



Response to Home Office and HM Treasury Consultation on legislative proposals for an Action Plan for anti-money laundering and counter-terrorist finance from the National Association of Estate Agents (NAEA)

June 2016

Background

1. National Association of Estate Agents (NAEA) is the UK's leading professional body for estate agency personnel, being part of a group representing more than 16,000 members who practice across all aspects of property services both in the UK and overseas. These include residential and commercial sales and lettings, property management, business transfer, auctioneering and land. The NAEA is a sister organisation to the Association of Residential Letting Agents (ARLA).
2. NAEA is dedicated to the goal of professionalism within all aspects of property, estate agency and land. Its aim is to reassure the general public that by appointing an NAEA member to represent them they will receive in return the highest level of integrity and service for all property matters. Both NAEA and ARLA members 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 Associations.

Questions

Section 2(a): Public-private partnership

1. The Government is seeking views on the change in focus of the SARs regime from one on transactions to one on the entities responsible for money laundering and terrorist financing.

What benefits are there for the reporting sector in moving the focus of the SARs regime from *transactions* to *entities* for tackling money laundering and the financing of terrorism?

1. Estate agents should already be scrutinising unusual transactions as well as unusual customer behaviour in order to consider whether there are reasonable grounds for knowing or suspecting that money laundering or terrorist financing may be taking place.



2. Before the Government changes the focus of the Suspicious Activity Report (SARs) regime, NAEA believes the Government should be doing more to increase standards of compliance with existing regulations. For instance, the Government's report in October 2015 highlighted concerns over the quality of reporting from the estate agency sector.¹ The report states that National Crime Agency (NCA) analysis of SARs from estate agents indicated that SARs lacked clarity in their reason for reporting, indicating a lack of general understanding of the requirement and purpose for doing so.

What would be the effect on costs to business in making that shift?

3. We do not envisage any significant additional costs to estate agents if the focus of the SARs regime was moved from transactions to entities for tackling money laundering and the financing of terrorism. This is because all relevant employees in an estate agency business must be made aware of the law relating to this area. They must also be regularly given training in how to recognise and deal with transactions and other activities which may be related to money laundering or terrorist financing.

2. To support that change, the Government is considering removing the current consent regime.

What are the risks in removing the consent regime, and how could these be overcome?

4. NAEA believes that further details are needed about the removal of the current consent regime. We understand that low SARs reporting leads to low levels of information for law enforcement agencies to act on. However, on the one hand, replacing the consent regime with greater protection for reporters may lead to more accurate SARs, but without a defence in place preventing transactions from being held up this may reduce rather than increase the number of SARs submitted by estate agents.

If the current SARs consent regime is replaced, removing the statutory defence for SARs reporters, what legal protections should be available for reporters who unwittingly come into the possession of criminal property?

5. If the statutory defence is removed there should be a clause included which outlines that reporters are protected and will not have committed an offence if they have

¹https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/468210/UK_NRA_October_2015_final_web.pdf



taken reasonable steps within a reasonable timescale to investigate or report information about suspicious activity relating to money laundering and terrorist financing as soon as they suspected an issue.

What would be the costs to your business of this change?

6. Due to the limited number of SARs submitted by estate agents we do not know the cost implications to businesses in the sector.

3. Should a reformed SARs regime include powers for law enforcement agencies to direct reporters to take certain actions, including maintaining a customer relationship, and provide legal cover for the reporter to do so?

7. If a reformed SARs regime included powers for law enforcement agencies to direct reporters to take certain actions then we believe that substantial resources and guidance would need to be introduced for this to work.

4. The Government is proposing to provide legislative cover to support better data sharing within the private sector.

What legislation and guidance needs to be in place to allow effective sharing of information between private sector firms in order to prevent and detect financial crime?

8. NAEA has long held the view that the guidance from HMRC (Money Laundering Regulations 2007: supervision of Estate Agency Businesses) should include working examples of estate agents who have submitted SARs and the outcome to better explain to staff and Money Laundering Reporting Officers (MLROs) about how long the process can take and what happens if the report is acted upon or not.
9. In addition, under the Money Laundering Regulations it's an offence to trade as an estate agent unless you're registered with HMRC for anti-money laundering supervision. However, whilst estate agents are required to register, HMRC does not operate a 'fit and proper' test for estate agents because the regulations do not provide them with the legal powers to do. By introducing a test this would allow for the checking of internal and external information sources.



What benefits would you see from having the ability to develop SARs in partnership / report jointly with other private sector entities?

10. NAEA believes that the ability to share information is a vital component in the fight against money laundering and terrorist financing.
11. Estate agents must undertake due diligence on their customers, who in the majority of property transactions is the seller. Estate agents can only do customer due diligence on the buyer if they are independently represented and thus become a client of the estate agent. Therefore because estate agents are usually the first party to be instructed in a property transaction they are usually unable to rely on a third party, such as a solicitor or financial institution for checks. However, if a third party has already conducted customer due diligence, and provided they consent to this to be relied upon, an estate agent may rely upon them.
12. Additionally, because estate agents do not handle the transfer of money we think there needs to be a more integrated approach with financial institutions, solicitors and estate agents working together to gather information. 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.

What can we learn from the U.S. experience of data sharing between private sector entities under the s314 of the USA PATRIOT Act?

13. We acknowledge the Government's desire to expand its investigative capabilities and the difficulties in seeking traditional criminal justice outcomes in the UK courts against money laundering threats across the globe.
14. However, before introducing new laws we believe there are issues that should be initially addressed by the Government to help estate agents ascertain further information about the customer. For instance, under Money Laundering Regulations there is no legal requirement for the ultimate owners of property to be publically available in the Land Registry. The Land Registry only lists legal owners, such as UK companies and entities registered in tax havens.
15. Furthermore, whilst the NAEA is pleased that the UK Government has decided to extend the public register of beneficial ownership to foreign companies purchasing property in the UK, we also believe that the Land Register must be able to distinguish



between residential and commercial properties in order to make it easier for estate agents to verify and ascertain information on the seller as well as the buyer.

5. Under the EU 4th Anti-Money Laundering Directive (4AMLD), Financial Intelligence Units are required to have a power to request further information in relation to a SAR. How should such information be gathered, and should it be regarded as part of the overall SAR?

16. Under the Money Laundering rules estate agency staff must raise an internal report where they know or suspect another person is engaged in money laundering and report to the MLRO as soon as possible. The MLRO will then file the information with the NCA if they feel there is enough suspicion or knowledge to suspect money laundering, even if no transaction has taken place. The business must then seek consent from the NCA before proceeding with a suspicious transaction or entering into arrangements. We think it is feasible for Financial Intelligence Units to contact MLROs for further information but unless third party consent has been given on checks as outlined in our answer to the previous question and changes have been made to Land Registry data as we have suggested in points 14 and 15 it is unlikely that further details will be available to pass on.

6. The Government wants to support the financial sector in dealing with suspected proceeds of crime held in suspended bank accounts.

What new powers are required to allow the criminal funds held in UK bank accounts to be forfeited more easily?

17. NAEA believes that the financial sector is better placed to answer this question. However, what we would like to see is the banks stop de-risking because of the Money Laundering regulations. This is creating difficulties for estate and letting agents to open client accounts in an environment where there is greater legislation coming along requiring client money to be held in correctly designated client accounts.

What safeguards should be put in place around any new powers in order to protect innocent account holders?

18. 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 some banks, who also have client due diligence obligations under the Money Laundering Regulations 2007, 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 businesses are at a disadvantage. In addition to this, where estate agents hold a tenancy deposit and they can't put money into a client account they would be in breach of Tenancy Deposit legislation.

In uncontested cases, should administrative forfeiture be permitted, in the same way that POCA already enables the administrative forfeiture of cash?

Section 2(b): Enhanced law enforcement response

7. What do you see as the benefits of introducing a power to require individuals to explain the sources of their wealth?

19. Anonymous individuals must not be able to buy properties in the UK without explaining the sources of their wealth because properties bought with alleged dirty money is impacting on supply in the housing market as they are unavailable to potential other buyers who really want them as a home.

8. Would you see a benefit in a linked forfeiture power where the explanation is not satisfactory or no explanation is provided?

20. Yes, NAEA would see a benefit in a linked forfeiture power where the explanation is not satisfactory or no explanation is provided.

9. What benefit would you see in an illicit enrichment offence, targeting those who use their public position to enrich themselves? What are the potential impacts on business?

21. NAEA believes that measures such as an illicit enrichment offence, targeting those who use their public position to enrich themselves would help to improve the credibility of the sector. It could also potentially bring down property prices by acting as a deterrent to prevent illicit money soaking up the UK's property market.

10. The Government is considering the introduction of a power to enable the Government to designate entities of primary money laundering concern.

What benefit would such a power provide?

22. We understand that the introduction of a power to enable the Government to designate entities of primary money laundering concern would prevent individuals from abusing financial institutions around the world and using property to launder illicit money.

What would be the impact of such a power on firms in the regulated sector?

23. The introduction of designated entities of primary money laundering concern may mean that estate agents are unable to rely on certain third parties when carrying out customer due diligence checks. They will however be alerted to designated entities of primary money laundering concern and react to the level of risk accordingly.

What legal recourse should be available for designated entities who wish to challenge their designation?

24. NAEA thinks that any designated entity of primary money laundering concern should be against the agent or specific individuals not the agency. There should be a timescale in which the grounds for determining the designation have to be determined and can be appealed against.

What can the UK learn from the U.S. experience of using section 311 of the USA PATRIOT Act?

25. NAEA does not know enough information about section 311 of the USA PATRIOT Act. However, we understand that it can allow for the identification of foreign jurisdictions and allow for UK financial institutions to take appropriate countermeasures.

What would be the costs to your business?

11. What benefit would you see in the provision of a power, similar to the provisions for cash seizure, to allow seizure and forfeiture of other forms of readily moveable property such as high value jewellery or precious metals?

26. It is widely viewed that the laundering of illicit money is also heavily linked to other illegal activities and therefore the seizure of other forms of readily moveable property may act as a deterrent or lead further investigations by the enforcement agencies.

12. What benefit would you see in enabling the administrative forfeiture of the proceeds of crime in uncontested cases, following an initial hearing at a magistrates' court? Should a limit be set on the value of property that could be administratively forfeited, and what should that limit be?



27. NAEA does not have sufficient knowledge or information about criminal proceedings to answer this question.

13. If we amend the investigative powers within POCA so they can be sought earlier in the investigative process, and make applications and administration more flexible, what would be the impact on your business?

28. If the investigative powers within POCA were amended this could mean that more information is in the public remit to suspect the potential use of property to launder illicit funds.

14. In addition to the proposals in this Action Plan, are there additional powers that UK law enforcement agencies should have to tackle money laundering?

29. Fines are an effective deterrent and we know of a number of agents who have been fined by HMRC. Enforcement is essential and NAEA believes that the NCA and HMRC should be able to retain fines and ring fence the money, putting it back into further enforcement.

30. Furthermore, NAEA 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.