



# ***Defence Against Money Laundering and Tipping Off***

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# *Today's presenters*



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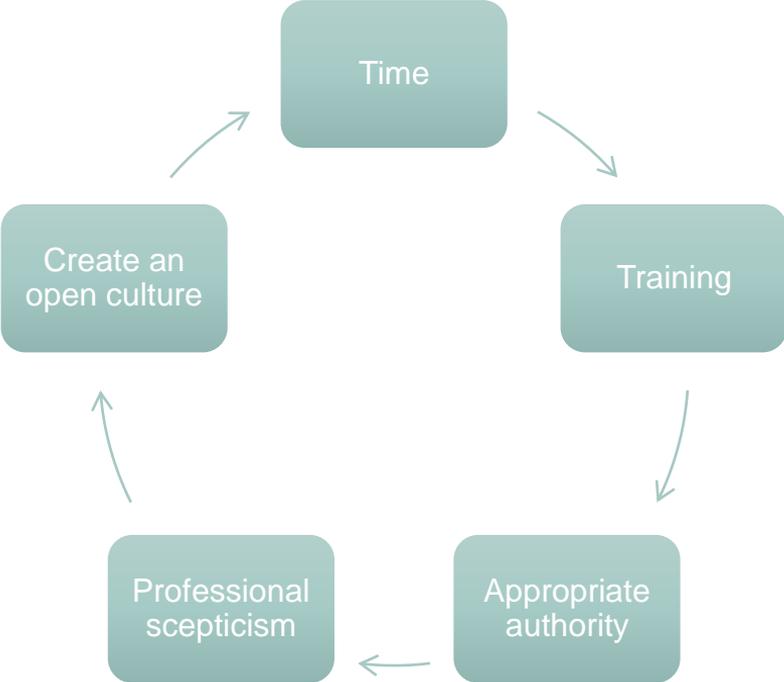
# ***Agenda***

- Your role as Money Laundering Reporting Officer (MLRO)
- Defence Against Money Laundering (DAML)
- Tipping off



# ***Your role as the MLRO***

# *Attributes of an MLRO*





# ***Defence Against Money Laundering (DAML)***

# ***Introduction***

- As a reminder, money laundering takes place where there is criminal conduct resulting in a criminal benefit or proceeds of crime.
- Criminal benefit may occur as a result of breaches of sanctions, instances of fraud, payment or receipts of bribes and tax evasion.
- As MLROs/NOs, when your teams form a reasonable suspicion and report this to you, as well as considering whether to make an external SAR, the MLRO/firm must consider whether it would commit a money laundering offence if it delivered on the terms of the engagement.

# ***Reminder: what is a suspicion***

- 'Suspicion' is not defined in legislation.
- Case law has provided some clarity on the term suspicion:
  - a state of mind more definite than speculation but falling short of evidence-based knowledge.
  - a vague feeling of unease would not suffice.
- Suspicion does not require document-based evidence, it may be a particular fact pattern, a series of red flags.
- The threshold for suspicion is generally considered to be low.
- The Accountancy sector has received criticism for under-reporting SARs.

# What is a DAML?

- When a suspicion is formed and an internal SAR reported, would your firm commit a Money Laundering or Terrorist Financing (MLTF) offence if you completed the engagement?
- Can you determine what MLTF offence(s) your firm might commit if you completed the engagement?
- If you need or want to complete your engagement, you may request a defence against the MLTF offence(s) from the NCA.

## Money Laundering offences:

- ❖ **PoCA S327:** conceal, disguise, convert or transfer criminal property.
- ❖ **PoCA S328:** Becoming involved or concerned in an arrangement that allows the client to launder criminal property.
- ❖ **PoCA S329:** Acquire, use or possess criminal property

## Terrorist Financing offences:

- ❖ **TA S15-18 :** fundraising, using or possessing terrorist funds, entering into funding arrangements, money laundering.

# ***Common scenarios where a DAML may be required***

- In the accountancy sector, there are a small number of ‘common’ scenarios that you may come across where a DAML may be required. Can you identify these in your firm?
- We will go through case studies in this session but the most common scenarios are:
  - Advising on a transaction where the proceeds of crime may be transferred – for example issuing a due diligence report.
  - Handling assets that may have been tainted by criminal proceeds – for example when acting as trustee in bankruptcy.
  - Putting a corporate structure in place where you suspect that it will be used to conceal criminal property – for example setting up offshore structures.
- You cannot obtain a DAML for activity you have already carried out – it cannot be granted retrospectively.

# ***DAML - common misconceptions***

- A DAML must only be submitted for a specified activity (or specified series of activities).
- A DAML should not be open ended such as such as seeking a defence in relation to “handling all business dealings” concerning the subject.
- You cannot obtain a DAML to continue a business relationship with a client eg, to continue an audit engagement.

# How to submit a DAML

- You are required under the Proceeds of Crime and Terrorism Acts, to submit SARs and DAML requests to the National Crime Agency.
- In order to meet your reporting obligations you should not submit to another law enforcement body.
- You submit a DAML via the NCA's SAR Online portal.
- You must tick the 'Consent Required' checkbox.

The screenshot displays the NCA SAR Explorer interface. At the top, the NCA logo and 'National Crime Agency' are visible. The user is identified as 'Sabah Hussain, PricewaterhouseCoopers LLP'. The navigation bar shows 'step 1 [HEADER]', 'step 2 [MAIN SUBJECT]', 'step 3 [ASSOCIATED SUBJECT]', 'step 4 [TRANSACTION]', and 'step 5 [REASON / SUBMIT]'. The 'SAR Header' form includes the following fields:

- Your Reference: \* n/a
- SAR Type: \* [dropdown menu]
- SAR Creation Date: \* 1 Jul 2021
- Related Disclosure IDs: [input field]
- Consent Required:  (highlighted in yellow)
- Reporting Institution: \* PricewaterhouseCoopers LLP
- Branch/Office/Outlet: \* [input field] or [dropdown menu]
- SAR Access Level: \* [dropdown menu]

Buttons for 'Save' and 'Save and Exit' are located below the form. A message at the bottom states: 'When you have completed this page, proceed to step 2.' with a 'step 2 >>' button.

# ***DAML top tips***

The structure of a DAML should cover the following areas:

- NCA Glossary Code.
- That it is a DAML and not a SAR.
- What your suspicions are (or knowledge).
- The Who, What, Where, When and How – the relevant parties and how the circumstances arose/are planned to happen.
- What specifically are you seeking a defence for – both the money laundering offence and activity.
- The duration you are seeking a defence for and any amounts (£) involved.
- A description of the property you know or suspect is criminal property.
- Timing/deadlines – engagement.
- Who at your firm to contact for any questions (usually the MLRO/NO).

# ***What happens once a DAML has been submitted?***

- The NCA has **seven working days** to consider all DAML requests.
- At seven working days, the NCA may apply to the court for an **extension** to this period of up to **31 days** (moratorium period). This can be applied in 31 day increments up to a **maximum of 186 days**.
- If you do not hear anything from the NCA after the seven working days have passed, you have '**Deemed consent**'. If this happens you may wish to take legal advice to confirm you can continue.
- In exceptional circumstances, you may email the NCA to request your DAML to be fast-tracked.
- During the 7 day period (or 31 day period if an extension is required) the NCA may seek to investigate the matter and consider what, if any action they can take.

# ***What you can / cannot do after submitting a DAML***

## **What you can do**

- ❖ Document your rationale for seeking a DAML.
- ❖ MLRO/NO to brief engagement team on what they can and can't do.
- ❖ Consider whether it is appropriate to continue working on the engagement but without issuing any deliverables or providing verbal advice as this may constitute a MLTF offence.
- ❖ Answer any follow-up questions the NCA ask.

## **What you cannot do**

- ❖ You cannot issue any deliverables (including providing advice verbally).
- ❖ You cannot tell your client or any advisors/third party that you have sought a DAML.
- ❖ You should not chase the NCA for a response.



# ***Case study 1***

XASN Ltd

## Engagement details

- Two insolvency practitioners appointed as receivers by XYZ Bank Plc in relation to the loan provided to XASN Limited.
- A review of the accounts has identified furlough payments totaling £20,000 were claimed for Janet Smith during 2020-2021.
- Evidence found to confirm that Janet Smith was working during the entire furlough claim period.
- Book value of company assets are £400,000.
- John Smith and Janet Smith have £100,000 in a personal bank account.
- XASN Limited and Janet Smith suspected of fraud and money laundering.

## XASN Limited – company background

- Owned by John Smith and Janet Smith. They are the only directors.
- Supplier of inflatable goods eg, bouncy castles.
- Took out a £500,000 loan from XYZ Bank Plc.
- Unable to meet loan repayment obligations due to the pandemic.

Unable to rule out the possibility that XASN Limited's assets and the joint bank account of John and Janet Smith are tainted by the proceeds of crime.

DAML sought to

1. realise assets of the company;
2. enforce the guarantee by taking possession of funds from Mr and Mrs Smith's bank account;
3. use those proceeds to repay the secured creditors of the company.



# ***Case study 2***

Beta 364 Ltd

## Engagement details

- The client wants to make an R&D claim application. The claim relates to a software development project for an application that could confirm whether digital images of human faces used for personal identity verification were genuine or computer-generated.
- The client put together a report to demonstrate the R&D work undertaken during the year including details of staff involved, hours spent on the project and employee costs.
- After submitting the tax return, the firm identified the client on a HMRC list of those having claimed furlough monies. Further enquiries caused the firm to suspect that the staff who were supposed to have worked on the R&D project had in fact been on furlough and were not working on R&D activities as reported.
- In the meantime, before any action could be taken, HMRC sent an R&D refund into the firm's client account.

### Beta 364 Limited – client and engagement background

- Operates within the software development industry.
- Regulated firm provides accounts preparation, general business support and corporation tax services.
- Client was a referral from a known intermediary.
- Company had a short but credible trading history.
- In order to facilitate the payment of corporation tax the regulated firm opened a designated client money account for the client.

Beta 364 Limited suspected of fraud and tax evasion.

DAML sought to pay the refund to Beta 364 Limited.



# ***Case study 3***

Alex Miller

## Engagement details

- The client has sought inheritance tax advice in relation to several cash and investment assets.
- The firm advises the client that he can avoid inheritance tax by transferring assets to his wife – the client would like to proceed with this advice.
- A review of the client's assets reveals one of the assets is a share portfolio which includes shares in a Canadian cannabis company.
- Whilst legal in Canada, cannabis is illegal in the UK, therefore any funds derived from revenue or profits from sales of cannabis would constitute as proceeds of crime under PoCA.

### Alex Miller– client background

- Long term client of the firm.
- UK resident.
- Seeking inheritance tax advice in relation to several assets.

Assisting with the transfer of Alex Miller's share portfolio would constitute facilitating the acquisition of criminal proceeds.

DAML sought to assist Alex Miller with the transfer of assets to his wife which includes assets tainted by the proceeds of crime.



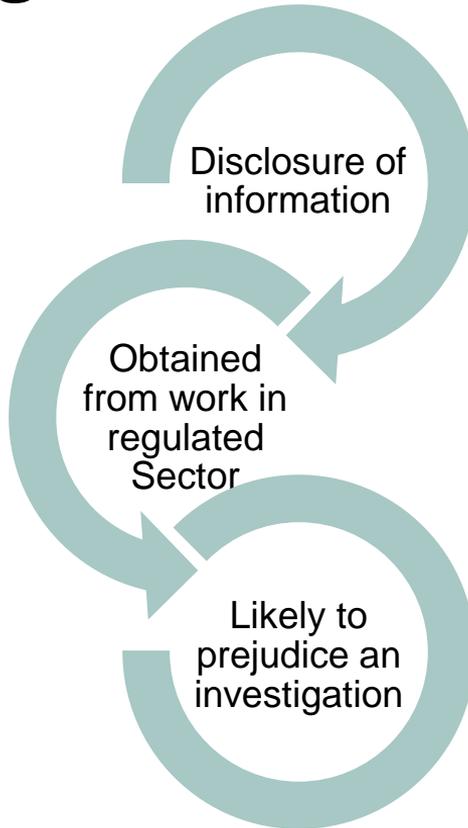
# *Tipping off*

# ***What is tipping off and why does it matter?***

- Tipping off is a criminal offence in the regulated sector;
- There are two circumstances in which tipping off can apply:
  - Where a person discloses that a suspicious activity report has been made
  - Where a person discloses that an investigation is being contemplated or carried out
- What is or is not tipping off is an area which causes concern and confusion.



# ***What is tipping off – three conditions***



# *Components of tipping off*



- The purpose of the legislation is to ensure that criminals are not warned that their activities have given rise to suspicion or that an investigation is or may be underway
- The offence is therefore designed to penalise those who either disclose to their client that they are suspicious and have reported the matter to the police, HMRC, the nominated officer or to the NCA as well as those who disclose that an investigation is underway into those suspicions.
- The disclosure must be likely to prejudice any current or potential future investigation of the matter disclosed in the report or the investigation which is already underway. This latter element is a key element of the offence.

# ***What is not tipping off?***



- Asking questions which would be expected of you in the circumstances – for example an auditor who asks for an explanation of an unusual journal.
- Discussing with a specialist colleague to ensure that you have understood the facts and the appropriate application of any rules.
- Discussing with the nominated officer or one of his or her team.
- Discussing with a lawyer to obtain legal advice on the matter.

# ***Prejudicing an investigation***

- In all cases you should assume that an investigation is underway or may arise in future.
- However, not all disclosures may prejudice an investigation – for example if you are engaged to carry out work on behalf of a third party, the disclosure of the facts underlying any suspicion you may have could be disclosed.

Example:

An independent business review on a company causes you to suspect that there may be invoice discounting fraud:

The report could validly state *'We have been unable to obtain a satisfactory explanation in relation to the following invoices as no underlying sales documents or despatch notes were available.'*

# ***Case study 1***

James is auditor to Anyfirm Ltd. He receives a call from the NCA asking for access to his audit files to assist them with a fraud enquiry. James is alarmed as he noticed nothing in his most recent audit, signed off a month ago.

He rings the finance director of ABC Ltd to see if he knows anything about it.

Tipping off?



James has now told the person at the centre of the enquiry that an investigation is in progress.

This is tipping off.

## ***Case study 2***

Mary is preparing a tax return for John, a long-standing client. She notices that the bank statement he provided shows income from a French property management company, but John has not told her he has received any overseas rental fees. She calls John to ask him what these entries are and to check if he is renting out a French property. Tipping off?



Part of Mary's role as a tax adviser is to ensure that the client has identified all of their taxable income. A simple enquiry about what this money is, and whether this is taxable is extremely unlikely to be tipping off. Clarification questions are something that would be expected as part of the process of preparing the return.

## ***Case study 3***

Padma and Jan are compliance specialists in separate accounting firms. They meet for a coffee and are chatting. Padma tells Jan she is surprised that Jan's firm took on a Mr Bennett as a client, as her firm had disengaged. Padma says he was 'dodgy as hell' and they had had to report him.

Tipping off?



It is clear Padma discloses the fact that a SAR has been filed. A casual disclosure in a social setting of this kind may be tipping off.



# *Questions*