Sub-Sahara African Academic Research Publications
March, 2022 Editions

JHSPR
Journal of Human, Social & Political Science Research. Vol.23, No.6, ISSN:2416-7999

COMPARATIVE ANALYSIS OF THE EFFECTIVENESS OF ANTI-LAUNDERING LAWS AND REPORTING SYSTEM BETWEEN NIGERIA UNITED KINGDOM

MOHAMMED IDRIS
Department of Legal Studies, Federal Polytechnic, Mubi, Adamawa State

ABSTRACT
This research examines the effectiveness of anti-laundering legislations between the United Kingdom and Nigeria by analyzing the strategies adopted by the two countries in fighting the scourge. Thus, one of the most effective mechanisms of International Anti-Money Laundering Laws is the requirement that, each country's financial institution should file Suspicious Transaction Reports (STRs) to its Financial Intelligent Units (FIU). Even though a global standard of reporting system had been established by the Financial Action Task Force (FATF); most of the countries in the world has their peculiar methods of filing the STR. Therefore, the aim of this research is to assess not only the sufficiency of the anti-laundering laws in these countries, but to analyse their reporting methods in other to accentuate their efficacy and short comings therein and to proffer solution(s) accordingly with a view of making improvement by the relevant concern authorities. The research also tried to venture into the correct meaning of the term „suspicion" for the purposes of attaining the objectives of fighting the scourge through reporting. The research also highlighted some impacts of suspicious reporting and its attendant effect both from the sides of the customers of the financial institutions, the institutions and the two jurisdictions analised herein. In conclusion, suggestions and or recommendations based on the analysis carried out were made in other to make some improvement in both jurisdictions.

Keywords: *Money Laundering, Legal Framework, Reporting, Suspicious Transaction, Effectiveness.*

INTRODUCTION

The effect of money laundering on the economy of any nation, more particularly developing nations, is devastating and may plunder such nations into a state of quagmire. Nowadays, countries are becoming susceptible to the risk and contagious effect of money laundering. According to the International Monetary Fund (IMF), the scale of money laundering globally could be between 2% and 5% of the world Gross Domestic Product (GDP). This account between 590 billion USD to 1.5 trillion of the money laundered per year[2].

The impact of money laundering affect economic development, financial stability and political developments of developing countries[3] and by implication, it does affects the developed ones through migration of people from former (developing) to the latter (developed countries) for greener pasture.

The international Communities were facing an increasingly sophisticated and dynamic method of moving illicit funds via financial systems across the globe and have therefore acknowledged the importance of improved multilateral cooperation to fight these criminal activities.

Thus, money laundering is a global phenomenon which requires the global effort in fighting the menace. The term has been defined as; the process by which criminals attempt to conceal the true origin and ownership of their criminal activities. If undertaken successfully, will also allow them to maintain control over those proceeds, and ultimately, to provide a legitimate cover for their sources of incomes[4]. K. Harrison and N. Ryder also defined money laundering as a process utilized by criminals to disguise or convert the proceeds of crime (dirty money) into clean money. The writers went further to explain the term "criminal" as to include drugs dealers, burglars, fraudsters, people

[2] MT Ladan, 'International Legal and Administrative Regimes for Combating Money Laundering and Terrorist Financing' (2012) 6 NJIL 168

[3] A Aluko and M. Bagheri, 'The Impact of Money Laundering on Economy and on Political Development in Developing Countries' (2012) 15 (4) JMLC 442, 443.

[4] A Haynes, *Financial Services Law Guide (Bloomsbury Professional, 4th Ed Hayward Heath 2014)* p. 275 See also Joint Money Laundering Steering Group Guidance Notes for the Financial Sector, p. 103

traffickers, smugglers, terrorists, extortionists, tax evaders and illegal arms dealers[5].

According to Financial Action Task Force (FATF), the aim of criminal act is to drive profit for the person or group that perpetrated such act. It went further to state that, money laundering is the processing of these illicit proceeds in other to cover their sources so as to enable the criminal to benefit from the illicit profit devoid of detection[6]. There are basically three (3) stages of money laundering these are:

i. **Placement:** This is the first stage in money laundering act. It involves the injection of criminal proceeds or funds into the financial system which may be a single or multiple transactions using one or more bank deposits or by acquisition of negotiable instruments like bonds or shares[7]. Placement stage is the most risky stage in money laundering process this is because physical cash has to be taken in person to the financial institutions. However, once such cash is deposited with the financial institution, such will be replaced by a paper or electronic record which may be transported, conveyed or negotiated easily.

ii. **Layering:** At this stage, this is a process of generating a series or layers of transactions in other to separate or disguise the illicit origin of such funds so as to obscure the possible trait of such funds. Common techniques adopted at this stage are electronic funds transfer to another bank account more especially firm account which will later be dissolve or liquidated. It may also be transferred to bank secrecy haven or a jurisdiction with lax anti-laundering law and or reporting or record keeping system. It may also be through Travelers Cheque or money order.

---

[5] K Harrison and N Ryder, *The Law Relating to Financial Crime in the United Kingdom (Ashgate Publishing Limited, Survey, England 2013)*' p.9

[6] www.fatf-gafi.org/faq/moneylaundering/#d.en.11223. Accessed on 8/4/2016 @ 11:50pm

[7] J. Menally, *Money Laundering Methodology* in Toby Graham, *International Guide to Money Laundering Law and Practice (2nd Ed, LexisNexis, 2003)* P.2

iii. **Integration:** At this stage, the criminal funds have been fully assimilated into a main stream after intermingling same with legitimate funds. Thus, integration is deemed to be successful where a series of transaction has been done to the extent that such funds cannot be easily linked to the criminal sources[8].

SCOPE OF THE STUDY

The scope of this work is limited to laws and regulations governing anti-laundering laws generally between the United Kingdom and Nigeria. Relevant conventions to which the two (2) countries were parties to will also be considered, for same has formed part of the legislations in most of the countries that are party's to such conventions more especially where same is or are ratified and domesticated[9].

The scope will also be restricted to the following issues;

i. Appraisal of the concept of money laundering
ii. Analysis of the legal and administrative mechanisms in combating money laundering and terrorism financing;
iii. Appraisal of the patterns of reporting system adopted in the two jurisdictions.

AIMS AND OBJECTIVES

The aim of this work is to make a comparative analysis of the laws and regulations governing anti-laundering laws and reporting systems between the United Kingdom and Nigeria. The research will achieve this through;

i. examining the effectiveness of the legal frameworks governing the anti-laundering laws and reporting system in the two jurisdictions;
ii. examining the differences and similarities that exist in the two countries legal frameworks;
iii. the mode of reporting suspicious transactions as provided by laws and regulation of such nations;
iv. examine the concept of suspicion and its effects;

[8] O U Jerome, 'A Review of the Special Duties of Banks under the Nigerian Money Laundering Act' (2011) 26(6) JIBLR, 300, 301.

[9] See the Constitution Federal Republic of Nigeria 1999 as amended, S. 12.

v. methods of making the reports and those that are saddle with the responsibility of making same;
vi. when to make a report and the various kind of transactions to be reported;
vii. to whom such reports are going to be made;
viii. powers of the bodies or agencies receiving the reports;
ix. effect of non-reporting where same is or are ought to be made; and
x. The impediments towards the effectiveness of the various legal frameworks and reporting systems in the two countries.

EFFECT OF MONEY LAUNDERING

Money laundering has devastating effect on a nation's financial sector and its economic and social development[10]. The scourge of such menace has the following implications;

i. Economic implication: The economic implication of money laundering cannot be overemphasise. This is because its affect indigenous entrepreneurs and that had been accentuated following trade liberalisation. Proceeds of drugs sales and its consequent laundering act are utilized in importing goods to the market, and such goods are usually disposed at a price that is below it costs in the exporting countries.

This is not unconnected to the fact that, the drug barons ultimate motive is to transfer the dirty or illicit funds but not for profit making[11].

These barbaric conducts seriously affect domestic production as a result of the inviting pricing of the imported goods. The return on investment from local or domestic production and related legitimate business activities will naturally be adversely affected[12]. This will affect small and medium scale enterprises which will invariably lead to a declined in foreign investment. This is because the investors will be afraid of an

[10] I A Abubakar, *Anti-money Laundering and Counter Terrorism Financing Law and Practice in Nigeria (Malthouse Press Limited, Lagos Nigeria 2005)* p. 72

[11] A J Ikpan, 'A Critical Analysis of the Legal Mechanisms for Combating Money Laundering in Nigeria' (2001) 1 AJLC 116, 124

[12] E Azinge and C Nwabuzor, *Money Laundering Law and Policy (Published by Nigerian Institute of Advanced Legal Studies Abuja, 2013)* p. 27

economy where the market forces are been dictated by the launderers considering the illicit funds at their disposal.

The impact of money laundering could also have negative effect on the foreign exchange market of the economy. This has been clearly stated by the European Union in the EU Money Laundering Directives. Moreover, the foreign exchange market will also be vulnerable as a result of volumes of cash in circulation[13]. This movement of money in and out of the country is capable of influencing variables such as exchange rates, interest rates and will even influence the prices of goods or commodities on which these monies are invested. Thus, it can only be imagined the kind of confusion regulatory bodies will face in making policy decisions having regard to these unstable and incorrect variables.[14]

Thus, money laundering is a crime that quietly creeps in and within a period of time robs the nation of all its economic resources and leaves it struggling for development. This can said to be the major reason why a country like Nigeria, as rich as it is, having blessed with both human and material resources, is still struggling with development.[15]

ii. **Political Implication:** The illicit funds accumulated as a result of money laundering were usually used to fund a political party or a particular candidate during an election with the hidden motive to influence government decisions one way or the other if such party or candidate wins[16]. This will ultimately weaken the governmental institutions and a consequent loss of confidence in the rule of law. This happened in Russia after the 1998 economic meltdown which led to the transfer of $74 billion from Russian financial institution to offshore financial centres.

[13] M Donato, The Illegal Sector, Money Laundering and the Legal Economy: A Macroeconomic Analysis (2000) 8 (2) JFC, P103 See also P Quirk, Macroeconomic Implication of Money Laundering IMF Working Paper No 96/66.

[14] P Quirk, Macroeconomic Implication of Money Laundering IMF Working Paper No 96/66.

[15] N Ribadu, *Show Me the Money, Leveraging Anti-Money Laundering Tools to Fight Corruption in Nigeria (Published by Centre for Global Development CGD Washington DC, 2010)*

[16] President E Samper of Columbia was accused of Funding his Political Campaign with Illicit Drug Money to the Tune of US$6 Million donated by Cali Cocaine Cartel in 1996 Election.

Inflation shut-up by 200%, unemployment by around 12% and crime by 4%.[17]

Sometimes the launderers almost run a parallel government against the democratically legitimate ones by having their own sort of armies that operate in total disregard to the legitimate government laws and or order. This happened in Latin American countries e.g. Columbia.

iii. **Social Implications:** Criminal organisation's economic and political influence can weaken the collective ethical standards, social fabric and will consequently affect or disrupt democratic institutions of societal set-up. For instance in Nigeria, the reputation of the country had been badly tarnished by the unwholesome act of few misguided elements that partake in money laundering and allied activities. This causes problems to Nigeria in foreign economic relations.[18]

iv. **Global Effects:** Organised crimes does not recognised territorial boundaries nor the sanctity of sovereign nation laws and that poses fundamental problem to the global society. Money laundering is a major threat to global societies and this is facilitated by the removal of capital control which ultimately led to liberalisation of global finance[19]. This has unfortunately aids money laundering more especially in developing countries that depends on foreign investments[20].

To safeguard against the contamination of legitimate trade with the illicit funds generated through drugs and related heinous acts, the United Nations came out with policies through conventions in other to tackle the laundering of the proceeds of drugs which ultimately endanger not only the economy of nations, but it has negative effect on government and society at large.

[17] L Dizon, 'Financial Flows via Offshore Financial Centers as part of the International Financial System' (2001) Financial Stability Review, 106

[18] A J Ikpan, 'A Critical Analysis of the Legal Mechanisms for Combating Money Laundering in Nigeria' (2011) 1 AJLC 116, 125

[19] Globalization as an Economic Ideology Promotes the Liberalization in Trade, Investment and Finance i.e. the Ability to move capital goods and services across nations boundaries.

[20] L Boulle, *The Law of Globalization: An Introduction (Wolters Kluwer, Boston, 2009)* p. 6

LEGAL FRAMEWORK AGAINST MONEY LAUNDERING IN UK

Anti-money laundering legislations in UK were provided by Proceeds of Crime Act (POCA) 2002 and the Terrorism Act 2000. The laws which had their origin from the Drugs Trafficking Offences Act of 1986 (Which only prohibited the laundering of the proceeds of drugs); had after several amendments[21]culminated into the present Act (i.e. POCA) and has removed the hitherto differences that existed between the drugs and non-drugs laundering offences. However, separate laundering offences had been created relating to terrorist financing following the enactment of the Terrorism Act, 2000.

With the arrival of Money Laundering Regulations 2007 coupled with two additional statutory instruments[22] aimed at strengthening the law in these aspects; the law relating to money laundering in UK has witnessed a remarkable change.[23] The law can be found mainly in Proceeds of Crime Act 2002 which creates money laundering offences in sections 327-339. The Act was later amended by the Serious Organized Crime and Police Act 2005.

Similarly, Terrorism Act 2000 also created laundering offences related to terrorist financing in sections 12-21 of the Act. The Act was also amended severally with the Anti-Terrorism Crime and Security Act, 2001, the Prevention of Terrorism Crime and Security Act, 2005 and lastly by the Counter-Terrorism Act, 2008.[24]

The POCA 2002, in part VII consolidates the money laundering offences created by the DTA 1994 and the CJA 1988, however, in a clear departure from the earlier laws, it (POCA) creates offences that encompasses all form of criminal conduct. Among the offences, three were referred to as the 'Money Laundering Offences' i.e. sections 327, 328 and 329 POCA 2002.[25] Three creates offences for 'failure to disclose' i.e. sections 330, 331 and 332 POCA.

---

[21] See the Criminal Justice Act 1988 as Amended by Criminal Act of 1993.

[22] S. I. 2007/3288 and 2007/3398.

[23] A Haynes, Financial Services Law Guide (Bloomsbury Professional, 4th Edition Hayward Heath 2014), p. 276.

[24] K Harrison and N Ryder, *The Law Relating to Financial Crime in the United Kingdom (Ashgate Publishing Limited, Surrey England 2013)* p. 39.

[25] See Section 340(11) POCA for the definition of money laundering.

Two tipping off offences and an offence of prejudicing an investigation were provided by sections 333A and 342 respectively.[26] Similar offences exist relating to terrorist activities under the UK Terrorism Act. All these will be highlighted vis – a- vis Money Laundering Regulations 2007.

Concealing the Proceeds of Criminal Conduct (s.327)

POCA 2002 in s.327 provides the first out of the three primary money laundering offences. That is, the offence can be committed where a person: (i) conceals, (ii) disguises, (iii) convert, (iv) transfers or (iv) removes criminal property from England and Wales, Scotland or Northern Ireland. As can be seen clearly from the above section, the offence can be committed in five different ways, although it has to be recognised that, there is an overlap between them, more especially with regard to (i) and (ii) above.[27] This can be seen from the wording of s.327(3) which defined the term "Concealing and disguising" to include "concealing or disguising its nature, sources, location, disposition, movement or ownership or any right with respect to it.

Thus, items (iv) and (v) may also overlap, considering the fact that, the word 'transfers' and 'removes' denotes taking something out (from where it was) either to a specific place in regard to (iv) or to an unknown place, in respect of (v), and in both cases something has been taken out.

For the purpose of POCA 2002, the term 'property' includes money, real, personal, heritable or movable property, things in action and other incorporeal or intangible property.[28] property will be considered as a criminal property if:

a. It constitutes a person's benefit from criminal conduct or it represents such a benefit (wholly or partly, directly or indirectly) and
b. The alleged offender either knows or suspect that it constitute or represent such a benefit.[29] This definition of criminal property is somewhat contentious. This is because its scope may admit property

[26] R Forston in W Blair and R Brent, *Banks and Financial Crime, the International Law of Tainted Money (OUP, Clarendon Oxford, 2008)* p. 158

[27] E Rees and R Fisher, *Blackstone's Guide to the Proceeds of Crime Act 2002 (OUP 2005)* p 119

[28] Proceeds of Crime Act, 2002 s 340 (9)

[29] Proceeds of Crime Act, 2002 s. 340 (3).

> from anywhere in the world.[30] Moreover, Forston[31] opined that paragraph (b) above, provides 'somewhat' artificial meaning because the knowledge of the person handling such property will only become relevant at this point. Furthermore, Hudson[32] argues that, the provision has two specific requirements. Firstly, that the property which qualify as criminal property based on the above definition constitute a benefit, and secondly, that the defendant had knowledge or suspicion of this fact.

Thus, the striking features of the offences created under s.327 POCA is broadly wide in scope. The section will catch not only those engages in money laundering activities per-se, i.e. concealing or disguising criminal property but to include what may be regarded as a standard banking practice[33] such as transfer, conversion and also sending wire transfer of funds abroad. However, under s.327(2) (C) POCA, a deposit taking body that transfers or convert 'criminal property' does not commit an offence as far as the transaction conducted relates to an account such bank maintains and the value of the criminal property concerned does not exceed £250 which is the threshold amount stipulated by law.[34]

Thus the above threshold amount is to my mind too low, having regard to the fact that is far below the minimum wage in UK and will consequently lead to a voluminous report to National Crime Agency (NCA) with little or no significant effect.

---

[30] K Harrison and N Ryder, *The Law Relating to Financial Crime in the United Kingdom (Ashgate Publishing Limited, Surrey England 2013)* P 11

[31] R Forston, in W. Blair and R Brent, *Banks and Financial Crime, the International Law of Tainted Money (OUP, Clarendon Oxford 2008),* p. 165.

[32] A Hudson, *The Law of Finance (Sweet and Maxwell, London 2009)* P 344

[33] R Stokes and A Arora, 'The Duty to Report under the Money Laundering Legislation within the United Kingdom' (2004) JBL 332, 342

[34] A Haynes, *Financial Services Law Guide (Bloomsbury Professional 4th Ed Hayward Heath 2014)* P.277. See also s.339A (2) POCA

The offense under S. 327 is not without an exception. Thus, it is not an offence where the person concerned has made an authorized disclosure,[35]or where he intent to make same but has a reasonable excuse for failing to do so and or where the act is done in fulfillment of a function he has relating to any legislative provision concerning criminal conduct or benefiting therefrom.[36] In regard to terrorism, the Terrorism Act, 2000 contained similar provision to that of s.327 POCA. Section 18 of the 2000 Act, which is explicitly titled: 'Terrorist Money Laundering' is almost identical to laundering offences provided by s.327 POCA so also to s.93 A of the Criminal Justice Act of 1988 which preceded them. The only apparent difference is the reference to "terrorist property" instead of "criminal property".[37]

Participation is Money Laundering Arrangement (S. 328)

A separate offence under s.328 POCA 2002 may be committed by any person who "enters into or becomes concerned in an arrangement" which he "knows or may suspects facilitates (by whatever means) the acquisition, retention, use or control of criminal property by or on behalf of another person".

Thus, the actus reus relates to entering into an arrangement, which presupposes a contract at one hand, or any other mutual form of behavior at the other, which allows a person to either acquire, retain, use or control any criminal property.[38] It could be an arrangement where bank passes money through its accounts, provided its officers either knows or suspect that the property (i.e. money) might be criminal property. If money or any valuable was held in a particular account or bank, that would qualify as 'retention', if same was exchange to another currency, that would be 'use' and if paid into an account over which the criminal happened to be a trustee then it would constitute 'control'. In all these

[35] See s. 338 POCA in respect of protected disclosure.

[36] Proceeds of Crime Act, 2002 s 327(2) (a-c)

[37] R Alexander, 'Money Laundering and Terrorist Financing: Time for a Combined Offence' (2009) 30 (7) Comp. Law 200, 204.

[38] A Hudson, *The Law of Finance (Sweet & Maxwell, London 2009)* P. 352

circumstance the mens rea is either knowledge or suspicious that any of the component of that actus reus had been effected.[39]

In RV GH,[40] It was held by the Supreme Court that, for the purposes of s.328 POCA, the arrangement entered into by D is one that facilitates the acquisition, retention, use or control by another person in respect of property that was criminal property at such time when the arrangement operates on it. Therefore, an arrangement may exist and remain in abeyant until such a time when the criminal property engages the arrangement.[41] In the above mentioned case, D was found guilty of laundering by 'arranging' pursuant to s.328 POCA when he allowed a fraudster the use of his bank account in selling bogus motor-insurance policy thereby directing the victims of such fraud to pay for the premiums into such account. The money became 'criminal property' only after the victims paid same into D's account. Thus, what rendered the money to be regarded as 'criminal property' was not because of the arrangement between the fraudster and the defendant (i.e. account owner), but because it was obtained from the victims by deception.[42] Thus, for the purposes of POCA 2002 s. 328, the 'predicate offence' is separate from D's alleged act of money laundering consequent upon which the subject matter became criminal property.

Like the offence of concealment etc under s.327 POCA, the offence under s.328 is also not without an exception. Thus, a person will not be liable under this section if he makes an authorized disclosure under S. 338,[43] or he intent to make a disclosure but have a reasonable excuse[44] for not doing so, or where the act that has been done consist of carrying a function he has relating to the enforcement of any provision of POCA or of any other enactment relating to

[39] See the Case of Squirrell Ltd V National Westminster Bank Plc [2006] 1 W. L. R. 637 Para. [16] Laddie J.

[40] [2015] UKSC 24; [2015] I WLR 2126 (Sc)

[41] R Fortson, 'Intensifying Anti-Money Laundering Laws-The Last 30 Years' (2016) 4 Arch. Rev., 6, 8

[42] Per Lord Toulson, at p. 50

[43] Proceeds of Crime Act, 2002, s.328 (2)

[44] Unfortunately the word 'reasonable excuse' has not been defined by the POCA. See A Haynes, Financial Services Law Guide *(Bloomsbury Professional, 4th Ed Hayward Heath 2014)* p. 277.

criminal conduct or benefit thereof.[45] Additional defences were also provided under sub-section (3) and (5) of s.328 POCA. Terrorism Act 2000 also make it an offence, in S. 17, to becomes concerned in an arrangement and as a result of which money or other property will be made available for the purpose of funding a terrorism. Like the other offences, it has to be shown that the defendant either know or has reasonable cause to suspect that, such money or property is to be used for this purpose.[46]

Acquisition, Use or Possession of Criminal Property s.329 POCA 2002

The third money laundering offence is found in s.329 (1) of POCA 2002.[47] A person commits an offence under this section if he acquire, use or have possession of criminal property. For the purposes of this section, possession means physical custody. For a person to be convicted, it must be establish that, the property handled is a criminal property and same constitute a benefit. Moreover, the prosecution has to prove that the defendant either knows or suspect that such property is derived from a criminal conduct. [48]

A person will not be liable under this section and no offence is committed if he makes an authorized disclosure pursuant to s.338 POCA; or he intend to make same but had a reasonable excuse for not doing so, or he furnished adequate consideration[49] at the time of acquisition, use and or taking possession of such property; or he committed the act while performing a function he has relating to the enforcement of POCA or any relevant enactment; or his conduct related to a 'relevant criminal conduct' which took place outside the united Kingdom and same is lawful there,[50]or where the act of acquisition, use or possession is

[45] Proceed of Crime Act 2002, s.328 (2) (a-c).

[46] K Harrison and N Ryder, *The Law Relating to Financial Crime in the United Kingdom (Ashgate Publishing Limited, Surrey England 2013)* p. 41.

[47] This Consolidates and replaces DTA 1994, s.51 and CJA 1988, s.93B.

[48] K Harrison and N Ryder, *The Law Relating to Financial Crime in the United Kingdom (Ashgate Publishing Limited, Surrey England 2013)* p. 16.

[49] See the case of R V Hogan [2007] EWHC (Admin) 978.

[50] See proceeds of Crime Act, 2002 s.329 (2 A and B)

done by a 'deposit taking body[51] while discharging its duties as such and the amount involved is less than the threshold amount stipulated by law.[52]

With regard to terrorism, s.15 TA 2000 provide a somewhat equivalent provision to s.329 POCA (in respect of acquisition) whereas, s.16TA (which is also similar to s. 329 POCA) provides for the offence of 'use and possession' of terrorist property.

Section 15 TA 2000 provides that, a person commits an offence of fund raising (akin to offence of acquisition under s.329 POCA) if he facilitates the raising of funds for the purposes of terrorism. The offence can be committed either by inviting another person to provide money or property, receiving such money or property or by providing money or property. In all these three circumstances, it has to be prove that, the person has intend or has reasonable cause to suspect that, the money (or property) is to be used to fund terrorist activity.[53]

A defence of express consent[54] exists for the offences provided in ss.15-18TA. The defence will be available if the act has been continued with express consent of the police in other to monitor the terrorist activity. Originally, the defence avails the defendant only where he made a disclosure, on his own volition, at such a point that is deemed reasonably practicable, after becoming involved in an arrangement or transaction.[55]

This has been expanded to cover the defenses of prior consent, consent and reasonable excuse as were introduced by the Terrorism Act 2000 and proceeds of Crime Act 2002 Amendment Regulations 2007.[56] The defence of prior consent will be available where a disclosure has been made to an authorized

[51] Proceeds of Crime Act, 2002 s.329 (2C)

[52] R Fortson in W. Blair and R Brent, '*Banks and Financial Crime, the International Law of Tainted Money (OUP, Clarendon Oxford, 2008)* P. 185.

[53] K Harrison and N Ryder, *The Law Relating to Financial Crime in the United Kingdom (Ashgate Publishing Limited, Surrey England 2015)* p. 40

[54] Terrorism Act, 2000, s.21

[55] Terrorism Act 2000 s.21 (3)

[56] See ss.21ZA, 21ZB and 21ZC of TA 2000.

officer[57] before involving in a transaction or an arrangement and thereafter the person (i.e. defendant) with the consent of such authorized officer, becomes involved in such an arrangement.[58] Similarly, the consent defence avails a person who, after been involved in a transaction or arrangement, makes a disclosure and continue to act with the consent of the authorized officer. However, it has to be shown that, there was a reasonable excuse for failure to make an advance disclosure and that the disclosure, which is of his own volition, was made as soon as is reasonably practicable.[59]

Thus, the defences of prior consent or consent cannot be rely upon if the persons continued involvement in a transaction or arrangement has been forbidden by the authorized officer. Finally, the defence of reasonable excuse [60] may be used where a person intent to make disclosure but have a reasonable excuse for not doing so.[61]

Failure to Report Offences (ss.330-332 POCA)

Apart from the three principals money laundering offences mentioned above. There are three separate offences of failure to report. These offences are provided in sections 330-332 of POCA 2002. Under s.330, a person commits an offence if he fail to make financial disclosure to SOCA (now NCA) where he knows or suspects or has reasonable cause to know or suspect that someone is engaged in money laundering if such knowledge or suspicion acquired in the course of a business is a regulated sector,[62] and the person can identify the person concerned or the whereabouts of the laundered property.

[57] s.21ZA (5) defined an authorized officer as 'a member of staff of the SOCA (now NCA)' authorized for the purpose of this section by the Director General of the Agency.

[58] Terrorism Act 2000 s. 21 ZA (1).

[59] Terrorism Act, 2000 s.21ZAB (1 and 2)

[60] Unfortunately the word "Reasonable Excuse" is nowhere defined under the Act.

[61] Terrorism Act, 2000, s.21ZC

[62] Regulated sector is defined in Sch. 9 POCA 2002 as amended by (Business in the Regulated Sector and Supervisory Authorities)' Order 2003 (S12003/3074) art. 2 to include all those working in the financial sector such as banks and building societies, insolvency practitioners, solicitors and barristers and company or trust service providers

A defence[63] exist if the person concerned has a reasonable excuse for not making the required disclosure or if he is a professional legal advisor and such information came to him in his professional capacity and same was not made for the purpose of furthering a criminal purpose.[64] Another defence exist where the person concerned does not know or suspect and has no reasonable course to know or suspect that the other person engaged in money laundering and had not been provided with money laundering training by their employer.[65]

The offences in sections 331 and 332 are almost identical.[66] under section 331 POCA, a person (as a nominated officer) commits an offence where after receiving internal disclosures from members of a firm or business within the regulated sector, and same give rise to reasonable ground for suspicion, fails to transmit same to NCA. The same offence may be committed under section 337 POCA by a nominated officer outside the regulated sector.[67]

Tipping off and act prejudicial to an investigation

Section 333 POCA which is repealed[68] and replaced by s.333A creates two offences and both confined to persons working in the regulated sector. A person commit an offence under this section if he knows or suspect that a report has been made to NCA or other appropriate person and then makes a disclosure which is likely to prejudice any investigation that might follow.

However, defences exist where a person who makes such disclosure did not know or suspect that same will likely to be prejudicial or the disclosure was made while carrying out a function he has relating to the enforcement of POCA or any other law. It is also a defence where the person who tipped off is a professional legal adviser and such disclosure was made to a client during the

[63] Proceed of Crime Act, 2002 s.330 (6).

[64] Equivalent provisions are made in relation to terrorist money in S. 19(2) TA.

[65] A Haynes, *Financial Services Law Guide (Bloomsbury Professional, 4th Ed Hayward Heath 2014)* P. 278

[66] J Fisher, 'The Anti-Money Laundering Disclosure Regime and the Collection of Revenue in the United Kingdom' (2010) 3 BTR 235, 238

[67] Equivalent provision are provided in S. 21 TA 2000.

[68] By S12007/3398

course of giving legal advice or to anyone in connection with legal proceedings. However, this last defence would not avail the defendant if such disclosure was made in other to further a crime.[69]

By s.333B a disclosure will be made within the same undertaking or business in the regulated sector and by s.333C, same (disclosure) will be made between institutions in the regulated sector and lastly, s.333D allows those within the regulated sector to report to NCA. Under the Terrorism Act, 2000 tipping off offences and all the defences provided in POCA (as mentioned above) were similarly provided in s.19(5) TA and ss.21D-G TA respectively.

A person convicted under ss.327-329 POCA is liable, on summary conviction, to up to six months in prison and/or a fine. On indictment, it rises up to fourteen years and/or a fine. A summary conviction under sections 330-333POCA (i.e. offences relating to breach of appropriate consent by reporting officer and prejudicing an investigation) are all liable to six months imprisonment and/or fine and on indictment it rises to five years and/or a fine.[70] Under the Terrorism Act, similar punishments for similar offences (as discussed above under POCA and TA) were provided under the TA 2000.[71]

Thus, among the legal framework against laundering offences in UK are money Laundering Regulation 2007.

Money Laundering Regulation 2007 (SI 2007/2157)[72]

These Regulations require all firms to establish and communicate procedures for 'Customer Due Diligence (CDD)',[73] reporting any transaction that is suspicions, records keeping[74] and an ongoing training of its personnel's . Firms should comply with their anti-money laundering law and counter terrorism financing policies more especially the CDD procedures. A strong system of

[69] A Haynes, *Financial Services Law Guide (Bloomsbury Professional, 4th Ed Hayward Heath 2014)* P. 280

[70] Proceeds of Crime Act, 2002 ss. 334 and 336 (6).

[71] See s. 22 of the Terrorism Act 2000.

[72] www.legislation.gov.uk/uksi/2007/2157/pdfs/uksi_20072157_en.pdf. Accessed on 20/7/2016 at 10:00am

[73] For the definition of Customer Due Diligence (CDD), see part 2 Reg. 5 of MLR 2007.

[74] Firm should keep identity record of its Clients for at least 5 years. See Reg. 19.

identification of client identity and/or verification of beneficial owners[75] should be adopted.

CDD procedures should be divide on a risk-sensitive basis based on the kind of client, transaction and business relationship. Distinction between the pre-requisite for simplified, standard and enhanced customer due diligence should be adopted, though substantial number of clients falls into the middle category. [76]

The Regulations required all institutions governed by it to satisfy itself that, where its clients is a Politically Expose Person (PEP),[77] his sources of funds is honest and legal. Regard should also be accorded to CDD outsourcing arrangements and the firms policy toward others for relevant CDD. Moreover, employees must be trained in other to acquaint themselves with the relevant laws against money laundering and also be able to spot transactions that are suspicions for the purposes of reporting same to a firms 'nominated officer' otherwise called 'Money Laundering Reporting Officer (MLRO) for onward transmission (where same disclose suspicion) to National Crime Agency (NCA).

SUSPICIOUS TRANSACTION REPORTS

Every financial institution or firms must have a system of reporting suspicions transactions to a nominated officer who is referred to as "Money Laundering Reporting Officer (MLRO), such person has the task of ascertaining whether or not the report made to him disclose suspicion, where it does, he must make a report to NCA as soon as possible.[78]

In 2014, a total of 354, 186[79] Suspicious Activity Report SAR has been received by the NCA which represent an increase of 11.9% as against that received in 2013 (which was 316.527). The banking sector alone submitted 291,055 SAR,

[75] See Reg. 6 for the definition beneficial owner.

[76] T Harvey, 'Beware of Dirty Laundry' (2015) 165 (7638) NLJ 18, 19.

[77] See Sch. 2 Reg. 4 for the meaning of Politically Exposed Persons.

[78] A Haynes, *Financial Services Law Guide (Bloomsbury Professional, 4th Ed Hayward Heath 2014)*, p. 289.

[79] www.nationalcrimeagency.gov.uk/publications/464-2014-sars-annual-report/file. Accessed on 8/5/2016 at 12:30 pm

exceeding the total report received by UK Financial Intelligent Unit UKFIU (a unit within the NCA) for the reporting period of 2011/2012 which stood at 279,655. In 2015, a total of 381,882[80] SAR has been made, which is 7% increase compare to that of 2014 mentioned above S. Bazley and C Foster[81] stated that, timely reporting of suspicions activity determines the effectiveness of UK anti-laundering system. POCA under section 330 (3) provide a duty to report when information received by a person in the course of business raises suspicion that money laundering is about to be committed. Section 330(2)(b) requiring a disclosure when knowing or suspecting that someone is laundering money set up a liability for breach not only when someone knows or suspect but yet did not submit SAR but include when an person should have known or suspected based on reasonable grounds to do so, thus creating an objective test. [82]

The expression 'suspect', 'suspicion', 'reasonable ground to suspect' and 'reasonable cause to suspect' feature consistently in anti-laundering legislation in UK. For the purpose of POCA 2002, the expressions are vital in determining whether property is 'criminal property' and whether the accused has mens rea.[83] The Joint Money Laundering Steering Group (JMLSG) described 'suspicion' as 'subjective' and falling short of proof based on firm evidence. In R v Da Silva,[84] the court said, the essential element in the word 'suspect' and its affiliates in this context is that, the defendant must think that there is a possibility, which is more than fanciful, that the relevant fact exist. A vague feeling of unease would not suffice. But the statute does not require suspicion to be clear or firmly grounded and targeted on specific facts, or based upon reasonable grounds.

---

[80] www.nationalcrimeagency.gov.uk/publications/677-sars-annual-report-2015/file. Accessed on 8/5/2016 at 12: 40 pm

[81] S Bazley and C Foster, *Money Laundering: Business Compliance (Reed Elsevier, LexisNexis UK 2004),* p. 161.

[82] P Yeoh, 'Enhancing Effectiveness of Anti-Money Laundering Laws through Whistle-blowing' (2014) 17 (3) JMLC 327, 329

[83] R Forston, in W Blair and R Brent, *Banks and Financial Crime, the International Law of Tainted Money (OUP, Clarendon London, 2008)* p.167.

[84] [2006] EWCA Crim 1654

Thus, where a report has been received by MLRO and same discloses suspicion, the latter commit an offence if he failed to transmit same to NCA.[85]

ROLE OF NATIONAL CRIME AGENCY (NCA)

The National Crime Agency NCA was established in the year 2013. It took over the responsibility of Serious Organized Crime Agency SOCA, the latter agency (i.e. SOCA) also took over from the National Crime Intelligent Service NCIS in 2005. The NCA is the UKs lead agency against organised crime and has the role of gathering, storing, analysing and disseminating information for the purposes of prevention, detection, investigation and prosecution of offences.[86]
The NCA divides itself into 5 distinct areas, viz:

i. Organized crime command
ii. Economic crime command
iii. National Cybercrime unit
iv. Border policy command and
v. Child exploitation and online protection command.[87]

The Home Office envisages the role of the Economic Crime command to 'ensure a logical approach to the use of resources focused on economic crime across the full range of agencies deploying them'[88] Moreover, it is believed that, it will maintain an overview of a wide range of economic crime agencies including the city of London police and the Serious Fraud Office SFO.

LEGAL FRAMEWORKS AGAINST MONEY LAUNDERING IN NIGERIA

The legal frameworks against money laundering in Nigeria were provided both under the Acts[89] and the Regulations[90] made thereunder. Effort exerted by the

[85] Though defenses exist under s 331(b) POCA.

[86] Serious Organized Crime and Police Act 2005, s. 3(1).

[87] J Miller, 'National Crime Agency-just a Rebrand?' (2013) 163 (7580) NLJ, 6

[88] The Home Office, the National Crime Agency, A Plan for the Creation of a National Crime Fighting Capability (Home Office 2011, 20).

[89] MLPA 2011 and TA 2013
[90] Central Bank of Nigeria Regulations, 2013

legislature towards criminalising laundering of proceeds of crime started with criminalising the laundering of proceeds of drugs related offences as provided by the National Drugs Laws Enforcement Agency Act[91] which later encompassed the predicate offences as enacted under the succeeding MLA. Thus, following successive amendments, culminated into the present Act, i.e Money Laundering Prohibition Act 2011.

Money Laundering (Prohibition) Act, 2011

This law made comprehensive provisions prohibiting money laundering, financing terrorism and laundering the proceeds of crime or illegal act. It set out penalties and extent the scope of supervisory authorities in order to meet the challenges encountered while implementing the anti-laundering legislation in Nigeria.

The Act prohibit, except through financial institutions, cash transaction in making or accepting payment in excess of N5,000,000 or its equivalent and N10,000,000 or its equivalent for individual and corporate bodies respectively.[92] The Act make it a duty on any person or financial institution to report any international transfer of funds and securities above US$10,000 or its equivalent to Economic and Financial Crime Commission, Central Bank of Nigeria or Securities and Exchange Commission in writing within 7 days from the date of such transaction.[93] Likewise, transportation of funds and negotiable instruments whose value is above US$10,000 or equivalent in or out of Nigeria must also be declared with the Nigerian Customs Services who in turn report same to the Central Bank of Nigeria and EFCC. Failure to declare or making false declaration to Customs Services is an offence and punishable with 2 year imprisonment or forfeiture of not less than 25% of the undeclared funds.[94]

This is no doubt a good measure in tracking the movement of funds and by reporting same to NFIU and central bank will assist in combating money laundering offences.

The Act also direct financial institutions and designated non-financial institution to verify the identity of its customer by obtaining all relevant

[91] Cap 253 Laws of the Federation of Nigeria 1990, s. 3

[92] Money Laundering (Prohibition) Act, (MLPA) 2011 s.1 (a) and (b)

[93] O U Jerome, 'A Review of the Special Duties of Banks under the Nigerian Money Laundering Act' (2011) 26 (6) JIBLR 300, 303. See also MLPA 2011, s. 2 (1)

[94] Foreign Exchange (Monitoring and Miscellaneous Provisions) Act, 2004 s.12

information including originals receipts issued within the last 3 months by public utilities before opening an account for him. In regard to corporate body or entity, original certificate of incorporation and other valid official documents has to be filed before opening same.[95]

Suspicious transaction reporting system is also provided in the Act. It provides that, where the frequency with which a particular account or customer conduct transactions is unjustifiable or unreasonable and such appears to have no lawful purposes, or the financial institution or designated non-financial institutions suspect any terrorist financing or any abnormality to the usual pattern of such customers transaction; information should be seek from such customer regarding the sources and destination of such funds, reason or reasons of transaction and the beneficiaries details. Within 7 days, forward a written report containing details information of the principal and beneficiary or beneficiaries to the Commission and to also take measures to prevent the laundering of the proceeds of crime or illegal act.[96]

The Commission shall sent acknowledgment of receipt of such report and may demand further information where necessary. The Commissions acknowledgment may also contain a notice directing the deferment of such transaction for a term not exceeding 72 hours. It may also contain a stop order on any account found during an investigation to have connected to the crime (the stop order could be issued by the Chairman of the Commission or the Governor of the Central Bank or their representative) and should not exceed 72 hours.

However, where the Commission's investigation fails to trace the origin of the funds during the period of stoppage order, it may apply to the Federal High Court for an order to block such account and such order has to be enforced immediately. Failure to comply with the order by any financial institution or designated non-financial institutions attract a penalty of N1,000,000 for each day until the order has been complied with.[97]

No action, civil or criminal, at the instance of the customer, shall lie against the directors or employees of the financial institution or designated non-financial institution for discharging their duties in good faith under this Act.[98]

[95] MLPA 2011 s, 3 (1-3)
[96] MLPA 2011 s.6 (1-2)
[97] MLPA 2011 s. 6 (4-9)
[98] MLPA 2011 s. 6 (10)

The Act enjoined financial institution and designated non-financial institutions to preserve its records for a period of at least 5 years after the closure of an account of a customer and same shall be made available, on demand, to Central Bank of Nigeria, National Drugs Law Enforcement Agency (NDLEA) and other authorities as the Commission may, by gazette, direct from time to time.[99]

The Act also provide that, training programme be provided to employees of financial institutions in order to equip them with relevant knowledge of combating laundering of proceeds of crime. Moreover, Compliance Officers be designated at both management and branch level and to ensure effectiveness of compliance with the provisions of the Act, internal audit unit be created for proper monitoring. Non-compliance with this, attract penalty of not less than N1,000,000 or suspension of license by the Central Bank.[100]

Mandatory disclosure is required of any financial institution in respect of any single transaction, lodgment or transfer of funds above N5000,000 or equivalent, in case of an individual or N10,000,000 or equivalent in respect of body corporate to the Commission in writing within 7 days. Designated non-financial institutions must do so within the period of 30 days notwithstanding anything to the contrary in any law or regulations in Nigeria.[101] Failure to abide by this provision attract a penalty of not less than N250,000 but not more than N1,000,000 fine for each day during which the offence continue.[102]

Multiple accounts opening and maintaining of anonymous accounts by any entity, persons or institution is also proscribed. Penalty is also provided for up to 2 years but less than 5 years imprisonment if committed by an individual and fine of N10,000,000 and above but not exceeding N50,000,000 if committed by corporate body or financial institution.[103]

The Act also empowered the Commission, Central Bank or other regulators to, after obtaining an ex-parte order from the Federal High Court, place any account under surveillance so as to identify anything suspected to have been related to laundering the proceed of crime. The order can also enjoin the Commission to have access to computer systems and telephone line for the purpose of obtaining information. Similar powers were conferred on NDLEA under sub section (2)

[99] A I Chukwuemeri, 'Nigeria's Money Laundering (Prohibition) Act 2004: A Tighter Noose' (2006) 9 (2) JMLC 173, 178. See also MLPA 2011 s. 7 and 8

[100] O U Jerome, 'A Review of the Special Duties of Banks under the Nigerian Money Laundering Act' (2011) 26 (6) JIBLR 300, 305. See also MLPA 2011, s. 9

[101] MLPA 2011 s. 10

[102] MLPA 2011 s. 10 (3)

[103] MLPA 2011 s 11 (1-2)

of this section if it relate to locating objects or proceeds of narcotic drugs.[104] Banks duty of secrecy and confidentiality is not an excuse for not complying with the provisions of this Act, EFCC Act or any other law. Moreover, the financial institution can, at the instance of the Commission, testify as a witness in respect of any facts likely to constitute an offence.[105]

The Act also enjoined the Commission to determine the flow of transactions in consultation with central bank and Corporate Affairs Commission (CAC) in order to ascertain the beneficiaries, including the beneficiaries of individual accounts and that of corporate accounts.[106] It is also an offence under the Act to convert or transfer resources or properties obtained from trafficking in narcotic or to participate in an organized criminal group and racketeering, terrorism, its financing, counterfeiting, piracy, insider trading etc. and to collaborate in disguising the proceeds obtain from such illicit act. The penalty on conviction is not less than five years imprisonment but not exceeding ten years. The fact that other elements constituting an offence under this section are committed in different jurisdictions (countries) is immaterial.[107]

Retention of proceed of crime, conspiracy, aiding and abetting to commit any offence under the Act, are also punishable with imprisonment. If an offence is committed by a body corporate under this Act, such body would be wound up, its assets and property be forfeited to federal government.[108] The Act vested exclusive jurisdiction on Federal High Court to try offences created under this Act. Lastly, the Act repealed the Money Laundering Act, 2004.

The main agency (though there are other regulatory bodies) saddle with the task of enforcing the provisions of this Act is Economic and Financial Crimes Commission (EFCC).[109]

Central Bank of Nigeria (Anti-Money Laundering and Combating the Finance of Terrorism in Banks and other Financial Institutions in Nigeria) Regulations, 2013

The objective of these regulations is to provide a compliance template for the financial institutions under the watch of the central bank as required by the anti-laundering and terrorism legislations in Nigeria.[110] The regulation applies to

[104] MLPA 2011 s. 13 (1-2)
[105] MLPA 2011 s. 13 (4)
[106] MLPA 2011 s, 14
[107] A I Chukwuemeri, 'Nigeria's Money Laundering (Prohibition) Act 2004: A Tighter Noose' (2006) 9 (2) JMLC 173, 182 See also MLPA 2011 s. 15
[108] MLPA 2011 ss. 17-19
[109] MLPA 2011 s. 24
[110] Central Bank of Nigeria Regulations, 2013 R. 1

banks and other financial institutions in Nigeria. Its mandated all financial institutions to have Anti-Money Laundering/Counter Financing of Terrorism (AML/CFT) Chief Compliance Officer, whose duties is to;

- Receive suspicious transaction report from the institution staffs for onward transmission to Nigerian Financial Intelligent Unit (NFIU),
- Rendering report to Central Bank of Nigeria (CBN),
- Ensuring the implementation of compliance manual,
  - Organise staffs training for the purpose of detection and reporting, and
  - To act as intermediary between the institution, CBN and NFIU and to also act as a nerve centre for employees on anti-laundering issues and terrorist financing.[111]

The regulation provides that, banks duty of secrecy and confidentiality should not bar the institution from complying with this regulation having regard to protection provided in sections 13 of the MLPA 2011, 38 of the EFCC Act, 2004 and 33 of the CBN Act 2007 respectively.[112] Customer due diligence measures must also be adopted by institutions and an enhanced due diligence is required for transactions involving politically expose persons, cross-border banking or any business prescribed by competent authority.[113] Moreover, to engage into business relationship with politically expose person,[114] approval of senior management is required and that such institution must notify the CBN and NFIU of all transactions made by such person on monthly basis. Where account has already been opened, and it later found that such customer is or becomes a politically expose person, approval mentioned above has to be obtain before such relationship continue.[115] Financial institutions are mandated to trace the root of wealth of politically expose persons and flag such account if abnormal transaction has occur and report same to NFIU as suspicious transaction.

[111] Central Bank of Nigeria Regulations, 2013 R. 7
[112] Central Bank of Nigeria Regulations, 2013 R. 12
[113] Central Bank of Nigeria Regulations, 2013 R. 16
[114] For the definition of *'politically expose persons'*, see s. 18 of the Regulations.
[115] Central Bank of Nigeria Regulations, 2013 R. 18 (4-5)

Branches of financial institutions in foreign countries and their subsidiaries must comply with these Regulations to such an extent as permitted in such foreign country.

Financial institutions and their subsidiaries should apply the higher standard of these Regulations, if the minimum requirements of AML/CFT provided herein differ with that of the host country, provided it does not violet the regulations in force in the host country. Where observance of these Regulations is impossible by a foreign branch of a financial institution or its subsidiary, because of the host country's law, such shall be communicated to the CBN in writing.[116]

The Regulation further provides that, where money laundering or terrorist financing is suspected in any transaction and the institution is of the opinion that, conducting customer due diligence checking could inform the customer of such suspicious, it shall file report to NFIU without going through the process of customer due diligence.[117]

The Regulations also provides that, a transaction whose frequency is unreasonable, or has no lawful objective or is inconsistent with the normal pattern of such account, and that to the institution view it involves terrorist financing, such transaction shall be considered suspicious and the institution shall find out from the customer, the sources and destination of such funds, the purpose of same and beneficiary thereto. The financial institution shall thereafter file a report within 24 hours containing all the details to NFIU and that will not constitute a violation of confidentiality duty in case of any action by the customer. Failure to comply with the stipulated time above attract a penalty of N1,000,000 on conviction for any day it continue.[118]

Any financial institution that neglect, fails or refuse to abide with these regulation shall have its license withdrawn or suspended and the employees thereof be punish according to the relevant sections of Money Laundering Prohibition Act, 2011 and Terrorism Prevention Act, 2013 accordingly.[119]

SUSPICIOUS TRANSACTION REPORTS IN NIGERIA

Suspicious transaction reporting by financial institution is either risk based or compliance based (also referred to as 'prescriptive' based). Under the risk based approach (which is recommended by the Financial Action Task Force FATF),

[116] Central Bank of Nigeria Regulations, 2013 R. 22 (1-4)
[117] Central Bank of Nigeria Regulations, 2013 R. 27 (4)
[118] Central Bank of Nigeria Regulations, 2013 R. 31 (1-4)
[119] Central Bank of Nigeria Regulations, 2013 R. 34 (3-4)

the reporting financial institution is required to study intelligently, on case by case basis, any transaction that is abnormal or unusual and reasonably suspected to have been connected with money laundering or terrorist financing. Whereas, with regard to prescriptive based approach, here the reporting institution is required to file a report of any transaction that exceed a specific threshold amount fixed by law.

According to Ajayi and Abdulkareem,[120] the Nigerian system of reporting is a hybrid of the two known approaches (i.e risk-based and compliance based), though in practice reporting from financial institutions is mostly compliance-based by making Currency Transaction Reports (CTRs) to relevant agencies where such exceed the stated threshold.

Thus, a financial institution or designated non-financial institution shall report to the commission in writing within seven (7) and thirty (30) days respectively of any single transaction, lodgment or transfer of funds in excess of:

(a) N5000,000 or its equivalent, in case of an individual; or

(b) N10,000,000 or its equivalent in case of a body corporate.[121]

Moreover, international transfer of funds or securities from a foreign country by any person, body corporate or money service business of an amount exceeding US$10,000 or its equivalent must be reported to the Central Bank of Nigeria, Securities and Exchange Commission or the Economic and Financial Crime Commission in writing within seven days from the transaction date.[122]

In 2014, Banks submitted a total of 3,988,210[123] CTRs with a value of N272,116,229,864,990. These represent a 53.62% decrease in both the volume and value compare to 2013 CTR figure which stood at 8,619,406.

Abubakar[124] states that, 'problem may arise by this provision, because it is not clear whether an individual or corporate body that split there transactions into bits totaling the above stated sums will report such transaction'.

[120] K Ajayi, O Ajayi and H Abdulkareem, 'Insulating the Vaults from the Tide of Dirty Money: are the Floodgates Secure' (2010) 13 (1) JMLC 33, 36

[121] MLPA 2011 s.10 (1) (a-b)

[122] MLPA 2011 s.2 (1)

[123] NFIU Activity Report 2014, available at www.nfiu.gov.ng. Accessed on 7/5/2016

[124] I A Abubakar, 'An Appraisal of the Legal and Administrative Framework for Combating Terrorism Financing and Money Laundering in Nigeria' (2013) 19 JLPG 26, 31

It is my view that, section 6 of MLPA 2011 mentioned above **may** be a solution to issue raised by Abubakar more especially where the bits transactions are made frequently in an unusual manner.

Suspicious Transaction Report STR is also required to be file with NFIU by both financial and designated non-financial institutions.[125] In 2014, the NFIU received a total of 2,180[126] STR from the banking sector and it also recorded 126 convictions[127] in same year. However, some of the cases were instituted long before 2014.

Currency Transaction Reports (CDRs) is also mandated in line with the FATF Recommendation 32 which seeks to forestall the nefarious activities of criminals and terrorist by ensuring that they do not launder the proceeds of their crimes or finance their terrorist activities through cross-border transportation of funds and or negotiable instruments.

In 2014, a total sum of US$807,585,061.71 was declared by 26,296 persons from all legally exit routes in the country.[128]

The cumulative effect of section 2 (3), (4) and (5) of the MLPA 2011 is that, false or failure to declare any transportation of cash or negotiable instruments in excess of US$10,000 or its equivalent to Nigeria Custom Service (the latter should transmit same to Central Bank and the NFIU) attract a penalty of forfeiture of not less than 25% of the undeclared funds or imprisonment of not less than 2 years or both.

Apart from the NFIU, other agencies saddle with the responsibility of collecting financial reporting include central bank of Nigeria and Securities and Exchange Commission SEC, though the latter entitle to be given report only in case of foreign transfer of funds.

ROLE OF NIGERIAN FINANCIAL INTELLIGENT UNIT

The Nigerian Financial Intelligent Unit (NFIU) is the Nigerian arm of the global Financial Intelligent Units (FIUs) which is domiciled within the Economic and Financial Crime Commission (EFCC) as an autonomous unit that fed the anti-graft agencies with its intelligent report.

[125] MLPA 2011 s.6
[126] NFIU Activity Report 2014, available at www.nfiu.gov.ng. Accessed on 7/5/2016
[127] https://efccnigeria.org/efcc/images/2014_convictions.pdf. Accessed on 7/5/2016
[128] NFIU Activity Report 2014, available at www.nfiu.gov.ng. Accessed on 7/5/2016

The establishment of NFIU is based on the FATF Recommendation 29 and Article 14 of the United Nations Convention against Corruption (UNCAC).[129] It was established in 2004 as the country's central agency for the collection, analysis and dissemination of financial information regarding money laundering and terrorist financing.

The powers of the NFIU are largely covered under the EFCC Act 2004 and the Money Laundering (Prohibition) Act 2011 as amended. Though it is (NFIU) domiciled within the EFCC, it serves all the stakeholders, including the law enforcement and regulatory agencies. Its domiciliation within the EFCC is strategic taking into consideration the Nigerian economy and polity.[130]

Other functions of the NFIU include the responsibility to:

a) Received suspicious transaction reports, currency transaction reports, currency declaration reports and any other information concerning money laundering and terrorist financing activities from financial institutions and designated non-financial institution;
b) Maintain a comprehensive financial intelligence database for the purposes of collecting, analysing and exchanging information with other FIUs and law enforcement agencies around the globe;
c) Provide intelligent report relating to commission of an offence by any entity(s) or persons subject to other jurisdictions to foreign financial intelligent unit based on their bilateral agreement or membership of Egmont Group;[131]
d) Advise the government and relevant regulatory agencies for the purpose of preventing and or combating financial crimes;
e) Liaise with money laundering compliance officers in other to ensure effective compliance culture by reporting bodies; and to
f) Promote public awareness on issues relating to economic crimes, money laundering and terrorist financing.[132]

[129] www.nfiu.gov.ng/index.php/nfiu. Accessed on 12/8/2016

[130] E Azinge and C Nwabuzor, *Money Laundering Law and Policy (Published by Nigerian Institute of Advanced Legal Studies Abuja, 2013)* p 175

[131] Egmont Group was founded in 1995 as the global body responsible for setting standard on best practices for FIU.

[132] www.nfiu.gov.ng/index.php/nfiu. Accessed on 12/8/2016

COMPARATIVE ANALYSIS OF THE UK AND NIGERIAN ANTI-LAUNDERING LAWS SYSTEM

The law against money laundering in UK is more comprehensive[133]than it is in Nigeria. This can be seen from the legislation(s) creating the offences against such menace. In UK, unlike in Nigeria, the Proceeds of Crime Act (POCA) 2002 created money laundering offences (in Part VII) with some qualifications. For example, sections 327(2), 328(2), 329(2), 330(6), 331(6), 332(6), and 333(2) all used the word "But a person does not commit an offence----------". In *Archbold* 2008, Dr. David Thomas QC,[134] opined that, this was intended by parliament "to avoid argument as to burden and standard of proof". However, Fortson[135]states that, "an alternative view is that parliament simply decided to place that issue into the hands of the courts", he cited the cases of *Colle*[136] and *Butt*[137].

Thus, while I am not in total disagreement with the opinions proffered by the above writers; I am of the view that, the qualification(s) is necessitated for commercial convenience and also to preserve and protect the sanctity of market and the interest of a bonafide purchaser for value without notice where "he acquired or used or had possession of the property for adequate consideration".[138]

The qualification is also necessary having regard to the nature of works of the professional legal advisers where the information or other matters (relating to money laundering) came to him in privilege circumstances and the advice was not intended to further the criminal act.[139]

---

[133] Though there are lapses in some provisions of the law. For instance, see sections 327 (2) (b), 328 (2) (b) and 329(2) (b) POCA which all provides for the defences of 'reasonable excuse' but yet nowhere in the whole Act the word 'reasonable excuse' is define. See A Haynes, *Financial Services Law Guide (Bloomsbury Professional, 4th Ed Hayward Heath 2014)* p. 277.

[134] J Richardson (Ed), *Archbold: Criminal Pleading, Evidence and Practice 2008 (Sweet and Maxwell 2007)*

[135] R Fortson in W. Blair and R Brent, *Banks and Financial Crime, the International Law of Tainted Money (OUP, Clarendon Oxford, 2008)* P. 178.

[136] (1992) 95 Cr App R 67

[137] [1999] Crim LR 414

[138] See Section 329(2) (C) POCA

[139] See Sections 330 (6) (b) and 333 (2) (c) & (3) (a) and (b) POCA

Whereas, the Nigerian Money Laundering Prohibition Act 2011 as amended, has no qualification whatsoever in the offences (money laundering offences) it created under part II of the Act.[140] For instance, the Act provides that;

> *"Without prejudice to the penalties provided under section 15 of the Act, any person who-*
>
> *(a) Being a director or employee of a financial institution warns or in any other way informs the owner of the funds involved in the transaction referred to in section 6 of this Act about the report he is required to make or the action taken on it or who refrains from making the report as required;*
>
> *(b) Destroys or removes a register or record required to be kept under this Act;*
>
> *(c) Carries out or attempt under false identity to carry out any of the transactions specified in sections 1-5 of the Act; or*
>
> *(d) Makes or accepts cash payments above the amount authorised under the Act;*[141]
>
> *(e) Fails to report an international transfer of funds or securities required to be reported under the Act; or*
>
> (f) *Being a director or an employee of a financial institution or designated non- financial institution contravenes the provisions of sections 2, 3, 4, 5, 6 or 7 of the Act, commits an offence.*[142]

A person found guilty of the offences mentioned above, shall on conviction-

> *(a) For offences in paragraphs (a) to (c) above, be send to imprisonment for a period of not less than 2 years but not more than 3 years or to a fine of N500,000 but not more than N1,000,000;*
>
> *(b) For offence in paragraph (d), a forfeiture of 25% of the excess above the limit imposed by section 1 of the Act;*
>
> *(c) For offences in paragraphs (e) and (f), if the offender:*

[140] See Sections 15-19 of the MLPA 2011

[141] The authorised amount is N5,000,000 or equivalent for individual or N10,000,000 or equivalent for corporate body, see section 1 of the MLPA 2011

[142] MLPA 2011 s 16 (1)

> *(i) Is an individual, a fine of not less than N1,000,000 but not exceeding N3,000,000 or imprisonment for a term of not less than 2 years but not exceeding 3 years or to both, and*
>
> *(ii) Is a financial institution or body corporate, to a fine of not less than N3,000,000 or more than 25,000,000.*[143]

Thus, in other to separate chaff from the grain and to also nip the perpetrators in the bud; POCA provides for an "authorized disclosure" as a means of not only absolving an innocent person from the alleged offence but to act as an undercover agent of government in curtailing the offences of money laundering. The Act provides:

> *"For the purposes of this part, a disclosure is authorized if ---------- the disclosure is made before the alleged offender does the prohibited act, ---------- the disclosure is made after the alleged offender does the prohibited act, there is a good reason for his failure to make the disclosure before he did the act and the disclosure is made on his own initiative and as soon as it is practicable for him to make it.*[144]

With regard to reporting requirements, under the Nigerian Money Laundering Prohibition Act 2011, suspicious transaction is required to be file by the financial institutions and designated non-financial institutions whenever a transaction is conducted with such frequency that is unjustifiable or unreasonable or is surrounded by conditions of unusual or unjustified complexity or its appears to have no economic justification or lawful objective or in the opinion of the financial institution or designated non-financial institution involves terrorist financing or is contrary to the known transaction pattern of the account or business relationship; such transaction is deemed suspicious and the institution concerned is required to file a Suspicious Transaction Report (STR).[145]

[143] See subsection (2) (a-c) of section 16 of the MLPA 2011

[144] Proceeds of Crime Act 2002 s 338 (1-3)

[145] Money Laundering Prohibition Act 2011 s 6 (1and 2), see also Regulation 31 (1) of the Central Bank of Nigeria (Anti-Money Laundering and Combating the Financing of Terrorism in Banks and Other Financial Institutions in Nigeria) Regulations, 2013

Currency Transaction Report (CTR) is also required to be file by any financial institution or designated non-financial institution for any transfer to or from a foreign country of funds or securities made by a person or body corporate including money service business of a sum in excess of ten thousand US dollars or its equivalent.[146]

CTR will also be file for any single transaction, lodgement or transfer of funds exceeding five million naira or its equivalent in the case of individual or ten million naira or equivalent in the case of body corporate.[147]

Moreover, transportation of cash or negotiable above ten thousand US dollars or its equivalent by individuals in and out of the country shall be declared with the Nigerian Custom Services. Such declaration is called "Currency Declaration Report" (CDR). The declaration so made shall be forwarded by Customs Services to the Central Bank of Nigeria and the Economic and Financial Crime Commission EFCC.[148]

While STR is required to be file with the EFCC,[149] CTR is to be file with the Central Bank of Nigeria, Securities and Exchange Commission (SEC) or the EFCC in writing.[150]

Suspicious transactions shall be reported in writing within seven (7) days to the EFCC, such report must contain the identity of the principal and the beneficiary(s) if any, the reporting institution must however take appropriate measure to prevent the laundering of the proceeds of crime or the illegal act.[151]In Nigeria, transaction or attempted transaction that is or are suspicious, regardless of the amount involved, shall be reported to the commission i.e. EFCC.[152]

CTR is also required to be filed within seven (7) days from the transaction date.[153] However, CDR made to Custom Services are to be reported by the latter to the Central Bank of Nigeria and the EFCC within a reasonable time.

Unlike under POCA which admits some exceptions for tipping-off offences, under the Nigerian Money Laundering Act, confidentiality of STR against

[146] Money Laundering Prohibition Act 2011 as amended s 2 (1)
[147] Money Laundering Prohibition Act 2011 as amended s 10 (1)
[148] See sub section (3) and (4) of section 2 of the Money Laundering Prohibition Act 2011
[149] Money Laundering Prohibition Act 2011 as amended s 6 (2) (c)
[150] Money Laundering Prohibition Act 2011 as amended s 2 (1)
[151] Money Laundering Prohibition Act 2011 as amended s 6 (2)
[152] Regulation 31 (7) of the Central Bank of Nigeria (Anti-Money Laundering and Combating the Financing of Terrorism in Banks and Other Financial Institutions in Nigeria) Regulations, 2013
[153] Money Laundering Prohibition Act 2011 as amended s 2 (1) and 10 (1)

tipping-off is absolute i.e financial institutions, their directors or employees (whether permanent or temporary) are totally prohibited from disclosing or intimating the owner of the fund involved in any suspicious transaction that report is required to be filed with the competent authorities thereof.[154] Such disclosure is a criminal offence and punishable on conviction with not less than two (2) years imprisonment or a fine of not less than ten million naira.[155]

However, in regard to failure to file STR or CTR, a person who committed the offence would on conviction be punishable with not less than three (3) years of imprisonment or in lieu thereof, a fine of ten million naira or both imprisonment and fine and the financial institution shall be liable to pay fine of twenty five million naira.[156]

In UK under POCA, Suspicious Activity Report (SAR) shall be file by a firm nominated officer (Money Laundering Compliance Officer) in respect of any transaction or activity which he knows or suspect, or has reasonable grounds to know or suspect is connected or attempted to connect to money laundering or terrorist financing.[157] The report shall be filed with the National Crime Agency (NCA).

The central collection point for suspicious disclosures and for seeking and granting consent to continue to proceed with the transaction or activity (suspicious transaction) is the UK Financial Intelligent Unit (UKFIU) domiciled within the NCA.[158]

SAR must be file within a reasonable time after having knowledge or suspicious of same and it should not be disclose to the person against whom such report has been filed if the disclosure is likely to be prejudicial to an investigation that might follow.

Unlike in Nigeria, where tipping off offences admits no exception, under POCA, exceptions has been provided against the confidentiality of SARs/tipping off as follows:

---

[154] Money Laundering Prohibition Act 2011 as amended s 16 (1)

[155] Money Laundering Prohibition Act 2011 as amended s 16 (2)

[156] Money Laundering Prohibition Act 2011 as amended s 16 (2) (b)

[157] Proceeds of Crime Act, 2002(as amended) s 331, see also Money Laundering Regulations 2007, Regulation 20(2) (d). The question now is "what of if the money is for the purpose of committing an offence other than money laundering or terrorist financing"?

[158] Joint Money Laundering Steering Group JMLSG, Prevention of Money Laundering/Combating Terrorist Financing, 2013 Revised Version, Guidance for the UK Financial Sector Part 1 Amended in November 2013, Paragraph 6.40

(i) A firm employee, officer or partner of a business undertaking does not commit tipping off offence if he made the disclosure to his fellow employee, officer or partner of the same firm or undertaking.[159]

(ii) Tipping off offence would not be committed in respect of a disclosure by a credit institution or a financial institution where-

a) The disclosure is made to a fellow credit institution or a financial institution,

b) The institution to whom the disclosure is made is situated in an EEA or in a country imposing equivalent money laundering requirements, and

c) Both the institution making the disclosure and the institution to which it is made belong to the same group.[160]

(iii) A professional legal adviser does not commit an offence under s 333A if-

a) The disclosure is to a professional legal adviser or a relevant professional adviser,

b) Both the person making the disclosure and the person to whom it is made carry on business in an EEA state or in a country or territory imposing similar money laundering policy, and

c) Those persons perform their professional activities within different undertakings that share common ownership, management or control.[161]

Thus, failure to file SAR is punishable, on summary conviction, with imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum or to both. On indictment, this rises to five years imprisonment and or fine.[162]

In regard to tipping off offences, a person found guilty of same will on summary conviction, be imprison for a term not more than three (3) months or a fine not

[159] Proceeds of Crime Act 2002 as amended s 333B(1)
[160] Proceeds of Crime Act 2002 as amended s 333B (2)
[161] Proceeds of Crime Act 2002 as amended s 333B (4)
[162] Proceeds of Crime Act 2002 as amended s 334 (2) (a and b)

exceeding level five (on standard scale) or to both, and on indictment to imprisonment for a term not exceeding two years and or fine.[163]

RANGE OF THOSE MAKING REPORTS

Under the POCA 2002, those that were required to file report of any transaction they deemed suspicious were those who work within the regulated sector. Scheduled 9 POCA 2002 defined the term "regulated sector" to include those working in the financial sector such as banks and building societies, estate agent, accountants, auditors, solicitors and barristers, insolvency practitioners, tax advisers and those involved in the provisions of company or trust formation or management.

Thus, apart from the three principal money laundering offences under the Act,[164] three secondary offences of failure to report were also provided in sections 330-332 POCA.

Section 330 is to the effect that, a person commits an offence where:

1) He fails to make a financial disclosures to SOCA (now NCA) in a situation where such person knows or suspects or has reasonable grounds for knowing or suspecting that another person engaged in money laundering;
2) The information consequent upon which his knowledge or suspicion or reasonable grounds for such knowledge or suspicion based came to him in the cause of his business in the regulated sector; and
3) He can identify the person engaged in money laundering or the whereabouts of any of the laundered property, or he believes (or it is reasonable to expect him to believe) that the information will or may assist in identifying the money launderer or the whereabouts of the laundered property.

The offence is punishable on conviction with imprisonment for a maximum of five years and an unlimited fine.[165]

[163] Proceeds of Crime Act 2002 as amended s 333A (4) (a and b)
[164] Proceeds of Crime Act 2002 as amended ss 327, 328 and 329
[165] Proceeds of Crime Act 2002 s 334 (2)

The offences in sections 331 and 332 POCA were almost identical.[166] Section 331 governed a person who is a nominated officer (i.e Money Laundering Reporting Officer MLRO) whose duty is to receive internal disclosure of suspicious report from members of the firm within the regulated sector, whereas section 332 governs the circumstances where the nominated officer received an internal disclosure of suspicious transaction outside the regulated sector.

In both circumstances, a nominated officer is deemed to have committed an offence where he fails to make a financial disclosure of information he received in an internal report which gives rise to reasonable grounds for suspicion.

In Nigeria, under the Money Laundering Prohibition Act 2011, those that were mandated by law to file suspicious reports are those working in either Financial Institution or Designated Non-Financial Institution.[167]

Section 25 of the MLPA 2011 explain the term "financial institution" to mean banks, association or group of persons whether corporate or incorporate which carries on the business of investment and securities, insurance firms, discount houses, debt factorization and conversion firms, finance company, bureau de change, money brokerage firm whose principal business include factoring, project financing, equipment leasing, fund management, investment management, debt administration, private ledger service, project consultancy, financial consultancy, local purchase order financing export finance, pension fund management and such other business as the central bank, or other appropriate regulatory authorities may from time to time designate.

The section also explain the term "Designated Non-Financial Institution" to mean dealers in jewelry, cars and luxury goods, tax consultant, chattered accountants, audit firms, legal practitioners, clearing and settlement companies, casinos, hotels, supermarkets or such other business as the federal ministry of commerce or appropriate regulatory authorities may from time to time designate.

Regulation 7[168] also mandated banks and other financial institution to designate its AML/CFT Chief Compliance Officer with the relevant competence, authority and independence for the purposes of implementing the institution's

[166] J Fisher, 'The Anti-Money Laundering Disclosure Regime and the Collection of Revenue in the United Kingdom' (2010) 3 BTR 235, 238

[167] See Money Laundering Prohibition Act, 2011 s 25

[168] Central Bank of Nigeria (Anti-Money Laundering and Combating the Financing of Terrorism in Banks and Other Financial Institution in Nigeria) Regulations, 2013

anti-money laundering law and counter financing of terrorism compliance programme whose duties shall include-

a) developing an AML/CFT compliance programme;
b) receiving and examining suspicious transaction reports from staff;
c) filing Suspicious Transaction Reports STR to Nigerian Financial Intelligent Unit NFIU;
d) filing other regulatory returns with the Central Bank and other relevant regulatory and supervisory authorities;
e) making "nil" reports, where necessary to ensure compliance, to the Central Bank and NFIU;
f) ensuring that the financial institution's compliance programme is effected;
g) organising the training of firm employees in AML/CFT awareness, detection methods and reporting requirements; and
h) acting both as a link man between the CBN, NFIU and his institution. He also served as a point of contact for all the employees on matters pertaining money laundering and terrorist financing.

DEFINATION OF SUSPICION

The word "suspicious" has nowhere been defined in the whole of POCA 2002. However, its (POCA) require that suspicious activity report to be file as soon as possible once a person acting in the cause of their profession, trade or business knows or suspect that someone is engaged in money laundering. Unfortunately, POCA has not provided guidance as to what this state of mind means. "Knows" presents no problems beyond those of proof. However, the word "suspicious" is less clear. Therefore, the test is an objective one.[169]

Thus, in most cases if not all, the report by those authorized to file SAR that they have suspicious will be enough. It will be strange for courts to demand justification, inform of proof, from those that report a suspicion. Actually it will be for those challenging the filing of SAR to prove that no suspicion existed.[170] In R v Da Silva,[171] Da Silva was convicted of having knowledge or suspicious that her husband was involved in criminal conduct, which was an offence

[169] A Haynes, *Financial Services Law Guide (Bloomsbury Professional, 4th Ed Hayward Heath 2014)*
[170] G Brown, 'The Impact: The Breadth and Depth of Anti-Money Laundering Provisions Requiring Reporting of Suspicious Activities' (2008) 23 (5) JIBLR 274, 276
[171] [2006] EWCA Crim 1654

contrary to section 93A (i) (a) of the Criminal Justice Act of 1998 (an offence which if committed now would be prosecuted under s. 328 POCA). Da Silva appealed against such conviction on the ground that the trial judge had directed the Jury to an unjust definition of "suspicion". The trial judge used the dictionary meaning of "suspicion". Da Silva opined that suspicion should be on reasonable grounds. This assertion was rejected by the court for the word "reasonable" could not be imply into the relevant statutory provision. The court further stated that, the Act did not postulate that the suspicion has to be clear or firmly grounded or base upon reasonable grounds. The court went further to state, those required to make a report must think that there is a possibility which is more than fanciful, that the relevant fact exist.

The Court of Appeal also held that, a person who had temporarily held suspicion, but subsequently dismissed same honestly from their mind upon further consideration of some existing fact, should not be liable to be convicted. In K Limited v National Westminster Bank,[172] National Westminster Bank refused to comply with the payment instruction given by K on the basis that, by doing so, it would facilitate the use of criminal property contrary to section 328 POCA. National Westminster already filed a SAR and K sought an interim order to restraint the National Westminster from violating its contractual duty to honour its customer's instruction and opined that, if National Westminster was to capitalized on "suspicion", it should prepare to provide admissible evidence before the court consequent upon which it could be cross-examined. Or else, customers account could be frozen despite no any suspicion exist. The court refused to grant the injunction and K appealed. The appeal was also refused. The appellate court determined that, "suspicion" need not be proved at all. There is no basis or justification whereby a bank official can be cross-examined as to reason for their suspicion.

K Limited argued that, if National Westminster need not to provide evidence for its suspicion, it would lead banks to be filing groundless suspicious reports. The courts response to this was that:

> *"The existence of suspicion is a subjective fact. There is no legal requirement that there should be reasonable grounds for suspicion. The relevant bank employee either suspects or he does not.*[173]

[172] [2006] EWCA Civ 1039

[173] K Limited v National Westminster Bank [2006] EWCA Civ 1039 at [21]

See also the cases of R (on the application of UMBS Online Ltd) v Serious Organised Crime Agency[174] and N2J Ltd v Cater Allen.[175]

Unlike POCA 2002, in Nigeria, banks and other financial institution are under a duty to report suspicious transactions whether or not they relate to proceeds of crime.[176] Under the Nigerian Money Laundering Prohibition Act 2011 as amended, conduct capable of or deemed to be regarded as suspicious has been provided in section 6 of the Money Laundering Prohibition Act 2011 as follows:

> *"Where a transaction-*
>
> *a) involves a frequency which is unjustifiable or unreasonable;*
> *b) is surrounded by conditions of unusual or unjustified complexity;*
> *c) appears to have no economic justification or lawful objectives; or*
> *d) in the opinion of the financial institution or designated non-financial institution involves terrorist financing or is inconsistent with the known transaction pattern of the account or business relationship, that transaction shall be deemed to be suspicious……."*[177]

Thus, suspicious transaction may be described as a transaction that is suspected to be fraudulent or dishonest though not proof. M Tantam, N Mathew and J Traynor had this to say in respect to suspicion:

> *"Suspicion is less than an absolute certainty but more than mere speculation. Neither is it possible to provide a comprehensive list of suspicious transactions. All one can say is that suspicious transactions will often be characterized as being inconsistent with a customer's known legitimate business objectives. Therefore, a useful method in identifying suspicious transaction is first to identify unusual*

[174] [2007] EWCA Civ 406
[175] [2006] EWHC B10 (QB)
[176] O U Jerome, 'A Review of the Special Duties of Banks under the Nigerian Money Laundering Act' (2011) 26 (6) JIBLR 300, 304
[177] Money Laundering Prohibition Act 2011 s 6 (1) (a-d)

> *transactions before examining these further to access whether they are suspicious and therefore require reporting".*[178]

Though I am unable to come across even a single Nigerian case law that define the term "suspicion" under the anti- laundering law, Garba JCA had this to say (in a criminal case other than laundering matter) about the term "suspicion" viz-

> *"Suspicion means a mere feeling or thought that someone is guilty of something. In criminal trials, suspicion is the feeling or thought without actual proof, that someone is guilty of an offence or crime. The absence of an actual factual basis for the feeling or thought in a person in respect of another is what amount to suspicion."*[179]

Court in Australia defined "suspicion" as a degree of satisfaction, not necessarily amounting to belief, but at least extending beyond speculation as whether an event occurred or not.[180]

IMPACT OF SUSPICIOUS TRANSACTION REPORTS

The operation of Proceeds of Crime Act (POCA) 2002 has stirred widespread concern, especially in connection to the seemingly uncontrolled power of the authorities coupled with the detrimental impact which Suspicious Activity Report (SAR) may have cause on the activities or transactions reported.[181] Recent judicial pronouncement regarding those provisions appears to confer some fetter, albeit limited, on the authorities.[182]

Thus, the impact of the anti-laundering provisions under POCA, more particularly the provisions requiring reporting of suspicious transaction is, to say the least, tyrannous. This is because all that is needed for an account to be temporarily frozen is suspicious report (on reasonable ground or otherwise) from someone in a bank or financial institution. The National Crime Agency (NCA) has a statutory seven (7) days to respond to the report as to whether the

[178] M Tantam, N Mathew and J Traynor, *Practical Implementation of Regulations and Rules in* Toby Graham *(Ed), International Guide to Money Laundering Law and Practice,* (LexisNexis, 2nd Ed 2003) p 66

[179] Osho v The State (2012) 8 NWLR Pt 1302 P 293 Para A-B Per Garba JCA

[180] T Graham*, International Guide to Money Laundering Law and Practice* (LexisNexis, 2nd Ed 2003) p 23

[181] G Brown and T Evans, 'The Impact: The Breadth and Depth of the Anti-Money Laundering Provisions Requiring Reporting of Suspicious Activities (2008) 23 (5), JIBLR 274, 275

[182] See the case R (on the application of UMBS Online Ltd) v Serious Organised Crime Agency [2007] EWCA Civ 406

transaction be continue or otherwise. On the expiration of this period consent is deemed granted unless NCA stated it refuses same. NCA has further 31 days to carry investigation (For these 7 plus 31 days period, the account will remain temporarily frozen and no remedy is provided if the SAR turns to be frivolous) over the report and to decide appropriately. Once it granted consent to continue, execution of any transaction as a result thereof will not result to a person been charged with any of the principal money laundering offences.[183]

In R (on the application of UMBS Online Ltd) v Serious Organised Crime Agency,[184] an offshore finance company, UMBS Online Ltd, applied to court for judicial review of SOCA's (now NCA) refusal to give consent to a bank to abide by its customer's mandate in dealing with funds held on trust for UMBS Online Ltd. In refusing to give its consent, SOCA (now NCA) stated that, the refusal would not be revisited in the absence of a further request for consent from the bank and a change in circumstances.

UMBS raised the following points, which has been acknowledged by the court to have force:

- that the blocking of an account is triggered by no more than suspicious, not even reasonable suspicion;
- that the cardinal freedom of an individual to be presumed innocent until proved guilty is done away with;
- that incalculable damages may be committed against the person under investigation while the account is frozen;
- that the clients and customers of the person under suspicion may be prejudice; and
- SOCA (now NCA) may be amenable to judicial review but the difficulties of proving an abuse of its power are huge and more often than not the theoretical remedy is in reality worthless.

On appeal Ward L J said:

> *"I am prepared to accept that, SOCA (now NCA) should not withhold consent without good reason. This is more than good administration……..SOCA (now NCA) is an immensely powerful body whose decisions have the consequences of imperiling private and*

[183] See Sections 327-333 POCA generally.

[184] [2007] EWCA Civ 406

> *business banking activity based on no more than a reported suspicion of money laundering. If the proper balance is to be struck between undue interference with personal liabilities and the need constantly to fight crime, then the least that can be demanded of SOCA (now NCA) is that they do not withhold without good reasons."*[185]

The question readily comes to mind is "what is good reason"? And "who is to determined good reason"? The answer is certainly the NCA (SOCA's successor). Therefore, any remedy that may be provided is theoretical and is often worthless in reality.

Another impact of "suspicious reporting" is that, it causes defensive reporting, and by implication over reporting, since there is a penalty for not reporting and the suspicion need not be proved. In K Limited v National Westminster Bank,[186] the Court of Appeal held that, "the existence of suspicion is a subjective fact,[187] there is no legal requirement that there should be reasonable grounds for the suspicion. The relevant bank employee either suspect or he does not".

Moreover, it eroded the relationship of trust and confidentiality between professionals and their clients. Though, there are exceptions[188] in certain circumstances. The problem is that, where the suspicious report turns-out to be unfounded, no remedy is contemplated in law for the suspected client.

The situation is almost the same in Nigeria under the Money Laundering Prohibition Act, 2011 as amended. The Act also eroded (though with qualification) banker/customer relationship of trust and confidence in regard to secrecy of transactions conducted by the customer with his or her account. Unlike under the amended Money Laundering Act 2004, in the 2011 Act, a categorical provision[189] has been provided conferring protection on directors, officers and employees of financial institutions and designated non-financial institutions in case of any action brought by a customer on account of disclosing the latter's account while discharging their duties **in good faith** under the Act.[190] The implication of the qualification (**in good faith**) provided in section 6 (10) of the Money Laundering Act, 2011 is that, where suspicious report has been filed by any Money Laundering Reporting Officer (MLRO) pursuant to his or

[185] UMBS Online [2007] EWCA Civ 406 [36]
[186] [2006] EWCA Civ 1039
[187] At page 21
[188] See Proceeds of Crime Act 2002 s 330 (6)
[189] Money Laundering Prohibition Act 2011 s 6 (10)
[190] N Ofo, 'Nigeria: Economic Crime – Money Laundering' (2012) 23 (8) ICCLR 38, 39

her duty under the Act and such report turns-out to be recklessly filed, such qualification may work against him (MLRO) in case of any eventual action at the instance of the suspected customer.

Thus, the English Court remarked in K Limited v National Westminster Bank[191] that *"The existence of suspicion is a subjective fact…… The relevant bank employee either suspects or he does not"* may (if to be decided in line with the qualification provided in section 6 (10) of the 2011 Nigerian Act) be decided differently consequent upon such qualification.

Suspicious transaction report also has an impact on the priviledged communication between legal practitioner and his client. This is because in Nigeria, unlike UK where exceptions were provided for tipping off offence,[192] no exception for the rule against tipping off is provided under the Act.[193]

CONCLUSION AND RECOMMENDATIONS

The UK anti-laundering legislations traced it origin from the desire to tackle organized crime and terrorism activities consequent upon which various legislations were enacted and re-enacted culminating into the present POCA (as amended) and Terrorism Act.

In both Acts[194] a duty is created to report suspicious acts where it is suspected that a person is laundering the proceeds of crime or if it is suspected that, the money will be used to commit an act or acts of terrorism.

Unfortunately, no such requirement is created where it is suspected that the client is moving the money to commit criminal offence other than terrorism. If a person proceeds in such circumstances, he may commit a series of criminal offences ranging from conspiracy to commit an offence planned by the client, aiding and abetting etc. yet no reporting requirement exist. These seems to be illogical, it is therefore suggested that, the offences be merged as follows:

> " a person commits an offence if he handles money knowing or suspecting that it will be used to commit a criminal offence or that it amount to be the proceeds of one (such money shall be defined as "criminal property"). This offence covers:
> (a) acquiring, using or possessing criminal property;
> (b) concealing, disguising, converting, transferring criminal property or removing it from the jurisdiction; or

[191] [2006]EWCA Civ 1039 See also the cases of N2J Ltd v Catter Allen [2006] EWCH B10 (10) and R (on the application of UMBS Online Ltd) v SOCA [2007] EWCA Civ 406

[192] See Proceeds of Crime Act 2002 s 333 (2) (c) and (3) (a and b)

[193] See Money Laundering Prohibition Act, 2011 as amended s 16 (1)

[194] Proceeds of Crime Act, 2012 and Terrorism Act 2000

(c) entering into an arrangement which will facilitate the acquisition, use, retention or control of criminal property by or on behalf of another."

The existing defences provided in sections 327-329 POCA could then be added.

Also in regard to protected disclosure under section 337 POCA, it states that, no breach of any law relating to disclosure has been committed provided; *"(2) --- the information or other matter disclosed came to the person making the disclosure in the course of his trade, profession, business or employment."* However, there are instances where minor facts trigger a little suspicion which ordinarily will be ignored but the vital ingredient that will add up to it may later come into the reporter's possession outside the course of his trade, profession, business or employment. A typical example is where in a Charity Bazaar, a potential reporter introduced a client to his friends and was told by the latter after the client left that "the client is a rogue, he engages in laundering activities, in fact he was twice convicted for an offence involving money laundering". With this new information, the potential reporter will be in a dilemma, for if he continue with the transaction without filing a suspicious report, he will found himself committing an offence and if he did filed the report and same came to the notice of the client, the latter may file a civil claim against him for violating his duty of trust and confidence. Therefore sub section (2) of section 337 need to be amended to read as follows:

"(2)-----the information or other matter disclosed came to the person making the disclosure-----in whole or in part in the course of his trade, profession, business or employment".

Unlike under the MLPA 2011, POCA provides for exceptions against the offences of disclosing confidentiality of SAR/tipping off. However, while I am not in support of the strict rule against tipping off offences in Nigeria which admits no exception; the exceptions provided under POCA, is to my mind, over stretched and unqualified.

The amendment of old section 333 POCA [195] was effected by inserting new section 333A, 333B, 333C and 333D. The section provides:

"-----tipping off offence would not be committed----------where--

(b) The institution to whom the disclosure is made is situated in an EEA or country imposing similar money laundering requirements; and---"

[195] Inserted by SI 2007/3398 Sch. 2 Para 4

To me this provision over stretched and unqualified, for it may give room or opportunity to so many things with resultant consequences. The section should be amended to read:

> "Tipping off offence would not be committed---------where--
> (b) The institution to whom the disclosure is made is situated in an EEA or in country imposing similar money laundering requirements and such disclosure was made in good faith and for the purposes of tracking laundering proceeds."

Lastly, the threshold amount pegged by POCA (which is £250) is extremely low and that would create unnecessary reporting on the pretext of "better safe than sorry" principle since failure to report if the transaction exceed the threshold goes with severe penalty.

In Nigeria, unlike under POCA 2002, tipping off and priviledged communication between legal practitioner and client is eroded by the Nigerian Money Laundering Act and this does not only negate the international best practice, but contravene the provision of section 192 of the Nigerian Evidence Act, 2011 which statutorily recognized priviledge communication which was later judicially upheld in the Nigerian case of Musa Abubakar v E I Chuks.[196]

Therefore, I recommend that section 16(1)(a) of the Money Laundering Prohibition Act, 2011 and Regulation 31 (6) of the Central Bank of Nigeria Regulations 2013 be amended in line with the exceptions provided in section 333 POCA 2002.

Moreover, "Authorised Disclosures" similar to that provided in section 338 POCA be incorporated into the Nigerian money laundering laws. This is because, it will serve as not only a means of absolving an innocent party to the laundering offences, but it will create an avenue of having a spy agent within the system in assisting the law enforcement agencies in curtailing the menace.

[196] (2007) 18 NWLR (pt 1066) 356