as a clean, safe and rules-based place to do business post-Brexit.

However, the UK currently lacks an effective corporate liability regime to deter corporate actors from engaging in economic crime. The FinCEN Papers underscored this issue, showing that several banks continued to process suspicious transactions for high-risk clients and in spite of the risk of receiving major fines, often only reporting suspicious transactions years after they first occurred. Yet, again, this reflects a broader problem:

- In research from 2019 comparing the responses of the UK and US to economic crime carried out by banks, Corruption Watch found that the UK has not brought a single successful corporate criminal prosecution against a UK bank for money laundering or sanctions violation.[43] On the other hand, the US has brought criminal enforcement actions against six of the big banks and imposed almost £3 billion in criminal fines.

Urgent reform is needed. The covid-19 pandemic has created a burgeoning fraud crisis - there are potentially huge losses to the public purse from those defrauding the Government through overpriced or undelivered procurement contracts, the business bailout fund, and the furlough scheme.[44] However, the UK Government is limited in its ability to prosecute such actors, particularly

[43] Corruption Watch (2019), Corporate Crime Gap: How the UK Lags the US in Policing Corporate Financial Crime.
[44] Susan Hawley (Nov 2020), 'The UK's Corporate Crime Rules – Why Urgent Change is Needed', *Spotlight on Corruption*.

since - as noted by the Law Commission - the UK is at a risk of falling behind international standards in the prosecution of economic crime.[45]

Reforming the 'identification doctrine'

The UK's inability to secure criminal prosecutions is linked to an outdated principle which makes it near impossible to prosecute large corporations for economic crime. The 'identification doctrine' is an antiquated principle that requires proof that a company's director intended for the economic crime to occur before it can be prosecuted.

This principle is out-of-touch with the reality of large, modern corporations. It creates a permissive environment, in which large companies can routinely break the law without fear of repercussions and are incentivised to maintain poor corporate governance structures. It also unfairly disadvantages SMEs with less complex organisational structures, who are more likely to be prosecuted under the current rules.

Key stakeholders have been drawing attention to this problem for years, including this Committee:

- In 2019, the Treasury Select Committee found, with regard to corporate liability, "clear evidence that legislative reform is required to strengthen the hand of law enforcement in the fight against economic crime" and urged the Government to set out a timetable for introducing the legislation on a failure to prevent economic crime offence.[46]

- Lisa Osofsky, the Director of the Serious Fraud Office, stated while giving evidence to the Justice Select Committee in 2019 that "We are hamstrung right now by the identification principle: if we do not have the top two, three or four controlling minds in the dock, we cannot hold the corporate liable for fraud and other sorts of economic crime. That is an old law that was developed at a time when two, three or four people ran companies in our country."[47]

After three and a half years, the UK Government published the results of its Call for Evidence into corporate liability reform – as recommended by this Committee in 2019. The Government has now tasked the Law Commission with reviewing this principle. While we support this review, the urgency of reform means it is essential that this review does not lead to an unacceptable delay to change.

Alongside the Law Commission's review, we support the introduction of a 'failure to prevent economic crime' offence, akin to those used for bribery and tax evasion. This would give prosecutors the tools they need to prosecute corporate criminals, promote strong corporate governance after the UK leaves the EU, and create a level playing field for different economic crimes and different sized companies.

Our recommendations:

- Abandon the unnecessarily restrictive and outdated 'identification doctrine', which is currently being reviewed by the Law Commission and is due to publish an options paper towards the end of 2021.

[45] Law Commission (Nov 2020), 'Law Commission begins project on Corporate Criminal Liability'.
[46] Treasury Committee (2019) *Economic Crime – Anti-money laundering supervision and sanctions implementation.*
[47] Lisa Osofsky (18 Dec 2018), 'Oral Evidence: Serious Fraud Office', *Justice Committee*.

- To ensure accountability can be achieved in the meantime, the UK should urgently implement a 'failure to prevent economic crime' akin to those successfully used for bribery and tax evasion in the UK Bribery Act 2010 and Criminal Finances Act 2017 respectively, ensuring extensive consultation with the private sector during the development of this guidance.

- Serious consideration should be given to the introduction of an individual failure to prevent economic crime offence for senior managers where a company is found guilty of that offence, or enters into a Deferred Prosecution Agreement (DPA). Prosecutorial bodies should also be given the power to apply to courts for disqualification orders for directors who were in charge of a company at the time that criminal conduct occurred in cases of company convictions or DPAs, and where directors would not otherwise be subject to the criminal law.

Section 4.2: Ensuring the sustainable and accountable return of stolen assets

Although our submission does not address the impact of economic crime on consumers in the UK, we recognise the real importance of this issue and commend the Committee for addressing it in this inquiry. We also encourage the Committee to be mindful of the victims of economic crime outside of the UK, particularly the victims of grand corruption.

As has been demonstrated by the FinCEN Files, the UK has become a key destination for stolen assets from around the world and a key jurisdiction through which the proceeds of corruption are laundered. It is critical to remember that this wealth should have been put towards much-needed public goods like education, healthcare or infrastructure; there are always victims of economic crime, and they are often some of the world's most vulnerable people.[48]

Ensuring that there are effective systems to return stolen assets is therefore a critical element of any comprehensive review of the UK's approach to tackling economic crime.

Publication of Asset Recovery Data

While the Home Office now publishes a high-level bulletin on asset recovery[49], which is very welcome, this data doesn't disaggregate assets being returned under the UN Convention against Corruption or by offence types. This means that finding information about asset repatriation is not as easy as it could be.

We think it would be useful if the UK authorities publish clear data on an annual basis of assets linked to grand corruption that have been frozen, seized or confiscated in the UK, and assets that have been repatriated. The UK should consider developing a public national database of asset recovery relating to grand corruption or a central webpage managed by the FCDO or the International Corruption Unit which includes up-to-date information about assets returned and modalities agreed for return.

Transparent and accountable asset return

[48] See, for example, RAID (2020) *Congo's Victims of Corruption*.
[49] Home Office (10 Sep 2020), *Asset Recovery Statistical Bulletin, 2014-15 – 2019-20*.

We welcome the UK Government's recent commitment to setting a strategy that will enhance consistency in how recovered assets are returned to countries of origin. Asset recovery is an opportunity not just for denying corrupt actors their gains but also for raising the profile of the fight against corruption and the damage it causes.

We recommend that in framing the strategy, there is clear cross-government understanding about language that will be used in relation to accountable asset return. In particular, it is important in our experience to avoid applying conditions or even using the term 'condition' in relation to returning assets. Language highlighting mutually agreed terms for returning assets that builds public confidence in both the UK and the relevant jurisdiction that money will not be lost again to corruption is useful. Even the smallest indication of conditionality can lead to unproductive discussions about sovereignty.

Our recommendations:

- Disaggregate asset return data so that annual reporting on assets returned in relation to corruption can be done.
- Ensure that the UK's asset recovery strategy is an opportunity for embedding the Global Asset Recovery Forum (GFAR) principles[50] across all types of returned assets and that there is a formal process for signing off that these principles have been adhered to.
- Commit to ensuring that returned money is spent on social projects that benefit the poorest, who are often those most harmed by corruption, and that there is independent post-return monitoring.
- Ensure civil society engagement is meaningful and considered at an early stage to ensure it can be effective.
- Embed greater transparency in the asset recovery and return process, in particular by ensuring court hearings and documents relating to corruption are in the public domain and full statements about assets to be returned are made well in advance of the return.
- Commit to learning from best practice in asset return.

About

The UK Anti-Corruption Coalition brings together eighteen of the leading anti-corruption organisations in the UK who, through their work, witness the devastating impact of corruption on society.[51]

The coalition provides a common platform for those working to reduce corruption in the UK and reduce the UK's role in facilitating corruption abroad, drawing on our collective expertise to advocate for change.

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[50] Global Forum for Asset Recovery (2017) *GFAR Principles for Disposition and Transfer of Confiscated Stolen Assets in Corruption Cases*.
[51] See our members page for more information.