

To exchange or not to exchange, that is the question? A critical analysis of the use of financial intelligence and the exchange of information to tackle fraud and terrorism financing



Manchester University

Wednesday 29th March 2023

3.30pm

Manchester Centre for Law and Business

Professor Nic Ryder

Cardiff University

rydern@cardiff.ac.uk



SYNALOGiK

Research Funding

- This work has been conducted under funding provided by InnovateUK (Activist Financing, Organised Crime/Fraud and Suspicious Activity Reports) Synalogik and RUSI

Innovate UK



To exchange or not to exchange, that is the question?

Abstract

The paper is divided into five parts:

- Part 1 – Typologies, terrorism financing and fraud
- Part 2 – Financial Action Task Force (FATF) Recommendations
- Part 3 – UK legal framework
- Part 4 – Case studies
- Part 5 – Recommendations

Part 1 – Typologies, terrorism financing and fraud

- ‘Typologies provide a contemporary snapshot of the ways in which terrorists raise, move and use funds’ (FATF, 2009, 18)
- Typologies have focused on identifying the different types of fraudulent activity and are often victim centric:
 - Financial Conduct Authority (FCA, 2014, 36-45),
 - National Fraud Authority (NFA, n/d),
 - Home Office (2018),
 - KPMG (2019, 6) and
 - Levi (2008, 389-419).
- No focus on terrorism financing and fraud.

Part 1 - Typologies, terrorism financing and fraud

- Perri and Brody (2011)
- Freeman (2011)
- Irwin *et al.* (2012)
- Vittori (2011)
- Wood *et al.* (2021)
- Is there a need for a new typology?
- ‘particular concern was expressed [by HM Government] that the linkages of some types of fraud with ... terrorist funding were being missed ’ (Fraud Review, 2006, 134)

Part 1 - Typologies, terrorism financing and fraud

- Passport Fraud
- Immigration Fraud
- Identity Fraud
- Financial Fraud
- Public Funding and Grant Fraud
- Benefit Fraud
- Student Loan Fraud
- Non-Profit Organisation Fraud
- Tax Fraud
- Counterfeiting
- Insurance Fraud
- Mortgage Fraud
- Trade Based Fraud (Ryder, 2023)

Part 2 – FATF Recommendations

- Money laundering regime strengthened by Proceeds of Crime Act (2002),
- Deficiencies in fraud legislation addressed by Fraud Act (2006)
- Bribery Act (2010),
- Financial Services Act (2012),
- Financial Services (Banking Reform) Act (2013),
- The Criminal Finances Act (2017),
- Law Commission SARs report (2019),
- Sanctions and Anti-Money Laundering Act (2018)



Part 2 – FATF Recommendations

- Law Commission Asset Recovery (2020)
- National Risk Assessments (2015, 2017 and 2020)
- Economic Crime Plan (2019)
- Law Commission Corporate Economic Crime (2020)
- Economic Crime (Transparency and Enforcement) Act (2022)
- Law Commission Corporate Criminal Liability Options Paper (2022)
- Economic Crime and Corporate Transparency Bill (2022-2023)
- Economic Crime Plan 2 (2023)



Part 2 – FATF Recommendations

- ‘The United Kingdom has a well-developed and robust regime to effectively combat ... terrorist financing’ (FATF, [2018](#))
 - FATF gave the UK its highest possible rating
 - ‘Out of 60 countries assessed, the UK has one of the toughest AML/CTF regimes in the world’ (HM Government, [2018](#))
-



Part 2 – FATF Recommendations

- Compliant with all FATF recommendations relating to information exchange:
 - Recommendations 2, 30 and 31, which require national coordination and cooperation, including the exchange of information, between Law Enforcement Agencies
 - Moderate to high levels of effectiveness in regards to Immediate Outcomes 1 and 6, concerning risk, policy and coordination, and financial intelligence, as well as Immediate Outcomes 7 and 9, concerning effective money laundering and terrorism financing investigations (FATF, [2018](#)).
-



Part 3 – UK Legal Framework

- International AML/CTF Legislative Frameworks
- International Best Practices
- Terrorism Act (2000)
 - Defence Against Terrorism Financing SARs
- Proceeds of Crime Act (2002)
- Money Laundering Regulations (2017)
 - Defence Against Money Laundering SARs
- Criticisms



Part 3 – UK Legal Framework

- Anti-terrorism, Crime and Security Act 2001 ([s 19](#))
- Commissioners for Revenue and Customs Act 2005 ([s 18](#))
- Serious Crime Act 2007 ([s 48](#))
- Counter Terrorism Act 2008 ([s 18](#))
- Criminal Finances Act 2017 ([s 11](#))
- Digital Economy Act 2017 ([s 56](#))
- Money Laundering Regulations 2017 ([regs 46, 50 and 52](#))
- Private Public Partnerships
 - Joint Money Laundering Intelligence Task Force
- Economic Crime and Corporate Transparency Bill 2022 ([Part 5](#))



Part 4 – Case Studies

- London (July 7 2005)
- Manchester (May 22 2017)
- London (June 3 2017)



To exchange or not to exchange, that is the question?

London (July 7, 2005)

- HMRC connected several suspected frauds with Shahzad Tanweer, one of the July 2005 terrorists (1995)
- Information was not disclosed to the FIU or SIS
- The group linked to Tanweer gained approximately £8billion VAT and benefit fraud
- £80million sent to al-Qaeda
- Anti-terrorism, Crime and Security Act 2001 (s 19)
- Commissioners for Revenue and Customs Act 2005 (s 18(1))
- Money Laundering Regulations 2007 (Reg 46(5))
- Duty of tax payer confidentiality



To exchange of not to exchange, that is the question?

Manchester (May 22, 2017)

- Funded by benefit, student loan fraud and debit card fraud
- Abedi received £7,000 from the Student Loans Company
- Regular payments (£1,000 and £2,258 January 2017, £2,258)
- Regular cash withdrawals of £300
- The Money Laundering Regulations do not apply to higher education institutions (Ryder *et al* 2023)
- Yahya Werfalli (2020) debit card was used to purchase hydrogen peroxide in May 2017
- RBS suspected fraud? Obligation to report?



To exchange of not to exchange, that is the question?

London (June 3, 2017)

- Khuram Butt was investigated and arrested on suspicion of falsely reporting fraudulent activity on three bank accounts in October 2016 (£3,000)
- He had also successfully applied for two pay day loans (£14,000).
- Arrested and charged with conspiracy to defraud
- Case was dropped insufficient evidence
- Santander obligation to report suspected fraud?
- Action Fraud?
- No DATF SAR submitted to the NCA
- Fraud as a disruptive mechanism



To exchange of not to exchange, that is the question?

Part 5 – Recommendations

- The reporting of fraud should become mandatory placing it on the same legislative footing as money laundering and terrorist financing
- The Fraud Act 2006 could be amended:
 - ‘receives information in the course of a business in the regulated sector ... thereby knows or suspects or has reasonable grounds for knowing or suspecting that another person is engaged in fraud’ and ‘fails to disclose a nominated officer, or person authorised for by the Director of NCA, the information on which his knowledge or suspicion is based as soon as is practicable after the information comes to him’.
- Funded by Economic Crime Levy
- Cross-governmental Economic Crime Fighting Fund
- Reallocation of financial penalties from the FCA

Part 5 – Recommendations

- A single Economic Crime Agency, managed by the Home Office
- Automatic exchange of information between LEAs
- Direct access to information, e.g. Bank Account Portal
- Expand the membership of the Joint Money Laundering Intelligence Task Force and allow wider sharing of information at pre-suspicion points
- The Commissioners for Revenue & Customs Act (CRCA) 2005 should be amended to require, rather than permit, disclosure when HMRC employees suspect that they are in possession of information that reveals indications of money laundering or terrorism