

WHY CARE ABOUT SARs?

(or why you should help the Financial Intelligence Unit to help you)

A raft of international standards addresses the fight against Money laundering, Terrorist Financing and Proliferation Financing. An entire industry has grown up on the back of these issues. Some people regard all of this as a box-ticking exercise which is, at best, a significant frictional cost on their doing business. So, why should you care about SARs?

There is the obvious reason that failing to file a Suspicious Activity Report in circumstances where there are reasonable grounds to suspect ML/TF/PF is a criminal offence punishable by up to 5 years imprisonment. There is also the fact that institutions whose Boards fail to put in place proper systems to ensure such reporting face not only reputational damage, but the imposition of regulatory sanctions including fines and disqualification. Furthermore, failure to uphold the required standards puts the reputation of the entire jurisdiction, and thus the livelihoods of many people, in jeopardy.

But even without these sanctions and risks, most people have good reason to care about the issues. Who wants to go to bed at night thinking that the money they earned that day was earned at a high cost in human suffering? Modern slaves exploited for their labour, young women trafficked for sex, starving children suffering the effects of corruption in failing states, victims of terrorism; who wants to feel that they have contributed to the plight of these people?

Perhaps it is easy, and certainly comforting, to assume that one's hands are clean. The reality is likely to be different if you operate in the arena of private wealth management. Guernsey's National Risk Assessment has identified the highest risk sectors in the jurisdiction as the provision of TCSP and Private Banking services and for good reason.

A few years ago a senior partner of a London law firm used to speak regularly at private client conferences. He knew that the bankers and trust professionals whom he was addressing were by and large decent people who, so far as they were aware, had no involvement with criminality. Whilst they recognised that problems existed somewhere in the financial system, they were confident that this had nothing to do with them personally. He had a stark message for his audience and one which he had conveniently encapsulated in a graph. One line on the graph charted the growth of GDP averaged across a range of jurisdictions for the past decade. It showed slow and steady growth, the line having a gradient of say 10%. Then a second line was added to the graph, showing the growth in assets under management by the private wealth industry over the same period. It showed very rapid growth, the line having a gradient more like 50%. Finally, a third line was added. This showed the growth in estimated profits from human trafficking, drug trafficking and organised crime over the same period. That line lay virtually on top of the second line. The correlation was obvious and the conclusion unsettling.

Offshore structures have many legitimate uses. Amongst those is legitimate asset protection. However, offshore structures are also used to launder money and for terrorist and proliferation financing. How can you spot the difference? It can be extremely difficult, especially if you are trying to distinguish between legitimate asset protection and money laundering.

A financial service business with appropriately trained staff will be able to recognise reasonable grounds for suspicion. With proper systems in place, those will be reported internally to the MLRO,

who will then be able to consider whether such reasonable grounds do indeed exist, perhaps after having (without tipping off) sought and obtained further information.

Where reasonable grounds for suspicion exist, the MLRO must then make an external SAR to the FIU. At this stage the MLRO cannot say whether or not money laundering (or terrorist or proliferation financing) has occurred. The MLRO alone will rarely be in a position to state with confidence whether it has or not. All that the MLRO can do is provide as full information as is available to him or her which explains the grounds for suspicion.

The SAR then becomes one piece of intelligence available to the FIU. Importantly, it is not the only available intelligence. The FIU, because of its unique position, has access to a range of other data points:

- it can search closed-source databases unavailable to the public, such as the UK Police National Computer;
- it receives intelligence from other agencies within the Bailiwick;
- it receives intelligence from foreign FIUs through the Egmont network of FIUs;
- it can request information from other jurisdictions through the Egmont network;
- it has statutory powers to compel institutions within the Bailiwick to provide information.

The intelligence gathered from all of these data sources is collected within the THEMIS database which itself can be searched by the FIU for links between data gathered in relation to different SARs and other intelligence reports.

To take an example: A bank may file a SAR in relation to a trust administered in Guernsey whose account it holds. The bank's MLRO may think it unlikely that there is anything untoward, but nonetheless recognises that reasonable grounds to form such a suspicion exist. On receipt of the SAR, the FIU may determine that one subject of the SAR is linked to two other SARs filed by a different institution in relation to a different structure. Another subject of the SAR may have been the subject of a request for information from a foreign FIU. These links, when put together, may suggest a much higher level of suspicion. The FIU could then serve a Regulation 2A request on the TCSP administering the trust, so as to gain a more detailed understanding of the situation. It could ask the foreign FIU to provide information about the subjects of the SAR.

There are many players in this situation. Aside from the FIU, each can see only a part of the picture. As the central intelligence-gathering agency, the FIU is able to see a much bigger picture. With the benefit of that additional data, what may have looked like an innocent transaction, albeit one giving rise to reasonable grounds for suspicion, may now look like a probable money laundering, terrorist or proliferation financing venture. Its ability to analyse that range of data puts the FIU in a position to refer cases to domestic agencies for investigation, or to foreign FIUs in order to enable them to fulfil the same role in their jurisdiction.

Whether you are a director of a finance business, responsible for ensuring that your company has robust systems in place for compliance, an MLRO or other compliance professional operating those systems, or an employee of a finance business in a position to pick up on, and internally report grounds for suspicion, you should care very much about SARs. By promptly filing a SAR and by following the FIU guidance on how to make that SAR as useful as possible, you will be playing a vital part in a worthwhile struggle to stop bad people making the world a worse place.