

UK Parliament Treasury Committee Economic Crime Inquiry

Response from NAEA Propertymark

May 2018

Background

1. NAEA Propertymark is the UK's leading professional body for estate agency personnel; representing more than 11,000 offices from across the UK property sector. These include residential and commercial sales and lettings, property management, business transfer, auctioneering and land.
2. NAEA Propertymark is dedicated to the goal of professionalism and by appointing an NAEA Propertymark agent to represent them consumers will receive in return the highest level of integrity and service for all property matters. NAEA Propertymark agents are bound by a vigorously enforced Code of Practice and adhere to professional Rules of Conduct. Failure to do so can result in heavy financial penalties and possible expulsion from the organisation.

The anti-money laundering, counter-terrorist financing and sanctions regimes

The scale of money laundering, terrorist financing and sanctions violations in the UK, and the means by which this activity is enabled

3. Purchasing property in the UK is a common method 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. The sales and lettings sectors, property auctioneers and high value dealers are all attractive targets. 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. Whilst the property sector remains largely unregulated, and without minimum standards, the industry is vulnerable to attack.
4. 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. Criminal funds can be concealed and made to look legitimate through an untraceable 'company' and subsequently the purchasing of property. When agents try to determine the true, or 'beneficial' owners, they find only documents listing shell companies. Furthermore, houses bought with laundered money often sit 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. It is imperative that the public register of overseas companies owning property in the UK is set up as soon as possible. The longer we wait for the register, the longer corrupt individuals will be able to use the UK property market to hide their wealth.

5. Property bought at auction is open to abuse from criminal operators. The guidance is confusing and places additional checks on property auctioneers. Under the guidance an auctioneer may act for sellers, buyers and bidders. A business relationship is formed when, on establishing contact, the business expects the relationship with the customer to have an element of duration. Prospective buyers are not included in a business relationship unless they are a customer, for example an auctioneer may charge a fee to a bidder for participating in an auction. However, the guidance also states that an auctioneer should carry out customer due diligence on a bidder who is a customer before they receive a paddle and on the buyer before the hammer falls. This has significantly increased the administration of property auctioneers. For instance, if you have 300 people attending an auction a huge amount of additional administration is now needed to ensure due diligence is carried out on every single person. Under the old regime property auctioneers often only asked for a person's identification once a bid had been accepted. Furthermore, once the gavel comes down a binding contract is formed, and the buyer is under an obligation to purchase that property. Therefore, it is very difficult for additional checks to be made on the buyer if this is required.

6. Luxury goods, auction houses, arts and antique sectors are also being used by the corrupt to hide the illegal proceeds of crime. Greater awareness and enforcement is needed within these sectors to drive up standards and improve reporting levels. In these sectors it is common for foreign and offshore accounts to be used as well as for intermediaries to carry out a transaction through online auctions or over the telephone. Weak levels of compliance mean that the sector is vulnerable to money laundering. Between October 2015 and March 2017, High Value Dealers in the UK submitted 265 Suspicious Activity Reports (SARs).¹ High Value Dealers who deal in goods and services and make or accept cash payments over the value of 10,000 euros (or its equivalent in another currency) whether that is a single payment, or a series of payments must register with Her Majesty's Revenue and Customs (HMRC). In the

¹ <http://www.nationalcrimeagency.gov.uk/publications/suspicious-activity-reports-sars/826-suspicious-activity-reports-annual-report-2017/file>

sector, awareness of money laundering risks is low. Despite small elements of good practice, High Value Dealers must do more than just be wary of buyers paying with cash or using intermediaries. They need to actively train staff on implementing the Money Laundering Regulations 2017. To coincide with an increase in compliance from the sector, greater enforcement is needed from HMRC.

7. Estate agency businesses do not handle the funds used to buy a property. Nevertheless, they are a key facilitator in a property sale and encounter both parties to the transaction at an early stage. As a result, they are in an ideal position to identify suspicious activity. However, agents in customer facing roles (managers, negotiators, valuers) need to understand what to look for. Under the Money Laundering Regulations 2017 agents must carry out due diligence on their customer and the other party to the transaction (the buyer and/or the seller). The level of customer due diligence will depend on the agent's risk assessment of each person. As a result, the action taken by estate agents to the risk of money laundering and terrorist finance will vary across each business. The risks faced by each firm are likely to be different depending on the location they operate in, the customers they have and the value of transactions they are undertaking. Agents that do not implement adequate procedures to safeguard against the risks leave themselves open to exploitation by serious organised criminals.

8. Financial criminals target both small and large estate agency businesses and look for weak links. These are estate agents with weaker due diligence procedures or those that have a lack of basic knowledge on crime prevention. Some larger businesses have financial services divisions whilst smaller estate agency businesses are unlikely to have large dedicated compliance teams. In the case of a larger estate agency business with a financial services division, unlike major banks and financial institutions, they are unlikely to have the same level of defences, processes and resilience 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 2017 require. Estate agents must constantly consider the level of identification, verification and monitoring needed to check for money laundering. Whether they have large or small teams they are unable to apply the same 'tick-box' procedure to every client. Knowledge, expertise and resources to deal with money laundering varies across the sector, leaving estate agents vulnerable to attack.

9. Along with our sister organisation ARLA Propertymark² we were disappointed that the Government chose not to include lettings activity within the Money Laundering Regulations 2017. Letting agents fall within the scope of the regulations where they carry out estate agency work in accordance with section one of the Estate Agents Act 1979 (as amended). By not extending the Money Laundering Regulations to include lettings activity the sector is vulnerable to criminal activity. In the last 15 years the size of the private rented sector has more than doubled. In 2016-17, 4.7 million (20%) of households in England were renting privately.³ As homeownership becomes out of reach for more people we are likely to see the private rented sector continue to grow. Unlike estate agents, letting agents hold a significant amount of money from deposits, rents, service charges and ground rent which highlight the opportunities for cash payments to be made. We know of one letting agent who 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 must carry out Right to Rent checks⁴, 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 SAR. The rules need changing. It is wrong that letting agents are not covered by the Money Laundering Regulations 2017.
10. Moreover, 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.⁵ With lettings activity not included within the Money Laundering Regulations 2017 there is a risk that money laundering activity will transfer from the sales sector, due to the increased powers within the new regulation, into the lettings sector where firms do not have to register with HMRC for anti-money laundering supervision.

² <http://www.arla.co.uk/>

³ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/675942/2016-17_EHS_Headline_Report.pdf

⁴ <http://www.arla.co.uk/lobbying/immigration-act.aspx>

⁵ <https://www.yorkshirepost.co.uk/news/bradford-money-lauderer-s-fleet-of-luxury-cars-1-7017328>

11. Estate agents 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 doesn't understand the technicalities involved in buying and selling property or understand how to analyse the level of risk to their business of money laundering or terrorist financing. We believe that full mandatory government regulation of sales is the quickest and most effective method to eliminate unprofessional, unqualified and unethical agents from the property sector. It is vitally important that agents understand their obligations and undertake the appropriate anti-money laundering checks. Greater awareness and training from everyone working in the sector will ensure that professional standards of working are enhanced, and suspicions of money laundering are identified and reported. In April 2018, the Government announced that all estate agents will be required to hold a professional qualification.⁶ This is very welcome news and it is imperative that the decision is implemented as soon as possible.

The current legislative and regulatory landscape, including any weaknesses in the rules and their enforcement

12. Since the introduction of the Money Laundering Regulations 2017 there has been a ramping up of compliance activity. The tighter regulations require agents to do anti-money laundering checks on both the buyers and sellers of properties. However, fines for those agents flouting the rules are not publicly being made known. Agents were not given sufficient time to adapt to the changes. Only interim guidance is available and there is a need for better guidance for reporting suspicious activity. The rules do not cover letting agents and there needs to be more tools to help regulated agents understand enhanced due diligence.

13. Anecdotally, non-compliant firms have been fined six and seven figure sums, but anti-money laundering penalties imposed by HMRC are not broken down by sector and the fines are not made public. HMRC supervises seven different industry sectors, including estate agents, but it only makes available overall figures. Furthermore, 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 2015. Despite HMRC publicising its crackdown on the sector, we do not know what the average fine is or what the biggest fine is. Ineffective supervision affects the sector in three ways. Firstly, it leads to

⁶ <https://www.gov.uk/government/news/government-to-professionalise-the-estate-agent-market>

inadequate compliance with the rules by firms within the sector. Secondly, it leads to low reporting of suspicious activity. Thirdly, it leads to poor-quality reporting.

14. The rules went through Parliament very quickly and the sector had little time to prepare. The Regulations that transposed the Fourth Money Laundering Directive were laid before Parliament on 22 June 2017 and commenced on 26 June 2017. Although the Fourth Directive was finalised in June 2015, a draft version of the regulations was only released in March 2017 and the regulations themselves were only laid before Parliament one working day prior to commencement. It is not simply enough for estate agents to check the buyer and seller, the obligation on them is to analyse the risk of each case. The legislation is complex, and the sector was given very little time to change its procedures to comply with the new rules.
15. Nearly 12 months on from the introduction of the Money Laundering Regulations 2017 the sector is still working from interim guidance. This guidance has changed and is likely to change again. Initially, the sector had two consultation versions of the guidance in May 2017 and then a published interim version on 26 June. Furthermore, NAEA Propertymark no longer produces guidance because the Treasury only want one set of industry guidance in existence for each sector. However, until HMRC sign-off and confirm the (interim) guidance, estate agents are left without full clarity on what the requirements are. Agents are at risk of breaching their legal obligations, and legitimate property transactions are at risk of being jeopardised.
16. Guidance from HMRC should include real life examples from estate agents who have given Suspicious Activity Reports the National Crime Agency, to illustrate the process and explain the steps required. This would help to better explain to staff and Money Laundering Reporting Officers (MLRO) about how long the process can take and what the outcomes can be. Additionally, if the process could include priority and non-priority reporting to the National Crime Agency (NCA) this may lead to greater detail being provided as well as more initial reports filed. Under the Regulations there is a requirement to have a nominated person within your business to act as a MLRO and a Deputy, where applicable. Alongside this, the new 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 National Crime Agency will then determine whether the agent can proceed with the

transaction. 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. Agents need better guidance and working examples.

17. In the private rented sector, checks on any potential customers would help letting agents avoid committing a money laundering offence and protect the reputation of their business. There are several activities that lettings agencies carry out. These include introductory services, let only, rent collection, full property management, block management. Another type of lettings activity that exists are letting agents who rent and manage property on behalf of local authorities. There is also the issue of a license agreement rather than tenancy where the landlord is living in the property and the need to carry out customer due diligence. Letting agent contracts with a landlord and holiday and short term lets should also fall under types of lettings activity within the UK's anti-money laundering rules. Customer due diligence must be carried out on the tenant and landlord. Checking a landlord's identity will also prevent invalid agreements which can lead to letting agents losing out on fees. Checks on tenants will reduce the risk of properties being used for what could be illegal purposes. Furthermore, for landlords if a tenant gets caught money laundering, their funds will be frozen, resulting in no rent.

18. The Government need to provide simple tools and training to help agents and senior managers assess the level of risk. 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. To support agents with their enhanced due diligence obligations, the 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. Furthermore, most estate 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. Estate 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 PEP.

The effectiveness of the Treasury and its associated bodies in supporting and supervising the regimes

19. Anti-money laundering measures are relatively unfamiliar and HMRC should do more to engage estate agents in recognising the importance of complying with the Money

Laundering Regulations 2017. Support from the Treasury can be made more effective in four ways. Firstly, the number of anti-money laundering supervisors must be consolidated. Secondly, Estate agents need clearer guidance. Thirdly, a more integrated approach is needed to gather information. Fourthly, a stronger approach to enforcement is needed.

20. The number of anti-money laundering supervisors must be consolidated to prevent the fragmentation of monitoring and enforcement, improve transparency across sectors and ensure standards are consistent. We are pleased that the new regulations allow scope for self-regulatory, professional bodies to supervise estate agents. NAEA Propertymark believe that self-regulatory bodies should be appointed supervisors of estate agents and letting agents alongside HMRC. We would advocate professional bodies acting as the self-regulatory body for their members and HMRC would remain as the supervisor for agents who are not members of these bodies. Self-regulatory bodies acting as supervisors are best placed to understand their own sectors and to gather information about developing risks and anti-money laundering methodologies.
21. In discussions we have had with HMRC they have very little understanding of developments in estate agency and the fringe areas of the sector, such as online estate agents. HMRC does not publish an annual anti-money laundering enforcement report and there are no thematic papers produced by HMRC or detailed reviews of compliance. Therefore, allowing self-regulatory bodies to become supervisors for the estate agency sector would allow HMRC to put more resources into monitoring those agents who are not part of a professional body, whilst self-regulatory bodies can continue to drive up standards amongst their members.
22. Estate agents need clear guidance from the 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.
23. Estate agents do not handle the transfer of money and we think there needs to be a more integrated approach with financial institutions, solicitors and estate agents working together to gather information. NAEA Propertymark would like to see the

new Office for Professional Body Anti-Money Laundering Supervision (OPBAS)⁷ facilitate and report on the exchange of information between supervisors within and across different industries. 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 think 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. To this end, NAEA Propertymark believes that 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 we believe could produce more productive outcomes for law enforcement.

24. NAEA Propertymark would like to see a strong approach to enforcement and prosecution for non-compliance. Currently, estate 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 NCA and HMRC and imprisonment depending on the crime. However, it is unheard of that agents have been put out of business as a result. Fines are an effective deterrent and we know of several agents who have been fined by HMRC. Enforcement is essential. Furthermore, we believe that the NCA and HMRC should be able to retain fines and ring fence the money, putting it back into further enforcement.

The impact of the implementation of the current regimes on individuals, firms and the wider economy, including unintended consequences, such as the removal/refusal of financial services from/to individuals or firms

25. De-risking by banks, in response to the Money Laundering Regulations 2017 is preventing some estate and letting agents from opening client accounts. Conversely, legislation is being introduced which requires 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.
26. When an estate agent receives or holds a clients' money this is required to be kept in a separate client bank or building society account or accounts. However, we know that

⁷ <https://www.fca.org.uk/opbas>

some banks, who also have client due diligence obligations under the Money Laundering Regulations, are unilaterally changing the status of these accounts from client to office, but estate agents are not being informed. The banks previously did not make the connection and as a result new business are at a disadvantage.

27. Where estate 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.

The role of financial institutions and/or professional bodies in these regimes

28. Professional bodies play an important role in educating and providing relevant up-to-date information to the sector. NAEA Propertymark does this through a series of dedicated resources. Technology has a significant role to play, so to benefit and help our members we have developed Propertymark Passport to enable them to verify customers' identities and support compliance with the Money Laundering Regulations 2017. We play an important role in ensuring that our members are equipped to recognise and prevent money laundering and terrorist financing practices. We are committed to working with the Government, supervisors and law enforcement agencies to ensure the UK is viewed by criminals as a hostile destination for money laundering. The Government should be doing more to promote professional bodies whilst continuing to work with us to endorse best practice.
29. NAEA Propertymark host free masterclasses around the country to keep members up-to-date with any changes in legislation, to discuss current industry trends and to invite top industry speakers to present. NAEA also provides a four-hour Financial Crime training course that gives attendees the knowledge needed to ensure compliance with the Money Laundering Regulations.⁸ We have created an Identity Verification Form to assist members in collecting important information they need regarding the vendor and the property or land to be sold.⁹ We also provide a form that members can download to provide the full details of their MLRO plus the Deputy.¹⁰ NAEA Propertymark has also collected details across its membership about who the MLRO

⁸ <http://www.naea.co.uk/training-qualifications/sales/financial-crime-update.aspx>

⁹ <http://www.naea.co.uk/media/1045373/identity-verification-form.pdf>

¹⁰ <http://www.naea.co.uk/media/1046772/money-laundering-regulations-2007.pdf>

is. We do all of this to keep our members up-to-date with important legislation updates and additional information around anti-money laundering.

30. Estate agents must ensure all staff are aware of the risks of money laundering, the relevant legislation and their obligations. Staff training is essential, particularly when taking on new staff, and this could take a few days or up to a week each month to ensure they fully understand the Money Laundering Regulations. The Regulations also advise staff training at least every two years. In addition, members of NAEA Propertymark are required to log twelve hours of Continued Professional Development (CPD) each year. Members identify their own development needs and at least four hours of CPD is expected to be recorded through the attendance of an event or training course. It is integral to NAEA Propertymark membership and ensures that our members are constantly keeping up-to-date with changes to legislation and the industry.
31. In February 2018, we launched Propertymark Passport, which is now available to all NAEA Propertymark members.¹¹ Propertymark Passport supports agents in assessing the authenticity of ID documents, regardless of their type or country of origin.¹² It is an app which uses artificial intelligence with biometrics to help confirm someone's identity and report issues and concerns of money laundering. For a fee of £1-£3 per check, the app streamlines the process, increasing the agent's ability to spot issues during identity checks. Developed with Trust Stamp, Propertymark Passport does not replace face to face checks but gives agents more tools to ensure they consistently comply with the Money Laundering Regulations 2017. It should be more widely endorsed by the Treasury to increase its use.
32. We have engaged with the Government throughout the development of its proposals, including meeting with HMRC, Home Office, Treasury and the Department for Business Innovation and Skills (as it was called until July 2016) to discuss how the Government's Anti-Money Laundering and Terrorist Finance regime impacts on estate agents. Last year we held a roundtable discussion with NAEA Propertymark members and representatives from the Treasury and Home Office to discuss views and provide evidence from the estate agency and property sector against a comprehensive set of Money Laundering and Terrorist Finance risk factors. NAEA Propertymark is a member of the Money Laundering Advisory Committee (MLAC). This gives us a forum to work with and advise the Government, law enforcement, supervisors, and other industry

¹¹ <http://www.naea.co.uk/news/february-2018/propertymark-passport/>

¹² <https://propertymark.pro/>

representatives on how to operate an effective and proportionate Anti-Money Laundering and Counter-Terrorist Finance regime in the UK. We are committed to raising standards across the industry.

The UK's role in international efforts to tackle money laundering and terrorist financing and implement sanctions

33. NAEA Propertymark recognises that the UK has taken a leading role in the fight against money laundering. However, there is more that the UK can do to ensure corrupt individuals cannot buy property with impunity. UK Government should accelerate plans to implement the now much-delayed property register and to tackle cross-border corruption the UK's Overseas Territories and Crown Dependencies must also introduce centralised public registers of beneficial ownership. Furthermore, there is no single Act of Parliament that sets out the UK financial sanctions regime. It is made of EU Regulations and UK Statutory Instruments. This means the penalties for breaches vary depending on the underlying legislation but include imprisonment and/or a fine. Continued reform of the anti-money laundering system is needed to defend against corrupt wealth entering the housing market and ensure that robust checks on investors' source of wealth are fit for purpose.