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Some Comments on "The Sanctions and Anti-Money Laundering Bill"

This submission comments on the second part of the Bill, which is concerned with the UK's anti-money laundering regime. The regime itself is mainly based on EU money laundering directives though the UK has cherry-picked some aspects.

The Bill, in its present form, is inadequate as it fails to address UK's failures. The key failures are secrecy, poor regulation and enforcement. The failures to address the issues has made the UK a global hub[1] for money laundering proceeds, frequently derived from bribery, corruption, tax avoidance/evasion, narcotics, smuggling, terrorism and other nefarious practices. Shell companies are a recurring feature of illicit financial flows and the UK lacks effective controls on company formation.

This submission offers a brief commentary and outlines some reforms. These relate to:

- Failures in the company formation regime which encourage criminals to form companies for illicit purposes.
- Secretive Trusts are also vehicles for money laundering and the Bill hardly examines them.
- The need to shackle the enablers of tax avoidance/evasion and money laundering, especially major accounting firms
- The need to reform UK Crown Dependencies and Overseas Territories
- The duty to report money laundering.
- The need to reform regulatory system which is fragmented and ineffective.
- Finally, this submission argues that the political ethos in the UK is not conducive to combating money laundering. All too often, the tendency is to bury illicit practices and shield selected economic and political elites from scrutiny and protect their economic interests. Some evidence is provided to support this contention.

  The case studies cited in this submission show that that in pursuit of economic advantage regulators and governments have directly and indirectly supported corruption, bribery and money laundering practices. An examination of the political culture and ethos of the related institutions will go a long way towards explaining why the UK is not very successful in combating money laundering and financial crime.

[1] For example, see Transparency International, Hiding in Plain Sight: How UK companies are used to launder the proceeds of corruption, 2017, London: Transparency International; Reuters, British shell companies linked to 52 money laundering scandals, 9 November 2017 (https://uk.reuters.com/article/uk-britain-finance-crime/british-shell-companies-linked-to-52-money-laundering-scandals-idUKKBN1D918B).

COMPANY FORMATION

1 A joint report[2] by HM Treasury and Home Office noted that "Company formation continues to be exploited by criminals to mask the ownership of assets or transfer these assets between persons". This suggests the need for stringent checks on company formation by bona fide individuals who called be called to account by the UK authorities. However, that is not the case.

2 The first stop in company formation is Companies House, but it acts more like a filing box and rarely performs any meaningful checks. It checks to ensure that the appropriate fields of the company formation forms are completed and neglects checks on the identity of the parties forming the company. It does not even check that a bona fide address is used.

3 The UK permits anyone from anywhere in the world to form a company and become a company director. More than 175,000 UK-registered companies[3] have used directors giving addresses in secretive offshore jurisdictions. Such companies provide a respectable front. It is not clear how the UK calls foreign nationals to account for corporate malpractices, money laundering or sanctions busting, especially when the public records abroad (e.g. in Crown Dependencies and Overseas Territories) do not reveal identity of the key individuals.

4 Companies House should be a vital cog in the regulatory machinery for combating money laundering. However, the government seems to attach little importance to the operations of Companies House. Replies by ministers to parliamentary questions exude complacency and indifference. A couple of examples would help to highlight that.

> Kelvin Hopkins (Luton North) on: 14 September 2017: To ask the Secretary of State for Business, Energy and Industrial Strategy, what procedures are used by Companies House to verify the authenticity of company directors, secretaries and registered addresses.
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> Answered by: Margot James on 12 October 2017: Companies House does not have powers to verify the authenticity of company directors, secretaries and registered office addresses. However, it does carry out a number of checks on all information received; ensuring it is valid, complete, correctly formatted and in compliance with company filing requirements. The obligation to ensure the information is accurate lies with the company and its directors. An offence is committed by the company if it files false information. Companies House maintains one of the most open and extensively accessed companies' register in the world. It is a powerful tool in identifying false,

[2]HM Treasury and Home Office, National risk assessment of money laundering and terrorist financing 2017, October 2017 (https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/655198/National_risk_assessment_of_money_laundering_and_terrorist_financing_2017_pdf_web.pdf).

[3] The Guardian, Offshore secrets: how many UK companies are run from overseas havens?, 3 April 2013 (https://www.theguardian.com/uk/datablog/2013/apr/03/uk-companies-controlled-offshore).

inaccurate or possibly fraudulent information. With many eyes viewing the data, errors, omissions or worse can be identified and reported.

Kelvin Hopkins (Luton North) on 14 September 2017: To ask the Secretary of State for Business, Energy and Industrial Strategy, what the role of Companies House is in combatting money laundering.

Answered by: Margot James on 12 October 2017: Companies House's role is to incorporate and dissolve limited companies. It registers the information that UK companies are required to disclose and makes it available to the public. Companies House does not have a front-line role in combatting money laundering but it can support and assist law enforcement in their investigations.

Company House carries out a number of checks on all information received, ensuring it is valid, complete, and in compliance with company filing requirements. When it detects or receives intelligence relating to suspicious actions, including possible money laundering, Companies House will report the information to the relevant enforcement body.

5 To effectively combat money laundering, regulators need to be able to identify the parties behind shell companies, but this is not possible in the UK as company law permits nominee shareholdings i.e. enables concealment of the identity of the real beneficiaries.

Kelvin Hopkins (Luton North) on14 September 2017: To ask the Secretary of State for Business, Energy and Industrial Strategy, if he will introduce legislative proposals to prohibit nominee shareholdings.

Answered by Margot James on 12 October 2017: Shareholding through nominee accounts is commonly used for legitimate investment and commercial reasons. The Government has no plans to introduce legislative proposals to prohibit nominee shareholdings.

6 By clinging to nominee shareholdings, the government is facilitating secrecy spaces which can be exploited for money laundering and other illicit practices.

7 The UK law allows companies to become directors of other companies. These companies can be registered in secretive tax havens where nothing is publicly known about shareholders or directors of the companies. The registered address is about the only publicly available information. One building in the Cayman Islands, a UK overseas territory, is the registered address of 18,857 corporations. The British Virgin Islands, another UK overseas territory has 14 times as many companies as people and little is known about any of them. These companies rarely carry out any trade in their locales, but facilitate secrecy to their owners, an ingredient necessary for illicit flight of capital.

8 In the above vacuum, anything goes. Italian investigators discovered that Mafia had formed companies in the UK for illicit financial flows, often with false names and addresses[4].

9 A mafia kingpin was a director of a Magnolia Fundaction UK, a company registered to an address in London's Broadwick Street. Its documents cite as a director a man with the surname "Il Ladro di Galline", which translates as "The Chicken Thief". His occupation was stated to be a "fraudster", using the Italian word "truffatore". Among Magnolia's directors is a nominee company called Banda Bassotti — the Italian name for the Beagle Boys gang of crooks in the Donald Duck cartoons. Bassotti's address, also in Italian, translates as "0, Street of the 40 Thieves" in the fictional Italian city of "Ali Babba" in Italy. All of this information was accepted by Companies House of a number of years.

10 The public disclosures should have resulted in reforms and tighter checks by that has not been the case.

> Kelvin Hopkins (Luton North) on14 September 2017: To ask the Secretary of State for Business, Energy and Industrial Strategy, whether any action has been taken against the promoters and officers of Magnolia Fundaction UK Ltd for filing information at Companies House which stated a director's name as The Chicken Thief and described his occupation as fraudster.
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> Answered by Margot James on 12 October 2017: No action has been taken at this time against the promoters and officers of Magnolia Fundaction UK Ltd for filing inappropriate information in Italian at Companies House. The company has already filed documents providing appropriate information and terminating the inappropriate appointment.

11 The above is not the only example. Italian journalists were only a computer click away from registering a company with the address "10 Downing Street" and a false name[5]. Yet Companies House did not query anything.

12 A fundamental reform of company and limited liability partnership (LLP) formation is needed and I would recommend the following:

13 The names and addresses of all directors, shareholders and LLP partners should be on the public register.

14 Nominee shareholdings should be abolished as they conceal the identity of the ultimate beneficiaries.

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4 Uk - Pizza, friarielli e pounds, la ricetta per il riciclaggio a Londra (https://www.ilfattoquotidiano.it/longform/mafie-europa/focus/gran-bretagna/)

5 The Independent, Italian journalists say they could register company at 10 Downing Street in name of mafia boss, 16 November 2017 (http://www.independent.co.uk/news/uk/politics/paradise-papers-italian-journalists-register-company-a8058201.html).

15 Shadow/nominee directors should not be permitted as the practice conceals the identity of the ultimate beneficiaries, controllers and decision-makers. Too many individuals act post-boxes, for a fee, and merely collect correspondence which they then forward to the real controllers. In return, they often have an 'indemnity agreement' with the real controllers to shield them from liabilities. All such agreements should be null and void. Therefore, if anyone wishing to act as a shadow/nominee director would need to face the full consequences of their decision.

16 Only natural persons resident in the UK should hold the office of a director for a UK-registered company. Individuals resident in other countries can be a director as long as their identity can be independently verified.

17 Companies cannot be directors of other companies.

18 Companies House should check the names and addresses of directors and shareholders against suitable databases. In the era of electronic communication numerous databases are available (and are used – e.g. for credit card applications) and should be used by Companies House. Examples include databases relating to bank accounts, passports, criminal convictions, director disqualification orders, credit ratings, electoral registers, data held by utility companies, registers of birth, marriage a deaths, etc. Anyone not on the databases used by Companies House should be required to provide certified copies of selected documents (e.g. birth certificate, passport).

19 Within 12 months of first registering a company, its directors shall be required to obtain a Unique Taxpayer Reference (UTR) number from Her Majesty's Revenue and Customs. The UTR number should be shown on all subsequent public filings (this would require a slight redesign of the annual return or the confirmation statement). Any company failing to display the UTR should be automatically struck-off. This proposal shifts the onus to company directors to register with HMRC and thus makes it difficult for them to escape tax liabilities.

20 The current threshold before any individual must publicly declare an interest in a company is 25% of shares and is too high. It is too easy to avoid. The threshold should be no more than 10%, and ideally there should be no threshold at as shareholders stand to benefit from illicit flight of capital. Details of all shareholders should be publicly available. Companies already have electronic registers and therefore there is no additional data production cost. This information should be filed at Companies House and made publicly available

TRUSTS

21 The 2017 money laundering report[6] by HM Treasury and Home Office noted that "The creation of trusts and companies on behalf of clients is assessed to be the legal service at greatest risk of exploitation. Investigations by law enforcement often feature trusts and companies being used to facilitate high-end money laundering by hiding beneficial ownership, undermining due diligence checks and frustrating law enforcement investigations". However, the Bill says little about transparency or reform of trusts even though trusts have been identified as vehicles for money laundering in the Panama Papers and Paradise Papers.

22 One of the ways of tackling this is by increasing transparency and also reforming trust law. There are two broad issues that must be addressed with trust law. The first is the way in which trusts are used to separate ownership of an asset.

23 One way to understand the trust is to think of it as a promise to donate or gift something to someone in the future, by handing control over it to someone else (a trustee). The consequence of this is that no one fully owns the asset anymore (on paper). A trust can be a type of ownerless limbo, unreachable by legitimate creditors of the settlor or beneficiaries, such as victims of accidents or fraud, tax authorities, etc.

24 The second issue is the creation of so-called abusive trusts, trusts that service illicit or illegal activity by design. The creation of such trusts is permitted by some tax haven jurisdictions, and the trusts can have legal standing in the UK.

Examples of abusive trust rules include: self-settled trusts, where the settlor is the only beneficiary; flee clauses written into the trust deed which compel the trustee to move the trust to another jurisdiction if an event is triggered, say an investigation by a tax authority; and duress clauses which command the trustee to refrain from any action or instruction sent by the settlor or beneficiary if the instruction was given under duress – such as a foreign court order. These duress clauses help shield the trustee from compliance with foreign laws and court orders, e.g. attempts by creditors to retrieve assets that have been purposefully hidden in an offshore trust.
There are also mechanisms which allow the settlor to keep control of a trust. Revocable trusts for example allow a settlor to end a trust and regain control of an asset at any time.

25 The UK started a register of the beneficial ownership of trusts in 2017. The register is held by HMRC and is a private registry. It should be made public and searchable with the Companies House database.

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[6]HM Treasury and Home Office, National risk assessment of money laundering and terrorist financing 2017, October 2017 (https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/655198/National_risk_assessment_of_money_laundering_and_terrorist_financing_2017_pdf_web.pdf).

26 Registration of a trust should be a precondition for any trust having legal effect. The courts should not recognise any trust that is not registered and included in the public register.

27 The UK should take countermeasures to protect itself against countries, including British Crown Dependencies and Overseas Territories that allow the creation of abusive trusts. The UK should compile a blacklist of jurisdictions that allow the formation of abusive trust structures. Inclusion on the blacklist would mean that the trust had no legal status in the country implementing the blacklist. All persons involved in the trust, (e.g. the settlor, and trustees) could be held in contempt of court if a trust refused to abide by a court order or be penalised simply for being part of a blacklisted trust.

28 No asset should be disassociated via a trust from its owners. Trust assets that have not been distributed to beneficiaries should be considered as belonging to the settlor. This would stop trusts from being used to shield settlors and beneficiaries from compliance with the law.

THE ENABLERS

29 The Panama Papers, Paradise Papers, HSBC leaks and other documents show that a well-organized industry facilitates tax avoidance/evasion and money laundering. Yet the Bill has little to offer.

30 The government is the biggest spender in the UK economy and can use its spending power to discipline the rules avoidance industry. For example, it can prevent tax avoiders from securing public contracts. Such a policy was introduced in 2013 under the "Tax Compliance and Procurement Rules[7]". The key idea was to deny publicly-funded contracts to those involved in tax avoidance. However, the rules require bidders to self-certify whether during the previous six years they have had any 'occasions of non-compliance' i.e. whether they have submitted an incorrect tax return because of their engagement in tax evasion. If so, the bidder is asked to submit an explanatory statement and offer mitigating factors. To date, no individual or organisation has been banned from securing public contracts.

31 A 2014 government press release[8] stated that: "Of the 65 bids applying for central government contracts of five million or more, one potential bidder failed the overriding mandatory procurement test. This failure, however, was due to the bidder being unable to provide and deliver services that would fulfil the procurement department's contract, rather than an issue of whether or not they were tax compliant. The remaining 64 potential bidders declared that they had been tax compliant". Subsequently, the government refused to provide any further information[9]. Why this silence?

32 Despite numerous court judgements declaring the tax avoidance schemes marketed by the firms to be illegal, major accountancy firm has ever been investigated, fined or prosecuted.

33 The current system of dealing with the enablers is grossly inadequate and needs to be reviewed. Personal fines on enables, closing down firms, denial of public contracts, restrictions on securing further business are some of the policy options, but none will success unless there is an effective and publicly accountable regulatory system

UK CROWN DEPENDENCIES AND OVERSEAS TERRITORIES

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[7] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/278135/PPN_0314_Measures_to_Promote_Tax_Compliance_Feb.pdf

[8] Cabinet Office and HMRC press release, Review of the Tax and Procurement policy, 26 august 2014 (https://www.gov.uk/government/news/review-of-the-tax-and-procurement-policy).

[9] For example, see the reply to question in parliament on 16 March 2016 (https://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2016-03-16/31437)

34 The Paradise Papers, Panama Papers and numerous other episodes continue to show that secrecy, trusts, shell companies and a thriving tax-avoidance located in UK Crown Dependencies and Overseas Territories play a central role on global tax avoidance/evasion and money laundering.

35 The UK is responsible for the good governance of its Dependencies and Territories. It has unlimited power to legislate for the territories. All laws of the British overseas territories are approved by the sovereign with advice from the Privy Council.

36 Government (or Privy Council) should not approve laws which fall below the standards of transparency and public accountability applicable in the UK. Thus, the territories should be required to maintain publicly available register of trusts and beneficial ownership of companies. LLPs and companies operating in the territories should publish meaningful accounts.

37 The UK government should persuade the territories to adopt reforms. If that fails, the UK should blacklist them and consider imposing sanctions. All trusts, contracts and other transactions executed through the blacklisted jurisdictions should be considered null and void, unless full disclosure is made to the relevant UK and/or other designated authorities

DUTY TO REPORT MONEY LAUNDERING

38 On occasions financial institutions have been fined[10] for failing to maintain an adequate anti-money laundering. However, these are not accompanied by any fines on company executives even though they may have personally benefited from breaches of controls in the form of performance related pay and dividends (if they held shares). The absence of any personal consequences does not send strong signals for future practices.

39 The prime responsibility for implementing systems of internal controls to prevent, detect and report suspicious transactions lies with company directors. All major financial institutions and corporations have internal audit departments and audit committees. One of their responsibilities is to monitor and evaluate the quality of internal controls. Bank fines show that such apparatuses were not effective.

40 However, questions also need to be asked of company's external auditors. As part of their normal audit procedures auditors should evaluate the company's system of internal controls. If auditors have any material reservations then they should be highlighted in the audit report. The audit reports relating to the errant banks do not carry any audit observations suggesting that external auditors also failed to note the weaknesses or failure sin internal controls.

41 Questions should be asked of the failing external auditors, but that has not been the case. The Financial Conduct Authority (FCA) does not seem to be bothered by audit failures in relation to money laundering control. May be it is content to pass the buck to the Financial Reporting Council (FRC) but there is no action or investigation of the auditors failure to evaluate money laundering risks. This inaction is symptomatic of poor regulatory architecture.

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[10] For example, Financial Services Authority, Coutts fined £8.75 million for anti-money laundering control failings, 26 March 2012 (http://www.fsa.gov.uk/library/communication/pr/2012/032.shtml); Financial Conduct Authority, Standard Bank PLC fined £7.6m for failures in its anti-money laundering controls, 23 January 2014; Financial Conduct Authority, FCA fines Deutsche Bank £163 million for serious anti-money laundering controls failings, 31 January 2017 (https://www.fca.org.uk/news/press-releases/fca-fines-deutsche-bank-163-million-anti-money-laundering-controls-failure),

THE REGULATORY SYTEM

42 The UK regulation of money laundering is poor. The regulatory process is spread across numerous bodies, many of which lack any public accountability. There is enormous scope for inertia, duplication, waste and buck-passing. Currently, as the list below shows nearly 29 diverse bodies are involved in regulation of money laundering

UK's AML Regulators

REGULATOR	**RESPONSIBILITY**
Association of Accounting Technicians (AAT) Accountants	Accountants
Association of Chartered Certified Accountants (ACCA)	Accountants
Association of International Accountants (AIA)	Accountants
Association of Taxation Technicians (ATT)	Tax Advisers
Chartered Institute of Management Accountants (CIMA)	Accountants
Chartered Institute of Legal Executives (CILEX)	Legal executives
Chartered Institute of Taxation (CIOT)	Tax Advisers
Council for Licensed Conveyancers (CLC)	Licensed Conveyancers
Department of Enterprise, Trade, and Investment Northern Ireland (DETNI)	Insolvency Practitioners in Northern Ireland
. Faculty of Advocates (Scottish bar association) (FoA)	Barristers in Scotland
. Faculty Office of the Archbishop of Canterbury (AoC)	Notarial profession in England & Wales
. Financial Conduct Authority (FCA)	Credit and financial institutions
. Financial Reporting Council (FRC)	Large Accountancy firms and Professional Accountancy Bodies
. Gambling Commission (GC)	Non-remote and remote casinos
. General Council of the Bar (England and Wales) (GCBEW)	Barristers in England and Wales
. General Council of the Bar of Northern Ireland (GCBNI)	Barristers in Northern Ireland
. HM Revenue & Customs (HMRC)	Tax Avoidance/Evasion in the UK Money Service Businesses Bill Payment Service Providers Telecommunication, digital and IT Payment

	Service Providers Trust and Company Service Providers Estate Agency Businesses High Value Dealers Accountancy Service Providers (for those not registered with a professional body)
. Insolvency Practitioners Association (IPA)	Insolvency Practitioners
. Insolvency Service	Insolvency Practitioners
. Institute of Certified Bookkeepers (ICB)	Bookkeepers
. Institute of Chartered Accountants in England and Wales (ICAEW)	Accountants
. Institute of Chartered Accountants in Ireland (ICAI)	Accountants
. Institute of Chartered Accountants of Scotland (ICAS)	Accountants
. Institute of Financial Accountants (IFA)	Accountants
. International Association of Book-keepers (IAB)	Bookkeepers
. Law Society of England and Wales (LSEW) regulating through the Solicitors Regulation Authority (SRA)	Solicitors and Solicitor firms
. Law Society of Northern Ireland (LSNI)	Solicitors and Solicitor firms
. Law Society of Scotland (LSS)	Solicitors and Solicitor firms
. National Crime Agency (NCA)	Serious and Organised Crime; subject to scrutiny by the Home Affairs Committee and the Public Accounts

43 The AML bodies do not have a consistent organisational structure and there is no central place for investigation or prosecution.

44 In this fragmented system, it is difficult to develop in-house capacity to learn and use the knowledge. It is like having 29 parallel tracks which rarely converge.

45 No single regulator has an overview of the entire system or comprehensiveness of the issues. Intelligence sharing from the NCA has historically been limited to the banking sector and others are neglected.

46 Too many lines of communication inevitably add to bureaucracy, delay and costs.

47 Some bodies are too small to be regulators at the national level and muster sufficient resources.

48 Small regulators are less able to join up their work, and are less aware of the cumulative burdens on businesses.

49 In the current environment it is more difficult and more expensive to have a comprehensive risk assessment system if data is split across several regulators with similar areas of responsibility. Small regulators cannot achieve economies of scale and are less efficient.

50 Many of the regulators are poorly resourced. For example, in addition to its taxation duties, HMRC also has AML duties. However, its budget and staffing have been reduced. In April 2005, HMRC had staff of 104,670 and a budget of £4.4bn, compared to a staffing of 61,800 in April 2017 and a budget of £3.8bn. This is a massive reduction in real terms and must raise doubts about its effectiveness. In February 2016, HMRC had only 81 transfer pricing specialists for scrutinising profit shifting by companies. An investigation into just one major company (e.g. Google) can take up to twenty-two months and use between 10 and 30 specialists, leaving little resource for others. HMRC also claimed to have the capacity to investigate only about 35 wealthy individuals for tax evasion each year. The Public Accounts committee noted that "HMRC has not been tough enough in dealing with tax evasion and avoidance by the very wealthy … In the five years to 31 March 2016 HMRC completed investigations into just 72 of these people for potential tax fraud. In 70 of these cases it used its civil powers: two were criminally investigated, of which just one was successfully prosecuted[11].

51 Regulators should be accountable for the efficiency and effectiveness of their activities while remaining independent in the decisions they take, but that is not the case with the current regulatory system**.**

52 Too many of the regulatory bodies are too close to the interests that are to be regulated and thus have no independence. This is particularly true of the 22 law and accountancy professional bodies acting as regulators. I am not aware of any case where any accountancy body has investigated the role of major firms involved in tax avoidance/evasion or money laundering, even after strong court judgments.

53 None of the regulatory bodies have any stakeholder representation on their boards. That is stakeholders who can ask searching questions of executive directors. Selected press releases and glossy brochures have limits and are not as effective in securing public accountability as the presence of stakeholders on the boards of regulatory bodies.

54 It is hard to discern any strong principles of transparency, independence or public accountability in the current regulatory architecture. It seems to have mushroomed as governments have sought to appease sectional interests (e.g. accountancy and law professional bodies) by granting them a regulatory status.

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[11] House of Commons Committee of Public Accounts, Collecting tax from high net worth individuals, January 2017 (https://publications.parliament.uk/pa/cm201617/cmselect/cmpubacc/774/774.pdf).

55 In May 2006, a report by Professor Richard Macrory[12] examined the UK's system of regulatory sanctions and argued that transparency and public accountability are key parts of the regulatory system. Yet the AML regulatory system remains secretive and available for hire to big corporations and firms who have colonised the regulatory bodies, especially in the accountancy profession.

56 In their capacity as regulators, professional bodies should be subject to the freedom of information laws, but they are not. On 10 October 2017, the Chancellor informed parliament that "Law enforcement agencies, the FCA, HM Revenue and Customs and the Gambling Commission are subject to the Freedom of Information Act whilst the 22 professional bodies named above are not[13]". It is hard to see any consistency in government policies. Citizens can request information form some designated regulators but not others.

57 The prosecution of money laundering is also fragmented with bodies like the National Crime Agency (NCA, the Serious Fraud Office (SFO), Financial Conduct Authority (FCA) Crown Prosecution Service and others involved. Altogether the regulatory bodies come under the domain of the Home Office, the Ministry of Justice, HM Treasury and the Department for Business, Energy and Industrial Strategy (BEIS). It is hard to think of any co-ordinating mechanism at the governmental or regulatory level. Unsurprisingly, the UK has a poor record in prosecuting money laundering.

58 Between 2007 and 2015 only 5 individuals[14] have been found guilty of offences under the Money Laundering Regulations 2007. Poor enforcement reduces the deterrent effect of legislation.

59 Rather than streamlining regulatory bodies, the government has created another quango. The Office for Professional Body Anti-Money Laundering Supervision (OPBAS) based within the FCA came into existence in January 2018. Its remit is to oversee the 22 accountancy and legal professional bodies acting as AML supervisors. This adds even more complexity and one commentator stated "This is staggering, and creates even less consistency in anti-money laundering supervision[15]".

60 The UK's regulatory architecture needs to be redesigned. There need to be fewer bodies, preferably one well-resourced regulatory body. This body should have its own investigative capacity so that it can have in-house expertise, memory and specialisms rather than outsourcing investigations. All regulatory bodies are susceptible to 'capture' by the very interests that are to be regulated. This often happens in the guise of claims that 'we need people with technical knowledge' and before long their worldviews become naturalised within the regulatory bodies. To be

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[12] https://www.restorativejustice.org.uk/sites/default/files/resources/files/Regulatory%20Justice%20Sanctioning%20in%20a%20post-Hampton%20World%201.pdf

[13] http://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2017-09-14/105355/

[14] http://www.antimoneylaundering.lawyer/law-enforcement-drops-ball/

[15] http://www.cityam.com/277755/its-time-address-failings-money-laundering-supervision-not

effective regulators must have considerable distance from those to be regulated. They constantly need to be called to account. One way of ensuring that is to appoint a stakeholder board i.e. regulators have a board of executives who manage day-to-day activities. The stakeholder board would oversee the executive board by asking questions about policies and practices.

THE SILENCE OF THE BRITISH

61 Banks, financial institutions, accountants, lawyers and corporations are key nodes in financial crime and illicit flight of capital and need to be reformed.

Yet the UK regulatory and political system shields them from scrutiny. Examples are provided below from recent times, the 1990s and the 1980s to show that there is a deep-seated and a recurring problem in the UK regulatory and political system which seeks to protect wrongdoers and in doing so weakens attempts to combat money laundering. Laws may be well intentioned but will yield little if political culture overrides them.

It is rare for parliamentary committees to discuss how political culture encourages, or shields, illicit practices and it is hoped that the Committee will take this unusual step.

HSBC

62 In December 2012, HSBC, a major UK bank, was fined $1.9 billion by the US authorities for violation of the sanctions regime and for permitting money laundering[16] and effectively out of probation. HSBC was charged with "willfully failing to maintain an effective anti-money laundering (AML) program, willfully failing to conduct due diligence on its foreign correspondent affiliates, violating IEEPA and violating TWEA. HSBC has … accepted responsibility for its criminal conduct and that of its employees"

63 The US Department of Justice announced "criminal charges" against HSBC and added that the bank permitted

> "narcotics traffickers and others to launder hundreds of millions of dollars through HSBC subsidiaries, and to facilitate hundreds of millions more in transactions with sanctioned countries … HSBC's blatant failure to implement proper anti-money laundering controls facilitated the laundering of at least $881 million in drug proceeds through the U.S. financial system. HSBC's willful flouting of U.S. sanctions laws and regulations resulted in the processing of hundreds of millions of dollars in OFAC-prohibited transactions …
> HSBC Bank USA severely understaffed its AML compliance function and failed to implement an anti-money laundering program capable of adequately monitoring suspicious transactions and activities from HSBC Group Affilliates, particularly HSBC Mexico, one of HSBC Bank USA's largest Mexican customers. This included a failure to monitor billions of dollars in purchases of physical U.S. dollars, or "banknotes," from these affiliates. Despite evidence of serious money laundering

[16] US Department of Justice press release, HSBC Holdings Plc. and HSBC Bank USA N.A. Admit to Anti-Money Laundering and Sanctions Violations, Forfeit $1.256 Billion in Deferred Prosecution Agreement, 11 December 2012 (https://www.justice.gov/opa/pr/hsbc-holdings-plc-and-hsbc-bank-usa-na-admit-anti-money-laundering-and-sanctions-violations).

risks associated with doing business in Mexico, from at least 2006 to 2009, HSBC Bank USA rated Mexico as "standard" risk, its lowest AML risk category. As a result, HSBC Bank USA failed to monitor over $670 billion in wire transfers and over $9.4 billion in purchases of physical U.S. dollars from HSBC Mexico during this period, when HSBC Mexico's own lax AML controls caused it to be the preferred financial institution for drug cartels and money launderers … drug traffickers were depositing hundreds of thousands of dollars in bulk U.S. currency each day into HSBC Mexico accounts. …

HSBC Group allowed approximately $660 million in OFAC-prohibited transactions to be processed through U.S. financial institutions, including HSBC Bank USA. HSBC Group followed instructions from sanctioned entities such as Iran, Cuba, Sudan, Libya and Burma, to omit their names from U.S. dollar payment messages sent to HSBC Bank USA and other financial institutions located in the United States. The bank also removed information identifying the countries from U.S. dollar payment messages; deliberately used less-transparent payment messages, known as cover payments; and worked with at least one sanctioned entity to format payment messages, which prevented the bank's filters from blocking prohibited payments.

Specifically, beginning in the 1990s, HSBC Group affiliates worked with sanctioned entities to insert cautionary notes in payment messages including "care sanctioned country," "do not mention our name in NY," or "do not mention Iran." HSBC Group became aware of this improper practice in 2000. In 2003, HSBC Group's head of compliance acknowledged that amending payment messages "could provide the basis for an action against [HSBC] Group for breach of sanctions."

64 The above is a matter of concern. If the more robust US regulatory environment did not deter HSBC, what might it have done in a more relaxed regulatory environment, such as that of the UK? The US revelations should have prompted the UK government (or the regulatory regime) to investigate HSBC so that some regulatory lessons can be learnt. An investigation would also have sent a strong signal to financial institutions warning them predatory practices are not acceptable.

65 The UK government did not launch an investigation. Instead, the then Chancellor wrote (on 10 September 2012) to the Chairman of the US Federal Reserve and urged the US authorities to go easy on HSBC. The Chancellor warned[17] the US administration that prosecuting a "systemically important financial institution" such as HSBC "could lead to [financial] contagion" and pose "very serious implications for financial and economic stability, particularly in Europe and Asia".

66 The Chancellor's intervention may have persuaded the US authorities to defer prosecution, but it begs serious questions about the seriousness of the UK government in tackling money laundering and errant financial institutions.

[17] US House of Representatives Committee On Financial Services, Too Big To Jail: Inside The Obama Justice Department's Decision Not To Hold Wall Street Accountable, 11 July 2016, Washington DC.

Bank of Credit and Commerce International[18] (BCCI)

67 HSBC is not the only example of how UK governments cover-up money-laundering and financial crime to protect elites.

68 The fraud infested London-based Bank of Credit and Commerce International (BCCI) was closed down in July 1991. It was the site of the biggest banking fraud of the twentieth century. At the time of its closure BCCI had some 1.4 million depositors across the world. The creditors' collective losses were estimated to be over US$10 billion and around 14,000 people worldwide lost their jobs[19].

69 According to New York District Attorney Robert Morgenthau[20], who mounted a number of criminal prosecutions,

> "BCCI operated corruptly for 19 years prior to its closure. It systematically falsified its records, laundered the money of drug traffickers and other criminals. It paid kickbacks and bribes to public officials. BCCI had links with senior government officials in many countries. It handled money transfers for dictators, such as Saddam Hussein, Manuel Noriega, Hussain Mohammad Ershad and Samuel Doe. It provided accounts for the Medellin Cartel and Abu Nidal".

70 A US senate inquiry[21] noted that "In 1988 and 1989, the Bank of England learned of BCCI's involvement in the financing of terrorism and in drug money laundering, and undertook additional, but limited supervision of BCCI in response to receiving this information …".

71 The US Senate report further stated that

"By agreement, Price Waterhouse, Abu Dhabi, BCCI, and the Bank of England had in effect agreed upon a plan in which they would each keep the true state of affairs at BCCI secret in return for cooperation with one another in trying to restructure the bank to avoid a catastrophic multi-billion dollar collapse. Thus to some extent, from April 1990 forward, BCCI's British auditors, Abu Dhabi owners, and British regulators, had now become BCCI's partners, not in crime, but in cover-up. The goal was not to ignore BCCI's wrongdoing, but to prevent disclosure of the wrongdoing from closing the bank. Rather than permitting ordinary depositors to find out for themselves the true state of BCCI's finances, the Bank of England, Price

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[18] Further details of this episode are provided in Prem Sikka, Using freedom of information laws to frustrate accountability: Two case studies of UK banking frauds, Accounting Forum**,** Vol. 41, No. 4, 2017, pp. 300-317

[19] Hansard, House of Commons Debates, *2*2 October 1992, cols. 574-89.

[20] As per US Senate Foreign Relations Subcommittee on Narcotics, Terrorism and International Operations, The BCCI Affair: Hearings Part 1 – August 1, 2 and 8 1991, Washington DC: US Senate Committee on Foreign Affairs

[21] United States Senate Committee on Foreign Relations, The BCCI Affair: A Report to the Committee on Foreign Relations by Senator John Kerry and Senator Hank Brown, December 1992. Washington: USGPO

Waterhouse, Abu Dhabi and BCCI had together colluded to deprive the public of the information necessary for them to reach any reasonable judgment on the matter, because the alternative would have been BCCI's collapse".

72 The BCCI closure was followed by some prosecutions[22], but unlike other banking frauds of the late twentieth-century the UK government did not appoint inspectors to investigate the frauds and indeed to this day there has not been an independent investigation.

73 As a way of managing the crisis, on 19 July 1991, it appointed Lord Justice Bingham to conduct an inquiry[23] "into the supervision of BCCI under the Banking Acts; to consider whether the action taken by all the UK authorities was appropriate and timely; and to make recommendations" (page iii).

74 The Prime Minister said that "The conclusion of the inquiry will be made public[24]".

75 On 22 October 1992, the Chancellor of the Exchequer told parliament that the government has decided to publish the report "… unamended and in full but without the supporting appendices[25]".

76 The appendices are thought to have contained extracts from the Sandstorm Report, a secret report which explained some of the frauds and the parties involved in them.

77 The Bingham report briefly referred to the Sandstorm Report (pages 138 to 140) and considered its contents as "fairly damning" and "devastating" (para 2.447 and 2.448), but it remained secret.

78 Initially, the US Senate Committee on Foreign Affairs secured a censored version of the Sandstorm Report form the Bank of England. Subsequently, it secured an uncensored copy and wrote that it "revealed criminality on an even wider scale than that set forth in the censured version[26]" (United States Senate Committee on Foreign Relations, 1992: 53).

79 A number of UK parliamentary committees examined the BCCI closure but none were given sight of the Sandstorm Report even though most of it was available in the US Congress Library. It is hard to see how parliament can call government to account or judge the appropriateness of banking reforms when governments decide to conceal information.

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[22] The Guardian, Files closed on BCCI banking scandal, 17 May 2012 (http://www.guardian.co.uk/business/2012/may/17/files-close-bcci-banking-scandal; accessed 20 May 2012).

[23] Bingham, The Right Honourable Lord Justice. Inquiry into the Supervision of The Bank of Credit and Commerce International, London: HMSO: 1992.

[24] Hansard, House of Commons Debates, 22 July 1991, col. 755, 761.

[25] Hansard, House of Commons Debates, *2*2 October 1992, cols 574-89

[26]Page 53, United States Senate Committee on Foreign Relations, The BCCI Affair: A Report to the Committee on Foreign Relations by Senator John Kerry and Senator Hank Brown, December 1992. Washington: USGPO

80 In 2006, after the enactment of the Freedom of Information legislation, a copy of the Sandstorm Report was requested by the author. After a two year wait, the government refused to release it. In 2008, an appeal was made to the Information Commissioner who sided with HM Treasury. At that I sought access to courts. In July 2011, after a five and half year legal battle, three judges unanimously ordered the government to release most of the Sandstorm Report[27].

81 The judges rebuked the Treasury and the Information Commissioner for their interpretation of the data protection and privacy laws to shield individuals who were "the architects of a group-wide programme of fraud and concealment, not to mention the creation of a culture that led others with positions of responsibility within the bank to follow their lead" (paragraph 42 of the judgment).

82 By comparing the version held in the US Congress Library (and also on the internet) with the version released by the UK Treasury, the information concealed by the UK government could now be read[28].

83 It mainly related to the names of individuals and organisations. The individuals included Sheikh Sultan bin Zayed, ruler of Abu Dhabi; various members of the royal family of Abu Dhabi; Prince Turki, a member of the Saudi royal family; Sheikh Kamal Adham, thought to be the one-time head of Saudi intelligence services; Sheikh Sharqi, the Emir of Emir of Fujaira; Pharon, a Saudi businessman and financier and Clark Clifford, a former US Defence Secretary and Presidential adviser.

84 The UK government shielded the identity of some individuals who had died in the intervening years. These included BCCI founder Agha Hassan Abedi (died in 1995[29]) and Saudi billionaire Sheikh Khalid bin Mahfouz (died 2009) who in 1993 paid $225 million to settle US charges of bank fraud[30] in 1993.

85 A number of BCCI executives had been convicted of fraud, but their identity was still being withheld by the UK government. These included Mohammed Swaleh Naqvi, Ziauddin Akbar[31]. Perhaps, to defend the reputation of some jurisdictions, the UK government also concealed the names of some places. Examples include Grand Cayman, Bahrain, the name of a Turks and Caicos company, North American Finance and Investment, Arab Livestock Company (ALSCO) operating from Bahrain,

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[27] the case of Professor Prem Sikka v Information Commissioner, EA/2010/0054, 11 July 2011

[28] The comparison is available at http://visar.csustan.edu/aaba/BCCISandstormRelease.html.

[29] New York Times, 6 August 1995 (http://www.nytimes.com/1995/08/06/obituaries/agha-hasan-abedi-74-dies-in-the-shadow-of-a-vast-fraud.html)

[30] New York Times, 26 August 2009 (http://www.nytimes.com/2009/08/27/world/middleeast/27mahfouz.html).

[31] The Independent, 15 June 1994 (http://www.independent.co.uk/news/business/bcci-men-jailed-and-ordered-to-pay-dollars-9bn-by-abu-dhabi-court-former-chief-executive-and-founder-of-collapsed-bank-sentenced-in-their-absence-1422790.html).

Saudi National Commerce Bank operating from Bahrain and Royal Bank of Scotland, Singapore.

86 The names of a number of corporations, including Bear Stearns, Abu Dhabi Investment Authority, Capcom, Credit Suisse, Dubai Islamic Bank, Gokal Brothers, Habib Bank and National Bank of Georgia were also concealed.

87 The UK government went to considerable length to shield well known individuals from the Middle East, and attached little weight to the UK citizens' right to know or the ability of parliament to design better banking regulations. The involvement of Middle East elites in BCCI frauds did not prompt the UK government to withdraw ambassadors, close their embassies, or make public demands for restitution. It simply covered up their identities, possibly to promote and defend the interests of corporations exporting arms to the Middle East, or the interests of elites in a politically sensitive part of the world.

88 Despite releasing the Sandstorm Report to the author, successive UK government have failed to make it publicly available. It is still not filed in the House of Commons Library. It is not on any government website.

89 Even in 2018, some 27 years after the closure of BCCI, the appendices to Lord Justice Bingham's report (see above) which had extracts from the Sandstorm Report remain unpublished.

Accountants and Money Laundering[32]

90 The involvement of accountants in illicit financial practices is routinely covered in newspapers. The most recent money laundering risk assessment report published by HM Treasury and the Home Office[33] provides a number of examples of the complicity of accountants in money laundering.

91 A detailed case study to show that the political and regulatory system shields accountants. The case study is based upon the High Court case of *AGIP (Africa) Limi*ted *v Jackson & Others (1990) 1 Ch. 265* in which a partner and an employee of an accounting firm were judged to have 'knowingly' laundered money and assisted in the misapplication of the funds. The accountancy firm was judged to have used a series of shell companies to launder money

92 In the 1990 High Court case of *AGIP (Africa) Limited v Jackson & Others*., Mr. Justice Millett judged that

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[32] For further information see Austin Mitchell, Prem Sikka and Hugh Willmott, The Accountants Laundromat, Basildon, Association for Accountancy & Business Affairs, 1998

[33] HM Treasury and Home Office, National risk assessment of money laundering and terrorist financing 2017, October 2017 (https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/655198/National_risk_assessment_of_money_laundering_and_terrorist_financing_2017_pdf_web.pdf).

> "[Accountants] are professional men. They obviously knew they were laundering money. .... It must have been obvious to them that their clients could not afford their activities to see the light of the day. Secrecy is the badge of fraud. They must have realised at least that their clients *might* be involved in a fraud on the plaintiffs".

The court also judged that other accountancy firms may be involved.

93 In his judgement, Mr. Justice Millett stated that a Grant Thornton partner was involved. The judgement said that

> "Jackson & Co. were introduced to the High Holborn branch of Lloyds Bank Plc. … by a Mr Humphrey, a partner in the well known firm of Thornton Baker [now part of Grant Thornton]. They probably took over an established arrangement. Thenceforth they provided the payee companies... In each case Mr Jackson and Mr Griffin were the directors and the authorised signatories on the company's account at Lloyds Bank. In the case of the first few companies Mr Humphrey was also a director and authorised signatory".

94 The case involved organisations in the Channel Islands, the Isle of Man, Tunisia, London and France.

95 A large number of bank accounts and companies were used. Many companies never traded but large sums of monies passed through their bank accounts. The involvement of a former senior politician was also hinted. The key players who threatened to blow the whistle died in mysterious circumstances. The complex transactions and structures used in this case of money laundering are explained in the publication.

96 In view of the very strong and clear court judgment one expected government and/or professional bodies to follow-up, make inquires and possibly even discipline the accountants and accountancy firms. However, no regulator was interested in investigating or even touching this case.

97 Through a series of questions raised in the UK House of Commons and numerous letters to regulators and Ministers, including the then Prime Minister Sir john Major, attempts were made to discover how the regulatory apparatus was responding to the revelations of the AGIP case. The Department of Trade and Industry, the Serious Fraud Office, the Police, the Attorney General, the Institute of Chartered Accountants in England & Wales (ICAEW) and the Prime Minister all declined to investigate and considered it to be matter for someone else. Myriad regulators always create opportunities for obfuscation and denial of responsibility.

98 Thousands of pages of evidence was submitted to the ICAEW. At one stage, the Prime Minister claimed that the matter had been investigated by the ICAEW and despite the High Court judgement the firm had been exonerated, He declined to provide a copy of this report because it was confidential.

99 On 15 May 1996, Austin Mitchell MP secured an adjournment debate[34] in the House of Commons. A defensive response ensued from the Parliamentary Under-Secretary of State for Trade and Industry. He noted that the possible involvement of a former senior minister has been cited. He invited Mr. Mitchell to submit further evidence to the authorities with the full knowledge of the virtual impossibility of being able to do so.

100 Eventually, a copy of the ICAEW report[35] (see above) which enabled Prime Minister John Major to put lid on the episode was secured. Much of the 27 page report prepared by the investigation 'Team' and the commentary by the 'Director of Professional Conduct Department' consists of summaries of newspaper reports and the publicly available transcripts of the court judgement and speculation thereupon. No reference could be found to any of the evidence that we had submitted to the ICAEW

101 The fraudulent payments passed through Tunisia, England and France, with shell-companies often obscuring the origins and destination of illicit funds. There is nothing in the ICAEW report to show that any steps were taken to secure information, evidence and files from other jurisdictions. No attempt has made to request to secure any files from any accountant, accountancy firm or its associates. No attempt has even been made to look at the bank statements of the shell companies allegedly used to launder money.

102 There is no indication that any face-to-face meetings took place with any of the key parties. No evidence had been invited from accountants involved in the episode. No evidence had been requested from third parties, including journalists, who investigated the matters.

103 The ICAEW Report is not based upon any sworn affidavits from any of the parties concerned. There is no list of any questions which any individual accountant or accountancy firm had been asked to answer

104 . The ICAEW Report speculates on three possible interpretations of the events. These are framed from the transcript of the publicly available High Court judgement and press reports rather than from any original investigation by the ICAEW. The Committee's favoured belief is "the possibility that the funds were intended as bribes to Tunisian officials or ministers" (page 2). Yet the report does not contain any evidence to show why the Committee believes this version of the events rather than any other interpretation. There is certainly no indication of any weights that might have been attached to any of the evidence to enable the Committee to reach its favoured conclusion. The ICAEW does not appear to have asked for the sight of any of the allegedly forged bank drafts. The report does not contain names of the directors, or the bank signatories of the companies through whom the money was laundered.

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[34] Hansard, House of Commons Debates, http://hansard.millbanksystems.com/commons/1996/may/15/regulation-of-accountancy-agip

[35] The report is available here http://visar.csustan.edu/aaba/agip.htm

105 In view of the shallowness of the ICAEW inquiries it is hard to know why the Prime Minister chose to shelter behind it. Perhaps, he was comforted by the understanding that this report would somehow never see the light of the day.

106 Whatever the merits of the case and its difficulties, at the very least it shows a deep-seated tendency to obfuscate and pass the buck in a regulatory maze. Ministers sheltered behind reports which they claim to be confidential but when examined the reports were highly deficient. A very strong High Court judgement was not challenged by nay of the parties. It did not lead to any investigations.

BAE Systems plc[36]

107 BAE Systems plc[37] (BAES) is the world's second largest defence contractor. It exports a wide range of products and services for air, land and naval forces, as well as advanced electronics, security, information technology and support services. It has customers in over 100 countries, though most of its business is based around four key markets - the US, the UK, the Kingdom of Saudi Arabia and Australia[38].

108 The company's sales have been the subject of critical media scrutiny for some time. For example, The Guardian newspaper has claimed that "Three huge BAE deals with the Saudi royal family kept Britain's sole warplane manufacturer in profitable existence in the 1960s and 70s. All were corrupt ... successive UK governments, desperate for foreign exchange, took no notice[39]".

109 In 1985, the UK and Saudi governments signed a government-to-government contract[40] known as the Al Yamamah contract. The £43 billion contract was Britain's biggest ever arms export deal and BAE Systems would provide Tornado and Hawk jets and other military equipment.

110 It was soon alleged that the Prime Minister's son, Mark Thatcher, received kickbacks for the contract[41].

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[36] For further information see Prem Sikka and Glen Lehman, "Supply-side corruption and Limits to Preventing Corruption within Government Procurement and Constructing Ethical Subjects", Critical Perspectives on Accounting, Vol. 28, May 2015, pp 62-70.

[37] It is the successor company formed in 1999 after the merger of British Aerospace and Marconi Electronic System.

[38] As per http://bae-systems-investor-relations-v2.production.investis.com/bae-systems-at-glance.aspx; accessed 19 May 2014.

[39] As per http://www.theguardian.com/baefiles/page/0,,2095814,00.html; accessed 21 May 2014.

[40] In legal terms, this means that BAE sold equipment to the UK government, which then sold it to the government of Saudi Arabia. As the sale is technically by the government, this entitles UK government auditors (e.g. the National Audit Office) to scrutinize the process.

[41] The Independent, Mark Thatcher accused: Sources say he got 12m pounds from arms deal signed by his mother, 9 October 1004 (http://www.independent.co.uk/news/mark-thatcher-accused-sources-say-he-got-

111 In 1989, amidst allegations of the payment of secret commissions to a number of agents and Saudi royals, the National Audit Office[42] (NAO) began an investigation[43].

112 In 1992, the investigation was abruptly discontinued and the report remains unpublished “amidst fears that its publication would offend the notoriously sensitive Saudis, jeopardising continuing trade relations[44]”. I

113 In 2004, it was reported that BAE’s chief operating officer operated a “slush fund” which made corrupt payments of £60 million to Saudi officials, including providing prostitutes, Rolls-Royces and Californian holidays[45]. The company allegedly used an elaborate process of false accounting to make and conceal payments through shell companies. Some of the entries were in code in order to conceal the identity of the recipients. BAE’s response to allegations was a response that it “can state categorically that there is not now and there has never been in existence what the media refers to as a 'slush fund'. Neither has BAE Systems or any of its officers or employees been involved in false accounting[46]”.

114 The media revelations, accompanied by documentary evidence, persuaded the Serious Fraud Office[47] (SFO) to launch an investigation.

115 On 1st December 2006, it was reported that “Saudi Arabia has given Britain 10 days to halt a fraud investigation into the country's arms trade ... The country's advisers have made clear through diplomatic channels that unless the inquiry is closed, the kingdom's arms business will be taken elsewhere[48]”.

12m-pounds-from-arms-deal-signed-by-his-mother-1441851.html, accessed 20 May 2014).

[42] It is a Parliamentary body independent of any UK government departments which scrutinises public spending by government departments, government agencies and non-government pubic bodies.

[43] The Daily Telegraph, BAE's arms deals with Saudi Arabia: Timeline, 30 July 2008 (http://www.telegraph.co.uk/news/worldnews/middleeast/saudiarabia/2473238/BAEs-arms-deals-with-Saudi-Arabia-Timeline.html; accessed25 May 2014).

[44] The Daily Telegraph, SFO illegally dropped Saudi arms inquiry, judge rules, 10 April 2008 (http://www.telegraph.co.uk/news/uknews/1584595/SFO-illegally-dropped-Saudi-arms-inquiry-judge-rules.html; accessed 23 May 2014).

[45] The Guardian, BAE chief linked to slush fund, 5 October 2004 (http://www.theguardian.com/uk/2004/oct/05/saudiarabia.armstrade; accessed 24 May 2014).

[46] BBC News, BBC lifts the lid on secret BAE slush fund, 5 October 2004 (http://news.bbc.co.uk/1/hi/business/3712770.stm; accessed 19 November 2014)

[47] SFO is a government department charged with investigation and prosecution of serious or complex fraud, and corruption.

[48] The Daily Telegraph, Halt inquiry or we cancel Eurofighters, 1 December 2006 (http://www.telegraph.co.uk/news/uknews/1535683/Halt-inquiry-or-we-cancel-Eurofighters.html; accessed 20 May 2014).

116 In 14 December 2006, the Attorney General told parliament that the investigation had been abandoned because of the "need to safeguard national and international security. It has been necessary to balance the need to maintain the rule of law against the wider public interest[49]".

117 Prime Minister Tony Blair defended the action by saying that "the result would have been devastating for our relationship with an important country[50]".

118 The US authorities[51], which had launched an investigation in 2005, were not pleased[52] and made a formal protest to the UK government.

119 Attention now focused on the US investigation into BAE Systems Inc., the US subsidiary of BAE System plc, for its role in the Saudi arms deal, as well as contracts for supplies to South Africa, Chile, the Czech Republic, Romania, Tanzania and Qatar.

120 On 1st March 2010, the US Department of Justice announced that BAE Systems plc had pleaded guilty to conspiring to defraud the United States by impairing and impeding its lawful functions and making false statements about its Foreign Corrupt Practices Act compliance program, and violating the Arms Export Control Act and International Traffic in Arms Regulations. BAE was ordered to pay a $400 million criminal fine[53].

121 The court order (United States District Court for the District of Columbia, 2010) relating to sales in Saudi Arabia, Hungary and the Czech Republic stated that "BAES knowingly and willfully failed to identify commissions paid to third parties for assistance in the solicitation or promotion or otherwise to secure the conclusion of the sale of defense articles ... " (p. 6). In the company's records, the middlemen were described as "marketing advisers" and BAES took active steps to conceal its relationships with them. BAES used onshore and offshore shell companies to

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[49] Hansard, House of Lords Debates, 14 December 2006, col. 1712 (http://www.publications.parliament.uk/pa/ld200607/ldhansrd/text/61214-0014.htm; accessed 1 June 2014)

[50] The Guardian, Dropping BAE inquiry vital to national interest, says Blair, 16 January 2007 (http://www.theguardian.com/world/2007/jan/16/bae.immigrationpolicy; accessed 1 June 2014).

[51] Financial Times, US issued protest on axing of BAE probe, 27 April 2007 (http://www.ft.com/cms/s/0/b008fd02-f45c-11db-88aa-000b5df10621.html#axzz355ZUUp36; accessed 1 June 2014).

[52] UK NGOs made attempts to force the government to continue with its investigations, but were ultimately unsuccessful (The Guardian, Lords rule SFO was lawful in halting BAE arms corruption inquiry, 30 July 2008; http://www.theguardian.com/world/2008/jul/30/bae.armstrade; accessed 30 May 2014)

[53] US Department of Justice press release, BAE Systems PLC Pleads Guilty and Ordered to Pay $400 Million Criminal Fine, 1 March 2010 (http://www.justice.gov/opa/pr/2010/March/10-crm-209.html; accessed 3 June 2014).

disguise the origins of secret commissions and also advised recipients to use offshore shell companies. There was little internal scrutiny of the payments.

122 The court order noted that "BAES established one entity in the British Virgin Islands to conceal BAES's marketing advisor relationships, including who the agent was and how much it was paid; to create obstacles for investigating authorities to penetrate the arrangements; to circumvent laws in countries that did not allow agency relationships; and to assist advisors in avoiding tax liability for payments from BAES" (p. 8). BAES's official records maintained inadequate information about the identity of the advisors and the nature of their work and, frequently the communication was not in writing. Between May and November 2001 alone, BAES made payments of over £135,000,000 (about $216 million) and over $14,000,000 to certain of its marketing advisors and agents through offshore entities. (p. 9).

123 There is little persuasive evidence to show that the advisers performed legitimate activities to justify the receipt of substantial payments. Amongst other things, the court order noted that for the Saudi contract, BAES provided substantial benefits to one public official and his associates (p. 12). These included "sums totaling more than £10,000,000 and more than $9,000,000 to a bank account in Switzerland controlled by an intermediary" (p. 13). For the contract to supply Grippen fighter planes to the Czech Republic and Hungary, BAES made payments of more than £19,000,000 to entities associated with an unnamed agent. BAES made "these payments even though there was a high probability that part of the payments would be used in the tender process to favor BAES" (p. 9-10). In May 2011, the US government levied another fine of $79 million on BAE for violation of defense export controls[54] for the period 1997 to 2010 (United States Department of State, 2011).

124 In December 2010, the UK authorities announced that BAE had agreed to make an ex-gratia payment of £29.5 million to the Tanzanian government, which the company's 2011 annual report referred to as a "charitable contribution[55]" to be used for educating children in Tanzania[56].

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[54] Also see Wall Street Journal, BAE Pays $79 Million To Settle Case With State Department, 17 May 2011(http://blogs.wsj.com/corruption-currents/2011/05/17/bae-pays-79-million-to-settle-case-with-state-department/; accessed 22 June 2014)

[55] Page 49 of the 2011 annual report, available at http://bae-systems-investor-relations-v2.production.investis.com/~/media/Files/B/BAE-Systems-Investor-Relations-V2/PDFs/results-and-reports/reports/2012a/ar-2011.pdf; accessed 20 June 2014.

[56] Serious Fraud Office press release, BAE Systems will pay towards educating children in Tanzania after signing an agreement brokered by the Serious Fraud Office, 15 March 2012 (http://www.sfo.gov.uk/press-room/latest-press-releases/press-releases-2012/bae-systems-will-pay-towards-educating-children-in-tanzania-after-signing-an-agreement-brokered-by-the-serious-fraud-office.aspx; accessed 17 June 2014).

125 A fine of £500,000 was negotiated by the UK authorities for failing to "keep adequate accounting records[57] in relation to a defence contract for the supply of an air traffic control system to the Government of Tanzania[58]".

126 The background is that, in 1999, BAE, with the support of the UK government, entered into an agreement with the Tanzanian government to supply an air traffic control system at the price of about $40 million (£28 million). The UK government helped to secure the finance from Barclays Bank[59]. The World Bank and the International Monetary Fund opposed the deal by arguing that an effective radar system should only cost about $10 million[60] (£7 million).

127 The UK court order[61] for the fine provides some details of the discrepancies. Some $12.4 million (30% of the contract value) ended up in two offshore companies operated by an agent. The payments were recorded in accounting records by BAE as payments for the provision of technical services by the agent.

128 The court documentation noted that "there was a high probability that part of the $12.4 million would be used in the negotiation process to favour British Aerospace Defence Systems Ltd. The payments were not subjected to proper or adequate scrutiny or review" (para 4.5). The failure to record the information accurately was the result of a deliberate decision by officials. Despite the admission that the company had failed to keep adequate accounting records, its annual financial statements continued to receive unqualified audit opinions. The judge expressed his surprise that the UK's law enforcement officers had given BAE officials blanket immunities from any future prosecutions.

129 In October 2010, the UK's accounting regulator, the Financial Reporting Council, announced that it would investigate audits and professional services advice provided by KPMG to BAE in the period 1997 to 2007, but in 2013, the investigation was abruptly abandoned because "proper assessment of KPMG's conduct would require consideration of work undertaken in earlier years. Because there is no realistic prospect that a Tribunal will make an adverse finding in respect of a complaint relating to work done so long ago it has been concluded that it is not in the public interest to extend the investigation to the years preceding 1997[62]".

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[57] This was a statutory requirement under Section 221 of the Companies Act 1985.

[58] Serious Fraud Office press release, BAE fined in Tanzania defence contract case, 21 December 2010 (http://www.sfo.gov.uk/press-room/press-release-archive/press-releases-2010/bae-fined-in-tanzania-defence-contract-case.aspx; accessed 2 June 2014).

[59] Hansard, House of Commons Debates, 25 June 2002, cols. 228-236.

[60] BBC News, World Bank hits out at Tanzania deal, 22 December 2001 (http://news.bbc.co.uk/1/hi/uk_politics/1723296.stm; accessed 23 May 2014)

[61] R and BAE Systems PLC [2010] EW Misc 16 (CC) (21 December 2010) available at http://www.bailii.org/ew/cases/Misc/2010/16.pdf; accessed 3 June 2014.

[62] Financial Reporting Council press release, Closure of investigation into the conduct of: KPMG Audit plc, Member Firm of the ICAEW, 1 August 2013; https://www.frc.org.uk/News-and-Events/FRC-Press/Press/2013/August/Closure-of-investigation-into-the-conduct-of-KPMG.aspx, accessed on 31 May 2014).

FINAL THOUGHTS

This submission has provided some suggestions for reforms. It also encourages the Committee to examine the political and institutional context of regulation of money. In a poorly designed regulatory system well intentioned laws will not yield good outcomes. The ammeters become more acute when the regulators and sponsoring government departments collude to protect wrongdoers. Governments seemingly put corporate interests above the need to combat financial crime. This undermines the rule of law and public faith in democracy.

There is also a broader institutional failure. None of the practices highlighted in this paper were brought to the attention of the public or regulators by internal or external auditors of the companies even though they are central to debates about controlling corruption and money laundering. Organisations and their advisers continue to show their willingness to bend the laws and make profits at almost any social cost. This requires law enforcement agencies to be vigilant and proactive, but the UK's fragmented regulatory system has consistently failed to deliver the expected outcome.

Law enforcement agencies may have the capacity to check corrupt practices, but the reality, as the evidence in this paper shows, is murkier. This murk can offer valuable lessons, but all too often the regulatory response is to cover-up or sanitize or conceal information or take minimal action. In the case of BAE, the UK government went to considerable length to thwart investigations. The NAO, the government auditor, was prevented from investigating the frauds. In pursuit of what the government called "national" interests, the SFO, a law enforcement agency, was neutered. The UK government granted immunities to BAE officials from future investigations and prosecutions. Seemingly, the commercial interests of BAE and its capacity to export arms took priority over attempts to combat corruption. There is something very troubling for democratic sensibilities in that the UK government's interventions to prevent investigations of corrupt practices were accompanied by the claims that the rule of law is not compatible with pursuit of the public interest and exposure of corrupt practices. Such worldviews pose serious questions about the willingness of governments to eradicate the supply of corruption.

Companies and banks claim to have internal audits, non-executive directors, audit committees, codes of ethics yet illicit practices flourish and indicate a deeper crisis of corporate governance. Governments and legislators claim to apply high standards to public life, but the outcomes noted in this paper can't easily be related to them. Thus, any effective response to money laundering requires examination of different layers. The present Bill does not do that and is unlikely to make a significant dent in combating money laundering.

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