Lawyers and the Proceeds of Crime: The Facilitation of Money Laundering and Its Control

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An overview and summary of findings

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Introduction

This summary document provides an overview of the key findings and conclusions from *Lawyers and the Proceeds of Crime: The Facilitation of Money Laundering and its Control*, published by Routledge in April 2020. *Lawyers and the Proceeds of Crime* examines the role played by legal professionals in the facilitation of money laundering and considers how this is (and should be) dealt with through criminal justice and regulatory processes.

The book analyses:

- The legislative, regulatory and policy frameworks aimed at preventing lawyers and other 'gatekeepers' from allowing 'dirty' money into the legitimate financial system, including their scope, challenges and implications.

- The diversity in the ways that lawyers can become involved in facilitating money laundering by or on behalf of their clients, and in the actions (or non-action) for which they can be convicted of money laundering offences.

- The structures, processes and transactions of the legal profession that can provide opportunities/vulnerabilities for money laundering.

- The role of decision-making by lawyers in relation to clients, transactions and services, and the various factors that may influence their decisions.

- Concepts of complicity, knowledge, suspicion and intent in relation to lawyers' involvement in money laundering and in relevant legislative frameworks.

- The challenges and complexities of the current (criminal justice and/or regulatory) response to the facilitation of money laundering, and potential future strategies.

Lawyers and the Proceeds of Crime develops a framework and agenda for future research and analysis on the facilitation of money laundering by legal professionals. This remains an under-researched area, and the framework provides clear direction for future analysis and empirical investigation. The book also proposes a combination of strategies for controlling the facilitation of money laundering, suggesting that multiple approaches are necessary due to the challenges and limitations of individual approaches. The findings from *Lawyers and the Proceeds of Crime* will therefore be of interest to academics and researchers, AML/financial crime specialists, legal professional or representative bodies, regulators and AML supervisors, and policy makers responsible for preventing the facilitation of money laundering.

What is ‘the facilitation of money laundering’?

This term encompasses the various ways by which someone in a legitimate occupational position can play a role in how another person uses, moves or conceals the origins of the proceeds of crime.

Section 328 of the UK Proceeds of Crime Act 2002 (POCA) states that a person commits an offence if they enter into or become concerned in an arrangement which they know or suspect facilitates (by whatever means) the acquisition, retention, use or control of criminal property by or on behalf of another person. Official discourse refers to the role of professionals in, for example: assisting organised crime groups to invest in property or high-value goods or to set up front businesses; integrating illicit funds into global banking systems; or concealing the proceeds of corruption or income on which no tax has been paid behind corporate structures and in off-shore jurisdictions. Poor compliance with Money Laundering Regulations, or failure to adequately carry out the obligations they confer, may also be considered as facilitating money laundering.

The research identified solicitors who had been convicted under s.328 or other offences (including the offence of failing to disclose suspicions of money laundering) for a whole range of different actions (or non-action). The analysis also showed variation in: the nature, purpose and complexity of the transactions or processes involved; the nature and form of the criminal proceeds; the relationship between the professional and the predicate offender; the benefit received by the professional for their role in the laundering; and the degree of complicity, knowledge and intent involved.

The facilitation of money laundering, therefore, is **not a homogenous phenomenon**; it is complex and multi-faceted, and this needs to be recognised in both criminological analysis and policy development.

Opportunity/vulnerability structures

The structures, processes and transactions of the legal profession and the nature of the organisations in which legal professionals work can provide **opportunities** for those wishing to assist others to launder criminal proceeds and make individuals within the profession **vulnerable** to exploitation for the purposes of laundering.

Examples of these 'opportunity/vulnerability structures' include:

- **Client accounts**

  A client account (or trust account) is a bank account maintained by a legal practice for holding client money, separate to the business account. These accounts are used, for example, to hold deposits in property transactions or facilitate other funds transfers. Whilst they provide a necessary legitimate function, client accounts can also be used to move illicit funds between individual/company bank accounts and in the purchase of assets, providing a 'façade of legitimacy' to the transaction and obscuring the identity of the owner of the funds.

- **Property transactions and trust and company service provision**

  Investment in high-value real estate can be used to hide, store or transfer the proceeds of corruption or other major crimes. On a lower scale, the purchase of residential property as a home, investment or rental opportunity is a common use for the proceeds of crime-for-profit. Corporate vehicles such as shell companies, trusts and foundations can be used as a means of confusing or disguising the links between offenders and the proceeds of their crimes. The *legitimate* role played by legal professionals in the conveyancing process of property transactions and in the setting up and management of corporate vehicles creates both opportunities and vulnerabilities for their involvement in money laundering.

- **Autonomy and lack of (internal) oversight**

  Misconduct within organisations is more likely to take place at the less regulated, less visible or less transparent parts of routine business processes or transactions. A lack of internal oversight over transactions through client account, property conveyancing processes or trust and company service provision, for example, or high levels of autonomy for those carrying out such transactions, will increase their capacity to be misused. For example, a solicitor convicted for facilitating money laundering on behalf of a client was found to have had 'sole operational control' over his firm's client account. Consideration should be given to methods for increasing internal oversight of processes and transactions with the potential to be misused.

- **Nature of the organisation**

  Organised crime groups looking to launder the proceeds of their crimes may be more likely to use small 'high street' legal practices and sole practitioners than larger firms, as they will be local, lower cost and lower risk. Larger firms operating on a transnational basis will provide the transactions and services used in more complex laundering processes. Sole practitioners have autonomy and lack of oversight, and will have fewer resources to keep up with anti-money laundering regulations and guidance. Larger firms can invest in compliance programmes and may be more visible to regulatory agencies, but complex management and accountability structures can create opportunities for misconduct or regulatory non-compliance.

- **New forms of law firm**

  The legal services market in the UK has changed notably in recent years with, for example, the introduction of Alternative Business Structures (ABS), a growing online legal services provision and the rise of 'freelance' solicitors. As the 2017 UK *National Risk Assessment of Money Laundering and Terrorist Financing* suggests, innovation within the legal services market presents challenges for AML supervisors, as opportunities for accessing legal services without engaging a supervised firm are created.

  Solicitors interviewed during the research raised the issue of what they called 'conveyancing farms' or 'conveyancing factories' – firms that process large numbers of conveyancing transactions by using teams of paralegals rather than qualified solicitors. They considered such firms to be higher risk for money laundering.

These and other opportunity/vulnerability structures are explored fully in Chapter 5. Understanding such structures allows the development of strategies to inhibit them – questions of motivation and intent become irrelevant; *why* professionals become involved in money laundering is less important than *how* they do so.

On the 'borders of knowingness': complicity, knowledge and intent

Undoubtedly, there are legal professionals who are **fully complicit, active participants** in money laundering, who *know* that they are facilitating transactions involving criminal proceeds and *intend* to do so. In some cases, there may be a **complete lack of knowledge and intent**, described by the FATF as 'innocent involvement', where no 'red flags' were apparent. However, in many cases involvement will exist on the **'borders of knowingness'**, without intent to facilitate laundering but with a degree of knowledge or suspicion about the client, their funds or the transactions or services requested. Chapters 6 and 7 explore the complexity of concepts of complicity, knowledge and intent in relation to the facilitation of money laundering, and how these can vary in different circumstances. This variation has implications for control strategies, highlighting the need for a combination of approaches (discussed below).

Legislation used to prosecute the facilitation of money laundering in the UK allows for conviction without criminal intent or even, in certain circumstances, actual knowledge or suspicion that laundering was taking place. It therefore goes beyond the international frameworks from which it was derived, which focus on those who have *intentionally* laundered criminal proceeds. This has **significant implications for those working in the legal profession**, who face serious potential consequences for failing to fulfil their 'gatekeeper' obligations.

Decision-making in context

The facilitation of money laundering by legal professionals involves decision-making: there must be either a decision to facilitate money laundering or a decision to proceed with a certain transaction, provide a certain service or agree to act for a certain client, for example. The decision *to facilitate money laundering* refers to an **active, knowing choice** to assist the predicate offender in the laundering of their criminal proceeds. This may be **motivated** by (personal or organisational) financial benefit or competitive advantage, and involve **taking advantage of opportunities** created by the structural factors discussed above.

But lawyers can become involved in the facilitation of money laundering without making an active choice to do so, through the everyday **decisions they make as part of their routine occupational role**. (This does not suggest a complete lack of knowledge/suspicion or 'wrongdoing'; it highlights the complexity of issues of knowledge and intent).

These decisions are shaped by a range of macro-, meso- and micro-level factors, summarised in figure 9.1. For example, **the regulatory environment** in a particular jurisdiction or for a

particular transaction (which could cross multiple jurisdictions) could encourage compliance with AML processes and ethical decision-making. Any failures or limitations in the regulatory environment, however, will mitigate its effectiveness by limiting deterrence efforts or affecting individuals' or firms' ability to comply. The **nature of the organisation** in which a legal professional works (e.g. size; complexity; nature of their business and clients; extent (local/global) of their reach; structure; division of responsibility, authority and accountability; compliance processes and management; internal oversight processes and procedures; autonomy of individuals) will influence the types of decisions that lawyers have to take and the choices they make. A personal or family **relationship**, or some form of 'broker' to the relationship, can cause a legal professional to make decisions about a client or transaction that they otherwise would not.

Figure 9.1 Framework for analysing the facilitation of money laundering

Future research/analysis recommendations:

- Map the points of decision-making for legal professionals, in relation to their clients, the transactions they are involved in and the services they provide, in different organisational and regulatory contexts.
- Further analysis of the nature of the various situational contexts summarised in figure 9.1, how they interact with each other and how they influence individual action and decision-making.

Recommendations for policy and practice: a combination of approaches

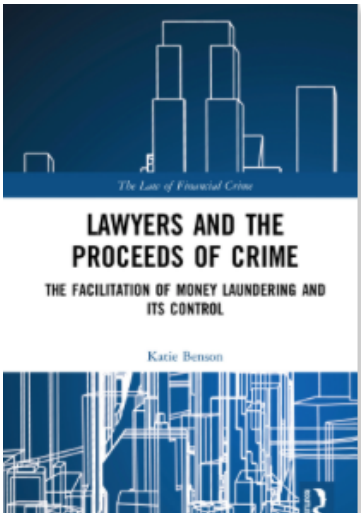
The variation in the nature of legal professionals' involvement in the facilitation of money laundering, and the challenges and limitations inherent in individual strategies, mean that there cannot be a single approach to controlling it. For example, difficulties in detection, investigation and prosecution and the unsuitability of deterrence approaches for those who do not make an active choice to facilitate laundering mean that, on its own, the enforcement of criminal laws and regulations would be insufficient. On the other hand, methods to assist lawyers wishing to comply would be ineffective for those actively seeking to launder others' criminal proceeds.

Cooperative strategies to **encourage compliance** with AML regulations,[1] and with the professional standards, rules and codes of conducts of the legal profession more broadly, are an important element. These should provide the **means to comply**, take account of variation in the **capacity to comply**, and foster the **desire to comply**. Deterrence strategies should aim for **effective and proportionate** detection, investigation, prosecution and sanctioning *and* increasing perceptions amongst the profession of the likely implications of misconduct.

The research highlights the roles of **opportunity/vulnerability structures** and **decision-making** in the facilitation of money laundering, as discussed above. Therefore, alongside compliance and deterrence strategies, the combined approach should include: (i) **identifying and inhibiting structural factors** that provide opportunities for legal professionals to facilitate money laundering or make them vulnerable to being exploited for laundering purposes and (ii) **understanding the points of decision-making** for legal professionals that can lead to their involvement in the facilitation of money laundering and **developing strategies for influencing the choices made** at these points.

Chapter 9 of *Lawyers and the Proceeds of Crime* provides a comprehensive overview and explanation of these strategies (directed primarily at the UK context, but with principles that are applicable globally) and their justification.

***Lawyers and the Proceeds of Crime: The Facilitation of Money Laundering and its Control* by Katie Benson is available here.**



[1] E.g. in the UK the Money Laundering, Terrorist Financing and the Transfer of Funds (Information on the Payer) Regulations 2017