

**From Dirty Money to Luxury Goods:
Money Laundering in UK Luxury Goods Sectors**

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Abstract

This PhD thesis examines money laundering risks within UK luxury goods sectors and identifies ways in which these risks can be significantly reduced. In analysing the UK anti money laundering (AML) regime, the thesis adopts a thematic approach based upon the obligations placed on dealers within the MLRs. In particular, the analysis is conducted in relation to obliged entities, registration, the risk-based approach, Customer Due Diligence (CDD), Suspicious Activity Reporting (SAR), and supervision. The thesis employs a mixed methodology which includes doctrinal and qualitative empirical research methods. The qualitative empirical study gathers insights from dealers with semi-structured interviews.

The study is organised into five parts. The first part provides the theoretical background for the study. This includes consideration of the international and national legislation and policies impacting the UK AML regime. The second part acknowledges money laundering risks in relation to the obligations contained within the MLR and the application of the regime within UK luxury goods sectors. The third part examines compliance challenges faced by dealers in implementing the MLRs. The fourth part considers practices within AML regimes in the US, Cayman Islands, Trinidad and Tobago, Japan, and Canada, which are helpful in evaluating the issues identified within the UK. The final part advances proposals to reduce money laundering risk within UK luxury goods sectors.

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Abbreviations

ABYA	Association of Brokers and Yacht Agents
ALR	Art Loss Register
AML	Anti Money Laundering
AMP	Art Market Participant
AUSTRAC	Australian Transaction Reports Centre
BAMF	British Art Market Federation
CDD	Customer Due Diligence
DCI	Department of Commerce and Investment Cayman Islands
DNFBPs	Designated Non-Financial Business Professionals
DPMS	Dealers for Precious Metals and Stones
EAs	Estate Agents
EDD	Enhanced Due Diligence
EU	European Union
FAQ	Frequently, Asked Questions
FCA	Financial Conduct Authority
FINTRAC	Financial Transaction and Reports Analysis Centre of Canada
FRA	Financial Reporting Authority
HVD	High Value Dealer
HVP	High Value Cash Payment
HVPC	High Value Portable Commodities
MLR	Money Laundering Regulations
MSB	Money Service Business
NAJ	National Association of Jewellers
NCA	National Crime Agency
NRA	National Risk Assessment
OPBAS	Office for Professional Body Anti Money Laundering Supervision
PEP	Politically Exposed Person
POCA	Proceeds of Crime Act 2002
RBA	Risk Based Approach
SAR	Suspicious Activity Reporting
SDD	Simplified Due Diligence
TBML	Trade Based Money Laundering
UK	United Kingdom
UKFIU	United Kingdom Financial Intelligence Unit
UWO	Unexplained Wealth Orders

1. Introduction

1.1 Background to the Study

Anti-Money Laundering (AML) is a fundamental aspect of the United Kingdom's (UK's) fight against financial crime.¹ While it remains difficult to quantify the scale of the money laundering threat to the UK, the amount of money being laundered has increased over the years due to an growth in crime across a range of predicate offences.² The National Crime Agency (NCA) estimates the amount of money laundered in the UK to be between £36 and £90 billion.³ Traditional methods of money laundering remain; however, over time criminals have advanced new methods to avoid detection.⁴ Criminals seek to exploit alternative avenues to 'serve their wicked ends'⁵ through which money can enter and leave the economy appearing legitimate.⁶ This includes a wide range of methods, with varying purposes, levels of scale, and complexity through regulated and unregulated sectors.⁷

One of these avenues involves money laundering through the purchase of luxury goods.⁸ Across the globe, large-scale cases of grand corruption have involved the acquisition of luxury items.⁹ In a response to these risks, the UK has progressed its AML regime to extend beyond traditional methods of money laundering to include sectors such as High-Value Dealers (HVDs), real estate agents, casinos, and more recently, Art Market Participants (AMPs).¹⁰ Whilst these expansions intend to reduce the amount of money

¹ Financial Conduct Authority, 'The Importance of Purposeful Anti-Money Laundering Controls' (24 March 2021) <<https://www.fca.org.uk/news/speeches/importance-purposeful-anti-money-laundering-controls>> accessed 12th January 2022.

² HM Treasury, 'UK National Risk Assessment of Money Laundering and Terrorist Financing' (2020).

³ National Crime Agency, 'Factsheet: Criminal Finances Bill' <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/564464/CF_Bill_-_Factsheet_1_-_The_Bill.pdf> accessed 1st February 2022.

⁴ HM Treasury, 'UK National Risk Assessment of Money Laundering and Terrorist Financing' (2020)

⁵ Home Office, 'New Legislation to attack Criminal Finances' (13 October 2016) <<https://www.gov.uk/government/news/new-legislation-to-attack-criminal-finances>> accessed 1st February 2022.

⁶ Ibid.

⁷ HM Treasury, 'UK National Risk Assessment of Money Laundering and Terrorist Financing' (2020).

⁸ Ibid.

⁹ Transparency International, 'Tainted Treasures: Money Laundering Risks in Luxury Markets' (2017) 5.

¹⁰ Financial Action Task Force, 'United Kingdom Mutual Evaluation Report' (2018) 77.

laundered in the UK, millions of pounds continue to be cleansed through luxury goods.¹¹ Luxury goods are a favourable target for money laundering operations due to their unique characteristics.¹² The anonymity of transactions, portability across borders, exposure to high-risk jurisdictions, and use of cash make luxury goods convenient for money laundering operations.¹³ These factors help criminals launder significant funds through the purchase of luxury items which conceal the origins of the wealth and reduce the chances of detection.¹⁴

In theory, luxury goods dealers should be well placed to prevent money laundering practices from taking place due to the increased awareness of the reputational risks to their brands, as well as their desire to establish long-term relationships with clients, which should add ease to conducting due diligence.¹⁵ However, in practice, UK luxury goods dealers have routinely been flagged up for adopting deficient AML controls.¹⁶ Low levels of registration, inadequate Customer Due Diligence (CDD) controls, and a low number of Suspicious Activity Reporting (SAR) heighten the risk of money laundering through luxury goods.¹⁷ Additionally, the limited attention given to this method of money laundering by the UK government has resulted in underdeveloped legislation and policies applicable to luxury goods sectors.¹⁸

UK Prime Ministers have regularly stated that dirty money is not welcome in the UK however, they have failed to specifically address the risk of money laundering through luxury items.¹⁹ Subsequently, no further measures are intended in combating the vulnerabilities that presently exist in this sector. Without an examination of this method of money laundering and the consideration of further measures to reduce the present

¹¹ See Examples of Cases in Chapter One, s 1.3.

¹² For further information regarding ‘characteristics’ see Chapter One, s 1.3.

¹³ HM Treasury, ‘UK National Risk Assessment of Money Laundering and Terrorist Financing’ (2020) 145.

¹⁴ *Ibid.*

¹⁵ *Ibid.*

¹⁶ Transparency International, ‘Tainted Treasures: Money Laundering Risks in Luxury Markets’ (2017) 5.

¹⁷ *Ibid.*

¹⁸ *Ibid.*

¹⁹ David Cameron, ‘Anti-Corruption Summit 2016: PM’s Closing Remarks’ (12 May 2016) <<https://www.gov.uk/government/speeches/anti-corruption-summit-2016-pms-closing-remarks>> accessed 8 May 2021; Theresa May, ‘Biggest Reforms to money Laundering Regime Over a Decade’ (2 March 2019) <<https://www.gov.uk/government/news/biggest-reforms-to-money-laundering-regime-in-over-a-decade>> accessed 10th January 2022.

risks,²⁰ criminals will continue to exploit this loophole to conceal corrupt wealth in the UK.²¹ Reducing these risks and safeguarding luxury goods sectors from money laundering practices is therefore necessary in ensuring that the UK economy becomes a hostile environment for illicit funds and instead an open, attractive destination for legitimate business.²²

Although UK luxury goods sectors are highly vulnerable to money laundering practices, the literature considers this area of law only marginally.²³ The UK government has published three National Risk Assessments (NRAs) which provide collective knowledge of money laundering and terrorist financing risks in the UK.²⁴ The Risk Assessments dedicate a section to HVDs, and more recently AMPs, providing an overview of the money laundering threats within the sector supported by statistical data and case studies.²⁵ This includes identifying the money laundering risks and assessing the compliance, supervision, and law enforcement response.²⁶

The NRAs identify luxury goods sectors as being targeted by criminals due to their significant turnover.²⁷ The ability to launder significant sums of money through HVDs and AMPs makes the sector attractive to criminals as it provides money launderers with a useful disguise.²⁸ Criminals are therefore noted as specifically targeting cash-intensive businesses, such as fine jewellers and luxury car dealerships, in order to achieve this.²⁹ The vulnerabilities created by luxury transactions, such as their anonymity, the ability to conceal ultimate beneficial ownership, portability across borders, and exposure to high-risk jurisdictions make these items extremely useful for money laundering

²⁰ For suggestions see Chapter Five.

²¹ HM Treasury, 'UK National Risk Assessment of Money Laundering and Terrorist Financing' (2020) 146; HM Treasury, 'UK National Risk Assessment of Money Laundering and Terrorist Financing' (2017) 81.

²² *Ibid.*

²³ Fabian Teichmann, 'Money Laundering through Raw Diamonds' (2020) 22 *Journal of Money Laundering Control* 125; Nicholas Gilmour, 'Blindingly Obvious and Frequently Exploitable' (2017) 20 *Journal of Money Laundering Control* 106.

²⁴ *Ibid.*; HM Treasury, 'UK National Risk Assessment of Money Laundering and Terrorist Financing' (2017) 81; HM Treasury, 'UK National Risk Assessment of Money Laundering and Terrorist Financing' (2015) 55.

²⁵ *Ibid.*

²⁶ *Ibid.*

²⁷ *Ibid.* 57.

²⁸ *Ibid.*

²⁹ *Ibid.* 77.

operations.³⁰ For example, criminals are able to conceal the ultimate beneficial owner of art, as well as the source of funds used to purchase art.³¹ This can be achieved by using complex structures of UK and offshore companies and trusts, agents, or intermediaries, with agents and intermediaries commonly used in the market.³² Although understanding of these vulnerabilities has increased over the years, luxury sectors such as jewellery and precious metals, cars and vehicles and art remain to be identified as having the highest risk of criminal abuse for money laundering.³³ It is therefore not surprising that HMRC highlights numerous case studies involving millions of pounds being laundered over the years through luxury goods sectors.³⁴

In addition to the vulnerabilities of luxury items, NRAs have flagged up HVDs as not fulfilling their legal and regulatory obligations and not having good control frameworks in place to identify risks.³⁵ Effective supervision of the sector is deemed difficult due to the number and diversity of businesses that satisfy the definition of an HVD under the Money Laundering Regulations (MLRs).³⁶ The low number of SARs submitted by HVDs, failure to carry out CDD to a sufficiently high standard before receiving high-value payment, and risk assessments conducted by firms not always addressing the specific money laundering risks of the business generate increased money laundering risks.³⁷ Subsequently, the NRAs identify the size of the sector, combined with a previous lack of consistent regulation and increased risks posed by luxury items as making luxury goods sectors an attractive option for criminals to launder the proceeds of crime.³⁸

Money laundering vulnerabilities within UK luxury goods have also been explored within academic discourse, although marginally. Nicholas Gilmour has

³⁰ HM Treasury, 'UK National Risk Assessment of Money Laundering and Terrorist Financing' (2020) 138.

³¹ *Ibid* 140.

³² *Ibid*.

³³ *Ibid* 139.

³⁴ *Ibid* 145.

³⁵ HM Treasury, 'UK National Risk Assessment of Money Laundering and Terrorist Financing' (2015) 58.

³⁶ *Ibid*.

³⁷ HM Treasury, 'UK National Risk Assessment of Money Laundering and Terrorist Financing' (2017) 81.

³⁸ HM Treasury, 'UK National Risk Assessment of Money Laundering and Terrorist Financing' (2020) 139.

conducted an empirical study identifying the process, steps and vulnerabilities behind money laundering via high-value portable commodities.³⁹ The study provides insights from individuals involved in AML practices and highlights that portable luxury commodities within the UK are susceptible to money laundering operations due to their characteristics and lack of regulation.⁴⁰ The study identifies the main characteristic of this method of money laundering as its ability to facilitate the cleansing of illicit funds through standard practices, across various business types, and in blatant view of regulators, investigators, and those involved in AML policy development.⁴¹ Thus, despite the efforts to combat money laundering across sectors, luxury goods within the UK pose a high money laundering risk.⁴²

Furthermore, Teichmann has conducted research on money laundering in raw diamonds⁴³ and jewellery businesses.⁴⁴ The research highlights that raw diamonds and jewellery are extraordinarily suitable for money, and they may be used in all three stages of the laundering process, namely, placement, layering and integration.⁴⁵ Fabian states that there is a need for law enforcement: intelligence agencies and compliance officers need to pay increased attention to this sector due to its extraordinary susceptibility to money laundering.⁴⁶ Despite the risks, he highlights that these sectors have not been investigated in sufficient depth, and they are largely neglected within academic discourse.⁴⁷ Money laundering through these luxury items tends to be highly profitable for launderers since the items hold significant value which usually increases over time.⁴⁸

Anti-money laundering regulation specifically within the art market has been considered in a study conducted by King and Hufnagel.⁴⁹ The study critiques the

³⁹ Nicholas Gilmour, 'Blindingly Obvious and Frequently Exploitable' (2017) 20 *Journal of Money Laundering Control* 106.

⁴⁰ *Ibid.*

⁴¹ *Ibid.*

⁴² *Ibid.*

⁴³ Fabian Teichmann, 'Money Laundering through Raw Diamonds' (2020) 22 *Journal of Money Laundering Control* 125.

⁴⁴ Fabian Teichmann, 'Money Laundering in the Jewellery Business' (2020) 23 *Journal of Money Laundering Control* 692.

⁴⁵ *Ibid.*

⁴⁶ *Ibid.*

⁴⁷ *Ibid.*

⁴⁸ *Ibid.*

⁴⁹ Saskia Hufnagel, Colin King, 'Anti-Money Laundering Regulation and the Art Market' (2020) 40 *Legal Studies* 132.

regulations applicable to the art market and identifies various money laundering vulnerabilities within the sector.⁵⁰ These include the lack of AML rules, emphasis on anonymity, lack of transparency, struggle in identifying the history of ownership, the commoditisation of artworks, portability of items, and the use of freeports.⁵¹ Whilst acknowledging these risks, King and Hufnagel remain sceptical about the continued expansion of the AML regime to include AMPs and think that AML is a disproportionate burden for dealers.⁵² Their analysis demonstrates that art dealers can be criminally prosecuted for engaging in normal commercial activities and that even if dealers comply with the AML reporting rules, such compliance can significantly impact upon their business.⁵³

This area of law has also been acknowledged at an international level by various organisations.⁵⁴ The Financial Action Task Force (FATF) acknowledges money laundering vulnerabilities within luxury goods markets through its Recommendations.⁵⁵ In response to the money laundering risk posed by luxury goods the Recommendations address luxury goods sectors such as dealers in precious metals and stones within the category of Designated Non-Financial Business Professionals (DNFBPs).⁵⁶ The FATF has also conducted research concerning trade-based money laundering which finds that luxury items such as high-end motor vehicles, watches and shoes are utilised in these operations.⁵⁷ Additionally, the FATF conducts Mutual Evaluation Reports in member countries, and these reports consistently flag up luxury goods as posing a high money laundering risk and luxury goods dealers as adopting deficient AML controls.⁵⁸

Transparency International has also published a report which specifically examines the risk of luxury goods and assets being used to launder proceeds of crime.⁵⁹ The report identifies risk factors of luxury sub-sectors, including the art market,

⁵⁰ Ibid.

⁵¹ Ibid 135.

⁵² Ibid.

⁵³ Ibid.

⁵⁴ Financial Action Task Force, 'Trade-Based Money Laundering' (2020); Transparency International, 'Tainted Treasures: Money Laundering Risks in Luxury Markets' (2017).

⁵⁵ Financial Action Task Force, 'The FATF Recommendations' (2022) 5.

⁵⁶ Ibid.

⁵⁷ Financial Action Task Force, 'Trade-Based Money Laundering' (2020).

⁵⁸ Financial Action Task Force, 'United Kingdom Mutual Evaluation Report' (2018) 77.

⁵⁹ Transparency International, 'Tainted Treasures: Money Laundering Risks in Luxury Markets' (2017).

superyachts, precious stones and jewels, personal luxury items, and real estate.⁶⁰ The report examines money laundering in leading luxury markets including China, France, Germany, Italy, Japan, the United Kingdom, and the United States.⁶¹ The findings highlight that individuals use luxury goods to conceal their criminal gains and that there is little evidence of authorities and luxury goods businesses reducing the risk of money laundering practices.⁶²

Whilst this literature provides valuable points for the development of the thesis, some critical gaps remain which this project seeks to fill. First, the literature fails to consider the implementation of the AML regime in UK luxury goods sectors which is essential in gaining an informed understanding of the sector. The study conducted by Gilmour provides a useful starting point; however, by focusing on portable luxury commodities, it ignores other major luxury goods sectors such as supercars, yachts, and art.⁶³ These sectors are equally susceptible to money laundering practices, and transactions involving, for instance, yachts and supercars, thoroughly protect the anonymity of the customers, providing an advantage for criminals seeking to distance themselves from criminally acquired funds.⁶⁴ Dealers in these sectors have been acknowledged as historically accepting large sums of cash from suspicious dealers as payment for vehicles.⁶⁵ This process allows the purchaser to clean their money through dealers by depositing cash proceeds into mainstream financial institutions removing any footprint of the transaction at the point of sale and the ability to determine the source of wealth at purchase.⁶⁶

Second, the literature fails to consider whether any practical barriers exist that make it difficult for luxury goods dealers to comply with the UK AML regime. The NRAs highlight deficiencies in AML implementation among regulated sectors, such as

⁶⁰ Ibid.

⁶¹ Ibid.

⁶² Ibid.

⁶³ Nicholas Gilmour, 'Blindly Obvious and Frequently Exploitable' (2017) 20 *Journal of Money Laundering Control* 106.

⁶⁴ Elaine Bunting, 'Murky Millions in Super Yachts' (1st March 2011)

<<https://www.yachtingworld.com/elaine-bunting/murky-millions-in-superyachts-6440>> accessed 5th March 2021.

⁶⁵ Transparency International, 'Tainted Treasures: Money Laundering Risks in Luxury Markets' (2017) 3.

⁶⁶ Ibid.

inadequate controls, but fail to consider why this may be the case.⁶⁷ Similarly, the FATF examines member states compliance with its Recommendations but fails to consider whether certain issues impact compliance among sectors (such as DNFBPs).⁶⁸ In this regard, King and Hufnagel have said that such issues exist within the art sector.⁶⁹ They state that AML measures strain relationships between dealers and customers, negatively impacting businesses, and are considered burdensome.⁷⁰ Similar issues may also exist within luxury goods sectors beyond the art market. Subsequently, it is essential to identify hurdles since this significantly assists in seeking ways to improve compliance.⁷¹

Third, the literature does not discuss any substantial reforms in reducing the threat of money laundering within the luxury goods sectors. Transparency International advances ‘Recommendations’ including, CDD requirements for dealers in luxury goods, designated competent authority charged with oversight and regulation, and revising FATF Recommendation 22 to require luxury sectors to adopt a Risk-Based Approach (RBA) to CDD instead of a threshold approach.⁷² However, these measures have already been adopted in the UK, and they provide no further assistance in addressing the present vulnerabilities.⁷³ Additionally, Gilmour states that money laundering through portable luxury commodities offers few options for introducing preventative measures based on its simplistic nature.⁷⁴ Failing to explore ways to reduce the risk of money laundering through luxury goods not only halts progress in reducing such practices from taking place but also undermines the need for further measures which attend to the risks exposed.

Fourth, no study so far has considered the viewpoints of those operating in UK luxury goods sectors. These insights are helpful to understand the dynamics of AML within the UK luxury goods sectors and to identify fundamental aspects of AML compliance that are problematic for dealers. Being the first qualitative empirical study on

⁶⁷ HM Treasury, ‘UK National Risk Assessment of Money Laundering and Terrorist Financing’ (2020) 139.

⁶⁸ Financial Action Task Force, ‘United Kingdom Mutual Evaluation Report’ (2018).

⁶⁹ Saskia Hufnagel, Colin King, ‘Anti-Money Laundering Regulation and the Art Market’ (2020) 40 *Legal Studies* 150.

⁷⁰ *Ibid.*

⁷¹ *Ibid.*

⁷² Transparency International, ‘Tainted Treasures: Money Laundering Risks in Luxury Markets’ (2017).

⁷³ *Ibid.*

⁷⁴ Nicholas Gilmour, ‘Blindly Obvious and Frequently Exploitable’ (2017) 20 *Journal of Money Laundering Control* 106.

the implementation of the UK AML regime in luxury goods sectors, this research project delivers a new and original perspective to this area of law.⁷⁵ In this regard, Zavoli and King have gathered interesting findings from those operating in the real estate industry through semi-structured interviews.⁷⁶ Their data collection provides valuable insights into the sector which cannot be achieved by merely focusing on literature alone.⁷⁷ Thus, gaining similar insights from those operating in UK luxury goods sectors adds value to the research project and this area of law.⁷⁸

1.2 The Focus of the Thesis and the Research Question

Based on the points raised above, the thesis focuses on money laundering vulnerabilities within UK luxury goods sectors. The overall aim of the study is to seek ways in which the present AML Regime applicable to UK luxury goods sectors can be further improved to reduce the risk of money laundering. To address this aim, the main research question is, ‘What are the money laundering risks within UK luxury goods sectors and how can the UK AML regime be improved to safeguard against such risks?’. Each Chapter is allocated a sub-research question to ensure focus throughout the thesis in addressing the primary research question.⁷⁹ The research seeks to provide a significant contribution to the discourse on money laundering in general, as well as paving the way forward regarding money laundering through the purchase of luxury goods, to reduce such practices and provide new insights into this area. Without the recognition of the money laundering vulnerabilities which exist within UK luxury goods sectors and the adoption of measures to reduce such risks, criminals are at an advantage in concealing their ill-gotten gains through the purchase of luxury goods.⁸⁰

The author argues that UK luxury goods sectors are vulnerable to money laundering practices, and this requires significant improvements to be made to reduce the risk of such practices. Upon the outset, the researcher identifies some of the money

⁷⁵ Siems Mathias, ‘Legal Originality’ (2008) 28 *Journal of Legal Studies* 147.

⁷⁶ Ilaria Zavoli, Colin King, ‘The Challenges of Implementing Anti- Money Laundering Regulation: An Empirical Analysis’ (2021) 4 *Modern Law Review* 740.

⁷⁷ *Ibid.*

⁷⁸ For justifications of the value derived through empirical interviews see s 1.3.

⁷⁹ Paul Oliver, *Writing Your Thesis* (SAGE 2013) 135.

⁸⁰ Transparency International, ‘Tainted Treasures: Money Laundering Risks in Luxury Markets’ (2017).

laundering risks of these sectors as deficient AML controls among UK luxury goods dealers, the characteristics of luxury goods making them useful in money laundering operations, and a general lack of attention allocated to this area of law. In addressing these risks and seeking ways to improve the present AML regime, useful knowledge is identified from the AML regimes adopted in luxury goods sectors within other jurisdictions. This not only allows consideration of good practices for the UK but also permits one to identify potentially bad practices that the UK needs to avoid.⁸¹

Subsequently, the first objective of the thesis is to analyse the literature surrounding money laundering through luxury goods and examine how luxury items are utilised by criminals in money laundering operations. Accordingly, Chapter One answers the sub-research question, ‘What makes luxury goods vulnerable to money laundering practices? To what extent does the UK AML regime attempt to reduce such risks?’⁸² The chapter provides the theoretical framework of the project by considering what makes luxury items vulnerable to money laundering operations and outlining the present measures adopted within the UK to prevent such abuses.

The second objective of the thesis is to identify the money laundering risks within UK luxury goods sectors. In addressing this, Chapter Two answers the sub-research question, ‘what are the money laundering risks within UK luxury goods sectors?’⁸³ This analysis delivers a vital contribution in addressing the primary research question by providing an in-depth understanding of the risks that exist within the present AML regime, and loopholes that criminals are able to exploit for money laundering operations. This knowledge allows the thesis to progress in seeking measures which are helpful in reducing the risks identified and making the UK luxury goods sector an attractive destination for legitimate business. By highlighting critical risks that have not been considered within academic discourse the objective provides a significant contribution to this area of research.

The third objective of this study is to consider the extent to which UK luxury goods dealers implement AML controls. In this sense, Chapter Three examines, ‘To what extent do UK luxury goods dealers implement the AML framework and what challenges

⁸¹ For further justifications in studying other Jurisdictions see Chapter Four s 4.2.

⁸² See Chapter One.

⁸³ See Chapter Two.

do they face in doing so?’⁸⁴ This analysis addresses the primary research question by providing insights into dealers’ compliance with the MLRs. This allows consideration of any issues faced by dealers in implementing AML controls, the identification of which is vital when considering ways to improve compliance to safeguard luxury goods sectors from being exploited for money laundering operations. Additionally, the analysis allows the exploration of money laundering risks posed by non-compliance or deficient AML controls which is also critical to acknowledge when seeking ways to improve compliance and reduce money laundering risks. Identifying these challenges allows the research to progress in highlighting potential hurdles which make AML implementation difficult for dealers.

The fourth objective of the project is to identify practices within the AML regimes applicable to luxury goods sectors in other jurisdictions to gain valuable insights into addressing the issues within the UK. Subsequently, Chapter Four examines, ‘What is the AML regime adopted within the luxury goods sector in the United States of America, Canada, Australia, Japan, Cayman Islands, and Trinidad and Tobago? How can the approach adopted within these jurisdictions be useful in reducing the money laundering vulnerabilities of the UK luxury goods sectors?’⁸⁵ This analysis allows consideration of alternative approaches to AML within luxury goods sectors and ways in which these can assist in reducing the money laundering risks identified within the UK. It must be noted that this thesis does not aim to conduct a comparative study when considering these jurisdictions. Instead, it seeks to identify good and bad practices within these jurisdictions which are useful in improving the UK AML regime and the issues identified within the study.

The final objective of the project is to consider ways to address the money laundering risks within UK luxury goods sectors and propose solutions in alleviating the present vulnerabilities.⁸⁶ To address this, Chapter Five considers, ‘How can the money laundering risks within UK luxury goods sectors be reduced to prevent money launderers from infiltrating such sectors?’. In answering this question, the thesis provides a vital contribution in addressing the issues within this area of law and considering ways in

⁸⁴ See Chapter Three.

⁸⁵ See Chapter Four.

⁸⁶ See Chapter Five.

which to reduce money laundering practices within UK luxury goods sectors. The suggestions are based upon the doctrinal and qualitative empirical analysis conducted throughout the project and are therefore based upon analytical justifications.

Furthermore, throughout the study insights are included from a qualitative empirical study involving interviews with UK luxury goods dealers.⁸⁷ The research question employed for the study is, ‘What money laundering vulnerabilities exist within UK luxury goods sectors?’. This question was chosen to allow consideration of the implementation of the AML regime within luxury goods sectors and to gain luxury goods dealers’ insights into what they perceive/experience in relation to money laundering risks. In addressing this question, the study uses sub-questions based upon the themes identified in Chapter One.⁸⁸ The sub-research questions include: are you registered for AML supervision, how do you assess AML risk, what CDD controls do you adopt, when do you submit SARs? Who are you supervised by for AML? What measures do you suggest in reducing money risks within luxury goods sectors?.⁸⁹ These answer the research question by allowing discussion of the extent to which luxury goods dealers implement AML controls. The insights gathered from this study answer the primary research question by providing practical insights into the extent to which dealers understand and implement AML controls. As well as delivering a practical outlook into the money laundering risks within UK luxury goods sectors.

All these objectives contribute to answering the primary research question from different angles and allow a focused approach throughout the project.⁹⁰ These aims, objectives, and sub-research questions were set out before conducting the research project to ensure that the study adopts a consistent approach and to avoid the possibility of any gaps arising within the research conducted.⁹¹ Thus the research questions establish the scope, depth and direction of the research project and ensure that the primary research question is efficiently addressed.⁹²

⁸⁷ See A1, A2, C1, C2, W1, W2, J1, J2, Y1, Y2.

⁸⁸ See Chapter One, s 1.4.

⁸⁹ See Empirical Study Interview Question Sheet.

⁹⁰ Terry Hutchinson, *Research Methods in Law: Doctrinal Research* (Routledge 2017).

⁹¹ *Ibid.*

⁹² *Ibid.*

1.3 Research Methodology

The thesis employs a mixed methodology. The doctrinal research is complemented by a qualitative empirical study conducted with luxury goods dealers captured by the MLRs. The combination of mixed methods is recognised as providing an in-depth understanding which cannot be gained by merely focusing on one approach alone.⁹³ The methodology employed assists in achieving the aims and objectives of the research project by providing a critical analysis of the present measures adopted within the UK AML regime, the identification of money laundering risks, and considering the viewpoints of those operating in luxury goods sectors concerning the application of the regime.⁹⁴

1.3.1 Doctrinal Research Methods

Traditional doctrinal research is acknowledged as a significant research method due to its ability to focus on and analyse the law.⁹⁵ Doctrinal methods allow a comprehensive approach, to emphasising the principle of law by using interpretive instruments and analytical techniques to systematise and assess legislative regulations and create suggestions in relation to what legislative rules should be.⁹⁶ The rationale in employing doctrinal research within the project is based upon the fact that this method allows analysis of legal doctrine, which is a significant aspect of the project.⁹⁷ Doctrinal methods, therefore, allow the study to address the primary research question through the study of legal materials to formulate a conclusion in addressing the money laundering risk within UK luxury goods sectors.⁹⁸

⁹³ John Creswell, Vicki Clark, *Designing and Conducting Mixed Methods Research* (SAGE 2007).

⁹⁴ *Ibid.*

⁹⁵ Jan Smits, 'What is Legal Doctrine? On the Aims and Methods of Legal Dogmatic Research' (2015) 6 (3) Maastricht European Private Law Institute.

<https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2644088> accessed 20th March 2022.

⁹⁶ Douglas Vick, 'Interdisciplinary and the Discipline of Law' (2004) 13 *Journal of Law and Society* 161.

⁹⁷ *Ibid.*

⁹⁸ Andrew Knight, Les Ruddock, *Advanced Research Methods in the Built Environment* (John Wiley & Sons 2009) 29.

Additionally, doctrinal research is grounded upon efficiency and the solving of a specific legal problem in a timely manner.⁹⁹ Therefore, the analysis permits the exploration of ways in which the UK AML regime applicable to luxury goods sectors can be further improved within the timeframe and word limitations of the project.¹⁰⁰ Furthermore, this method of research allows the identification of gaps and inconsistencies within the law and thus informs how the law can be more purposeful and effective.¹⁰¹ This is particularly beneficial to identify loopholes within the current approach and to seek ways in which the UK luxury goods sector can be further improved to reduce the money laundering risks that exist.¹⁰²

Doctrinal research methods include two key processes which involve locating the sources of law such as legislation, case law, regulations, rules, academic journal articles law reform reports, and policy documents.¹⁰³ Second, it includes the examination of legal texts to provide critical analysis of the regulations, their application, and their issues.¹⁰⁴ Subsequently, the thesis applies a doctrinal methodology through the critical analysis of the MLRs, professional and government publications, academic articles, conference papers, mutual evaluations, money laundering reports.¹⁰⁵ Studying these sources informs ‘what is known and not known’ about the topic and identifies problematic aspects within the AML regime.¹⁰⁶ This is not only necessary in addressing the primary research question but also ensures that the arguments presented are rooted upon strong legal justifications and subsequently make a significant contribution to research.¹⁰⁷ Doctrinal research, therefore, involves the analysis of legal doctrine and how it has been enhanced and applied by presenting the content of existing legislation in a systematic approach.¹⁰⁸

Additionally, upon addressing the money laundering vulnerabilities in UK luxury goods sectors, Chapter Four examines the approach adopted within other jurisdictions.¹⁰⁹

⁹⁹ Ibid.

¹⁰⁰ Ibid 17.

¹⁰¹ Terry Hutchinson, Nigel Duncan, ‘Defining and Describing What We Do: Doctrinal Legal Research’ (2012) 17 Deakin Law Review 83.

¹⁰² Ibid.

¹⁰³ Ibid.

¹⁰⁴ Ibid.

¹⁰⁵ Ibid.

¹⁰⁶ Terry Hutchinson, *Research Methods in Law: Doctrinal Research* (Routledge 2017).

¹⁰⁷ Ibid.

¹⁰⁸ Ibid.

¹⁰⁹ See Chapter Four.

In this regard, doctrinal methods allow the analysis of legislation and legal sources within other jurisdictions to identify good and bad practices which are useful in further progressing the approach within the UK.¹¹⁰ Doctrinal research also assists in providing an enhanced understanding of how the law operates in each jurisdiction and understanding of the AML regimes.¹¹¹ This analysis allows an in depth understanding of money laundering through luxury goods.¹¹²

Doctrinal research has been selected for the study with consideration of the potential limitations within this research method.¹¹³ Concerns exist in relation to doctrinal research being too theoretical and therefore disconnected from reality by focusing on legal sources.¹¹⁴ This limitation is addressed by including semi-structured interviews with luxury goods dealers which provide practical insights into luxury subsectors.¹¹⁵ Additionally, the task of locating reliable data is also identified as a potential issue when conducting doctrinal research.¹¹⁶ This issue is addressed by conducting a literature review of money laundering through luxury goods before conducting the study which includes the framework to be considered within the project and ensures that all sources required for the project can be located within its timeframe.¹¹⁷ Thus, whilst potential limitations exist within this method of research, these have been acknowledged and addressed to ensure that the project can meet its aims and objectives.¹¹⁸

1.3.2 Qualitative Empirical Methods

¹¹⁰ Ibid.

¹¹¹ Herbert Hart, *The Concept of Law* (Clarendon Press Oxford 1961).

¹¹² Ibid.

¹¹³ Vijag Gawas, 'Doctrinal Legal Research Method a Guiding Principle in Reforming the Law and Legal System towards the Research Development' (2017) 3 *International Journal of Law* 128.

¹¹⁴ Dawn Watkins, Mandy Burton, *Research Methods in Law* (Routledge 2017) 55.

¹¹⁵ Ibid.

¹¹⁶ Gareth Davies, 'The Relationship between Empirical Legal Studies and Doctrinal Research' (2020) 3 *Erasmus Law Review* 13.

¹¹⁷ Ibid.

¹¹⁸ William Baude, Adam Chilton, Anup Malani, 'Making Doctrinal Work More Rigorous: Lessons from Systematic Reviews' (Chicago Law Review, 2017) 37.

The study involves qualitative approaches to empirical legal research using semi-structured interviews.¹¹⁹ Qualitative research methods are difficult to define due to an absence of a set of methods and practices which are prescribed as underpinning the research method.¹²⁰ Kirk and Miller explain this research method as, ‘fundamentally watching people in their territory and interacting with them in their own language, on their terms’.¹²¹ This suggests that the research is conducted in its natural context (e.g. the field) rather than in an environment constructed by the researcher.¹²² Academics are in agreement that qualitative research is socially concerned, examining phenomena in their social setting and considering those phenomena in context.¹²³ This may include, perspectives such as people’s lives, lived experiences, behaviours, emotions, feelings as well as, organisational functioning, social movements, cultural phenomena, and interactions between nations.¹²⁴ Qualitative approaches are distinct from quantitative ones in that they identify the presence or absence of something, in contrast to quantitative observations which involve measuring the degree to which some feature is present.¹²⁵ Thus, qualitative research does not depend on statistical quantification but instead attempts to capture and categorise social phenomena and their meanings.¹²⁶

There are three main methods of qualitative data collection which are used alone or in combination: direct observation, in-depth interviews, and analysis of documents.¹²⁷ This study includes interviews with luxury goods dealers.¹²⁸ The rationale for engaging in this research method is to gain insights from luxury goods dealers which are not

¹¹⁹ See A1, A2, C1, C2, W1, W2, Y1, Y2, J1, J2.

¹²⁰ Norman Denzin, Yvonna Lincon, *Handbook of Qualitative Research* (SAGE 1994) 67.

¹²¹ Jerome Kirk, Marc Miller, *Reliability and Validity in Qualitative Research* (SAGE 1986).

¹²² *Ibid.*

¹²³ Juliet Corbin, Anselm Strauss, *Basics of Qualitative Research Techniques and Procedures for Developing Grounded Theory* (SAGE 1990), Uwe Flick, *An Introduction to Qualitative Research* (SAGE 2013); Van Maanen, Reclaiming Qualitative Methods for Organisational Research: The Role of Mixed Methods in Classroom Based Language Assessment Studies’ (1979) 24 *Administrative Science Quarterly* 520; Shidur Rahman, ‘The Advantages and Disadvantages of Using Qualitative and Quantitative Approaches and Methods in Language “Testing and Assessment” Research: A Literature Review’ (2017) 6 *Journal of Education and Learning* 102.

¹²⁴ *Ibid.*

¹²⁵ Jerome Kirk, Marc Miller, *Reliability and Validity in Qualitative Research* (SAGE 1986).

¹²⁶ Herbert Kritzer, Peter Cane, *Oxford Handbook of Empirical Legal Research* (Oxford University Press 2010) 927.

¹²⁷ Tim May, *Social Research: Issues, Methods and Practices* (Buckingham Open University Press 2001) 267.

¹²⁸ See A1, A2, C1, C2, W1, W2, Y1, Y2, J1, J2.

available through a purely doctrinal analysis.¹²⁹ Legal compliance is subjective and influenced by an individual's perceptions about the fairness of procedures.¹³⁰ It is therefore beneficial to focus on the personal experiences of luxury goods dealers in relation to the AML regime.¹³¹ The qualitative study involving semi-structured interviews with luxury goods dealers provides a comprehensive understanding of AML compliance within the sector.¹³² Additionally, it allows the identification of problematic aspects that make compliance difficult and risks that exist in practice.¹³³ By identifying the risks within UK luxury goods sectors and considering dealers implementation of the AML regime, and deficiencies in AML compliance, the study provides beneficial insights which cannot be provided through doctrinal research alone.¹³⁴

There are numerous advantages in selecting qualitative empirical research through interviews for this project. Not only is this method of data collection acknowledged as meeting the requirements of originality.¹³⁵ It also provides the capacity to understand and evaluate 'law in the real world',¹³⁶ and form a sound basis to recommend changes to law and legal policy.¹³⁷ In this regard, researchers have highlighted the importance of 'bridging the policy/research divide in law as in other disciplines.'¹³⁸ Undertaking analysis in this manner is therefore recognised as helping communities having their voices heard (such as UK luxury goods dealers) and providing meaningful engagement with what matters about the law, such as the effect on people's lives in contrast to the 'ivory tower' syndrome.¹³⁹

¹²⁹ Ibid.

¹³⁰ Tom R Tyler, *Why People Obey the Law* (Princeton University Press 2021).

¹³¹ Ibid.

¹³² Shidur Rahman, 'The Advantages and Disadvantages of Using Qualitative and Quantitative Approaches and Methods in Language "Testing and Assessment" Research: A Literature Review' (2017) 6 *Journal of Education and Learning* 102.

¹³³ Ibid.

¹³⁴ Ibid.

¹³⁵ Ibid.

¹³⁶ Felicity Bell, 'Empirical Research in Law' (2016) 2 *Griffith Law Review* 273.

¹³⁷ Terry Hutchinson, 'A Rationale for Expanding Lawyers Methodological Expertise' (2013) 3 *Law and Method* 78.

¹³⁸ Ibid.

¹³⁹ Herbert Kritzer, Peter Cane, *Oxford Handbook of Empirical Legal Research* (Oxford University Press 2010) 927; Nicole Lacey, 'Normative Reconstruction in Socio Legal Theory' (*Social and Legal Studies*, 1996) 131.

This is extremely useful when studying the UK AML regime and assessing money laundering risk within UK luxury goods sectors; as it scrutinises not merely the legal articulation of relevant rules and processes, but the meaning and application of those rules and processes as interpreted and enforced, and as experienced by the regulated subjects.¹⁴⁰ Therefore, the selected research method moves the study beyond the inquiry and the search for information¹⁴¹ to observations of the industry to verify the conclusions of the inquiry.¹⁴² It also ensures that the research does not merely report, describe, and theorise the UK AML regime, but it provides critical insights which are useful in increasing understanding of the issues that exist.¹⁴³ Qualitative empirical research through interviews is valuable in shining a light on areas of law for which previously little knowledge exists, such as money laundering through luxury goods.¹⁴⁴

However, qualitative empirical research is not without limitations. Whitehouse and Bright identify four key challenges of this research method, namely lack of training, funding constraints, accessing data and respondents, and ethics.¹⁴⁵ These drawbacks were addressed in this project by utilising research funding available to the researcher,¹⁴⁶ efficient time planning,¹⁴⁷ and attending training workshops in empirical methods and ethics.¹⁴⁸ Considering and addressing these potential limitations before conducting the empirical research ensures the project's success. In relation to training, Schmidt and Halliday highlight that many legal scholars receive little or no training in qualitative empirical research and therefore stray away from this method of research.¹⁴⁹ Whilst

¹⁴⁰ Ibid.

¹⁴¹ Landry III, Robert J, 'Empirical Scientific Research and Legal Studies Research – A Missing Link' (997) 15 *The Journal of Legal Studies Education* 321.

¹⁴² Ibid.

¹⁴³ Ibid.

¹⁴⁴ Lisa Whitehouse, Susan Bright, 'The Empirical Approach to Research in Property Law' (2014) 4 *Property Law Review* 176.

¹⁴⁵ Ibid.

¹⁴⁶ Roger Gagnon, *Empirical Research: The Burdens and the Benefits* (1982) 12 *Inform Journal on Applied Analytics* 76.

¹⁴⁷ Ibid.

¹⁴⁸ Felicity Bell, 'Empirical Research in Law' (2016) 2 *Griffith Law Review* 273.

¹⁴⁹ Simon Halliday, Patrick Schmidt, *Beyond Methods, Law and Society in Action* (Cambridge University Press 2009) 270.

formal training is not a prerequisite, before conducting the study the researcher attended training in empirical research delivered by the University of Leeds.¹⁵⁰

Qualitative empirical research is also regarded as expensive in terms of time and financial costs.¹⁵¹ This issue was addressed by planning the potential costs to be incurred through the project such as acquiring an encrypted recording device, travelling to participants and transcription services, and obtaining funding to support such costs. Accessing data and respondents is also identified as a potential hurdle in conducting empirical research.¹⁵² In consideration of this potential issue, the project planning allocated a generous amount of time in seeking participants and conducting interviews early on in the study.¹⁵³ Furthermore, ethical approval can also restrict research and access to participants.¹⁵⁴ In ensuring that this was not detrimental to the project, ethical approval was applied for at the earliest stage possible. Prior to conducting the study, considerations were made about safeguarding interview participants and the avoidance of any harm.¹⁵⁵

Once these limitations were addressed, semi-structured interviews were selected for the project due to their ability to combine structured and unstructured interviews and bring together the advantages of both styles.¹⁵⁶ Semi-structured interviews offer the measuring abilities of structured interviews, alongside the significant flexibility to pursue new topics as needed in unstructured interviews.¹⁵⁷ This provides a repertoire of possibilities¹⁵⁸ through an in-depth analysis of topics.¹⁵⁹ Since interviews are sufficiently

¹⁵⁰ University of Leeds, 'Postgraduate Research Training and Development' <https://students.leeds.ac.uk/info/10124/during_your_research/755/postgraduate_research_and_training> accessed 20th April 2021.

¹⁵¹ Hazel Genn, Martin Partington, Sally Wheeler, 'Law in the Real World: Improving Our Understanding of How Law Works' <https://www.ucl.ac.uk/judicial-institute/sites/judicial-institute/files/law_in_the_real_world_-_improving_our_understanding_of_how_law_works.pdf> accessed 20th March 2021.

¹⁵² Herbert Kritzer, Peter Cane, *Oxford Handbook of Empirical Legal Research* (Oxford University Press 2010) 927.

¹⁵³ Ibid.

¹⁵⁴ Ibid.

¹⁵⁵ Ibid.

¹⁵⁶ Michael Afolayan, 'Interviews and Questionnaires as Legal Research' (2019) 2 *Journal of Law, Policy and Globalization* 83.

¹⁵⁷ Ibid.

¹⁵⁸ Anne Galletta, *Mastering the Semi Structured Interview and beyond: From research design to analysis and publication* (Oxford University Press 2013).

¹⁵⁹ Ibid.

structured, they are able to address specific topics related to the study, whilst also leaving space for participants to offer new insights.¹⁶⁰

Semi-structured interviews are considered a reliable method for generating data from all sized samples with the flexibility to gain an authentic participant perspective.¹⁶¹ The flexibility allows unexpected responses to be revealed avoiding consuming answers to what the researcher hopes or expects to discover.¹⁶² Furthermore, the flexibility ensures that the interviews are dynamic, and generate valuable relevant data by allowing the researcher to pin down emerging themes from the interview dialogue.¹⁶³ On the other hand, semi-structured interviews also provide a degree of standardisation through the underpinning structure, giving the interviewer focus to direct the data process through questions aligned to identified themes.¹⁶⁴ They also offer a great potential to attend to the complexity of a research topic¹⁶⁵ through the identification of themes the researcher is able to navigate discussion address complex areas of law.¹⁶⁶

The limitations of semi-structured interviews were also considered before conducting the study to ensure that the best approach was applied. The time required for the interviews, such as seeking participants, conducting the interview, and analysing the data is often acknowledge as a limitation.¹⁶⁷ This was addressed through efficient planning, specifying a timeframe for the interview and ensuring timekeeping throughout the interview.¹⁶⁸ Additionally, semi-structured interviews can make it difficult to assess trends in data due to the flexibility offered.¹⁶⁹ This was dealt with by selecting themes which were utilised within the interview structure and the data analysis.¹⁷⁰ Furthermore, due to the nature of the study having varied responses was interesting for the analysis. Data loss is also a potential risk in semi-structured interviews, which is highlighted as

¹⁶⁰ Ibid.

¹⁶¹ David Silverman, *Qualitative Research*, (SAGE Publications 2011) 131.

¹⁶² Patricia Leavy, *The Oxford Handbook of Qualitative Research* (2014) Oxford University Press 271.

¹⁶³ Ibid.

¹⁶⁴ Frans Leeuw, Hans Schmeets, *Empirical Legal Research* (Edward Elgar 2016) 250.

¹⁶⁵ Ibid.

¹⁶⁶ Ibid.

¹⁶⁷ Karl Nunkoosing, 'The Problems with Interviews' (2005) 5 *Qualitative Research Journal* 231.

¹⁶⁸ Anne Galletta, *Mastering the Semi Structured Interview and beyond: From research design to analysis and publication* (Oxford University Press 2013).

¹⁶⁹ Michael Afolayan, 'Interviews and Questionnaires as Legal Research' (2019) 2 *Journal of Law, Policy and Globalization* 83.

¹⁷⁰ Ibid.

increasing during the Covid-19 pandemic.¹⁷¹ Subsequently, the data from the interviews were stored on various hard drives to ensure a backup was available.¹⁷²

Attempting to conduct semi-structured interviews sometimes requires authorisation from a third party and this can be an inconvenience to set up an interview.¹⁷³ In ensuring that this did not restrict the data collection, the email sent to participants allowed such approval, even when interviews were conducted with individuals who did not need to seek such approval. Furthermore, the difficulty in seeking individuals willing to participate in an interview and providing useful also acts as a hurdle in research projects.¹⁷⁴ In this regard, semi-structured interviews are considered time-consuming and subsequently, individuals are reluctant to allocate their time to being part of a project.¹⁷⁵ In addressing this issue, various methods of participant engagement were explored from initial emails to telephone calls and follow-up emails.¹⁷⁶ Furthermore, it was noted upon the outset to ensure that the number of participants contacted involved a large sample to increase the possibility of gaining participant approval.¹⁷⁷

The interview questions include open-ended and theoretically driven questions.¹⁷⁸ These are grounded on participants experiences and guided by existing constructs in the discipline within which the research was conducted.¹⁷⁹ Open-ended questions define the topic under investigation and allow the interviewer and interviewee to discuss the topics in more detail.¹⁸⁰ If participants struggle to answer questions or provide brief responses, then they allow the interviewer to use cues and prompts to encourage the participant to consider the question further.¹⁸¹ Thus, semi-structured interviews grant interviewers the freedom to follow up on answers provided by participants and allow the opportunity to

¹⁷¹ Charles Kakilla, 'Strengths and Weaknesses of Semi Structured Interviews in Qualitative Research' (2021) Trinity Centre for Global Health.

¹⁷² Ibid.

¹⁷³ Ibid.

¹⁷⁴ Mirjam Knapik, 'The Qualitative Research Interview: Participants' Responsive Participation in Knowledge Making' (2006) 3 International Journal of Qualitative Methods 142.

¹⁷⁵ Ibid.

¹⁷⁶ Ibid.

¹⁷⁷ Michael Afolayan, 'Interviews and Questionnaires as Legal Research' (2019) 2 Journal of Law, Policy and Globalization 83.

¹⁷⁸ Ibid.

¹⁷⁹ Ibid.

¹⁸⁰ Patricia Leavy, *The Oxford Handbook of Qualitative Research* (Oxford University Press 2014)

¹⁸¹ Ibid.

request elaboration on the original response or to follow a line of inquiry introduced by the interviewee.¹⁸²

Whilst it was impossible to predict the outcome of the empirical study before it was conducted, several potential outcomes were considered. First, it was expected for luxury goods dealers to express an element of discontent towards AML rules because this sentiment has been pointed out by the literature in other regulated sectors, reflecting the rules as being burdensome, disproportionate, and conflicting with business practices.¹⁸³ Second, a lack of compliance was expected due to the literature saying that dealers often adopt deficient AML controls.¹⁸⁴ Third, increased use of cash was expected due to the appeal of the luxury goods sector for money laundering operations.¹⁸⁵ Whilst these potential outcomes were considered before conducting the study, the data was not collected in a manner to prove these assumptions and instead involved a generic development.¹⁸⁶

Several aspects were considered before starting participant recruitment such as the sample size and what the sample was intended to include.¹⁸⁷ A criterion was formulated in relation to the types of individuals that would be most beneficial for the project and in addressing the primary research question.¹⁸⁸ This included factors such as operating in the UK luxury goods sectors, selling/purchasing items of €10,000 and above in luxury items, a variety of dealers from big corporations and small businesses (car, yacht, art, jewellery and precious stones, watches).¹⁸⁹ The number of participants for a study is often influenced by issues of time, cost, and other practicalities.¹⁹⁰ Consequently, a provisional sample size was decided at the initial stage of the project as comprising of

¹⁸² Ibid.

¹⁸³ Ilaria Zavoli, Colin King, 'The Challenges of Implementing Anti- Money Laundering Regulation: An Empirical Analysis' (2021) 4 *Modern Law Review* 740; Saskia Hufnagel, Colin King, 'Anti-Money Laundering Regulation and the Art Market' (2020) 40 *Legal Studies* 150.

¹⁸⁴ HM Treasury, 'UK National Risk Assessment of Money Laundering and Terrorist Financing' (2020) 139.

¹⁸⁵ Ibid.

¹⁸⁶ Ibid.

¹⁸⁷ Ibid.

¹⁸⁸ Oliver Robinson, 'Sampling in Interview Based Qualitative Research: A Theoretical and Practical Guide' (2014) 1 *Qualitative Research in Psychology* 11.

¹⁸⁹ Anne Galletta, *Mastering the Semi Structured Interview and beyond: From research design to analysis and publication* (Oxford University Press 2013).

¹⁹⁰ Felicity Bell, 'Empirical Research in Law' (2016) 2 *Griffith Law Review* 274.

10 dealers, with two from each luxury sub-sector selected to gain representative insight into the issue.¹⁹¹ However, this was approached with flexibility and influenced by the progression of the data analysis.¹⁹²

Participants who met this criterion were identified using the Google web browser.¹⁹³ Whilst those carrying out AML may not advertise their role on this platform, the browsers useful in identifying HVDs. This consisted of searching each of the luxury sub-sectors and then studying the results generated. For example, when searching luxury goods dealers in the jewellery sector the search contained words like ‘jewellery dealers’, ‘precious metal and stone dealers. Additionally, the research identified whether organisations had a nominated money-laundering officer, and these individuals were also invited to take part in an interview. In addition to this, ‘network sampling’ was also employed through a ‘snowball approach’.¹⁹⁴ This involved asking each participant, typically at the end of the interview, for a recommendation of other individuals who might be willing to participate.¹⁹⁵

The details from these searches were gathered in an Excel spreadsheet to ensure that the information was recorded for further use.¹⁹⁶ This displayed key information including: the sector, company name, company size, registered address, contact number, email address, and a column to list communications with the business.

A total of 514 businesses were contacted via email. Whether participants are approached directly or indirectly researchers should provide sufficient information about the purpose of the research, the degree of involvement expected of the participant (time and type of activity), and (briefly) how the data will be used.¹⁹⁷ Accordingly, the initial email included a brief overview of the project, a ‘participant information sheet’,¹⁹⁸ and a ‘consent form’.¹⁹⁹ The participant information sheet included vital information regarding

¹⁹¹ Ibid.

¹⁹² Ibid.

¹⁹³ Ibid.

¹⁹⁴ Margaret Diane LeCompte, *Designing and Conducting Ethnographic Research* (AltaMira Press 2010) 65.

¹⁹⁵ Felicity Bell, ‘Empirical Research in Law’ (2016) 2 Griffith Law Review 274.

¹⁹⁶ Patricia Leavy, *The Oxford Handbook of Qualitative Research* (Oxford University Press 2014) 927.

¹⁹⁷ Ibid.

¹⁹⁸ See Maariyah Islam, ‘Participant Information Sheet’ (2020)

¹⁹⁹ See Maariyah Islam, ‘Participant Consent Form’ (2020)

the project such as: the title of the research project, the purpose of the project, why the individual has been chosen, what individuals are required to do, possible advantages and disadvantages of taking part, confidentiality, and anonymity.²⁰⁰ The Consent Form ensured that participants understood the information sheet and what the project entails. The table below highlights the interview selection process.²⁰¹

Table 1	Art	Jewellery	Watch	Yacht	Car	Total
Number of people contacted	94	86	112	89	123	514
Decline	43	49	85	43	81	301
No Response	49	34	25	44	40	192
Interviews Conducted	2	2	2	2	3	11
Position	Director Salesperson	Owner Salesperson	Manager Sales Professional	Director Sales Negotiator	Sales Manager Salesperson X2	N/A
Withdrawal	0	0	0	0	1	1

Numerous individuals declined the offer to participate in the project, as displayed in the table above. They provided a mixture of reasons for declining, from being busy to not being interested. Some dealers expressed discontent in the project considering AML and made remarks such as, ‘I want to stay well away from that stuff’, ‘I can’t say I trust you to talk about my business, for all I know you could be working for the government’ and ‘I am not prepared to discuss the legality of the business with a stranger’. This reluctance made data collection difficult, however since this was a potential limitation

²⁰⁰ Felicity Bell, ‘Empirical Research in Law’ (2016) 2 Griffith Law Review 274.

²⁰¹ Ibid.

considered at the outset of the project, this did not halt the data collection process. Instead, the researcher employed various methodologies to engage with potential participants.²⁰²

Individuals that failed to respond to the initial email were contacted a second time two weeks later with a follow-up email, as this is noted as an effective way of trying to engage with potential interviewees.²⁰³ The email summarised the information sent and questioned whether individuals were interested in the project or needed further information to make a decision.²⁰⁴ Responses contained, ‘contact me in a few months as I am busy at the moment’, ‘we cannot take part as we are busy due to the implications of covid-19’, ‘the business is in financial distress due to the pandemic, we don’t have the time’. Subsequently, interactions took place with dealers that indicated an interest in being involved in the project, such as arranging a time and location to conduct the interviews and answering any further questions they may have regarding the project.²⁰⁵

Eleven interviews were conducted in total. Due to the Covid-19 lockdown restrictions, the interviews could only take place virtually as communication in person was not permitted.²⁰⁶ These discussions, therefore, involved gaining information regarding the preferred virtual communication platform to be utilised to conduct the interview. Most respondents opted for Facetime calls (80 per cent) the remainder opted for the interview to be conducted with Zoom.

In conducting the interview, attention was allocated to participants narratives and well-informed judgments were adopted such as when and when not to interrupt the participant as he/she responds to a question.²⁰⁷ Further, the use of open-ended questions was successful in providing interesting insights with the ability to ensure focus and provide the ability to navigate the interview.²⁰⁸ The interviews gave extremely interesting insights into UK luxury goods sectors and ranged between 45 minutes to an hour in length. A month after the interviews were conducted, one participant contacted the

²⁰² Mirjam Knapik, ‘The Qualitative Research Interview: Participants’ Responsive Participation in Knowledge Making’ (2006) 5 *International Journal of Qualitative Methods* 21.

²⁰³ Patricia Leavy, *The Oxford Handbook of Qualitative Research* (Oxford University Press 2014).

²⁰⁴ *Ibid* 73.

²⁰⁵ Margaret Diane LeCompte, *Designing and Conducting Ethnographic Research* (AltaMira Press 2010)

²⁰⁶ Gov.UK, ‘Covid-10 Lockdown Measures’ <<https://www.gov.uk/guidance/living-safely-with-respiratory-infections-including-covid-19>> accessed 20th April 2020.

²⁰⁷ Anne Galletta, *Mastering the Semi Structured Interview and beyond: From research design to analysis and publication* (Oxford University Press 2013).

²⁰⁸ *Ibid*.

researcher stating their wish to withdraw from the project and requested the interview be deleted. In accordance with the Participant Information Sheet, the interview was removed from the data collection. This resulted in ten interviews being utilised for the research project (two in each sector).

Ethics was a significant aspect of the study and observed at each stage of the interview process to safeguard participants.²⁰⁹ In ensuring that the project was ethical numerous considerations were made in relation to participant privacy, confidentiality and anonymity, informed consent, autonomy, and safety.²¹⁰ In terms of safety, considerations were made of any potential risk to the researcher and participants and ensuring that the research is conducted with minimal risk to all the parties involved.²¹¹ The project ensured participant autonomy by informing participants of their right to freely optout from the research at any time. Informed consent was obtained through the Consent Form.²¹² The interviews were recorded using an encrypted recording device to protect the participant's privacy.²¹³ Once the data was collected a vital aspect of the study was ensuring that participant information and interview data were confidential.²¹⁴ A coding system was used to make reference to participants and anonymise the data so that the individual is not ascertainable.²¹⁵ Additionally, the personal details of participants were kept in a folder on the University N drive and discarded when no longer required.²¹⁶ These measures ensured that the project was ethical at every stage.²¹⁷

A transcription service was used from one of the University of Leeds suggested transcription providers. This service provider was made aware of the ethical implications of the project and consented to the information being stored in a safe secure location.²¹⁸

²⁰⁹ Margaret Davis, 'Ethics and Methodology in Legal Theory' (2002) 6 *Law Text and Culture* 153.

²¹⁰ Tina Miller, Linda Bell, *Ethics in Qualitative Research* (SAGE 2002) 321.

²¹¹ Ibid.

²¹² Maariyah Islam, 'Participant Consent Form' (2020).

²¹³ Ian Gregory, *Ethics in Research* (A&C Black 2003) 67.

²¹⁴ Peter Allmark, Jonathan Bootem Eleni Chambers, Amanda Clarke, Ann McDonnell, Andrew Thompson, Angela Mary, 'Ethical issues in the use of in-depth interviews: literature review and discussion' (2009) 2 *Research Ethics Review* 6.

²¹⁵ Ibid 10.

²¹⁶ Gary Husband, 'Ethical Data Collection and Recognizing the Impact of Semi-Structured Interviews on Research Respondents' (2020) 8 *Educational Sciences* 10.

²¹⁷ Ibid.

²¹⁸ Alyahmady Halil, Saleh Alabri, 'Using NVivo for Data Analysis in Qualitative Research' (2013) 2 *International Interdisciplinary Journal of Education* 62.

The names and personal information of the participants were not communicated to the transcription company.²¹⁹ NVivo was used to assess the data derived from the interviews.²²⁰ NVivo is endorsed as providing invaluable assistance to researchers by allowing consideration of themes and nodes to identify relationships between the data collection.²²¹

Additionally, the presence of nodes in NVivo is recognised as making it more compatible with grounded theory and thematic analysis approaches, such as this study.²²² Nodes were selected to connect ideas emerging from the data.²²³ For example, within the coding for CDD, the following nodes were selected, SDD, EDD, Customer Identification, verification, and money laundering risk. Additionally, the software allowed memos to be created to document thoughts and key insights that were emerging from the data analysis such as lack of understanding, non-compliance, and lack of awareness.²²⁴ NVivo was also selected since it is less time-consuming in comparison to manual coding.²²⁵ Additionally, it allowed reshaping and reorganising coding and nodes structure quickly and efficiently.²²⁶ Thus NVivo allowed efficient data analysis in a timely manner which was beneficial in addressing the primary research question.²²⁷

1.4 The Structure of the Thesis and the Outline of the Chapters

²¹⁹ Ibid.

²²⁰ Lynee Johnston, 'Software and Method: Reflections on Teaching and Using QSR NVivo in Doctoral Research' (2006) 9 *International Journal of Social Research Methodology* 124.

²²¹ Nigel King, *Using Templates in the Thematic Analysis of Text* (Sage Publications 2004).

²²² Ibid.

²²³ Elaine Welsh, 'Dealing with Data: Using NVivo in the Qualitative Data Analysis Process' (2003) 2 *Qualitative Social Research*.

²²⁴ Ibid.

²²⁵ Carmel Maher, Mark Hadfield, Maggie Hutchings, Adam Eyto, 'Ensuring Rigor in Qualitative Data Analysis: A Design Research Approach to Coding Combining NVivo with Traditional Material Methods' (2018) 1 *International Journal of Qualitative Methods*, 112.

²²⁶ Ibid.

²²⁷ Karla Eisen, Cynthia Robins, 'Strategies for the Effective Use of NVivo in a Large-Scale Study: Qualitative Analysis and the Repeal of Don't Ask, Don't Tell' (2017) 10 *International Journal of Qualitative Methods* 23.

Each Chapter makes a significant contribution in addressing the primary research question and providing an original contribution to research.²²⁸ The analysis within the study delivers valuable insights for money laundering within UK luxury goods sectors as well as money laundering in general.²²⁹ The thesis is divided into three parts. The first part includes an overview of money laundering within UK luxury goods sectors. This includes identifying the theoretical background to the study,²³⁰ considering the money laundering risks within UK luxury goods sectors,²³¹ and identifying challenges in relation to AML implementation (supported by insights from luxury goods dealers).²³² The second part considers the AML regime applied to luxury goods sectors within other jurisdictions and identifies useful practices to address the money laundering vulnerabilities within the UK.²³³ The final part presents recommendations for reducing money laundering risks within UK luxury goods sectors and proposes solutions in alleviating the issues identified.²³⁴

Accordingly, Chapter One provides the theoretical background to the study.²³⁵ This includes definitions for key terms used within the project including money laundering, luxury goods, high-value dealers, and art market participants. These definitions ensure a focused approach within the project and further clarify the aims of the research project. Additionally, the Chapter provides an overview of the laundering vulnerabilities within luxury goods. The analysis identifies characteristics of luxury goods which increase their risk of being utilised within money-laundering operations. Such as accepting cash payments, the anonymity of transactions, appreciation in value, transportability, absence of standard pricing, the status they confer, and difficulty to trace. Furthermore, the Chapter examines international AML efforts in reducing money laundering operations within luxury goods sectors across the globe. This includes a particular focus on the FATF Recommendations and European Union (EU) AML

²²⁸ Herbert Kritzer, Peter Cane, *Oxford Handbook of Empirical Legal Research* (Oxford University Press 2010) 632.

²²⁹ *Ibid.*

²³⁰ See Chapter One.

²³¹ See Chapter Two.

²³² See Chapter Three.

²³³ See Chapter Four.

²³⁴ See Chapter Five.

²³⁵ See Chapter One.

Directives. Subsequently, the Chapter identifies AML measures adopted within the UK to reduce money laundering through luxury goods. Based upon this analysis, the final section identifies key themes which will be used as a foundation for both the doctrinal research and the empirical research conducted throughout the project.

Chapter Two examines the risks derived through the application of the UK AML regime within luxury goods sectors through a thematic approach.²³⁶ This includes risks created by luxury goods dealers as well as risks within the AML regime. Substantial insights into the present vulnerabilities are derived from the semi-structured interviews conducted with dealers operating in the car, yacht, jewellery, watch, and art industries.²³⁷ This includes exploration of the extent to which dealers understand their AML obligations within the MLRs and the approaches they adopt within their day-to-day practices. The analysis delivers a new perspective on the loopholes that exist within UK luxury goods sectors that criminals can exploit for money laundering operations, and it highlights the necessity for further measures to safeguard against such practices.

Chapter Three explores the extent to which dealers implement AML controls within their business practices.²³⁸ The chapter examines these challenges in relation to the themes identified for the project. The analysis includes data derived from UK luxury goods dealers which provide a practical outlook in relation to AML implementation. This allows consideration on UK dealers compliance with their AML obligations and potential hurdles that make such compliance difficult in practice. The hurdles involve issues such as dealers lack of knowledge, understanding, and awareness of their obligations within the MLRs. The chapter also considers dealers' perceptions concerning the AML obligations imposed on them and their inclination in implementing the required controls. This highlights the potential cost of compliance and emphasises the conflict faced by dealers between AML and ordinary business practices (e.g., generating a profit). The findings provide a critical outlook on the issues faced by UK luxury goods dealers in complying with AML obligations for the first time, which is vital when considering ways to improve compliance in the sector.

²³⁶ See Chapter Two.

²³⁷ See A1, A2, C1, C2, W1, W2, J1, J2, Y1, Y2.

²³⁸ See Chapter Three.

Chapter Four considers the AML regime applicable to luxury goods sectors in the US, Canada, Japan, Australia, Cayman Islands, and Trinidad and Tobago.²³⁹ In doing this, the chapter identifies good and bad practices from the AML regimes and the application of the AML regimes within luxury sectors in these jurisdictions. This consideration is structured following the themes selected in Chapter One. The analysis provides useful insights into ways to reduce the risks identified within UK luxury goods sectors and improve compliance. This includes the identification of ways in which luxury goods dealers are provided support in implementing AML controls, which are vital in improving compliance among private actors. Additionally, the chapter highlights areas of concern, such as the absence of registration requirements, defensive SAR reporting, and a failure to recognise luxury sub-sectors. Identification of these practices provides substantial knowledge in relation to how the UK AML regime can be further improved.

Subsequently, Chapter Five suggests ways in which the AML regime applicable to UK luxury goods sectors can be further improved and strengthened to prevent money launderers from infiltrating these sectors.²⁴⁰ This includes addressing the AML regime itself and the application of the regime in practice through the themes used in the study. The proposals are based upon various aspects including, the data collected from interviews with dealers, the money laundering risks identified within the study, alternative practices considered within other jurisdictions, and the approach adopted within other regulated sectors in the UK. The suggestions not only provide a significant contribution to reducing the risk of money laundering practices within UK luxury goods sectors but provide knowledge that is useful and transferrable across other regulated sectors.

The last chapter concludes the research project.²⁴¹ This includes a summary of the key findings of the research project and their relevance, presented through the thematic approach adopted in the project. The chapter explains the insights provided by the study in addressing the aims and objectives of the project. Additionally, the chapter explains the overall result of the research and simplifies the answer to the primary research question. Moreover, the analysis considers the broader implications of the research. This

²³⁹ See Chapter Four.

²⁴⁰ See Chapter Five.

²⁴¹ See Conclusion.

includes contextualising the study and highlighting the wide-reaching benefits of the research project, like the impact of the project on money laundering through luxury goods and money laundering in general. As well as identification of the various individuals who benefit from the study such as academics, practitioners, HMRC, law enforcement, and trade associations.

Chapter 1

Theoretical Framework

1.1 Introduction

Luxury goods are utilised in money laundering practices across the globe.¹ The unique characteristics of luxury goods coupled with the lack of attention allocated to this form of money laundering make luxury goods sectors an attractive avenue to exploit.² Law enforcement within luxury goods sectors has increased over the years; however, significant deficiencies remain in reducing the threat of money laundering and safeguarding the sector against such practices.³ Gaining an insight into these practices is necessary to understand how criminals manipulate luxury goods to appear legitimate and avoid detection.

This chapter answers the primary research question by providing the theoretical framework for the research project. The chapter is divided into four parts. First, it considers definitions of key terms used in the project including money laundering, luxury goods, and luxury goods dealers. Defining these terms is critical in ensuring a focused approach within the project and clarifying the aims of the research project. Second, the chapter provides an overview of the laundering vulnerabilities within luxury goods. This highlights the risks identified within the literature of how luxury items are manipulated for money laundering operations. Third, the chapter examines international AML efforts in reducing money laundering operations within luxury goods sectors across the globe. This includes a particular focus on the FATF Recommendations and European Union AML Directives. Subsequently, the chapter identifies the AML measures adopted within the UK to reduce the risk of money laundering through luxury goods. Based upon this analysis, the final section identifies key themes which will be applied throughout the study.

¹Transparency International, 'Transparency International, Tainted Treasures: Money Laundering Risks in Luxury Markets' (2017).

² HM Treasury, UK National Risk Assessment of Money Laundering and Terrorist Financing (2015).

³ Financial Action Task Force, 'Report: Professional Money Laundering' (2018).

The analysis within this chapter is important to clarify the fundamental aspects of the project and providing an overview of the AML regime applicable to UK luxury goods sectors. This acknowledgement is vital to examine issues within the current approach and consider ways to strengthen UK luxury goods sector from money laundering practices. Thus, this chapter frames the research project and justifies the approach conducted within the study by demonstrating that the research is grounded upon established observations of money laundering vulnerabilities within UK luxury goods sectors.⁴

1.2 Definitions of Key Terms

Individuals have their own understandings and perceptions of terms which necessitates the need for definitions which explain what is intended when keywords are utilised within a study.⁵ This section defines Money Laundering, Luxury Goods, and Luxury Goods Dealers for the purposes of this project.⁶ These terms are vital aspects of the main research question and clarifying them ensures that the reader can understand these components in the manner intended for the study.⁷

1.2.1 Money Laundering

The term ‘money laundering’ is understood to derive from the use of ‘Laundromats’ by organised crime groups in the United States to process the proceeds of criminal businesses through legitimate business.⁸ Al Capone’s connection to laundromats is therefore recognised as providing the phrasing ‘money laundering’.⁹ However, the practice of

⁴ Sanne Taekema, ‘Theoretical and Normative Frameworks for Legal Research: Putting Theory in Practice’ (2018) 10 *Law and Method* 107.

⁵ George Barton, ‘The Derivation and Clarification of Objectives’ (2014) 8 *Journal of Educational Research* 624.

⁶ *Ibid.*

⁷ Stephen Bailey, *Academic Writing: A Handbook for International Students* (Routledge 2011) 126, Qais Faryadi, ‘A Systematic Approach: How to Write Your Literature Review’ (2016) 6 *Creative Education Journal* 145.

⁸ Edward Rees, Richard Fisher, Richard Thomas, *Blackstone’s Guide to The Proceeds of Crime Act 2002* (Oxford University Press 2015) 124; Jeffery Robinson, *The Laundrymen: Inside Money Laundering, the World’s Third- Largest Business* (Arcade Publishing 1996); Dennis Cox, *Handbook of Anti – Money Laundering* (Wiley 2014).

⁹ Laurence Bergreen, *Capone: The Man and the Era* (Simon & Schuster Paperbacks 1994).

laundering money to conceal income from government bureaucrats due to fear of rulers taking profits has been identified as occurring long before this.¹⁰ It is therefore difficult to pinpoint the exact origins of money laundering since the practice is suggested to have taken place before the phraseology was introduced.¹¹ Within the UK, the Proceeds of Crime Act 2002 (POCA) defines money laundering as, ‘the process by which the proceeds of crime are converted into assets which appear to have a legitimate origin so that they can be retained permanently or recycled into further criminal enterprises’.¹² Thus, money laundering involves the process of ‘cleaning’ criminal proceeds.¹³

POCA provides further clarity regarding the processes acknowledged as money laundering.¹⁴ Property is ‘criminal’ if it ‘constitutes a person’s benefit from criminal conduct or it represents such a benefit in whole or part and whether directly or indirectly), and the alleged offender knows or suspects that it constitutes or represents such a benefit’.¹⁵ Criminal property in money laundering offences, therefore, extends beyond situations involving money.¹⁶ For example, if an individual approaches a dealer to sell a luxury item, such as a necklace, and the dealer knows or suspects that the jewellery is stolen, then the dealer is required to report the matters to the authorities through an authorised disclosure.¹⁷ If the dealer decides that he is not prepared to accept the business from the customer, but the necklace has been left with him for an examination, the dealer can be liable for an offence if he returns the jewellery to the customer without making a disclosure.¹⁸ Criminal property, therefore, has a broad definition and extends to any direct and indirect benefit derived from criminal conduct.¹⁹

¹⁰ Brigitte Unger, Daan van der Linde, *Research Handbook on Money Laundering* (Edward Elgar 2013) 67.

¹¹ *Ibid.*

¹² Proceeds of Crime Act 2002, Explanatory Note, s 6

¹³ *Ibid.*

¹⁴ *Ibid.*

¹⁵ *Ibid* s 340.

¹⁶ *Ibid.*

¹⁷ *ibid* s 330.

¹⁸ *Ibid.*

¹⁹ Sarah Kebbell, ‘Everybody’s Looking at Nothing—the legal profession and the disproportionate burden of the Proceeds of Crime Act 2002’ (Criminal Law Review, 2017) 741.

Under POCA money laundering involves the practice of concealing, disguising, converting, transferring, or removing criminal property from England and Wales.²⁰ Concealing and disguising criminal property are defined as including ‘its nature, source, location disposition, movement, ownership or any rights with respect to it’.²¹ For example, a dealer will be committing the offence of money laundering through concealment if a customer asks the dealer to take care of some money for a few days and the dealer places the money in a drawer in his office.²² King and Hufnagel consider this practice within the art sector and explain that art is used for either spending criminal proceeds or ‘cleansing’ proceeds of crime.²³ To support this point, they provide the example of the US authorities alleging that money diverted from the 1 Malaysia Development Berhad fund was used to purchase items of art, including a \$3.2 million Picasso and a \$9.2 million Basquiat.²⁴ This process of purchasing commodities such as artwork, antiques, gems, gold, diamonds, and jewels to disguise illicit funds is recognised as centuries-old, based upon the historic movement of the population seeking to protect individual wealth and avoid taxes and conceal criminally acquired funds.²⁵

Fabian indicates various methods of concealing and disguising criminal property within the jewellery sector.²⁶ He states that money laundering may involve incorporating a limited company with the stated aim of jewellery trading.²⁷ This business may then engage in transactions with fictitious customers and subsequently declare the margins as legitimate income.²⁸ Individuals with an insufficient amount of incriminated assets can commit money laundering by establishing a jewellery store through which they purchase jewellery in cash.²⁹ The purchase of jewellery can be hidden in a secret location such as

²⁰ Proceeds of Crime Act 2002 s 327, Frederick Cram, ‘Understanding the Proceeds of Crime Act 2002: Cash Seizure and Frontline Policing’ (2012) 52 *The Howard Journal of Criminal Justice* 156.

²¹ *Ibid.*

²² *Ibid.*

²³ Saskia Hufnagel, Colin King, ‘Anti Money Laundering Regulation and the Art Market’ (2020) 40 *Legal Studies* 134.

²⁴ *Ibid.*

²⁵ Nicholas Gilmour, ‘Understanding Money Laundering – A Crime Script Approach’ (2014) 2 *European Review of Organised Crime* 109.

²⁶ Fabian Teichmann, ‘Money Laundering in the Jewellery Business’ (2020) 23 *Journal of Money Laundering Control* 694.

²⁷ *Ibid.*

²⁸ *Ibid.*

²⁹ *Ibid.*

a rented deposit box which is unlikely to be detected.³⁰ Alternatively, money laundering may involve a person claiming they have inherited jewellery as a plausible explanation for having large amounts in criminally acquired assets.³¹ These examples indicate the various ways luxury items can be manipulated by criminals to conceal their origins.³²

In addition to concealing and disguising, POCA stipulates that individuals will be committing a money laundering offence if they enter into or become concerned in an arrangement which they know or suspect facilitates (by whatever means) the acquisition, retention, use or control of criminal property by or on behalf of another person.³³ For example, if a dealer knowingly processes a customer's sale to purchase a luxury item with criminally derived funds.³⁴ King and Hufnagel explain this by providing an example of an art dealer who knows that a customer runs a lorry driving business has turned a blind eye to his drivers and ignores so-called drivers' hours, and spends the money earned to purchase a painting.³⁵ In such a situation the dealer must report the issue to the authorities as the money in question represents criminal property.³⁶

The offence of money laundering also includes a person acquiring, using, or having possession of criminal property.³⁷ For example, if a dealer carries, holds or looks after the criminal property, or acquires criminal property for 'inadequate consideration'.³⁸ This would include a situation where a dealer purchases or exchanges something significantly below market value, such as purchasing a necklace for £50 when the dealer is aware that it is worth £5000 as this is deemed as 'inadequate consideration'.³⁹ Or if a customer requests a dealer to place money into their company account and then transfers the money to a bank account in another jurisdiction.⁴⁰ Such a situation would also capture

³⁰ Ibid.

³¹ Ibid.

³² Ibid.

³³ Proceeds of Crime Act 2002 s 328.

³⁴ See C1.

³⁵ Saskia Hufnagel, Colin King, 'Anti Money Laundering Regulation and the Art Market' (2020) 40 *Legal Studies* 143.

³⁶ Ibid.

³⁷ Proceeds of Crime Act 2002 s 329.

³⁸ Frederick Cram, 'Understanding the Proceeds of Crime Act 2002: Cash Seizure and Frontline Policing' (2012) 2 *The Howard Journal of Criminal Justice* 134.

³⁹ See A2.

⁴⁰ Ibid.

the offence of ‘transferring’⁴¹ and involvement in a money laundering arrangement within POCA.⁴²

It is interesting to note that when dealers were asked about how they would define money laundering they mentioned terms captured within POCA, including criminal property,⁴³ concealing⁴⁴ and converting.⁴⁵ Accordingly, some dealers understood money laundering as ‘the process through which criminals can conceal their illegal funds’. Others explained money laundering by referring to terms which are not captured within POCA, including ‘something illegal’,⁴⁶ ‘hiding money’,⁴⁷ ‘drug-related’⁴⁸ and ‘the involvement of gangs’.⁴⁹ Dealers also indicated difficulties in providing a definition by stating, ‘I would struggle to define it as it sounds like a technical term’,⁵⁰ ‘I do not have a lot of legal knowledge and it sounds quite subjective to me’,⁵¹ ‘it’s hard to define as the way I understand money laundering operations is that they are never the same as criminals are looking for ways to remain undetected, so they vary a lot’.⁵² Thus, although a statutory definition exists, dealers’ perceptions and understandings of money laundering differ significantly, resulting in a variety of definitions.⁵³

In addition to the statutory definition, money laundering is also considered within academic discourse.⁵⁴ Literature acknowledges money laundering operations as a three-stage process involving placement, layering, and integration.⁵⁵ The placement stage involves the money launderer introducing the proceeds of crime into the financial sector

⁴¹ Proceeds of Crime Act 2002 s 327

⁴² Ibid s 328, Saskia Hufnagel, Colin King, ‘Anti Money Laundering Regulation and the Art Market’ (2020) 40 *Legal Studies* 142.

⁴³ See J1, C1, A1, A2.

⁴⁴ See W1, J2.

⁴⁵ See C1, C2.

⁴⁶ See A1, A2, C2, W1, Y2.

⁴⁷ Ibid.

⁴⁸ See J1, Y2.

⁴⁹ See C2, J2.

⁵⁰ See J1.

⁵¹ See C2.

⁵² See A1.

⁵³ See A1, A2, C1, C2, W1, W2, J1, J2, Y1, Y2.

⁵⁴ Brigitte Unger, Daan van der Linde, *Research Handbook on Money Laundering* (Edward Elgar 2013) 67.

⁵⁵ Ibid, Anu Arora, *Banking Law* (Person 2014), Dennis Cox, *Handbook of Anti – Money Laundering* (Wiley 2014).

or retail economy making the money easier to move around.⁵⁶ In the layering stage, the launderer enters into several transactions to distance the illegal money from the original supply.⁵⁷ The integration stage involves the illegal money entering the economy as clean money, without the illicit origin being detected.⁵⁸ Luxury goods can be manipulated to be utilised by criminals within all three stages to provide a sheen of legitimacy to conceal the origins of criminal activity.⁵⁹

However, not all money laundering transactions comprise of three distinct stages, and some may include more.⁶⁰ Koningsveld advocates that the classic idea of money laundering as a three-stage process is not only incorrect and incomplete but also antiquated, particularly criticising the third stage which she advocates should be subdivided into two separate parts labelled ‘justification’ and ‘investment’ to avoid serious mistakes in legislation and investigation.⁶¹ Subsequently, by focusing on money laundering in relation to the three specific stages the literature fails to emphasise how money launderers proceed.⁶²

Gilmour contests the three-stage analysis by explaining money laundering operations involving high-value portable commodities (HVPCs) include a five-stage process.⁶³ The first stage consists of the identification of a suitable business through which an individual can purchase the HVPCs.⁶⁴ Stage two involves ‘placement’ through which the commodity or commodities are purchased using criminal funds.⁶⁵ This stage is explained as being as simple as purchasing a diamond engagement ring or a Rolex watch

⁵⁶ Jan Van Koningsveld, ‘Money Laundering – You don’t see it, until you understand it: rethinking the stages of money laundering process to make enforcement more effective (2013) 2 Research Handbook on Money Laundering 438.

⁵⁷ Bonnie Buchanan, ‘Money Laundering - a Global Obstacle’ (2004) 18 Research in International Business and Finance 117.

⁵⁸ Anu Arora, *Banking Law* (Person 2014) 459.

⁵⁹ Nicholas Gilmour, ‘Blindly Obvious and Frequently Exploitable’ (2017) 20 Journal of Money Laundering Control 114.

⁶⁰ Ibid.

⁶¹ Jan Van Koningsveld, ‘Money Laundering – You don’t see it, until you understand it: rethinking the stages of money laundering process to make enforcement more effective (2013) 2 Research Handbook on Money Laundering 438.

⁶² Fabian Teichmann, ‘Money Laundering in the Jewellery Business’ (2020) 23 Journal of Money Laundering Control 692.

⁶³ Nicholas Gilmour, ‘Understanding Money Laundering – A Crime Script Approach’ (2014) 2 European Review of Organised Crime 41.

⁶⁴ Ibid.

⁶⁵ Ibid.

as a special gift using cash to avoid suspicion of the recipient.⁶⁶ The third stage includes further preparatory work that assists in a more effective process, particularly in situations involving large items which are shipped overseas (this stage is not compulsory and not necessary in every circumstance).⁶⁷ The fourth stage involves ‘layering’ through which the commodity is sold legitimately, for example through a business transaction which generates a receipt or the commodity is sold secretly and thus there are no records but still facilitates a legitimate financial transaction capable of impeding suspicion.⁶⁸ The final stage represents ‘integration’ through which money which can be legitimately accounted for is used to make purchases.⁶⁹

Whilst these explanations are useful in understanding how criminals launder proceeds, restricting money-laundering operations to a specific number of stages runs the risk of failing to recognise operations which qualify as money laundering under POCA.⁷⁰ Indeed the stages taken by individuals in concealing criminal gains differ significantly from one money-laundering operation to another.⁷¹ Subsequently, the research project does not advocate that money laundering operations require a specific number of stages.⁷² Instead, the thesis adopts the statutory definition of money laundering within POCA as, ‘the process by which the proceeds of crime are converted into assets which appear to have a legitimate origin so that they can be retained permanently or recycled into further criminal enterprises’.⁷³ This definition is considered the most appropriate for the purposes of this study due to its universal acceptance and it being the standard by which money laundering is assessed within UK goods sectors.⁷⁴

1.2.2 Luxury Goods

⁶⁶ Ibid.

⁶⁷ Ibid.

⁶⁸ Ibid.

⁶⁹ Ibid 43.

⁷⁰ Jan Van Koningsveld, ‘Money Laundering – You don’t see it, until you understand it: rethinking the stages of money laundering process to make enforcement more effective (2013) 2 Research Handbook on Money Laundering 438.

⁷¹ Ibid.

⁷² Ibid.

⁷³ Proceeds of Crime Act 2002

⁷⁴ Jeanne Price, ‘Wagging, Not Barking: Statutory Definitions’ (2013) 2 Scholarly Works 764.

There is an absence of statutory and judicial definition of the term ‘luxury’.⁷⁵ When courts are faced with cases involving luxury items (such as in the context of intellectual property), they have taken the view they will know a luxury brand when they see one and this alters on a case-by-case basis.⁷⁶ The courts have therefore failed to provide any guidance or information regarding what falls within the definition of ‘luxury goods’.⁷⁷ The absence of a legal definition may be allocated to the difficulty in defining the term.⁷⁸ Luxury items are considered subjective and multi-dimensional.⁷⁹ Phau and Prendergast explain this point by stating what is a luxury to one may just be ordinary to another.⁸⁰ Additionally, social factors are considered to influence how an individual perceives luxury.⁸¹ For example, an individual’s quality of life influences how the person views luxury and the items they would place within this category.⁸² Moreover, what constitutes a luxury brand or sector is considered to be rapidly changing;⁸³ items that were considered as luxuries in the 20th century may not be acknowledged in the same way in the 21st century.⁸⁴

This multifaceted and constantly developing nature of luxury items makes it difficult to formulate a definition.⁸⁵ Dealers interviewed for this project also highlighted this point, ‘It’s hard to define such a broad concept as I think it’s quite subjective, sorry!’⁸⁶ and ‘That’s a tricky one... It’s a hard one to define... some people would say all of our

⁷⁵ Ko Eunju, John Costello, Chartles Taylor, ‘What is a luxury brand? A new definition and review of literature’ (2019) 4 *Journal of Research* 405.

⁷⁶ *L’Oréal v Bellure [2007]* EWCA Civ 968.

⁷⁷ *Ibid.*

⁷⁸ Paurav Shukla, Michael Chattalas, ‘Impact of value perceptions on luxury purchase intentions: a developed market comparison’ (2015) 5 *Luxury Research Journal* 43.

⁷⁹ *Ibid.*

⁸⁰ Phau Prendergast, ‘Conceptualizing the Country of Origin of Brand’ (2000) 6 *Journal of Marketing Communications* 3.

⁸¹ *Ibid.*

⁸² Rumina Akther, ‘Redefining the Meaning of Luxury Goods: A Conceptual Paper’ (2015) 2 *Journal of Student Research and Enterprise* 2.

⁸³ Baker McKenzie, *IP and the Luxury Goods Sector* (Lexis PSL).

⁸⁴ Alessandro Brun and Cecilia Castelli, ‘The Nature of Luxury: a consumer perspective’ (2013) 2 *International Journal of Retail Management and Distribution Management* 143; Silverstein and Fiske, *Trading Up: The New American Luxury* (Penguin 2003) 56; Altgamma, ‘Fashion and Luxury Insight’ https://image-src.bcg.com/Images/True-Luxury-Global-Consumer-Insight-2020-PR_tcm9-252200.pdf accessed 23rd May 2021; Dubois and Paternault ‘Understanding the World of International Luxury Brands: the Dream Formula’ (2004) 6 *Journal of Advertising Research* 87.

⁸⁵ Alessandro Brun and Cecilia Castelli, ‘The Nature of Luxury: a consumer perspective’ (2013) 11 *International Journal of Retail Management and Distribution Management* 828.

⁸⁶ See Y1.

watches are luxuries but others may only consider some of them to be a luxury good.....I guess it depends on how you view the world. It's quite hard to pin down'.⁸⁷ Whilst these factors make it challenging to formulate a definition, they may be also considered as important aspects of identifying luxury items.⁸⁸ For example, the subjectivity of what is perceived as a luxury item may be acknowledged as an important aspect, as without this degree of subjectivity some items which are perceived as luxuries may fall outside of the remit of luxury.⁸⁹ Thus, the fact that luxury is an abstract concept may itself make an item a luxury, 'perhaps the absence of a solid conception is what makes an item a luxury'.⁹⁰

A better approach to understanding luxury involves considering several factors which are recognised as attributes of a luxury item.⁹¹ The price point of an item is considered a useful factor when determining whether or not it is a luxury.⁹² Items economically recognised to have the highest price/quality relationship are considered to be a luxury.⁹³ Kwang explains this by stating that luxury goods are defined by their relative price and they are valued due to the fact they are costly.⁹⁴ Economic theories consider the influence of pricing strategies on the exclusivity of luxury goods and strongly associate luxury with 'high' and 'exclusive' pricing.⁹⁵ This understanding of luxury considers items with the highest price ratios in the market and a price that is significantly greater than that of products with similar tangible features.⁹⁶ It is interesting to note that dealers also shared these views and stated they associated luxury items as having a 'high price point' and being 'expensive items'.⁹⁷

Price is recognised to have a positive role in relation to product quality and provides status-conscious consumers an indication of prestige.⁹⁸ Kapferer and Bastien

⁸⁷ See W1.

⁸⁸ Ibid.

⁸⁹ Ibid.

⁹⁰ See J2.

⁹¹ Alessandro Brun and Cecilia Castelli, 'The Nature of Luxury: a consumer perspective' (2013) 11 *International Journal of Retail Management and Distribution Management* 828.

⁹² Ibid.

⁹³ So Lau Man, 'Motivations of Luxury Brand Consumption' (2012) *Chinese University of Hong Kong* 56.

⁹⁴ NG Yew-Kwang, 'Diamonds are a government's best friend: burden-free taxes on goods valued for their values' (1987) 4 *The American Economic Review* 77.

⁹⁵ Ibid.

⁹⁶ McKinsey Corporation, *The Luxury Industry: An Asset for France* (1990).

⁹⁷ See A1, A2. C1. C2. W1, W2, J1, J2, Y1, Y2.

⁹⁸ Fabris, Giampaolo, *Il nuovo consumatore: verso il postmoderno* (Milano: Franco Angeli Editore, 2003).

mention that luxury sets the price but price does not set luxury.⁹⁹ Although a higher price has been considered as making luxury goods seem more desirable, this alone is not sufficient, they must offer benefits to justify the cost.¹⁰⁰ Additionally, Prendergast explains that luxury cannot be defined solely in relation to a higher price.¹⁰¹ Moreover, Dubois and Czellar also note that just because an item is deemed as expensive does not result in it being always considered a luxury.¹⁰² It is impossible to define luxury by a specific price point since items of luxury range in price.¹⁰³ Brands that have been traditionally considered a luxury due to their exclusivity or price are now becoming mainstream.¹⁰⁴ Nonetheless, a high point is an aspect that is recognised as a factor in distinguishing luxury items from their counterparts.¹⁰⁵

The emotional value of an item is also mentioned as a factor which makes it a luxury.¹⁰⁶ This understanding of luxury stretches beyond the price tag attached to an item to the emotional value that it conveys.¹⁰⁷ The positive personal feelings that one acquires when purchasing an item are acknowledged as a key factor in deterring the item as a luxury.¹⁰⁸ Considering the emotional values attached to an item in addition to their functional utility relates to hedonism.¹⁰⁹ A hedonistic consumer is emotionally satisfied by the pleasures, senses, and arousing feelings derived from items making them a luxury.¹¹⁰ This emotional value may be based upon the item being passed down generations or the memory associated with the item.¹¹¹ Dealers also supported this point

⁹⁹ Jean Kapferer, Vincent Bastien, 'The specificity of luxury management: Turning marketing upside down' (2009) 6 *Journal of Brand Management*, 2009 16.

¹⁰⁰ Jose Nueno, John Quelch, 'The Mass Marketing of Luxury' (1998) 6 *Business Horizons* 41.

¹⁰¹ Gerard Prendergast, Claire Wong, 'An exploratory study of the purchase of luxury brands on infant apparel' (2003) 7 *Journal of Consumer Marketing* 157.

¹⁰² Bernard Dubois, Sandor Czellar 2002, *Prestige Brands or Luxury Brands? An Exploratory Inquiry on Consumer Perceptions*.

¹⁰³ Ibid.

¹⁰⁴ Ibid.

¹⁰⁵ Alessandro Brun and Cecilia Castelli, 'The Nature of Luxury: a consumer perspective' (2013) 11 *International Journal of Retail Management and Distribution Management* 828.

¹⁰⁶ See A1, A2, C1, W2, Y1, Y2.

¹⁰⁷ Ibid.

¹⁰⁸ Alessandro Brun, Cecilia Castelli, 'The Nature of Luxury: A Consumer Perspective' (2013) 2 *International Journal of Retail Management and Distribution Management* 67.

¹⁰⁹ Weidnabb Hennigs Siebels, *Luxury Marketing* (Springer 2013).

¹¹⁰ Robert Westbrook, Richard Oliver, 'The Dimensionality of Consumption Emotion Patterns and Consumer Satisfaction' (1991) 1 *Journal of Consumer Research*, 1991 81.

¹¹¹ Chris Hall, 'My Father's Watch: Tales of Timepieces Passed Down Through Generations' <<https://www.mrporter.com/en-us/journal/watches/fathers-watch-generation-family-heirloom-1277430>> accessed 14th May 2021.

by stating, ‘for me my grandmas wedding ring is a luxury item as it holds emotional value that no other item does’,¹¹² and ‘my wedding band is a luxury item as it reminds me of special memories and reflects positive feelings among me and my partner’.¹¹³ This understanding of luxury conflicts with the above theories which allocate a high price point to luxury items and demonstrate that luxury stems beyond monetary value to include the value attached to an item such as emotions and feelings.¹¹⁴

A further factor when distinguishing an item as a luxury may be allocated to considering whether it is a necessity.¹¹⁵ In this regard, luxury goods are recognised as products and services not necessary for basic needs, for which demand increases more proportionally than an increase in revenue.¹¹⁶ Dealers also shared this view by stating that a luxury item was something that is not necessary for day-to-day basic needs and instead holds value as it appeals beyond these needs.¹¹⁷ In support of this, Berry explains that necessities are considered utilitarian objects that relieve an unpleasant state of discomfort, whereas luxuries are categorised as objects of desire which provide pleasure.¹¹⁸ Thus, luxury goods are considered non-essential items providing indulgence beyond the necessary minimum.¹¹⁹

The rarity of an item is also regarded as a factor in considering whether it is a luxury.¹²⁰ All 10 dealers indicated they understand a luxury item to be rare and therefore not part of the mass market.¹²¹ In this sense, the perceived exclusivity and rareness of an item positively correlates to the customers’ desire or preference for it by making it unique.¹²² This relates to historical understandings of luxury that highlight luxury as

¹¹² See J2.

¹¹³ See W2.

¹¹⁴ Ibid, Robert Westbrook, Richard Oliver, ‘The Dimensionality of Consumption Emotion Patterns and Consumer Satisfaction’ (1991) 1 *Journal of Consumer Research*, 1991 81.

¹¹⁵ Ibid.

¹¹⁶ KPMG, ‘Luxury Goods’ <<http://www.blog.kpmgafrika.com/luxury-goods-and-wealth-management-in-africa/>> accessed 20th December 2017.

¹¹⁷ See A1, Y1, J2.

¹¹⁸ Christopher Berry, *The Idea of Luxury* (Cambridge University Press 2011) 30.

¹¹⁹ Klaus Wiedmann, Nadine Hennigs, Astrid Siebels, ‘Measuring Consumers’ Luxury Value Perception: A Cross-Cultural Framework’ (2007) 7 *Academy of Marketing Science Review*, 2007 23.

¹²⁰ Aron Cass, Emily Frost, ‘Status Brands: Examining the Effects of Non-Product-Related Brand Associations on status and Conspicuous Consumption’ (2002) 11 *Journal of Product and Brand Management* 67.

¹²¹ See A1 A2, C1, C2, J1, J2, W1, W2, Y1, Y2.

¹²² Klaus Wiedmann, Nadine Hennigs, Astrid Siebels, ‘Measuring Consumers’ Luxury Value Perception: A Cross-Cultural Framework’ (2007) 7 *Academy of Marketing Science Review*, 2007 23.

emerging due to the consequence of elite consumption, resulting in the unique value meeting the consumption needs through the acquisition of material goods reserved for a limited group of individuals.¹²³ In such a reading of luxury, the more unique a brand is perceived to be and the more expensive it is compared to ‘normal’ standards, the more value is created for the item, making it a luxury.¹²⁴ The exclusivity and rarity of an item are further acknowledged as a feature of prestige and a driving factor in the market phenomenon of luxury branding.¹²⁵

Moreover, luxury items are recognised as portraying a positive status/image upon the purchaser.¹²⁶ The consumption of status or luxury items has been recognised to involve the purchase of a higher-priced product to enhance the individual’s ego.¹²⁷ Luxury items can be used to display wealth and as a vehicle for self-expression.¹²⁸ The motivation for acquiring a luxury item such as self-indulgence and status-seeking may vary depending on an individual’s personal preferences.¹²⁹ Guyon explains luxury items as creating a ‘look what I can afford’ status symbol through which success is based on the perceived envy of customers who cannot afford the item.¹³⁰ In this regard, three out of the ten dealers interviewed agreed they associate luxury with an image of high social class and standing out from the rest.¹³¹

The analysis above has demonstrated that luxury is particularly difficult to define due to the fluidity of the term.¹³² Most academics agree that luxury perception takes on different forms depending on the context and the individual concerned.¹³³ The perception

¹²³ Franck Vigeneron, Lester Johnson, ‘A Review and a Conceptual Framework of Prestige -Seeking Consumer Behaviour’ (1999) 9 *Academy of Marketing Science Review* 484.

¹²⁴ Tim Verhallen, Henry Robben, ‘Scarcity and Preference: An Experiment on Unavailability and Product Evaluation’ (1994) 2 *Journal of Economic Psychology* 331.

¹²⁵ Aron Cass, Emily Frost, ‘Status Brands: Examining the Effects of Non-Product-Related Brand Associations on status and Conspicuous Consumption’ (2002) 11 *Journal of Product and Brand Management* 67.

¹²⁶ Jacqueline Eastman, ‘Status Consumption in Consumer Behaviour: Scale Development and Validation’ (1999) 3 *Journal of Marketing Theory and Practice* 41.

¹²⁷ Ibid.

¹²⁸ Ibid.

¹²⁹ Alessandro Brun, Cecilia Castelli, ‘The Nature of Luxury: A Consumer Perspective’ (2013) 3 *International Journal of Retail Management and Distribution Management* 826.

¹³⁰ Ibid.

¹³¹ See C1, C2, J2.

¹³² Cornell A, ‘Cult of Luxury: The New Opiate of the Masses’ (*Australian Financial Review*, 2002) 47, Jose Nueno, John Quelch, ‘The Mass Marketing of Luxury’ (1998) 6 *Business Horizons* 41.

¹³³ Ibid, Andrew Cornell, ‘Cult of Luxury: The New Opiate of the Masses’ (2002) *Australian Financial Review* 47, Christopher Berry, *The Idea of Luxury* (Cambridge University Press 2011) 30.

of what is a luxury item, as well as the amount of luxury contained in a brand is therefore dependent on the context and the individuals concerned.¹³⁴ This project advocates for a broad definition of luxury items as including the characteristics considered, namely high price, rarity, conferring a high status, non-essential item, and emotional significance. This thesis does not restrict all these characteristics as being necessary for an item to be considered a luxury, nor does it prescribe certain characteristics as holding more significance than others. The specific luxury subsectors considered within this project include the yacht, watch, jewelry and precious stones, cars, and art. This selection is based upon the fact that these luxury items have been recognised as being utilised by individuals to conceal the origins of criminally acquired funds/assets and therefore pose a high money laundering risk.¹³⁵

1.2.3 Luxury Goods Dealers

This research project considers dealers within specific luxury sub-sectors.¹³⁶ The MLRs capture these individuals within their definitions of High Value Dealers and Art Market Participants.¹³⁷ A HVD is defined as any business or sole trader that accepts or makes high-value cash payments of €10,000 (£8393.35) or more (or equivalent in any currency) in exchange for goods.¹³⁸ Cash means notes, coins, or traveller's cheques.¹³⁹ This includes when a customer deposits cash directly into your bank account, or when they pay cash to a third party for your benefit.¹⁴⁰ HMRC considers a high-value payment to be a single cash payment of €10,000 or more for goods; several cash payments for a single transaction totalling €10,000 or more, including a series of payments and payments on account; cash payments totalling €10,000 or more which appear to have been broken

¹³⁴ Ibid.

¹³⁵ For explanation of how these operations take place See s 2.3.

¹³⁶ Dealers in the yacht, watch, jewellery and precious stones, cars, art and antiques sectors.

¹³⁷ Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017; The Money Laundering and Terrorist Financing (Amendment) (EU Exit) Regulations 2020.

¹³⁸ Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017, Regulation 14 (1) a.

¹³⁹ Ibid.

¹⁴⁰ Ibid.

down into smaller amounts so that they come below the high-value payment limit.¹⁴¹ Although the regulations do not list luxury subsectors, HMRC provides an insight into the various subsectors which fall within the scope of HVD.¹⁴² These include alcohol, antiques, art and music, auction, boats and yachts, caravans, cars, cash and carry/wholesale electronics, food, gold, household goods and furniture jewellery, mobile phones, plant, machinery and equipment recycling, textiles and clothing, vehicles other than cars.¹⁴³ This list further clarifies that the dealers selected for the study fall within the scope of the MLRs.¹⁴⁴

The MLRs define AMPs as ‘a firm or sole practitioner (such as a dealer, advisor or auction house) who by way of business trades in, or acts as an intermediary in, the sale or purchase of works of art, and the value of the transaction, or a series of linked transactions, amounts to €10,000 or more; or is the operator of a freeport and stores works of art in that freeport where the value for a person (or a series of linked persons) is €10,000 or more’.¹⁴⁵ The Value Added Tax Act defines a ‘work of art’ as including paintings, engravings, sculptures, tapestry, ceramics, enamel on copper, and photographs.¹⁴⁶ Subsequently, when the thesis refers to luxury goods dealers it includes individuals which fall within both of these statutory definitions.

1.3 Money Laundering Vulnerabilities in Luxury Goods

Several unique characteristics of luxury goods make them vulnerable to money laundering operations and heighten the risk of these crimes.¹⁴⁷ These characteristics make the sector attractive to criminals and vulnerable to being targeted by criminals.¹⁴⁸ Whilst these have been identified within academic discourse, the literature fails to consider these

¹⁴¹ HMRC, ‘Anti-Money Laundering Supervision: Guidance for High Value Dealers’ (2020).

¹⁴² *Ibid.*

¹⁴³ *Ibid.*

¹⁴⁴ *Ibid.*

¹⁴⁵ Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017.

¹⁴⁶ Value Added Tax Act 1994 s 21 (6).

¹⁴⁷ Transparency International, ‘Tainted Treasures: Money Laundering Risks in Luxury Markets’ (2017) 3.

¹⁴⁸ *Ibid.*

vulnerabilities in detail and critically examine how luxury items lend themselves to being utilised in money laundering operations.¹⁴⁹ The ease of money laundering through luxury items makes luxury goods sectors vulnerable to such practices.¹⁵⁰ Luxury items can be easily purchased and sold both legitimately and on the black market.¹⁵¹ Additionally, luxury items are capable of holding significant value, which money launderers require to conceal large sums of money.¹⁵² Furthermore, luxury goods can also be easily transported beyond borders without detection.¹⁵³ This quick and relatively easy method of laundering criminal proceeds appeals to criminals seeking avenues to conceal their illicit gains.¹⁵⁴

Luxury goods dealers are often largely cash-intensive businesses and have a significant turnover, which is attractive for criminals.¹⁵⁵ In Europe, most SARs are filed in relation to cash use and cash smuggling.¹⁵⁶ Cash facilitates the laundering of illicit funds due to its anonymity and the absence of a paper trail.¹⁵⁷ Thus, it is a bearer negotiable instrument which fails to provide any details on the origin of the proceeds or the beneficiary of the exchange.¹⁵⁸ Purchases in cash provide a façade of legitimacy, allowing criminals to transfer large sums of money without being detected.¹⁵⁹ Intelligence indicates that criminals specifically target cash-rich businesses such as jewellery and luxury car dealerships to provide a legitimate cover for large sums of criminal proceeds.¹⁶⁰

The process of purchasing luxury items in cash allows criminals to clean large sums of money by moving them into mainstream financial institutions, removing any footprint of the transaction at the point of sale, and the ability to determine the source of

¹⁴⁹ Ibid.

¹⁵⁰ Ibid.

¹⁵¹ Ibid.

¹⁵² Ibid.

¹⁵³ Ibid.

¹⁵⁴ Ibid 112.

¹⁵⁵ Nicholas Gilmour, Nick Ridley, 'Everyday Vulnerabilities. Money Laundering Through Cash Intensive Businesses (2015) 2 Journal of Money Laundering Control 239.

¹⁵⁶ Michele Riccardi and Michael Levi, 'Cash, Crime and Anti-Money Laundering' in Colin King, Clive Walker, Jimmy Gurule, *The Palgrave Handbook of Criminal and Terrorist Financing Law* (Palgrave Macmillan 2018).

¹⁵⁷ Ibid.

¹⁵⁸ Ibid.

¹⁵⁹ Nicholas Gilmour, 'Blindly obvious and frequently exploitable' (2017) 20 Journal of Money Laundering Control 105.

¹⁶⁰ HM Treasury, UK National Risk Assessment of Money Laundering and Terrorist Financing (2015) 58.

wealth at purchase.¹⁶¹ Criminal and terrorist organisations across the globe regularly exploit trade systems with a significant turnover to move value across the globe through complex schemes associated with legitimate trade transactions, such as the purchase of cars.¹⁶² A report conducted in British Columbia highlighted the attractiveness of the motor vehicle industry to criminals due to the increasing willingness of dealerships to accept large sums of cash.¹⁶³ Dealers stated, ‘large cash sales occur on a monthly basis’¹⁶⁴ and admitted that by accepting such payments they are ‘right in the thick of money laundering’.¹⁶⁵ Cash-intensive businesses are also vulnerable to money laundering operations.¹⁶⁶ High-value items such as cars, boats, and jewels are recognised as a common consumption pattern for organised crime groups. Several jurisdictions allow individuals to purchase a car entirely in cash.¹⁶⁷ In Germany for example, 67% of car transactions are processed in cash.¹⁶⁸ Car shops are also noted as applying a discount in the case of cash payments such as the Barzahleer Rabatt cash payer’s discount.¹⁶⁹

The emphasis on anonymity and/or lack of transparency involved in luxury sales (in contrast to banks and other financial service providers) also makes luxury items susceptible to money laundering.¹⁷⁰ The courts have suggested that ‘there is a dark side to the confidentiality surrounding the identity of an auctioneer’s principal’.¹⁷¹ Luxury

¹⁶¹ Ibid.

¹⁶² Ibid.

¹⁶³ Government of British Columbia, ‘Report: Money Laundering’ (Canada 12th July 2015) <https://news.gov.bc.ca/files/German_Report_luxury_cars.pdf> accessed 20th January 2022.

¹⁶⁴ See C1, J2, Y2.

¹⁶⁵ See A1.

¹⁶⁶ Nicholas Gilmour, Nick Ridley, ‘Everyday Vulnerabilities. Money Laundering Through Cash Intensive Businesses (2015) 2 Journal of Money Laundering Control 239.

¹⁶⁷ Michele Riccardi and Michael Levi, ‘Cash, Crime and Anti-Money Laundering’ in Colin King, Clive Walker, Jimmy Gurule, *The Palgrave Handbook of Criminal and Terrorist Financing Law* (Palgrave Macmillan, 2018)

¹⁶⁸ Bundesverband Freier Kfz Handler, ‘Position Paper to the German Ministry of Finance’ (2016)

¹⁶⁹ Ibid.

¹⁷⁰ Elaine Bunting, ‘Murky Millions in Super Yachts’ <<https://www.yachtingworld.com/elaine-bunting/murky-millions-in-superyachts-6440>> accessed 5th March 2021; Saskia Hufnagel, Colin King, ‘Anti-Money Laundering Regulation and the Art Market’ (2020) 40 Legal Studies 140; Fabian Teichmann, ‘Money Laundering in the Jewellery Business’ (2020) Journal of Money Laundering Control 23 (3) 692

¹⁷¹ *Rachmaninoff v Sotheby’s and Teranyi* [2005] EWHC 258 (QB) para 35.

goods providers such as yacht companies,¹⁷² art¹⁷³ retailers, and jewellery businesses have been identified to thoroughly protect the anonymity of clients.¹⁷⁴ These concepts date back to the eighteenth century when items would be sold without any reference to the name of the individual selling the items and ownership was instead referred to by means of ‘property of gentleman/lady’.¹⁷⁵

Client anonymity and confidentiality remain essential aspects of luxury goods sales, providing an advantage for criminals seeking to distance themselves from criminally acquired funds.¹⁷⁶ From a super-yacht context, listings often mention secrecy, discretion, and confidentiality.¹⁷⁷ For example, in explaining the 180m long yacht named Azzam an industry publication states, ‘not much is known about this behemoth of a yacht other than the specs.....it remains a secret for all’.¹⁷⁸ Consequently, the lack of transparency surrounding the price of the yacht serves as an advantage for criminals by assisting them in concealing how much they have to pay.¹⁷⁹

The art market has also attracted a lot of criticism due to maintaining the transparency of clients.¹⁸⁰ Art purchasers are able to remain anonymous and able to use offshore shell companies to conceal ownership and sources of funds.¹⁸¹ Additionally, auction artwork sellers are often not required to disclose their identity to the purchaser, with some situations where the auction house is not aware of the name or the original owner or the purchaser.¹⁸² This anonymity makes it difficult to trace sales transactions,

¹⁷² Elaine Bunting, ‘Murky Millions in Super Yachts’ *Yachting World* (1 March 2011) <<https://www.yachtingworld.com/elaine-bunting/murky-millions-in-superyachts-6440>> accessed 5th March 2021.

¹⁷³ Saskia Hufnagel, Colin King, ‘Anti-Money Laundering Regulation and the Art Market’ (2020) 40 *Legal Studies* 140.

¹⁷⁴ Fabian Teichmann, ‘Money Laundering in the Jewellery Business’ (2020) 23 *Journal of Money Laundering Control* 692.

¹⁷⁵ Noah Charney, *The Art of Forgery* (Phaidon Press 2015) 67.

¹⁷⁶ *Ibid.*

¹⁷⁷ Transparency International, ‘Tainted Treasures: Money Laundering Risks in Luxury Markets’ (2017) 13.

¹⁷⁸ Boat International, ‘Top 25 Largest Yachts in the World’ <<https://www.boatinternational.com/yachts/the-register/largest-yachts-in-the-world>> accessed 21st January 2022.

¹⁷⁹ *Ibid.*

¹⁸⁰ Government of British Columbia, ‘Report: Money Laundering’ (Canada 12th July 2015) <https://news.gov.bc.ca/files/German_Report_luxury_cars.pdf> accessed 20th January 2022.

¹⁸¹ *Ibid.*

¹⁸² *Ibid.*

art ownership, and determinations regarding authenticity.¹⁸³ The concealment of buyer and sellers' identity makes art an attractive instrument to conceal assets as the transactions are often private, prices are speculative and an item can be easily smuggled to evade authorities.¹⁸⁴ Money launderers rely on anonymity and deception to cover their tracks, disguise the origin of their funds and conceal the real purpose behind their business transactions.¹⁸⁵ In a report conducted by Deloitte, 77 percent of wealth managers and 75 percent of collectors mention the art market's lack of transparency as one of the industry's key challenges and as a major concern.¹⁸⁶ Subsequently, the art market has been cited as the "ideal playing ground for money laundering".¹⁸⁷

Moreover, the transportability of luxury goods makes them particularly vulnerable to being utilised for money laundering operations.¹⁸⁸ Precious metals and stones are categorised as having a 'high value to mass ratio' meaning that a million dollars' worth of diamonds can be carried across borders illegally with relative ease.¹⁸⁹ Gilmour states the practice of purchasing high-value portable commodities to launder criminally acquired funds is centuries old, based upon the historic movement of populations seeking to protect individual wealth and avoid taxes.¹⁹⁰ Once purchased, high-value goods such as gems, gold, diamonds, jewels, artwork and antiques can be easily transported overseas whilst establishing an aura of legitimacy.¹⁹¹ In support of these assertions, participants in this study made remarks including, 'I can go through customs and border controls without getting stopped for having a pocket full of diamonds, three Rolex watches, and an antique picture',¹⁹² and 'intelligent criminals will invest in low volume high value easily transportable stuff'.¹⁹³

¹⁸³ Ibid.

¹⁸⁴ Samuel Rubinfeld, 'Art World's Response to Money Laundering Concerns Draws Critics' *The Wall Street Journal* (America 22nd April 2020) < <https://www.wsj.com/articles/BL-252B-12248>> accessed 2nd March 2021.

¹⁸⁵ Ibid.

¹⁸⁶ Deloitte, 'Art and Finance Report' (2019).

¹⁸⁷ Ibid.

¹⁸⁸ Ibid.

¹⁸⁹ Transparency International, 'Tainted Treasures: Money Laundering Risks in Luxury Markets' (2017) 14.

¹⁹⁰ Nicholas Gilmour, 'Blindingly Obvious and Frequently Exploitable' (2017) 20 *Journal of Money Laundering Control* 105.

¹⁹¹ Ibid.

¹⁹² Ibid.

¹⁹³ Ibid 109

Fabian also acknowledges the transportability of luxury items as providing added benefits to money launderers.¹⁹⁴ Raw diamonds are generally smaller than gold, antiques, art, or jewellery and subsequently, transportation poses a comparatively lower risk to the launderer.¹⁹⁵ Importing assets poses a challenge for money laundering operations.¹⁹⁶ However, importing raw diamonds is less complicated than the transport of cash or bigger assets which are difficult to transport in large volumes.¹⁹⁷ Raw diamonds have added benefits since they may for example be sewed into an individual's clothing, making it difficult to detect, and easily transport significant wealth across borders.¹⁹⁸ Diamonds are usually 'carried in launderer's pocket'¹⁹⁹, and it is a 'common practice to transport diamonds in a small briefcase or pants pocket'.²⁰⁰ Thus, the fact that luxury items, such as raw diamonds hold significant value and can be easily moved around makes them useful in money laundering operations.²⁰¹

Furthermore, the increase in value of luxury goods makes them attractive for money laundering.²⁰² Not only can large amounts of money be moved through the purchase of luxury items such as art, but the item is also likely to increase in value and serve as a long-term investment.²⁰³ Additionally, the value of artworks can increase rapidly, resulting in the ability for criminals to gain profit through short-term money laundering operations.²⁰⁴ Art is ideal for such operations in comparison to other items which are used within the layering process and require a fast resell to maintain value, such as cars.²⁰⁵ Furthermore, art also has a historic value that is not observable to the same extent in most other commodities.²⁰⁶

¹⁹⁴ Fabian Teichmann, 'Money Laundering in the Jewellery Business' (2020) 23 *Journal of Money Laundering Control* 692.

¹⁹⁵ *Ibid.*

¹⁹⁶ *Ibid.*

¹⁹⁷ *Ibid.*

¹⁹⁸ *Ibid.*

¹⁹⁹ *Ibid.*

²⁰⁰ *Ibid.*

²⁰¹ Transparency International, 'Tainted Treasures: Money Laundering Risks in Luxury Markets' (2017) 3.

²⁰² Saskia Hufnagel, Colin King, 'Anti-Money Laundering Regulation and the Art Market' (2020) 40 *Legal Studies* 136.

²⁰³ HM Treasury, UK National Risk Assessment of Money Laundering and Terrorist Financing 2020.

²⁰⁴ Saskia Hufnagel, Colin King, 'Anti-Money Laundering Regulation and the Art Market' (2020) 40 *Legal Studies* 136.

²⁰⁵ *Ibid.*

²⁰⁶ *Ibid* 149

Gilmore adds to this point by stating that commodities such as gold are capable of holding significant monetary value which often increases over time and is likely to continue to do so.²⁰⁷ Shifts in the global economy have created an increased demand for stable value investments and commodities.²⁰⁸ Gold is a universally accepted currency which has remained stable despite fluctuations in global financial markets which makes it attractive to criminals.²⁰⁹ Abuse of the real estate sector to facilitate money laundering operations has also been acknowledged as being attractive for criminals due to the increased likelihood of real estate appreciating in value.²¹⁰

An additional vulnerability exists in the absence of standard pricing among luxury goods.²¹¹ Luxury items such as jewellery and art do not necessarily include standardised prices, allowing money launderers to purchase items without the ability to ascertain their price.²¹² The absence of fixed market prices provides criminals with the scope for discretion and manipulation, making it impossible to accurately assess how much an item has been sold/ purchased for.²¹³ It is not unusual for individuals to purchase artwork in cash, thus illicitly gained funds can be used to purchase precious art from discreet private collectors who do not publicly advertise their items or prices. Following the purchase, the money launderer can declare that they bought the painting for a lower price than paid and downplay the value of the item as there is no opportunity to check or verify the price.²¹⁴

Similarly, antiques are also advantageous due to their value being unclear and difficult to measure.²¹⁵ This allows money launderers to falsify their position as a private collector or as a professional antique dealer.²¹⁶ After having acquired the necessary

²⁰⁷ Nicholas Gilmore, 'Blindly Obvious and Frequently Exploitable' (2017) 20 *Journal of Money Laundering Control* 105.

²⁰⁸ FATE, 'Money Laundering and Terrorist Financing Risks and Vulnerabilities Associated with Gold' (2015).

²⁰⁹ Ibid.

²¹⁰ European Parliamentary Research Service, 'Understanding money laundering through real estate transactions' <https://www.europarl.europa.eu/cmsdata/161094/7%20-%2001%20EPRS_Understanding%20money%20laundering%20through%20real%20estate%20transactions.pdf> accessed 23rd June 2021.

²¹¹ Fabian Teichmann, 'Twelve Methods of Money Laundering' (2017) 2 *Journal of Money Laundering Control* 20.

²¹² Ibid.

²¹³ Ibid.

²¹⁴ Ibid.

²¹⁵ Ibid.

²¹⁶ Ibid.

knowledge, the individual can target items which are unknown within the general market and maintain a price point which is open to negotiation instead of a set price.²¹⁷ This makes it difficult to ascertain the price paid or examine the market value of the item.²¹⁸ Consequently, King and Hufnagel explain that art is particularly vulnerable to trade-based money laundering (TBML).²¹⁹ TBML involves ‘the exploitation of the international import and export system to disguise, convert and transfer criminal proceeds through the movement of goods as well as funds’.²²⁰ Within the art sector, paperwork can be altered with ease, such as the value of pieces of art and subsequently items can be moved across borders with a lower than actual valuation.²²¹ As an example, Basquiat’s Hannibal was declared as being worth US\$100, when in reality it was worth US\$8 million.²²² These opportunities of TBML are expected to increase post Brexit due to the increase of trade with non-EU countries.²²³

Moreover, the lack of AML rules within luxury goods sectors also makes the sector vulnerable to money laundering.²²⁴ Over the years AML rules have extended to include luxury goods dealers in some jurisdictions. However, the rules do not specifically target the money laundering risks within luxury goods sub-sectors.²²⁵ Additionally, individuals operating in luxury goods sector, such as dealers, often fail to adopt the required AML controls.²²⁶ Deficient AML controls provide criminals with loopholes to exploit and fail to recognise and prevent money laundering operations from taking place.²²⁷ On the other hand, some jurisdictions fail to regulate luxury goods markets.²²⁸

²¹⁷ Ibid.

²¹⁸ Ibid.

²¹⁹ Saskia Hufnagel, Colin King, ‘Anti-Money Laundering Regulation and the Art Market’ (2020) 40 *Legal Studies* 136.

²²⁰ HM Treasury, *UK National Risk Assessment of Money Laundering and Terrorist Financing* (2017) 54.

²²¹ Saskia Hufnagel, Colin King, ‘Anti-Money Laundering Regulation and the Art Market’ (2020) 40 *Legal Studies* 136.

²²² Ibid.

²²³ Ibid.

²²⁴ Transparency International, ‘Tainted Treasures: Money Laundering Risks in Luxury Markets’ (2017) 3.

²²⁵ Ibid.

²²⁶ HM Treasury, *UK National Risk Assessment of Money Laundering and Terrorist Financing* 2020.

²²⁷ Ibid.

²²⁸ Transparency International, ‘Tainted Treasures: Money Laundering Risks in Luxury Markets’ (2017).

This continues to make luxury goods an ideal target for criminals seeking a resting place to legitimise their illicit gain with ease.²²⁹

The appeal that luxury items hold and the status they confer to individuals make luxury items attractive in criminal operations.²³⁰ Status is defined as a higher position compared to others on some dimension.²³¹ Psychological research has confirmed that the desire for status is an important force driving the luxury goods market.²³² Items such as supercars, yachts, expensive jewellery appeal to criminals as they can serve as ‘badges of wealth’,²³³ becoming a highly desirable consumption target.²³⁴ Luxury industry reports state that reputation is a luxury brand's greatest asset, making them particularly susceptible to risk.²³⁵ Thus the enjoyment or status gained by owners makes luxury sectors very attractive to criminals.²³⁶ These feelings and the status invoked by luxury items, therefore, make luxury items increasingly appealing to money laundering operations.²³⁷

The difficulty to trace luxury items makes them desirable for money laundering operations.²³⁸ Money exchanged for items such as gold can be melted down fairly easily, making it enormously difficult to trace the origin of illicitly gained assets.²³⁹ Many transactions involving items such as gold occur anonymously, with little to no record identifying the seller or purchaser.²⁴⁰ This makes it difficult for law enforcement to

²²⁹ Ibid.

²³⁰ Transparency International, ‘UK Businesses Helping the World’s Corrupt Embed Themselves into British Establishment’ (London, 24th October 2019) <<http://www.transparency.org.uk/uk-businesses-helping-world-s-corrupt-embed-themselves-british-establishment>> accessed 12th March 2020.

²³¹ Herbert Hyman, *The Psychology of Status* (New York Columbia University 1942).

²³² Xavier Dreze, Joseph Nunes, ‘Feeling Superior: The Impact of Loyalty Program Structure on Consumers’ perception of Status’ (2009) 35 *Journal of Consumer Research* 890; Susan Fournier, ‘Consumers and Their Brands: Developing Branding Theory in Consumer Research (1998) 24 *Journal of Consumer Research* 343; Derek Rucker, Adam Galinsky, ‘Desire to Acquire: Powerlessness and Conspicuous Consumption’ (2008) 35 *Journal of Consumer Research* 257.

²³³ Organisation for Economic Co-operation and Development, *Money Laundering Awareness Handbook for Tax Examiners and Tax Auditors* (2019).

²³⁴ Transparency International, ‘Tainted Treasures: Money Laundering Risks in Luxury Markets’ (2017) 5.

²³⁵ Ibid.

²³⁶ Ibid.

²³⁷ Rob Nelissen, Marijn Meijers, ‘Social Benefits of Luxury Brands as Costly Signals of Wealth and Status’ (2011) 11 *Evolution and Human Behaviour* 343.

²³⁸ Ibid.

²³⁹ Ibid.

²⁴⁰ FATF, ‘Money Laundering and Terrorist Financing Risks and Vulnerabilities Associated with Gold’ (2015).

identify the source of the gold and the individual who sold it.²⁴¹ Furthermore, it may be difficult to refute false claims regarding the source of gold due to the challenges in identification.²⁴² Gold and diamonds are non-descript and only traceable with accompanying receipt and paperwork.²⁴³ These difficulties make items such as gold, and other forms of jewellery ideal for money laundering operations as they provide criminals with the confidence to avoid detection.²⁴⁴

These vulnerabilities highlight the need for AML measures within luxury goods sectors to protect against criminal abuse. The unique characteristics of luxury items ‘lend them to money laundering operations and provide the lazy money launderer with easy and useful avenues’.²⁴⁵ It is imperative to ensure that AML measures are based upon consideration of these risks. Subsequently, by analysing these risks for the first time in this regard the study provides a significant contribution to this area of law in highlighting the unique money laundering vulnerabilities of luxury goods.

1.4 Contextualising International Anti Money Laundering Efforts

Fighting money laundering contributes to global security, the integrity of the financial system, and sustainable growth.²⁴⁶ Subsequently, laws to combat money laundering are designed to prevent the financial market from being misused for such purposes.²⁴⁷ The UK AML regime is influenced by international AML efforts including the FATF Recommendations and EU AML Directives. These initiatives have increased the AML obligations applicable to luxury goods sectors to reduce criminals’ ability to utilise these sectors for money laundering operations.²⁴⁸

²⁴¹ Ibid.

²⁴² Ibid.

²⁴³ Nicholas Gilmour, ‘Blindly Obvious and Frequently Exploitable’ (2017) 20 *Journal of Money Laundering Control* 110.

²⁴⁴ Ibid.

²⁴⁵ See C 2.

²⁴⁶ European Commission, ‘Anti Money Laundering and Countering the Financing of Terrorism’ <https://ec.europa.eu/info/business-economy-euro/banking-and-finance/financial-supervision-and-risk-management/anti-money-laundering-and-countering-financing-terrorism_en> accessed 12th February 2021.

²⁴⁷ Ibid.

²⁴⁸ Ibid.

The FATF has been a driving force in the current AML regime since its establishment in 1989 and the issuing of its 40 Recommendations in 1990.²⁴⁹ The Recommendations are acknowledged as ‘Standards’ and ‘Guidelines’ which members are required to comply with to eradicate financial crime.²⁵⁰ The Recommendations provide countermeasures against money laundering by setting out principles and minimum standards for action.²⁵¹ These include AML policies and coordination, confiscation measures, preventative measures, transparency and beneficial ownership arrangements, powers and responsibilities of competent authorities and other institutional measures, international cooperation.²⁵² Although the Recommendations are non-binding, presently 39 member jurisdictions have opted to commit to implementing them in their fight against money laundering.²⁵³ The FATF monitors the compliance of its Recommendations in these jurisdictions through its mutual evaluation assessments and provides feedback to members on improving their AML controls.²⁵⁴

In line with the constantly evolving money laundering threats, the FATF examines AML techniques and countermeasures, and reviews whether existing national and international policies are adequate in combating the threat.²⁵⁵ One of these advancements is the inclusion of financial and non-financial businesses and professions within the Recommendations.²⁵⁶ The category of DNFBPs encompasses luxury goods sectors such as real estate agents, precious metals and stones, casinos, lawyers, accountants, but fails to cover major luxury goods sectors (such as cars, yachts).²⁵⁷ Although the Recommendations may be categorised as ‘soft law’, they have considerable influence upon the evolution of the EU AML regime.²⁵⁸ In response to the increased money laundering vulnerabilities in non-financial businesses, the EU also extended the list of

²⁴⁹ Emmanuel Senanu, ‘Anti money laundering and combating the financing of terrorist compliance – Are FATF member states just scratching the surface?’ (2019) 22 *Journal of Money Laundering Control* 452.

²⁵⁰ Financial Action Task Force, ‘The FATF Recommendations’ (2020).

²⁵¹ *Ibid.*

²⁵² *Ibid.*

²⁵³ *Ibid.*

²⁵⁴ *Ibid.*

²⁵⁵ Financial Action Task Force, ‘What We Do’ <<https://www.fatf-gafi.org/about/whatwedo/>> accessed 12th January 2021.

²⁵⁶ Financial Action Task Force, ‘The FATF Recommendations’ (2020).

²⁵⁷ *Ibid.*

²⁵⁸ *Ibid.*

obliged entities in its Second Money Laundering Directive to include luxury goods sectors.²⁵⁹

By requiring luxury goods dealers to implement such controls the likelihood of being involved in money laundering is aimed to be significantly reduced.²⁶⁰ The imposition of preventative measures upon individuals in the private sector is considered the cornerstone of an efficient AML regime.²⁶¹ Key duties include customer identification, record keeping, reporting suspicious transactions, and the duty not to ‘tip off’ individuals in money laundering investigations.²⁶² These responsibilities have been extended to luxury goods sectors in an effort to close loopholes within non-financial businesses that criminals targeted due to the robust AML controls within financial sectors.²⁶³

However, the extension of these AML preventative duties within sectors such as luxury goods has raised questions.²⁶⁴ Concerns have been raised in relation to the feasibility of compliance and the effectiveness of prevention in sectors which are limited in regulations and resources.²⁶⁵ The extension of the list of professions covered by the Directives has created controversy with private actors stating that the duties run contrary to the relationships of trust between themselves and customers (such as luxury goods dealers and their clients).²⁶⁶ The latest luxury goods extension involves the addition of AMPs within the scope of regulated entities in the Fifth EU AML Directive.²⁶⁷ This extension has also received criticism.²⁶⁸ The art market is identified to provide its own restrictions as to how dealers operate such as through contract and tort.²⁶⁹ Additionally, there have been extensive debates regarding the role of self-regulation in the art market.²⁷⁰

²⁵⁹ Directive 2001/97/EC of the European Parliament and of the Council of 4 December 2001.

²⁶⁰ Transparency International, ‘Tainted Treasures: Money Laundering Risks in Luxury Markets’ (2017) 5

²⁶¹ Valsamis Mitsilegas, Niovi Vavoula, ‘The Evolving EU Anti-Money Laundering Regime: Challenges for Fundamental Rights and the Rule of Law’ (2016) 23 *Maastricht Journal of European Comparative Law* 273.

²⁶² *Ibid.*

²⁶³ *Ibid.*

²⁶⁴ *Ibid.*

²⁶⁵ *Ibid.*

²⁶⁶ *Ibid.*

²⁶⁷ European Union Directive 2018/843 of the European Parliament and of the Council of 30 May 2018.

²⁶⁸ Saskia Hufnagel, Colin King, ‘Anti-Money Laundering Regulation and the Art Market’ (2020) 40 *Legal Studies* 136.

²⁶⁹ *Ibid.*

²⁷⁰ *Ibid.*

As well as the art market displaying a lack of interest in implementing AML guidelines, which raises questions as to how ready the art market is for self-regulation.²⁷¹

In addition to extending AML obligation to luxury goods sectors, the FATF has largely influenced international AML efforts in adopting a RBA to AML.²⁷² The varying degrees of risk of money laundering for particular types of private actors, customers and transactions is a critical aspect underlying the FATF Recommendations.²⁷³ The Recommendations stipulate a RBA to AML to allow measures to prevent and mitigate money laundering incommensurate with the risks identified.²⁷⁴ This allows countries to allocate their resources efficiently accordance to the high and emerging risks.²⁷⁵ This approach is preferred to the rule-based approach where resources are targeted evenly based on factors other than risks.²⁷⁶ This can inadvertently result in a ‘tick-box’ approach with the focus being on meeting regulatory requirements instead of combating money laundering efficiently and effectively.²⁷⁷ The RBA allows efficient and effective use of resources and minimises burdens on customers and counterparties.²⁷⁸ The flexibility of the approach allows regulated entities to tailor their resources in accordance to the risks exposed and take a broad and objective view of their activities with customers.²⁷⁹ This flexibility is particularly important in AML efforts as combating money laundering should be flexible to adapt as risks evolve.²⁸⁰

However, adopting a RBA to AML presents some challenges.²⁸¹ Implementing a RBA is not a simple exercise and there are several barriers to overcome when implementing the necessary measures.²⁸² One of these challenges includes identifying

²⁷¹ Ibid.

²⁷² Financial Action Task Force, ‘Risk Based Guidance for Dealers in Precious Metals and Stones’ (2016).

²⁷³ Ibid.

²⁷⁴ Ibid.

²⁷⁵ Ibid.

²⁷⁶ Ibid.

²⁷⁷ LexisNexis White Paper, ‘Overcoming the Challenges of the Risk Based Approach to Anti Money Laundering’ (2020).

²⁷⁸ Financial Action Task Force, ‘Risk Based Guidance for Dealers in Precious Metals and Stones’ (2016).

²⁷⁹ Ibid.

²⁸⁰ Ibid.

²⁸¹ Anna Simonova, ‘The Risk Based Approach to Anti- Money Laundering: Problems and Solutions’ (2011) 14 *Journal of Money Laundering Control* 32.

²⁸² Financial Action Task Force, ‘Risk Based Guidance for Dealers in Precious Metals and Stones’ (2016).

appropriate information to conduct a sound risk analysis.²⁸³ This may be difficult for individuals who do not have an understanding of AML risks and lead to flawed judgements.²⁸⁴ This creates an increased need for staff with expertise in making a sound judgement which increases regulatory costs.²⁸⁵ Additionally, the diversity caused by dealers adopting varied approaches from one another requires designated competent authorities to increase their efforts in identifying and disseminating guidelines on sound practice and may create challenges to staff working to monitor compliance.²⁸⁶

Moreover, the EU AML Directives have stipulated cash thresholds for anyone trading in goods to reduce the risk of money laundering.²⁸⁷ The Fourth AML Directive lowered the threshold from €15,000 to €10,000.²⁸⁸ This lower threshold was due to several Member States adopting a stricter approach toward the requirements for traders to conduct CDD either by applying identification requirements at a reduced threshold or by imposing an outright ban on payments in cash above certain thresholds.²⁸⁹ In response to this diversity of thresholds, the Commission received complaints that the proceeds of crime committed within one Member State can be anonymously converted into cash within another Member State without the need to identify the customer if the amount of the transaction was less than €15,000.²⁹⁰ Subsequently, the threshold limit presently stands at €10,000 and is applied as a limit within luxury goods sectors in member states and the UK.²⁹¹

²⁸³ Ibid.

²⁸⁴ Ibid.

²⁸⁵ Ibid.

²⁸⁶ Ibid.

²⁸⁷ EUR-LEX, 'Preventing Abuse of the Financial System for Money Laundering and Terrorism Purposes' <<https://eur-lex.europa.eu/legal-content/EN/LSU/?uri=CELEX:32015L0849>> accessed 5th March 2021.

²⁸⁸ Directive 2015/849, Article 2 (1) (e).

²⁸⁹ European Commission, 'Final Study on the Application of the Anti-Money Laundering Directive' <<https://op.europa.eu/en/publication-detail/-/publication/8afd2daa-05cf-49aa-9c5b-f4eca0472a2e>> accessed 20th March 2021.

²⁹⁰ European Commission, 'Impact Assessment Accompanying the Proposal for a Directive on the Prevention of the use of the Financial System for the purpose of Money Laundering, SWD 2013' <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A52013SC0022>> accessed 21st April 2021.

²⁹¹ Ibid.

1.5 UK Response to Money Laundering in Luxury Goods Sectors

The regulation of a specific sector or profession may be desirable for various reasons.²⁹² For example, where a situation requires a certain skill or level of expertise in dealing with a task, then insistence upon the standard of the skill might be necessary, such as the medical profession.²⁹³ Alternatively, there are also reasons not to require regulation of certain sectors, such as entry restrictions or increased costs.²⁹⁴ The regulation of those operating within luxury goods sectors has been debated for some time and the progression of extending such regulation has been gradual.²⁹⁵ The UK AML regime is influenced by the international measures highlighted above including the FATF Recommendations and EU AML Directives.²⁹⁶ Since Brexit, the UK has opted out of transposing the Sixth EU AML Directive which is primarily due to the fact that many of its requirements are already covered within UK law.²⁹⁷

The UK AML Regime is contained within the Money Laundering Regulations and the Proceeds of Crime Act 2002.²⁹⁸ The regulations are acknowledged as placing ‘stringent requirements’ on relevant persons for the purpose of preventing and detecting money laundering and terrorist financing.²⁹⁹ As identified above, the entities obliged under the MLRs have expanded over the years to include luxury goods sectors through the categories of high value dealers³⁰⁰ and art market participants.³⁰¹ This expansion seeks to reduce the risk of money laundering within these sectors by requiring individuals to act as AML gatekeepers. The obligations impose on relevant people to assess money

²⁹² Julia Black, ‘Critical Reflection’s on Regulation’ (2002) 27 Australian Journal of Legal Philosophy 56.

²⁹³ Ilaria Zavoli, Colin King, ‘The Challenges of Implementing Anti- Money Laundering Regulation: An Empirical Analysis’ (2021) 4 Modern Law Review 748.

²⁹⁴ Ibid.

²⁹⁵ Nicholas Gilmour, ‘Blindly Obvious and Frequently Exploitable’ (2017) 20 Journal of Money Laundering Control 114; Transparency International, ‘Don’t Look, Won’t Find’ (2015); Transparency International, ‘Tainted Treasures: Money Laundering Risks in Luxury Markets’ (2017); European Union Agency for Law Enforcement Cooperation, ‘From Suspicion to Action – Converting financial intelligence into greater operational impact’ (2021).

²⁹⁶ Dennis Cox, *Handbook of Anti Money Laundering* (Wiley 2014).

²⁹⁷ European Commission, ‘UK’s withdrawal from the European Union’ (2020).

²⁹⁸ Ibid.

²⁹⁹ HM Treasury, ‘UK National Risk Assessment of Money Laundering and Terrorist Financing’ (2017).

³⁰⁰ Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017, Regulation 14 (1) a.

³⁰¹ *ibid* Regulation 18.

laundering risk,³⁰² adopt a risk-based approach,³⁰³ conduct customer due diligence,³⁰⁴ report suspicious matters,³⁰⁵ provide AML training requirements.³⁰⁶ Failure to comply with these obligations can result in a civil and/or a public statement being issued censuring the dealer.³⁰⁷

The first requirement under the MLRs is for dealers to register with HMRC for AML supervision.³⁰⁸ Accordingly, dealers must complete Form MLR100³⁰⁹ and must not accept or make high-value cash payments until they have gained this authorisation from HMRC.³¹⁰ The registration process requires businesses to provide details about the premises and pay relevant fees.³¹¹ Once this has been completed, HMRC reviews the application and adopts ‘fit and proper checks’ on ‘responsible’ people included in the application.³¹² Registration must be renewed annually and dealers are required to notify HMRC of any changes that affect their registration.³¹³ Registration is aimed to bring dealers under the supervision of HMRC to ensure they are operating in accordance with the UK AML regime.³¹⁴ HMRC states that it employs officers to check on businesses registered for money laundering supervision to verify they are complying with the regulations.³¹⁵ This includes assessing how the business operates AML policies and procedures and to assist businesses to make sure they have the correct systems in place.³¹⁶

³⁰² Ibid.

³⁰³ Ibid.

³⁰⁴ Ibid Regulation 17.

³⁰⁵ Ibid Regulation 36.

³⁰⁶ Ibid Regulation 24.

³⁰⁷ Ibid Regulation 76.

³⁰⁸ Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017.

³⁰⁹ HM Revenue & Customs, ‘Money Laundering Regulations Application Form’ <https://public-online.hmrc.gov.uk/lc/content/xfatforms/profiles/forms.html?contentRoot=repository%3A%2F%2F%2FApplications%2FBusinessTax_iForms%2F1.0%2FMLR100&template=MLR100.xd> accessed 20th June 2021.

³¹⁰ Gov.UK, ‘Guidance: Register or renew your money laundering supervision with HMRC’ <<https://www.gov.uk/guidance/register-or-renew-your-money-laundering-supervision-with-hmrc>> accessed 6th December 2021.

³¹¹ Ibid.

³¹² Ibid.

³¹³ Ibid.

³¹⁴ Ibid.

³¹⁵ Gov.UK, ‘HMRC Checks Businesses Registered for Money Laundering Supervision’ <<https://www.gov.uk/guidance/money-laundering-regulations-business-inspections>> accessed 20th January 2022.

³¹⁶ Ibid.

Once registered, dealers must ensure that their AML controls are based upon the risks that the organisation is exposed to.³¹⁷ The RBA has been actively promoted by international organisations such as the FATF, the Wolfsberg Group, and the International Association of Insurance Supervisors as a fundamental aspect in ensuring efficient AML controls.³¹⁸ The RBA is beneficial for dealers by allowing them to target resources to areas that have the highest risk of money laundering and providing the flexibility required to respond to emerging risks.³¹⁹ This approach helps to ensure that compliance costs are proportionate to the risks faced by the entity.³²⁰ The discretion provided by the RBA allows dealers to tailor their systems and procedures in accordance to their business and ensure that the best fit is applied in alleviating money laundering risk.³²¹

Under the RBA dealers are required to: identify the money laundering risks relevant to their business, carry out a detailed risk assessment of the business (focusing on customer behaviour, delivery channels), carry out a risk assessment of their customers, design and put in place controls to manage and reduce the impact of these risks, monitor the controls and improve their efficiency, keep records of what they did and why they did it.³²² Dealers have the discretion to decide how to carry out their risk assessment.³²³ This flexibility is a key strength of the RBA, in the sense that it provides flexibility to regulatees in implementing measures in accordance with the specific money laundering threats they face, instead of prescribing set criteria which fail to recognise unique and individual risks.³²⁴ HMRC provides guidelines concerning certain factors to consider when assessing money laundering risks.³²⁵ These include the types of customers, location

³¹⁷ Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017, Regulation 18.

³¹⁸ Ehi Esoimeme, *The Risk-Based Approach to Combating Money Laundering and Terrorist Financing* (Amazon 2015).

³¹⁹ Ibid.

³²⁰ Ibid.

³²¹ Gov.UK, 'Risk Assess Your Business for Money Laundering Supervision' <<https://www.gov.uk/guidance/money-laundering-regulations-risk-assessments>> accessed 12th April 2021.

³²² Ibid.

³²³ Ibid.

³²⁴ Anna Simonova, 'The Risk Based Approach to Anti Money Laundering: Problems and Solutions' (2011) 14 *Journal of Money Laundering Control* 4.

³²⁵ Gov.UK, 'Risk Assess your Business for Money Laundering Supervision' <<https://www.gov.uk/guidance/money-laundering-regulations-risk-assessments>> accessed 20th December 2020.

of customers, customers' behaviour, how customers come to the business, the products the individual sells, payment processes (for example cash over the counter, cheques, electronic transfers, or wire transfers), where customers' funds come from or go to.³²⁶ Once a risk assessment has been carried out, businesses are required to put policies and controls and procedures in place to reduce the money laundering risks identified.³²⁷ Additionally, dealers must monitor their business controls on an ongoing basis to ensure that the controls they have adopted are adequate.³²⁸ Furthermore, in accordance to the risk assessment, dealers must identify and report any suspicious transactions or activities to the NCA.³²⁹ These controls help dealers allocate their resources to effectively prioritise and focus on risks and apply preventative measures commensurate to such risks.³³⁰

In ensuring that dealers know who they are dealing with the MLRs necessitate dealers to apply CDD measures when establishing a business relationship.³³¹ Criminals seek to conceal illegal funds by introducing them into legitimate financial systems without needing to provide their identity which makes it difficult to detect the individual.³³² CDD, therefore, helps dealers to protect their businesses from fraudulent activities and financial abuse.³³³ CDD involves taking necessary steps to identify customers and checking they are who they state they are, including any beneficial owners.³³⁴ This obligation extends to situations where someone is acting on behalf of someone else in relation to a particular transaction, such as a personal shopper.³³⁵ By verifying customers, dealers are able to lower the risk of money laundering and avoid financial penalties and fraudulent payments.³³⁶

³²⁶ Ibid.

³²⁷ Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017, Regulation 18.

³²⁸ Ibid.

³²⁹ Ibid.

³³⁰ Paola Costanzo, *The Risk Based Approach to Anti Money Laundering and Counter Terrorist Financing in International and EU Standards* (Edward Elgar Publishing 2013) 351.

³³¹ Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017, Regulation 27 1(a).

³³² Alexander Dill, *Anti Money Laundering Regulation and Compliance: Key Problems and Practice Areas* (Edward Elgar 2021) 213.

³³³ Ibid.

³³⁴ Ibid.

³³⁵ Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017, Regulation 27.

³³⁶ Alexander Dill, *Anti Money Laundering Regulation and Compliance: Key Problems and Practice Areas* (Edward Elgar, 2021) 213.

When carrying out CDD dealers must reflect on the risk assessment conducted as well as an individual assessment of the level of risk arising within a specific transaction.³³⁷ Based upon these observations dealers must alter their CDD controls to enhanced due diligence (EDD) and simplified due diligence (SDD) depending on the situation at hand.³³⁸ EDD is required when a customer is not physically present, when entering into a business relationship with a Politically Exposed Person (PEP), when entering into a transaction with a person from a high-risk third country identified by the EU, and in any other situation where there is a higher risk of money laundering.³³⁹ EDD extends beyond verifying the identity of the client and the background and nature of the transactions.³⁴⁰ For example, this may include obtaining additional information or evidence to establish the identity of the individual from independent sources, such as more documentation on the identity or address or electronic verification alongside manual checks.³⁴¹ Additionally, it may include taking further steps to understand the history, ownership, and financial situation of the parties to the transaction.³⁴² Furthermore, in the case of a PEP, it may include establishing the source of wealth and source of funds.³⁴³

SDD is necessary where the business relationship or transaction is considered to have a low money laundering risk.³⁴⁴ In applying SDD controls dealers must still identify and verify the identity of customers and adopt reasonable measures to verify the identity of beneficial owners.³⁴⁵ However, dealers can decide when this is done, how much they do, or the type of measures they take to identify and verify a person.³⁴⁶ The Regulations sets a list of factors to consider when assessing whether a situation poses a lower risk of money laundering including who the customer is, product, service, transaction or delivery channel risk factors and geographical risk factors.³⁴⁷ By providing dealers with the

³³⁷ Ibid Regulation 28 (12).

³³⁸ Ibid.

³³⁹ Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017, Regulation 28.

³⁴⁰ Ibid.

³⁴¹ Ibid.

³⁴² Ibid.

³⁴³ Ibid.

³⁴⁴ Ibid.

³⁴⁵ Ibid.

³⁴⁶ Ibid.

³⁴⁷ Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017, Regulation 37 (3)

flexibility to tailor their CDD controls in accordance to the level of risk exposed the MLRs ensure that private actors are able to attend to the unique and individual risks that their business practices are exposed to.³⁴⁸ Subsequently, CDD requirements ensure that dealers regularly maintain and update their policies to verify customers and to determine the ongoing pattern of transactions to detect money laundering practices.³⁴⁹ By implementing correct CDD controls, dealers can drastically lower the risk of money laundering within their organisation and improve customer experience.³⁵⁰

When faced with suspicious matters, the Regulations require dealers to file a SAR.³⁵¹ Reporting is a crucial part of the UK AML framework and dealers are required to report any information that comes to them in the course of their business if they know, suspect, or have reasonable grounds for knowing or suspecting, that an individual is engaged in, or attempting, money laundering or terrorist financing.³⁵² SARs alert the NCA of potential instances of money laundering and terrorist financing, providing information and intelligence that would otherwise not be visible.³⁵³ The value of SARs is wide-reaching and has been instrumental in tackling money laundering operations, human trafficking, tracing murder suspects.³⁵⁴ Donald Toon, director of the NCA advocates the importance of SARs by stating that the financial intelligence contained within these reports enhances the intelligence picture against money laundering and all serious and organised threats.³⁵⁵ Furthermore, individuals such as dealers are considered to be more likely than government officials to have a sense as to what transactions appear to lack commercial justification or otherwise cannot be explained as falling within the usual

³⁴⁸ UK Parliament, 'Explanatory Memorandum to Money Laundering and transfer of Funds Regulations 2017' (2017).

³⁴⁹ Stuart Ross, Michelle Hannan, 'Money Laundering Regulation and Risk- Based Decision Making' (2007) 10 *Journal of Money Laundering Control* 106.

³⁵⁰ *Ibid.*

³⁵¹ Proceeds of Crime Act 2002, ss 329 – 332.

³⁵² *Ibid.*

³⁵³ National Crime Agency, 'Suspicious Activity Reports' < <https://nationalcrimeagency.gov.uk/what-we-do/crime-threats/money-laundering-and-illicit-finance/suspicious-activity-reports>> accessed 10th April 2021.

³⁵⁴ *Ibid.*

³⁵⁵ National Crime Agency, 'Suspicious Activity Reports Annual Report' (2018).

methods of legitimate commerce, such as money laundering.³⁵⁶ Thus, SAR provides vital information in detecting money laundering operations within luxury goods sectors.³⁵⁷

Dealers that fail to make suspicious disclosures face criminal prosecution and sanctions.³⁵⁸ HMRC stipulates minimum requirements for dealers in relation to reporting suspicious activity.³⁵⁹ These include dealers making a report when POCA s329 is engaged.³⁶⁰ In ensuring that employees are aware of the reporting requirements the MLRs require businesses to appoint a ‘Nominated Officer’ who is responsible to train employees and consider all internal SARs.³⁶¹ The Nominated Officer is required to make a report to the NCA as soon as it is practical to do so, even if no transaction takes place if they consider that there is knowledge, suspicion, or reasonable grounds for knowledge or suspicion that another person is engaged in money laundering, or financing terrorism.³⁶² This ensures that an individual is appointed to conduct this vital task in assisting the NCA to detect and prevent criminal abuse.³⁶³ It is a criminal offence for anyone to do or say anything that ‘tips off’ another person that a disclosure has been made where the tip-off is likely to prejudice any investigation that might take place.³⁶⁴ SARs can be submitted online via the NCA website or manually if the business is registered.³⁶⁵ Businesses not registered with the NCA must report matters to HMRC via the Fraud Hotline.³⁶⁶

In ensuring that dealers are complying with the requirements in the MLRs HMRC acts as the AML supervisory.³⁶⁷ In supervising AML compliance HMRC focuses its activity on areas where it expects to have the biggest impact and splits this into a three-part structure.³⁶⁸ The first aspect includes ‘Promote’ which is targeting help and education

³⁵⁶ Financial Crime Enforcement Unit, *Review of the Suspicious Activity Reporting System* (Springer 2015).

³⁵⁷ *Ibid.*

³⁵⁸ *Ibid.*

³⁵⁹ HMRC, ‘Anti-Money Laundering Supervision: Guidance for High Value Dealers’ (2020).

³⁶⁰ *Ibid.*

³⁶¹ *Ibid.*

³⁶² *Ibid.*

³⁶³ Peter Romaniuk, Jeffrey Haber, Gary Murray, ‘Suspicious Activity Reporting’ (2007) 77 CPA Journal 33.

³⁶⁴ Proceeds of Crime Act 2002 333A.

³⁶⁵ HMRC, ‘Anti-Money Laundering Supervision: Guidance for High Value Dealers’ (2020).

³⁶⁶ HMRC, ‘Guidance: Suspicious Transaction Reporting’ (2021).

³⁶⁷ Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017.

³⁶⁸ HMRC, ‘High Value Dealers’ <<https://register.gotowebinar.com/register/2754374899152339724>> accessed 20th July 2021.

towards businesses that require it, such as offering a webinar for dealers and highlighting the consequences of non-compliance with the regulations.³⁶⁹ The second aspect, ‘Prevent’ comprises of building controls and prompts into the system to make sure the right businesses are registered and remain compliant.³⁷⁰ It also involves checking supervised businesses to make sure they have controls and processes in place that will protect them and prevent them from being used for money laundering.³⁷¹ The final aspect, ‘Respond’ includes taking action where needed through targeted compliance interventions.³⁷² If HMRC finds businesses have failed to comply with their AML obligations it has a range of sanctions available including criminal prosecutions and civil penalties.³⁷³

Additionally, HMRC provides advice and support to regulated entities in fulfilling their AML obligations.³⁷⁴ This includes various forms of guidance explaining key aspects of AML supervision.³⁷⁵ HMRC government platform explains vital aspects of AML supervision such as, who is required to register for supervision and what this involves.³⁷⁶ Moreover, HMRC states that it provides face-to-face and telephone interventions to maintain and further improve compliance standards.³⁷⁷ HMRC advocates that it checks dealers understanding of the MLRs, what they are doing on a daily basis, and their records to make sure they are doing what they state.³⁷⁸ This helps HMRC analyse whether further guidance is required, such as the creation of webinars and workshops to improve compliance.³⁷⁹

In addition to the AML requirements within the MLRs, it is also useful to acknowledge the UK efforts in retrieving the proceeds of crime through the introduction of Unexplained Wealth Orders (UWOs).³⁸⁰ UWOs provide an investigative tool to assist

³⁶⁹ Ibid.

³⁷⁰ Ibid.

³⁷¹ Ibid.

³⁷² Ibid.

³⁷³ Ibid.

³⁷⁴ Ibid.

³⁷⁵ HMRC, ‘Anti-Money Laundering Supervision: Guidance for High Value Dealers’ (2020).

³⁷⁶ Gov.UK, ‘Guidance: Register or renew your money laundering supervision with HMRC’ <<https://www.gov.uk/guidance/register-or-renew-your-money-laundering-supervision-with-hmrc>> accessed 6th December 2021.

³⁷⁷ HMRC, ‘High Value Dealers’<<https://register.gotowebinar.com/register/2754374899152339724>> accessed 20th July 2021.

³⁷⁸ Ibid.

³⁷⁹ Ibid.

³⁸⁰ Criminal Finances Act 2017.

law enforcement agencies to recover the proceeds of crime and tackling money laundering, corruption and terrorist funding.³⁸¹ Andy Lewis, the Head of Asset Denial within the NCA has stated that UWOs are a ‘powerful tool in being able to investigate illicit finance flowing into the UK and discourage it from happening in the first place’.³⁸² However, since their enactment, merely nine UWOs have been obtained.³⁸³ The extremely low number of UWOs has branded them as having ‘patchy’ success and caused concern that the measure is not enough to counter money laundering in the UK.³⁸⁴ Robert Barrington, Executive Director of Transparency International, also welcomed UWOs but indicated that much more needs to be done in preventing money laundering operations from taking place in UK luxury goods sectors.³⁸⁵ Improvements are expected to be made to UWOs via the Economic Crime (Transparency and Enforcement) Act 2022 but these are restricted to the property market and therefore do not take address luxury goods sectors.³⁸⁶

The AML regime identified within this section seeks to reduce the risk of money laundering within the HVD and AMP sectors.³⁸⁷ In July 2021 HM Treasury issued its first ‘Call for Evidence’ to review the UK AML regulatory and supervisory regime.³⁸⁸ It is encouraging to note that the review seeks to analyse the systematic effectiveness of the present measures and how they contribute to the overarching objective of countering economic crime, as well as the specific application and effectiveness of the regime.³⁸⁹ However, although responses have been issued by Art AML, the Law Society, the Association of Taxation Technicians, the Association of Chartered Certified Accountants,

³⁸¹ Financial Times Advisor, ‘Beware the powers of unexplained wealth orders’ (London, 9 March 2019) <<https://www.ftadviser.com/regulation/2019/03/06/beware-the-powers-of-unexplained-wealth-orders/>> accessed March 10th 2019.

³⁸² Ibid.

³⁸³ Ibid.

³⁸⁴ House of Commons, ‘Unexplained Wealth Orders’ <<https://researchbriefings.files.parliament.uk/documents/CBP-9098/CBP-9098.pdf>> accessed 20th February 2022.

³⁸⁵ Financial Times Advisor, ‘Beware the powers of unexplained wealth orders’ <<https://www.ftadviser.com/regulation/2019/03/06/beware-the-powers-of-unexplained-wealth-orders/>> accessed March 10th 2019.

³⁸⁶ Gov.UK, ‘Policy Paper: Unexplained Wealth Order Reforms’ (2022).

³⁸⁷ Financial Action Task Force, ‘The FATF Recommendations’ (2022).

³⁸⁸ HM Treasury, ‘Call for Evidence: Review of the UKs AML/CTF Regulatory and Supervisory Regime (2021).

³⁸⁹ Ibid.

and Property Mark, a response has not been submitted from HVDs.³⁹⁰ This raises the question as to the extent to which the review will consider the AML regime from a luxury goods context and address the issues that presently exist. As highlighted in the Introduction of this thesis, no study has been conducted which examines the UK AML with regard to luxury goods sectors and considers whether the regime attends to the money laundering risks present.³⁹¹ The NRAs have constantly flagged dealers as implementing deficit AML controls and consider HVDs to pose a ‘medium ML risk’ whilst AMPs are assessed as having a ‘high ML risk’.³⁹² The FATF has also indicated various deficiencies in UK money laundering controls within Mutual Evaluation Reports.³⁹³ These include (but are not limited to), a lack of understanding among DNFBPs of money laundering risks, lack of clear obligations in relation to CDD, and inadequate controls.³⁹⁴

However, these issues have not been considered in any detail or analysed in relation to the money laundering risks exposed within luxury sub-sectors. This gap further highlights the significant role played by the study in considering money laundering vulnerabilities within UK luxury goods sectors and examining ways in which to reduce such risks and prevent money laundering operations from taking place. Indeed, this is an area of law which has not been addressed within the present discourse, and the analysis within this study is necessary for safeguarding UK luxury goods sectors from money laundering abuses through the analysis of the money laundering risks present, the AML controls, and their application. This allows consideration of ways to improve the AML regime to reduce the risk of money laundering practices within UK luxury goods sectors.

³⁹⁰ Art AML, ‘Response by Art AML Limited to HM Treasury’s Call for Evidence: Review of the UK’s AML / CFT regulatory and supervisory regime’ (2021); Law Society, ‘Call for evidence: UK AML regulatory and supervisory regime – Law Society response’ (2021); Association of Taxation Technicians ‘Review of the UK’s AML/ CTF Regulatory Supervision Regime’ (2021); ACCA, ‘ACCA’s response to review of UK AML/CTF regulatory & supervisory regime call for evidence’ (2021); Property Mark, ‘Response to review UK AML/CTF regulatory & supervisory regime’ (2021).

³⁹¹ See Introduction.

³⁹² HM Treasury, ‘UK National Risk Assessment of Money Laundering and Terrorist Financing’ (2020); HM Treasury, ‘UK National Risk Assessment of Money Laundering and Terrorist Financing’ (2017); HM Treasury, ‘UK National Risk Assessment of Money Laundering and Terrorist Financing’ (2015).

³⁹³ Financial Action Task Force, ‘Mutual Evaluation Report of the United Kingdom’ (2018).

³⁹⁴ Ibid.

1.6 Key Themes

The analysis above has identified key aspects of the UK AML regime applicable to luxury goods dealers.³⁹⁵ Based upon this analysis the following themes have been selected to be applied throughout the research project: obliged entities, registration, assessing money laundering risk, customer due diligence controls, suspicious transaction reporting, and AML supervision. These themes are selected as key aspects of the AML obligations imposed on UK dealers.³⁹⁶ The thematic approach is therefore justified upon the AML regime within the MLRs.³⁹⁷ To add further direction to the study, sub-themes have been identified within each theme based upon the obligations stipulated within the MLRs.³⁹⁸ These are demonstrated in the table below.

Table 2	
Theme	Sub-themes
Obligated entities	High Value Dealers Art Market Participants Threshold Limit (10,000)
Registration	Registration Process (Form MLR100) Registration Rates
Assessing Money Laundering Risk	Identify ML risks Risk Assessment Implement Risk based controls
Customer Due Diligence	Risk assessed CDD Enhanced Due Diligence Simplified Due Diligence
Suspicious Transaction Reporting	Reporting Requirements Reporting Rates

³⁹⁵ See s 1.5.

³⁹⁶ Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017, Regulation 14 (1) a.

³⁹⁷ Ibid. Ishwara Bhat, *Idea and Methods of Legal Research* (Oxford University Press 2019) 567.

³⁹⁸ Ibid.

	Nominated Officer NCA
Supervision	HMRC Support/ Outreach Detect/ Deter

These aspects of the AML regime have been selected as themes due to several reasons. First, they are fundamental aspects of the UK AML regime and therefore it is important to analyse these requirements in further detail to understand the present approach to AML within luxury goods sectors.³⁹⁹ Second, analysing these themes contributes to answering the primary research question by providing an overview of what requirements are placed upon dealers and the extent to which these are implemented by dealers to reduce money laundering risk.⁴⁰⁰ Third, HVDs and dealers in precious metals and stones have been continuously flagged up within UK NRAs and FATF Mutual Evaluation Reports as having a deficient application of these controls which require improvement.⁴⁰¹ Fourth, the literature within this area of law does not examine UK luxury goods sectors in relation to these aspects of the AML regime and, therefore, the analysis fills a gap in research and this contributes towards the originality of the research project.⁴⁰²

A thematic approach has been selected rather than other approaches, such as chronological methods as these methods risk making the research descriptive.⁴⁰³ A thematic approach is, therefore, better suited to answering the primary research question and providing critical analysis.⁴⁰⁴ Identifying themes has been recognised as favourable in research due to the process requiring rigorous analysis and interpretation of the legal

³⁹⁹ Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017.

⁴⁰⁰ Greg Guest, Kathleen MacQueen, Emily Namey, *Applied Thematic Analysis* (SAGE 2012) 34.

⁴⁰¹ Financial Action Task Force, 'Mutual Evaluation Report of the United Kingdom' (2018); HM Treasury, 'UK National Risk Assessment of Money Laundering and Terrorist Financing' (2020); HM Treasury, 'UK National Risk Assessment of Money Laundering and Terrorist Financing' (2017); HM Treasury, 'UK National Risk Assessment of Money Laundering and Terrorist Financing' (2015).

⁴⁰² Mathias Siems, 'Legal Originality' (2008) 2 *Oxford Journal of Legal Studies* 72.

⁴⁰³ Michael Forrester, *Doing a Literature Review* (SAGE Publications 2012) 231.

⁴⁰⁴ *Ibid.*

sources surrounding the topic.⁴⁰⁵ Thus, identifying and drawing out themes is understood as the hallmark of an excellent research project as they provide a coherent critical account of the body of literature.⁴⁰⁶ Additionally, a thematic approach is helpful in ensuring that the research project covers all necessary ground in the project, such as the UK AML regime.⁴⁰⁷ Thematic analysis provides focus and structure throughout the study.⁴⁰⁸ This includes the qualitative empirical study involving interviews with dealers since the themes provide a skeleton for the interview questions.⁴⁰⁹ Furthermore, the thematic approach allows the development of the project in relation to identifying the risks within the UK AML regime applicable to luxury goods sectors and then exploring how the approach adopted within other jurisdictions (in Chapter Four) can assist in addressing these issues.⁴¹⁰ Thus, by adopting a thematic approach, the study can consider ways to address each aspect of the UK AML regime that requires redress.⁴¹¹

1.7 Conclusion

This chapter has provided the theoretical framework of the research project defining key terms and identifying the AML framework applicable to UK luxury goods sectors. This research provides a foundation for subsequent chapters by clarifying the focus of the research project and identifying the need for further research within this area of law. The findings within the chapter provide a significant contribution to the existing literature on the topic by identifying and analysing the money laundering vulnerabilities posed by luxury goods and subsequently increasing understanding of this money laundering typology.

In adding further clarity to the research question and the aims of the project this chapter has proposed several definitions.⁴¹² These include the statutory definition of money laundering, HVDs, and AMPs. Additionally, the analysis has identified an absence

⁴⁰⁵ Ibid.

⁴⁰⁶ Ibid.

⁴⁰⁷ Greg Guest, Kathleen MacQueen, Emily Namey, *Applied Thematic Analysis* (SAGE 2012) 257.

⁴⁰⁸ Ibid.

⁴⁰⁹ See A1, A2, C1, C2, W1, W2, J1, J2, Y1, Y2.

⁴¹⁰ Ishwara Bhat, *Idea and Methods of Legal Research* (Oxford University Press 2019) 567.

⁴¹¹ Ibid.

⁴¹² See s 1.2.

of a statutory definition for luxury goods and proposed the definition of luxury goods including the following characteristics: high price, rarity, conferring a high status, non-essential item, and emotional significance. An item does not need to include all these characteristics to be considered as a luxury item, neither do some characteristics hold more significance than others. Instead, luxury items are those items that may include these characteristics. By asserting this definition, the study provides an original contribution to this area.

The analysis has also recognised money laundering risks posed by the unique characteristics of luxury goods.⁴¹³ These include the ease of laundering criminal proceeds through luxury goods and the status conferred through such purchases. The increasing use of cash within luxury goods sectors and the significant turnover have also been identified as useful for money laundering operations. The emphasis on anonymity and/or lack of transparency involved in luxury sales has been highlighted as adding further difficulties in detecting the origins of criminal proceeds through the purchase of luxury goods. Additionally, the transportability of luxury goods, such as the ease of moving precious metals and stones across borders has been acknowledged as providing criminals with ease in laundering proceeds of crime. Moreover, the appreciation in value of luxury items such as art has been acknowledged as making these items a particularly useful investment through which criminals are able to generate a profit. The absence of standard pricing has also been identified as making it almost impossible for law enforcement to detect the price paid for luxury items. Moreover, the lack of AML measures addressing the specific money laundering risks within luxury goods sectors allows criminals to conduct their operations without fear of detection. Lastly, the analysis has acknowledged the difficulty to trace items such as gold as removing the ability of law enforcement to follow a trail and detect the origins of criminal proceeds. In identifying these aspects, the chapter has further highlighted the unique vulnerabilities posed by luxury items and the importance of AML controls which attend to these risks to prevent criminal abuse.

Following this, the chapter has contextualised international AML efforts in relation to luxury goods sectors and identified the FATF Recommendations and EU AML

⁴¹³ See s 1.3.

Directives as significantly influencing the UK AML regime.⁴¹⁴ Subsequently, the chapter identified the UK AML regime applicable to luxury goods sectors and the requirements placed upon luxury goods dealers.⁴¹⁵ These include obliged entities, registration, assessing money laundering risk, customer due diligence controls, suspicious transaction reporting, and AML supervision. Based upon this analysis, these aspects of the UK AML regime have been identified as key themes to be applied throughout the thesis.⁴¹⁶ The thematic approach also allows a focused approach to be applied in answering the primary research question and provides a narrative which is unique and original. Based upon the analysis that has been presented within this chapter, the next chapter will examine money laundering risks in the UK AML regime.⁴¹⁷

⁴¹⁴ See s 1.4.

⁴¹⁵ See s 1.5.

⁴¹⁶ See s 1.6.

⁴¹⁷ See Chapter Two.

Chapter 2

The AML Regime Risks in UK Luxury Goods Sectors

2.1 Introduction

The MLRs require regulated entities, such as luxury goods dealers to act as ‘gatekeepers’ by adopting policies, controls, and procedures to manage the risk of money laundering.¹ However, this chapter argues that money laundering risks remain in relation to the obligations contained within the MLR as well as the application of the regime within luxury goods sectors. By highlighting these risks, the chapter demonstrates a need for further measures to ensure that criminals are not provided additional ease in pursuing money laundering with the use of luxury goods.

The previous chapter provided a general overview of the money laundering vulnerabilities posed by luxury goods.¹ Several characteristics of luxury goods were identified as useful and attractive in money laundering operations.² These include (but are not limited to): accepting cash payments, the anonymity of transactions, appreciation in value, transportability, absence of standard pricing, the status they confer, and difficulty to trace.³ Despite the potential for further investigation of this method of money laundering, the literature fails to consider the extent to which risks are generated in dealers’ application of the UK AML regime. Indeed, these factors are important in understanding and identifying ways in which criminals can exploit luxury goods sectors for money laundering operations.

Subsequently, the objective of this chapter is to analyse the risks generated within the application of the UK AML regime among luxury goods dealers. In doing so, the chapter considers the following themes: obliged entities, registration, assessing money laundering risk, customer due diligence, reporting, and AML supervision. These themes

¹ Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017.

¹ See Chapter One, s 1.3.2.

² Ibid.

³ Ibid.

are vital aspects of the UK AML regime and were used as guiding themes for the interviews conducted with dealers.⁴ Drawing upon the data from these interviews, the chapter provides a better understanding of the risks within UK luxury goods sectors and identifies critical aspects that require redress. In doing so, the chapter delivers a new perspective on money laundering risks within UK luxury goods sectors. These findings address the primary research question by providing an insight into the risks present in the application of the UK AML regime. Identifying these risks allows the thesis to progress and address the second aspect of the primary research question which considers ways in which the regime can be improved to safeguard against such risks.

2.2 Obligated Entities

The MLRs have progressed to extend the scope of regulated entities in accordance to the risks generated within various sectors.⁵ The regulations included luxury goods dealers for the first time in 2003 through the inclusion of HVDs⁶ and more recently the addition of AMPs.⁷ The MLRs define these individuals as, ‘any business or sole trader that accepts or makes high-value cash payments of €10,000 or more (or equivalent in any currency) in exchange for goods’.⁸ By obliging these entities to adopt AML measures, the risk of money laundering within these sectors is intended to be significantly reduced.⁹ However, in practice, the extent to which these entities agree with the regulatory burden placed upon them and implement the required controls remains contested.¹⁰ Thus, there appears to be a varied approach applied by luxury goods dealers based upon their individual level of engagement with the regulations.¹¹ Additionally, by only obliging certain dealers to adopt

⁴ See Chapter One, s 1.4.

⁵ Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017.

⁶ Money Laundering Regulations 2003, Part Two.

⁷ Money Laundering and Terrorist Financing (Amendment) Regulations 2019.

⁸ Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017, s14 (1) a.

⁹ Financial Conduct Authority, ‘Money Laundering Regulations’ <<https://www.fca.org.uk/firms/financial-crime/money-laundering-regulations>> accessed 15th February 2022.

¹⁰ See A1, A2, C1, C2, Y1, Y2, W1, W2, J1, J2.

¹¹ Ibid.

AML controls, the regulations provide loopholes for criminals to exploit.¹² These factors generate risk and provide opportunities for money laundering operations through luxury goods.¹³

The MLRs were extended to include luxury goods sectors due to the unique money laundering risks presented within these industries.¹⁴ Luxury dealers sell items such as jewellery, precious stones, art, which are particularly attractive to money launderers.¹⁵ These items allow illegal proceeds to be used to purchase expensive assets which can then be easily resold, or often transported across borders, making it harder for law enforcement to detect illicit funds.¹⁶ Thus the ability to legitimatise criminal gains can largely be linked to the unique characteristics held by luxury goods.¹⁷ As highlighted in Chapter One, luxury goods are regarded as money laundering red flags due to: the increased acceptance of cash payments, the anonymity of transactions, their appreciation in value, transportability, the absence of standard pricing, the status they confer upon individuals and their difficulty to be traced across borders.¹⁸ Thus in addressing these risks, the MLRs require dealers to adopt AML controls in the hope that these will reduce criminals' ability to use professional services to launder money.¹⁹

However, in practice, there is a general lack of knowledge, awareness and agreement in relation to the obligations among dealers.²⁰ This top-down approach to regulation creates money laundering risk because dealers are left unaware of the regulations and recognise their necessity, resulting in non-compliance.²¹ Dealers mentioned they had not been informed of their regulatory burden, and HMRC had not communicated this to them: 'It's just typical they [HMRC] expect us to do things without telling us, or gaining our opinion. We're like puppets on strings'.²² When provided an

¹² Such as dealers who operate below the threshold.

¹³ See A1, A2, C1, C2, Y1, Y2, W1, W2, J1, J2.

¹⁴ Transparency International, 'Transparency International, Tainted Treasures: Money Laundering Risks in Luxury Markets' (2017).

¹⁵ *Ibid.*

¹⁶ *Ibid.*

¹⁷ *Ibid.*

¹⁸ See Chapter One, Section 1.2.3

¹⁹ Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017.

²⁰ See A1, A2, C1, C2, Y1, Y2, W1, W2, J1, J2.

²¹ *Ibid.*

²² See C2.

explanation of the AML measures they are required to adopt, dealers disagreed with the requirements and voiced reluctance in acting as gatekeepers.²³ Thus, whilst there is an expectation for regulated entities such as dealers to be well informed of their legal obligation, these remarks indicate that in practise this may not be the case.

Dealers consider the extension of the MLRs to include luxury goods sectors as disproportionate and unreasonable: ‘I don’t agree with it.....I goes beyond by role....so I won’t be complying with it’²⁴ and ‘I requiring me to adopt procedures which I personally think go beyond my role as a dealer... I’m not a money laundering officer... I sell watches’.²⁵ The general consensus amongst the dealers interviewed was that the additional duties required under the MLR are disproportionate due to these obligations extended beyond their role as dealers.²⁶ Whilst the literature does not contest the inclusion of HVDs,²⁷ there have been ongoing debates surrounding the inclusion of AMPs.²⁸ Additionally, the legal sector also shares similar views in highlighting that the current AML regime places disproportionate compliance obligations and the AML regime is designed with the financial sector in mind.²⁹ Therefore, extending obligations to further sectors must be informed by evidence of risks that do not seem evident.³⁰ Nonetheless, money laundering vulnerabilities remain in luxury goods sectors and, based upon these weaknesses, this study argues that the inclusion of these actors within the MLRs is justified.³¹

Furthermore, by requiring dealers to act as AML gatekeepers and implement AML controls, the MLRs rely on a presumption that dealers possess the abilities to

²³ See A1, A2, C1, C2, Y1, Y2, W1, W2, J1, J2.

²⁴ See A1

²⁵ See A2.

²⁶ See A1, A2, C1, C2, W1, W2, J1, J2.

²⁷ Nicholas Gilmour, ‘Blindly Obvious and Frequently Exploitable’ (2017) 20 *Journal of Money Laundering Control* 106; Fabian Teichmann, ‘Money Laundering in the Jewellery Business’ (2020) 23 *Journal of Money Laundering Control* 692.

²⁸ Saskia Hufnagel, Colin King, ‘Anti-Money Laundering Regulation and the Art Market’ (2020) 40 *Legal Studies* 137.

²⁹ The Law Society, ‘Anti Money Laundering Approach must be Risk – Based, warn solicitors’ leaders’ <<https://www.lawsociety.org.uk/contact-or-visit-us/press-office/press-releases/anti-money-laundering-approach-must-be-risk-based-warn-solicitors-leaders>> accessed 12th February 2022.

³⁰ *Ibid.*

³¹ Transparency International, ‘Transparency International, Tainted Treasures: Money Laundering Risks in Luxury Markets’ (2017).

implement such controls.³² Dealers indicated they found the AML regime extremely challenging and complex and therefore did not feel equipped to take on this role.³³ One dealer identified the risk of this approach: ‘so I’m expected to act as an AML gatekeeper and stop criminals from engaging in wrongful actions? I’m probably ideal for criminals as I’m obviously going to overlook things as I don’t understand money laundering’.³⁴ Another dealer stated, ‘it’s funny that the government expects us to help with its AML agenda, especially when they know dealers like myself have no legal experience. It’s like they’re trying to make it appear like they are doing things to reduce criminal activity but in practice, it’s a complete sham’.³⁵ Accordingly, there is a risk that dealers may not have the ability to properly apply AML controls which results in creating further vulnerabilities.³⁶ For example, dealers may be registered with HMRC and adopt a RBA to AML, however, their risk assessment may fail to consider all the risks present within the organisation and thus by focusing attention on certain risks dealers may overlook others, providing criminals with loopholes to exploit.³⁷ This lack of awareness contrasts with other regulated sectors such as real estate agents and lawyers whom seem more knowledgeable and aware of their AML obligations.³⁸ Subsequent chapters identify specific factors which make this awareness difficult for dealers such as, a general lack of interest, financial motivations and struggles in understanding the law.³⁹

HMRC states that it uses a variety of tools to assist regulated entities in complying with their AML obligations such as guidance, webinars, training events.⁴⁰ However, none of the dealers interviewed had received any of this assistance.⁴¹ Additionally, HMRC stipulates that it has started telephoning entities to ensure they are aware of the MLRs and

³² Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017, A2, C1, J1, Y2.

³³ Ibid.

³⁴ See C1.

³⁵ See Y1.

³⁶ Ibid.

³⁷ See s 2.4 for further discussion on the Risk Based Approach to Anti Money Laundering.

³⁸ Ilaria Zavoli, Colin King, ‘The Challenges of Implementing Anti- Money Laundering Regulation: An Empirical Analysis’ (2021) 4 *Modern Law Review* 749, The Law Society, ‘Anti Money Laundering Initiatives’ <<https://www.lawsociety.org.uk/topics/anti-money-laundering>> accessed 20th May 2021, HM Treasury, ‘Anti Money Laundering and Counter Terrorist Financing: Supervision Report’ (2021).

³⁹ See Chapter Three, Four, Five for specific compliance challanages.

⁴⁰ HMRC, ‘Anti-Money Laundering Supervision: Guidance for High Value Dealers’ (2020).

⁴¹ See A1, A2, C1, C2, Y1, Y2, W1, W2, J1, J2.

find out whether they need further assistance in complying with their obligations.⁴² Again, none of the dealers could confirm they had received such calls.⁴³ These efforts are targeted at the registered population which results in dealers that are completely unaware of the MLRs as unlikely to receive any assistance in complying with their AML obligations.⁴⁴ Risk is therefore generated by expecting dealers to understand and correctly adopt the AML controls, when in practice this may be a struggle for a lot of individuals.⁴⁵ This issue has also been raised by the EU Commission in its latest ‘Assessment of Money Laundering’.⁴⁶ The Commission has identified HVDs and AMPs as lacking basic knowledge and understanding of their AML obligations and subsequently increasing the likelihood of deficient controls within their businesses.⁴⁷

Nonetheless, the MLRs continue to apply to dealers and they must comply with the obligations stipulated.⁴⁸ The provisions refer to cash payments which are recognised as an easy way for criminals to launder money, due to the difficulty to detect transactions.⁴⁹ By limiting large cash payments, the regulations seek to make it harder for criminals to launder dirty money.⁵⁰ Subsequently, in accordance to the FATF guidelines⁵¹ and the Fifth EU AML Directive,⁵² the MLRs oblige dealers that accept cash payments of €10,000 and above to adopt AML controls.⁵³ However, this threshold limit creates a significant loophole for dealers who feel reluctant in operating as AML gatekeepers.⁵⁴ Indeed, dealers are able to continue accepting cash payments and avoid the obligation to adopt AML controls by operating just below the €10,000 threshold.⁵⁵ One dealer raised

⁴² HM Treasury, ‘Anti Money Laundering and Counter Terrorist Financing: Supervision Report’ (2021).

⁴³ See A1, A2, C1, C2, Y1, Y2, W1, W2, J1, J2.

⁴⁴ Ibid.

⁴⁵ Ibid.

⁴⁶ European Commission, ‘Report on the on the assessment of the risk of money laundering and terrorist financing affecting the internal market and relating to cross-border activities’ (2019).

⁴⁷ Ibid.

⁴⁸ Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017.

⁴⁹ Ibid.

⁵⁰ European Commission, ‘Beating Financial Crime: Commission Overhauls Money Laundering and Terrorist Financing Rules’ <https://ec.europa.eu/commission/presscorner/detail/en/IP_21_3690> accessed 30th August 2021.

⁵¹ Financial Action Task Force, ‘The FATF Recommendations’ (2020).

⁵² Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018.

⁵³ Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017, Regulation 14.

⁵⁴ See A1, A2, C1, C2, Y1, Y2, W1, W2, J1, J2.

⁵⁵ HM Treasury, ‘UK National Risk Assessment of Money Laundering and Terrorist Financing’ (2020).

this issue by stating, ‘how will anyone know if I’ve made a single sale above that limit? For a business like mine that sells items at a variety of price points, I could easily say the sale is below that limit’.⁵⁶ HMRC has not explained the extent to which it checks the items that dealers are selling in relation to this threshold limit and issues. Neither have any penalties been issued to luxury goods dealers in this regard.⁵⁷ Subsequently, the likelihood of HMRC monitoring and checking the content of transactions remains low in this regard remains low.⁵⁸ This contrasts with HMRC’s approach within other sectors such as real estate where it diligently checks payments (e.g. rent of houses).⁵⁹

Additionally, there is no guarantee that dealers would refuse payments above the threshold limit in cash if faced with such a situation.⁶⁰ Dealers suggested they have accepted purchases above the threshold limit from customers in cash even though they are not registered with HMRC for AML:⁶¹ ‘I can confirm that I’m not an AML gatekeeper whereas I can’t confirm that I haven’t accepted payments above that limit from customers in cash’.⁶² Another dealer stated, ‘why would I refuse the payment? I have employees and bills to pay. All sales are welcomed in my organisation. That’s the basics of keeping your business afloat’.⁶³ The threshold definition consequently provides an opportunity for individuals to opt out of adopting AML controls and continue accepting payments that pose a high money laundering risk.⁶⁴ Indeed opting out of AML compliance goes against the purpose of the system, which is designed to ensure that those on the front line are able to assist in the fight against crime.⁶⁵ This is a critical aspect of the AML regime which requires attention and is subsequently considered further later Chapters.⁶⁶

⁵⁶ See A1.

⁵⁷ HM Treasury, ‘Anti Money Laundering and Counter Terrorist Financing: Supervision Report’ (2021).

⁵⁸ Ibid.

⁵⁹ Lisa Wilson, ‘Rental Income Scrutinised by HMRC’ Cowgills (London, 25 February 2022) <<https://www.cowgills.co.uk/news/rental-income-scrutinised-by-hmrc/>> accessed 31st March 2022.

⁶⁰ Ibid, A1, A2, C1, C2, Y1, Y2, W1, W2, J1, J2.

⁶¹ Ibid.

⁶² See C1.

⁶³ See J1.

⁶⁴ See A1, A2, C1, C2, Y1, Y2, W1, W2, J1, J2.

⁶⁵ HM Revenue and Customs, ‘Understanding the Businesses that HMRC Supervise in Respect of the Money Laundering Regulations’ <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/344782/report253.pdf> accessed 3rd March 2022.

⁶⁶ See Chapters Three, Four and Five.

A further vulnerability extends it presuming that cash purchases below €10,000 do not include a risk of money laundering and thus such individuals do not need to adopt AML controls.⁶⁷ The European Commission has highlighted that there is no evidence that cash payment limitations have limited risks within the art and high-value goods sectors.⁶⁸ Similarly, from a real estate perspective, the idea of having multiple purchases for a smaller amount of money rather than a big payment for millions is recognised as a phenomenon to bypass AML controls.⁶⁹ Subsequently, dealers who make sales below the threshold still pose a money laundering risk.⁷⁰ By failing to require these individuals to adopt AML controls, the AML regime provides opportunities to money launderers who continue to identify susceptibility and locations where the risk of detection for money laundering practices is at its lowest.⁷¹

Luxury items such as jewellery, watches, and art can hold value below €10,000 and can be utilised in sophisticated money-laundering operations, for example, several cash purchases for luxury items amounting to a large amount in total.⁷² Cash is a key component in organised criminal activity and criminals may try to dispose of cash through the purchase of goods subsequently, dealers must be vigilant in high-risk areas.⁷³ By accepting payments for these items in cash, dealerships with no AML controls provide money launderers with useful loopholes.⁷⁴ Dealers failed to see the risk in accepting cash payments and made specific reference to Covid-19 government controls negatively impacting businesses resulting in an increased need to make sales and generate a profit ‘to keep the business afloat’.⁷⁵ Another dealer said, ‘I’m not in a position to start turning

⁶⁷ European Commission, ‘Report from the Commission to the European Parliament and to the Council on the assessment of the risks of money laundering and terrorist financing affecting the internal market and relating to cross-border situations’ (2017).

⁶⁸ Ibid.

⁶⁹ The Law Society, ‘Anti Money Laundering in the Property Market’ (London, 9 September 2021) <<https://www.lawsociety.org.uk/en/topics/property/anti-money-laundering-in-property>> accessed 20th March 2022.

⁷⁰ See A1, A2, C1, C2, Y1, Y2, W1, W2, J1, J2.

⁷¹ Nicholas Gilmour, ‘Understanding Money Laundering – A Crime Script Approach’ (2014) 2 *European Review of Organised Crime* 109.

⁷² See A2.

⁷³ HMRC, ‘Anti-Money Laundering Supervision: Guidance for High Value Dealers’ (2020).

⁷⁴ See A1, A2, C1, C2, Y1, Y2, W1, W2, J1, J2.

⁷⁵ See C2.

money down for a purchase when the business is on the brink of bankruptcy due to not generating a profit for over 9 months'.⁷⁶

2.3 Registration

Registration is a pivotal aspect of the UK AML regime⁷⁷ and ensures that regulated entities are supervised in relation to their AML obligations.⁷⁸ By registering with HMRC for AML supervision, dealers are able to adopt controls within their organisation to reduce the risk of money laundering.⁷⁹ HMRC states that dealers must not accept high-value cash payments (HVPs) until they have registered with HMRC since these are recognised to pose a high risk of money laundering.⁸⁰ A HVP is a: single cash payment of €10,000 or more for goods; several cash payments for a single transaction totalling €10,000 or more, including a series of payments and payments on account; cash payments totalling €10,000 or more which appear to have been broken down into smaller amounts so that they come below the high-value payment limit.⁸¹

However, despite its significance, dealers say they had not registered for AML and accepted high-value payments regardless of the risk attached to such payments: 'I've never registered for AML and I accept cash payments up to £30,000 in my stores'.⁸² Another dealer stated, 'I have run this business for 25 years and never registered for AML, neither have I refused a payment due to concerns of it being related to money laundering. That isn't my responsibility'.⁸³ The documents issued by HMRC fails to consider the extent to which failure to register for AML increases the risk of money laundering among regulated entities. The above assertions by dealers subsequently indicate that such risks

⁷⁶ See W1.

⁷⁷ Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017, Part 6.

⁷⁸ Gov.UK, 'Anti-Money Laundering Registration' <<https://www.gov.uk/anti-money-laundering-registration>> accessed 11th January 2022.

⁷⁹ Ibid.

⁸⁰ Ibid.

⁸¹ Ibid.

⁸² See C1.

⁸³ See A1.

may significantly increase since dealers fail to recognise the risk of accepting HVPs and have not faced any penalties for doing so.⁸⁴

A dealer that is not registered with HMRC and has no AML controls in place may therefore be regarded as posing an increased risk of being involved in money laundering operations.⁸⁵ For example, a jewellery dealer may be considered more likely to engage in operations that involve a high risk of money laundering by failing to register, due to several reasons.⁸⁶ First, the dealers' ability to understand the risks associated with certain high-risk payments is likely to be reduced due to the absence of AML controls.⁸⁷ In this regard, all businesses supervised by HMRC for AML are subject either to 'fit and proper test' or approval requirements under the Regulations.⁸⁸ These requirements ensure that businesses, beneficial owners, and senior management are appropriate people to undertake those roles.⁸⁹ Relevant persons must pass the relevant test before the business can register and remain registered with HMRC.⁹⁰ Second, by failing to register, the dealer is unlikely to fear the repercussions of accepting high-risk payments, such as penalties from HMRC;⁹¹ for example refusal of registered status, civil financial penalty, or criminal prosecution.⁹² Third, the dealer may be considered more likely to prioritise profit and therefore less likely to reject payments that involve money laundering risk (as reflected in the remarks above).⁹³

Additionally, by failing to work with supervisory authorities such as HMRC, dealers may be regarded as being in a weaker position to identify and handle suspicious matters and gain the necessary support to prevent money laundering operations from taking place.⁹⁴ In support of this, one dealer stated, 'I've never worked with HMRC for AML, I wouldn't know where to start or what to do'.⁹⁵ Whilst dealers can access the

⁸⁴ See A1, C1, HM Treasury, 'Anti Money Laundering and Counter Terrorist Financing: Supervision Report' (2021).

⁸⁵ HMRC, 'Anti-Money Laundering Supervision: Guidance for High Value Dealers' (2020).

⁸⁶ *Ibid.*

⁸⁷ *Ibid.*

⁸⁸ *Ibid.*

⁸⁹ *Ibid.*

⁹⁰ *Ibid.*

⁹¹ See A1, J2

⁹² HMRC, 'Anti-Money Laundering Supervision: Guidance for High Value Dealers' (2020).

⁹³ See C1, C2, W1.

⁹⁴ HM Treasury, 'UK National Risk Assessment of Money Laundering and Terrorist Financing' (2020).

⁹⁵ See C2.

guidance online, even if they are not registered with HMRC, they are unlikely to do so because they have no incentive to research AML.⁹⁶ Furthermore, without registering individuals are less likely to undergo training or ensure that employees that handle AML matters are ‘fit and proper’ in conducting the checks.⁹⁷ These vulnerabilities coupled with the unique characteristics of luxury goods which make them useful for money laundering operations⁹⁸ create an increased risk of money laundering and make unregistered luxury goods dealers an attractive avenue for criminals seeking to conceal criminal gains without detection.⁹⁹

The analysis above indicates that registration is critical in reducing the risk of money laundering within luxury goods sectors. HMRC states that it issues financial penalties for failure to register starting from £350.¹⁰⁰ However, the extent to which HMRC issues penalties by seeking out and detecting unregistered dealers remains unclear.¹⁰¹ Some dealers interviewed had not registered for AML supervision and failed to comply with the Regulations, but had not faced any penalties for this.¹⁰² Neither did they experience any checks from HMRC in relation to conducting their business in accordance with the AML regime.¹⁰³ The fact that these dealers have never been detected or penalised by HMRC for failing to register may be due to the fact that HMRC allocates the majority of its time and resources on the registered businesses.¹⁰⁴ This generates risk as it means that dealers can continue to operate without any consideration of AML¹⁰⁵ and subsequently engage in operations which pose a high money laundering risk.¹⁰⁶ By failing to identify and penalise these dealers also undermines the importance of registration: ‘I’ve

⁹⁶ See J1, J2, W1, Y2.

⁹⁷ Ibid, Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017, Regulation 24.

⁹⁸ See Chapter One, s 1.3.

⁹⁹ Transparency International, ‘Transparency International, Tainted Treasures: Money Laundering Risks in Luxury Markets’ (April 2017) 3.

¹⁰⁰ HMRC, ‘Guidance: Money Laundering Supervision, Appeals and Penalties’ (2020).

¹⁰¹ See A1, A2, C1, C2, Y1, Y2, W1, W2, J1, J2.

¹⁰² Ibid.

¹⁰³ Ibid.

¹⁰⁴ Gov.UK, ‘Guidance: How HMRC Checks on Businesses registered for Money Laundering Supervision’ <<https://www.gov.uk/guidance/money-laundering-regulations-business-inspections>> accessed 12th February 2022.

¹⁰⁵ See A1, A2, C1, C2, Y1, Y2, W1, W2, J1, J2.

¹⁰⁶ Nicholas Gilmour, ‘Understanding Money Laundering – A Crime Script Approach’ (2014) 2 European Review of Organised Crime 109.

never faced any sanctions for not registering for AML so it's clearly not as important as you explain it to be'.¹⁰⁷

HMRC has recently introduced for dealers to report a business they suspect not to be registered with HMRC when it should be.¹⁰⁸ This process includes completing an online form which requires details of the business such as its name, address, as well as information which raises suspicion of the business not being registered and what activity is taking place.¹⁰⁹ Dealers were questioned about this procedure and if they were aware of a dealer that was not registered but accepted payments of €10,000 and above in cash for payments.¹¹⁰ It is concerning to note that all the dealers stated they would not be willing to report other businesses, even if they had concrete evidence of misconduct.¹¹¹ Dealers explained this reluctance by stating they have formed relationships with other dealerships and would not feel comfortable reporting on their peers in this regard.¹¹² One dealer stated, 'We aren't the police, how can HMRC expect us to spy on others and report them? how other dealers run their business is not something I'm comfortable in reporting or something that I would be getting involved in'.¹¹³

This reluctance creates money laundering risks as dealers may be considered to be in a better position to identify peers that fail to register for AML by being on the front line.¹¹⁴ However, dealers who are not prepared in reporting such practices, reduce the opportunity for HMRC to detect non-compliance and increase the issue for dealerships to continue operating without AML controls.¹¹⁵ The risk posed by non-compliant dealers therefore remains, making them vulnerable to being exploited by money launderers.¹¹⁶ Subsequently, HMRC needs to engage in more active steps in relation to conducting

¹⁰⁷ See W2.

¹⁰⁸ Gov.UK, 'Guidance: Report A Business That is not registered for Money Laundering Supervision' <<https://www.gov.uk/guidance/money-laundering-regulations-supervised-business-register>> accessed 20th February 2022.

¹⁰⁹ Ibid.

¹¹⁰ See A1, A2, C1, C2, Y1, Y2, W1, W2, J1, J2.

¹¹¹ Ibid.

¹¹² Ibid.

¹¹³ See A1.

¹¹⁴ Gov.UK, 'Guidance: Report A Business That is not registered for Money Laundering Supervision' <<https://www.gov.uk/guidance/money-laundering-regulations-supervised-business-register>> accessed 20th February 2022.

¹¹⁵ Ibid.

¹¹⁶ Ibid.

checks on dealers that fail to comply with the MLRs and issuing penalties for non-compliant dealers to reduce the risk of money laundering within luxury goods sectors.¹¹⁷

A further factor which generates risk may be due to dealers adopting alternative approaches when dealing with matters that may involve criminals instead of registering for AML.¹¹⁸ Dealers explained this alternative approach to comprise of an individual within the organisation who is responsible for dealing with suspicious matters and adopting relevant controls to prevent criminality.¹¹⁹ These included the company administrator¹²⁰ and the boss.¹²¹ One of these individuals was willing to part take in the interview,¹²² whilst the other declined the offer as he ‘did not feel comfortable discussing the procedures within the organisation’.¹²³ The dealer that accepted the interview offer mentioned that the company did not have a procedure in place to prevent money laundering operations from taking place.¹²⁴ However, if a situation arose where the client was unable to adhere to the business policies, such as presenting one form of ID for purchases over £12,000, then he is tasked with handling the matter instead of the dealers on the shop floor.¹²⁵ The dealer indicated that only he has the discretion to authorise purchases in such situations and implement procedures that he deems necessary.¹²⁶

When questioned what the dealer would do in such a situation, he explained that he would have a conversation with the customer and if the reasons for not having the ID seemed plausible, such as ‘them being sent for a renewal update’ then he would authorise the payment.¹²⁷ The individual clarified that these controls are not adopted to specifically reduce the risk of money laundering, but instead to ensure that all sales are processed in accordance to the business policies and are not fraudulent.¹²⁸ Additionally, the dealer said that he felt confident that he can handle any matters which ‘may involve criminality’ and therefore ‘don’t see the need in registering with HMRC to do a job that I can do myself

¹¹⁷ Ibid.

¹¹⁸ See C1, J1, W2.

¹¹⁹ See C1, J1.

¹²⁰ See J1

¹²¹ See C1

¹²² See C1.

¹²³ See J1.

¹²⁴ See C1.

¹²⁵ Ibid.

¹²⁶ Ibid.

¹²⁷ Ibid.

¹²⁸ Ibid.

without any costs'.¹²⁹ However, when questioned regarding AML and basic controls within the MLRs the dealer did not offer correct answers.¹³⁰ Thus, by adopting alternative approaches such as tasking an individual within a dealership to handle 'matters that may involve criminality' creates money laundering risk as it means businesses are adopting controls based upon their own assessment without consideration of the MLRs, and such controls fail to address money laundering vulnerabilities, as displayed by the interview participant.¹³¹

A further risk associated with registration is the ability for criminals to register in an attempt to provide a legitimate appearance and conceal criminal funds.¹³² A large number of individuals seeking to register have been convicted or suspected of involvement in criminal activity, resulting in an increased risk of businesses being involved in money laundering.¹³³ In 2014, HMRC noticed that an increasing number of criminals were attempting to register as HVDs in an attempt to provide themselves with a legitimate appearance,¹³⁴ and allocated this vulnerability to the absence of a fit and proper test which created a low barrier to entry.¹³⁵ Additionally, HMRC stated that registered businesses viewed registration and compliance as providing a license to trade rather than a desire to keep society safe.¹³⁶

In response to these concerns, HMRC has altered its verification and registration process for dealers in an attempt to strengthen its ability to keep criminal businesses off the register.¹³⁷ This has resulted in HMRC's refusal of registered status steadily increasing over the years, demonstrating HMRC's attempts to make the process more robust and keep applicants off the register if they are unlikely to comply with the regulations.¹³⁸ Going forward, HMRC intends to continue making the process robust and

¹²⁹ Ibid.

¹³⁰ Ibid.

¹³¹ Ibid.

¹³² HM Treasury, 'UK National Risk Assessment of Money Laundering and Terrorist Financing' (2020).

¹³³ HM Treasury, UK National Risk Assessment of Money Laundering and Terrorist Financing (2017).

¹³⁴ Ibid.

¹³⁵ HM Treasury, UK National Risk Assessment of Money Laundering and Terrorist Financing (2015).

¹³⁶ HM Revenue and Customs, 'Understanding the Businesses that HMRC Supervise in respect of the Money Laundering Regulations'

<https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/344782/report253.pdf> accessed 3rd March 2022.

¹³⁷ HMRC, 'Corporate Report: HMRC Anti-Money Laundering Supervision Annual Assessment' (2021).

¹³⁸ Ibid.

consequently expects refusals to increase further.¹³⁹ Between 2019 and 2020 HMRC rejected 1.7% of registration applications, which is a lot less than in previous years as highlighted within the Corporate Report.¹⁴⁰ However, many legitimate businesses are opting to move away from cash-based operations as a result of the growth of alternative payment methods.¹⁴¹ Consequently, the NRA highlighted that a greater proportion of HMRC's register will be made up of more criminally inclined HVDs or encounter proportionately more applications from criminally-inclined prospective HVDs.¹⁴²

2.4 Assessing Money Laundering Risk

The RBA requires regulated entities to assess the risks within their organisations and implement appropriate controls accordingly.¹⁴³ This seeks to reduce the risk of money laundering by requiring entities to identify risks and put in place measures to effectively manage and mitigate the risks.¹⁴⁴ The vagueness of the RBA is recognised as placing regulated entities in a vulnerable position in facing penalties for incorrect controls.¹⁴⁵ Dealers argued they considered the RBA as trying to catch them out¹⁴⁶ and 'a way for the regulator to always have the upper hand'.¹⁴⁷ This has also been acknowledged from a real estate perspective, where estate agents explain they 'do whatever they can to protect themselves rather than what they are expected to do' such as implementing a RBA.¹⁴⁸

Consequently, the RBA creates multiple compliance methods and approaches which can be detrimental to the AML regime.¹⁴⁹ Zavoli and King base this assertion on the justifications provided by estate agents for the compliance strategies they adopt.¹⁵⁰

¹³⁹ Ibid.

¹⁴⁰ Ibid.

¹⁴¹ Ibid.

¹⁴² HM Treasury, UK National Risk Assessment of Money Laundering and Terrorist Financing (2020).

¹⁴³ Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017, Regulation 18.

¹⁴⁴ HMRC, 'Anti-Money Laundering Supervision: Guidance for High Value Dealers' (2020).

¹⁴⁵ Ibid.

¹⁴⁶ See W1, C1, J2.

¹⁴⁷ See C1.

¹⁴⁸ Ilaria Zavoli, Colin King, 'The Challenges of Implementing Anti- Money Laundering Regulation: An Empirical Analysis' (2021) 4 Modern Law Review 740.

¹⁴⁹ Ibid.

¹⁵⁰ Ibid.

Estate agents were recognised to rely on self-justifications, and self-protection when addressing issues in implementing their AML obligations.¹⁵¹ Subsequently, estate agents said they passively applied AML provisions and therefore failed to exercise the required level of critical assessment required by the RBA.¹⁵² Thus, estate agents do not always actively evaluate the risks associated with a transaction and instead prefer to depend on subsequent evaluations made by national authorities, such as the NCA.¹⁵³

Dealers suggested they would prefer a rule-based approach since it provides ‘much-needed clarity and confidence’ in implementing AML controls.¹⁵⁴ The rule-based approach may be preferred due to the ‘desire for a totally automatic detection system that would obviate the need for individual decision making’.¹⁵⁵ Thus although the RBA seeks to provide regulated entities with a degree of flexibility to tailor controls according to the risks posed, in practice it generates fear in regulated entities and subsequently they prioritise self-protection above acting in accordance to their risk assessment.¹⁵⁶

Additionally, the RBA fails to take into account the individual risks which exist within organisations.¹⁵⁷ This is particularly problematic in a luxury goods context as luxury items include increased risks which may not be present within other sectors.¹⁵⁸ As identified in Chapter One, luxury items have added benefits for money laundering operations due to: the increased usage of cash payments within the sector, the anonymity of transactions, appreciation in value, transportability, absence of standard pricing, status they confer, and their difficulty to be traced.¹⁵⁹ These factors are not acknowledged within the RBA for dealers to consider when conducting their risk assessment.¹⁶⁰ This is problematic as it means that luxury goods dealers may never fully understand the money

¹⁵¹ Ibid.

¹⁵² Ibid.

¹⁵³ Ibid.

¹⁵⁴ See A1, C1, J2, C2.

¹⁵⁵ Gilles Favareel Garrigues, Thierry Godefroy Pierre Lascoumes, ‘Sentinels in the Banking Industry: Private Actors and the Fight against Money Laundering in France’ (2008) 1 *The British Journal of Criminology* 48.

¹⁵⁶ See W1, C1, C2, J2.

¹⁵⁷ Anna Simonova, ‘The Risk Based Approach to Anti- Money Laundering: Problems and Solutions’ (2011) 14 *Journal of Money Laundering Control* 4.

¹⁵⁸ Transparency International, ‘Tainted Treasures: Money Laundering Risks in Luxury Markets’ (2017) 29.

¹⁵⁹ Chapter One, s 1.4.

¹⁶⁰ Ibid.

laundering vulnerabilities that exist within their business and adopt the necessary measures to mitigate against such risks.¹⁶¹ Subsequently, this allows criminals to make use of being one step ahead of dealers and target luxury dealerships to conceal their criminal gains.¹⁶²

Additionally, dealers increase the risk of money laundering by failing to recognise the money laundering risks within their business and adopting controls which address such vulnerabilities.¹⁶³ The risk assessment is a crucial aspect of the RBA as it forms the basis of the controls that entities opt to adopt to reduce money laundering risk.¹⁶⁴ This should include consideration of: the types of customers you have; where you and your customers are based; your customers' behaviour; how customers come to your business; the products you sell or the services you offer; your delivery channels and payment processes, for example, cash over the counter cheques, electronic transfers or wire transfers; where your customers' funds come from or go to.¹⁶⁵ However, dealers displayed an absence of consideration of these aspects and instead stated they did not feel knowledgeable to conduct such assessments.¹⁶⁶ By failing to consider these aspects within their risk assessment dealers are unable to fully understand the potential risks faced by the business and subsequently consider ways to prevent money laundering.¹⁶⁷

When dealers were asked about potential money laundering risks within their business, they explained these to be: counterfeit notes,¹⁶⁸ storing large sums of money in the workplace,¹⁶⁹ data theft,¹⁷⁰ incidents such as break-ins/ burglars¹⁷¹ inventory damage, and forced closure.¹⁷² These responses include risks which are not relevant for money

¹⁶¹ See A1 A2, J1, J2, C1, C2, W1, W2, Y1, Y2, Ehi Eric Esoimeme, *The Risk-Based Approach to Combating Money Laundering and Terrorist Financing* (Eric Press 2015).

¹⁶² Transparency International, 'Tainted Treasures: Money Laundering Risks in Luxury Markets' (2017) 29.

¹⁶³ See A1 A2, J1, J2, C1, C2, W1, W2, Y1, Y2.

¹⁶⁴ Gov.Uk, 'Guidance: Risk Assess your Business for Money Laundering Supervision' <<https://www.gov.uk/guidance/money-laundering-regulations-risk-assessments>> accessed 13th February 2022.

¹⁶⁵ Ibid.

¹⁶⁶ See A1 A2, J1, J2, C1, C2, W1, W2, Y1, Y2.

¹⁶⁷ Ibid.

¹⁶⁸ Ibid.

¹⁶⁹ See C1.

¹⁷⁰ See J1, W2.

¹⁷¹ See J2.

¹⁷² See A1.

laundering and therefore demonstrate a lack of understanding of what exactly constitutes a money laundering risk.¹⁷³ By adopting controls in accordance to these risks, dealers may be under the impression they have efficient controls in place to reduce the risk of money laundering when in practice the controls fail to reduce such risk.¹⁷⁴ Relying on these deficient controls and not being able to check the reliability of such measures, dealers create money laundering risk.¹⁷⁵ Thus the vagueness of the RBA makes it difficult to ascertain whether approaches adopted by dealers are sufficient in addressing money laundering risks¹⁷⁶ and reliance upon such controls may increase the risk of money laundering if they fail to properly address money laundering risks.¹⁷⁷

The RBA requires dealers not to accept HVPs until they have registered with HMRC since these are recognised to pose a high risk of money laundering.¹⁷⁸ Dealers however failed to understand what a HVP is and the risks of accepting HVP in cash without adopting any AML controls.¹⁷⁹ None of the dealers interviewed were able to provide the correct description of a HVP being anything that equates to €10,000 or more in cash.¹⁸⁰ Instead, one participant stated that their million-pound yachts would equate to a HVP,¹⁸¹ another suggested it to be ‘something in the thousands price range’.¹⁸² On the other hand, one dealer explained a HVP as not being fixed to one specific price but instead a price point that is within the top 10% of the customer's assets/capital.¹⁸³ Nonetheless, dealers stated they would not adopt any additional AML controls for processing such payments.¹⁸⁴ Furthermore, dealers mentioned they have accepted payments above €10,000 in cash without any consideration of them being associated with money laundering: ‘sometimes we do, I’ve heard of yacht dealers accepting large sums of money,

¹⁷³ See Y1, J2, C1, J1, W2, J2, A1.

¹⁷⁴ Louis de Koker, ‘Identifying and Managing Low Money Laundering Risk: Perspectives on FATF’s Risk-Based Guidance (2009) 4 Journal of Financial Crime 16, Y1, J2, C1, J1, W2, J2, A1.

¹⁷⁵ Ibid.

¹⁷⁶ Stuart Ross, Michelle Hannan. ‘Money Laundering Regulation and Risk- based Decision Making’ (2007) 1 Journal of Money Laundering Control 10.

¹⁷⁷ See Y1, J2, C1, J1, W2, J2, A1

¹⁷⁸ Gov.UK, ‘Anti-Money Laundering Registration’ <<https://www.gov.uk/anti-money-laundering-registration>> accessed 11th January 2022.

¹⁷⁹ See A1, A2, C1, C2, J1, J2, W1, W2, Y1, Y2.

¹⁸⁰ Ibid.

¹⁸¹ See Y1.

¹⁸² See C2.

¹⁸³ See J2.

¹⁸⁴ See Y1, C2, J2.

like £250,000 in cash and not declaring it',¹⁸⁵ and, 'I sold a BMW for £16,000 last year in cash, quite a few of our cars are priced between £12,000 and £40,000 if the customer wants to pay some of it, all of it in cash I'm okay with it'.¹⁸⁶

Just one dealer stated that the business has never accepted payment of £10,000 in cash,¹⁸⁷ whilst the remaining nine dealers indicated a willingness to accept payments in cash regardless of their value.¹⁸⁸ Dealers provided mixed responses regarding the risks of receiving HVPs. These ranged from: 'the money being part of a criminal group',¹⁸⁹ 'the money being fake',¹⁹⁰ 'storing large sums of money in a small shop isn't very safe'.¹⁹¹ By failing to recognise the money laundering risks associated with accepting cash payments dealers make it easier for criminals to exploit luxury goods sectors to conceal their money-laundering operations.¹⁹² Thus by permitting customers to purchase items in cash without any consideration of the MLRs, dealers increase the risk of money laundering within their organisations.¹⁹³

2.5 Customer Due Diligence

Dealers are required to conduct CDD to identify the customer unless the identity of that customer is known to, and has been verified by, the relevant person; verify the customer's identity unless the customer's identity has already been verified by the relevant person, and assess, and where appropriate obtain information on, the purpose and intended nature of the business relationship or occasional transaction.¹⁹⁴ This includes obtaining a customer's name, photograph on an official document that confirms their identity, residential address, and date of birth.¹⁹⁵ HMRC lists the following documents as meeting

¹⁸⁵ See Y2.

¹⁸⁶ See C2, Y1, J1, A2, W1, W2, J2.

¹⁸⁷ See A1, J1.

¹⁸⁸ See A2, J2, C1, C2, W1, W2, Y1, Y2.

¹⁸⁹ See J1.

¹⁹⁰ Ibid.

¹⁹¹ Ibid.

¹⁹² Colin King, Clive Walker, Jimmy Gurule, *The Palgrave Handbook of Criminal and Terrorism Financing Law* (Palgrave Macmillan 2018) 135.

¹⁹³ See A1, A2, C1, C2, J1, J2, W1, W2, Y1, Y2.

¹⁹⁴ Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017, Regulation 27 (1) Regulation 28 (2).

¹⁹⁵ Ibid.

the identification requirements: passport, utility bill, bank statement electoral register, information held by credit reference agencies, and other official documents.¹⁹⁶

However, in practice dealers state they do not implement CDD controls in accordance to the MLRs and instead adopt alternative identification controls they deem appropriate for their business.¹⁹⁷ This creates money laundering risk as the alternative controls fail to address money laundering risks and are adopted as ‘tick box exercises’.¹⁹⁸ Dealers explained their CDD controls as requiring a minimum of one form of ID before processing any transaction.¹⁹⁹ This would usually include photographic ID such as a passport or driving license.²⁰⁰ However, if the individual was unable to provide these then any other items would suffice such as utility bills and bank cards.²⁰¹ Dealers suggested they would not adopt any further checks on the information within the ID.²⁰² Instead, they would merely need to ensure that the individual had a form of ID to show due to it being required in the company’s sales procedures.²⁰³ This creates money laundering risk as dealers do not spend time verifying the ID or asking questions in relation to the transaction, such as the reason for the purchase.²⁰⁴ These checks are necessary in ensuring that the individual is who he/she presents as being and to evaluate the extent to which the customer exposes the business to a range of risks.²⁰⁵ Failure to check ID leaves the identification process redundant and criminals can conceal their identity with ease, however, HMRC’s guidance for dealers does not highlight this point.²⁰⁶

¹⁹⁶Gov.UK, ‘Your Responsibilities Under Money Laundering Supervision’ <<https://www.gov.uk/guidance/money-laundering-regulations-your-responsibilities>> accessed 20th July 2021.

¹⁹⁷ See A1, A2, J1, J2, C1, C2, W1, W2, Y1, Y2.

¹⁹⁸ Ibid.

¹⁹⁹ See A1, A2, Y1, Y2, J1, C1, C2, W1.

²⁰⁰ Ibid.

²⁰¹ Ibid.

²⁰² Ibid.

²⁰³ Ibid.

²⁰⁴ Norman Mugarura, ‘Customer Due Diligence Mandate and the Propensity of its Application as a Global Anti Money Laundering Paradigm’ (2014) 1 *Journal of Money Laundering Control* 17.

²⁰⁵ Louis De Koker, ‘Money laundering control and suppression of financing of terrorism: Some thoughts on the impact of customer due diligence measures on financial exclusion’ (2006) 1 *Journal of Financial Crime* 13.

²⁰⁶ HMRC, ‘Anti-Money Laundering Supervision: Guidance for High Value Dealers’ (2020), Christian Kalin, Wouter Muller, John Goldsworth, *Anti Money Laundering: International Law and Practice* (Wiley 2007) 549.

Risk is also generated by dealers implementing CDD controls based upon an incorrect assessment of risk.²⁰⁷ Dealers state they only conduct additional verification checks on customers that purchase items above a certain threshold.²⁰⁸ In this regard, two dealers stated that in addition to ID documentation they may also conduct additional checks to verify clients if they purchased items above £50,000²⁰⁹ and £100,000.²¹⁰ This may involve checking: client databases including the personal details of customers and payment methods²¹¹, checking the Electoral Roll and Companies House to see if the information provided matches up,²¹² and using an online system to register each client and keep a record.²¹³ Similarly, real estate agents use methods such as internet searches, LinkedIn, and Facebook to conduct further searches regarding their client's identification.²¹⁴ However, these checks are not based on a threshold incorporated within a business, as is the case for dealers.²¹⁵ Thus, dealers adopt a flexible approach in relation to customer identification that largely depends on individual business practices.²¹⁶ This generates risk as dealers themselves decide when to conduct further verification measures, such as identifying thresholds that are extremely high and excluding transactions equally risky but that do not meet the limit.²¹⁷

Risk is generated by dealers failing to require any identification from certain customers.²¹⁸ Whilst the MLRs provide the opportunity for regulated entities to alter their CDD measures in accordance to the risk exposed by the client (such as EDD and SDD), they did not provide justifications for failing to conduct CDD altogether.²¹⁹ One dealer said, 'we deal with extremely high-profile people, we don't need to verify their identity

²⁰⁷ See A2, J1, J2.

²⁰⁸ Ibid.

²⁰⁹ See J1.

²¹⁰ See J2.

²¹¹ See J1.

²¹² See J2.

²¹³ See J1.

²¹⁴ Ilaria Zavoli, Colin King, 'The Challenges of Implementing Anti- Money Laundering Regulation: An Empirical Analysis' (2021) 4 *Modern Law Review* 751.

²¹⁵ See A2, J1, J2.

²¹⁶ Ibid.

²¹⁷ Ibid.

²¹⁸ See A1, W1.

²¹⁹ Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017, Regulation 27 (1), Regulation 37 and 33.

as we know who they are from the internet'.²²⁰ Another dealer explained they sell items via social media such as Instagram to 'influencers', and therefore they do not feel the need to check or verify customers as they are social media celebrities.²²¹

The vulnerability of social media platforms for money laundering operations is not something which has been recognised within the literature until recently due to the increasing usage of such platforms in the era of modern technology.²²² However, risks have been identified regarding the utilisation of social media in terrorist financing operations.²²³ These online systems pose emerging vulnerabilities for terrorist financing in that they can be accessed globally, used to transfer funds quickly, while transactions may be traceable it is difficult to identify the actual beneficiary.²²⁴ Creating social media accounts is extremely simple due to the fact that the only requirement that an individual must provide to verify their ID and create an account is an email address, which can be easily created under a false ID.²²⁵ This coupled with the ability for individuals to purchase items worth significant amounts (£12,000 onwards) with relative ease creates an increased money laundering threat.²²⁶ Thus, by relying on social media accounts for CDD, dealers increase the risk of money laundering and provide opportunities for criminals to create fake accounts to purchase luxury items and avoid detection.²²⁷ Furthermore, knowledge of these lax measures may also increase the attraction of luxury goods sectors for criminals seeking a resting place for their illicit gains.²²⁸

One of the benefits of the RBA to AML is the ability for regulated entities to tailor their CDD controls in accordance to the risk exposed by individual customers, providing

²²⁰ See A1.

²²¹ See W1.

²²² Maysan Alobaid, 'Social Media Influencers in the Grand Scheme of Money Laundering' <<https://www.law.upenn.edu/live/blogs/100-social-media-influencers-in-the-grand-scheme-of>> accessed 11th February 2022.

²²³ Andrew Silke, Tylor Francis, *Handbook of Terrorism and Counter Terrorism* (Routledge 2018) 89. Tom Keatinge, Florence Keen, 'Social Media and Counter Terrorist Finance: A Fund Raising disruptive Tool' (2018) *Studies in Conflict and Terrorism* 178 – 205.

²²⁴ FATF, 'Emerging Terrorist Financing Risks – Report October 2019' <<https://www.fatf-gafi.org/media/fatf/documents/reports/Emerging-Terrorist-Financing-Risks.pdf>> accessed 20th May 2022.

²²⁵ Gov, UK, 'Guidance: New Plans to Protect People from Anonymous Trolls Online' <<https://www.gov.uk/government/news/new-plans-to-protect-people-from-anonymous-trolls-online>> accessed 1st February 2022.

²²⁶ See A1, W1.

²²⁷ Jose Van Dijck, Thomas Poell, 'Understanding Social Media' (2019) 1 *Media and Communication Journal* 3.

²²⁸ *Ibid.*

them with flexibility and adaptability.²²⁹ However, dealers indicated a failure to tailor their CDD controls in this regard and adopt EDD and SDD measures.²³⁰ EDD applies to situations that are high risk and requires adopting additional measures to identify and verify the customers' identity and source of funds, as well as conducting additional ongoing monitoring.²³¹ Subsequently, EDD is required for PEPs as they are considered as being in a position to abuse their public office for private gain.²³² A PEP may therefore use the financial system to launder the proceeds of abuse of office.²³³

However, none of the dealers understood what a PEP was or the specific principles they are required to apply when entering into a business relationship with a PEP.²³⁴ Dealers stated, 'how would I know If someone is or isn't a PEP',²³⁵ and 'In the very long time I have worked as a dealer I have never heard of measures for PEP or adopted any such measures'.²³⁶ Indeed, the difficulty in identifying someone as a PEP has also been recognised in real estate: 'well if I'm a dodgy PEP who's using bribery from my Russian foreign deal, am I really gonna say, yeah I'm a PEP'.²³⁷ When dealers were provided an explanation of a PEP, they demonstrated they were confused and would not feel comfortable adopting measures they are unsure about.²³⁸ This generates risk as dealers are not in a position to adopt EDD checks on PEPs and therefore would adopt minimum ID measures of ensuring they have one form of ID if the business required it.²³⁹

On the other hand, dealers may apply SDD where the business relationship or transaction is considered low risk in terms of money laundering or terrorist financing.²⁴⁰ However, dealers did not make specific reference to this variation but did state that for

²²⁹ Abdul Rafay, *Risk-Based AML/CFT Regulations for Effective Supervision* (IGI Global 2021) 207.

²³⁰ See A1, A2, J1, J2, C1, C2, W1, W2, Y1, Y2

²³¹ HMRC, 'Anti-Money Laundering Supervision: Guidance for High Value Dealers' (2020).

²³² Financial Conduct Authority, 'Guidance on the Treatment of Politically Exposed Persons under the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017' <<https://www.fca.org.uk/publication/guidance-consultation/gc17-02.pdf>> accessed 2nd February 2022.

²³³ Ibid.

²³⁴ See A1, A2, J1, J2, C1, C2, W1, W2, Y1, Y2.

²³⁵ See C1.

²³⁶ See W2.

²³⁷ Ilaria Zavoli, Colin King, 'The Challenges of Implementing Anti- Money Laundering Regulation: An Empirical Analysis' (2021) 4 *Modern Law Review* 751.

²³⁸ See A1, A2, J1, J2, C1, C2, W1, W2, Y1, Y2.

²³⁹ Ibid.

²⁴⁰ HMRC, 'Anti-Money Laundering Supervision: Guidance for High Value Dealers' (2020).

some clients they apply relaxed identification.²⁴¹ Dealers mentioned that to avoid alienating clients and balancing the need for checks alongside maintaining a trustworthy relationship with clients they adopted a light-touch approach in certain situations.²⁴² One dealer explained this by stating, ‘we’ve known the gentleman for over ten years, we’ve put artwork up in his house for him, we have no reservations about him doing anything illegal’.²⁴³ Another dealer highlighted, ‘a lot of local customers I’ve known for years, I know their families, we go way back so I don’t need to identify them’.²⁴⁴ Dealers do not base these reduced CDD controls on a reduced risk of money laundering.²⁴⁵ Instead, they based such controls on how they perceive the customer and the relationship formed with the individual.²⁴⁶ This generates money laundering risk as these individuals may actually pose a high risk of money laundering.²⁴⁷

Moreover, money laundering risk may be considered to have increased due to Covid-19. Dealers said they adapted their CDD systems in accordance to the Covid-19 government lockdown restrictions.²⁴⁸ Dealers explained that the restrictions made it impossible to meet customers in person and therefore they adopted new verification measures such as requesting clients to email IDs, and conducting video calls with customers.²⁴⁹ Additionally, dealers raised concerns about the pandemic increasing financial strains on businesses and consequently sales were now given an even higher priority than before: ‘we’re on the verge of bankruptcy, we need all the sales possible right now’,²⁵⁰ and ‘I haven’t sold a product for months because of covid-19, I won’t be questioning clients from whom I need sales to keep the business afloat’.²⁵¹ Criminals have taken advantage of the government lockdown measures by finding ways to bypass CDD measures and exploiting temporary challenges in internal controls caused by remote

²⁴¹ See A1, A2, J1, J2, C1, C2, W1, W2, Y1, Y2.

²⁴² See A1, J1, C2, W1.

²⁴³ See A1.

²⁴⁴ See C2.

²⁴⁵ See A1, J1, C2, W1.

²⁴⁶ Ibid.

²⁴⁷ Ibid.

²⁴⁸ See A1, A2, J1, J2, C1, C2, W1, W2, Y1, Y2.

²⁴⁹ See J2.

²⁵⁰ See C1

²⁵¹ See J2.

working situations, in order to conceal and launder funds.²⁵² By adopting a relaxed approach to CDD through the Covid-19 pandemic, dealers increase the risk of money laundering within their businesses.²⁵³ The FATF and the NCA have issued information highlighting Covid-19 related money laundering risks for regulated entities.²⁵⁴ However, none of the dealers interviewed were aware of this information or utilised it.²⁵⁵ Thus risks are generated by dealers failing to consider the increased money laundering risks created by remote working and failing to adopt controls to mitigate against such risks.²⁵⁶

2.6 Suspicious Activity Reporting

Dealers are required to report suspicious activity as soon as possible if they know or suspect money laundering or terrorist financing.²⁵⁷ Whilst SARs do not necessarily reduce the risk of money laundering, they serve various uses from providing immediate opportunities to stop crime and arrest offenders, to helping uncover potential criminality that needs to be investigated, and providing valuable intelligence for crime reduction in the future.²⁵⁸ Thus, SARs are an important aspect of the UK AML regime, and by complying with reporting obligations dealers are assisting in combatting money laundering operations.²⁵⁹

Suspicion is a key component of money laundering offences.²⁶⁰ It is the minimum mental state required for the commission of an offence under sections 327, 328, and 329 of POCA.²⁶¹ Without a statutory definition or guidance, it has been left to the courts to determine what ‘suspicion’ means.²⁶² From a money laundering context, the principal

²⁵² Financial Action Task Force, ‘Update: Covid 19 Related Money Laundering and Terrorist Financing’ (2021), National Crime Agency, ‘Covid-19’ (2021).

²⁵³ Ibid.

²⁵⁴ Ibid.

²⁵⁵ See A1, A2, J1, J2, C1, C2, W1, W2, Y1, Y2.

²⁵⁶ Ibid.

²⁵⁷ Proceeds of Crime Act 2002.

²⁵⁸ National Crime Agency, ‘How SARs are Used’ <<https://www.nationalcrimeagency.gov.uk/who-we-are/publications/158-introduction-to-suspicious-activity-reports-sars/file>> accessed 15th February 2022.

²⁵⁹ Ibid.

²⁶⁰ Proceeds of Crime Act 2002, s 327, s 328, s 329.

²⁶¹ Ibid.

²⁶² R v Da Silva [2006] EWCA Crim 1654, [2006] 2 Cr App R 35.

authority regarding the meaning of suspicion is *R v Da Silva*.²⁶³ The Court of Appeal considered the correct interpretation of suspicion to be, ‘the defendant must think that there is a possibility, which is more than fanciful, that the relevant facts exist’.²⁶⁴ A vague feeling of unease would not suffice.²⁶⁵ However, statutes do not require suspicion to be ‘clear’ or ‘firmly grounded and targeted on specific facts’, or based upon ‘reasonable grounds’.²⁶⁶ When dealers were provided this definition of suspicion they stated they considered it extremely complicated and unclear.²⁶⁷ Dealers raised concerns about the unclarity: ‘it’s like the regulators want us to fail so they can catch us out and fine us’,²⁶⁸ and ‘for an ordinary person like myself that’s way too technical to understand and interpret, you have to bear in mind that dealers like myself are not experts in the law. Assuming that we can make such a judgment is unrealistic and disproportionate and unfair’.²⁶⁹

Regardless of these concerns, suspicion of money laundering requires a personal and subjective assessment from regulated entities in determining when to file a SAR.²⁷⁰ Individual perceptions are a vital aspect of SARs, as a decision must be made in relation to whether the situation raises enough suspicion to file a report.²⁷¹ Submitting a SAR does not involve a common approach, and it is instead largely based upon personal observations and choices.²⁷² This subjectivity generates risk as the concept of suspicion itself remains unclear and inconsistently applied by regulated entities.²⁷³ Dealers highlighted that what appears to be suspicious to one person may not be to another, and vice versa, creating confusion and perplexity.²⁷⁴ This combination of factors results in a very high volume of reports (in other regulated sectors) and issues with the quality of

²⁶³ Ibid.

²⁶⁴ Ibid.

²⁶⁵ Ibid.

²⁶⁶ Ibid.

²⁶⁷ See A1, A2, J1, J2, C1, C2, W1, W2, Y1, Y2.

²⁶⁸ See C1.

²⁶⁹ See C2.

²⁷⁰ Ilaria Zavoli, Colin King, ‘The Challenges of Implementing Anti- Money Laundering Regulation: An Empirical Analysis’ (2021) 4 *Modern Law Review* 740.

²⁷¹ Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017, s 21.

²⁷² Ibid.

²⁷³ Law Commission, ‘Anti Money Laundering: the SARs Regime’ (2020).

²⁷⁴ See C1, C2, W1, A1, J2.

disclosures.²⁷⁵ Additionally, misapplying suspicion increases the risk of regulated entities committing a criminal offence either by laundering criminal property or failing to disclose it.²⁷⁶

Regulated entities that file SARs when there is no suspicion of criminal property impact on the UK Financial Intelligence Units (UKFIU) resources.²⁷⁷ This delays the processing of more serious cases, as it can divert resources away from serious and organised crime or vulnerable people where matters may be time-sensitive.²⁷⁸ As well as wasting the entities' time and resources in the private sector by lodging a report that is of no value.²⁷⁹ On the other hand, dealers may fail to recognise money laundering risks and subsequently fail to report matters to the NCA which include a high suspicion of money laundering.²⁸⁰ This allows money-laundering operations to go undetected and creates a considerable loophole in the system.²⁸¹ Additionally, the subjectivity provides dealers with the opportunity to avoid filing a SAR on the basis they did not reach the level of suspicion required to file one.²⁸² Furthermore, the subjectivity relies upon dealers having a certain level of knowledge and understanding of money laundering to make such an assessment, which in practice many dealers may not possess.²⁸³

Accordingly, dealers say they would file a SAR when 'sensing a red flag'²⁸⁴ or if 'something didn't smell right'.²⁸⁵ They explained these approaches by stating that if something had a 'strange smell' they would assess the situation with another colleague.²⁸⁶ If something had a 'bad smell' they would discuss the situation with the manager.²⁸⁷ This is comparable to real estate agents also mentioning they would file a report in accordance

²⁷⁵ Robert Axelrod, 'Criminality and Suspicious Activity Reports' (2017) 24 *Journal of Financial Crime* 231.

²⁷⁶ *Ibid.*

²⁷⁷ *Ibid.*

²⁷⁸ *Ibid.*

²⁷⁹ *Ibid.*

²⁸⁰ See C2, Y2.

²⁸¹ *Ibid.*

²⁸² Jackie Harvey, 'Compliance and reporting issues arising for financial institutions from money laundering regulations: a preliminary cost benefit study' (2004) 7 *Journal of Money Laundering Control* 22.

²⁸³ *Ibid.*, See A1, A2, J1, J2, C1, C2, W1, W2, Y1, Y2.

²⁸⁴ See C2.

²⁸⁵ See Y2.

²⁸⁶ *Ibid.*

²⁸⁷ *Ibid.*

to the ‘smell test’ or ‘traffic light system’ if something appears a little bit off.²⁸⁸ The traffic light system bears similarities with the smell test explained by dealers in the fact that, if everything was right then it was considered green; if something was wrong but not a criminal offence then it would be regarded as amber; and if something was a fail under the MLRs then it would be red.²⁸⁹ This creates an inconsistent/scattered approach to potentially suspicious activities and highlights different levels of experience to detect and ‘smell’ such activities.²⁹⁰ The subjectivity of detecting whether or not a situation is suspicious can therefore generate risk, as individuals with a relatively limited understanding and awareness of money laundering risk may opt to overlook a situation which in reality raises high suspicion of money laundering and should be reported.²⁹¹

Further risks are generated by dealers that opt not to comply with their SARs obligations.²⁹² Dealers indicated they had never submitted a report, even when faced with suspicious matters.²⁹³ These responses correlate with the data in the NRA which highlights low reporting rates among HVDs.²⁹⁴ The low level of reporting and poor quality of SARs negatively impact the quality and usefulness of the financial intelligence available to competent authorities.²⁹⁵ There is a risk that investigative opportunities, particularly relating to complex criminal activity, maybe missed as a result of a lack of comprehensive, cross-agency analysis of available financial intelligence and the poor quality of SARs.²⁹⁶

Failing to submit SARs, therefore, increases the risk of money laundering through luxury goods and increases the attraction of the sector for criminals.²⁹⁷ The value of SARs is wide-reaching and has been instrumental in locating offenders and identifying money laundering operations.²⁹⁸ By being on the front line and dealing with customers, dealers are in an extremely useful position to flag money laundering operations and provide

²⁸⁸ Ilaria Zavoli, Colin King, ‘The Challenges of Implementing Anti- Money Laundering Regulation: An Empirical Analysis’ (2021) 4 *Modern Law Review* 759.

²⁸⁹ *Ibid.*

²⁹⁰ *Ibid.*

²⁹¹ See A1, Y1, Y2, J1.

²⁹² See A1, A2, J1, J2, C1, C2, W1, W2, Y1, Y2.

²⁹³ *Ibid.*

²⁹⁴ HM Treasury, ‘UK National Risk Assessment of Money Laundering and Terrorist Financing’ (2020).

²⁹⁵ Financial Action Task Force, ‘Mutual Evaluation Report of the United Kingdom’ (2018).

²⁹⁶ Law Commission, ‘Anti Money Laundering: the SARs Regime’ (2020).

²⁹⁷ *Ibid.*

²⁹⁸ National Crime Agency, ‘Suspicious Transaction Reporting’ (2015).

insights that cannot be provided by anyone else.²⁹⁹ Failing to provide intelligence allows criminals to continue their operations undetected.³⁰⁰ The information contained in SARs provides vital intelligence about criminal methods and contributes to the UK's understanding of crime strategies to reduce money laundering.³⁰¹ Rachel Davis, Head of Advocacy at Transparency International states that when regulated entities turn a blind eye to corrupt money, they are assisting in hiding wealth that has been stolen from very often the poorest parts of the world.³⁰² She explains that law enforcement agencies should be coming down hard on those individuals and firms found not to have submitted reports after incidents of clear money laundering, whether unknowingly or complicity.³⁰³

By failing to comply with reporting obligations and providing valuable information on potential criminality to the NCA, dealers are not only operating illegally but they are also potentially assisting money laundering operations from taking place.³⁰⁴ SARs can help identify changes in the nature or prevalence of types of organised crime: for example, money laundering and fraud which enables detection and prevention activity, including the issue of alerts to businesses at risk from such activity.³⁰⁵ Furthermore, SARs can also assist in establishing a geographical picture/ pattern of the vulnerability of a particular sector or product, and can be used in the analysis of suspicious activity before and after a specific event such as a terrorist incident.³⁰⁶

Risk is also increased by dealers adopting alternative approaches when faced with situations that involve suspicion instead of what is stipulated under POCA.³⁰⁷ The interview data suggests that there appears to be an inconsistent approach applied by dealers, which is based upon individual business practices rather than the reporting

²⁹⁹ Ibid.

³⁰⁰ Ibid.

³⁰¹ Ibid.

³⁰² Transparency International, 'Rise in Number of Suspicious Activity Reports Should Not Mask Failing System' <<https://www.transparency.org.uk/rise-number-suspicious-activity-reports-should-not-mask-failing-system>> accessed 24th January 2022.

³⁰³ Ibid.

³⁰⁴ National Crime Agency, 'Introduction to Suspicious Transaction Reporting' <<https://www.nationalcrimeagency.gov.uk/who-we-are/publications/158-introduction-to-suspicious-activity-reports-sars/file>> accessed 15th February 2022.

³⁰⁵ Ibid.

³⁰⁶ Ibid.

³⁰⁷ See A1, A2, J1, J2, C1, C2, W1, W2, Y1, Y2.

obligations within POCA.³⁰⁸ One dealer voiced that if a client seemed suspicious they would speak to their manager to ‘have a look into the situation and the information that has been provided by the customer’, who would then decide whether to continue with the transaction or decline it.³⁰⁹ Another dealer stated that in suspicious situations they are required to have a conversation with the client and if this discussion removes the suspicion then the transaction would proceed.³¹⁰ These measures do not include flagging situations to the NCA, which is an important aspect of SAR.³¹¹ The NCA can communicate the information within SARs to relevant departments such as HMRC, the local police, and government departments to adopt for further investigation.³¹² Dealers, on the other hand, do not possess the same knowledge, skills, expertise, and resources to fill the role of the NCA internally. Subsequently, by failing to comply with POCA and submit SARs to the NCA the risk of money laundering significantly increases.³¹³

Furthermore, the MLRs require dealers to appoint a ‘Nominated Officer’ who is responsible for money laundering matters within the business, such as training employees and reporting suspicious activity to the National Crime Agency.³¹⁴ Only one out of the ten dealers was able to confirm that this role existed within the business and was held by the manager.³¹⁵ The remaining nine dealers stated that this role did not exist within the organisation and was not required.³¹⁶ They justified this on the basis they ‘do not look out for money laundering operations’, and therefore do not face suspicious matters that require expertise.³¹⁷ By failing to appoint a nominated officer the risk of money laundering increases as there is no individual responsible for training employees in AML controls and assessing and reporting suspicious matters to the NCA.³¹⁸ The absence of

³⁰⁸ Ibid.

³⁰⁹ See A1.

³¹⁰ See W1.

³¹¹ Ibid.

³¹² National Crime Agency, ‘How SARs are Used’ <<https://www.nationalcrimeagency.gov.uk/who-we-are/publications/158-introduction-to-suspicious-activity-reports-sars/file>> accessed 15th February 2022.

³¹³ Ibid.

³¹⁴ Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017, s 21.

³¹⁵ See Y2.

³¹⁶ See A1, A2, Y1, Y2, J1, J2, W1, W2, C1, C2.

³¹⁷ Ibid.

³¹⁸ David Chaikin, ‘How Effective are Suspicious Transaction Reporting Systems?’ (2009) 12 *Journal of Money Laundering Control* 3.

this role may also explain the general lack of knowledge and understanding among dealers in all aspects of AML.³¹⁹ Thus dealers generate risk by failing to comply with the regulations in ensuring that an individual within the organisation holds the role of an AML nominated officer.³²⁰

Moreover, dealers failing to comply with the requirement to ensure confidentiality when filing a report may also be acknowledged as creating risk.³²¹ Dealers highlighted difficulties in maintaining confidentiality:³²² ‘It’s unrealistic to expect me to keep such a serious matter a secret from my colleagues, we work in a team and always discuss matters with each other’.³²³ These difficulties have also been raised by real estate agents: ‘mainly works in open-plan offices as a team and therefore the whole team is going to know about the situation, particularly in the market now where we’re fairly low volume of transactions so everybody is going to know, and therefore the risk of something getting out is far greater than it perhaps would be indicated by the regulations’.³²⁴ By failing to keep SARs confidential, regulated entities run the risk of prejudicing current or future investigations and reducing law enforcement’s ability to disrupt criminal activity effectively.³²⁵ However, dealers and other regulated entities (such as estate agents) argue that the system is not written with them in mind, and thus there is a huge gap between the establishment of AML obligations on paper and their implementation in practice.³²⁶ Subsequently, dealers voiced they would not ‘go out of their way’³²⁷ to keep SARs confidential within their business environment.³²⁸

A final risk to consider in relation to SARs is defensive filing.³²⁹ The consequences that dealers may face as a result of failing to comply with their reporting

³¹⁹ See A1, A2, Y1, Y2, J1, J2, W1, W2, C1, C2.

³²⁰ Ibid.

³²¹ Ibid.

³²² Ibid.

³²³ See Y2.

³²⁴ Ilaria Zavoli, Colin King, ‘The Challenges of Implementing Anti- Money Laundering Regulation: An Empirical Analysis’ (2021) 4 *Modern Law Review* 760.

³²⁵ HM Treasury, ‘Correspondence 004/2021: Money Laundering: The Confidentiality and Sensitivity of Suspicious Activity Reports in the Context of Disclosure in Private Civil Litigation’ (2021).

³²⁶ Ilaria Zavoli, Colin King, ‘The Challenges of Implementing Anti- Money Laundering Regulation: An Empirical Analysis’ (2021) 4 *Modern Law Review* 761; A1, A2, Y1, Y2, J1, J2, W1, W2, C1, C2.

³²⁷ See W2.

³²⁸ See J1, C1, W2.

³²⁹ See Y1, C1, C2, W2.

requirements may result in dealers making reports to protect themselves.³³⁰ One dealer stated, ‘if by failing to make a report I’m at risk of being penalised then, of course, I’m going to file the report to cover my ass’.³³¹ Whilst this issue has not been flagged up within the discourse in relation to dealers (since they are instead recognised for low reporting levels), this is an issue which has recognised within other regulated sectors.³³² This practice of reporting runs the risk of becoming an embedded approach, especially due to the ease of submitting a SAR within a few hours being preferred to the prospect of more than a few years’ incarceration for substantive laundering or failure to disclose offence.³³³

However, defensive reporting may have no immediate value to law enforcement agencies and instead creates an overwhelming burden for the UKFIU.³³⁴ Ian Mynot from the NCA has highlighted, ‘we are dealing with huge volumes and large increases of SARs, year on year...reform is needed’.³³⁵ Indeed, this approach to reporting frustrates the objectives of the AML regime and stays away from the RBA.³³⁶ Whilst to a certain extent regulated entities may always opt to err on the safe side,³³⁷ if dealers engage in submitting reports purely to protect themselves from facing any penalties then they increase pressure on the NCA and detract time away from situations that may include a high suspicion of money laundering, resulting in an increased risk.³³⁸

2.7 Supervision

³³⁰ Ibid.

³³¹ See Y1.

³³² HM Treasury, ‘UK National Risk Assessment of Money Laundering and Terrorist Financing’ (2020)

³³³ Sarah Kebbell, ‘The Law Commission: Anti Money Laundering and Counter Terrorist Financing- Reform of the Suspicious Activity Reporting Regimes’ (2018) 2 *Criminal Law Review* 880.

³³⁴ Ibid.

³³⁵ Anti-Money Laundering Intelligence, ‘British NCA chief calls for Reform of SAR System to eliminate the challenges posed by ‘defensive reporting’ <<https://www.amlintelligence.com/2020/11/british-nca-chief-calls-for-reform-of-sar-system-to-eliminate-the-challenges-posed-by-defensive-reporting/>> accessed 1st March 2022.

³³⁶ Ibid.

³³⁷ Ilaria Zavoli, Colin King, ‘The Challenges of Implementing Anti- Money Laundering Regulation: An Empirical Analysis’ (2021) 4 *Modern Law Review* 763.

³³⁸ Law Commission, ‘Anti Money Laundering: the SARs Regime’ (2020).

The MLRs have progressed to reduce vulnerabilities within sectors targeted by money launderers who constantly resort to more sophisticated ways to disguise the source of their funds.³³⁹ Luxury goods dealers were acknowledged as posing a high risk of being targeted for such practices and subsequently required to register for AML supervision.³⁴⁰ Dealers are the first line of defence in the UK's response to illicit finance and consequently play a critical role in both preventing the financial system from being exploited for criminal gain and detecting suspicious activity where it has occurred.³⁴¹ Strong regulatory and supervisory systems are therefore fundamental in protecting dealers against abuse by money launderers and risk of prosecution through the implementation of the controls explained within this chapter.³⁴² An effective AML supervisory and enforcement system has been considered as comprising of preventative measures and related sanctions, remedial actions that AML supervisors can apply, as well as separate, yet complementary, measures and actions by law enforcement and other relevant competent authorities.³⁴³ HMRC is responsible for supervising dealers and whilst its supervision covers all of these aspects, the UK supervisory regime is considered to be moderately effective.³⁴⁴ Thus significant risks exist in HMRC AML supervision of HVDs and AMPs.³⁴⁵

The MLRs require AML supervisors to adopt a risk-based approach to the supervision of their population.³⁴⁶ This includes understanding the money laundering risk within their population to target resources on the activities that criminals are most likely to exploit.³⁴⁷ This methodology ensures that supervision is focused on areas where it will have the greatest impact in detecting, deterring, and disrupting criminals as well as

³³⁹ Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017, Part 7, Fabian Teichmann, *Methods of Money Laundering: Circumventing Anti Money Laundering Mechanisms* (2021) 2 Kluwer Law International 67.

³⁴⁰ House of Commons, 'Money Laundering Briefing Paper' (2018).

³⁴¹ HM Treasury, 'Anti Money Laundering and Counter Terrorist Financing: Supervision Report' (2021).

³⁴² *Ibid.*

³⁴³ Financial Action Task Force, 'Effective Supervision and Enforcement by AML Supervisors of the Financial Sector and Law Enforcement' (2019).

³⁴⁴ *Ibid.*

³⁴⁵ *Ibid.*

³⁴⁶ Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017, Part 7.

³⁴⁷ HM Treasury, 'Anti Money Laundering and Counter Terrorist Financing: Supervision Report' (2021).

minimising unnecessary burdens on legitimate businesses.³⁴⁸ Subsequently, HMRC adopts a RBA in supervising HVDs and AMPs.³⁴⁹ An effective risk-based approach is identified as comprising a deep understanding of the supervised population; differentiating between types of firms, the services they provide, and their clients, among other factors.³⁵⁰ Accordingly, there are various resources available to assist HMRC in building an understanding of money laundering risks within its regulatory population, such as the NCA risk assessments and briefings, and the Office for Professional Body Anti Money Laundering Supervision (OPBAS) sourcebook.³⁵¹ Additionally, the MLRs require supervisors to refer to the National Risk Assessment when conducting their AML risk assessments.³⁵²

However, HMRC has been identified as basing its supervisory attention on firm size instead of a nuanced understanding of sectoral risks within luxury goods sectors.³⁵³ This creates a risk of overlooking dealerships which pose a high money laundering risk and such businesses never being inspected, as well as the appropriate level of resources required for effective supervision never being obtained over the medium to long-term.³⁵⁴ In view of the large supervisory population and diverse range of services supervised, the FATF states that HMRC needs to consider how to ensure the appropriate intensity of supervision for all the different categories of its supervisory population from low risk to high risk.³⁵⁵ Subsequently, there is an uneven level of sophistication in the development of risk-based supervision of luxury goods dealers which runs the risk of disregarding certain businesses.³⁵⁶

³⁴⁸ Ibid.

³⁴⁹ Gov.UK, 'Guidance: Risk Assess your Business for Money Laundering Supervision' <<https://www.gov.uk/guidance/money-laundering-regulations-risk-assessments>> accessed 13th February 2022.

³⁵⁰ HM Treasury, 'Anti Money Laundering and Counter Terrorist Financing: Supervision Report' (2021)

³⁵¹ Ibid.

³⁵² Ibid.

³⁵³ Ibid.

³⁵⁴ FATF, 'Mutual Evaluation Report: 2018' <<https://www.fatf-gafi.org/media/fatf/documents/reports/mer4/MER-United-Kingdom-2018.pdf>> accessed 29th October 2021.

³⁵⁵ Ibid.

³⁵⁶ Ibid.

A further issue in relation to HMRC risk-based supervision of dealers relates to the specific risks that it recognises as money laundering vulnerabilities.³⁵⁷ Whilst the literature mentions that HMRC has a good understanding of inherent money laundering risks in relation to the sectors it supervises,³⁵⁸ this Chapter has identified risks which are not considered or acknowledged by HMRC.³⁵⁹ These risks are equally important and require consideration when supervising luxury goods sectors.³⁶⁰ Thus, by failing to acknowledge these risks, as a supervisor HMRC may be considered as having an inadequate understanding of the money laundering vulnerabilities present within luxury goods sectors.³⁶¹ Subsequently, HMRC cannot allocate resources to these risks and preemptively address them.³⁶² Thus, HMRC's RBA to supervision fails to recognise certain risks, making luxury goods sectors ideal for money launderers to target such weaknesses for their operations.³⁶³

This failure to recognise risks may be due to the breadth of entities that HMRC supervises.³⁶⁴ Under the MLRs, HMRC supervises estate letting agency businesses, art market participants, high-value dealers, money service businesses, and trust or company service providers who are not supervised by the Financial Conduct Authority or Professional Body Supervisors.³⁶⁵ HMRC is also the default supervisor for Accountancy Service Providers.³⁶⁶ The latest AML supervision review identified the total number of registered entities supervised by HMRC as 46,746.³⁶⁷ In supervising this population between 2019 and 2020 HMRC is reported to have approximately 266 full-time employees dedicated to AML supervision.³⁶⁸ This raises concerns as to whether HMRC is equipped to supervise such a vast number of entities with varying needs and money

³⁵⁷ See A1, A2, J1, J2, C1, C2, W1, W2, Y1, Y2.

³⁵⁸ Financial Action Task Force, 'Mutual Evaluation Report of the United Kingdom' (2018).

³⁵⁹ See s 2.2, s 2.3, s 2.4, s 2.5, s 2.6, s 2.7.

³⁶⁰ Ibid.

³⁶¹ Lucia Dalla Pellegrina, Donato Masciandaro, 'The Risk-Based Approach in the New European Anti-Money Laundering Legislation: A Law and Economics View (2009) 3 Review of Law and Economics 23.

³⁶² Ibid.

³⁶³ See s 3.2, s 3.3, s 3.4, s 3.5, s 3.6, s 3.7.

³⁶⁴ Gov.UK, 'Policy paper: Economic Crime Plan 2019 to 2022' (2022).

³⁶⁵ Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017, Section 8.

³⁶⁶ Ibid.

³⁶⁷ HM Treasury, 'Anti Money Laundering and Counter Terrorist Financing: Supervision Report (2021).

³⁶⁸ Ibid.

laundering risks.³⁶⁹ Indeed the large population of entities may make it easier to overlook certain risks,³⁷⁰ particularly if staff numbers are low and the nature of money laundering risks requires consideration of constantly evolving risks within each sector.³⁷¹ HMRCs role as AML supervisor for HVDs is considered further in subsequent Chapters.³⁷²

Although HMRC adopts a RBA as an AML supervisor, registration rates remain low among dealers, resulting in dealers operating in the UK without any supervision.³⁷³ The interview data suggests that dealers fail to understand the importance of being supervised for AML and subsequently many opt not to be registered for supervision.³⁷⁴ One dealer indicated this by stating, ‘I am self-employed, the book stops with me. I’m not going to sign up to be supervised by HMRC for AML and be told how to run my business’.³⁷⁵ This creates a risk of dealers operating without any consideration of AML and subsequently adopting policies which are vulnerable to being targeted by money launderers.³⁷⁶ An absence of AML supervision reduces the necessity for dealers to assess money laundering risks and consider ways in which to mitigate against such risks.³⁷⁷ Additionally, dealers who are not supervised are unlikely to fear the prospect of facing the penalties for non-compliance or engaging in practices which pose a high money laundering risk.³⁷⁸

Subsequently, additional risk is generated in HMRC’s failure to identify non-compliant dealers.³⁷⁹ It is impossible to ascertain the number of businesses not registered for AML supervision.³⁸⁰ The dealers interviewed demonstrated an absence of registering for AML supervision, some for several years without facing any repercussions for such practices.³⁸¹ Although HMRC states that it conducts checks on dealers in its capacity as

³⁶⁹ See A1, J2.

³⁷⁰ Ibid.

³⁷¹ Alexander Dill, *Anti Money Laundering Regulation and Compliance: Key Problems and Practice Areas* (Edward Elgar 2021).

³⁷² See Chapter Three, Four and Five.

³⁷³ HM Treasury, ‘UK National Risk Assessment of Money Laundering and Terrorist Financing’ (2017).

³⁷⁴ See A1, A2, J1, J2, C1, C2, W1, W2, Y1, Y2.

³⁷⁵ See Y1.

³⁷⁶ Ibid.

³⁷⁷ See C2, Y2, W2.

³⁷⁸ See J1, A2.

³⁷⁹ See A1, A2, J1, J2, C1, C2, W1, W2, Y1, Y2.

³⁸⁰ HM Revenue and Customs, ‘Understanding the Businesses that HMRC Supervise in respect of the Money Laundering Regulations’ (2021).

³⁸¹ Ibid.

AML supervisor,³⁸² none of the dealers had experienced this, nor were they aware of such checks being conducted within their sector.³⁸³ The 2019 Economic Crime Plan considered HMRC's activity in relation to sanctions and considered ways to enhance the present approach.³⁸⁴ Subsequently, HMRC has suggested that it can make greater use of the full range of sanctions available in the MLRs.³⁸⁵ These include: suspended or deregistered businesses; reviewed (and revoked) fit and proper status of individuals; issued financial penalties; and published details of non-complaint businesses.³⁸⁶ However, the impact of these changes within luxury goods sectors remains to be known since until present sanctions have not increased within this category.³⁸⁷

Additionally, this failure to identify non-compliance may be attributed to HMRC prioritising certain obligations above others.³⁸⁸ In this regard, the MLRs require HMRC to monitor its supervised populations effectively and to vary the frequency and intensity of its on and off-site supervision, based on the different risk profiles within its supervised populations.³⁸⁹ Additionally, Regulation 49(1)(d) requires supervisors to ensure that regulated firms who contravene relevant requirements are liable to effective, proportionate, and dissuasive measures.³⁹⁰ Subsequently, as mentioned above, this runs the risk of HMRC adopting an approach whereby it prioritises monitoring dealers registered for AML supervision seeking out dealers operating illegally by failing to comply, resulting in major money laundering risks within luxury goods sectors.³⁹¹

Dealers explained, 'I haven't been caught out in 20 years so I'm not going to worry about AML now',³⁹² and 'if it's so important for me to comply with AML obligations why have I never been approached by HMRC or heard of such a thing'.³⁹³

³⁸² HMRC, 'Corporate Report: HMRC Anti-Money Laundering Supervision Annual Assessment' (2021).

³⁸³ See A1, A2, J1, J2, C1, C2, W1, W2, Y1, Y2.

³⁸⁴ HM Treasury, 'Economic Crime Plan' (2021).

³⁸⁵ Ibid.

³⁸⁶ Ibid.

³⁸⁷ Ibid.

³⁸⁸ HM Revenue and Customs, 'Understanding the Businesses that HMRC Supervise in respect of the Money Laundering Regulations' (2021).

³⁸⁹ Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017, Section 8.

³⁹⁰ Ibid Regulation 49 (1) (d).

³⁹¹ Ibid s 2.2.

³⁹² See C2.

³⁹³ See J1.

Along with its supervisory role, HMRC has the power to also pursue prosecutions through its law enforcement powers under the MLRs and POCA which covers money laundering offences.³⁹⁴ Correspondingly, staff working on supervisory issues work closely with the wider investigation teams elsewhere in HMRC to ensure intelligence is shared effectively.³⁹⁵ However, between 2019-20, HMRC only made two referrals to law enforcement agencies.³⁹⁶ Thus, HMRC seems to adopt a lax approach in identifying non-compliant dealers which may undermine the importance of AML, reduce engagement with AML obligations among regulated populations and increase money laundering risk in luxury goods sectors.³⁹⁷

In addition to monitoring compliance, HMRC runs the risk of increasing money laundering vulnerabilities within luxury goods sectors by failing to engage with dealers in relation to their AML obligations.³⁹⁸ Under the MLRs supervisors are required to provide appropriate and up-to-date information on AML/CTF requirements to their supervisory population.³⁹⁹ Poor or inadequate supervision in the property market has been highlighted as laying out a welcome mat for money launderers.⁴⁰⁰ Although HMRC has issued guidance for HVDs and AMPs,⁴⁰¹ this was not utilised by the dealers interviewed as they were not sent the guidance, nor were they aware of its existence.⁴⁰² Dealers mentioned they had not received any support from HMRC regarding AML and they felt very much ‘left in the dark’⁴⁰³ in relation to their obligations.⁴⁰⁴ Dealers also highlighted that by failing to receive this assistance they did not feel confident in applying the controls necessary and feared they may have ‘missed out something important’⁴⁰⁵ creating loopholes for criminals to exploit.⁴⁰⁶

³⁹⁴ HM Treasury, ‘Anti Money Laundering Supervisory Review’ (2017).

³⁹⁵ Ibid.

³⁹⁶ Ibid.

³⁹⁷ Ibid.

³⁹⁸ Ibid.

³⁹⁹ Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017, Regulations 17(1), 47(1), 47(3).

⁴⁰⁰ House of Commons, ‘Proceeds of Crime Fifth Report of Session’ (2017).

⁴⁰¹ HMRC, ‘Anti-Money Laundering Supervision: Guidance for High Value Dealers’ (2020).

⁴⁰² See A1, A2, J1, J2, C1, C2, W1, W2, Y1, Y2.

⁴⁰³ See J2.

⁴⁰⁴ See C2, J1, Y2.

⁴⁰⁵ See W2.

⁴⁰⁶ Ibid.

HMRC recognises that there is room for further improvement in its supervisory efforts with regulated sectors.⁴⁰⁷ In addressing this risk, HMRC has indicated that it is working to increase the number of supervisory interventions per year, increasing staff numbers and improving productivity through better training and other improvements in supervisory processes.⁴⁰⁸ Furthermore, it has identified a strong desire and willingness by HMRC staff and Senior Leadership Team to improve the existing system and widespread agreement on the changes needed to enhance and increase its effectiveness.⁴⁰⁹ However, these efforts remain to be conducted in the context of luxury goods dealers and thus risks remain in this regard.⁴¹⁰

A final risk may be generated by the numerous associations which represent luxury sub-sectors. Some of these associations engage with the MLRs and provide support that is approved by HMRC. The British Art Market Federation (BAMF) represents the interest of the UK's large and diverse art and antiques market in its contracts with the government.⁴¹¹ BAMF has issued guidance on AML for UK AMPs approved by HM Treasury.⁴¹² This collates with the guidance issued by HMRC and thus provides further clarity to art dealers. In addition to this, the Art Loss Register (ALR) is the leading due diligence provider for the art market and maintains the world's largest private database of stolen art, antiques, and collectables.⁴¹³ From a yacht context, the Association of Brokers and Yacht Agents (ABYA) provides ongoing training and monitors the development of its members in relation to various aspects including AML.⁴¹⁴ ABYA has close working relationships with UK regulatory bodies and requires its members to be registered with HMRC as HVDs.⁴¹⁵

On the other hand, several associations exist which fail to specify their engagement with AML and subsequently may be providing information which runs

⁴⁰⁷ HMRC, 'Corporate Report: HMRC Anti-Money Laundering Supervision Annual Assessment' (2021).

⁴⁰⁸ Ibid.

⁴⁰⁹ HM Revenue and Customs, 'Understanding the Businesses that HMRC Supervise in respect of the Money Laundering Regulations' (2020).

⁴¹⁰ Ibid.

⁴¹¹ British Art Market Federation, 'The BAMF' <<https://tbamf.org.uk>> accessed 12th March 2022.

⁴¹² British Art Market Federation, 'Guidance on Anti Money Laundering for UK Art Market Participants' (2020).

⁴¹³ Art Loss Register, 'About' <<https://www.artloss.com>> accessed 2nd March 2022.

⁴¹⁴ Association of Brokers and Yacht Agents, 'About Us' <<https://abya.co.uk/about-us/>> accessed 21st February 2022.

⁴¹⁵ Association of Brokers and Yacht Agents, 'Brokers Code of Conduct' (2017).

contrary to that provided by HMRC. From a jewellery context, the National Association of Jewellers (NAJ) is the UK's leading trade association.⁴¹⁶ Every NAJ member must abide by a 'code of conduct' stipulated by NAJ, based on honesty, integrity and professionalism.⁴¹⁷ NAJ does not contain any provisions within its code of conduct in relation to AML.⁴¹⁸ Similarly, UK car dealers are able to gain further support from several associations including the Independent Motor Dealers Association,⁴¹⁹ National Franchised Dealers Association,⁴²⁰ and British Motor Trade Association.⁴²¹ Furthermore, UK watch dealers are able to gain assistance from The Watch Register (which is part of the ALR) provides due diligence on watches for dealers, pawnbrokers, auction houses, individual insurers and police.⁴²²

Whilst these associations are not AML supervisory bodies, dealers stated they may contact these associations if they suspected money laundering.⁴²³ Associations were contacted for interviews, but many ignored the request whilst others said, 'we are not in a position to discuss AML', and 'we cannot part take as this contravenes without privacy policy'.⁴²⁴ Therefore, is unclear the extent to which these bodies understand and are aware of the AML requirements under the MLRs.⁴²⁵ Subsequently, there is a potential risk that without this knowledge, the information provided by these associations may not be accurate.⁴²⁶ Further risk may be generated by these multiple bodies providing information which may contradict the MLRs and each other.⁴²⁷ This lack of coordination and failure to apply a uniform approach among regulated sectors may lead to inconsistencies in AML application and create further money laundering vulnerabilities within luxury goods

⁴¹⁶ National Association of Jewellers, 'About Us' <<https://www.naj.co.uk/>> accessed 20th February 2022.

⁴¹⁷ National Association of Jewellers, 'Code of Conduct' (2021).

⁴¹⁸ Ibid.

⁴¹⁹ Independent Motor Vehicle Dealers Association, 'About the IMDA' <<https://theimda.co.uk/about-the-imda/>> accessed 2nd March 2022.

⁴²⁰ National Franchised Dealers Association, 'About' <<https://www.nfda-uk.co.uk/about>> accessed 2nd March 2022.

⁴²¹ British Motor Trade Association, 'About Us' <<https://www.britcar.org/about-the-british-motor-trade-association>> accessed 1st March 2022.

⁴²² The Watch Register, 'What We Do' <<https://www.thewatchregister.com/#whatwedo>> accessed 2nd March 2022.

⁴²³ See A1, A2, J1, J2, C1, C2, W1, W2, Y1, Y2.

⁴²⁴ See Email P.

⁴²⁵ Office for Professional Body AML Supervision, 'Sourcebook for Professional Body Anti Money Laundering Supervisors' (2018).

⁴²⁶ Ibid.

⁴²⁷ Ibid.

sectors.⁴²⁸ In this regard, inconsistent supervision has been identified within the legal and accountancy sector which resulted in the establishment of the Office of Professional Body AML Supervision.⁴²⁹

2.8 Conclusion

This chapter has identified various money laundering risks within UK luxury goods sectors. These include risks within the UK AML regime itself, such as the obligations it places upon luxury goods dealers, as well as risks generated in practice through dealers' application of the AML regime within luxury goods sectors. The MLRs oblige HVDs and AMPs who accept or make cash payments of €10,000 or more (or equivalent in any currency) in exchange for goods.⁴³⁰ However, the literature has identified numerous risks within this approach.⁴³¹ Whilst the MLRs stipulate that dealers must act in a certain manner, the data collection indicates that dealers may not be aware of these obligations or understand what they are required to do.⁴³² Thus dealers indicated a general reluctance in acting as AML gatekeepers and the analysis highlighted that dealers operate illegally without any consideration of the MLRs.⁴³³

Additionally, concerns were raised in presuming that dealers are equipped to act as gatekeepers, especially due to the fact that dealers perceive the requirements as complex and confusing.⁴³⁴ The threshold stipulated in the MLRs also generates risk.⁴³⁵ Whilst the threshold approach seeks to capture high-risk transactions, this fails to recognise the risk of transactions below this threshold which are equally as susceptible to money laundering operations.⁴³⁶ Furthermore, dealers are able to take advantage of the

⁴²⁸ HM Treasury, 'Anti Money Laundering Supervisory Review' (2017).

⁴²⁹ Ibid.

⁴³⁰ Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017, s14 (1) a.

⁴³¹ See s 2.2.

⁴³² See A1, A2, C1, C2, Y1, Y2, W1, W2, J1, J2.

⁴³³ Ibid.

⁴³⁴ See A2, C1, J1, Y2.

⁴³⁵ Nicholas Gilmour, 'Understanding Money Laundering – A Crime Script Approach' (2014) 2 European Review of Organised Crime 109.

⁴³⁶ See A1, A2, C1, C2, Y1, Y2, W1, W2, J1, J2.

threshold in avoiding AML controls by operating below the threshold⁴³⁷ or in some cases indicating that their business operations fall below the threshold when in practice this is not the case.⁴³⁸

To reduce the risk of money laundering within luxury goods sectors, dealers are required to register with HMRC for AML supervision.⁴³⁹ However, the analysis within this chapter highlights that this requirement is not strictly monitored by HMRC and subsequently dealers operate within the UK and accept HVPs without registering with HMRC for AML supervision.⁴⁴⁰ This approach undermines the importance of registration and makes dealers perceive the requirement as unnecessary.⁴⁴¹ Instead of registering, dealers are identified as adopting alternative approaches, such as assigning an individual within the organisation who was responsible for checking matters that may involve criminality and making a decision accordingly.⁴⁴² Such an approach fails to consider the MLRs and include the vital aspects covered within money laundering registration.⁴⁴³ Additionally, the analysis identifies the ability for criminals to register under the present regime in an attempt to provide a legitimate appearance and conceal criminal funds.⁴⁴⁴ Although HMRC has altered its approach by making the registration process robust, the impact of this remains to be known.⁴⁴⁵

Once registered, dealers are required to adopt a RBA to AML to adopt controls which efficiently target the specific risks present within individual business practices.⁴⁴⁶ In practice, this proves to be a difficult task particularly due to the limited knowledge and understanding of AML held by dealers.⁴⁴⁷ This creates a situation where dealers are unable to identify the money laundering risk within their organisation and adopt controls which may fail to address risks efficiently.⁴⁴⁸ Subsequently, dealers may be engaging in practices which pose a high risk of money laundering due to their failure to recognise

⁴³⁷ HM Treasury, UK National Risk Assessment of Money Laundering and Terrorist Financing (2015).

⁴³⁸ See C1, J1, Y1.

⁴³⁹ See s 2.3.

⁴⁴⁰ See A1, C1.

⁴⁴¹ Ibid.

⁴⁴² See C1, J1, W2.

⁴⁴³ Ibid.

⁴⁴⁴ HM Treasury, UK National Risk Assessment of Money Laundering and Terrorist Financing (2020).

⁴⁴⁵ Ibid.

⁴⁴⁶ See s 2.4.

⁴⁴⁷ See A1 A2, J1, J2, C1, C2, W1, W2, Y1, Y2.

⁴⁴⁸ Ibid.

risks.⁴⁴⁹ One of these examples includes dealers accepting HVPs without understanding the risk associated with such payment methods.⁴⁵⁰

In accordance to the risk assessment, dealers are required to conduct CDD of their clients to ensure they are who they present themselves as being.⁴⁵¹ This chapter highlights that dealers fail to implement CDD controls in accordance with the MLRs.⁴⁵² Dealers lack knowledge and understanding of these requirements.⁴⁵³ Instead, they adopt identification measures stipulated within their business practices, which fail to address money laundering risks.⁴⁵⁴ Additionally, dealers fail to alter CDD measures in accordance to the risk exposed such as SDD and EDD.⁴⁵⁵ Subsequently, all customers are verified in the same way even if they pose a high risk of money laundering.⁴⁵⁶ Furthermore, the analysis highlights the impact of covid-19 governmental measures upon dealers, resulting in a reduced approach to customer verification.⁴⁵⁷

Moreover, the SARs system has been acknowledged as posing numerous risks.⁴⁵⁸ These are largely focused on the concept of ‘suspicion’ and the difficulty in applying the term due to its subjectivity.⁴⁵⁹ Filing SARs in situations where suspicious is extremely low diverts resources away from serious and organised crime or vulnerable people where matters may be time-sensitive.⁴⁶⁰ On the other hand, by failing to report matters which include a high suspicion of money laundering, dealers may be facilitating money laundering operations.⁴⁶¹ Thus, striking this balance is a difficult exercise in practice, resulting in a reluctance to comply with the requirements among dealers.⁴⁶² Subsequently,

⁴⁴⁹ Ibid.

⁴⁵⁰ See Y1, J2, C1, J1, W2, J2, A1.

⁴⁵¹ See s 2.5.

⁴⁵² See A1, A2, J1, J2, C1, C2, W1, W2, Y1, Y2.

⁴⁵³ Ibid.

⁴⁵⁴ Ibid.

⁴⁵⁵ See A1, W1.

⁴⁵⁶ Ibid.

⁴⁵⁷ Ibid, FATF, ‘Update: Covid 19 Related Money Laundering and Terrorist Financing’

<<https://www.fatf-gafi.org/media/fatf/documents/Update-COVID-19-Related-Money-Laundering-and-Terrorist-Financing-Risks.pdf>> accessed 10th January 2021.

⁴⁵⁸ See Section 3.6.

⁴⁵⁹ Ibid.

⁴⁶⁰ National Crime Agency, ‘Suspicious Transaction Reporting’ <

<https://www.nationalcrimeagency.gov.uk/who-we-are/publications/158-introduction-to-suspicious-activity-reports-sars/file>> accessed 15th February 2022.

⁴⁶¹ See A1, A2, J1, J2, C1, C2, W1, W2, Y1, Y2.

⁴⁶² Ibid.

SARs rates among dealers remain low, increasing the risk of situations involving money laundering risk potentially going undetected.⁴⁶³ Furthermore, the analysis highlights that certain dealers adopt alternative approaches instead of SARs such as escalating the matter to the manager to make the final decision.⁴⁶⁴ Such an approach not only undermines the importance of SARs but also increases the risk of money laundering by refusing the opportunity for the NCA to assess the situation.⁴⁶⁵ Additionally, the analysis identifies the risk associated with defensive filing and failure to appoint a nominated officer.⁴⁶⁶

Lastly, the chapter considers AML supervision of luxury goods dealers.⁴⁶⁷ The RBA to AML supervision is identified as failing to consider all the risks present within luxury goods sectors resulting in an absence of controls in accordance to these risks.⁴⁶⁸ Risk has been identified in HMRC's failure to identify non-compliant dealers and issue penalties to such individuals.⁴⁶⁹ In addition to monitoring compliance, HMRC runs the risk of increasing money laundering vulnerabilities within luxury goods sectors by failing to engage with dealers in relation to their AML obligations.⁴⁷⁰ Finally, the chapter identifies potential risks generated by the numerous associations which represent luxury sub-sectors. Whilst some of these offer AML guidance which is approved by HMRC. Others fail to explain the extent to which they would involve themselves in AML matters and thus risk may be generated by these multiple bodies providing information which may contradict MLRs and each other.⁴⁷¹

The findings within this chapter answer the research question by identifying the money laundering risks which exist within UK luxury goods sectors. These findings will be used as a basis for subsequent chapters, particularly when exploring ways to address and reduce these risks.⁴⁷² As one of the first studies to identify AML risks within luxury goods sectors, the research presents original findings and provides new perspectives to this area of law. Subsequently, the analysis within this chapter is useful in exploring ways to strengthen further and improve UK luxury goods sectors against money laundering

⁴⁶³ HM Treasury, 'UK National Risk Assessment of Money Laundering and Terrorist Financing' (2020).

⁴⁶⁴ See A1, A2, J1, J2, C1, C2, W1, W2, Y1, Y2.

⁴⁶⁵ Ibid.

⁴⁶⁶ Ibid.

⁴⁶⁷ See s 3.7.

⁴⁶⁸ See A1, A2, J1, J2, C1, C2, W1, W2, Y1, Y2.

⁴⁶⁹ Ibid.

⁴⁷⁰ Ibid.

⁴⁷¹ Ibid.

⁴⁷² See Chapters Four and Five.

risks. Based upon this analysis, the following chapter explores the challenges faced by UK dealers in complying with the AML regime in practice.

Chapter 3

AML Regime Implementation Challenges in UK Luxury Goods Sectors

3.1 Introduction

Luxury goods dealers are legally obliged to implement AML controls within their business in accordance with the MLRs.¹ If dealers fail to comply with the Regulations, they risk facing civil financial penalties or criminal prosecution that may result in an unlimited fine and/or prison term of up to two years.² In practice, implementing AML controls is not a simple exercise, and numerous factors can hinder its success. This chapter identifies several factors which impede dealers' compliance with AML obligations. By highlighting these compliance challenges, the chapter demonstrates the need for further consideration within this area of law in reducing compliance hurdles and strengthening luxury goods sectors against money laundering operations.³

The previous chapter identified money laundering risks within UK luxury goods sectors.⁴ These risks increase the vulnerability of luxury goods being targeted for money laundering operations. The UK seeks to address these risks by requiring dealers to adopt controls stipulated within the MLRs. However, the literature fails to consider the extent to which luxury goods dealers can comply with these requirements and whether any barriers exist which make compliance challenging. These factors are important in understanding the present approach to AML implementation among luxury goods dealers, and ways to assist dealers in adopting controls to prevent money laundering.

The objective of this chapter is to examine the challenges faced by UK luxury goods dealers in implementing AML controls. In identifying these issues, the chapter

¹ Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017.

² HMRC, 'Anti-Money Laundering Supervision: Guidance for High Value Dealers' (2020).

³ See Chapter Four, Chapter Five.

⁴ See Chapter Two.

adopts a thematic approach that focuses on obliged entities, registration, assessing money laundering risk, customer due diligence, reporting, and AML supervision. Drawing upon the data derived through interviews with dealers, the chapter provides an original outlook on AML implementation challenges. These findings address the primary research question by providing an insight into issues faced by dealers in complying with the MLRs. Identifying these challenges allows the research to progress by considering ways to improve compliance and increase controls to safeguard luxury goods sectors from being exploited for money laundering operations.

3.2 Obligated Entities

UK AMPs and HVDs are required to implement the obligations of the MLRs to reduce the risk of money laundering within their day-to-day practices.⁵ However, several hurdles exist, making it difficult for dealers to adopt such practices within their businesses resulting in a varied approach to the MLRs.⁶ One of these hurdles involves a failure to understand the basic principles of money laundering and the UK AML regime.⁷ Dealers displayed a general lack of knowledge and understanding of money laundering operations and AML efforts.⁸ Dealers stated, ‘I know nothing about money laundering law, my role simply involves sales’,⁹ and ‘unfortunately I can’t tell you much about money laundering as I don’t have that knowledge’.¹⁰ Duncan Hames, director of Transparency International highlights that ‘there is an inadequate understanding of money laundering obligations among dealers and therefore HMRC needs to provide better guidance to clearly articulate what is expected of dealers to ensure they can guard against illicit wealth and criminal activity’.¹¹ In this sense, knowledge is pivotal in regulatory compliance as it ensures

⁵ Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017.

⁶ See A1 A2, J1, J2, C1, C2, W1, W2, Y1, Y2.

⁷ See C1, J2, W2, Y2.

⁸ Ibid.

⁹ See C1.

¹⁰ See Y2.

¹¹ Alex Capon, ‘Money Laundering Regulations’ *Antiques Trade Gazette* <<https://www.antiquetrade gazette.com/guides/information-guides/money-laundering-regulations/>> accessed 5th February 2022. HMRC, ‘Anti-Money Laundering Supervision: Guidance for High Value Dealers’ (2020).

individuals are able to understand what is required from them and adopt measures accordingly.¹²

Legal regulations can be complex for non-specialists and subsequently make it difficult for dealers to understand their obligations.¹³ Dealers mentioned they had not been provided any training or guidance to understand AML obligations.¹⁴ Without these initiatives, it is not surprising that NRAs constantly report that HVDs adopt deficient controls.¹⁵ Simplified guidance and training has been recognised as significantly increasing knowledge and having a knock-on effect in increasing understanding among entities.¹⁶ The absence of these practices for dealers may therefore explain the limited understanding of MLRs.¹⁷ Subsequently, improving dealers' understanding of what is stipulated in the MLRs is critical in improving compliance among luxury goods sectors.¹⁸

Coupled with a lack of knowledge and understanding, a lack of awareness also acts as a barrier to AML compliance.¹⁹ Dealers were not aware of being captured by the MLRs or their role as AML gatekeepers.²⁰ In this regard, dealers said, 'I definitely know I'm not an anti-money laundering gatekeeper, this is the first I've heard of it',²¹ and 'In my 20 years running this dealership I have never been told that I need to follow the MLRs or what they include'.²² Dealers stressed they had not been sent any information from HMRC in relation to the obligations placed upon them via the MLRs, which may explain the lack of awareness among dealers.²³ Whilst ignorance of the law is not enough to absolve individuals of liability, if dealers are not informed of their AML obligations, dealers they are unlikely to know of the practices they are required to adopt within their

¹² Sarah Kebbell, *Anti Money Laundering Compliance and the Legal Profession* (Routledge 2021).

¹³ *Ibid.*

¹⁴ See A1 A2, J1, J2, C1, C2, W1, W2, Y1, Y2.

¹⁵ HM Treasury, 'UK National Risk Assessment of Money Laundering and Terrorist Financing' (2020); HM Treasury, 'UK National Risk Assessment of Money Laundering and Terrorist Financing (2017)'; HM Treasury, 'UK National Risk Assessment of Money Laundering and Terrorist Financing (2015).

¹⁶ Susan Dudley, 'Improving Regulatory Accountability: Lessons from the Past and Prospects for the Future' (2014) 2 *Western Reserve Law Review* 45.

¹⁷ *Ibid.*

¹⁸ *Ibid.*

¹⁹ See A1 A2, J1, J2, C1, C2, W1, W2, Y1, Y2, Alexander Dill, *Anti Money Laundering Regulation and Compliance: Key Problems and Practice Areas* (Edward Elgar 2021) 76.

²⁰ *Ibid.*

²¹ See Y2.

²² See C1.

²³ See A1 A2, J1, J2, C1, C2, W1, W2, Y1, Y2.

organisation, and the manner in which they are required to conduct their business affairs.²⁴ Even if dealers wish to comply with MLRs, they are unable to do so because they are not aware of them.²⁵ Thus, a lack of awareness of AML requirements reduces the dealers' ability to comply with MLRs.²⁶

Additionally, a failure to understand the merits of acting as AML gatekeepers may also be recognised as impeding compliance.²⁷ In recent years, the role of professional enablers or gatekeepers in facilitating money laundering has significantly increased.²⁸ Professional service industries such as real estate agents have been identified as being utilised to help buy and sell property to launder criminal funds.²⁹ Whilst the role of dealers as professional enablers has not been raised within discourse, the interview data has indicated that dealers that fail to adopt AML measures are more likely to engage in a high risk transaction.³⁰ Subsequently, analysing the UK AML framework, a key aspect that emerges is the role of and the function attributed to private actors.³¹ These AML policing requirements have been acknowledged as a form of government outsourcing regulatory responsibility.³² The UK AML Action Plan states that the private sector is 'the first line of defence'.³³ However, the rationale for this extension has not been communicated to dealers nor does the guidance provided by HMRC explain why HVDs are required to act as gatekeepers and how AML compliance is advantageous for dealers.³⁴ Instead, it addresses the obligations that dealers must adopt via the MLRs and expresses penalties for failing to do so.³⁵

²⁴ Ibid.

²⁵ Ibid.

²⁶ Alexander Dill, *Anti Money Laundering Regulation and Compliance: Key Problems and Practice Areas* (Edward Elgar 2021) 76.

²⁷ Ibid.

²⁸ HM Treasury, 'UK National Risk Assessment of Money Laundering and Terrorist Financing' (2017), Ilaria Zavoli, Colin King, 'The Challenges of Implementing Anti- Money Laundering Regulation: An Empirical Analysis' (2021) 4 *Modern Law Review* 750.

²⁹ Ibid.

³⁰ See Chapter Two, Chapter Three, A1, A2, C1, C2, J1, J2, W1, W2.

³¹ Ilaria Zavoli, Colin King, 'The Challenges of Implementing Anti- Money Laundering Regulation: An Empirical Analysis' (2021) 4 *Modern Law Review* 750.

³² Ibid.

³³ Home Office and HM Treasury, 'Action Plan for Anti-Money Laundering and Counter-Terrorist Finance' (2016).

³⁴ HMRC, 'Anti-Money Laundering Supervision: Guidance for High Value Dealers' (2020).

³⁵ Ibid.

Dealers indicated frustration in being expected to act as AML agents and were unable to recognise the merits of such controls.³⁶ One dealer stated, ‘it’s like the regulators want us to do their job for them at no cost, I think it’s unfair’.³⁷ Another dealer said, ‘I can’t see the need to add this role to the list of jobs I already have, I personally don’t see any merits for my business in adopting AML controls’.³⁸ In this regard, Zavoli and King explain the role of real estate agents as AML gatekeepers by stating they are at the front line and therefore well-positioned to contribute to AML efforts.³⁹ This view is also supported in the art market.⁴⁰ However, by failing to communicate the justification of this extension to dealers, the obligations are not well received and the majority of dealers interviewed openly expressed they did not consider themselves as AML gatekeepers⁴¹ as they ‘see no benefits in doing so’.⁴²

Subsequently, compliance can be significantly improved when individuals understand the obligations placed upon them and how such obligations provide benefits to them.⁴³ By adopting AML controls, dealers are able to protect their businesses from being utilised by criminals, reduce the potential of fraudulent transactions, protect against reputational risks, promote integrity and stability within the business, and raise awareness of risks among employees.⁴⁴ However, without recognising these benefits, dealers may continue to view AML negatively and be reluctant to act as gatekeepers, creating a further hurdle to compliance.⁴⁵

A further factor to consider in this regard is the dealers’ lack of self-assurance in acting as AML gatekeepers. Dealers expressed that AML was not something they felt comfortable or well-positioned to implement and assess, as they considered it an

³⁶ See C1, J1, W2, A2.

³⁷ See C1.

³⁸ See A2.

³⁹ Ilaria Zavoli, Colin King, ‘The Challenges of Implementing Anti- Money Laundering Regulation: An Empirical Analysis’ (2021) 4 *Modern Law Review* 750.

⁴⁰ Saskia Hufnagel, Colin King, ‘Anti-Money Laundering Regulation and the Art Market’ (2020) 40 *Legal Studies* 131.

⁴¹ See C1, J1, W2, A2.

⁴² See A2.

⁴³ Benjamin Rooij, Melissa Rori, *Measuring Compliance: Assessing Corporate Crime and Misconduct Prevention* (Cambridge University Press 2022) 256.

⁴⁴ Christian Kalin, Wouter Muller, John Goldsworth, *Anti Money Laundering International Law and Practice* (Wiley 2007) 673; Saskia Hufnagel, Colin King, ‘Anti-Money Laundering Regulation and the Art Market’ (2020) 40 *Legal Studies* 147.

⁴⁵ See A1 A2, J1, J2, C1, C2, W1, W2, Y1, Y2.

extremely confusing and difficult task.⁴⁶ It is interesting to note that Zavoli and King consider real estate agents as being under a moral obligation to act as gatekeepers and that this justifies the imposition of legal obligations.⁴⁷ Their findings indicate that extending these AML obligations to real estate agents has assisted in creating a community of regulatees that are informed and aware of their responsibilities.⁴⁸

However, the imposition of this ‘moral and legal obligation’ did not seem justified by the dealers interviewed.⁴⁹ Dealers instead made the following remarks: ‘my job is about customer service, so like I say money laundering is not something I feel comfortable to legally consider’,⁵⁰ and ‘I don’t think we should be made to look into money laundering...I see that as more of a job for enforcers’,⁵¹ ‘it’s unfair to oblige me to act as an AML gatekeeper when I don’t feel confident about dealing with legal matters’.⁵² Thus, the dealers interviewed did not feel well-positioned in acting as AML gatekeepers, and this lack of confidence was acknowledged as a factor causing dealers to stray away from AML compliance.⁵³ This raises questions as to whether dealers are fact in a position to act as AML gatekeepers and equipped to deal with the requirements under the MLRs.⁵⁴

Additionally, the financial, logistical, and administrative costs derived from AML compliance were acknowledged as negatively impacting dealers' businesses and therefore preventing compliance.⁵⁵ Instead of recognising the benefits derived from complying with AML obligations, dealers considered the obligations as complex, burdensome, time-consuming, and financially disadvantageous.⁵⁶ The primary motivation for all dealers interviewed was generating a profit and implementing AML controls was considered as curtailing this.⁵⁷ By adopting AML controls dealers expressed they would have less time

⁴⁶ Ibid.

⁴⁷ Ilaria Zavoli, Colin King, ‘The Challenges of Implementing Anti- Money Laundering Regulation: An Empirical Analysis’ (2021) 4 *Modern Law Review* 765.

⁴⁸ Ibid.

⁴⁹ See A1, A2, C1, C2, J1, J2, Y1, Y2, W1, W2.

⁵⁰ See J1.

⁵¹ See J2.

⁵² See Y2.

⁵³ See A1, A2, C1, C2, J1, J2, Y1, Y2, W1, W2.

⁵⁴ Ibid.

⁵⁵ See A1, C2, W1, Y2.

⁵⁶ See A1 A2, J1, J2, C1, C2, W1, W2, Y1, Y2.

⁵⁷ Ibid.

to dedicate to clients, such as building a friendly rapport and tempting them towards making a purchase.⁵⁸

Regulated entities within other sectors have also highlighted discontent about experiencing high AML costs resulting in them feeling less positive about AML in general and its effectiveness.⁵⁹ High AML costs have been acknowledged as reducing the perception of AML effectiveness.⁶⁰ In support of this, Leong explains that the costs of AML compliance outweigh the risks for example, in the banking sector financial and reputational interests influence AML compliance.⁶¹ Furthermore, dealers feared that AML controls would scare clients off and make them feel unwelcome.⁶² They, therefore, considered the cost of AML compliance as disproportionate for their businesses and not an important factor in their day-to-day practices.⁶³

The burden of compliance has also been expressed by real estate agents,⁶⁴ individuals in the banking sector,⁶⁵ and dealers in the art sector.⁶⁶ Real estate agents (EAs) shared similar views, a reoccurring complaint related to the burden of compliance.⁶⁷ In this regard, one estate agent stated, 'it's a huge cost to the business, you know, absolutely huge'.⁶⁸ Additionally, businesses adopting AML requirements may be considered a 'pain for people to buy through' and subsequently at a disadvantage compared to others that fail to do so.⁶⁹ This can potentially act as a disincentive toward compliance.⁷⁰ From an art

⁵⁸ See C1, W2, J1, J2.

⁵⁹ Z Yen, 'Anti Money Laundering Requirements: Costs Benefits and Perceptions' (City Research Series 2005)

⁶⁰ Ibid.

⁶¹ Veng Mei Leong, *The Disruption of International Organised Crime: An Analysis of Legal and Non-Legal Strategies* (Routledge 2007) 134.

⁶² See W2, A1, A2, C1.

⁶³ Ibid.

⁶⁴ Ilaria Zavoli, Colin King, 'The Challenges of Implementing Anti- Money Laundering Regulation: An Empirical Analysis' (2021) 4 *Modern Law Review* 766.

⁶⁵ Antoinette Verhage, *The Anti Money Laundering Complex and the Compliance Industry* (Routledge 2011).

⁶⁶ Saskia Hufnagel, Colin King, 'Anti-Money Laundering Regulation and the Art Market' (2020) 40 *Legal Studies* 140.

⁶⁷ Ilaria Zavoli, Colin King, 'The Challenges of Implementing Anti- Money Laundering Regulation: An Empirical Analysis' (2021) 4 *Modern Law Review* 766.

⁶⁸ Ibid.

⁶⁹ Ibid.

⁷⁰ Angela Leong, *The Disruption of International Organised Crime* (Routledge 2007) 134.

context, it has been expressed that most businesses are small to medium in size and therefore generate a turnover significantly under one million.⁷¹

Therefore, requiring such individuals to adopt AML measures is a disproportionate burden costing them time, expenses as well as potentially losing business.⁷² King and Hufnagel state that including art dealers within the AML framework is ‘policing beyond the police’ through which private actors are tasked to act as ‘front line workers’ in tackling money laundering operations.⁷³ They question whether by acting as gatekeepers to the financial system, private actors such as AMPs should be responsible for protecting the integrity of the financial system.⁷⁴ Although this role has been adopted by banks and financial institutions for decades, there appears a lack of agreement on extending such obligations to the private sector.⁷⁵

3.3 Registration

Despite the legal requirement for dealers to register with HMRC for AML supervision,⁷⁶ the number of registered dealers within the UK is extremely low.⁷⁷ At the end of 2019, there were 461 registered HVDs and 36 registered Art Market Participants operating in the UK.⁷⁸ Whilst this figure has increased from 2018 when there were 368 registered HVDs in the UK,⁷⁹ this is still an extremely small proportion of HVDs, leaving one to question the reasoning for such low figures. The NRA provides statistical information regarding HVD registration however, it states that it is difficult to ascertain the overall

⁷¹ Miao Jiaxin, ‘New Money Laundering Regulation a “disproportionate burden” on art and antiques businesses’ *Antiques Trade Gazette* (London, 2 June 2020) <<https://www.antiquetrade gazette.com/news/2018/new-money-laundering-regulation-a-disproportionate-burden-on-art-and-antiques-businesses/>> accessed 20th January 2021.

⁷² *Ibid.*

⁷³ Saskia Hufnagel, Colin King, ‘Anti-Money Laundering Regulation and the Art Market’ (2020) 40 *Legal Studies* 140.

⁷⁴ *Ibid.*

⁷⁵ Antoinette Verhage, *The Anti Money Laundering Complex and the Compliance Industry* (Routledge 2011).

⁷⁶ Gov.UK, ‘Anti-Money Laundering Registration’ <<https://www.gov.uk/anti-money-laundering-registration>> accessed 11th January 2022.

⁷⁷ HMRC, ‘Corporate Report: HMRC Anti-Money Laundering Supervision Annual Assessment’ (2021).

⁷⁸ *Ibid.*

⁷⁹ HM Treasury, *UK National Risk Assessment of Money Laundering and Terrorist Financing* (2020).

number of HVDs presently operating within the UK.⁸⁰ The Table below demonstrates registration rates among regulated entities.

¹ Table 3	2016 – 2017	2017 – 2018	2018 – 2019	2019 – 2020
High-Value Dealers	737	647	347	461
Art Market Participants	/	/	/	36
Money Service Businesses	1868	1788	1320	1497
Estate Agency Businesses	9907	10,089	7999	13,116
Trust/ Company Service Providers	2735	1747	1378	1629
Accountancy Service Providers	13,275	13,395	12,210	16,865
Bill Payment Service Providers	65	87	240	311
IT and Digital Payment Service Providers	28	33	125	173
TCSP Businesses	1745	867	625	817
Total Registered Businesses	28,615	27,786	23,619	32,827

⁸⁰ Ibid.

The data highlights that low registration rates also exist in other regulated sectors, such as bill payment service providers and IT and Digital service providers. It is also interesting to also note that HMRC identified that 50% of businesses advertising properties for sale at £5 million had failed to register with them for AML supervision or had failed to pay their annual fees.⁸¹ Thus the issue does not purely exist in the context of HVDs but also within other regulated sectors.⁸² However, HVDs and AMP have considerably low registration rates in comparison to other regulated sectors.

The FATF also acknowledges a steady decline in the number of HVDs since the requirement to register with HMRC.⁸³ FATF attributes this to firms opting to operate strict no cash policies to ensure they are not required to register and adopt AML control frameworks.⁸⁴ FATF explains that this may be due to firms perceiving AML requirements as burdensome and thus by making the decision not to accept any form of payment in cash they are able to bypass the requirement to register.⁸⁵ HMRC considers firms opting not to accept cash payments as a positive outcome as it views this as reducing the level of risk within the sector.⁸⁶ However, the NRA offers contrasting viewpoints by stating that there are many cash-intensive businesses within the UK which have failed to register and are therefore operating illegally.⁸⁷ These HVDs accept high-value transactions above the cash threshold but fail to register themselves with HMRC.⁸⁸ Additionally, some HVDs are recognised to operate just below the threshold required by the MLRs (€10,000) in order to continue accepting cash payments (see Chapter Two Section 2.3).⁸⁹ Thus, the extent to which a failure to accept cash may be utilised by dealers to avoid AML registration remains unclear. A further factor which may explain reduced registration rates may be allocated to HMRC's response to criminals attempting to register as HVDs to provide themselves with a legitimate appearance.⁹⁰ As highlighted in the previous

⁸¹ HM Treasury, UK National Risk Assessment of Money Laundering and Terrorist Financing (2020) 111.

⁸² *Ibid.*

⁸³ Financial Action Task Force, 'Mutual Evaluation Report of the United Kingdom' (2018).

⁸⁴ *Ibid* 141.

⁸⁵ *Ibid.*

⁸⁶ *Ibid.*

⁸⁷ HM Treasury, UK National Risk Assessment of Money Laundering and Terrorist Financing (2020)

⁸⁸ *Ibid.*

⁸⁹ *Ibid.*

⁹⁰ HMRC, 'Corporate Report: HMRC Anti-Money Laundering Supervision Annual Assessment' (2021).

chapter, HMRC has changed its verification and registration for dealers to strengthen its ability to keep criminal businesses off the register.⁹¹

Low registration rates may also be allocated to dealers not being aware of the requirement to register for AML supervision.⁹² Lack of awareness is recognised to increase non-compliance among actors since they fail to recognise the need to follow obligations and recognise their significance.⁹³ The government website provides guidance in relation to registration;⁹⁴ however, none of the dealers interviewed were aware or had accessed the information.⁹⁵ Additionally, HMRC fails to reach out to dealers regarding their requirement to register and provide them with information on how to register.⁹⁶ When questioned about registration, dealers made remarks such as, ‘I’ve never heard of it’,⁹⁷ ‘Anti-money laundering registration? That’s not something I have come across or been contacted about’,⁹⁸ and ‘I’m not aware of what that registration, it’s not something that filters through to us at a dealer level’.⁹⁹ By failing to possess knowledge of AML registration, dealers fail to acknowledge their legal responsibility to register and recognise they may be operating illegally.¹⁰⁰ Additionally, even if dealers wish to register and consider AML as favourable for their business, they are unable to do so due to a lack of awareness.¹⁰¹ Moreover, all the dealers interviewed were unaware of when they are next required to update their registration status with HMRC and what this entails.¹⁰²

Furthermore, a failure to understand and recognise the importance of registration may be acknowledged as another factor causing non-compliance.¹⁰³ One dealer stated, ‘I don’t understand how AML registration brings any benefit to my business or to me

⁹¹ Ibid, Chapter Two s 2.3.

⁹² See A1, A2, C1, C2, J1, J2, Y1, Y2, W1, W2.

⁹³ Kevin Sullivan, *Anti Money Laundering in a Nutshell: Awareness and Compliance for Financial Personnel and Business Managers* (Apress 2015) 125.

⁹⁴ Gov.UK, Guidance: Register or Renew Money Laundering Supervision’ <<https://www.gov.uk/guidance/register-or-renew-your-money-laundering-supervision-with-hmrc>> accessed 20th March 2021.

⁹⁵ See A1, A2, C1, C2, J1, J2, Y1, Y2, W1, W2.

⁹⁶ Ibid.

⁹⁷ See A2, Y2, W1.

⁹⁸ See C2.

⁹⁹ See A2.

¹⁰⁰ Ibid.

¹⁰¹ Ibid.

¹⁰² See: A1, A2, C1, C2, J1, J2, W, W2, Y1, Y2.

¹⁰³ Ibid.

making a profit'.¹⁰⁴ There are several merits to registration for AML supervision, from protecting the organisations from criminal operations to assisting in the UK's fight against crime.¹⁰⁵ However, these merits have not been communicated to dealers,¹⁰⁶ and the guidance provided by HMRC fails to explain why dealers are required to register and act as responsible agents within the UK's AML regime.¹⁰⁷ This reflects a top-down approach to AML enforcement, where dealers are told they must act as AML gatekeepers and implement certain controls within their business without any information as to why this is the case or what has led to this decision being reached.¹⁰⁸ Thus, HMRC does not provide dealers with a justification as to why AML obligations have been allocated to them.¹⁰⁹

The top-down approach to AML is also recognised in the AML requirements placed upon other regulated entities including lawyers,¹¹⁰ and real estate agents who also share similar views.¹¹¹ Consequently, by failing to provide an explanation of the reasoning behind extending the MLRs to capture dealers, such as money laundering risks which exist in luxury goods sectors, dealers are unable to recognise the importance of registration.¹¹² In this regard, one dealer mentioned, 'if they [HMRC] can't explain why I need to register, then it is clearly just a way of them controlling my business without any justification, and I have no time for that'.¹¹³ Dealers therefore may disregard the requirement to register if they fail to see the merits of it and instead consider it to be disproportionate and unnecessary.¹¹⁴

¹⁰⁴ See A1.

¹⁰⁵ Peter Reuter, *Chasing Dirty Money: The Fight Against Money Laundering* (Institute for International Economics 2004) 56.

¹⁰⁶ See A1, A2, C1, J2.

¹⁰⁷ Gov.UK, 'Anti-Money Laundering Registration' <<https://www.gov.uk/anti-money-laundering-registration>> accessed 11th January 2022.

¹⁰⁸ Rudolf Duttweiler, *Managing Liquidity in Banks* (Wiley 2011) 245, Jeffery Rachlinski, 'Bottom-up versus Top-down Law-making' (2006) 3 *Chicago Law Review* 954.

¹⁰⁹ Gov.UK, 'Anti-Money Laundering Registration' <<https://www.gov.uk/anti-money-laundering-registration>> accessed 11th January 2022.

¹¹⁰ Kate Benson, *Lawyers and the Proceeds of Crime* (Routledge 2020).

¹¹¹ Ilaria Zavoli, Colin King, 'The Challenges of Implementing Anti- Money Laundering Regulation: An Empirical Analysis' (2021) 4 *Modern Law Review* 760.

¹¹² See A1, A2, C1, J2.

¹¹³ See J2.

¹¹⁴ See A1, A2, C1, C2, J1, J2, W1, W2, Y1, Y2

Moreover, an absence of support in completing the registration process may also reduce compliance among dealers.¹¹⁵ Analysing the MLR100 registration form, there is no option for individuals to gain support in completing the form, such as an option to seek assistance or help.¹¹⁶ Instead, the only opportunity for dealers to seek help regarding AML can be found at the end of the guidance document issued by HMRC, which provides generic contact details for communicating with HMRC if regulated entities have any questions.¹¹⁷ When shown the registration form, dealers indicated they would struggle to complete the form with confidence, as they are not aware of AML controls or have any knowledge of this area of law.¹¹⁸ One dealer mentioned, ‘that looks too complex for me’,¹¹⁹ another stated, ‘it’s asking me questions for which I don’t know the answers, I wouldn’t know what to do’.¹²⁰ In this regard, it is crucial to highlight that applicants are unable to move on to the ‘next section’ of the form without providing answers for all the questions at each stage.¹²¹ This creates a situation where dealers may be prevented in progressing on with the application if they are not aware of some of the answers and are therefore unable to submit the form for approval from HMRC.¹²² This acts as a potential barrier in applying for registered status and there is a need for alterations within the form to help and encourage HVDs to comply with their registration requirements.¹²³

Additionally, locating the form MLR100 online is also difficult.¹²⁴ The government gateway does not include a direct link to navigate users to the registration form nor does it include a PDF attachment of the form.¹²⁵ Additionally, the guidance

¹¹⁵ Ibid.

¹¹⁶ HMRC, ‘Money Laundering Application for Registration’ <https://public-online.hmrc.gov.uk/lc/content/xfafoms/profiles/forms.html?contentRoot=repository:///Applications/BusinessTax_iForms/1.0/MLR100&template=MLR100.xdp> accessed 15th November 2021.

¹¹⁷ HMRC, ‘Anti-Money Laundering Supervision: Guidance for High Value Dealers’ (2020).

¹¹⁸ Ibid.

¹¹⁹ See A1, A2, C1, C2, J1, J2, Y1, Y2, W1, W2.

¹²⁰ See C1.

¹²¹ See Y1.

¹²² HMRC, ‘Money Laundering Application for Registration’ <https://public-online.hmrc.gov.uk/lc/content/xfafoms/profiles/forms.html?contentRoot=repository:///Applications/BusinessTax_iForms/1.0/MLR100&template=MLR100.xdp> accessed 15th November 2021.

¹²³ Ibid.

¹²⁴ See Y1, Suggestions in Chapter Five.

¹²⁵ See C2, J1, Y1.

¹²⁶ HMRC, ‘Money Laundering Application for Registration’ <https://public-online.hmrc.gov.uk/lc/content/xfafoms/profiles/forms.html?contentRoot=repository:///Applications/BusinessTax_iForms/1.0/MLR100&template=MLR100.xdp> accessed 15th November 2021.

issued by HMRC for dealers does not dedicate a section to registration, as it does for other aspects of AML such as CDD and SAR.¹²⁶ Thus, dealers are unable to locate the form through this platform.¹²⁷ The registration form can only be accessed if it is specifically searched for within the government website or through a web browser.¹²⁸ This means that individuals not aware of what the registration form is called or the fact that registration must take place via an online form will struggle to locate the form.¹²⁹ Additionally, individuals that do not use the internet may be restricted in accessing a paper version of the registration form as this option has not been listed anywhere.¹³⁰ Subsequently, these factors can make it difficult for dealers to register and may impede compliance in relation to AML registration.¹³¹

A final factor in reducing compliance is the fees required for AML registration.¹³² When registering dealers must pay £300 for each premises included in their application, £40 for an ‘fit and proper’ approval test fee for all employees, and a £300 renewal fee.¹³³ Dealers demonstrated reluctance in complying due to the fees included, ‘I have enough costs, I’m not happy to pay’,¹³⁴ ‘so I’m expected to do the regulators job for them, be paid nothing for it and instead pay fees? It sounds ludicrous to me’,¹³⁵ and ‘the way I see it, AML compliance will cost me for training, cost me for adopting systems, cost me for registration. It’s not for me’.¹³⁶ The cost of regulatory compliance continues to be one of the business community’s biggest concerns. According to a Deloitte survey, regulated entities named the cost of regulation as the second most serious threat to their businesses after the possibility of a recession.¹³⁷ Regulators across the globe face significant pressure

¹²⁶ HMRC, ‘Anti-Money Laundering Supervision: Guidance for High Value Dealers’ (2020).

¹²⁷ Ibid.

¹²⁸ Such as searching ‘Money Laundering registration Form MLR100 within a Google search bar.

¹²⁹ Ibid.

¹³⁰ HMRC, ‘Money Laundering Application for Registration’ <https://public-online.hmrc.gov.uk/lc/content/xfatforms/profiles/forms.html?contentRoot=repository:///Applications/BusinessTax_iForms/1.0/MLR100&template=MLR100.xdp> accessed 15th November 2021.

¹³¹ See C1, J1, Y1.

¹³² See C1, J1, A1, W2.

¹³³ Gov.UK, ‘Guidance: Fees you’ll pay for money laundering supervision’ <<https://www.gov.uk/guidance/money-laundering-regulations-registration-fees>> accessed 2nd February 2021.

¹³⁴ See C2.

¹³⁵ See J2.

¹³⁶ See C1.

¹³⁷ Deloitte, ‘CFO Signals Survey’ (2020).

to reduce regulatory burdens and costs or risk facing increased non-compliance among actors.¹³⁸ Subsequently, removing compliance costs is recognised as improving legal compliance among private actors.¹³⁹ However, HMRC has not voiced any intentions to make changes to the present fees listed or to remove them.¹⁴⁰

3.4 Assessing Money Laundering Risk

Implementing a RBA to AML is recognised as providing a framework and identifying the degree of potential risks associated with customers and transactions, as well as allowing institutions to focus on those customers and transactions that potentially pose the greatest risk of money laundering.¹⁴¹ This requires dealers to ‘know your customers by finding out about prospective and actual clients’ business operations, industries, and characterises’.¹⁴² This assessment is considered as allowing regulated entities to get to know their customers better which allows them to assess better how likely they would be to engage in money laundering operations and equip dealers’ to mitigate and address such vulnerabilities efficiently.¹⁴³ Thus the RBA helps dealers to allocate their resources in the most efficient way and prioritise and focus on essential risks and apply preventive measures commensurate to the nature of risks.¹⁴⁴

To assist dealers in assessing money laundering risks HMRC has recently issued guidance specifically addressing the key risks that dealers may face.¹⁴⁵ This includes useful information to understand money laundering risks such as ‘risk characteristics’ and ‘risk indicators’.¹⁴⁶ These are based upon the NRAs and highlight items such as portable

¹³⁸ Organisation for Economic Co-operation and Development, *Regulatory Compliance Cost Assessment Guidance* (OECD 2014) 93.

¹³⁹ Ibid.

¹⁴⁰ HMRC, ‘Money Laundering Application for Registration’ <https://public-online.hmrc.gov.uk/lc/content/xfafoms/profiles/forms.html?contentRoot=repository:///Applications/BusinessTax_iForms/1.0/MLR100&template=MLR100.xdp> accessed 15th November 2021.

¹⁴¹ The Wolfsberg Group, ‘Guidance on a Risk Based Approach for Managing Money Laundering Risks’ (2006).

¹⁴² Ehi Eric Esoimeme, *The Risk-Based Approach to Combating Money Laundering and Terrorist Financing* (Amazon Digital Services 2015) 256.

¹⁴³ Ibid.

¹⁴⁴ Paolo Costanzo, *The Risk-Based Approach to Anti Money Laundering and Counter Terrorist Financing in International EU Standards: What is it, what it entails* (Edward Elgar 2013) 348.

¹⁴⁵ HM Treasury, ‘Guidance: Understanding Risks and Taking action for High Value Dealers’ (2021).

¹⁴⁶ Ibid.

luxury assets, precious metals, stones and jewellery, cars boats, can be used to convert criminal proceeds to appear legitimate.¹⁴⁷ Additionally, the guidance explains ‘risks common to all HVDs’ with useful measures that can assist in reducing such risks.¹⁴⁸ For example, the guidance lists ‘cash payments from high-risk jurisdictions’ as a key risk indicator, and expresses that these are more likely to be linked to money laundering.¹⁴⁹ To reduce this risk, the guidance instructs dealers to carefully consider the purpose and nature of any transaction which involves this.¹⁵⁰ Thus, the guidance provides a useful starting point for dealers to carefully assess the risks specific to their business and implement efficient policies to mitigate the risks.¹⁵¹ The dealers interviewed had not accessed the guidance as they were not aware of its existence.¹⁵² HMRC does not specifically send out guidance to dealers therefore they can only access it if they specifically search for it, which individuals are unlikely to do if they are not aware of its existence.¹⁵³

Subsequently, in practice dealers struggle to adopt the RBA due to the vagueness of the concept of ‘risk’.¹⁵⁴ Presently, there is no legal definition of ‘risk’ in relation to money laundering.¹⁵⁵ Thus, the MLRs require dealers to assess the money laundering risks within their organisation without any clarity concerning how these risks should be examined.¹⁵⁶ Unlike other industries such as the pharmaceutical industry where there is a calculation of risk factors based upon an equation like ‘probability x severity x detectible’.¹⁵⁷ The MLRs acknowledge risk in relation to high medium and low however, there is no explanation of what this means from a luxury goods context.¹⁵⁸ Dealers are therefore left to adopt measures in accordance to the money laundering risks present

¹⁴⁷ Ibid.

¹⁴⁸ Ibid.

¹⁴⁹ Ibid.

¹⁵⁰ Ibid.

¹⁵¹ Ibid.

¹⁵² See A1 A2, J1, J2, C1, C2, W1, W2, Y1, Y2.

¹⁵³ Ibid.

¹⁵⁴ Abdullahi Bello, ‘From risk-based to an uncertainty-based approach to anti money laundering compliance’ (2017) 30 Security Journal 12.

¹⁵⁵ Ibid.

¹⁵⁶ Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017.

¹⁵⁷ Vadim Tantsyura, ‘Risk Based Approaches: Pros and Cons’ (2010) Drug Information Journal 467.

¹⁵⁸ Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (the Regulations) Schedule 4.

within their businesses based upon their intuition.¹⁵⁹ Dealers explained they would struggle to categorise risks and feel confident in them being correct since they are not educated in this regard: ‘I don’t trust myself to assess the money laundering risks within the business’,¹⁶⁰ ‘I have no idea where to start, I don’t even know what a money laundering risk is’.¹⁶¹ These difficulties in assessing risk may result in dealers opting not to comply with the MLRs, especially if they do not feel confident in their risk assessment being accurate.¹⁶²

Furthermore, one HVD stated, that the RBA is a way for regulators to ‘catch us out and cause us financial disadvantage through the issuing of fines’¹⁶³ since individuals are bound to make errors in the controls they adopt due to the vagueness of the RBA approach.¹⁶⁴ Simonova also stresses this point stating that regulated entities run a legal risk of exposure to fines if their RBA does not capture high-risk transactions.¹⁶⁵ The vagueness of the RBA, therefore, makes it difficult for dealers to implement controls as there is no criteria that dealers can refer to when assessing the specific risk which exist within their organisations.¹⁶⁶ The absence of a common risk language and articulated understanding of how regulated entities perceive risks creates a plurality of understanding which makes it problematic for dealers to adopt a RBA.¹⁶⁷

Dealers within the same institution may use different risk languages and perceive risks in different ways causing a patchy approach.¹⁶⁸ One dealer highlighted, ‘if we all assess risks differently there will be no uniformity between employees in the business which is very important for us’.¹⁶⁹ The dealer went on to explain that a lack of agreement on the money laundering risks exposed to the business is also likely to cause conflict

¹⁵⁹ Anna Simonova, ‘The Risk Based Approach to Anti- Money Laundering: Problems and Solutions’ (2011) *Journal of Money Laundering Control* 14.

¹⁶⁰ See A1.

¹⁶¹ See J2.

¹⁶² See A1, J2, W2, C1.

¹⁶³ See C1.

¹⁶⁴ *Ibid*, A1.

¹⁶⁵ Anna Simonova, ‘The Risk Based Approach to Anti- Money Laundering: Problems and Solutions’ (2011) *Journal of Money Laundering Control* 14.

¹⁶⁶ *Ibid*, See A2, Y2.

¹⁶⁷ See A1 A2, J1, J2, C1, C2, W1, W2, Y1, Y2, Anna Simonova, ‘The Risk Based Approach to Anti- Money Laundering: Problems and Solutions’ (2011) *Journal of Money Laundering Control* 14.

¹⁶⁸ *Ibid*.

¹⁶⁹ See J2.

between managers which is unfavourable for the business.¹⁷⁰ Thus, the plurality and lack of clarity within the RBA can be acknowledged as pushing dealers away from implementing such an approach out of fear of it causing added strains and issues within the work environment due to disagreements in interpretation and application.¹⁷¹

A further factor which makes it difficult for dealers to implement a RBA to AML is a failure to possess basic knowledge and understanding of money laundering risk and the RBA.¹⁷² Not being aware of how to conduct a risk assessment or what the RBA entails makes it extremely difficult to comply with this requirement.¹⁷³ Dealers said, ‘I’m not a money laundering officer, I know nothing about it’,¹⁷⁴ and ‘I think it’s very unreasonable to expect dealers like me to adopt a risk-based approach when we are not educated on money laundering or law’.¹⁷⁵ Even if dealers wish to adopt a RBA to AML by failing to possess knowledge of how to conduct this dealers are restricted from complying with this requirement.¹⁷⁶ Hence, staff inadequacy in knowledge of legislation and regulations and regulated entities’ poor track record in compliance, corruption, bribery are acknowledged as making it difficult for individuals to comply with the RBA.¹⁷⁷

The FATF also highlights that the understanding of money laundering risk is much less developed among DNFBPs (such as HVDs) and allocates this to the requirement for these entities to undertake a written risk assessment being fairly recent.¹⁷⁸ The report outlines that HVDs are less aware of money laundering risks and receive little guidance in comparison to other DNFBPs, such as accountants.¹⁷⁹ This lack of understanding is also identified as making it difficult for regulated entities within other sectors to adopt a RBA, with individuals stating they require education to implement a

¹⁷⁰ Ibid.

¹⁷¹ See J2, C1, C2. Paolo Costanzo, *The Risk-Based Approach to Anti Money Laundering and Counter Terrorist Financing in International EU Standards: What is it, what it entails* (Edward Elgar 2013) 348.

¹⁷² See A1, A2, C1, C2, J1.

¹⁷³ Ibid.

¹⁷⁴ See C1.

¹⁷⁵ See J1.

¹⁷⁶ See A1, A2, C1, C2, J1.

¹⁷⁷ Anna Simonova, ‘The Risk Based Approach to Anti- Money Laundering: Problems and Solutions’ (2011) *Journal of Money Laundering Control* 14.

¹⁷⁸ Financial Action Task Force, ‘United Kingdom Mutual Evaluation Report’ (2018) 77.

¹⁷⁹ Ibid.

RBA to AML as they do not fully understand the regulations and what they require.¹⁸⁰ Subsequently, dealers may be restricted from assessing the risks within their business and implementing risks in accordance to these risks if they lack knowledge and understanding of these methods and how to conduct them.¹⁸¹ This is also recognised to exist among other regulated entities such as real estate businesses, which display a lack of consideration of money laundering risk and fail to align their business practices with appropriate risk assessments.¹⁸² The lack of knowledge and understanding of the RBA among dealers, therefore, acts as a barrier to compliance as it makes it difficult for dealers to understand what is required from them.¹⁸³

This lack of knowledge of the RBA may be due to an absence of training and workshops which explain the RBA on a general level as well as from a luxury goods context.¹⁸⁴ Dealers indicated they would struggle to identify money laundering risks within their organisation as they did not know how money laundering operations take place.¹⁸⁵ One dealer stated, ‘I’ve never been told how to assess risks so I wouldn’t know where to start’,¹⁸⁶ another argued that, ‘I find anti-money laundering very complex, without any training on how to assess risks I am not prepared to comply with this requirement, as I fear I will make mistakes’.¹⁸⁷ Regulatory compliance is recognised as significantly improving through training and workshops as these provide individuals with the opportunity to engage with information and gain further support when necessary.¹⁸⁸ However, without these initiatives dealers are left feeling hesitant in assessing money laundering risks which may explain why dealers opt not to engage with the RBA.¹⁸⁹

Furthermore, dealers voiced discontent towards adopting the RBA as they considered it to conflict with their business aims.¹⁹⁰ Dealers indicated that their primary

¹⁸⁰ LexisNexis, ‘White Paper: Overcoming the Challenges of the Risk Based Approach to Anti Money Laundering’ (2019).

¹⁸¹ See A1, A2, C1, C2, J1.

¹⁸² HM Treasury, ‘UK National Risk Assessment of Money Laundering and Terrorist Financing’ (2020).

¹⁸³ See A1 A2, J1, J2, C1, C2, W1, W2, Y1, Y2.

¹⁸⁴ Financial Action Task Force, ‘United Kingdom Mutual Evaluation Report’ (2018).

¹⁸⁵ See A1 A2, J1, J2, C1, C2, W1, W2, Y1, Y2.

¹⁸⁶ See C1.

¹⁸⁷ See C2.

¹⁸⁸ Alexander Dill, *Anti Money Laundering Regulation and Compliance: Key Problems and Practice Areas* (Edward Elgar 2021) 98.

¹⁸⁹ See C1, C2, A1.

¹⁹⁰ Ibid.

aim is to generate a profit and the RBA does not directly add to this aim and is therefore not considered as important.¹⁹¹ Dealers fail to recognise the merits of the RBA and how such an approach can provide any benefit to their business.¹⁹² This is also recognised among other regulated entities who have also said that implementing the RBA has caused a ‘loss of revenue was a big problem as we just don’t have the resources to deal with the extra work that was created’,¹⁹³ frustration at ‘the amount of work has increased with no financial reward’,¹⁹⁴ and ‘loss of potential business due to the fact that we can’t turn over projects fast enough’.¹⁹⁵ Dealers also shared similar thoughts in the RBA costing them time, training, and resources which they perceived as having negative impacts on the business: ‘the way I see it the RBA makes my workload increase, my costs increase. For example, I need to train my employees in understanding money laundering risks and the new policies adopted within the business, I will need to purchase additional resources. it’s a huge, huge cost on the business which I personally don’t feel is justified’.¹⁹⁶ This demonstrates that a barrier to compliance exists in the additional costs incurred by dealers in implementing the RBA, such as requiring time and an increased workload which dealers are not prepared to prioritise above sales.¹⁹⁷

Dealers also fear that by adopting a RBA they may be required to turn certain customers away, resulting in customers purchasing items from competing dealers without such policies,¹⁹⁸ ‘in the end of the day they are the customers, and we are here to provide them the best service possible. Refusing things like payments in cash over a certain limit will just make them go to another dealer who is accepting of such payment methods and again we lose out’.¹⁹⁹ The nature of the RBA means that controls adopted by dealers will vary from one institution to another depending on the risks they are exposed to.²⁰⁰ This variation is perceived negatively by dealers as they fear that adopting an approach which

¹⁹¹ Ibid.

¹⁹² Ibid.

¹⁹³ LexisNexis, ‘White Paper: Overcoming the Challenges of the Risk Based Approach to Anti Money Laundering’ (2019).

¹⁹⁴ Ibid.

¹⁹⁵ Ibid.

¹⁹⁶ See W2.

¹⁹⁷ See A1 A2, J1, J2, C1, C2, W1, W2, Y1, Y2.

¹⁹⁸ Ibid.

¹⁹⁹ See A2.

²⁰⁰ Paolo Costanzo, *The Risk- Based Approach to Anti Money Laundering and Counter Terrorist Financing in International EU Standards: What is it, what it entails* (Edward Elgar 2013) 348.

is more rigorous than a competitor will draw sales away.²⁰¹ Subsequently, dealers may opt-out of complying with the RBA to favour their business policies of generating sales and working towards making a profit.²⁰²

3.5 Customer Due Diligence

By implementing CDD controls dealers are able to protect their businesses against money laundering risks.²⁰³ CDD controls allow dealers to establish the identity of customers and help them identify unusual behaviour.²⁰⁴ CDD is therefore important in preventing significant financial losses due to reputational, operation, and legal damages caused by money laundering and related financial crimes.²⁰⁵ Thus, CDD is considered as the first line of defence against money laundering and is recognised as having a tangible effect on preventing crimes globally that affect individuals, societies, and the environment.²⁰⁶

To assist regulated entities in complying with CDD, HMRC has issued several forms of guidance.²⁰⁷ This includes generic guidance for all regulated entities²⁰⁸ and specific guidance for those operating as HVDs.²⁰⁹ The guidance issued for dealers provides vital information regarding CDD including minimum requirements, explanation of ‘customer’ in accordance to the MLRs, the timing of CDD, business relationships, ongoing monitoring, occasional transactions, SDD and EDD.²¹⁰ It is encouraging to note that HMRC has clarified key aspects of CDD in simple language to assist dealers in fulfilling their obligations.²¹¹ However, the dealers interviewed indicated they were not aware of these sources of guidance nor had they accessed them.²¹² Dealers stated they

²⁰¹ See A1 A2, J1, J2, C1, C2, W1, W2, Y1, Y2.

²⁰² Ibid.

²⁰³ Alexander Dill, *Anti Money Laundering Regulation and Compliance: Key Problems and Practice Areas* (Edward Elgar 2021) 76.

²⁰⁴ Ibid.

²⁰⁵ Norman Mugarura, ‘Customer Due Diligence (CDD) mandate and the propensity of its application as a global AML paradigm’ (2014) 17 *Journal of Money Laundering Control* 124.

²⁰⁶ Ibid.

²⁰⁷ HMRC, ‘Anti-Money Laundering Supervision: Guidance for High Value Dealers’ (2020)

²⁰⁸ HMRC ‘Guidance: Your Responsibilities Under Money Laundering Supervision’ (2019).

²⁰⁹ HMRC, ‘Anti-Money Laundering Supervision: Guidance for High Value Dealers’ (2020).

²¹⁰ Ibid.

²¹¹ Ibid.

²¹² See A1, A2, C1, C2, Y1, Y2, W1, W2, J1, J2.

would welcome such guidance to assess how they can improve their customer verification measures however, they would not know how or where to locate the information, which creates a barrier to implementation.²¹³

Whilst these efforts seek to increase CDD implementation among dealers, in practice dealers may struggle to comply with their requirements under the MLRs due to an absence of knowledge and understanding of their CDD obligations²¹⁴ Dealers were not aware of the controls they are legally obliged to implement within their business practices under the MLRs:²¹⁵ ‘I have customer ID controls but I didn’t know that there were specific anti-money laundering CDD requirements’,²¹⁶ ‘I can’t say I consider AML when conducting CDD, I’ve never noticed the requirement or know what to do’.²¹⁷ Dealers failed to understand how CDD controls can assist in reducing the risk of money laundering operations taking place.²¹⁸ Instead, dealers mentioned that CDD checks are adopted to keep a record of sales,²¹⁹ as a general business practice, and that ‘CDD didn’t have anything to do with money laundering or stuff like that, it’s not our area of specialism’.²²⁰ The NRA also highlights poor CDD compliance among dealers due to a lack of understanding of money laundering risk and the requirements within the MLRs.²²¹ This lack of knowledge and understanding of the specific CDD obligations under the MLRs acts as a barrier to compliance as it makes it difficult for dealers to understand and implement the correct CDD controls within their business practices.²²²

Additionally, none of the dealers interviewed understood how to tailor CDD controls in accordance to the money laundering risk exposed within a transaction:²²³ ‘I wouldn’t know how to assess money laundering risk and change controls accordingly’.²²⁴ Dealers were not aware of EDD and SDD systems, what they entail and when to adopt

²¹³ Ibid.

²¹⁴ Ibid.

²¹⁵ See A1, J1, C2, W1.

²¹⁶ See A1.

²¹⁷ See C1.

²¹⁸ See A1, A2, C1, C2, Y1, Y2, W1, W2, J1, J2.

²¹⁹ See C1.

²²⁰ See C2.

²²¹ HM Treasury, UK National Risk Assessment of Money Laundering and Terrorist Financing (2015).

²²² See A1, J1, C2, W1. Alexander Dill, *Anti Money Laundering Regulation and Compliance: Key Problems and Practice Areas* (Edward Elgar 2021) 98.

²²³ See A1, C2, J1, J2, W1.

²²⁴ See C2.

such controls.²²⁵ One dealer stated, ‘I cannot alter by identification procedure as I don’t know what else I could do’.²²⁶ Another mentioned, ‘this is the first I’ve heard of EDD and SDD systems, I would struggle to incorporate them as I know nothing about them’.²²⁷ Altering CDD controls in accordance to the risk exposed by individual customers requires specialist knowledge and understanding of AML as these controls stem beyond the ordinary ID measures.²²⁸ Without this knowledge, dealers are left in a difficult position in implementing such controls.²²⁹

This lack of knowledge and understanding may be allocated to an absence of AML training among dealers.²³⁰ Training is an important part of AML enforcement as it ensures that individuals are equipped with the skills required to implement controls to reduce money laundering risk, such as CDD.²³¹ However, dealers are not provided any training from HMRC or any related associations in fulfilling their CDD obligations and implementing the correct controls.²³² The absence of training from HMRC results in dealers not being able to understand the money laundering risks within their business and implement the correct CDD controls to eliminate money laundering risks.²³³ Additionally, it creates a situation where dealers rely on their own CDD training which may not consider AML.²³⁴ In this regard, some dealers stated they had undergone some form of basic CDD training to understand the ‘businesses identification procedures’.²³⁵

The MLRs require dealers to assign a ‘nominated officer’ within a business who is responsible for AML training of all employees.²³⁶ However, the interview data suggests that dealers are not aware of this role or this requirement.²³⁷ Dealers stated disquiet in this

²²⁵ See A1.

²²⁶ See C2.

²²⁷ See J2

²²⁸ Louis de Koker, ‘Money laundering control and suppression of financing of terrorism: Some thoughts on the impact of customer due diligence measures on financial exclusion’ (2006) 13 *Journal of Financial Crime* 34.

²²⁹ *Ibid.* See A1, C2, J1, J2, W1.

²³⁰ See A1, A2, C1, C2, Y1, Y2, W1, W2, J1, J2.

²³¹ Dennis Cox, *Handbook of Anti-Money Laundering* (Wiley 2014) 142.

²³² See A1, A2, C1, C2, Y1, Y2, W1, W2, J1, J2.

²³³ *Ibid.*

²³⁴ See Y1, W1, 1, C2.

²³⁵ *Ibid.*

²³⁶ Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017, Regulation 21.

²³⁷ See C1, C2, J1.

requirement by expressing that it detracts the employee's attention away from the original role assigned and increases costs, such as training the individual and then paying the individual to train all employees.²³⁸ One HVD explained the absence of any training by mentioning, 'money laundering isn't part of our business, we sell yachts. I don't have the time or money to start training employees on CDD and AML'.²³⁹ Indeed, as highlighted above dealers lack basic knowledge of CDD, and a lack of training makes it increasingly difficult to understand and implement correct CDD controls.

A further factor which makes the implementation of CDD challenging for dealers is that the controls are considered as conflicting with business principles.²⁴⁰ Dealers said that their primary aim in running the business was to generate a profit and that CDD clashes with this. Implementing 'know your customer' controls have been remarked as invasive and putting a strain on relationships.²⁴¹ Similarly, dealers shared the same thoughts and expressed that their business culture favours privacy above intrusion.²⁴² The level of scrutiny required in CDD has been acknowledged as infringing trust/relationship building with clients which is identified as more important for dealers than AML.²⁴³ In this regard, one dealer stated, 'we prioritise building positive relationships with our customers above everything else, we never want our customers to feel unwelcomed and not return',²⁴⁴ and 'we've known some of our customers for years, we know where they live, we've delivered things to them and hung things for them, we trust them'.²⁴⁵

The level of CDD required by the MLRs makes dealers feel like they need to police customers: 'we don't want to make clients feel victimised by asking loads of questions, we aren't anti-money laundering professionals'.²⁴⁶ The scrutiny has been recognised as creating friction in the relationship between the company and its clients by

²³⁸ Ibid.

²³⁹ See Y1.

²⁴⁰ See A1, A2, C1, C2, Y1, Y2, W1, W2, J1, J2.

²⁴¹ Dina Alyacoubi, 'Challenges in Customer Due Diligence for Banks in the UAE' (2020) 2 *Journal of Money Laundering Control* 52.

²⁴² Ibid. See A1, A2, C1, C2, Y1, Y2, W1, W2, J1, J2.

²⁴³ Ibid.

²⁴⁴ See J1.

²⁴⁵ See A1.

²⁴⁶ See A2, C2, W1, W2.

shifting from trust to suspicion and potential client alienation.²⁴⁷ In this regard, dealers stated, ‘the CDD controls make us sound like money laundering police, that’s not my role and I’m just not interested’,²⁴⁸ and ‘I think expecting dealers like myself to start acting like detectives is unfair and unrealistic, at the end of the day we are here to make our customers want to return and make a profit’.²⁴⁹ These opinions are also reflected in other regulated sectors, such as the banking industry²⁵⁰ and real estate businesses.²⁵¹ Estate agents assert disquiet in relation to asking for documentation from individuals they have known for several years²⁵² and the potential negative impact of AML checks which may result in the loss of a sale.²⁵³

CDD controls are therefore unfavoured by dealers due to the potential financial losses faced as a result of them:²⁵⁴ ‘if we start wasting time asking questions the customer will go to another dealer to make the purchase, we can’t afford that’.²⁵⁵ CDD controls are recognised as impeding the most important part of the sales procedure between dealers and their clients.²⁵⁶ Dealers are therefore not prepared to intimidate customers with questions regarding their identity at the risk of losing the sale.²⁵⁷ These opinions are also reflected in other regulated sectors, such as legal firms, ‘customers will feel unhappy about the amount of checking we have to do on them, the potential loss of revenue is hard to swallow’.²⁵⁸ The potential financial disadvantage as a result of adopting CDD controls acts as a hurdle in implementation measures among dealers.²⁵⁹ Implementing CDD

²⁴⁷ Martin Gill, Geoff Taylor, ‘Preventing Money Laundering or Obstructing Business? Financial Companies’ Perspectives on “Know Your Customer” Procedures’ (2004) *British Journal of Criminology* 582.

²⁴⁸ See W1.

²⁴⁹ See C1.

²⁵⁰ Dina Alyacoubi, ‘Challenges in Customer Due Diligence for Banks in the UAE’ (2020) 2 *Journal of Money Laundering Control* 52.

²⁵¹ Ilaria Zavoli, Colin King, ‘The Challenges of Implementing Anti- Money Laundering Regulation: An Empirical Analysis’ (2021) 4 *Modern Law Review* 760.

²⁵² *Ibid.*

²⁵³ *Ibid* 757.

²⁵⁴ *Ibid.*

²⁵⁵ See C2.

²⁵⁶ See A1, A2, C1, C2, Y1, Y2, W1, W2, J1, J2.

²⁵⁷ *Ibid.*

²⁵⁸ LexisNexis, ‘White Paper: Overcoming the Challenges of the Risk Based Approach to Anti Money Laundering’ (2019).

²⁵⁹ See A1, A2, C1, C2, Y1, Y2, W1, W2, J1, J2.

systems is difficult for dealers due to the potential negative impact they can have on their business, such as losing sales and making the customer feel victimised/uncomfortable.²⁶⁰

Furthermore, challenges exist in monitoring business relationships and identifying the source of wealth and source of funds in certain situations (such as when required to conduct EDD).²⁶¹ This was considered particularly problematic for dealers as their business culture did not favour clients to volunteer such information.²⁶² Instead, dealerships referred to their sales as ‘a bespoke experience’²⁶³ resulting in conversations with clients being focused on developing “a first-class experience rather than taking the form of an investigation.”²⁶⁴ Dealers stated that investigating the source of customer funds was not part of their job role and stemmed beyond their capabilities:²⁶⁵ ‘We trust our customers, asking about where they’ve acquired their funds from would make them feel like criminals, which goes against our ethos’.²⁶⁶

This practice has also been recognised as ‘tricky’ within other regulated sectors, particularly due to the importance of client discretion, and thus in-depth probing on individual affairs and associations is considered by entities as putting long-standing hard-earned client trust at stake.²⁶⁷ The temptation, therefore being for entities to avoid such a requirement or doing the minimum possible.²⁶⁸ Real estate agents have also shared similar opinions by stating that checking identification documentation is fine, but looking into the source of funds goes beyond their understanding.²⁶⁹ Prioritising sales above assessing the origin of funds, therefore, makes it difficult for dealers to report potential customers to the state.²⁷⁰

²⁶⁰ Ibid.

²⁶¹ See A1, C1, C2, W1, W2, J2.

²⁶² See J2.

²⁶³ Ibid.

²⁶⁴ See A1.

²⁶⁵ See Y1, C1, C2

²⁶⁶ See Y1, C1, C2, J2

²⁶⁷ Jos De Wit, ‘A risk-based approach to AML: A controversy between financial institutions and regulators’ (2007) 2 *Journal of Financial Regulation and Compliance* 15.

²⁶⁸ Ibid.

²⁶⁹ Ilaria Zavoli, Colin King, ‘The Challenges of Implementing Anti- Money Laundering Regulation: An Empirical Analysis’ (2021) 4 *Modern Law Review* 751.

²⁷⁰ See Y1, C1, C2, J2.

Besides these challenges, the struggles in identifying the beneficial owner of luxury items limits CDD implementation in practice.²⁷¹ Due to the extensive involvement of buyers in the customised design process of luxury items such as yachts, the identity of the ultimate beneficial owner of the vessel is usually unknown to the shipyard.²⁷² Dealers said they struggled to understand beneficial ownership and the ownership and control structure of legal persons, trusts, or similar legal arrangements, ‘what the regulators don’t understand is we are ordinary salespeople, we don’t have any knowledge of beneficial ownership or how such structures work. We are therefore not in a position to assess such things like lawyers’.²⁷³

Additionally, dealers indicated they did not have the resources or time to verify the identity of beneficial owners: ‘we have customers from all over the world, I don’t have the time to assess ownership to that extent and checking that much data’.²⁷⁴ Instead, dealers suggested they are only concerned with the individual they are dealing with in person, and going beyond this is not a task they feel comfortable or prepared to implement.²⁷⁵ Beneficial ownership struggles have also been voiced by other regulated entities due to multiple legal structures, corporate structures with more than one layer of ownership, a lack of standardised documentation across countries, complicated beneficial ownership structures, and companies not possessing the knowledge required to assess beneficial ownership structures.²⁷⁶ Thus, this is a wider compliance issue which stems beyond luxury goods dealers.²⁷⁷

Moreover, practical difficulties also reduce dealers’ ability to conduct CDD.²⁷⁸ This includes not having the software to verify whether ID is real or fake or a system in place which can conduct checks on the client as well as ongoing monitoring of the client.²⁷⁹ Dealers made the following remarks, ‘I am a small business we don’t have fancy

²⁷¹ Transparency International, ‘Tainted Treasures: Money Laundering Risks in Luxury Markets’ (2017) 8.

²⁷² Ibid.

²⁷³ See A1, A2, C1, C2, Y1, Y2, W1, W2, J1, J2.

²⁷⁴ Ibid.

²⁷⁵ Ibid.

²⁷⁶ Christina Davilas, ‘AML compliance for foreign correspondent accounts: a primer on beneficial ownership requirements and other challenges’ (2014) 15 *Journal of Investment Compliance*.

²⁷⁷ Ibid.

²⁷⁸ See A1, A2, C1, C2, Y1, Y2, W1, W2, J1, J2.

²⁷⁹ Ibid.

technology to verify customers identity and there's only so much that I can do with the ID provided by customers',²⁸⁰ and 'my business doesn't have any software to investigate clients identity or the source of their funds, we just don't have the money or time for such things. We are happy as long as the customer can provide us one form of ID to scan for our database'.²⁸¹ The FATF also identifies practical issues which make CDD difficult, such as the lack of reliable identity documentation and data verification such as screening platforms for potential customers (such as asylum seekers and refugees).²⁸² These practical obstacles have also been identified by estate agents: 'It is absurd to put the obligation on estate agents to check whether a passport is fake. What if it is Russian and it is in Cyrillic'.²⁸³ Subsequently, the dealer's ability to conduct CDD may also be impeded because of practical obstacles.²⁸⁴

These difficulties may be acknowledged as having increased as a result of Covid-19 governmental measures, creating further barriers to CDD compliance.²⁸⁵ The Financial Conduct Authority recognises the impact of Covid-19 giving rise to operational challenges, however, it advocates that firms should not change or switch off CDD controls by working remotely.²⁸⁶ However, dealers said that the lockdown measures reduced their ability to verify customers as they were required to work from home through virtual platforms such as Teams and Zoom.²⁸⁷ Dealers adopted measures such as 'requesting clients to email a copy of ID',²⁸⁸ and were unable to adopt any further checks as they could not meet individuals in person.²⁸⁹ Furthermore, dealers highlighted they did not have any digital identity software accessible for them to utilise remotely.²⁹⁰ Moreover,

²⁸⁰ See C1.

²⁸¹ See A2.

²⁸² Financial Action Task Force, 'Guidance on AML/CFT Measures and Financial Inclusion, with a supplement on Customer Due Diligence' (2015).

²⁸³ Ilaria Zavoli, Colin King, 'The Challenges of Implementing Anti- Money Laundering Regulation: An Empirical Analysis' (2021) 4 *Modern Law Review* 751.

²⁸⁴ Financial Action Task Force, 'Guidance on AML/CFT Measures and Financial Inclusion, with a supplement on Customer Due Diligence' (2015).

²⁸⁵ Financial Action Task Force, 'COVID-19 Related Money Laundering and Terrorist Financing: Risks and Policy Responses' (2021).

²⁸⁶ Financial Conduct Authority, 'Financial crime systems and controls during coronavirus situation' <<https://www.fca.org.uk/firms/financial-crime/financial-crime-systems-controls-during-coronavirus-situation>> accessed 3rd January 2022.

²⁸⁷ See A1, A2, C1, C2, Y1, Y2, W1, W2, J1, J2.

²⁸⁸ See A2.

²⁸⁹ See W1, Y2, C1.

²⁹⁰ Ibid.

dealers expressed that some of their customers were not technologically experienced and struggled to understand how to send CDD documents virtually.²⁹¹ On such occasions, they accepted verification over the phone.²⁹² Thus, the lockdown measures caused increased difficulty in dealers' abilities to verify customers.²⁹³

3.6 Suspicious Activity Reporting

By complying with SAR requirements dealers can alert law enforcement of potential money laundering operations.²⁹⁴ The UKFIU located within the NCA receives, analyses, and distributes the financial intelligence gathered from SARs.²⁹⁵ The information is then disseminated to law enforcement agencies who investigate and decide what action to take.²⁹⁶ Thus, dealers are well-positioned to assist in the UK's fight against crime and provide vital intelligence to capture money laundering operations.²⁹⁷

Despite its importance, the NRA highlights that poor compliance and underreporting have remained unchanged among HVDs since 2017.²⁹⁸ Between 2018 and 2019, HVDs submitted 481 SARs equating to 0.10% of the total.²⁹⁹ Transparency International acknowledges this as an extremely low number of reports filed by the sector.³⁰⁰ Similarly, other regulated sectors have also been recognised for low reporting levels such as estate agents (635 reports) and trust or company service providers (23 reports).³⁰¹ The highest amount of SARs are received from banks that filed 323,733 equating to 80.21 % of the total.³⁰² SAR system has been criticised as being designed for

²⁹¹ See A2, W2.

²⁹² Ibid.

²⁹³ Financial Action Task Force, 'The importance of allocating sufficient resources to AML/CFT regimes during the COVID-19 pandemic' < <https://www.fatf-gafi.org/publications/fatfgeneral/documents/covid-19-impact-oct-2020.html> > accessed 2nd March 2022.

²⁹⁴ Proceeds of Crime Act 2002, Part 7.

²⁹⁵ National Crime Agency, 'UK Financial Intelligence Unit' (2019).

²⁹⁶ Ibid.

²⁹⁷ Ibid.

²⁹⁸ HM Treasury, UK National Risk Assessment of Money Laundering and Terrorist Financing (2020).

²⁹⁹ National Crime Agency, 'UK Financial Intelligence Unit' (2019).

³⁰⁰ Transparency International, 'Tainted Treasures: Money Laundering Risks in Luxury Markets' (2017).

³⁰¹ Ibid

³⁰² Ibid.

the banking sector and not transferring well to other sectors.³⁰³ One dealer shared this view by stating, ‘anti-money laundering systems and detecting and reporting such matters is for the financial services, not people like us’.³⁰⁴ The factors identified below are useful in understanding the difficulties faced by dealers in complying with SAR requirements which result in low reporting rates.

In assisting regulated entities to comply with their SAR obligations, HMRC has issued guidance for regulated entities.³⁰⁵ This provides information regarding SAR: minimum requirements, nominating an officer, tipping off, dealing with new and regular customers.³⁰⁶ Additionally, the NCA has also issued numerous forms of guidance to help regulated entities in complying with SARs requirements.³⁰⁷ It is encouraging to note these efforts in assisting entities to understand their reporting obligations and encouraging them to file SARs.³⁰⁸ However, none of the dealers interviewed had accessed any of these forms of guidance, nor were aware of them being available to utilise.³⁰⁹ SARs within the HVD and AMP sectors have not received the same level of attention as other regulated sectors.³¹⁰ For example, the NCA has issued specific guidance for real estate agents in submitting better quality SARs.³¹¹ Such efforts have not been undertaken for those operating in UK luxury goods sectors and thus the only guidance they can rely on is that which is issued universally for all regulated entities.³¹²

Subsequently, the absence of tailored guidance addressing SARs within luxury goods sectors may be acknowledged as a factor resulting in a lack of knowledge and understanding of SARs among luxury goods dealers.³¹³ When questioned about SARs, nine out of ten dealers indicated they had not heard of the terms, nor were they aware of

³⁰³ Ilaria Zavoli, Colin King, ‘New Development: Estate Agents’ Perspectives of Anti Money Laundering Compliance – Four Key Issues in the UK Property Market’ (2020) *Public Money and Management* 417.

³⁰⁴ See C1.

³⁰⁵ HMRC, ‘Anti-Money Laundering Supervision: Guidance for High Value Dealers’ (2020).

³⁰⁶ *Ibid.*

³⁰⁷ National Crime Agency, ‘Introduction to Suspicious Activity Reports’ <

<https://www.nationalcrimeagency.gov.uk/who-we-are/publications/158-introduction-to-suspicious-activity-reports-sars/file>> accessed 10th December 2021.

³⁰⁸ *Ibid.*

³⁰⁹ See A1, A2, J1, J2, C1, C2, W1, W2, Y1, Y2.

³¹⁰ *Ibid.*

³¹¹ Ilaria Zavoli, Colin King, ‘The Challenges of Implementing Anti- Money Laundering Regulation: An Empirical Analysis’ (2021) 4 *Modern Law Review* 740.

³¹² *Ibid.*

³¹³ See A1, A2, J1, J2, C1, C2, W1, W2, Y1, Y2.

what a SAR entails.³¹⁴ One dealer responded by stating, ‘A what report? Not come across that in my 20 years as a dealer’.³¹⁵ Another dealer questioned whether SARs involve the police or theft and stated that ‘it is an alien term’.³¹⁶ The fact that dealers are unaware of SARs to the extent they have not heard of it makes it difficult for them to comply with such a requirement.³¹⁷ The reporting obligations have been acknowledged as complex and challenging to understand.³¹⁸ Thus, a lack of basic knowledge and awareness of SARs acts as a barrier to compliance in following the reporting obligations under POCA when faced with matters that raise suspicion.³¹⁹

The process that a regulated entity is required to undertake to ensure they are complying with their obligations under Part 7 of POCA 2002 has been considered complicated.³²⁰ Individuals struggle with understanding their legal obligations especially since POCA 2002 contains complicated and knotty concepts including ‘suspicion’ and ‘criminal property’.³²¹ Dealers mentioned that the plurality of ‘suspicion’ makes compliance challenging.³²² Interpretation of suspicion largely differs from one individual to another, resulting in dealers feeling unsure about when to file a SAR: ‘It’s just so vague, I could ask all my employees and they would all provide different explanations of how they interpret suspicion’.³²³ As demonstrated in the previous chapter, ‘suspicion’ generates money laundering risk due to the variety of ways in which entities understand the concept.³²⁴ Whilst the flexibility of the concept seeks to provide entities with discretion in assessing suspicious situations, in practice the ill-defined nature of the concept acts as a hurdle in compliance.

A nominated person is required to receive and consider SARs and evaluate whether there seems to be any evidence of money laundering and report the SAR to the NCA.³²⁵ However, dealers stated an absence of such a role within the organisation and

³¹⁴ See Y1.

³¹⁵ See C1.

³¹⁶ See C2.

³¹⁷ Peter Reuter, Edwin Truman, *Chasing Dirty Money* (Institute for International Economics 2005)

³¹⁸ Law Commission, ‘Anti-Money Laundering: SARs Regime Consultation Paper’ (2018).

³¹⁹ *Ibid*, See A1, A2, J1, J2, C1, C2, W1, W2, Y1, Y2.

³²⁰ *Ibid*.

³²¹ *Ibid*.

³²² *Ibid*.

³²³ See J2.

³²⁴ See Chapter Two s 2.6.

³²⁵ *Ibid*.

not being aware of such a requirement.³²⁶ ‘I’ve never heard of such a role’³²⁷, ‘I didn’t know that was something I needed to do’.³²⁸ Dealers explained that instead of having someone that fills this role, they had individuals within the organisation such as the director or the manager who made important decisions when required.³²⁹ When provided with an explanation of the responsibilities of a nominated person dealers voiced discontent:³³⁰ ‘I don’t know anyone that has this role in their dealership, imagine the added costs of training and requiring someone to take on those additional duties, it’s just not feasible’,³³¹ and ‘it’s another cost in addition to everything else we have to do in relation to AML, it’s ridiculous as we’re always the ones losing by having to face the increases costs or paying someone’.³³² The cost of AML compliance such as appointing a Nominated Officer has not been well received by regulated entities, particularly in consideration of the additional duties that these individuals are required to adopt without any payment.³³³ Consequently, SARs compliance may be impeded due to the absence of a nominated person and dealers’ reluctance towards appointing such a person due to the time and cost required.³³⁴

Furthermore, reporting requirements have been considered to negatively impact the relationship between dealers and their customers, which is built upon trust, confidentiality, and privacy, and thus dealers prioritise these values above reporting requirements.³³⁵ Dealers made remarks including, ‘we don’t want to seeing our clients from an investigative perspective as that would make them feel uncomfortable’,³³⁶ and ‘always considering whether someone may be involved in money laundering gives off an unpleasant vibe which customers will definitely detect and subsequently opt to take their business elsewhere. We want customers to trust us’.³³⁷ Ayling and Grabosky also

³²⁶ See A1, C1, Y1, W2.

³²⁷ See W2.

³²⁸ See W1.

³²⁹ See C2, J2, W1.

³³⁰ Ibid.

³³¹ See C2.

³³² See W1.

³³³ Alexander Dill, *Anti Money Laundering Regulation and Compliance: Key Problems and Practice Areas* (Edward Elgar 2021) 151.

³³⁴ Ibid. See A1, C1, C2, W1, W2, J2.

³³⁵ See Y1, C1, C2, J2.

³³⁶ See J2.

³³⁷ See C2.

highlight this point by stating that reporting obligations undermine relationships of trust and confidentiality with clients.³³⁸ These values act as a hurdle in reporting matters that may raise a dealer's suspicion.³³⁹ Additionally, King and Hufnagel state that reporting rules can be problematic in practice as they can negatively impact business and relationships with clients.³⁴⁰ These concerns have also been recognised within the real estate,³⁴¹ banking,³⁴² solicitors,³⁴³ and art³⁴⁴ sector as making compliance difficult.

The financial implications of SARs also influence the extent to which dealers comply with their reporting requirements.³⁴⁵ Dealers voiced, 'if we don't make sales, we can't pay our bills and employees, SARs could restrict this and I'm not willing to do that, especially after being closed due to the pandemic'.³⁴⁶ For submitted SARs dealers cannot proceed with the transaction without consent from NCA:³⁴⁷ 'by filing an SAR I'm shooting myself in the foot as I'm turning down a potential sale which I can't now complete due to referring it to the NCA'.³⁴⁸ Economic factors have also been identified by real estate agents as influencing their compliance with SARs: 'If you don't exchange contracts, you don't get paid. So, if your client pulls out because they think you've rumbled them, well, why would you spend time now submitting a SAR when the evil that you're involved in has stopped and you're not going to get paid for that work?'³⁴⁹ Thus, monetary considerations impact the decisions of regulated entities in relation to whether or not to comply with AML regulations fully.³⁵⁰ This has raised questions as to whether

³³⁸ Julie Ayling and Peter Grabosky, 'Policing by Command: Enhancing Law Enforcement Capacity through Coercion' (2006) 2 Law and Policy 417.

³³⁹ Ibid.

³⁴⁰ Saskia Hufnagel, Colin King, 'Anti Money Laundering Regulation and The Art Market (Legal Studies, 2020) 133.

³⁴¹ Ilaria Zavoli, Colin King, 'The Challenges of Implementing Anti- Money Laundering Regulation: An Empirical Analysis' (Modern Law Review, 2021)

³⁴² Robert Axelrod, 'Criminality and Suspicious Activity Reports' (Journal of Financial Crime, 2017).

³⁴³ Sarah Kebbell, *Anti Money Laundering Compliance and the Legal Profession* (Routledge, 2021).

³⁴⁴ Saskia Hufnagel, Colin King, 'Anti-Money Laundering Regulation and the Art Market' (2020) 40 Legal Studies 140.

³⁴⁵ See A1, C2, W1, W2, Y1, Y2. Neil Gunningham, *Enforcement and Compliance Strategies* (Oxford University Press 2010).

³⁴⁶ Ibid.

³⁴⁷ National Crime Agency, 'Introduction to Suspicious Activity Reports' <<https://www.nationalcrimeagency.gov.uk/who-we-are/publications/158-introduction-to-suspicious-activity-reports-sars/file>> accessed 10th December 2021.

³⁴⁸ See Y2.

³⁴⁹ 765.

³⁵⁰ Daniel Nagin, 'Deterrence in the Twenty First Century' (2013) Crime and Justice 199.

this ‘sham’ of commitment to AML and whether individuals such as real estate agents are the wrong people to be AML gatekeepers,³⁵¹ a view also shared by dealers.³⁵² Subsequently, economic considerations can be identified as influencing SAR compliance within luxury goods sectors.³⁵³

Furthermore, dealers were not aware of the NCA role in SARs.³⁵⁴ The Government website does not provide any information about the NCA and its role in working with dealers.³⁵⁵ Although the guidance issued for dealers briefly acknowledges the NCA,³⁵⁶ this also fails to provide information on how the NCA works alongside regulated entities.³⁵⁷ Consequently, none of the dealers interviewed had heard of the NCA or experienced any dealings with it.³⁵⁸ Some dealers assumed this was a body linked to the police by making the following remarks: ‘they must be part of the police involved with criminal matters, not dealers like me’.³⁵⁹ Whilst others states they had no knowledge or awareness of the organisation, ‘never heard of that’, and ‘that’s new to me’.³⁶⁰ Without this knowledge, dealers are unable to comply with their reporting requirements and pass on vital intelligence to the NCA to investigate.³⁶¹ Thus, this absence of awareness also makes SAR compliance difficult for dealers.³⁶²

Compliance with SAR among dealers may also be impeded due to flaws within the reporting system.³⁶³ The system does not accommodate for grey areas, such as situations that involve less suspicion which are not adequate to complete a SAR.³⁶⁴ Zavoli and King also raise this issue from the context of real estate agents, by mentioning that issues exist within filing a SAR when there is not enough information on the system to

³⁵¹ Ilaria Zavoli, Colin King, ‘The Challenges of Implementing Anti- Money Laundering Regulation: An Empirical Analysis’ (2021) 4 *Modern Law Review* 765.

³⁵² See A1, C2, W1, W2, Y1, Y2.

³⁵³ Ibid.

³⁵⁴ Ibid.

³⁵⁵ HMRC, ‘Anti-Money Laundering Supervision: Guidance for High Value Dealers’ (2020).

³⁵⁶ Ibid.

³⁵⁷ Ibid.

³⁵⁸ See A1, A2, C1, C2, J1, J2, Y2, Y2, W1, W2.

³⁵⁹ See C1, C2.

³⁶⁰ See A1, A2

³⁶¹ Ibid.

³⁶² See A1, A2, C1, C2, J1, J2, Y2, Y2, W1, W2.

³⁶³ Ibid.

³⁶⁴ See Y2.

accept the SAR.³⁶⁵ Additionally, the system is regarded as complex to navigate through since the various pages are not linked.³⁶⁶ For example, estate agents have a ‘gateway’ with HMRC but if they wish to file a SAR they will have to navigate through the NCA portal, which is not linked to the HMRC gateway.³⁶⁷ The system has been critiqued as being designed for the banking sector and therefore does not transpose well into other sectors.³⁶⁸ Whilst dealers were unable to discuss this issue in much detail due to their lack of knowledge and understanding of SAR, this is a useful factor to acknowledge in making compliance challenging for dealers.³⁶⁹

The lack of support provided to dealers in complying with SAR also influences compliance.³⁷⁰ The SARs system does not provide follow-up information or feedback to regulated entities when they have submitted SARs.³⁷¹ Dealers highlighted that feedback is extremely important and this is the least they would expect from the state for complying with reporting obligations:³⁷² ‘I can’t emphasise enough how important feedback is in helping us make sure we are doing what is required’,³⁷³ ‘we need feedback for reassurance in complying with the MLRs’.³⁷⁴ This lack of support has also been recognised from a real estate context, with agents stating they would find the feedback helpful, such as having pointers in relation to aspects to consider.³⁷⁵ Indeed, providing regulated entities with feedback in relation to their SARs is an important part of proper functioning regulation³⁷⁶ and can assist dealers in complying with their reporting obligations.

Furthermore, feedback also assists in making dealers feel valued for providing the information they have and indicating how it has combated money laundering operations,

³⁶⁵ Iaria Zavoli, Colin King, ‘The Challenges of Implementing Anti- Money Laundering Regulation: An Empirical Analysis’ (2021) 4 *Modern Law Review* 759.

³⁶⁶ *Ibid.*

³⁶⁷ Iaria Zavoli, Colin King, ‘New Development: Estate Agents’ Perspectives of Anti Monet Laundering Compliance – Four Key Issues in the UK Property Market’ (2020) *Public Money and Management* 417.

³⁶⁸ Iaria Zavoli, Colin King, ‘The Challenges of Implementing Anti- Money Laundering Regulation: An Empirical Analysis’ (*Modern Law Review*, 2021) 759.

³⁶⁹ See A1, A2, C1, C2, J1, J2, Y2, Y2, W1, W2.

³⁷⁰ *Ibid.*

³⁷¹ *Ibid.*

³⁷² See Y2, J1

³⁷³ See J1.

³⁷⁴ Y2.

³⁷⁵ Iaria Zavoli, Colin King, ‘New Development: Estate Agents’ Perspectives of Anti Monet Laundering Compliance – Four Key Issues in the UK Property Market’ (2020) *Public Money and Management* 417.

³⁷⁶ Iaria Zavoli, Colin King, ‘The Challenges of Implementing Anti- Money Laundering Regulation: An Empirical Analysis’ (2021) 4 *Modern Law Review* 761.

without infringing any sensitive data rules.³⁷⁷ Without this dealers are left questioning the value of submitted SARs, ‘it’s like doing something for nothing’,³⁷⁸ and ‘what’s the point in complying with the reporting requirements if we never hear anything back’.³⁷⁹ Whilst, the practicality of providing feedback for every submitted SAR remains questionable, especially if the volume of SARs increases over time.³⁸⁰ Zavoli and King make a useful suggestion by stating that general, anonymised feedback in relation to all SARs submitted within a specific year may provide an unproblematic option.³⁸¹ This could take the form of a report such as the NRA and provide general SAR feedback to all regulated entities such as common mistakes, suspicion indicators.³⁸² This is a positive suggestion and will be considered in further detail in Chapter Five.³⁸³

A final factor to consider in relation to SARs compliance is defensive filing. Whilst the dealers interviewed said they failed to comply with SARs requirements when provided an explanation of the potential penalties they could face they indicated they would consider ways to ensure they are protected in the future.³⁸⁴ Erring on the safe side in relation to SARs is also recognised within other regulated sectors.³⁸⁵ Filing SARs merely as a protective measure can lead to problematic outcomes for regulators such as over-reporting and reports which are not useful for investigations.³⁸⁶ Although dealers appear to be on the other side of this scale (since they are recognised for low reporting rather than over-reporting) this is still a factor which may be present in dealers’ SARs compliance.³⁸⁷ Thus, dealers may opt to comply with SARs requirements out of fear of facing financial penalties instead of actively considering the basis of suspicious activity.³⁸⁸ This makes it difficult for law enforcement agencies to collect vital

³⁷⁷ Ibid.

³⁷⁸ See A1.

³⁷⁹ See J2.

³⁸⁰ Ilaria Zavoli, Colin King, ‘The Challenges of Implementing Anti- Money Laundering Regulation: An Empirical Analysis’ (2021) 4 *Modern Law Review* 766.

³⁸¹ Ibid.

³⁸² Ibid.

³⁸³ See Chapter Five.

³⁸⁴ See A1, A2, C1, C2, J1, J2, Y2, Y2, W1, W2.

³⁸⁵ National Crime Agency, ‘Guidance on submitting better quality Suspicious Activity Reports (SARs)’ <<https://www.nationalcrimeagency.gov.uk/who-we-are/publications/446-guidance-on-submitting-better-quality-sars-1/file>> accessed 2nd April 2021.

³⁸⁶ Ibid.

³⁸⁷ Ibid. See A1, A2, C1, C2, J1, J2, Y2, Y2, W1, W2.

³⁸⁸ Ibid.

intelligence to identify money laundering operations, and instead it increases the burden for both regulators and regulatees.³⁸⁹

3.7 Supervision

AML supervision is fundamental in ensuring compliance among firms that pose a high risk of money laundering, such as luxury goods dealers.³⁹⁰ HMRC has published guidance for each of its regulated sectors, which explains how businesses that fall within the sectors can fulfil their obligations under the Money Laundering Regulations.³⁹¹ Specific guidance has been issued for HVD and AMPs in complying with their AML requirements, which is updated when necessary to reflect changes in legislation.³⁹² However, dealers were not aware of the guidance and had therefore not been able to utilise it.³⁹³ Nine out of ten HVDs stated they were not aware of HMRC's role as an AML supervisor.³⁹⁴ One HVD was aware of HMRC's role and stated that he had received no information or guidance from HMRC and instead felt 'very much left in the dark'.³⁹⁵

The guidance may be considered difficult to access since dealers must specifically search for it on a web browser to locate it.³⁹⁶ Dealers are not sent the guidance by HMRC via platforms such as email, and thus if they fail to search for it, they will most likely not have access to it.³⁹⁷ Additionally, HMRC has published a video explaining AML supervision however, this is difficult to navigate to since the link for the video is only accessible after navigating through two web pages (individuals must click on the 'help and support for money laundering supervision page'³⁹⁸ and then select 'high-value

³⁸⁹ Ibid.

³⁹⁰ Alexander Dill, *Anti Money Laundering Regulation and Compliance: Key Problems and Practice Areas* (Edward Elgar 2021) 87.

³⁹¹ HMRC, 'Corporate Report: HMRC Anti-Money Laundering Supervision Annual Assessment' (2021).

³⁹² Ibid.

³⁹³ See A1, A2, J1, J2, C1, C2, W1, W2, Y1, Y2.

³⁹⁴ See A1, A2, C1, C2, J1, J2, Y2.

³⁹⁵ See Y1.

³⁹⁶ E.g. searching 'HMRC AML Guidance' within a Google Web browser.

³⁹⁷ See A1, A2, J1, J2, C1, C2, W1, W2, Y1, Y2.

³⁹⁸ GOV.UK, 'High Value Dealers – What you need to Know From HMRC' <<https://register.gotowebinar.com/register/2754374899152339724>> accessed 26th December 2021.

dealers’).³⁹⁹ The link is positioned at the very bottom of the page, which requires scrolling to be located.⁴⁰⁰ A user would therefore not come across the content by visiting the webpage and would therefore not be able to make use of the content.⁴⁰¹ Guidance is acknowledged to improve compliance among regulated entities however, without it being accessible to dealers it is very much redundant in this regard.⁴⁰²

Additionally, the guidance fails to address vital elements of AML compliance. One of these failures includes a lack of information explaining the merits of AML compliance and why the MLRs have been extended to include dealers.⁴⁰³ Dealers perceive AML negatively, and fail to recognise how it can be beneficial for their business practices: ‘I can’t see anywhere on this guidance the reasoning behind introducing these controls’.⁴⁰⁴ Dealers view the obligations as ‘placing unproportionate expectations’,⁴⁰⁵ and ‘a way for the regulators to catch us out’.⁴⁰⁶ Thus, dealers compliance with the MLRs may be reduced due to the absence of information explaining the money laundering risk which exists in luxury goods sectors and how the MLRs help dealers in protecting against such practices from taking place.⁴⁰⁷

Estate agents also indicate frustration in relation to AML guidance by expressing that the AML regime is flawed, and there is a lack of commitment by national authorities towards regulatees.⁴⁰⁸ Additionally, they state that there is an inconsistency in the guidelines provided by HMRC and NRA in relation to fundamental aspects of their AML duties, such as CDD and SARs.⁴⁰⁹ They express that there is a need for better guidance information for EAs.⁴¹⁰ Although dealers were unable to engage in such discussions due to their lack of knowledge of AML supervision and HMRC, dealers did state that HMRC,

³⁹⁹ GOV.UK, ‘Help and Support for Money Laundering Supervision’ <<https://www.gov.uk/guidance/help-and-support-for-anti-money-laundering>> accessed 26th December 2021.

⁴⁰⁰ Ibid.

⁴⁰¹ Ibid.

⁴⁰² Ibid.

⁴⁰³ HMRC, ‘Anti-Money Laundering Supervision: Guidance for High Value Dealers’ (2020).

⁴⁰⁴ See W2.

⁴⁰⁵ See A1.

⁴⁰⁶ See J2.

⁴⁰⁷ Ibid.

⁴⁰⁸ Ilaria Zavoli, Colin King, ‘The Challenges of Implementing Anti- Money Laundering Regulation: An Empirical Analysis’ (2021) 4 *Modern Law Review* 766.

⁴⁰⁹ Ibid.

⁴¹⁰ Ibid.

‘always overcomplicates matters for by increasing anti-money laundering requirements without providing assistance/ clarity’.⁴¹¹ Additionally, the guidance may be acknowledged as complex to understand for dealers without any prior knowledge of AML, and therefore instead of assisting with compliance, it may instead generate further confusion.⁴¹²

Alongside guidance, HMRC states that it conducts outreach activities for the sectors it regulates in complying with AML obligations.⁴¹³ In its recent assessment, HMRC highlights that it makes AML information, such as supervision, available to businesses via webinars, engagement with trade bodies, and speaking at conferences.⁴¹⁴ However, there is an absence of outreach activities conducted by HMRC for those operating in luxury goods sectors.⁴¹⁵ Dealers emphasised they require assistance from HMRC such as seminars and workshops to ‘help understand complex aspects of AML’.⁴¹⁶ Without any of these initiatives, dealers felt ‘left alone in the dark’⁴¹⁷ in implementing AML controls, and did not feel encouraged to comply with the MLRs.⁴¹⁸ One dealer mentioned that, ‘the least HMRC can do is offer us training and regular help in complying with these complex requirements, I can’t say compliance is the top of my list if the regulator can’t be bothered to help me’.⁴¹⁹ The absence of outreach activities may therefore act as a hurdle in compliance by making dealers lack confidence in their abilities to conduct AML and making them perceive HMRC as not wanting to assist them.⁴²⁰

Furthermore, an important aspect of AML supervision is ensuring that individuals that fail to comply with AML obligations are subject to penalties.⁴²¹ Following a review in 2018, HMRC opted to adopt a more robust approach to supervision to ensure that the sanctions that it issued were commensurate with the breach that occurred.⁴²² This included

⁴¹¹ See Y1.

⁴¹² See A1, A2, C1, C2, J1, J2, Y2.

⁴¹³ HMRC, ‘Corporate Report: HMRC Anti-Money Laundering Supervision Annual Assessment’ (2021).

⁴¹⁴ Ibid.

⁴¹⁵ Ibid.

⁴¹⁶ See A1, C2, W1, J2.

⁴¹⁷ See C2.

⁴¹⁸ See W1 J2, Y1, Y2.

⁴¹⁹ See C1.

⁴²⁰ See Chapter 3, s 3.6

⁴²¹ Melissa Van Den Broek, *Preventing Money Laundering* (Eleven International Publishing 2015).

⁴²² HMRC, ‘Corporate Report: HMRC Anti-Money Laundering Supervision Annual Assessment’ (2021).

⁴²² Ibid.

increasing the value of financial penalties and making more use of a wide range of sanctions available, including censuring statements, temporary and permanent management probation, registration suspension and cancellation, and criminal prosecution for breaches of the MLRs.⁴²³ The new sanctions framework is considered as ensuring more effective and dissuasive sanctions whilst meaning proportionality.⁴²⁴ Between 2019 and 2020 there were 461 HVDs registered with HMRC for AML supervision and HMRC issued three financial penalties equating to £77,678.00 to non-compliant HVDs.⁴²⁵ During the same time period, there were 36 AMPs registered with HMRC, and no penalties were handed out to this category during this time.⁴²⁶

It is concerning to acknowledge this low number of penalties, especially in reliance on the interview data which indicates that all participants questioned were operating illegally by failing to comply with the MLRs with HMRC even though they fulfil the criteria as a HVD or AMP.⁴²⁷ Since 2018, HMRC has regularly published details of sanctions online⁴²⁸ and since January 2021 HMRC has started publishing details of cancelled and suspended registrations online.⁴²⁹ However, only a handful of penalties have been issued to dealers, which raises questions in relation to HMRC's ability to detect non-compliance and issue appropriate sanctions for such failures.⁴³⁰ Dealers said, 'myself and many other dealers don't comply with AML requirements but we have never heard of HMRC sanctioning anyone',⁴³¹ and 'I don't think HMRC is really checking AML compliance as it's not something I've ever heard of in my 25 years as a dealer'.⁴³² Compliance may therefore be reduced by dealers feeling invincible due to not facing any repercussion for failing to implement AML controls.⁴³³ As well as removing the deterrent effect of facing penalties by failing to comply with the MLRS, resulting in further non-compliance among dealers.⁴³⁴ Indeed, the deterrent effect of facing penalties for non-

⁴²³ Ibid.

⁴²⁴ Ibid.

⁴²⁵ Global Banking and Finance Review, 'High Value Dealers in Spotlight' (2019).

⁴²⁶ Ibid.

⁴²⁷ See A1, A2, J1, J2, C1, C2, W1, W2, Y1, Y2.

⁴²⁸ HMRC, 'Anti-Money Laundering Supervision: Guidance for High Value Dealers' (2020).

⁴²⁹ Ibid.

⁴³⁰ Ibid.

⁴³¹ See J2.

⁴³² See C2.

⁴³³ See A1, A2, J1, J2, C1, C2, W1, W2, Y1, Y2.

⁴³⁴ Ibid.

compliance is useful in improving engagement with the law and highlighting the significance of the obligations imposed.⁴³⁵

A final factor to acknowledge in this regard is that dealers that do comply with the MLRs may only be doing so due to self-protection.⁴³⁶ A common theme in AML is self-protection due to the fear of penalties and reputational damage provoked by the AML regime.⁴³⁷ Private actors are recognised to do whatever they are able to do to protect themselves rather than what they are obliged to do.⁴³⁸ Subsequently, dealers explain they adopt an approach where they are safe rather than sorry.⁴³⁹ Real estates also share these views, ‘we do the minimum that is required to be compliant’ and, ‘conduct checks simply to tick a box’ to ‘be on the safe side’.⁴⁴⁰ Non-compliant dealers indicated that following the interview they would be discussing matters with staff to ensure they have ‘covered their backs’.⁴⁴¹ Such an approach may appear compliant to HMRC at face value, but in practice, this may not be the case and dealers may only doing the minimum or below the minimum to avoid detection.⁴⁴²

3.8 Conclusion

The analysis in this Chapter highlights that obliging dealers to act as AML gatekeepers is not as simple in practice as stipulated in the regulations.⁴⁴³ Several factors result in dealers failing to comply with their AML obligations and subsequently operating illegally.⁴⁴⁴ A general lack of knowledge among dealers about AML and money laundering operations restricts dealers’ ability to understand their requirements.⁴⁴⁵ Dealers highlighted their

⁴³⁵ Daniel Nagin, ‘Deterrence in the Twenty First Century’ (2013) *Crime and Justice* 210.

⁴³⁶ *Ibid.*

⁴³⁷ Liliya Gelemerova, ‘On the front line against money- laundering: the regulatory minefield’ (2008) 33 *Crime, Law and Social Change* 47.

⁴³⁸ Abdullahi Bello, *Improving Anti- Money Laundering Compliance: Self-Protecting Theory and Money Laundering Reporting Officers* (Palgrave Macmillan 2016) 48.

⁴³⁹ See A1, A2, J1, J2, C1, C2, W1, W2, Y1, Y2.

⁴⁴⁰ Ilaria Zavoli, Colin King, ‘The Challenges of Implementing Anti- Money Laundering Regulation: An Empirical Analysis’ (2021) 4 *Modern Law Review* 762.

⁴⁴¹ See A2, C1, C2.

⁴⁴² *Ibid.*

⁴⁴³ See s 3.2

⁴⁴⁴ *Ibid.*

⁴⁴⁵ See C1, J2, W2, Y2.

struggles in understanding legal jargon and considered this complex and confusing.⁴⁴⁶ Additionally, dealers stated a lack of awareness of their MLRs, which may be allocated to an absence of outreach work conducted by HMRC.⁴⁴⁷ Besides these limitations, the analysis identifies dealers' perceptions of acting as AML gatekeepers. Dealers fail to understand the merits of acting as AML gatekeepers and a lack of self-assurance in adopting this role.⁴⁴⁸ These opinions coupled with the financial, logistical, and administrative costs of AML compliance were highlighted as creating barriers to dealers complying with their obligations under the MLRs.⁴⁴⁹

In assessing AML registration, the analysis within this chapter identifies a variety of factors which may impede compliance among dealers.⁴⁵⁰ Dealers were identified as having significantly lower registration rates in comparison to other regulated sectors.⁴⁵¹ The literature allocates this to, firms operating strict no cash policies to avoid the requirement to register,⁴⁵² individuals perceiving AML requirements as burdensome,⁴⁵³ and HMRC's rigorous response to strengthening its verification process to reduce criminals' ability to use the registration to gain a legitimate appearance.⁴⁵⁴ In addition to these factors, the analysis recognises a lack of awareness of the requirement to register among dealers as impeding compliance.⁴⁵⁵ Furthermore, a failure to understand and acknowledge the importance of registration was also assessed as reducing compliance.⁴⁵⁶ Lastly, the chapter finds potential issues within the registration form MLR100 which may result in dealers opting not to register. These include a lack of support in completing the form as well as the fees that dealers are required to pay in gaining registered status.

Additionally, the Chapter considered the implementation of the RBA among UK luxury goods dealers.⁴⁵⁷ Whilst the plurality of the RBA is intended to provide dealers

⁴⁴⁶ Ibid.

⁴⁴⁷ See A1 A2, J1, J2, C1, C2, W1, W2, Y1, Y2, Alexander Dill, *Anti Money Laundering Regulation and Compliance: Key Problems and Practice Areas* (Edward Elgar 2021) 76.

⁴⁴⁸ Ibid.

⁴⁴⁹ See s 3.2.

⁴⁵⁰ See s 3.2.

⁴⁵¹ HMRC, 'Corporate Report: HMRC Anti-Money Laundering Supervision Annual Assessment' (2021).

⁴⁵² Financial Action Task Force, 'United Kingdom Mutual Evaluation Report' (2018) 77.

⁴⁵³ Ibid.

⁴⁵⁴ HMRC, 'Corporate Report: HMRC Anti-Money Laundering Supervision Annual Assessment' (2021).

⁴⁵⁵ See A1, A2, C1, C2, J1, J2, Y1, Y2, W1, W2.

⁴⁵⁶ Ibid.

⁴⁵⁷ See s 3.4.

with the flexibility to implement AML policies in accordance to the risks exposed within the organisation,⁴⁵⁸ this was identified as making compliance difficult.⁴⁵⁹ Dealers did not feel confident in their abilities to assess money laundering risk and considered the process as complex and difficult.⁴⁶⁰ The analysis identifies that dealers within the same institution perceived risks differently, causing issues for businesses that seek to adopt a uniform approach within their business policies.⁴⁶¹ Additionally, the chapter identifies a lack of knowledge and understanding of the RBA makes it difficult for regulated entities to engage with such an approach and implement controls accordingly within their business.⁴⁶² Lastly, the risk-based analysis identified the RBA as competing with business aims, such as increasing costs and driving customers to dealerships without such controls which makes dealers view the RBA as negatively.⁴⁶³

Furthermore, the literature highlights various challenges faced by dealers in implementing CDD controls.⁴⁶⁴ Dealers demonstrated limited knowledge of CDD controls and struggled to understand their obligations.⁴⁶⁵ This included tailoring CDD controls in accordance to risks exposed by the customer such as SDD and EDD controls.⁴⁶⁶ These inadequacies may be due to an absence of CDD training introduced for dealers as well as dealers failing to appoint a ‘nominated officer’ to handle such matters.⁴⁶⁷ CDDs compliance was also impeded by a clashing with dealer business principles such as profit, making customers feel welcome, and potential financial losses.⁴⁶⁸ The stage at which dealers are required to conduct CDD checks was highlighted as vital in making customers feel valued, with many dealers expressing that the

⁴⁵⁸ The Wolfsberg Group, ‘Guidance on a Risk Based Approach for Managing Money Laundering Risks’ (2006).

⁴⁵⁹ See A1 A2, J1, J2, C1, C2, W1, W2, Y1, Y2.

⁴⁶⁰ Ibid.

⁴⁶¹ See A1 A2, J1, J2, C1, C2, W1, W2, Y1, Y2, Anna Simonova, ‘The Risk Based Approach to Anti-Money Laundering: Problems and Solutions’ (2011) 14 *Journal of Money Laundering Control* 32.

⁴⁶² See A1, A2, C1, C2, J1

⁴⁶³ Ibid. Paolo Costanzo, *The Risk- Based Approach to Anti Money Laundering and Counter Terrorist Financing in International EU Standards: What is it, what it entails* (Edward Elgar 2013) 348.

⁴⁶⁴ See 3.5.

⁴⁶⁵ See A1, A2, C1, C2, Y1, Y2, W1, W2, J1, J2.

⁴⁶⁶ Ibid.

⁴⁶⁷ Ibid, HMRC, ‘Anti-Money Laundering Supervision: Guidance for High Value Dealers’ (2020).

⁴⁶⁸ See A1, A2, C1, C2, Y1, Y2, W1, W2, J1, J2, Dina Alyacoubi, ‘Challenges in Customer Due Diligence for Banks in the UAE’ (2020) 2 *Journal of Money Laundering Control* 52.

requirements were intrusive and made them feel like they ‘needed to police customers’.⁴⁶⁹ In addition to these challenges, dealers expressed struggles in identifying beneficial owners.⁴⁷⁰ As well as, practical hurdles such as not having the software required to verify customers and having to work remotely due to Covid-19 restrictions.⁴⁷¹

In assessing dealers’ compliance with SARs requirements, the literature identifies several hurdles.⁴⁷² Dealers file a low number of reports, especially in comparison to other regulated sectors.⁴⁷³ They also demonstrate a lack of knowledge and understanding of their reporting obligations,⁴⁷⁴ and they consider reporting requirements as negatively impacting relationships with their clients.⁴⁷⁵ In addition to this, the financial implications of compliance are also problematic for dealers. Furthermore, the analysis acknowledges flaws within the SAR system which makes the process of submitting a report challenging.⁴⁷⁶ Finally, the literature recognises the lack of support provided to dealers in complying with SARs such as absence of feedback and training.⁴⁷⁷

The final section of the chapter considered AML supervision of dealers and identified potential issues which impact dealers’ compliance with the MLRs.⁴⁷⁸ The analysis identifies a HMRC guidance for dealers,⁴⁷⁹ however, the dealers interviewed were not aware of it nor they had been sent it.⁴⁸⁰ Additionally HMRC fails to conduct outreach activities for dealers such as seminars, workshops, that dealers think would help them comply with the MLRs.⁴⁸¹ Moreover, the literature questioned HMRC’s ability to detect non-compliance, based upon the low penalties that it has issued and the non-compliance among the dealers interviewed who said they had not faced any penalties for

⁴⁶⁹ Ibid.

⁴⁷⁰ Ibid.

⁴⁷¹ Ibid. Financial Action Task Force, ‘COVID-19 Related Money Laundering and Terrorist Financing: Risks and Policy Responses’ (2021).

⁴⁷² See s 3.6

⁴⁷³ HM Treasury, ‘UK National Risk Assessment of Money Laundering and Terrorist Financing’ (2020).

⁴⁷⁴ See A1, A2, J1, J2, C1, C2, W1, W2, Y1, Y2.

⁴⁷⁵ Ibid.

⁴⁷⁶ Ilaria Zavoli, Colin King, ‘The Challenges of Implementing Anti- Money Laundering Regulation: An Empirical Analysis’ (2021) 4 *Modern Law Review* 759.

⁴⁷⁷ See A1, A2, C1, C2, J1, J2, Y2, Y2, W1, W2.

⁴⁷⁸ See s 3.7.

⁴⁷⁹ HMRC, ‘Anti-Money Laundering Supervision: Guidance for High Value Dealers’ (2020).

⁴⁸⁰ See A1, A2, C1, C2, J1, J2, Y2.

⁴⁸¹ Ibid.

operating in this way.⁴⁸² Lastly, the analysis identifies the likelihood of regulated entities doing the minimum to avoid repercussions for non-compliance and questions the extent to which HMRC can identify such approaches.⁴⁸³

These findings provide a critical outlook on the challenges faced by UK luxury goods dealers in complying with AML requirements. The challenges identified are useful in understanding AML implementation within luxury goods sectors and in seeking ways to improve compliance. Additionally, the barriers to compliance are also useful for other regulated sectors, especially since the requirements within the MLRs are the same for all regulated entities, and similar compliance challenges may exist in other sectors. The analysis of this chapter forms the basis for the research conducted in subsequent chapters in addressing these challenges and seeking ways to reduce money laundering vulnerabilities within luxury goods sectors.⁴⁸⁴ Subsequently, the following chapter considers the AML regime applicable to luxury goods sectors within other jurisdictions.⁴⁸⁵

⁴⁸² Ibid.

⁴⁸³ Ibid.

⁴⁸⁴ Chapter Four will consider approaches adopted within other jurisdictions to address these issues. Chapter Five will provide suggestions in improving the present approach to AML within UK luxury goods sectors.

⁴⁸⁵ See Chapter Four.

Chapter 4

Other Jurisdictions

4.1 Introduction

The previous chapters have identified significant money laundering risks within the UK luxury goods sectors and challenges that dealers face in implementing the AML regime.¹ This necessitates considering ways the present approach can be improved to reduce money laundering risks. Subsequently, the objective of this Chapter is to consider the AML framework and practices adopted in the United States of America (US), Canada, Australia, Japan, Cayman Islands, Trinidad and Tobago and identify ways in which these alternative approaches can be used to strengthen further and improve the AML regime applicable to UK luxury goods sectors. It must be noted upon the outset that whilst this chapter considers six jurisdictions, this is not a comparative study. Rather, this chapter considers ways the AML regimes within these jurisdictions can provide assistance and insights in reducing money laundering risk within UK luxury goods sectors, such as identifying good and bad practices. In achieving this the chapter will adopt a thematic approach.

Presently no study has been conducted which considers ways in which the UK AML regime can be further improved or analyses the AML framework and policies within the selected jurisdictions in the nature intended within this study. Although the Financial Action Task Force has assessed the jurisdictions in relation to their compliance with the 40 Recommendations, it has not undertaken a study in relation to money laundering practices within luxury goods sectors or considered this as a focal point. Thus, the chapter fills a gap within academic discourse and seeks to pave the way forward in relation to discussing the luxury goods sector from an AML perspective and identifying useful practices. The findings address the primary research question by providing valuable insights into how the issues identified within the UK can be reduced/removed through approaches adopted within other jurisdictions. Analysing these practices allows

¹ See Chapter Two, Chapter Three.

the thesis to progress in considering solutions for the AML measures applicable to UK luxury goods sectors and reducing the risk of money laundering operations.

4.2 The Rationale behind the Selected Jurisdictions

The US, Japan Australia, Canada, Trinidad and Tobago, and the Cayman Islands have been selected for this study based upon several justifications. One of these justifications is that the majority of the jurisdictions include common law legal systems; the same approach is also adopted within the UK.² This similarity helps identify practices to improve the UK AML regime.³ Analysing convergent and similar legal systems has been recognised as allowing findings which benefit from each other's experiences.⁴ Subsequently, examining the AML regimes within common law jurisdictions helps meet the study's aims and identify practices to reduce money laundering risks in the UK luxury goods sectors.⁵ Civil law jurisdictions were not selected within the sample because they fail to bear resemblance to the UK AML regime and this is recognised as potentially posing challenges when considering ways to address the issues identified within previous chapters.⁶ The selection does not seek to downplay the benefits of analysing different legal systems in enhancing the understanding of the law.⁷ Instead, the sample is considered to serve the interests of the research project best, and subsequently like must be compared with like (such as countries in the same evolutionary stage).⁸

The sample selection also ensures variation, which is acknowledged as an important aspect of sample selection.⁹ Variation is critical when studying approaches adopted within alternative jurisdictions to gain useful insights in addressing issues

² Kate Malleson, Richard Moules, *The Legal System* (Oxford University Press 2010).

³ Gunther Tuebner, 'Legal Irritants: Good Faith in British Law or How Unifying Law Wends Up New Divergences' (1998) 3 *Modern Law Review* 11.

⁴ Ibid.

⁵ Scott Slorach, Judith Embley, Peter Goodchild, Catherine Shephard, *Legal Systems and Skills* (Oxford University Press 2015).

⁶ Joseph Dainow, 'The Civil Law and the Common Law: Some Points of Comparison' (2001) *The American Journal of Comparative Law* 416.

⁷ John Alison, *A Continental Distinction in the Common Law* (Oxford University Press 2000).

⁸ Helen Xanthaki, 'Legal Transplants in Legislation: Defusing the Trap' (2008) *The International and Comparative Law Quarterly* 660.

⁹ Nick Emmel, *Sampling and Choosing Cases in Qualitative Research* (SAGE Publications 2013).

through consideration of multiple approaches.¹⁰ Accordingly, the study has selected jurisdictions with luxury goods sectors that vary in size to gain interesting insights that may not be apparent by merely selecting large or small luxury goods sectors.¹¹ For example, the US hosts the world's largest luxury goods market, with Japan the second largest.¹² Larger luxury goods allow identification of interesting practices, such as: necessitating stringent AML measures in response to an increased money laundering risk, extending AML obligations to include a larger variety of entities within luxury goods sectors, and including measures to address risks which may not be present within smaller luxury goods sectors.¹³ On the other hand, the luxury goods sectors in Australia, Canada, and Trinidad and Tobago are considerably smaller (approximately one fifth) in comparison to the US and Japan.¹⁴ This variation provides the opportunity to examine the AML practices adopted within significantly smaller luxury goods sectors and the consideration of practices which may not be present within larger luxury goods sectors.¹⁵ This allows analysis of interesting practices such as: a more tailored approach to AML within luxury goods sectors due to the ability to allocate more time to consider risks, increased attention to money laundering by law enforcement, and measures which address money laundering risks which are specific to smaller luxury goods sectors.¹⁶

Additionally, the sample includes variation in relation to the extent to which the jurisdictions include luxury goods sectors within their AML regimes.¹⁷ This is useful for the research project as it ensures that all the luxury subsectors selected for the study are represented within the sample.¹⁸ Some jurisdictions oblige specific luxury goods sectors whilst others do not.¹⁹ For example, Trinidad and Tobago and Australia specify car

¹⁰ Ibid.

¹¹ Ibid.

¹² Business in Japan, 'Understanding New Trends and Opportunities in Japan's Luxury Industry' <<https://businessinjapan.com/understanding-new-trends-and-opportunities-in-japans-luxury-industry-summary/>> accessed 1st November 2021.

¹³ Transparency International, 'Tainted Treasures: Money Laundering Risks in Luxury Markets' (2017).

¹⁴ Statista, 'Luxury Goods' <<https://www.statista.com/outlook/cmo/luxury-goods/australia>> accessed 5th October 2021; Statista, 'Luxury Goods' <<https://www.statista.com/outlook/cmo/luxury-goods/canada>> accessed 11th October 2021.

¹⁵ Ibid.

¹⁶ Transparency International, 'Tainted Treasures: Money Laundering Risks in Luxury Markets' (2017).

¹⁷ See s 4.3.

¹⁸ See Chapter One, s 1.2.2.

¹⁹ See s 4.3.

dealers within their AML regimes whereas the remaining jurisdictions do not.²⁰ Selecting a sample representing the car, yacht, art, jewellery and precious stones and watches industries subsequently allows consideration of AML measures which are useful in progressing the UK AML regime and addressing the identified money laundering risks.²¹

Furthermore, the sample presents a variation concerning FATF compliance.²² The table below has been created using the most up-to-date FATF scores of the Recommendations most suited to the themes explored in this Chapter.²³ These include R 1 – Assessing Risks and Applying a Risk-Based Approach, R 20 Reporting of Suspicious Transactions, R 22 – DNFBPs customer due diligence, R 23 – DNFBPs: Other measures, R 28 – regulation and supervision of DNFBPs, R 34 – guidance and feedback.²⁴ The selection of the Recommendations based upon the themes identified within Chapter One ensure a focused approach which allows critical analysis of individual aspects which are useful in improving the UK AML regime.²⁵

²⁶	R 1	R 20	R 22	R 23	R 28	R 34
UK	LC	C	LC	LC	C	C
USA	PC	PC	NC	NC	NC	LC
Canada	LC	LC	PC	LC	PC	LC
Japan	LC	PC	PC	PC	PC	LC
Trinidad & Tobago	LC	C	C	C	PC	C
Cayman Islands	LC	C	C	C	C	C
Australia	PC	C	NC	NC	NC	LC

Key:²⁷

²⁰ Financial intelligence Unit Trinidad and Tobago, 'Motor Vehicle Dealers' (2018), Australia Transaction Reports and Analysis Centre, 'Motor Vehicle Dealers' (2019).

²¹ Patrick Puhani, 'The Heckman Correction for Sample Selection and Its Critique' (2002) 2 Journal of Economic Surveys 234, s 4.3.

²² Financial Action Task Force, 'Consolidated Assessment Ratings' (2021).

²² Ibid.

²³ Ibid.

²⁴ Financial Action Task Force, 'The FATF Recommendations' (2022).

²⁵ See Chapter One.

²⁶ Financial Action Task Force, 'Consolidated Assessment Ratings' (2021).

²⁷ Ibid.

C – Compliant

LC – Largely Compliant, there are only minor shortcomings

PC – Partially Compliant, there are moderate shortcomings

NC – Non-Compliant, there are major shortcomings

The selected jurisdictions have received various ratings compared to the UK.²⁸ Some jurisdictions such as Trinidad and Tobago and the Cayman Islands have been allocated higher ratings compared to the UK, which allows analysis of why this is the case and exploration of good practices useful in improving the UK AML regime.²⁹ On the other hand, jurisdictions such as the US, Australia, and Japan are given lower ratings compared to the UK, and analysis of these jurisdictions allows considering of weaknesses/ bad practices that exist and that the UK needs to stay clear from.³⁰ It must be noted that these ratings do not guarantee that a jurisdiction has strong or weak AML controls.³¹ Instead, they can only be acknowledged as providing an insight into how the AML framework within a jurisdiction is developed.³²

A final factor considered when selecting the jurisdictions for the sample was the support, they provide to regulated entities within luxury goods sectors in complying with their AML obligations. Chapter 3 identified several hurdles that restrict AML compliance among UK dealers.³³ First, a reoccurring theme identified within the analysis was the lack of support provided to dealers in fulfilling their AML obligations, which reduced their understanding, knowledge, and application of such measures in practice.³⁴ Subsequently, considering various ways jurisdictions provide support to luxury goods dealers is particularly useful for the research project in identifying practices through which the UK can further assist and support HVDs and AMPs in complying with their AML obligations.³⁵ In this regard, the jurisdictions selected have issued various forms of guidance to regulated entities, from documentation explaining AML obligations to

²⁸ Ibid.

²⁹ Ibid.

³⁰ Ibid.

³¹ Ibid.

³² Ibid.

³³ See Chapter Three.

³⁴ Ibid.

³⁵ Ibid.

outreach work such as training, seminars, and presentations.³⁶ This variation provides an opportunity to consider the extent to which the support impacts AML compliance and identifies useful practices to improve dealers' knowledge understanding and application of AML measures within the UK.³⁷

4.3 Obligated Entities

As identified in previous chapters the FATF has been the driving force in extending the AML regime to include luxury goods sectors.³⁸ However, the implementation of the FATF Recommendations has varied significantly from one jurisdiction to another, including the extent to which luxury goods sectors are captured within the AML regime.³⁹ Unlike the UK,⁴⁰ the US, Canada, Australia, Japan, Trinidad and Tobago, and the Cayman Islands do not apply a threshold approach of requiring individuals who make or receive cash payments over a certain limit to implement AML controls.⁴¹ This absence may be considered as beneficial since it captures all payments regardless of their value in cash.⁴² As identified within Chapter Two, payments for luxury items below €10,000 in cash pose an equal risk of money laundering and can be utilised within money-laundering operations.⁴³ Thus by failing to stipulate a threshold these jurisdictions close this

³⁶ Financial Transaction and Reports Analysis Centre of Canada, 'Guidance and Resources for Businesses (Reporting Entities)' <<https://www.fintrac-canafe.gc.ca/guidance-directives/overview-apercu/1-eng>> accessed 2nd December 2021; Cayman Islands Monetary Authority, 'Anti Money Laundering and Countering the Financing of Terrorism' <<https://www.cima.ky/amlcft>> accessed 1st December 2021; Financial intelligence Unit Trinidad and Tobago, 'Anti Money Laundering Guidance' <<https://fiu.gov.tt/compliance/>> accessed 5th November 2021; Financial Crimes Enforcement Network, 'Guidance Notes for Dealers, Including Certain Retailers, of Precious Metals, Precious Stones, or Jewels, on Conducting a Risk Assessment of Their Foreign Suppliers' (2008).

³⁷ Ibid.

³⁸ See Chapter One, s 1.4, Chapter Two, s 2.2.

³⁹ Financial Action Task Force, 'Member Compliance Comparison' (2022).

⁴⁰ Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017.

⁴¹ Bank Secrecy Act 1970 (US); Proceeds of Crime Act 2000 (Canada); Anti Money Laundering and Counter Terrorism Financing Act 2006 (Australia); Proceeds of Crime Act 2020 (Cayman Islands); Money Laundering and Combatting the Financing of Terrorism Act 2015 (Trinidad and Tobago); Punishment of Organised Crimes Act 1990 (Japan).

⁴² Ibid.

⁴³ See Chapter Two s 2.2.

loophole.⁴⁴ Additionally, the absence of a threshold is also useful in addressing issues in relation to dealers avoiding AML obligations by operating below the limit.⁴⁵

Instead of stipulating a threshold limit, the approach adopted within the jurisdictions selected includes listing luxury subsectors which fall within the AML regime (regardless of the amount they make or receive).⁴⁶ A varied approach is applied because some jurisdictions extend their AML regime to capture more luxury sub-sectors than others.⁴⁷ The US, Japan, Australia, Cayman Islands, Trinidad and Tobago, and Canada include individuals operating in the jewellery sector within their AML regimes.⁴⁸ Additionally, the art sector is regulated in the US⁴⁹ and Trinidad and Tobago.⁵⁰ Furthermore, the US,⁵¹ Trinidad and Tobago⁵² and, Australia⁵³ all specify car dealers within their AML regime.⁵⁴ The US regulates yacht dealers under the terms ‘boat sales’.⁵⁵ Watch dealers are not included within the AML regimes in any of the selected jurisdictions, nor are watches listed within the Regulations employed for jewellery dealers.⁵⁶ Listing luxury goods is useful in increasing awareness, understanding and clarity within an AML regime since the approach specifies items which pose a high money laundering risk.⁵⁷

⁴⁴ Ibid.

⁴⁵ Ibid.

⁴⁶ Bank Secrecy Act 1970 (US); Proceeds of Crime Act 2000 (Canada); Anti Money Laundering and Counter Terrorism Financing Act 2006 (Australia); Proceeds of Crime Act 2020 (Cayman Islands); Money Laundering and Combatting the Financing of Terrorism Act 2015 (Trinidad and Tobago); Punishment of Organised Crimes Act 1990 (Japan).

⁴⁷ Ibid.

⁴⁸ Ibid; Financial Transaction and Reports Analysis Centre of Canada, ‘Dealers in Precious Metals and Stones’ (2020); Financial Intelligence Unit Trinidad and Tobago, ‘AML /CFT Guidance for Dealers in Precious Metals and Stones/ Jewellers’ (2018); National Police Agency, ‘Anti Money Laundering Regime in Japan’ (2018); Cayman Islands Monetary Authority, ‘AML/CFT Legal Framework’ (2018).

⁴⁹ Bank Secrecy Act 1970 (US).

⁵⁰ Proceeds of Crime Act 2000 (Trinidad and Tobago) Chap 11:27.

⁵¹ Patriot Act 2001 (US) s 365.

⁵² Money Laundering and Combatting the Financing of Terrorism Act 2015 (Trinidad and Tobago) Chapter 11:27; Financial intelligence Unit Trinidad and Tobago, ‘Motor Vehicle Dealers’ (2019).

⁵³ Anti-Money Laundering and Counter Terrorism Financing Act 2006 (Australia) Part One, Australia Transaction Reports and Analysis Centre, ‘Motor Vehicle Dealers’ (2018).

⁵⁴ Ibid.

⁵⁵ Vehicle Sellers Regulations 2003 (US) s 352 – 326.

⁵⁶ Bank Secrecy Act 1970 (US); Proceeds of Crime Act 2000 (Canada); Anti Money Laundering and Counter Terrorism Financing Act 2006 (Australia), Proceeds of Crime Act 2020 (Cayman Islands); Money Laundering and Combatting the Financing of Terrorism Act 2015 (Trinidad and Tobago); Punishment of Organised Crimes Act 1990 (Japan).

⁵⁷ Financial Action Task Force, ‘Mutual Evaluation Report United States’ (2016) 22.

Additionally, it is interesting to note that the AML regime within some jurisdictions also lists individual luxury items which pose a high money laundering risk.⁵⁸ Listing luxury items, not only emphasises the money laundering risks posed by certain luxury items but also adds further clarity in relation to the items that fall within an AML regime and reduce any ambiguity in this regard.⁵⁹ The US, Canada, Trinidad and Tobago, Japan, and the Cayman Islands list precious metals and precious stones as regulated items within the jewellery sector.⁶⁰ Additionally, Trinidad and Tobago and Japan list gold, silver semi-precious stones and diamonds as regulated items.⁶¹ Furthermore, the following items have also been listed as falling within the Dealers in Precious Metals and Stones (DPMS) category within individual jurisdictions: finished goods including, but not limited to, jewellery numismatic items and antiques within the US;⁶² buyers and sellers in the secondary and scrap metals industry within the Cayman Islands;⁶³ rubies, bullion, and artificial gemstones within Trinidad and Tobago.⁶⁴

Moreover, the US and Trinidad and Tobago specify art dealers within their AML regime.⁶⁵ The US AML regime does this by listing ‘art market and antique dealers’ within the Bank Secrecy Act.⁶⁶ Trinidad and Tobago defines an art dealer as an individual or company that buys and sells works of any category of art.⁶⁷ Accordingly, the regulation applies to: buyers, vendors, or intermediaries involved in selling artworks as professionals and includes, auction houses, galleries, museums, art fairs, and other art market

⁵⁸ Bank Secrecy Act 1970 (US); Proceeds of Crime Act 2000 (Canada), Proceeds of Crime Act 2020 (Cayman Islands); Money Laundering and Combatting the Financing of Terrorism Act 2015 (Trinidad and Tobago); Punishment of Organised Crimes Act 1990 (Japan).

⁵⁹ Financial Action Task Force, ‘Mutual Evaluation Report Trinidad and Tobago’ (2018) 32.

⁶⁰ Bank Secrecy Act 1970 (US); Proceeds of Crime Act 2000 (Canada); Proceeds of Crime Act 2020 (Cayman Islands); Money Laundering and Combatting the Financing of Terrorism Act 2015 (Trinidad and Tobago), Punishment of Organised Crimes Act 1990 (Japan).

⁶¹ Money Laundering and Combatting the Financing of Terrorism Act 2015 (Trinidad and Tobago) Chapter 11:27; Financial intelligence Unit Trinidad and Tobago, ‘Motor Vehicle Dealers’ (2019); National Police Agency, ‘Anti Money Laundering Regime in Japan’ (2018); National Police Agency, ‘AML Japan’ (2018).

⁶² Department of The Treasury, ‘Financial Crimes Enforcement Network; Anti-Money Laundering Programs for Dealers in Precious Metals, Stones, or Jewels’ (2021).

⁶³ Financial Intelligence Unit Trinidad and Tobago, ‘AML/CFT Guidance for Dealers in Precious Metals and Stones/ Jewellers’ (2018).

⁶⁴ Ibid.

⁶⁵ Bank Secrecy Act 1970 (US), Proceeds of Crime Act 2000 (Trinidad and Tobago) Chap 11:27.

⁶⁶ Ibid.

⁶⁷ Ibid.

operators.⁶⁸ Art is further described as including works of drawing, painting, sculpture, engraving, lithography, photography, and tapestry.⁶⁹

It is difficult to ascertain the extent to which the above-obliged entities understand their AML obligations since no study has been conducted in this regard.⁷⁰ However, the FATF highlights that within Australia promoting awareness of AML is a key priority for Australia Transaction Reports and Analysis Centre (AUSTRAC).⁷¹ This is reflected within statutory functions requiring the AUSTRAC Chief Executive Officer to advise and assist reporting entities regarding their AML obligations.⁷² AUSTRAC achieves this through several mechanisms including guidance materials, e-learning, regular industry forums and consultation processes and the AUSTRAC Help Desk.⁷³ Additionally, DPMS in the Cayman Islands are identified as having varying levels of understanding of their AML obligations.⁷⁴ Subsequently, the Department of Commerce and Investment has embarked upon an outreach and sensitisation programme to assist dealers in precious metals and stones in understating their obligations.⁷⁵

On the other hand, luxury goods dealers within Japan are identified as having a very limited understanding of their AML obligations.⁷⁶ Consequently, the FATF has suggested for Japan conduct targeted outreach and educational programs for DNFBPs and develop practical guidance to enhance understanding of AML obligations.⁷⁷ Similarly, dealers in DPMSV within Canada are identified as failing to understand and recognise their AML obligations.⁷⁸ In response to this deficiency, the Canadian Jewelers Association and the Jewellers Vigilance have conducted outreach work which has increased the level of understanding however, there is still room for further improvement.⁷⁹

⁶⁸ Ibid.

⁶⁹ Ibid.

⁷⁰ Ibid.

⁷¹ Ibid.

⁷² Financial Action Task Force, 'Mutual Evaluation Report: Australia' (2015) 76.

⁷³ Ibid.

⁷⁴ Financial Action Task Force 'Mutual Evaluation Report Cayman Islands' (2019).

⁷⁵ Ibid.

⁷⁶ Financial Action Task Force 'Mutual Evaluation Report: Japan' (2021) 57.

⁷⁷ Ibid.

⁷⁸ Financial Action Task Force, 'Mutual Evaluation Report: Canada' (2016).

⁷⁹ Ibid.

4.4 Registration

The FATF does not allocate a Recommendation to AML registration or provide specific commentary in relation to AML registration other than listing the number of registered entities within Mutual Evaluation Reports.⁸⁰ This has resulted in jurisdictions adopting their own registration processes and requirements.⁸¹ The luxury goods sectors within the US, Canada, and Japan are not required to formally register for AML even though they fall within the AML Regime.⁸² Whilst it is difficult to ascertain the extent to which registration impacts AML compliance, the FATF provides useful findings in this regard.⁸³ The ratings issued to jurisdictions without registration requirements appear to be significantly lower than jurisdictions with registration requirements (apart from Australia).⁸⁴ Thus, the absence of registration may potentially impact AML compliance among luxury goods sectors.⁸⁵ However, at the same time not having a requirement to register may also be considered beneficial because it does not provide criminals with an option to utilise registered status as a façade for money laundering operations.⁸⁶

It is impossible to analyse exactly how many luxury goods dealers presently operate within Australia, Cayman Islands, and Trinidad and Tobago selected since no study or mutual evaluation review considers this aspect. However, the jurisdictions are considered to have a gradual positive trend concerning the number of registered individuals within luxury goods sectors.⁸⁷ This increase may be allocated to several factors, such as an increase in AML enforcement within luxury goods sectors,⁸⁸ FATF extending AML guidance to DNFBPs such as luxury goods dealers,⁸⁹ and the general

⁸⁰ Financial Action Task Force, 'The FATF Recommendations' (2022) 5.

⁸¹ *Ibid.*

⁸² Bank Secrecy Act 1970 (US); Proceeds of Crime (Money Laundering) and Terrorist Financing Act 2022 (Canada); Act on Preventing of Transfer of Criminal Proceeds 2007 (Japan).

⁸³ Financial Action Task Force, 'Consolidated Assessment Ratings' (2021).

⁸⁴ See Table 4 s 4.2.

⁸⁵ *Ibid.*

⁸⁶ HM Treasury, 'UK National Risk Assessment of Money Laundering and Terrorist Financing' (2020).

⁸⁷ Financial Action Task Force, 'Mutual Evaluation Report: Australia' (2015) 105; Financial Action Task Force 'Mutual Evaluation Report Trinidad and Tobago' (2018) 78; Financial Action Task Force 'Mutual Evaluation Report Cayman Islands' (2019) 97.

⁸⁸ *Ibid.*

⁸⁹ Financial Action Task Force, 'The FATF Recommendations' (2022) 5.

increase in awareness of money laundering practices and risks within luxury goods sectors.⁹⁰ These efforts are useful in addressing low registration rates within the UK.⁹¹

The support provided to luxury goods dealers within these jurisdictions to complete their registration requirements is useful in improving the UK's registration process.⁹² The AUSTRAC registration form includes general information regarding 'completing the form', and 'submitting the form'.⁹³ In addition, the Australian Government has also issued an 'Explanatory Guide for Enrolment and Registration'.⁹⁴ This guide provides step-by-step detailed instructions in completing each question within the form along with useful examples.⁹⁵ For example, the section explaining 'Business Information' clarifies the legal name of a business as, 'the name of your business as it appears on all official or legal documents. This name may be different to the name your business is known by its customers'.⁹⁶ This section also provides comprehensive information regarding partnerships and trusts and the extent to which they must engage with the AML registration process.⁹⁷ Finally, an AML regime with clear stages and instructions is considered accessible and user-friendly for regulated entities.⁹⁸ In this regard, the guidance provided by AUSTRAC in completing the registration process is encouraging since it provides dealers with gateways to seek assistance when completing the registration requirements, as well as ensuring they are able to complete the process to the best of their abilities.⁹⁹ This is particularly helpful for the UK registration process which has been identified as difficult to utilise.¹⁰⁰

The registration forms within Trinidad and Tobago and the Cayman Islands are also user-friendly, including options to seek help and presenting information into smaller

⁹⁰ Transparency International, 'Don't Look, Won't Find' (2015); Transparency International, 'Tainted Treasures: Money Laundering Risks in Luxury Markets' (2017).

⁹¹ See Chapter Three s 3.3.

⁹² See Chapter Two s 2.3, Chapter Three s 3.3.

⁹³ Australia Transaction Reports and Analysis Centre, 'About this Form' (2021).

⁹⁴ Australia Transaction Reports and Analysis Centre, 'Business Profile Form: Explanatory Guide for Enrolment and Registration' (2020).

⁹⁵ *Ibid.*

⁹⁶ *Ibid.*

⁹⁷ *Ibid.*

⁹⁸ Susan Grossley, *Anti Money Laundering: A Guide for the Non-Executive Director* (Counter Space Independent 2012) 93.

⁹⁹ *Ibid.*

¹⁰⁰ See Chapter Two, Chapter Three, A1, A2, C1, C2, J1, J2, W1, W2.

categories to make navigation easy for users.¹⁰¹ Additionally, the forms are available in PDF format, allowing entities to download the form and fill it out in pen if preferred, with an option to post the form and email them.¹⁰² This is useful for individuals who are not comfortable using technical software, such as computers and the internet.¹⁰³ Additionally, it is interesting to note that the Cayman Islands registration form allows individuals to complete the registration process even if they are unsure about certain questions, leaving them blank.¹⁰⁴ This runs the risk of increasing the number of inadequately submitted registration forms and subsequently increasing the strain on regulatory bodies assessing the registration process.¹⁰⁵ Such an approach may be useful in addressing the issues highlighted within Chapter 3, concerning the UK registration form not allowing dealers to ‘submit’ the completed form until all sections are completed.¹⁰⁶ This was identified as particularly problematic when dealers cannot answer certain questions but wish to apply for registered status.¹⁰⁷

Moreover, AUSTRAC has issued a specific guidance document that provides step-by-step instructions for motor vehicle dealers to comply with their AML obligations.¹⁰⁸ The guidance includes a section concerning AML registration and explains how dealers can set up a business profile and the various stages of the registration process.¹⁰⁹ In explaining how to navigate through the form, the guidance provides sheet shots of various parts of the registration process with detailed explanations.¹¹⁰ This is useful for dealers as it provides them with all the information they require in one location.¹¹¹ AUSTRAC mentions that this guidance is sent out to motor vehicle dealers via email and post, making it accessible for all.¹¹² Additionally, the guidance contains a

¹⁰¹ Financial Intelligence Unit Trinidad and Tobago, ‘Registration of Supervised Entities’ (2018); Department of Commerce and Investment, ‘Application for Registration of Designated Non- Financial Business and Professions - Real Estate & Dealers in Precious Metals and Stones’ (2019).

¹⁰² Ibid.

¹⁰³ Ibid.

¹⁰⁴ Ibid.

¹⁰⁵ Ibid.

¹⁰⁶ See Chapter Three, s 4.3.

¹⁰⁷ Ibid.

¹⁰⁸ Australia Transaction Reports and Analysis Centre, ‘Business Profile Form: Guidance for Motor Vehicle Dealers’ (2018).

¹⁰⁹ Ibid.

¹¹⁰ Ibid.

¹¹¹ Ibid.

¹¹² Ibid.

direct link to the registration form making it easy for dealers to locate the form and complete it.¹¹³

Whilst these practices are useful in improving the UK registration process, the registration forms fail to explain the role of luxury goods as AML gatekeepers and why they are required to register for AML.¹¹⁴ Chapter Three highlighted that UK dealers lacked any understanding of their role as AML gatekeepers and that the registration process did not explain this obligation either.¹¹⁵ Consequently, similar views may also be held by dealers within these jurisdictions.¹¹⁶ Indeed, the FATF indicates that DNFBPs knowledge, understanding, and compliance with AML regimes in these jurisdictions require further improvements and suggests that this can be achieved through further engagement initiatives.¹¹⁷ Whilst the FATF does not specifically outline engagement measures, the inclusion of information which emphasises the importance of registration is useful in increasing AML compliance.¹¹⁸

Lastly, it is interesting to note that the registration process within Trinidad and Tobago, Australia, and the Cayman Islands does not require a fee to be paid by entities to gain registered status.¹¹⁹ Nor do the processes require any renewal fees.¹²⁰ In addition, the absence of fees may be acknowledged as a good practice, since eliminating the fee is useful in improving luxury goods dealers' compliance with the registration requirements and relieving any discontent concerning having to incur payments.¹²¹ Moreover, it is unclear how the governments within these jurisdictions pay individuals who assess the registration process and submitted forms. The identification of no registration fee within

¹¹³ Ibid.

¹¹⁴ Ibid, Financial Intelligence Unit Trinidad and Tobago, 'Registration of Supervised Entities' (2018); Department of Commerce and Investment, 'Application for Registration of Designated Non- Financial Business and Professions - Real Estate & Dealers in Precious Metals and Stones' (2019).

¹¹⁵ See Chapter Three, s 3.3.

¹¹⁶ Ibid.

¹¹⁷ Financial Action Task Force, 'Mutual Evaluation Report: Australia' (2015); Financial Action Task Force 'Mutual Evaluation Report Trinidad and Tobago' (2018); Financial Action Task Force 'Mutual Evaluation Report Cayman Islands' (2019).

¹¹⁸ Abdullahi Bello, 'From risk-based to an uncertainty-based approach to anti money laundering compliance' (2017) 30 Security Journal 12.

¹¹⁹ Australia Transaction Reports and Analysis Centre, 'Business Profile Form: Guidance for Motor Vehicle Dealers' (2018); Financial Intelligence Unit Trinidad and Tobago, 'Registration of Supervised Entities' (2018); Department of Commerce and Investment, 'Application for Registration of Designated Non- Financial Business and Professions - Real Estate & Dealers in Precious Metals and Stones' (2019).

¹²⁰ Ibid.

¹²¹ See Chapter Three, s 3.3, A1, A2, C1, C2, W1, W2, J1, J2, Y1, Y2.

these jurisdictions is useful in addressing the frustration voiced by UK dealers in being required to act as AML gatekeepers, thus adopting obligations for the government yet receiving no payment instead of having to pay a fee.¹²²

4.5 Assessing Money Laundering Risk

The RBA provides reporting entities with the flexibility required to develop and implement AML practices and policies in accordance to the money laundering risks posed.¹²³ William Fox, the former director of the Financial Crimes Enforcement Network (FinCEN), states that compliance must be risk-based to fairly and effectively regulate the panorama of industries included within AML regimes.¹²⁴ A RBA to AML allows jurisdictions to attend to diverse money laundering risks in different sectors and enables luxury goods dealers to adopt controls accordingly.¹²⁵ It is difficult to ascertain how luxury goods dealers adopt the RBA and consider their viewpoints in adopting the RBA (since no study has considered these aspects). However, the FATF rates Canada, Japan, Trinidad and Tobago and the Cayman Islands as largely compliant and the US and Australia as partially compliant with Recommendation 1 (Assessing Risks and Applying a Risk-Based Approach).¹²⁶

Although the RBA has several benefits, AML regimes often fail to communicate these to regulated entities.¹²⁷ In this regard, it is positive to note that the guidance issued by Trinidad and Tobago identifies how the RBA to AML benefits dealers.¹²⁸ The guidance provides reasons including, ‘resources being utilised more effectively as there is focus on the medium and high-risk activities and measures being developed to manage and mitigate such risks’.¹²⁹ This information is useful in helping regulated entities appreciate the RBA and alleviating dealers' frustration in adopting AML controls that

¹²² Ibid.

¹²³ Nicholas Ryder, *Money Laundering – An Endless Cycle?* (Routledge 2012) 47.

¹²⁴ Financial Crimes Enforcement Network, ‘Risk Based Anti-Money Laundering’ (2016) 66.

¹²⁵ Ibid.

¹²⁶ Financial Action Task Force, ‘Consolidated Assessment Ratings’ (2021).

¹²⁷ See Chapter Three, s 3.4.

¹²⁸ Financial Intelligence Unit Trinidad and Tobago, ‘Money Laundering and Terrorist Financing Risk’ (2018).

¹²⁹ Ibid.

impact business practices.¹³⁰ The FATF highlights that Trinidad and Tobago has improved AML compliance among regulated sectors since its last Mutual Evaluation Review through its tailored guidance.¹³¹ Thus, informing dealers of the rewards they reap from risk-based AML controls is particularly useful in increasing compliance and viewing RBA controls positively.¹³²

In addition to acknowledging the benefits of the RBA, luxury goods dealers must understand what is meant by risk-based AML.¹³³ The risk-based guidance provided within Canada and Australia is particularly useful as it clarifies the approach's foundational aspects.¹³⁴ This information is valuable for dealers who are unaware of AML and have no RBA background.¹³⁵ The guidance within these jurisdictions begins by addressing basic concepts such as 'what is a risk', 'what is money laundering risk', 'why is risk important.'¹³⁶ In addition to this simplification, the guidance explains risks at a national and regulated entity level. The latter is described as, 'Internal and external threats and vulnerabilities that could open a regulated entity up to the possibility of being used to facilitate money laundering activities.'¹³⁷ For example, a possible money laundering risk at the regulated entity level includes conducting business with clients located in high-risk jurisdictions or locations of concern'.¹³⁸ These simplified explanations are useful in increasing regulated entities' understanding of the RBA,¹³⁹ especially when luxury goods dealers are acknowledged as not having any background knowledge of AML or the RBA.¹⁴⁰ However, clarifying complex concepts through terms not technically restrictive (such as legal jargon) makes the information more user-friendly, which is particularly

¹³⁰ Ibid.

¹³¹ Financial Action Task Force 'Mutual Evaluation Report Trinidad and Tobago' (2018) 67.

¹³² Ibid.

¹³³ Financial Action Task Force, 'Guidance for the Risk Based Approach: The Banking Sector' (2014).

¹³⁴ Financial Transaction and Reports Analysis Centre of Canada, 'Risk Assessment Guidance' (2017), Law Council of Australia, 'Anti Money Laundering Guide' (2015).

¹³⁵ See Chapter Three s 3.4.

¹³⁶ Financial Transaction and Reports Analysis Centre of Canada, 'Risk Assessment Guidance' (2017), Law Council of Australia, 'Anti Money Laundering Guide' (2015).

¹³⁷ Ibid.

¹³⁸ Ibid.

¹³⁹ Stuart Ross, Michelle Hannan, 'Money Laundering Regulation and Risk-Based Decision Making' (2007) 10 *Journal of Money Laundering Control* 23.

¹⁴⁰ See Chapter Three s 3.4.

useful when engaging with an entity in following a stipulated approach.¹⁴¹ Thus, simplifying the RBA within the guidance issued in Canada and Australia is useful in increasing dealers knowledge and understanding of the RBA.¹⁴²

Additionally, Canada and Trinidad and Tobago provide valuable support to luxury goods dealers in assessing money laundering risks.¹⁴³ For example, Canada assists dealers by simplifying the risk assessment to a 'risk-based cycle' consisting of six steps.¹⁴⁴ The stages include: identifying inherent risks, setting up risk tolerance, creating risk reduction measures and key controls, evaluating residual risks, implementing the RBA, and reviewing the RBA.¹⁴⁵ This is explained through a diagram summarising what is required within each stage and a more detailed explanation within additional textual information.¹⁴⁶ The diagram allows entities to visualise the stages required in assessing money laundering risks which is particularly useful in increasing private actors engagement with information.¹⁴⁷ Each stage within the cycle includes examples of methods that may be employed and how these can reduce money laundering.¹⁴⁸ For example, step one considers the products, services, and delivery channels and includes high-risk examples such as 'delivery channels with non-face to face transactions pose a higher inherent risk which can be used to obscure the true identity of a client or beneficial owner'.¹⁴⁹ Whilst there is a risk of the cycle not including all risks present, it is useful in providing dealers with starting points to consider when assessing money laundering risks and thus clarifies the RBA approach by making it accessible.¹⁵⁰

¹⁴¹ Anna Simonova, 'The Risk Based Approach to Anti- Money Laundering: Problems and Solutions' (2011) 14 *Journal of Money Laundering Control* 32.

¹⁴² See Chapter Three s 3.4.

¹⁴³ Financial Transaction and Reports Analysis Centre of Canada, 'Risk Assessment Guidance' (2017), Financial Intelligence Unit Trinidad and Tobago, 'Money Laundering and Terrorist Financing Risk' (2018).

¹⁴⁴ *Ibid.*

¹⁴⁵ *Ibid.*

¹⁴⁶ *Ibid.*

¹⁴⁷ Tom Tyler, Jonathan Jackson, 'Popular legitimacy and the exercise of legal authority: Motivating compliance, cooperation, and engagement' (2014) 20 *Psychology, Public Policy and Law* 45.

¹⁴⁸ Financial Transaction and Reports Analysis Centre of Canada, 'Risk Assessment Guidance' (2017).

¹⁴⁹ *Ibid.*

¹⁵⁰ Financial Action Task Force 'Mutual Evaluation Report Canada' (2018) 87.

Similarly, Trinidad and Tobago clarifies the method of conducting a money laundering risk assessment in stages.¹⁵¹ These include identifying risks, assessing and evaluating risks, mitigating and managing risks, and monitoring and reviewing risks.¹⁵² Each stage explains the obligation required by entities under the AML regime.¹⁵³ By separating the risk assessment into stages, regulated entities are provided with direction on how to conduct a risk assessment, which has been recognised as a daunting task.¹⁵⁴ Additionally, listing aspects of the risk assessment through numbered stages increases the likelihood of ensuring that risk assessments consider all the aspects required and decreases the potential of missing out on vital aspects.¹⁵⁵ Furthermore, such an approach simplifies the RBA into smaller manageable steps which are easier for dealers to follow and comply with.¹⁵⁶

Australia assists regulated entities in conducting a risk assessment through the publication of a ‘checklist’ and ‘template’.¹⁵⁷ The checklist helps ensure that entities consider all required aspects when conducting a risk assessment.¹⁵⁸ By ticking through each aspect, dealers are actively required to engage with the RBA and consider all the obligations in relation to their organisation.¹⁵⁹ The template includes ‘risk indicators’ which regulated entities must consider to assign a ‘risk rating’ to all the risks present within the organisation.¹⁶⁰ This allows entities to contextualise the money laundering risks the business is exposed to and subsequently allocate attention to risks according to their severity/rating.¹⁶¹ Such an approach is therefore useful in assisting entities to tailor their risk assessment in accordance to unique and individual risks exposed.¹⁶² Additionally, it is also positive to note that the template includes ‘potential

¹⁵¹ Financial Intelligence Unit Trinidad and Tobago, ‘Money Laundering and Terrorist Financing Risk’ (2018).

¹⁵² Ibid.

¹⁵³ Ibid.

¹⁵⁴ See Chapter Three s 3.4.

¹⁵⁵ Ibid, Financial Action Task Force, ‘Guidance for a Risk-Based Approach: Effective Supervision and Enforcement by AML/CFT Supervisors of the Financial Sector and Law Enforcement’ (2015).

¹⁵⁶ Ibid.

¹⁵⁷ Australia Transaction Reports and Analysis Centre ‘A Guide to Preparing and Implementing an AML CTF program’ (2020).

¹⁵⁸ Ibid.

¹⁵⁹ Ibid.

¹⁶⁰ Ibid.

¹⁶¹ Financial Action Task Force, ‘Australia Mutual Evaluation Report’ (2015).

¹⁶² Ibid.

treatment/action points’ for risk indicators, including suggestions to reduce risk.¹⁶³ This information is helpful for dealers in mitigating risks, especially since dealers indicated they did not possess the level of knowledge required to consider ways to reduce money laundering risk confidently.¹⁶⁴

Further useful practices are identified in jurisdictions including ‘pointers’ for dealers to consider when assessing money laundering risks.¹⁶⁵ The direction these resources provide is particularly useful for dealers who lack knowledge of money laundering vulnerabilities and how their business practices may be utilised within such operations.¹⁶⁶ The ‘risk classification factors’ and ‘risk indicators’ assist luxury goods dealers in identifying various risks within their business practices.¹⁶⁷ For example: when assessing a customer's business or activity, risk factors include ‘assessing whether the customer is connected to sectors commonly associated with higher money laundering risks, such as cash-intensive businesses’.¹⁶⁸ Providing risk factors is useful in increasing luxury goods dealers' understanding of the potential money laundering risks they may be exposed to, allowing them to implement relevant controls to mitigate against such risks.¹⁶⁹ Geary states that risk factors ‘bring the risk-based approach to life’ by allowing entities to adopt appropriate risk-based systems and controls, taking into account the nature, size and complexity of the business.¹⁷⁰ Thus, specifying risk factors is useful in assisting luxury goods dealers in conducting an adequate risk assessment which addresses all potential money laundering threats.¹⁷¹

In conducting a risk assessment, it is also encouraging to note that the Financial Transaction and Reports Analysis Centre of Canada (FINTRAC) sets out expectations of

¹⁶³ Australia Transaction Reports and Analysis Centre ‘A Guide to Preparing and Implementing an AML CTF program’ (2020).

¹⁶⁴ See Chapter Three s 3.4.

¹⁶⁵ Financial Transaction and Reports Analysis Centre of Canada, ‘Risk Assessment Guidance’ (2017); Cayman Islands Monetary Authority, ‘Guidance Notes on Assessing Risks and Applying a Risk-Based Approach’ (2020); Law Council of Australia, ‘Anti Money Laundering Guide for Legal Practitioners’ (2018).

¹⁶⁶ Ibid.

¹⁶⁷ Ibid.

¹⁶⁸ Ibid.

¹⁶⁹ Joy Geary, ‘Light is the Best Antidote’ (2021) 12 Journal of Money Laundering Control 3.

¹⁷⁰ Ibid.

¹⁷¹ Ibid.

the RBA for all regulated entities.¹⁷² Whilst these are not legal obligations, the expectations are prescribed as minimum standards that regulated entities must consider and apply in accordance with money laundering risks.¹⁷³ Expectations are provided for each stage of the ‘risk-based cycle’, allowing luxury goods dealers to acknowledge what the regulator expects of them and providing them with the flexibility to implement appropriate controls accordingly.¹⁷⁴ For example, the expectations for ‘step six’ involve the duty for entities to review the RBA.¹⁷⁵ In this regard, FINTRAC states that it expects entities to ‘conduct a review at least every two years, or when there are changes to your business model when you acquire a new portfolio’.¹⁷⁶ These expectations are useful in helping entities understand what is expected of them and providing an element of clarity in applying the RBA.¹⁷⁷

Dealers' compliance with the RBA can also be increased through outreach initiatives.¹⁷⁸ In this regard, FinCEN issues guidance notes which comprise Frequently Asked Questions (FAQs) sent by regulated entities.¹⁷⁹ The guidance notes are issued for DPMS and answer questions regarding the implementation of the RBA, such as: how to assess the risks of a foreign supplier? What risk assessment must DPMS carry out? How to tailor a risk assessment for foreign customers?¹⁸⁰ This guidance method reflects the US's ongoing commitment to providing current and consistent support to regulated entities on risk-based policies.¹⁸¹ The publication of questions that dealers can access online provides a useful platform to refer to for help.¹⁸² The information contained within the guidance notes is user-friendly and showcases that the regulator is taking note of the questions sent by dealers, and actively trying to assist dealers in fulfilling their AML

¹⁷² Financial Transaction and Reports Analysis Centre of Canada, ‘Risk Assessment Guidance’ (2017).

¹⁷³ Ibid.

¹⁷⁴ Ibid.

¹⁷⁵ Ibid.

¹⁷⁶ Ibid.

¹⁷⁷ Financial Action Task Force, ‘Canada Mutual Evaluation Report’ (2016).

¹⁷⁸ Financial Action Task Force, ‘Guidance on the Risk Based Approach to Combat Money Laundering and Terrorist Financing’ (2018).

¹⁷⁹ Financial Crimes Enforcement Network, ‘Guidance Notes for Dealers, Including Certain Retailers, of Precious Metals, Precious Stones, or Jewels, on Conducting a Risk Assessment of Their Foreign Suppliers’ (2018).

¹⁸⁰ Ibid.

¹⁸¹ Nicholas Ryder, *Money Laundering – An Endless Cycle?* (Routledge 2012) 46.

¹⁸² Ibid.

obligations.¹⁸³ The FAQs are issued several instances in a year, allowing dealers several opportunities to ask questions for which they require assistance and ensuring that the guidance notes are up to date.¹⁸⁴

In addition to guidance, seminars and programs are valuable in improving dealers awareness and understanding of the RBA.¹⁸⁵ It is encouraging to note that Trinidad and Tobago and the Cayman Islands host seminars which provide luxury goods dealers with information on adopting the RBA.¹⁸⁶ The seminars provide practical insights into adopting the RBA by including examples that dealers can relate to.¹⁸⁷ Additionally, the seminars are a beneficial platform through which regulated entities can converse with each other concerning AML obligations.¹⁸⁸ Furthermore, the seminars allow time for dealers to ask any questions regarding the RBA and gain useful feedback.¹⁸⁹ The seminars are recorded and uploaded online, making them accessible for dealers to refer to whenever required.¹⁹⁰ Seminars are therefore useful in improving dealers awareness and understanding of adopting the RBA, as well as assisting HMRC in identifying areas where dealers require further support.¹⁹¹

4.6 Customer Due Diligence

CDD is recognised as an important aspect of the AML regimes within the US, Canada, Trinidad and Tobago, Cayman Islands, and Japan.¹⁹² All these jurisdictions require dealers to complete CDD on all customers and beneficial owners before entering into a

¹⁸³ Ibid.

¹⁸⁴ Ibid.

¹⁸⁵ David Baume, Carole Baume, *Learning to Teach: Running Tutorials and Seminars, Training Materials for Students* (1996 Oxford Centre for Staff Development).

¹⁸⁶ Financial Intelligence Unit Trinidad and Tobago, 'Anti Money Laundering/ Outreach Virtual Seminar' <<https://fiu.gov.tt/about-us/events/>> accessed 20th October 2021; Cayman Islands Monetary Authority, 'AML Risk Assessment' <<https://www.cima.ky/regulated-sectors-videos>> accessed 21st March 2021.

¹⁸⁷ Ibid.

¹⁸⁸ Ibid.

¹⁸⁹ Ibid.

¹⁹⁰ Ibid.

¹⁹¹ Ibid.

¹⁹² Proceeds of Crime (Money Laundering) and Terrorist Financing Act 2000 (Canada); Anti-Money Laundering and Counter Terrorism Financing Act 2006 Part 7 (Australia); The Financial Obligations Regulations 2010 s 15 (1) (Trinidad and Tobago); Anti-Money Laundering Act 2005 Article 11 (Japan); Bank Secrecy Act 1970 (US).

business relationship.¹⁹³ This includes tailoring CDD controls to EDD and SDD in accordance with the level of risk exposed by the situation at hand, and refusing to deal with individuals who fail to meet the minimum CDD standards.¹⁹⁴ FATF promotes CDD among DNFBPs through Recommendation 22.¹⁹⁵ In accordance to this Recommendation, FATF rates Trinidad and Tobago and the Cayman Islands as Compliant, Canada, and Japan as partially compliant, and the US and Australia as non-compliant.¹⁹⁶

It is useful to consider the CDD measures employed within the Cayman Islands since these have been recognised as appropriate measures to identify and verify the identity of customers upon the establishment of business relationships.¹⁹⁷ Financial institutions and DPMS are required to adopt a five-part CDD system.¹⁹⁸ This comprises identifying the customer and verifying that identity using data or information and documents from reliable independent sources.¹⁹⁹ For legal persons or arrangements, real estate agents and DPMS are required to take appropriate steps to identify the ownership and control structure of the customer, identify the beneficial owner(s) and take the necessary steps to satisfy that the true beneficial owner(s) is known.²⁰⁰ Additionally, dealers must understand and obtain information that identifies the true purpose and nature of the business relationship.²⁰¹ Furthermore, they must apply ongoing due diligence on the customer and the business relationship, analyse transactions completed or attempted during the business relationship ensuring that the transactions are in line with the customer risk profile and business, including where necessary, the customer's source of funds.²⁰² Moreover, they must ensure that documents, data or information collected under the CDD process are kept current and relevant by reviewing existing records at

¹⁹³ Ibid.

¹⁹⁴ Ibid.

¹⁹⁵ Ibid.

¹⁹⁶ Financial Action Task Force, 'Consolidated Assessment Ratings' (2021).

¹⁹⁷ Financial Action Task Force, 'Cayman Islands Mutual Evaluation Report' (2019).

¹⁹⁸ Cayman Islands Monetary Authority, 'Guidance Notes on the Prevention and Detection of Money Laundering, Terrorist Financing and Proliferation Financing in the Cayman Islands' (2020).

¹⁹⁹ Ibid.

²⁰⁰ Ibid.

²⁰¹ Ibid.

²⁰² Ibid.

appropriate times.²⁰³ These measures have been remarked as involving adequate risk-based policies and procedures in mitigating money laundering risks.²⁰⁴

In ensuring that dealers are able to adopt these measures, the Cayman Islands Monetary Authority assists regulated entities in complying with their CDD obligations through guidance.²⁰⁵ This guidance explains why CDD is important for dealers, allowing them to appreciate the importance of implementing such controls.²⁰⁶ Additionally, the guidance includes examples of the situations in which dealers must adopt CDD controls and how these must vary depending on the risk factors at hand.²⁰⁷ The information is summarised through a table format which simplifies the CDD requirements in a user-friendly manner.²⁰⁸ This includes columns addressing, the verification information required within the organisation's record, the verification process, and the record for the individual.²⁰⁹ This guidance is extremely useful in providing dealers with vital information in adequately fulfilling their CDD requirements in a simple, accessible, and user-friendly manner.²¹⁰

Regulated entities' understanding and application of CDD can be significantly improved through targeted training.²¹¹ It is encouraging to note that the US,²¹² Canada,²¹³ Australia,²¹⁴ Cayman Islands,²¹⁵ Trinidad and Tobago,²¹⁶ and Japan²¹⁷ require CDD training for regulated entities, including those operating in luxury goods sectors.²¹⁸ The training is useful as it covers all aspects of CDD and subsequently helps dealers to understand their CDD obligations and how to comply with them within their day-to-day

²⁰³ Ibid.

²⁰⁴ Financial Action Task Force, 'Cayman Islands Mutual Evaluation Report' (2019).

²⁰⁵ Department of Commerce and Investment Cayman Islands, 'Guidance Notes for Real Estate, Property Developers and Dealers in Precious Metals and Stones' (2015).

²⁰⁶ Ibid.

²⁰⁷ Ibid.

²⁰⁸ Ibid.

²⁰⁹ Ibid.

²¹⁰ Ibid.

²¹¹ Alexander Dill, *Anti Money Laundering Regulation and Compliance: Key Problems and Practice Areas* (Edward Elgar 2021) 76.

²¹² Financial Crimes Enforcement Network, 'Information on Complying with the Customer Due Diligence (CDD) Final Rule' (2021).

²¹³ Proceeds of Crime (Money Laundering) and Terrorist Financing Act 2000 (Canada).

²¹⁴ Anti-Money Laundering and Counter Terrorism Financing Act 2006 Part 7 (Australia).

²¹⁵ Cayman Islands Government, 'Designated Non-Financial Business Practices' (2021).

²¹⁶ The Financial Obligations Regulations, 2010 s 15 (Trinidad and Tobago).

²¹⁷ Anti-Money Laundering Act 2005, Article 11 (Japan).

²¹⁸ Ibid.

practices.²¹⁹ For example, the CDD training within the Cayman Islands addresses aspects such as: the process of identifying a customer, the types of ID that can be accepted, and alterations to the process including non-face-to-face transactions.²²⁰ Whilst the extent to which this training assists dealers in performing their CDD obligations remains unknown (since presently no study has looked into this); training can be considered good practice since assists entities in fulfilling their CDD obligations.²²¹ Training, therefore, provides dealers with a platform through which they can gain the necessary knowledge to implement correct CDD controls and an opportunity to ask questions and communicate with their peers regarding AML.²²²

Similarly, in this regard, it is also useful to identify that Trinidad and Tobago conduct AML outreach awareness seminars for all supervised entities at least once a month.²²³ These sessions are sector-specific, except where the session is conducted for all sectors.²²⁴ The seminars subsequently specifically address AML controls within luxury goods sectors, providing focused advice and support to dealers in relation to their obligations.²²⁵ It is encouraging to note that one of these outreach seminars focuses on applying a risk-based approach to AML through CDD controls.²²⁶ The Financial Intelligence Unit of Trinidad and Tobago also organises annual AML conferences which address all aspects of CDD controls.²²⁷ These initiatives are extremely beneficial in assisting dealers' understanding, application, and awareness of CDD controls, which has been identified as problematic in the UK.²²⁸

²¹⁹ Norman Mugarura, 'Customer Due Diligence (CDD) mandate and the propensity of its application as a global AML paradigm' (2014) 17 *Journal of Money Laundering Control* 165.

²²⁰ Cayman Islands Government, 'Designated Non-Financial Business Practices' (2021).

²²¹ *Ibid.*

²²² *Ibid.*

²²³ Financial Intelligence Unit Trinidad and Tobago, 'Anti Money Laundering Training' <<https://fiu.gov.tt/compliance/becoming-aml-cft-compliant/aml-cft-training/>> accessed 20th March 2021.

²²⁴ *Ibid.*

²²⁵ *Ibid.*

²²⁶ *Ibid.*

²²⁷ Government of the Republic of Trinidad and Tobago, 'Anti Money Laundering Annual Conference' <<https://www.finance.gov.tt/2014/05/12/4th-annual-anti-money-laundering-conference/>> accessed 23rd March 2021.

²²⁸ See Chapter Two s 2.5, Chapter Three s 3.5.

It is also valuable to consider the outreach work conducted by FINCEN to assist dealers in complying with CDD requirements.²²⁹ This includes publishing FAQs in relation to CDD controls several times throughout the year.²³⁰ The questions address aspects such as, who is covered under the CDD rule? Does the CDD rule require financial institutions to update customer information on a specific schedule? Is it a requirement under the CDD rule for institutions to use a specific method or categorisation to risk rate customers?²³¹ The guidance includes detailed answers to the questions posted by dealers in a simplified accessible manner.²³² This initiative is useful in providing dealers with a point of reference if they face a situation they are unsure about since all FAQs are accessible online.²³³ Additionally, it demonstrates FinCEN's commitment to assisting regulated entities in implementing CDD controls by attending to questions they have sent and clarifying their regulatory requirements in relation to obtaining customer information.²³⁴

Lastly, in helping dealers to identify beneficial owners, AUSTRAC has issued a factsheet on 'How to Verify Beneficial Owners'.²³⁵ This begins by highlighting the importance of identifying beneficial owners by stating, 'vital to understand the beneficial owners of your customers, so you can protect your business from being exploited for criminal gain'.²³⁶ This statement is useful in allowing dealers to appreciate the importance of CDD controls, especially when UK dealers have indicated frustration regarding CDD measures infringing on business practices.²³⁷ The factsheet then goes on to provide a summary of CDD obligations in relation to verifying beneficial owners.²³⁸ The information is split into smaller categories including 'assess, determine, collect, keep

²²⁹ Financial Crimes Enforcement Network 'Frequently Asked Questions Regarding Customer Due Diligence (CDD) Requirements for Covered Financial Institutions' (2021).

²³⁰ Ibid.

²³¹ Ibid.

²³² Ibid.

²³³ Ibid.

²³⁴ Financial Action Task Force, 'Mutual Evaluation Report United States' (2016).

²³⁵ Australia Transaction Reports and Analysis Centre, 'Factsheet: Meeting your Beneficial Owner Obligations' (2018).

²³⁶ Ibid.

²³⁷ See Chapter Two s 2.5, Chapter Three s 3.5.

²³⁸ Australia Transaction Reports and Analysis Centre, 'Factsheet: Meeting your Beneficial Owner Obligations' (2018).

records, and document’.²³⁹ In explaining these stages, the guidance includes diagrams and examples of how dealers can comply with each stage.²⁴⁰ For example, in relation to ‘collect’ the guidance states that regulated entities must ‘collect and take reasonable measures to verify each beneficial owner’s information.’²⁴¹ You must collect a minimum of the full name of each beneficial owner as well as either their date of birth or their full residential address’.²⁴² The factsheet is useful as it simplifies how to conduct CDD of beneficial owners, which has been acknowledged as a difficult task for dealers.²⁴³ Subsequently, by clarifying the verification process in identifying beneficial owners through stages, dealers are more likely to understand their obligations which helps improve compliance.²⁴⁴

4.7 Suspicious Transaction Reporting

Reporting suspicious transactions to law enforcement is a pivotal aspect of the AML regimes within all the selected jurisdictions.²⁴⁵ The FATF prescribes suspicious reporting through Recommendation 20 and rates Trinidad and Tobago, the Cayman Islands, and Australia as Compliant.²⁴⁶ On the other hand, the US and Japan are rated as partially compliant.²⁴⁷ SAR is extremely useful in detecting money-laundering operations.²⁴⁸ Subsequently, it is encouraging to note that the number of SARs submitted by DNFBS

²³⁹ Ibid.

²⁴⁰ Ibid.

²⁴¹ Ibid.

²⁴² Ibid.

²⁴³ See Chapter Two s 3.5, Chapter Three s 4.5.

²⁴⁴ Financial Action Task Force, ‘Mutual Evaluation Report Australia’ (2015).

²⁴⁵ Bank Secrecy Act 1970 (US); Proceeds of Crime Act 2000 (Canada); Anti Money Laundering and Counter Terrorism Financing Act 2006 (Australia); Proceeds of Crime Act 2020 (Cayman Islands); Money Laundering and Combatting the Financing of Terrorism Act 2015 (Trinidad and Tobago); Punishment of Organised Crimes Act 1990 (Japan).

²⁴⁶ Financial Action Task Force, ‘Consolidated Assessment Ratings’ (2021).

²⁴⁷ Ibid.

²⁴⁷ Ibid.

²⁴⁸ Financial Action Task Force, ‘Guidance on Private Sector Information Sharing’ (2017).

has increased each year within the US,²⁴⁹ Cayman Islands,²⁵⁰ Trinidad and Tobago,²⁵¹ Australia,²⁵² and Japan.²⁵³ However, the usefulness of these SARs in relation to combating money laundering operations remains questionable.²⁵⁴ Within the US FinCEN has reported cracks within the SAR system.²⁵⁵ The number of SARs submitted within the US has been acknowledged as eye-watering, with figures of 2.5 million in the first 11 months of 2020 alone, making it difficult for the government to find useful ‘needles’ in the ‘haystack’ of submitted reports.²⁵⁶ Steele, states that the issue is that regulated entities fear being hit with penalties if they do not file a SAR and therefore err on the side of caution when in doubt.²⁵⁷ This trend of reporting SARs primarily for self-protection is labelled as ‘defensive filing’.²⁵⁸ Furthermore, only a small percentage of SARs (between 1–3 %) are utilised by law enforcement, suggesting low usefulness in the investigative process, and a lack of correlation between the number of submitted SARs and the number of prosecutions.²⁵⁹

²⁴⁹ Carl Brown, ‘Not enough needles and too much hay: the problem with Suspicious Activity Reports’ *Financial Crime* (US 2 February 2021) <<https://www.grcworldforums.com/financial-crime/not-enough-needles-and-too-much-hay-the-problem-with-suspicious-activity-reports/719.article>> accessed 20th March 2021.

²⁵⁰ Michael Klein, ‘Number of Suspicious Activity Reports Increased’ *Cayman Compass* (Cayman Islands 11th June 2019) <<https://www.caymancompass.com/2019/06/11/number-of-suspicious-activity-reports-increased-in-2018/>> accessed 25th March 2021.

²⁵¹ Daniel Bethencourt, ‘Coronavirus Pandemic Fuelling Suspicious Transactions in Canada’ *Money Laundering News* (Canada, 20 October 2020) <<https://www.moneylaundering.com/news/coronavirus-pandemic-fueling-suspicious-transactions-in-canada/>> accessed 20th May 2021.

²⁵² Brian Monroe, ‘After Scratching Parliamentary AML Inquiry, AUSTRAC takes aim at quality, quantity of suspicious matter reports in quest to bolster Financial Crime effectiveness’ (Certified Financial Crime Experts 2021).

²⁵³ Tatsuo Uedo, ‘The Suspicious Transaction Reporting System and Its Effective Use’ (2021) *Political Science* 23.

²⁵⁴ *Ibid.*

²⁵⁵ Carl Brown, ‘Not enough needles and too much hay: the problem with Suspicious Activity Reports’ *Financial Crime* (US 2 February 2021) <<https://www.grcworldforums.com/financial-crime/not-enough-needles-and-too-much-hay-the-problem-with-suspicious-activity-reports/719.article>> accessed 20th March 2021.

²⁵⁶ *Ibid.*

²⁵⁷ Charles Steele, ‘Statement from Deputy Director, Financial Crimes Enforcement Network, United States Department of the Treasury (US 19 May 2010) <<https://www.fincen.gov/index.php/news/testimony/statement-charles-m-steele-deputy-director-financial-crimes-enforcement-network>> accessed 21st December 2022.

²⁵⁸ Carl Brown, ‘Not enough needles and too much hay: the problem with Suspicious Activity Reports’ *Financial Crime* (US 2 February 2021) <<https://www.grcworldforums.com/financial-crime/not-enough-needles-and-too-much-hay-the-problem-with-suspicious-activity-reports/719.article>> accessed 20th March 2021.

²⁵⁹ *Ibid.*

The increased amount of SARs has also created difficulties for regulators within Trinidad and Tobago, the Cayman Islands, and Australia.²⁶⁰ The Caribbean Financial Action Task Force has stated that the Financial Reporting Authority (FRA) has not been able to analyse and disclose reports in time due to their sheer number of reports, resulting in disclosures hardly used to initiate or supplement investigations.²⁶¹ The FRA is often faced with a backlog of cases due to the high volume of submitted SARs, which has led to three financial analysts joining the FRA in 2019 to assist with looking through the reports.²⁶² Similarly, Trinidad and Tobago has received the highest number of reports between 2019 and 2020 (1831 reports received amounting to \$27 billion) compared to the amount received in the past 10 years.²⁶³ The surge has been allocated to increased fraudulent activity during the COVID-19 pandemic and the demonetisation of the cotton \$100 notes.²⁶⁴ Likewise, the Canadian Financial Intelligence Unit has received a 25 percent increase in STRs in 2020 compared to the previous year.²⁶⁵ This is allocated to a spike in cyberattacks and online fraud schemes during the coronavirus pandemic.²⁶⁶

Equally, Australian financial institutions and companies have also submitted a record number of suspicious reports to AUSTRAC during the past financial year.²⁶⁷ The rise has been allocated to the recent regulatory action through which significant penalties

²⁶⁰ Gail Alexander, 'Trinidad & Tobago: FIU uncovers \$27B in Suspicious Transactions' (Trinidad and Tobago Guardian, 9 March 2021); *KYC360* <<https://kyc360.riskscreen.com/news/trinidad-tobago-fiu-uncovers-27b-in-suspicious-transactions/>> accessed 20th May 2021; Daniel Bethencourt, 'Coronavirus Pandemic Fuelling Suspicious Transactions in Canada' (Canada, 20 October 2020) *Money Laundering News* <<https://www.moneylaundering.com/news/coronavirus-pandemic-fueling-suspicious-transactions-in-canada/>> 21st March 2021; Brian Monroe, 'After Scratching Parliamentary AML Inquiry, AUSTRAC takes aim at quality, quantity of suspicious matter reports in quest to bolster Financial Crime effectiveness' (Certified Financial Crime Experts 2021); Michael Klein, 'Number of Suspicious Activity Reports Increased' *Cayman Compass* (Cayman Islands 11th June 2019) <<https://www.caymancompass.com/2019/06/11/number-of-suspicious-activity-reports-increased-in-2018/>> accessed 25th March 2021.

²⁶¹ *Ibid.*

²⁶² *Ibid.*

²⁶³ Gail Alexander, 'Trinidad & Tobago: FIU uncovers \$27B in Suspicious Transactions' (Trinidad and Tobago Guardian, 9 March 2021) *KYC360* <<https://kyc360.riskscreen.com/news/trinidad-tobago-fiu-uncovers-27b-in-suspicious-transactions/>> accessed 20th May 2021.

²⁶⁴ *Ibid.*

²⁶⁵ Daniel Bethencourt, 'Coronavirus Pandemic Fuelling Suspicious Transactions in Canada' (Canada, 20 October 2020) *Money Laundering News* <<https://www.moneylaundering.com/news/coronavirus-pandemic-fueling-suspicious-transactions-in-canada/>> 21st March 2021.

²⁶⁶ *Ibid.*

²⁶⁷ Samantha Carroll, Tim Brookes, 'AUSTRAC's guidance on submitting more effective suspicious matter reports' (Ashurst Group 2021).

have been imposed on reporting entities for various breaches.²⁶⁸ Identifying these consequences of increased SAR highlights that the number of submitted reports does not always correlate to the number of money laundering investigations.²⁶⁹ Instead, a high number of reports creates added burdens upon law enforcement in having to sift through information with low usefulness in detecting and preventing money laundering operations.²⁷⁰ It is therefore important for the SAR regime not to make dealers feel the need to report to ‘self-protect’ but instead promote a method of reporting which focuses on the quality of SARs submitted to ensure their usefulness.²⁷¹ Upon reliance on these issues, it is important to ensure that dealers within the UK are not put in a position where the uncertainty of not knowing when to file a SAR results in them filing a SAR due to this being the safest action.²⁷² Dealers understanding and awareness of SAR must be therefore improved to an extent where they feel confident in their abilities to file accurate SARs otherwise there is a risk of dealers filing SARs out of fear, which undermines the purpose of reporting.²⁷³

In increasing knowledge and understanding of SAR, it is useful to acknowledge the extent to which dealers are provided support within the selected jurisdictions.²⁷⁴ Although all jurisdictions have issued guidance in relation to SAR, different approaches have been employed, each with their strengths.²⁷⁵ The Cayman Islands has issued a guidance document explaining ‘how to prepare and submit high-quality SARs’.²⁷⁶ This addresses vital aspects of reporting including, the money laundering framework, who is

²⁶⁸ Ibid.

²⁶⁹ Ibid.

²⁷⁰ Ibid.

²⁷¹ Michael Klein, ‘Number of Suspicious Activity Reports Increased’ *Cayman Compass* (Cayman Islands 11th June 2019) <<https://www.caymancompass.com/2019/06/11/number-of-suspicious-activity-reports-increased-in-2018/>> accessed 25th March 2021.

²⁷² Ibid.

²⁷³ See Chapter Three s 3.6 and Chapter Five s 5.6.

²⁷⁴ Financial Action Task Force, ‘Guidance on Private Sector Information Sharing’ (2017).

²⁷⁵ Financial Crimes Enforcement Network, ‘Reporting Suspicious Activity’ (2021); Financial Reporting Authority, ‘Guidance on Preparing and Submitting High Quality Suspicious Activity Reports’ (2021); Financial Intelligence Unit Trinidad and Tobago, ‘Guidance Note on Suspicious transactions and Suspicious Activity Reporting Standards’ (2019); Financial Services Agency, ‘Guidelines for Anti-Money Laundering and Combating the Financing of Terrorism’ (2018).
Financial Transaction and Reports Analysis Centre of Canada, ‘Suspicious Transaction Report’ (2020); Australia Transaction Reports and Analysis Centre, ‘Suspicious Matter Reporting: Reference Guide’ (2019).

²⁷⁶ Financial Reporting Authority, ‘Guidance on Preparing and Submitting High Quality Suspicious Activity Reports’ (2021).

required to file SARs, step-by-step instructions on how to file a SAR, and examples of sufficient and insufficient SAR narratives.²⁷⁷ These narratives are useful since they provide dealers with practical examples they can relate to and offer insights regarding the standard expected from entities when submitting a SAR, and the standard which is insufficient.²⁷⁸ These examples can be a reference guide for dealers who are unsure about filing a SAR and provide vital clarity and support.²⁷⁹ Moreover, the examples are beneficial in reducing the number of incorrectly filed SARs and saving critical time in combatting money laundering operations.²⁸⁰

The guidance issued in Trinidad and Tobago and Australia also addresses vital aspects of reporting in relation to which UK dealers displayed a lack of awareness.²⁸¹ Trinidad and Tobago provides information concerning: what a suspicious transaction is, how to identify a suspicious transaction, how to make a report, step-by-step instructions in relation to filling the reporting form, and how the Financial Intelligence Unit deals with reports.²⁸² Dealers highlighted they were unaware of what SARs were and how and when to make a report.²⁸³ This information is useful in communicating the SAR requirements enforced upon dealers in an accessible, simple format.²⁸⁴ It is also beneficial to note that Australia has issued a reference guide for submitting more effective reports.²⁸⁵ This explains: legal obligations and liability, explanation of ‘reasonable grounds’ for suspicion, the importance of reporting crimes to the police, indicators and red flags, timescales, ‘know your customer’ information, extra help and guidance.²⁸⁶ This information is valuable in communicating AML reporting obligations to dealers and ensuring they understand how to file reports efficiently.²⁸⁷

²⁷⁷ Ibid.

²⁷⁸ Ibid.

²⁷⁹ Ibid.

²⁸⁰ Ibid.

²⁸¹ See Chapter Three s 3.6.

²⁸² Financial Intelligence Unit Trinidad and Tobago, ‘Guidance Note on Suspicious transactions and Suspicious Activity Reporting Standards’ (2019).

²⁸³ See A1, A2, C1, C2, J1, J2, Y2, W1, W2 and Chapter Three s 3.6.

²⁸⁴ Ibid.

²⁸⁵ Australia Transaction Reports and Analysis Centre, ‘Suspicious Matter Reporting: Reference Guide’ (2019).

²⁸⁶ Ibid.

²⁸⁷ Ibid.

Additionally, AUSTRAC has also issued video content to engage with dealers in complying with their reporting requirements.²⁸⁸ The video footage explains what a suspicious report is and how reporting assists in disrupting criminal activity.²⁸⁹ The latter includes information on how AUSTRAC deals with the information submitted within reports.²⁹⁰ This includes examples of how reports can help uncover large-scale money laundering networks and lead to the arrest of the individuals behind such operations.²⁹¹ The content is useful as it allows regulated entities to understand the value of reporting suspicious matters, knowledge which UK dealers were identified as lacking.²⁹² SAR has been considered to negatively impact the relationship between dealers and their customers,²⁹³ views which have also been shared by private actors within Australia²⁹⁴ and the US.²⁹⁵ Thus, initiatives which explain the value of reporting and provide examples of how reporting assists in detecting and prosecuting money laundering operations are particularly useful in addressing this friction.²⁹⁶ Communicating the value of reporting is subsequently helpful in allowing dealers to view reporting in a more positive light and engage with the requirement.²⁹⁷

Trinidad and Tobago's outreach efforts in delivering seminars for regulated entities addressing SAR obligations are also beneficial in improving dealers knowledge of reporting and increasing compliance.²⁹⁸ The seminars address all aspects of reporting, in an easy manner which is accessible for individuals who are not affluent in law.²⁹⁹ Additionally, the seminars provide practical examples of each aspect of SAR to assist dealers understanding and application of the controls.³⁰⁰ This includes addressing how to

²⁸⁸ Ibid.

²⁸⁹ Ibid.

²⁹⁰ Ibid.

²⁹¹ Ibid.

²⁹² See Chapter Two s 2.6, Chapter Three s 3.6.

²⁹³ See Chapter Three s 3.2.

²⁹⁴ David Lusty, 'Civil Forfeiture of Proceeds of Crime in Australia' (2002) 4 *Journal of Money Laundering Control* 345.

²⁹⁵ Julie Ayling and Peter Grabosky, 'Policing by Command: Enhancing Law Enforcement Capacity through Coercion' (2006) 2 *Law and Policy* 417.

²⁹⁶ *ibid.*

²⁹⁷ *Ibid.*

²⁹⁸ Financial Intelligence Unit Trinidad and Tobago, 'Anti-Money Laundering/Counter Financing of Terrorism Outreach Virtual Seminar' <<https://fiu.gov.tt/2021/01/14/anti-money-laundering-counter-financing-of-terrorism-outreach-virtual-seminar-6/>> accessed 12th March 2021.

²⁹⁹ *Ibid.*

³⁰⁰ *Ibid.*

approach ‘suspicion’ the types of situations which fall within this definition and those that fail to do so.³⁰¹ The FATF has recognised this initiative as demonstrating the Financial Intelligence Units' commitment in assisting regulated entities in correctly detecting and reporting suspicious matters.³⁰² Accordingly, the FATF has suggested that Japanese authorities further educate regulated entities in relation to their reporting obligations and improve the quality of their reports through seminars.³⁰³ Subsequently, seminars not only help increase dealers' knowledge of SAR but are also useful in addressing defensive filing and ensuring that dealers understand when to file a report, and when not to.³⁰⁴

Furthermore, AUSTRAC has issued a reporting checklist that guides dealers through the reporting process and ensures they comply with each reporting stage.³⁰⁵ The checklist splits the requirements into bullet points with tick boxes making the reporting exercise engaging.³⁰⁶ For example, it includes points for, ‘Have you conducted enhanced customer due diligence checks to determine if you have reasonable grounds for your suspicion? have you answered the six essential key elements in your grounds for suspicion? The who, what, where, when, why, and how? Have you referred to crime types and keywords to help you best describe the suspicious activity?’.³⁰⁷ The final point explains the timeframes for submission as ‘24 hours if your suspicion is related to terrorism financing and 3 business days for money laundering and other offences’.³⁰⁸ This guide is useful in assisting dealers through the reporting process and ensures they have not missed any important aspects.³⁰⁹ Additionally, this is beneficial in reducing the

³⁰¹ Ibid.

³⁰² Financial Action Task Force, ‘Mutual Evaluation Report: Trinidad and Tobago’ (2021).

³⁰³ Tatsuo Uedo, ‘The Suspicious Transaction Reporting System and Its Effective Use’ (2021) *Political Science* 23.

³⁰⁴ Ibid.

³⁰⁵ Australia Transaction Reports and Analysis Centre, ‘Suspicious Matter Reporting: Reference Guide’ (2019).

³⁰⁶ Ibid.

³⁰⁷ Ibid.

³⁰⁸ Ibid.

³⁰⁹ Carl Brown, ‘Not enough needles and too much hay: the problem with Suspicious Activity Reports’ *Financial Crime* (US 2 February 2021) <<https://www.grcworldforums.com/financial-crime/not-enough-needles-and-too-much-hay-the-problem-with-suspicious-activity-reports/719.article>> accessed 20th March 2021.

number of incorrectly filed reports by ensuring that dealers follow a procedure before submitting reports.³¹⁰

In analysing the AML regimes within the selected jurisdictions, it is interesting to identify that similar to the UK feedback is also not provided for submitting SARs within the US, Canada, Japan, Australia, Cayman Islands and Trinidad and Tobago.³¹¹ It is encouraging to note that within Australia AUSTRAC has recently started a ‘System Transformation Program’ designed to update and upgrade how suspicious reports are filed to improve reporting.³¹² This program seeks to introduce measures through which entities are provided feedback for submitted SARs.³¹³ AUSTRAC states that feedback on how the information provided by entities is used by law enforcement is a huge focal point in improving SAR compliance.³¹⁴ Additionally, the feedback allows the analysis of criminal trends within specific industries which is particularly beneficial in addressing money laundering risk.³¹⁵

In support of this Brown states that it is very useful for regulated entities to understand whether a report is part of something bigger or important, as it can enable the bank to take further action, improve their monitoring subjects, and further contribute proactively to an ongoing investigation.³¹⁶ At the very least, an entity would want to know that their SARs have been reviewed and analysed, which in turn would validate their work, and give them incentive and assurance that the work they are doing matters.³¹⁷ Similarly, Richards provides insights on how feedback can efficiently detect money

³¹⁰ Ibid.

³¹¹ Bank Secrecy Act 1970 (US); Proceeds of Crime Act 2000 (Canada); Anti Money Laundering and Counter Terrorism Financing Act 2006 (Australia); Proceeds of Crime Act 2020 (Cayman Islands); Money Laundering and Combatting the Financing of Terrorism Act 2015 (Trinidad and Tobago); Punishment of Organised Crimes Act 1990 (Japan).

³¹² Brian Monroe, ‘After Scratching Parliamentary AML Inquiry, AUSTRAC takes aim at quality, quantity of suspicious matter reports in quest to bolster Financial Crime effectiveness’ (Certified Financial Crime Experts 2021).

³¹³ Ibid.

³¹⁴ Ibid.

³¹⁵ Ibid.

³¹⁶ Carl Brown, ‘Not enough needles and too much hay: the problem with Suspicious Activity Reports’ *Financial Crime* (US 2 February 2021) <<https://www.grcworldforums.com/financial-crime/not-enough-needles-and-too-much-hay-the-problem-with-suspicious-activity-reports/719.article>> accessed 20th March 2021.

³¹⁷ Ibid.

laundering.³¹⁸ He introduces the idea of a ‘feedback loop framework’ comprising of ‘Tactical or Strategic Value’ (TSV) SARs.³¹⁹ This system would require law enforcement agencies to notify reporting entities whether their SAR has provided tactical value; it was useful in the particular case or strategic value and linked to a typology or trend.³²⁰ If a period of seven years passes without a TSV response, then the reporting entity can assume that the SAR was not of value.³²¹ Subsequently, providing feedback for submitted SARs is beneficial in allowing dealers to recognise the extent to which their report has assisted in detecting money-laundering operations, as well as providing information regarding how they can improve the quality of their future SARs.³²²

In addition to the above points, it is encouraging to note that some jurisdictions also require threshold reporting of certain transactions within their SAR regime.³²³ The US, Australia, and Canada require regulated entities to report transactions above \$10,000 since these are considered to involve a high suspicion of money laundering.³²⁴ In the US, DPMS are required to complete ‘Form 8300’ and report cash transactions above \$10,000 and designated reporting transactions.³²⁵ This requirement was introduced by FinCEN to better protect DPMS from potential abuse by criminals and terrorists, thereby enhancing the protection of the U.S. financial system.³²⁶ Similarly, in Australia, Transaction Threshold Reports (TTRs) must be submitted for transfers of \$10,000 or more in cash as part of a designated service.³²⁷ A transfer can be either receiving or paying cash and must be reported within 10 business days from the date of the transaction.³²⁸ TTRs are used to

³¹⁸ Jim Richards, ‘The Future Financial Crime Landscape in the US’ *Financial Crime* (US 16 March 2021) <<https://www.fincrimeworldforum.com/post/the-future-financial-crime-landscape-in-the-us>> accessed 10th October 2021.

³¹⁹ Ibid.

³²⁰ Ibid.

³²¹ Carl Brown, ‘Not enough needles and too much hay: the problem with Suspicious Activity Reports’ *Financial Crime* (US 2 February 2021) <<https://www.grcworldforums.com/financial-crime/not-enough-needles-and-too-much-hay-the-problem-with-suspicious-activity-reports/719.article>> accessed 20th March 2021.

³²² Ibid.

³²³ Bank Secrecy Act 1970 (US); Proceeds of Crime Act 2000 (Canada); Anti Money Laundering and Counter Terrorism Financing Act 2006 (Australia).

³²⁴ Ibid.

³²⁵ Bank Secrecy Act 1970 (US).

³²⁶ Financial Crimes Enforcement Network, ‘Interim Final Rule - Anti-Money Laundering Programs for Dealers in Precious Metals, Stones, or Jewels’ (2015).

³²⁷ AUSTRAC, ‘Threshold Transaction Reports’ (2020).

³²⁸ Ibid.

help AUSTRAC detect, deter and disrupt criminal and terrorist activity.³²⁹ Extending reporting requirements beyond suspicious matters to certain thresholds actively requires dealers to consider higher-risk transactions and ensures they have taken relevant measures to mitigate against the money laundering risk.³³⁰ Additionally, transaction reporting provides a useful insight into the number of transactions that take place above a certain threshold, which is valuable for NRA when assessing money laundering vulnerabilities and introducing new measures.³³¹

4.8 Anti-Money Laundering Supervision within Luxury Goods Sectors

The FATF requires DNFBPs, such as luxury goods sectors, to be subject to regulatory and supervisory measures (Recommendation 28).³³² FATF states that this should be performed on a risk-sensitive basis and may be performed by a: supervisor or an appropriate self-regulatory body, providing that such body can ensure that its members comply with their obligations in combating money laundering.³³³ The selected jurisdictions apply a varied approach in supervising luxury goods dealers in relation to AML controls.³³⁴ Accordingly, FATF rates the Cayman Islands as Compliant; Canada, Japan, and Trinidad and Tobago as Partially Compliant and Australia as Non-Compliant with Recommendation 28.³³⁵

Regulated entities need to be aware of whom they are supervised for AML compliance, knowledge which UK dealers lacked.³³⁶ Subsequently, it is positive to note that the Canadian AML supervisor (FINTRAC) explains its role within the government website.³³⁷ This information includes an explanation of FINTRAC's critical role in combating money laundering, its goals (such as producing actionable financial

³²⁹ Ibid.

³³⁰ Financial Crimes Enforcement Network, 'Interim Final Rule - Anti-Money Laundering Programs for Dealers in Precious Metals, Stones, or Jewels' (2015).

³³¹ Ibid.

³³² Financial Action Task Force, 'The FATF Recommendations' (2022).

³³³ Ibid.

³³⁴ Financial Action Task Force, 'Consolidated Assessment Ratings' (2021).

³³⁵ Ibid.

³³⁶ See Chapter Two s 2.7, Chapter Three s 3.7.

³³⁷ Financial Transaction and Reports Analysis Centre, 'Who we are' <<https://www.fintrac-canafe.gc.ca/fintrac-canafe/1-eng>> accessed 28th October 2021.

intelligence), and its position as AML regulator and ensuring that businesses within Canada comply with the Proceeds of Crime (Money Laundering) and Terrorist Financing Act.³³⁸ Additionally, the information explains how FINTRAC seeks to work with regulated entities such as luxury goods sectors to reduce criminals' ability to launder proceeds of crime through preventative measures, such as assessing money laundering risk, adopting CDD, and reporting suspicious activities matters.³³⁹ This information can be acknowledged as a good practice since it clarifies FINTRAC's role as an anti-money laundering supervisor and allows luxury goods dealers to understand the regulatory structure in relation to AML.³⁴⁰

In this regard, it is also encouraging to identify that AUSTRAC also clarifies its role as AML supervisor within its government website.³⁴¹ In addition to textual information which explains its role, AUSTRAC provides video content which clarifies how it conducts AML supervision and works with industry partners.³⁴² Videos have been acknowledged as an effective and efficient learning tool, with individuals stating that they can remember video content better than text and find it more interactive/ stimulating.³⁴³ Therefore, this is an effective way of communicating important information to regulated entities which is useful in increasing their knowledge and understanding of AML supervision.³⁴⁴

AML supervisors need to understand the money laundering risks present within the sectors they regulate to ensure adequate measures are in place to prevent such abuses.³⁴⁵ Consequently, the Cayman Islands has designated the Department of Commerce and Investment (DCI) as a new regulatory body to supervise real estate and DPMS.³⁴⁶ The DCI monitors and ensures compliance with all AML obligations among these sectors.³⁴⁷ However, the fact that the DCI covers fewer sectors than HMRC is

³³⁸ Ibid.

³³⁹ Ibid.

³⁴⁰ Ibid.

³⁴¹ Australian Transaction Reports and Analysis Centre, 'Overview' <<https://www.austrac.gov.au/about-us/austrac-overview>> accessed 29th October 2021.

³⁴² Ibid.

³⁴³ Anshuman Khare, Deborah Hurst, *Business Education in the Digital Age* (Springer 2017) 197.

³⁴⁴ Ibid.

³⁴⁵ Financial Action Task Force, 'The FATF Recommendations' (2022)

³⁴⁶ Financial Action Task Force, 'Cayman Islands Mutual Evaluation Report' (2019).

³⁴⁷ Ibid.

beneficial in allowing the DCI to dedicate more time to the sectors that it supervises and understanding the risks exposed.³⁴⁸ Allocating the responsibility for AML supervision of several sectors can create problems for supervisors, such as not being able to facilitate to unique needs of different sectors, not having the time and resources to assess the variety of sectors and an overwhelming workload which is difficult to manage.³⁴⁹ It is therefore encouraging to note that the Cayman Islands has opted to establish a new supervisor to regulate these two sectors and provide a focused and tailored approach to AML.³⁵⁰

The DCI undertakes annual self-assessments of its AML supervision of luxury goods sectors, the findings from which are published within an annual supervision report.³⁵¹ The assessment allows the DCI to review its supervision strategies and assess ways in which its practices can be further improved to increase AML compliance among regulated entities.³⁵² The assessment reviews compliance programmes, training programs, the execution of AML measures, educational and outreach interventions, and enforcement measures taken.³⁵³ These are all vital aspects of the DCI's role as supervisor and evaluating its present approach and ways in which this can be improved is extremely valuable in improving AML supervision.³⁵⁴ For example, in relation to the execution of CDD measures the assessment highlights that twenty-five percent of registrants inspected could not provide evidence of appropriate CDD when establishing a business relationship.³⁵⁵

Additionally, it is interesting to identify that the assessment considers the money laundering risks within the real estate and DPMS sectors.³⁵⁶ This includes an overview of inherent risks, such as the nature and size of the business, products and services, methods of delivery, customer types, and geographical risk.³⁵⁷ The DCI rates these risks between low medium and high in reliance upon data from questionnaires and inspections conducted

³⁴⁸ Ibid.

³⁴⁹ See Chapter Two s 2.7, Chapter Three s 3.7.

³⁵⁰ Department of Commerce and Investment, 'Anti Money Laundering Supervision' <<https://www.dci.gov.ky/>> accessed 21st February 2021.

³⁵¹ Department of Commerce and Investment, 'DNFBP Annual Supervision Report' (2020).

³⁵² Ibid.

³⁵³ Ibid.

³⁵⁴ Ibid.

³⁵⁵ Ibid.

³⁵⁶ Ibid.

³⁵⁷ Ibid.

within the sector.³⁵⁸ Furthermore, DCI identifies the extent to which DPMS are vulnerable to money laundering practices and highlights emerging risks which require additional supervision.³⁵⁹ This analysis is useful in assisting DCI's understanding of money laundering risks within the sectors it supervises and allowing it to utilise its resources in accordance to the insights identified efficiently.³⁶⁰ Furthermore, by publishing these findings, luxury goods dealers are able to recognise the need for AML supervision and how such controls are beneficial in reducing criminal operations.³⁶¹

The assessment highlights an increased need for efforts in assisting dealers to understand and implement AML controls.³⁶² The FATF has acknowledged the DCI's efforts toward gaining a better understanding of the sectors it regulates and the individuals within these sectors through outreach work.³⁶³ DCI has disseminated questionnaires to the sectors it regulates, such as DPMS, which involve questions such as: how can we further assist you as AML supervisor, what further support do you require, and share your thoughts regarding your role as an AML gatekeeper.³⁶⁴ The data collected from the questionnaires allow DCI to understand further merging risks within luxury goods sectors and additional ways in which to assist regulated entities as their AML supervisor.³⁶⁵ These efforts from the DCI can be acknowledged as good practices since they demonstrated DCI's commitment to assisting regulating entities in relation to their AML obligations and DCI's ongoing efforts to support regulated entities and improve the supervision provided to them.³⁶⁶

The FATF also identifies FINTRAC as having a good understanding of money laundering risks and that DNFBS are subject to appropriate risk-sensitive AML supervision.³⁶⁷ This is reflected through detailed training of money laundering risks, guidance explaining money laundering risks within individual sectors, and an increased

³⁵⁸ Ibid.

³⁵⁹ Ibid.

³⁶⁰ Financial Action Task Force, 'Cayman Islands Mutual Evaluation Report' (2019).

³⁶¹ Ibid.

³⁶² Department of Commerce and Investment, 'DNFBP Annual Supervision Report' (2020).

³⁶³ Financial Action Task Force, 'Cayman Islands Mutual Evaluation Report' (2019).

³⁶⁴ Ibid.

³⁶⁵ Ibid.

³⁶⁶ Ibid.

³⁶⁷ Financial Action Task Force, 'Canada Mutual Evaluation Report' (2016).

level of feedback in relation to improving surveillance and monitoring.³⁶⁸ These initiatives showcase FINTRAC's commitment to supporting luxury goods dealers in fulfilling their AML obligations.³⁶⁹ Similarly, the Japanese Financial Intelligence Centre is identified as increasing its understanding of money laundering risks within luxury goods sectors through comparable outreach activities, such as issuing guidance and conducting assessments of its regulated sectors.³⁷⁰

It is also encouraging to note that Trinidad and Tobago, Canada, Japan and Australia all engage with regulated entities through seminars and public/private sector forums and meetings with industries.³⁷¹ For example, between 2009 and 2015 FINTRAC conducted 300 presentations for DNFBPs.³⁷² These initiatives are useful in assisting regulated entities' understanding of AML supervision and its importance.³⁷³ They also allow supervisors to gain insights from regulated entities which are useful in further progressing supervision.³⁷⁴ Luxury goods dealers have been identified as showing frustration in being supervised for AML matters and the 'increased policing' of their business practices.³⁷⁵ Subsequently, these initiatives are valuable platforms through which supervisors can explain their role and seek ways to further assist luxury goods dealers in complying with their AML obligations.³⁷⁶

It is also helpful to acknowledge improvements that have been suggested to improve AML supervision of luxury goods sectors since the suggestions raise points which are useful for the UK.³⁷⁷ The FATF recommends for the Japanese Financial Intelligence Centre and AUSTRAC to increase their understanding of the money

³⁶⁸ Ibid 99.

³⁶⁹ Ibid.

³⁷⁰ Financial Action Task Force, 'Japan Mutual Evaluation Report' (2021).

³⁷¹ Ibid, Financial Action Task Force, 'Canada Mutual Evaluation Report' (2016); Financial Intelligence Unit Trinidad and Tobago, 'Anti Money Laundering Supervision Outreach Virtual Seminar' < <https://fiu.gov.tt/2020/10/21/anti-money-laundering-counter-financing-of-terrorism-outreach-virtual-seminar/>> accessed 12th February 2021.

³⁷² Ibid.

³⁷³ Ibid.

³⁷⁴ Ibid.

³⁷⁵ See Chapter Two s 2.7; Chapter Three s 3.7.

³⁷⁶ Financial Intelligence Unit Trinidad and Tobago, 'Anti Money Laundering Supervision Outreach Virtual Seminar' < <https://fiu.gov.tt/2020/10/21/anti-money-laundering-counter-financing-of-terrorism-outreach-virtual-seminar/>> accessed 12th February 2021.

³⁷⁷ See Chapter Two s 2.7, Chapter Three s 3.7.

laundering risks faced by individual reporting entities, including luxury goods dealers.³⁷⁸ In achieving this, the FATF advocates for supervisors to keep the inherent risk picture of domestic markets and sectors up to date.³⁷⁹ Criticisms have also been raised in relation to Australian and Canadian AML supervisors failing to issue sanctions to non-compliant luxury goods dealers.³⁸⁰ AUSTRAC has been identified as issuing an extremely low amount of enforcement actions per year for non-compliant regulated entities including those operating in luxury goods sectors, which are not commensurate to the deficient controls implemented by entities.³⁸¹ Additionally in Canada, sanctions for AML non-compliance are considered proportionate and dissuasive, however, the number of sanctions issued is regarded as low.³⁸² Thus, there are very few instances in which luxury goods have been issued sanctions for AML non-compliance.³⁸³ Consequently, the FATF suggests that these jurisdictions need to improve their methods of identifying non-compliant entities.³⁸⁴

4.9 Conclusion

This chapter has identified various interesting aspects of the AML regimes of the US, Canada, Australia, Japan, Cayman Islands, and Trinidad and Tobago which are useful in improving the AML regime applicable to UK luxury goods sectors and addressing the issues identified within previous chapters.³⁸⁵ This chapter's findings answer the thesis's primary research question by analysing the AML regimes within the selected jurisdictions and identifying specific practices from which the UK AML regime can benefit.³⁸⁶ The analysis includes good practices which are valuable in progressing the present approach in the UK, as well as bad practices which the UK needs to be aware of.³⁸⁷

³⁷⁸ Financial Action Task Force, 'Mutual Evaluation Report: Australia' (2015), Financial Action Task Force 'Mutual Evaluation Report: Japan' (2021).

³⁷⁹ *Ibid.*

³⁸⁰ *Ibid.*

³⁸¹ *Ibid.*

³⁸² Financial Action Task Force, 'Canada Mutual Evaluation Report' (2016).

³⁸³ *Ibid.*

³⁸⁴ *Ibid.*

³⁸⁵ See Chapter One, Two and Three.

³⁸⁶ *Ibid.*

³⁸⁷ See s 4.1, s 4.2, s 4.3, s 4.4, s 4.5, s 4.6, s 4.7, 4.8.

In assessing the extent to which the jurisdictions selected oblige luxury good dealers to adopt AML measures, the findings identified an absence of a threshold approach (as adopted within the UK).³⁸⁸ Instead, the jurisdictions list luxury subsectors which fall within the AML regime regardless of the amount they receive in cash.³⁸⁹ A varied approach is applied in relation to the luxury sub-sectors covered within AML regimes, with some jurisdictions obliging certain luxury sectors and others not doing so.³⁹⁰ Major luxury sub-sectors covered within the AML regimes include dealers in precious metals and stones, art dealers, car dealers and yacht dealers.³⁹¹ This approach captures all payments regardless of their value in cash which has been identified as beneficial in reducing money laundering risk.³⁹² Additionally, the analysis recognised that some jurisdictions list individual luxury items which pose a money laundering risk within their AML regimes, such as, silver semi-precious stones and diamonds.³⁹³ This removes any ambiguity regarding the items that fall within the regime and emphasises the money laundering risks of certain luxury items.³⁹⁴

Subsequently, the chapter examined the AML registration process for luxury goods dealers within the selected jurisdictions.³⁹⁵ The findings identified that Australia, the Cayman Islands, and Trinidad and Tobago all require luxury goods dealers to register for AML supervision, whilst the US, Canada, and Japan do not include such a requirement.³⁹⁶ The registration processes within these jurisdictions were regarded as having several useful practices which can assist the UK.³⁹⁷ This included the support provided to dealers in completing the registration form, such as guidance to navigate

³⁸⁸ See s 4.3.

³⁸⁹ Bank Secrecy Act 1970 (US); Proceeds of Crime Act 2000 (Canada); Anti Money Laundering and Counter Terrorism Financing Act 2006 (Australia); Proceeds of Crime Act 2020 (Cayman Islands); Money Laundering and Combatting the Financing of Terrorism Act 2015 (Trinidad and Tobago); Punishment of Organised Crimes Act 1990 (Japan).

³⁹⁰ Ibid.

³⁹¹ Ibid.

³⁹² Ibid.

³⁹³ Ibid.

³⁹⁴ Ibid.

³⁹⁵ See s 4.4.

³⁹⁶ Anti Money Laundering and Counter Terrorism Financing Act 2006 (Australia); Proceeds of Crime Act 2020 (Cayman Islands); Money Laundering and Combatting the Financing of Terrorism Act 2015; Money Laundering and Combatting the Financing of Terrorism Act 2015 (Trinidad and Tobago).

³⁹⁷ See s 4.4.

through the various stages;³⁹⁸ the registration forms being user friendly and; including options for dealers to seek help and support should they face any difficulties.³⁹⁹ The forms are also accessible in PDF format, providing dealers with an option to complete the registration process by pen.⁴⁰⁰ Interestingly, the registration process within these jurisdictions is not as restrictive as in the UK.⁴⁰¹ Dealers within the Cayman Islands can submit the form even if they struggle to answer all the questions.⁴⁰² This is particularly useful as UK dealers indicated they could not apply for registered status as the form required them to complete all fields accurately, some of which they did not have an answer for.⁴⁰³ Moreover, the analysis highlighted that the registration process within all the selected jurisdictions do not require a fee to be paid by dealers which is beneficial in improving compliance.⁴⁰⁴

The chapter then examined the risk-based approach to AML within the jurisdictions.⁴⁰⁵ The guidance issued by Trinidad and Tobago is recognised as communicating the benefits of the RBA,⁴⁰⁶ knowledge of which UK dealers failed to acknowledge.⁴⁰⁷ Additionally, various efforts are identified to assist luxury goods dealers in understanding what risk-based AML entails and their obligations.⁴⁰⁸ The guidance within Canada and Australia is useful as it clarifies foundational aspects of the RBA.⁴⁰⁹ The guidance also provides dealers with support in conducting a risk assessment and identifying money laundering risks through initiatives such as ‘risk-based cycles’ and

³⁹⁸ Australia Transaction Reports and Analysis Centre, ‘Business Profile Form: Explanatory Guide for Enrolment and Registration’ (2020); Financial Intelligence Unit Trinidad and Tobago, ‘Registration of Supervised Entities’ (2018); Department of Commerce and Investment, ‘Application for Registration of Designated Non- Financial Business and Professions - Real Estate & Dealers in Precious Metals and Stones’ (2019).

³⁹⁹ Ibid.

⁴⁰⁰ Ibid.

⁴⁰¹ See Chapter Two s 2.3, Chapter Three s 3.3.

⁴⁰² Department of Commerce and Investment, ‘Application for Registration of Designated Non- Financial Business and Professions - Real Estate & Dealers in Precious Metals and Stones’ (2019).

⁴⁰³ See A1, A2, C1, C2, W1, W2, J1, J2, W1, W2, Y1, Y2.

⁴⁰⁴ Anti Money Laundering and Counter Terrorism Financing Act 2006 (Australia); Proceeds of Crime Act 2020 (Cayman Islands); Money Laundering and Combatting the Financing of Terrorism Act 2015; Money Laundering and Combatting the Financing of Terrorism Act 2015 (Trinidad and Tobago).

⁴⁰⁵ See s 4.5.

⁴⁰⁶ Financial Intelligence Unit Trinidad and Tobago, ‘Money Laundering and Terrorist Financing Risk’ (2018).

⁴⁰⁷ See A1, A2, C1, C2, W1, W2, J1, J2, W1, W2, Y1, Y2.

⁴⁰⁸ See s 4.5.

⁴⁰⁹ Financial Transaction and Reports Analysis Centre of Canada, ‘Risk Assessment Guidance’ (2017), Law Council of Australia, ‘Anti Money Laundering Guide’ (2015).

‘risk assessment stages’.⁴¹⁰ The checklist provided to luxury goods dealers by AUSTRAC also helps dealers ensure that their risk assessment covers all vital aspects and provides them direction and clarity in adopting a RBA to AML.⁴¹¹ Outreach initiatives are also highlighted as assisting risk-based compliance among dealers.⁴¹² These include the identification of seminars delivered by Trinidad and Tobago to provide dealers with the fundamental aspects of the RBA to AML and to help increase their understanding in this regard.⁴¹³ As well as, guidance notes issued by FINTRAC answering FAQs sent by dealers in adopting the RBA with detailed answers to assist compliance.⁴¹⁴

The analysis also identified several useful points in the CDD requirements applied to luxury goods sectors within the selected jurisdictions.⁴¹⁵ The Cayman Islands CDD measures are recognised as appropriate in identifying and verifying the identity of customers.⁴¹⁶ This comprises a five-part CDD system, as well as specific guidance for dealers in precious metals and stones on how to establish adequate CDD controls in accordance to money laundering risk.⁴¹⁷ Additionally, CDD training conducted within all the selected jurisdictions has been acknowledged as helpful in increasing dealers understanding of CDD and addressing complex aspects such as how to tailor CDD controls to SDD and EDD methods.⁴¹⁸ Further outreach efforts have been identified in Trinidad and Tobago through the establishment of seminars and conferences to further assist dealers in their CDD obligations.⁴¹⁹ These initiatives increase AML understanding

⁴¹⁰ Ibid.

⁴¹¹ Ibid.

⁴¹² See s 4.5.

⁴¹³ Financial Intelligence Unit Trinidad and Tobago, ‘Anti Money Laundering/ Outreach Virtual Seminar’ < <https://fiu.gov.tt/about-us/events/>> accessed 20th October 2021; Cayman Islands Monetary Authority, ‘AML Risk Assessment’ <<https://www.cima.ky/regulated-sectors-videos>> accessed 21st March 2021.

⁴¹⁴ Financial Crimes Enforcement Network, ‘Guidance Notes for Dealers, Including Certain Retailers, of Precious Metals, Precious Stones, or Jewels, on Conducting a Risk Assessment of Their Foreign Suppliers’ (2018).

⁴¹⁵ See s 4.6.

⁴¹⁶ Financial Action Task Force, ‘Cayman Islands Mutual Evaluation Report’ (2019).

⁴¹⁷ Cayman Islands Monetary Authority, ‘Guidance Notes on the Prevention and Detection of Money Laundering, Terrorist Financing and Proliferation Financing in the Cayman Islands’ (2020).

⁴¹⁸ Financial Crimes Enforcement Network, ‘Information on Complying with the Customer Due Diligence (CDD) Final Rule’ (2021); Proceeds of Crime (Money Laundering) and Terrorist Financing Act 2000 (Canada); Anti-Money Laundering and Counter Terrorism Financing Act 2006 Part 7 (Australia); Cayman Islands Government, ‘Designated Non-Financial Business Practices’ (2021); The Financial Obligations Regulations, 2010 s 15 (Trinidad and Tobago); Anti-Money Laundering Act 2005, Article 11 (Japan).

⁴¹⁹ Financial Intelligence Unit Trinidad and Tobago, ‘Anti Money Laundering Training’ < <https://fiu.gov.tt/compliance/becoming-aml-cft-compliant/aml-cft-training/>> accessed 20th March 2021.

among dealers by providing examples of CDD controls and allowing dealers to ask questions and seek help.⁴²⁰ Furthermore, the analysis has highlighted AUSTRACs efforts in assisting dealers to identify beneficial owners through the publication of a factsheet including a summary of how to identify beneficial owners with a simplified process that assists dealers in this regard.⁴²¹

In seeking ways to address the UK SARs regime, the jurisdictions selected provided several useful points.⁴²² The publication of guidance addressing aspects of reporting such as how to submit high-quality SARs, how to identify suspicious transactions and how to follow the reporting process has been identified as useful in ensuring efficient reporting.⁴²³ Additionally, outreach efforts have been highlighted as valuable in increasing SARs compliance such as video content and seminars explaining the value derived from reporting.⁴²⁴ Whilst the SARs regimes fail to provide feedback for submitted reports (like the UK) it has been encouraging to identify that AUSTRAC seeks to introduce a feedback system within the next few years.⁴²⁵ The chapter has also recognised the reporting of transactions beyond suspicious matters within the US, Canada and Australia.⁴²⁶ This method of reporting transactions above a certain limit has been considered useful in actively requiring dealers to consider higher-risk transactions.⁴²⁷ The analysis has also raised concerns in relation to private actors filing reports in response to the fear of facing prosecution for failing to do so.⁴²⁸ This practice of ‘defensive reporting’

⁴²⁰ Ibid.

⁴²¹ Australia Transaction Reports and Analysis Centre, ‘Factsheet: Meeting your Beneficial Owner Obligations’ (2018).

⁴²² See s 4.7.

⁴²³ Financial Action Task Force, ‘Guidance on Private Sector Information Sharing’ (2017).

⁴²⁴ Financial Intelligence Unit Trinidad and Tobago, ‘Anti-Money Laundering/Counter Financing of Terrorism Outreach Virtual Seminar’ <<https://fiu.gov.tt/2021/01/14/anti-money-laundering-counter-financing-of-terrorism-outreach-virtual-seminar-6/>> accessed 12th March 2021.

⁴²⁵ Brian Monroe, ‘After Scratching Parliamentary AML Inquiry, AUSTRAC takes aim at quality, quantity of suspicious matter reports in quest to bolster Financial Crime effectiveness’ (Certified Financial Crime Experts 2021).

⁴²⁶ Bank Secrecy Act 1970 (US); Proceeds of Crime Act 2000 (Canada); Anti Money Laundering and Counter Terrorism Financing Act 2006 (Australia).

⁴²⁷ Ibid.

⁴²⁸ Carl Brown, ‘Not enough needles and too much hay: the problem with Suspicious Activity Reports’ *Financial Crime* (US 2 February 2021) <<https://www.greworldforums.com/financial-crime/not-enough-needles-and-too-much-hay-the-problem-with-suspicious-activity-reports/719.article>> accessed 20th March 2021.

has been identified as a bad practice which the UK must avoid to ensure that the task of reporting does not stray away from its objective.⁴²⁹

Lastly, the chapter examined AML supervision of luxury goods sectors within the selected jurisdictions.⁴³⁰ It is positive to note that FINTRAC and AUSTRAC clarify their role as AML supervisors within their guidance.⁴³¹ This ensures that luxury goods dealers understand and are aware of who they are regulated by for AML.⁴³² The creation of the DCI within the Cayman Islands to supervise DPMS has been identified as useful in relieving the increased burden placed upon HMRC.⁴³³ It is also encouraging to note that the DCI undertakes a self-assessment of its supervision to progress its methods and further assist regulated entities.⁴³⁴ Furthermore, the analysis recognised that Trinidad and Tobago, Canada, Japan and Australia engage with regulated entities through seminars, public/private sector forums, and industry meetings.⁴³⁵ These initiatives have been considered particularly beneficial in helping dealers comply with their AML obligations.⁴³⁶

The analysis within this chapter will assist in formulating suggestions in progressing the UK AML regime applicable to luxury goods sectors and reducing the money laundering risks identified.⁴³⁷ As the first study to examine the AML regimes applicable to luxury goods in this context, the research provides an original contribution to research and to this area of law. This chapter initiates discussion in relation to the AML regimes adopted in luxury goods sectors, both in the UK and internationally and seeking ways in which these regimes can be further improved to prevent criminals from taking advantage of luxury goods sectors to conceal their money-laundering practices.

⁴²⁹Ibid.

⁴³⁰ See s 4.8.

⁴³¹ Financial Transaction and Reports Analysis Centre, 'Who we are' <<https://www.fintrac-canafe.gc.ca/fintrac-canafe/1-eng>> accessed 28th October 2021, Australian Transaction Reports and Analysis Centre, 'Overview' <<https://www.austrac.gov.au/about-us/austrac-overview>> accessed 29th October 2021.

⁴³² Ibid.

⁴³³ Financial Action Task Force, 'Cayman Islands Mutual Evaluation Report' (2019).

⁴³⁴ Ibid.

⁴³⁵ Financial Action Task Force, 'Canada Mutual Evaluation Report' (2016), Financial Intelligence Unit Trinidad and Tobago, 'Anti Money Laundering Supervision Outreach Virtual Seminar' <<https://fiu.gov.tt/2020/10/21/anti-money-laundering-counter-financing-of-terrorism-outreach-virtual-seminar/>> accessed 12th February 2021.

⁴³⁶ Ibid.

⁴³⁷ See Chapter One, Chapter Two, Chapter Three.

Subsequently, based upon this analysis, the next chapter will consider ways in which the money laundering risks within UK luxury goods sectors can be reduced.⁴³⁸

⁴³⁸ See Chapter Five.

Chapter 5

Proposals

5.1 Introduction

Anti-money laundering is an essential aspect of the UK's fight against economic crime.¹ However, as highlighted by this project, money laundering through luxury goods has received little attention from the UK government and academics.² Suggestions have been put forward by Teichmann³ and Gilmour⁴ (and are acknowledged below); however, these are limited to portable luxury commodities and jewellery businesses.⁵ Furthermore, the proposals fail to recognise vital aspects of the UK AML regime, such as the risks generated within the themes considered throughout the project.⁶ This project has aimed to identify the money laundering risks within the UK luxury goods sectors and evaluate how the AML regime can be improved and strengthened against such risks.⁷ This chapter addresses the latter part of this aim through suggestions to reduce money laundering risk.

This analysis is influenced by the work conducted within subsequent chapters that have provided important insights into this area of law. Chapter Two highlighted the money laundering risks within UK luxury goods sectors and identified the need for further measures to attend to the vulnerabilities.⁸ Chapter Three analysed AML compliance among UK luxury goods dealers and identified challenges which make compliance difficult in practice and in turn generate further money laundering risks.⁹ To address these issues, Chapter Four acknowledged practices within AML regimes in: the US, Canada, Trinidad and Tobago, Cayman Islands, Japan, and Australia. This analysis provided

¹ HM Treasury, 'UK National Risk Assessment of Money Laundering and Terrorist Financing' (2015).

² Transparency International, 'Tainted Treasures: Money Laundering Risks in Luxury Markets' (2017).

³ Fabian Teichmann, 'Money Laundering in the Jewellery Business' (2020) 23 *Journal of Money Laundering Control* 692.

⁴ Nicholas Gilmour, 'Blindly Obvious and Frequently Exploitable' (2017) 20 *Journal of Money Laundering Control* 106.

⁵ *Ibid.*

⁶ *Ibid.*

⁷ See Introduction s 1.2.

⁸ See Chapter Two.

⁹ See Chapter Three.

insights which are particularly useful in addressing the money laundering risks issues identified within the study.¹⁰

Following this the chapter advances proposals to improve the AML regime applicable to UK luxury goods sectors and address the money laundering risks identified. In achieving this, the chapter continues to adopt a thematic structure. Proposals of this nature have not been considered in relation to the UK luxury goods sector so far and, subsequently, the proposed suggestions fill a gap within existing research. The knowledge provided within this chapter, therefore, adds new insights in assisting the UK's fight against crime and delivers new perspectives to this area of law.

5.2 Obligated entities

The study has identified that the threshold approach within the UK AML regime fails to capture luxury goods dealers who accept payments below the €10,000 limit¹¹ and are equally at risk of being targeted by criminals for money laundering operations.¹² In this regard, the European Commission has indicated that there is no evidence that cash payment thresholds have limited money laundering risks within the art and high-value goods sectors.¹³ The Fifth EU AML Directive proposes to include an EU-wide threshold on cash transactions of €10,000.¹⁴ This allows Member States to set lower cash thresholds in accordance to their money laundering risk assessment.¹⁵ The EU Commission explains that reducing the cash threshold will limit the possibilities of criminals channelling incriminated funds through the economic system.¹⁶ Thus, dealers who make sales below the threshold limit undeniably pose a money laundering risk.¹⁷ However, since Brexit, the

¹⁰ See Chapter Four.

¹¹ See Chapter Two s 2.2 Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017, Regulation 14 (1) a.

¹² See A1, A2, C1, C2, W1, W2, Y1, Y2, J1, J2.

¹³ European Commission, 'Report from the Commission to the European Parliament and to the Council on the assessment of the risks of money laundering and terrorist financing affecting the internal market and relating to cross-border situations' (2017).

¹⁴ Directive (EU) 2018/1673 of the European Parliament and of the Council of 23 October 2018 on combating money laundering by criminal law.

¹⁵ European Commission, 'Beating financial crime: Commission overhauls anti-money laundering and countering the financing of terrorism rules' (2021).

¹⁶ *Ibid.*

¹⁷ *Ibid.*

UK has opted out of transposing this Directive within its AML regime.¹⁸ Under the present regime therefore individuals in the UK are able to purchase luxury items below €10,000 in cash and avoid AML controls.¹⁹

Alternatively, some jurisdictions apply a sector-specific approach which includes luxury goods sub-sectors regardless of the amount they make or receive in cash.²⁰ This approach captures a broader number of dealers than the threshold approach employed in the UK.²¹ It is useful to note that HMRC lists individual luxury sub-sectors which fall within the AML regime.²² These include alcohol, antiques, art and music, auction, boats & yachts, caravans, cars, cash & carry/wholesale, electronics, food, gold, household goods & furniture jewellery, mobile phones, plant, machinery & equipment recycling, textiles & clothing, vehicles other than cars.²³ It is also interesting to recognise that the UK does not list threshold limits for other regulated sectors, such as accountancy service providers, estate agency businesses, or money service businesses.²⁴ Instead, HMRC lists a criterion which captures these individuals within the AML regime regardless of payment amounts.²⁵ Adopting a similar approach for dealers, which specifies luxury sub-sectors (such as the list prescribed by HMRC), and removing the threshold limit will capture a larger number of dealers within the AML regime.²⁶ By requiring all dealers to implement AML controls this approach closes loopholes.²⁷ Additionally, the absence of a threshold assists in addressing the issue of dealers opting to operate below the threshold limit to avoid AML compliance.²⁸

¹⁸ Al-Tawil, Tareq Na'el, Younies Hassan, 'The Implications of Brexit from EU and Bitcoin' (2021) 24 *Journal of Money Laundering Control*.

¹⁹ See A1, A2, C1, C2, W1, W2, J1, J2, Y1, Y2.

²⁰ See Chapter Four s 4.3.

²¹ *Ibid*.

²² HMRC, 'Anti-Money Laundering Supervision: Guidance for High Value Dealers' (2020).

²³ *Ibid*.

²⁴ HMRC, 'Guidance: Who Needs to Register for Money Laundering Supervision' <<https://www.gov.uk/guidance/money-laundering-regulations-who-needs-to-register#businesses-covered-by-the-regulations>> accessed 20th March 2021.

²⁵ *Ibid*.

²⁶ See Chapter Four s 4.3.

²⁷ See Chapter Two s 2.2, Chapter Three s 3.2.

²⁸ *Ibid*, HM Treasury, 'UK National Risk Assessment of Money Laundering and Terrorist Financing' (2020).

To add further clarity to this approach, some jurisdictions list individual luxury items which pose a money laundering risk.²⁹ For example, Trinidad and Tobago and Japan list gold, silver semi-precious stones, and diamonds as regulated items.³⁰ Listing items is useful in increasing dealers understanding of items that pose a high money laundering risk.³¹ Dealers themselves indicated the need for such an approach by stating, ‘I’m not knowledgeable on AML or what items are at a higher risk of being used by criminals than others. This needs to be clarified to us within law and policies’.³² Thus specifying individual items in this regard is recommended to assist dealers in recognising items that fall within the AML regime and help increase their knowledge of AML risks.³³ Subsequently, the project advocates for the inclusion of a list within the guidance issued by HMRC which specifies individual items which fall within luxury sub-sectors.³⁴

Dealers are required to play a key role as AML gatekeepers within the MLRs; however, the analysis has identified that dealers lack understanding and awareness of this role.³⁵ The guidance issued by HMRC³⁶ and the information displayed on the Government website³⁷ fail to explain the importance and relevance of dealers acting as AML gatekeepers. In this regard dealers mentioned, ‘it seems illogical to require us to act in a certain manner without explaining why’,³⁸ ‘the least they [the regulator] can do is explain why they need us to act as gatekeepers’,³⁹ and ‘there needs to be some information which explains what an anti-money laundering gatekeeper is and why I am required to adopt this role’.⁴⁰ The inclusion of information explaining why dealers are required to act as AML gatekeepers, and how they are useful in preventing money laundering operations

²⁹ Financial Intelligence Unit Trinidad and Tobago, ‘AML /CFT Guidance for Dealers in Precious Metals and Stones/ Jewellers’ (2018); National Police Agency, ‘Anti Money Laundering Regime in Japan’ (2018); Cayman Islands Monetary Authority, ‘AML/CFT Legal Framework’ (2018); Financial Transaction and Reports Analysis Centre of Canada, ‘Dealers in Precious Metals and Stones’ (2020).

³⁰ Ibid.

³¹ See Chapter Four s 4.3.

³² See C2.

³³ See Chapter Four s 4.3.

³⁴ Ibid.

³⁵ Ibid.

³⁶ HMRC, ‘Anti-Money Laundering Supervision: Guidance for High Value Dealers’ (2020).

³⁷ Gov.UK, ‘Guidance: Register or renew your money laundering supervision with HMRC’ <<https://www.gov.uk/guidance/register-or-renew-your-money-laundering-supervision-with-hmrc>> accessed 6th December 2021.

³⁸ See C2.

³⁹ See C1.

⁴⁰ See C2.

is useful in improving AML compliance.⁴¹ King and Zavoli identify the following factors as making real estate agents important actors in AML control: they are at the front line and therefore well-positioned to contribute towards AML efforts, they have a moral obligation to do so, the importance of AML justifies the imposition of legal obligations and such arguments are prevalent in other sectors (such as the art market).⁴² In support of King and Zavoli's assertions, other scholars also state that people are more likely to obey the law when they view the law generally as a legitimate moral authority for which they have a moral obligation to follow.⁴³

Adopting similar information within the guidance issued by HMRC is useful in improving dealers understanding of their AML obligations.⁴⁴ It is suggested for the guidance to be improved to highlight the ways in which dealers are vulnerable to money laundering practices.⁴⁵ For example, specifying that money launderers target cash-intense businesses as this limits the paper trail which is useful in avoiding the detection of money laundering operations.⁴⁶ It is also recommended for the guidance to emphasise the merits of implementing AML measures in reducing criminals' ability to target businesses for their operations.⁴⁷ For example, stating that by implementing AML controls dealers are less likely to process fraudulent payments.⁴⁸ This information helps increase dealers' awareness of their role as gatekeepers, and to recognise and understand the reasoning behind being obliged to comply with the MLRs, which is beneficial in increasing compliance.⁴⁹

To further assist dealers' knowledge, understanding, and awareness of their AML obligations Chapter 4 identified several initiatives conducted by AUSTRAC.⁵⁰ These include guidance materials, e-learning, regular industry forums, consultation processes,

⁴¹ Abdullahi Bello, *Improving Anti Money Laundering Compliance: Self-Protecting Theory and Money Laundering Reporting Officers* (Palgrave Studies 2017) 256.

⁴² Ilaria Zavoli, Colin King, 'The Challenges of Implementing Anti- Money Laundering Regulation: An Empirical Analysis' (2021) 4 *Modern Law Review* 749.

⁴³ Richard McAdams, *The Expressive Powers of Law* (Harvard University Press 2015).

⁴⁴ *Ibid.*

⁴⁵ HMRC, 'Anti-Money Laundering Supervision: Guidance for High Value Dealers' (2020).

⁴⁶ HM Treasury, 'UK National Risk Assessment of Money Laundering and Terrorist Financing' (2017).

⁴⁷ HMRC, 'Anti-Money Laundering Supervision: Guidance for High Value Dealers' (2020).

⁴⁸ Financial Action Task Force, 'Mutual Evaluation Report of the United Kingdom' (2018).

⁴⁹ *Ibid.*

⁵⁰ See Chapter Four s 4.3, Financial Action Task Force, 'Mutual Evaluation Report: Australia' (2015) 76.

and the AUSTRAC Help Desk.⁵¹ The FATF recognises these efforts as beneficial in improving compliance and showcasing AUSTRAC's dedication to assisting regulated entities in their understanding of AML.⁵² Sullivan explains that these outreach methods are stimulating and engaging in communicating knowledge to individuals.⁵³ Additionally, the FATF also states that these outreach initiatives are successful in improving AML knowledge among private actors and having a positive impact on AML compliance.⁵⁴ Presently, such efforts have not been undertaken by HMRC, nor has the HMRC indicated any intentions of engaging in initiatives to improve dealers' knowledge and understanding of AML.⁵⁵ Thus, reaching out to dealers through these avenues will help in increasing their knowledge of their AML obligations within the MLRs and subsequently assist in improving compliance.⁵⁶

5.3 Registration

The study has identified low registration rates among dealers.⁵⁷ Whilst it is impossible to ascertain the precise reason for this low number, several factors have been identified as potentially causing these low rates.⁵⁸ One of these factors includes dealers being unaware of the requirement to register for AML and failing to understand the merits of registration.⁵⁹ The registration process does not explain these aspects.⁶⁰ Providing individuals with an explanation of why they need to follow an action before a command is recognised as helping individuals understand the importance of the command and motivating them to comply with the command.⁶¹ Dealers shared this view, 'you can't

⁵¹ Ibid.

⁵² Ibid.

⁵³ Kevil Sullivan, *Anti-Money Laundering in a Nutshell* (APress 2015) 116.

⁵⁴ Financial Action Task Force, 'Best Practices Paper: Managing the Anti Money Laundering and Counter Terrorist Financing Policy Implications of Voluntary Tax Compliance Regimes' (2012).

⁵⁵ Ibid.

⁵⁶ See Chapter Two s 2.2 Chapter Three s 3.2, A1, A2, C1, C2, W1, W2, J1, J2, Y1, Y2.

⁵⁷ See Chapter Two s 2.3, Chapter Three s 3.3, HMRC, 'Corporate Report: HMRC Anti-Money Laundering Supervision Annual Assessment' (2021).

⁵⁸ Ibid.

⁵⁹ See A1, A2, C1, C2, J1, J2, Y1, Y2, W1, W2

⁶⁰ Gov.UK, 'Anti-Money Laundering Registration' <<https://www.gov.uk/anti-money-laundering-registration>> accessed 11th January 2022.

⁶¹ Professor Rudiger Bittner, *Doing Things for Reasons* (Oxford University Press 2001) 67.

expect us to register without explaining why – that’s like an empty statement’⁶² and, ‘I think it’s a basic requirement to explain why we need to register, I would expect this before signing up to register’.⁶³ Information which conveys the link between registration and preventing money laundering operations is useful in demonstrating the merits of registration to dealers.⁶⁴ In this regard, the inclusion of the following statements within HMRC's guidance is useful in improving dealers' understanding of their obligation to register:

- a) By registering with HMRC for anti-money laundering supervision, you can take active steps to prevent money launderers from utilising your business to conceal criminal operations.
- b) Luxury goods dealers have been recognised as providing a loophole for criminals to exploit for money laundering operations. Registration is the first stage in protecting your business from being used for such operations.

These statements not only advocate a positive working relationship between HMRC and dealers in relation to AML but also highlight the connection between registration and efforts to reduce money laundering. Furthermore, personal pronouns such as ‘you’ and ‘your business’ have been recognised as drawing readers into the material and making them feel immediately involved.⁶⁵ Thus this information will assist in helping dealers recognise the importance of registration which is useful in improving registration compliance.⁶⁶

Additionally, low registration rates may be allocated to dealers failing to register even though they meet the definition of a dealer under the MLRs (for example, they accept cash payments above the threshold limit).⁶⁷ One dealer stated, ‘I’ve been running the business for 20 years and never been investigated for not registering so why would I

⁶² See W1.

⁶³ See J2.

⁶⁴ Professor Rudiger Bittner, *Doing Things for Reasons* (Oxford University Press 2001) 68.

⁶⁵ Peter Frederick, *Persuasive Writing* (Pearson Education Limited 2012) 45.

⁶⁶ Ibid.

⁶⁷ See Chapter Two s 2.3, Chapter Three s 3.3.

worry now?’⁶⁸ The present system may therefore be deemed as deficient in detecting unregistered dealers.⁶⁹ Whilst HMRC mentions that it checks AML compliance, these efforts are largely focused on the registered population.⁷⁰ It is interesting to recognise that HMRC has increased its scrutiny of AML compliance of estate agency businesses.⁷¹ This includes several unannounced inspections of businesses trading without registering with HMRC and issuing fines or pursuing criminal proceedings against businesses that fail to comply.⁷² Consequently, Purplebricks has been issued a £266,973 fine by HMRC for breaches of money laundering rules including a failure to register (and regarded as the largest ever given to a UK estate agency).⁷³ Increasing scrutiny in this regard is useful in improving registration compliance among dealers and ensuring that non-compliance does not go ignored.⁷⁴ It is suggested for HMRC to adopt similar measures in seeking out non-compliant dealers and issuing penalties for failing to register with HMRC for AML supervision.⁷⁵

It is also beneficial to highlight penalties that non-compliant dealers face due to a failure to register.⁷⁶ This acts as deterrence which is useful in improving registration compliance.⁷⁷ Criminal and civil prosecution has been recognised as deterrence for regulated entities by shifting their focus from profit toward meaningful AML compliance.⁷⁸ Emphasising that non-compliant dealers are likely to face financial penalties, the possibility of withdrawing dealer status and their details being published on Gov.UK is therefore helpful in this regard.⁷⁹ HMRC presently has a page dedicated to, ‘businesses that have not complied with the regulations, and suspensions and

⁶⁸ See C2.

⁶⁹ See Chapter Two s 2.3, Chapter Three s 3.3, s 4.3, A1, C1, C2, Y1, Y2, W1, W2.

⁷⁰ See Chapter Two s 3.3, HMRC, ‘Guidance: How HMRC Checks on Businesses registered for Money Laundering Supervision’ (2014).

⁷¹ HMRC, ‘Corporate Report: HMRC Anti-Money Laundering Supervision Annual Assessment’ (2021).

⁷² *Ibid.*

⁷³ *Ibid.*, David Byers, ‘Purplebricks fined after money laundering breach’ *The Times* (London 18 August 2020) <<https://www.thetimes.co.uk/article/purplebricks-fined-after-money-laundering-breach-svmwdsnrk>> accessed 20th March 2022.

⁷⁴ Kris Hinterseer, ‘The Wolfsberg Anti Money Laundering Principles’ (2001) 5 *Journal of Money Laundering Control* 231.

⁷⁵ HMRC, ‘Corporate Report: HMRC Anti-Money Laundering Supervision Annual Assessment’ (2021).

⁷⁶ *Ibid.*

⁷⁷ Alexander Dill, *Anti Money Laundering Regulation and Compliance: Key Problems and Practice Areas* (Edward Elgar 2021) 159.

⁷⁸ *Ibid.*

⁷⁹ HMRC, ‘Anti-Money Laundering Supervision: Guidance for High Value Dealers’ (2020).

cancellations of registration’, which is updated annually.⁸⁰ It is interesting to note that 8 out of 10 dealers were not aware of any penalties for failure to register⁸¹ and that when dealers were informed of the penalties they may face the majority indicated a willingness to comply with the requirement.⁸² One dealer stated, ‘they need to make this very clear on their guidance as I didn’t know that and I’ve been in the industry for years’.⁸³ Another indicated, ‘I’ll be speaking to my business partner about this as we cannot afford to be facing any penalties’.⁸⁴ Thus, highlighting the potential penalties that dealers face for failing to register with HMRC is beneficial in increasing compliance by acting as a deterrent.

Additionally, providing dealers with case studies is also useful in helping them understand the importance of compliance with registration requirements.⁸⁵ Providing practical examples has been recognised as helping people learn by making the information clearer and easier to understand.⁸⁶ One dealer stated, ‘providing real-life examples would be useful in helping understand the bigger picture of money laundering operations’.⁸⁷ Providing case studies that showcase how criminals have taken advantage of unregistered dealers for money laundering operations will assist in improving dealers understanding in relation to how their day to day sales can be utilised in money laundering operations, as well as providing an incentive for dealers to protect their business from being used for such operations.⁸⁸ In this regard, the NRA includes case studies for various aspects of AML, such as dealers that have failed to apply sufficient CDD and cross-border controls.⁸⁹ These can be used as a basis when drafting case studies in relation to registration and communicating the vulnerabilities that exist within HVD businesses that fail to register.⁹⁰

⁸⁰ HMRC, ‘Businesses that have not Complied with the Regulations, and Suspensions and Cancellations of Registration’ (2021).

⁸¹ See A2, J1, C1, W1, W2, Y1, Y2, J2.

⁸² *Ibid.*

⁸³ See C2.

⁸⁴ See W2.

⁸⁵ National Research Council, *How People Learn* (National Academies Press 2000) 20.

⁸⁶ *Ibid.*

⁸⁷ See C2.

⁸⁸ *Ibid.*

⁸⁹ HM Treasury, ‘National Risk Assessment of Money Laundering and Terrorist Financing’ (2020) 145.

⁹⁰ *Ibid.*

Dealers have also been identified as avoiding their AML obligations by adopting no cash policies.⁹¹ This allows dealers to conduct their business without needing to register for AML.⁹² Upon reliance on the suggestions made above, the removal of the threshold limit is beneficial in capturing a larger number of dealers within the AML regime.⁹³ Such an approach will also close the loophole which presently allows dealers to avoid AML controls and subsequently oblige all dealers to register for AML supervision regardless of how much they accept in cash.⁹⁴ This reemphasises the need for the threshold approach to be removed to ensure that the AML regime captures all situations within luxury goods sectors which pose a money laundering risk.⁹⁵

Registration rates may also be low due to dealers opting to adopt alternative approaches instead of registering with HMRC for AML supervision.⁹⁶ For example, Chapter Two highlighted that some dealers employ internal individuals to handle AML matters instead of registering with HMRC and consider such controls as adequate in reducing the risk of money laundering.⁹⁷ One dealer stated, ‘well I’ve not faced any penalties for adopting the alternative approaches so I can’t say I’m in a hurry to register or worried about how I operate’.⁹⁸ These measures run contrary to the MLRs and generate money laundering risk as dealers are not in a position to self-regulate themselves in relation to AML.⁹⁹ There is an increased need for HMRC to seek out these dealers and ensure that non-compliance is prosecuted.¹⁰⁰ This will not only assist in improving registration among dealers but also emphasise the importance of complying with the MLRs.¹⁰¹

⁹¹ See Chapter Three s 3.3, Financial Action Task Force, ‘United Kingdom Mutual Evaluation Report’ (2018) 77.

⁹² *Ibid.*

⁹³ See s 4.2.

⁹⁴ *Ibid.*

⁹⁵ *Ibid.*

⁹⁶ See Chapter Two s 2.3.

⁹⁷ *Ibid.* A1, A2, C1, C2, J1, J2, Y1, Y2, W1, W2.

⁹⁸ See Y2.

⁹⁹ See Chapter Two s 2.3

¹⁰⁰ Esman Kurum, ‘RegTech Solutions and AML Compliance: What Future for Financial Crime’ (2020) 3 *Journal of Financial Crime* 56.

¹⁰¹ *Ibid.*

Compliance with the requirement to register can also be significantly improved by increasing the support provided to dealers.¹⁰² The guidance issued by HMRC for HVDs does not dedicate a section to registration as it does for other aspects of AML such as CDD and SAR.¹⁰³ Consequently, there is an absence of detailed information which explains registration.¹⁰⁴ Although the Gov.UK website addresses registration on a universal level for all regulated entities, improvements can be made to increase HVDs understanding of registration.¹⁰⁵ Dealers were questioned regarding suggestions they would find useful in helping them comply with their registration obligations.¹⁰⁶ One HVD suggested, ‘we need information which explains what the process entails, we can’t just be expected to know these things’.¹⁰⁷ Another HVD proposed, ‘I think it will be useful to be provided step by step instructions about registering so we know exactly what we need to do and how to do it’.¹⁰⁸

Chapter Four acknowledged the support provided to dealers in Australia, Trinidad and Tobago, and the Cayman Islands as beneficial in improving the UK's registration process.¹⁰⁹ This included AUSTRAC's inclusion of general information within its registration process in ‘completing the form’, and ‘submitting the form’.¹¹⁰ In addition to this, the Australian Government has been recognised for issuing an ‘Explanatory Guide for Enrolment and Registration’ and a guidance document for Motor Vehicle Dealers which provides step-by-step detailed instructions in completing aspects of the registration process.¹¹¹ Breaking requests down into step-by-step instructions has been recognised as a useful method of clarifying instructions to ensure correct application and improve understanding.¹¹² Providing step-by-step instructions in relation to the registration

¹⁰² See Chapter Two s 2.3.

¹⁰³ HMRC, ‘Anti-Money Laundering Supervision: Guidance for High Value Dealers’ (2020).

¹⁰⁴ Ibid.

¹⁰⁵ See A1, A2, C1, C2, J1, J2, Y1, Y2, W1, W2.

¹⁰⁶ Ibid.

¹⁰⁷ See J2.

¹⁰⁸ See C1.

¹⁰⁹ See Chapter Four s 4.4.

¹¹⁰ Ibid, Australia Transaction Reports and Analysis Centre, ‘About this Form’ <<https://forms.business.gov.au/smartforms/servlet/SmartForm.html?formCode=ATRC1001H>> accessed 2nd October 2021.

¹¹¹ See Chapter Four s 4.4, Australia Transaction Reports and Analysis Centre, ‘Business Profile Form: Explanatory Guide for Enrolment and Registration’ (2020).

¹¹² Kay Inaba, Stuart Parsons, Robert Smillie, *Guidelines for Developing Instructions* (CRC Press, 2017)

process within the guidance issued for dealers is useful in improving dealers awareness and understanding of the registration process, and enables dealers to recognise exactly what the process involves and how to comply with registration obligations correctly.¹¹³

Additionally, MLR100 fails to include an option for dealers to seek help or guidance when completing the form.¹¹⁴ Instead, the only opportunity for dealers to seek help can be found at the end of the guidance issued by HMRC, which provides the generic contact details for communicating with HMRC if regulated entities have any questions.¹¹⁵ The registration forms within Trinidad and Tobago and the Cayman Islands are considered user-friendly by including options to seek assistance and presenting information into smaller categories within the form to make navigation easy for users.¹¹⁶ In this regard, dealers stated that it would be useful to have an option through which they can receive help and support in completing the registration form.¹¹⁷ One dealer proposed the inclusion of an online chat assistant and stated that this would ‘bring HMRC’s approach in line with modern technology’.¹¹⁸ The study advocates for the registration process to be improved to provide dealers with the opportunity to seek assistance.¹¹⁹ This can be achieved through various methods, such as a query form, an online chat assistant or listing frequently asked questions.¹²⁰ Indeed, this support will assist dealers in completing the registration form efficiently and improve their understanding of what is required when completing the form.¹²¹

Access to the registration process also requires improvement to assist in increasing compliance.¹²² The government gateway does not include a direct link to

¹¹³ Ibid.

¹¹⁴ Ibid, HMRC, ‘Money Laundering Application for Registration’ <https://public-online.hmrc.gov.uk/lc/content/xfaforms/profiles/forms.html?contentRoot=repository:///Applications/BusinessTax_iForms/1.0/MLR100&template=MLR100.xdp> accessed 15th November 2021.

¹¹⁵ HMRC, ‘Anti-Money Laundering Supervision: Guidance for High Value Dealers’ (2020).

¹¹⁶ See Chapter Four s 4.4, Financial Intelligence Unit Trinidad and Tobago, ‘Registration of Supervised Entities’ (2018); Department of Commerce and Investment, ‘Application for Registration of Designated Non- Financial Business and Professions - Real Estate & Dealers in Precious Metals and Stones’ (2019).

¹¹⁷ See C2, A1, A2.

¹¹⁸ See C2.

¹¹⁹ HMRC, ‘Money Laundering Application for Registration’ <https://public-online.hmrc.gov.uk/lc/content/xfaforms/profiles/forms.html?contentRoot=repository:///Applications/BusinessTax_iForms/1.0/MLR100&template=MLR100.xdp> accessed 15th November 2021.

¹²⁰ Scott Tilley, Haey Rosenblatt, *Systems Analysis and Design* (Ebook, 2016) 645.

¹²¹ Ibid.

¹²² See Chapter Three s 3.3.

navigate users to the registration form.¹²³ Subsequently, MLR100 can only be accessed if it is specifically searched for within the government website or through a web browser.¹²⁴ Individuals who are unaware of the name of the registration form or their requirement to register online will therefore struggle to locate the form.¹²⁵ This also excludes individuals who wish to complete the form by hand or do not have access to the internet.¹²⁶ The approach adopted by AUSTRAC is useful since it sends the registration form and guidance to motor vehicle dealers via email and post, making it accessible for all.¹²⁷ Additionally, the guidance contains a direct link to the registration form making it easy for dealers to locate the form and complete it.¹²⁸ The Cayman Islands and Trinidad and Tobago also provide a PDF format of the registration form which allows entities to download the form and fill it out in pen if preferred, with an option to post the form as well as email.¹²⁹ Furthermore, the Cayman Islands registration form allows individuals to complete the registration process even if they are unsure about certain questions and therefore leave them blank.¹³⁰ These approaches help make registration more accessible for dealers.¹³¹ It is suggested for HMRC to include a PDF version of the registration form that allows individuals who are not confident in technology to complete registration.¹³²

The study has also identified that the registration process requires fees to be paid by dealers.¹³³ Chapter Three highlighted dealers' reluctance and frustration in having to pay such fees, especially upon consideration of the fact they are required to bear the financial burden of implementing AML controls for which they receive no payment.¹³⁴ The analysis of the registration process in other jurisdictions has indicated that dealers

¹²³ Ibid.

¹²⁴ Such as searching 'Money Laundering registration Form MLR100 within a Google search bar.

¹²⁵ Ibid.

¹²⁶ See A1, A2, C1, C2, J1, J2, Y1, Y2, W1, W2.

¹²⁷ Australia Transaction Reports and Analysis Centre, 'Business Profile Form: Explanatory Guide for Enrolment and Registration' (2020).

¹²⁸ Ibid.

¹²⁹ Financial Intelligence Unit Trinidad and Tobago, 'Registration of Supervised Entities' (2018); Department of Commerce and Investment, 'Application for Registration of Designated Non- Financial Business and Professions - Real Estate & Dealers in Precious Metals and Stones' (2019).

¹³⁰ Ibid.

¹³¹ Ibid.

¹³² Ibid.

¹³³ See Chapter Three s 3.3, A1, A2, C1, C2, J1, J2, Y1, Y2, W1, W2.

¹³⁴ Ibid.

are not required to pay a fee to gain registered status.¹³⁵ Nor do they require renewal fees.¹³⁶ The OECD states that reducing compliance costs (in this case, the registration fee) has been recognised as creating a more favourable business environment and improving compliance.¹³⁷ Therefore, eliminating the fees involved in registration assists in alleviating dealers discontent concerning the fees incurred and improve compliance.¹³⁸

Furthermore, in relation to fees, it is important to highlight that presently there appear to be inconsistencies in the fees displayed within the guidance issued by HMRC¹³⁹ and the fees listed within the MLR100 Registration Form.¹⁴⁰ In this regard, MLR100 lists a £100 non-refundable application charge that new customers need to pay to make an application to be registered for AML supervision and a £115 fee for each set of premises used by the business.¹⁴¹ However, the Government website states that a £300 fee must be paid for each premise included in an application, an approval process fee of £40 to check dealers for relevant criminal convictions and a renewal fee is £300 for each of the premises shown on the application at the time of renewal.¹⁴² Whilst the dealers interviewed did not realise this discrepancy if fees do continue to be required then this such information needs to be accurate since this will only create confusion in relation to compliance.¹⁴³

A final factor to address is the ability of criminals to register as dealers in an attempt to gain a legitimate appearance and conceal criminal funds.¹⁴⁴ It is positive to note that HMRC has altered its verification and registration process in an attempt to strengthen its ability to keep criminal businesses off the register.¹⁴⁵ HMRC states that it intends to

¹³⁵ See Chapter Four s 4.3.

¹³⁶ Ibid.

¹³⁷ OEDC, *Regulatory Compliance cost Assessment Guidance* (OECD Publishing 2014).

¹³⁸ Ibid.

¹³⁹ HMRC, 'Anti-Money Laundering Supervision: Guidance for High Value Dealers' (2020).

¹⁴⁰ HM Revenue & Customs, 'Money Laundering Regulations Application Form for Registration (MLR100)' <<https://public-online.hmrc.gov.uk/lc/content/xfafoms/profiles/forms>> accessed 25th March 2020.

¹⁴¹ Ibid.

¹⁴² HMRC, 'Anti-Money Laundering Supervision: Guidance for High Value Dealers' (2020).

¹⁴³ Gov.UK, 'Fees You'll Pay for Money Laundering Supervision' <<https://www.gov.uk/guidance/money-laundering-regulations-registration-fees#premises-registration-fee>> accessed 2nd December 2021.

¹⁴⁴ See Chapter Two s 2.3, HM Treasury, 'UK National Risk Assessment of Money Laundering and Terrorist Financing' (2020).

¹⁴⁵ HMRC, 'Corporate Report: HMRC Anti-Money Laundering Supervision Annual Assessment' (2021).

continue making the registration process robust and consequently expects refusals to increase in the future.¹⁴⁶ However, the latest report merely indicates that between 2019 and 2020 HMRC rejected 1.7% of registration applications.¹⁴⁷ Not only is this less than in previous years, but this is also an increasingly small percentage of rejections.¹⁴⁸ This fall in rejections indicate may indicate that registrations are working, or that money launderers getting better at circumventing the registration process.¹⁴⁹ The study suggests efforts to continue in this regard in ensuring that dealers that apply to register for AML are legitimate.¹⁵⁰

5.4 Assessing Anti Money Laundering Risk

The MLRs specify that dealers must adopt a RBA to AML however, the analysis has indicated that dealers are not aware of this obligation, and this lack of awareness results in non-compliance with the regulations.¹⁵¹ Outreach activities such as forums, conferences, workshops, and training events are recognised as helpful in increasing awareness and understanding of AML obligations.¹⁵² HMRC fails to engage in outreach initiatives for dealers that raise awareness of the RBA to money laundering.¹⁵³ Dealers allocated their lack of awareness of the RBA to HMRC, ‘If I had been contacted about being required to adopt such an approach by HMRC then I’d be aware of it’¹⁵⁴ and, ‘how can HMRC expect us dealers to know about risk-based money laundering when it fails to communicate it to us’.¹⁵⁵ Dealers unaware of the obligation to implement risk-based controls generate money laundering risk by engaging in practices such as accepting HVPs in cash without any AML controls.¹⁵⁶ Further measures are necessary in ensuring that

¹⁴⁶ Ibid.

¹⁴⁷ Ibid.

¹⁴⁸ Ibid.

¹⁴⁹

¹⁵⁰ Ibid.

¹⁵¹ See Chapter Two s 2.4, Chapter Three s 3.4, A1, A2, C1, C2, W1, W2, Y1, Y2, J1, J2.

¹⁵² Financial Action Task Force, ‘Conducting Relevant Outreach’ (2013).

¹⁵³ See Chapter Two s 2.4, Chapter Three s 3.4.

¹⁵⁴ See J2.

¹⁵⁵ See A1

¹⁵⁶ See Chapter Two s 2.4, C1, J2, Y2.

dealers acknowledge their risk-based obligations under the MLRs and understand the potential money laundering risks which exist within their business practices.¹⁵⁷

The importance of communicating risk to project stakeholders has been recognised as pivotal within a governance process.¹⁵⁸ Chapter Four identified that Trinidad and Tobago hosts seminars which provide regulated entities with information regarding their AML obligations, including the RBA.¹⁵⁹ Providing seminars which address the RBA is beneficial for dealers in increasing their knowledge, understanding, awareness, and compliance.¹⁶⁰ Additionally, seminars allow regulated entities to ask questions regarding the RBA, gain useful feedback and provide a platform for dealers to converse with one another in relation to AML obligations.¹⁶¹ Moreover, seminars which are recorded and uploaded online are beneficial for regulated entities to refer back to when required.¹⁶² It is interesting to note that The Law Society engages in various outreach initiatives to assist legal professionals in raising awareness of their obligations in preventing money laundering through a risk-based approach.¹⁶³ These include video footage which explains vital aspects of the RBA, training events, workshops, and guidance.¹⁶⁴ These resources provide useful templates for HMRC to consider when engaging in outreach initiatives for dealers, especially since the information delivered regarding the RBA is transferable across sectors.¹⁶⁵

Although HMRC has issued guidance for dealers which addresses the RBA, various improvements are useful in making this accessible and in further improving dealers' knowledge and understanding.¹⁶⁶ It is suggested for HMRC's guidance to be sent

¹⁵⁷ Ibid.

¹⁵⁸ Joseph Arvai, 'Using Risk Communication to Disclose the Outcome of a Participatory Decision-Making Process: Effects on the Perceived Acceptability of Risk-Policy Decisions' (2003) 23 *International Risk Analysis Journal* 21; Gregor Gossy, *A Stakeholder Rationale for Risk Management: Implications for Corporate Finance Decisions* (Springer 2008) 135; Andreas Klinke, 'Public Understanding of Risk and Risk Governance' (2021) *Journal of Risk Research* 45.

¹⁵⁹ See Chapter Four, s 4.5, Financial Intelligence Unit Trinidad and Tobago, 'Anti Money Laundering/ Outreach Virtual Seminar' <<https://fiu.gov.tt/about-us/events/>> accessed 20th October 2021.

¹⁶⁰ Ibid.

¹⁶¹ Ibid.

¹⁶² Ibid.

¹⁶³ The Law Society, 'Anti Money Laundering Initiatives' <<https://www.lawsociety.org.uk/topics/anti-money-laundering/>> accessed 20th May 2021.

¹⁶⁴ Ibid.

¹⁶⁵ Ibid.

¹⁶⁶ HMRC, 'Anti-Money Laundering Supervision: Guidance for High Value Dealers' (2020).

out to dealers via email or post to ensure that dealers are able to utilise it to their advantage since the analysis identified that dealers are unaware of its existence and had therefore not accessed it.¹⁶⁷ The present guidance states that regulated entities must assess the risk of money laundering operations and provides information on how to adopt the RBA however, it fails to provide an explanation of risk from a luxury goods context.¹⁶⁸ Dealers demonstrated an absence of understanding of the money laundering risks that exist within luxury goods sectors.¹⁶⁹ In improving the guidance, Chapter Four acknowledged that the information provided to dealers in Canada explains what is meant by risk in general terms, as well as what it means in relation to money laundering within luxury goods sectors.¹⁷⁰ These explanations allow dealers to differentiate between the two situations and recognise the importance of adopting a RBA to mitigate money laundering operations from taking place.¹⁷¹ Improving the present guidance to include an explanation of risk-based AML means from a luxury goods context is recommended in helping dealers understand the risks which exist and to contextualise the significance of the approach.¹⁷²

Additionally, Canada, the Cayman Islands, and Australia have been recognised as helping dealers understand and identify money laundering risks through the publication of ‘risk classification factors’ and ‘risk indicators’.¹⁷³ This information is useful for dealers that lack knowledge of money laundering as it allows them to understand the various risks that their businesses may be exposed to.¹⁷⁴ Dealers highlighted the need for such information, ‘I’m not an AML expert so I personally suggest for HMRC to give us pointers of what to look out for’¹⁷⁵ and, ‘I think when we’re required to adopt business controls in accordance to money laundering risks, which is a very complex area of law

¹⁶⁷ Ibid, A1, A2, C1, C2, W1, W2, Y1, Y2, J1, J2.

¹⁶⁸ HMRC, ‘Assess your Business for Money Laundering Supervision’ <<https://www.gov.uk/guidance/money-laundering-regulations-risk-assessments>> accessed 10th October 2021.

¹⁶⁹ See Chapter Two s 2.4, See A1, A2, C1, C2, W1, W2, Y1, Y2, J1, J2.

¹⁷⁰ See Chapter Four s 4.5, Financial Transaction and Reports Analysis Centre of Canada, ‘Risk Assessment Guidance’ (2017).

¹⁷¹ Ibid.

¹⁷² Financial Action Task Force, ‘Guidance for a Risk-Based Approach: Effective Supervision and Enforcement by AML/CFT Supervisors of the Financial Sector and Law Enforcement’ (2015).

¹⁷³ See Chapter Four s 5.4; Cayman Islands Monetary Authority, ‘Guidance Notes on Assessing Risks and Applying a Risk-Based Approach (2020).

¹⁷⁴ Ibid.

¹⁷⁵ See W1.

for dealers like myself, then we need to be provided with a template or checklist of the type of risks to consider'.¹⁷⁶ It is encouraging to notice that HMRC has recently issued guidance which includes 'risk characteristics', 'risk indicators', and 'risks common to all dealers'.¹⁷⁷ This provides detailed explanations of high-risk factors and potential situations of how these may occur in dealers day to day operations.¹⁷⁸ It is suggested for a link to this guidance to be placed within the guidance issued for dealers to provide ease in accessing the support and in ensuring that dealers are aware of it.¹⁷⁹

Furthermore, knowledge and understanding of the RBA approach can also be improved by providing dealers with an opportunity to ask HMRC questions and publishing these online for dealers to access when required.¹⁸⁰ FAQs are recognised as beneficial in communicating information to individuals and assisting in their understanding.¹⁸¹ One dealer suggested for HMRC to include FAQs of the RBA as a helpful guide to refer to when they are faced with a situation that requires clarification.¹⁸² In this regard, FinCEN publishes FAQs sent by regulated entities in relation to the RBA.¹⁸³ These help provide detailed information to dealers and have been acknowledged as reflecting the US's ongoing commitment to providing current and consistent guidance on risk-based policies.¹⁸⁴ FAQs will therefore assist in improving dealers' experience on the HMRC guidance website, as well as providing quick and useful information which helps dealers in reaching a decision and reduces time when needing answers.¹⁸⁵ Furthermore, displaying FAQs online demonstrates that the regulator is taking note of questions sent by dealers and actively trying to assist regulated entities in fulfilling their AML obligations in adopting the RBA.¹⁸⁶

¹⁷⁶ See Y2.

¹⁷⁷ HM Treasury, 'Guidance: Understanding Risks and Taking action for High Value Dealers' (2021).

¹⁷⁸ George Plumley, *Website Design and Development* (2010 Wiley) 156.

¹⁷⁹ HMRC, 'Anti-Money Laundering Supervision: Guidance for High Value Dealers' (2020).

¹⁸⁰ See Chapter Four s 4.5.

¹⁸¹ Financial Action Task Force, 'Conducting Relevant Outreach' (2013).

¹⁸² See J2.

¹⁸³ Ibid, Financial Crimes Enforcement Network, 'Guidance Notes for Dealers, Including Certain Retailers, of Precious Metals, Precious Stones, or Jewels, on Conducting a Risk Assessment of Their Foreign Suppliers' (2008).

¹⁸⁴ Nicholas Ryder, *Money Laundering – An Endless Cycle?* (Routledge 2012) 46.

¹⁸⁵ Ibid.

¹⁸⁶ Ibid, George Plumley, *Website Design and Development* (2010 Wiley) 140.

Whilst the RBA seeks to provide entities with the flexibility required in adopting AML controls in accordance to the individual risks exposed to the business, this vagueness has been recognised as making compliance difficult in practice.¹⁸⁷ Dealers did not feel equipped to identify money laundering risks due to a lack of knowledge and understanding in this regard.¹⁸⁸ The flexibility is necessary in allowing regulated entities to tailor their AML controls, however further support is required for dealers to correctly and confidently comply with this obligation.¹⁸⁹ In this respect, Canada and Trinidad and Tobago provide valuable support to dealers by simplifying the risk assessment into stages which are easy to follow.¹⁹⁰ Similarly, within the UK the FCA also simplifies the RBA for financial institutions through guidance which is split into stages that entities are required to consider/ follow.¹⁹¹

Additionally, AUSTRAC ensures that regulated entities consider all aspects required within the RBA through a ‘checklist’ and ‘template’ which provides much-needed direction.¹⁹² Dealers indicated the benefits of such an approach, ‘based upon the fact that I know very little about anti-money laundering, it would be useful for the RBA to be simplified into clear stages that I can then follow and feel confident in’.¹⁹³ Indeed, a one size fits all approach is impossible to draw up for dealers in relation to adopting a RBA since each business is exposed to a varying level of money laundering risks and vulnerabilities.¹⁹⁴ Thus, although the flexibility is acknowledged by dealers as causing vagueness within the RBA, it is necessary in ensuring that dealers are able to tailor their risk-based controls.¹⁹⁵ Subsequently, it is recommended for attention to be allocated to improving dealers' ability to identify the money laundering risks within their organisation to adopt measures to mitigate against such risks correctly.¹⁹⁶

¹⁸⁷ See Chapter Two s 2.4, Chapter Three s 3.4.

¹⁸⁸ See A1, A2, C1, C2, W1, W2, Y1, Y2, J1, J2.

¹⁸⁹ Ibid.

¹⁹⁰ Financial Transaction and Reports Analysis Centre of Canada, ‘Risk Assessment Guidance’ (2017).

¹⁹¹ Financial Conduct Authority, ‘Anti Money Laundering Systems and Controls’ (2021).

¹⁹² Australia Transaction Reports and Analysis Centre ‘A Guide to Preparing and Implementing an AML CTF program’ (2020).

¹⁹³ See C2.

¹⁹⁴ Financial Action Task Force, ‘Guidance for a Risk-Based Approach: Effective Supervision and Enforcement by AML/CFT Supervisors of the Financial Sector and Law Enforcement’ (2015).

¹⁹⁵ See Chapter Two s 2.4, Chapter Three s 2.4.

¹⁹⁶ See A1, A2, C1, C2, W1, W2, Y1, Y2, J1, J2.

The study also identified that the risk-based approach to AML conflicts with dealers' business aims and is therefore not favoured within their practices.¹⁹⁷ Dealers indicated that revenue was their primary objective and that anything that restricts this is not viewed positively.¹⁹⁸ Implementing controls in relation to the RBA is recognised as potentially reducing income for the business and therefore dealers do not allocate any attention or importance to this obligation.¹⁹⁹ In overcoming this issue, it is helpful to provide dealers with an explanation of the merits of adopting the RBA for their day-to-day operations and the advantages that it brings to the business.²⁰⁰ The guidance issued in Trinidad and Tobago highlights the benefits of the RBA for regulated entities and clarifies the advantages provided to their businesses by implementing such controls.²⁰¹ In this regard, HMRC has also issued briefings which highlight the benefits of risk-based tax compliance to allow individuals to recognise the benefits of the approach and improve compliance.²⁰² It is suggested for the present risk-based guidance issued by HMRC be further improved to include an explanation of the benefits of adopting the RBA for dealers.²⁰³ This may include advantages of the RBA: protecting businesses from criminal abuse, ensuring that systems are in place to identify and prevent fraudulent sales, allowing dealers to mitigate the risk of money laundering operations, and encouraging legitimate business.²⁰⁴ Whilst it is impossible to alter dealers' priorities within their business practices, these incentives are useful in helping dealers recognise the value of RBA AML which is useful in improving compliance.²⁰⁵

5.5 Customer Due Diligence

¹⁹⁷ Ibid, See Chapter Two s 2.4, Chapter Three s 3.4.

¹⁹⁸ See A1, C1, C2, W1, Y1, Y2, J2.

¹⁹⁹ Ibid.

²⁰⁰ Dawn Batchelor, 'Risk Based Compliance Monitoring' (1999) 1 *Journal of Financial Regulation and Compliance* 7.

²⁰¹ See Chapter Four s 4.5, Financial Intelligence Unit Trinidad and Tobago, 'Money Laundering and Terrorist Financing Risk' (2018).

²⁰² HMRC, 'Our Approach to Risk Based Tax Compliance' (2021).

²⁰³ HMRC, 'Anti-Money Laundering Supervision: Guidance for High Value Dealers' (2020).

²⁰⁴ Anna Simonova, 'The Risk Based Approach to Anti- Money Laundering: Problems and Solutions' (2011) *Journal of Money Laundering Control* 14.

²⁰⁵ Ibid.

CDD helps dealers identify their customers and ensure they are who they state they are.²⁰⁶ Acquiring this information and understanding the reasoning behind the clients' instructions places dealers in a better position to identify money laundering operations.²⁰⁷ In adopting this approach, HMRC has issued guidance to help dealers comply with their CDD obligations under the MLRs.²⁰⁸ However, dealers had not come across this guidance nor were they aware of its existence.²⁰⁹ In ensuring that dealers are able to utilise the guidance to their advantage, it is recommended for guidance to be sent to dealers via email or post, rather than relying on dealers to search for the document online.²¹⁰ This practice will also help demonstrate that HMRC is taking an active stance in helping dealers to comply with their CDD obligations, which is emphasised by Basel as a vital aspect of AML supervision.²¹¹

Improvements are useful in making the present guidance more user-friendly and engaging for dealers.²¹² Although the guidance considers several aspects of CDD such as the timing of CDD, non-compliance with CDD and, occasional transactions; the information is lengthy and difficult for dealers to engage with (as it includes 26 pages of textual information).²¹³ Providing readers with much information creates information overload, confusion, frustration, and loss of interest from the reader.²¹⁴ Studies have highlighted that when individuals are provided with masses of information they only consider certain parts of the information and ignore other parts.²¹⁵ To avoid this from occurring and making the guidance engaging, it is suggested for key aspects of CDD to be broken down into stages that dealers can easily refer to/ remember in practice.²¹⁶ It is useful to note that the Cayman Islands splits its CDD guidance into a five-part structure

²⁰⁶ Financial Action Task Force, 'The FATF Recommendations' (2020).

²⁰⁷ Ibid.

²⁰⁸ See Chapter Three s 2.5, HMRC, 'Anti-Money Laundering Supervision: Guidance for High Value Dealers' (2020).

²⁰⁹ See Chapter Two s 2.5, A1, A2, C1, C2, W1, W1, J1, J2, Y1, Y2.

²¹⁰ Ibid.

²¹¹ Basel Committee on Banking Supervision, 'Guidelines: Sound Management of risks related to Money Laundering and Financing of Terrorism' (2021).

²¹² See Chapter Two s 2.5, See Chapter Three s 3.5.

²¹³ HMRC, 'Anti-Money Laundering Supervision: Guidance for High Value Dealers' (2020).

²¹⁴ Mary Fitzpatrick, *Engaging Writing: Essential Skills for Academic Writing* (Pearson Education 2011).

²¹⁵ Ibid.

²¹⁶ Ibid.

which is clear to understand and apply for dealers.²¹⁷ These CDD instructions have been recognised as useful in improving compliance by making information accessible and easy to follow.²¹⁸ It is recommended for the CDD guidance to be simplified and streamlined to make it easier for dealers to follow and understand.²¹⁹

Additionally, dealers indicated they would find it helpful to be provided with examples of when to apply EDD and SDD systems to improve their understanding of which method of CDD is most relevant for the customer at hand.²²⁰ Practical examples have been acknowledged as improving understanding, providing better knowledge retention, and creating a deeper learning impact.²²¹ HMRC provides estate agency businesses with example scenarios of when to apply SDD and EDD controls within its guidance.²²² This includes information on what to do in a range of situations such as ‘when an estate agency business is unaware of the final buyer’, ‘failing to do CDD when an estate agency business is aware of the sale and the buyer’.²²³ Including similar examples within the guidance issued for dealers will assist in increasing knowledge, understanding, and application of CDD and how to tailor controls in response to the risk exposure within a situation.²²⁴

Whilst dealers understood the importance of verifying the identity of their customers this was largely due to the requirement being included within their business practices.²²⁵ CDD training is useful in improving dealers’ knowledge and understanding of their CDD obligations.²²⁶ All 10 dealers stated that training would be useful and they would be willing to attend training to ensure they are able to adopt correct CDD measures within their organisation.²²⁷ In particular, dealers explained that training would be useful in, ‘clarifying complex aspects of CDD such as EDD and SDD’,²²⁸ ‘explain the minimum

²¹⁷ Chapter Four s 4.5.

²¹⁸ Ibid, Financial Action Task Force, ‘Cayman Islands Mutual Evaluation Report’ (2019).

²¹⁹ See A1, A2, C1, C2, W1, W1, J1, J2, Y1, Y2.

²²⁰ Ibid, Chapter Two s 2.5, Chapter Three s 3.5.

²²¹ Peter Brown, Henry Reodiger, *Mark McDaniel, Make it Stick: The Science of Successful Learning* (Harvard University Press 2014).

²²² HMRC, ‘Guidance: Estate Agency Businesses Guidance Money Laundering Supervision’ (2021).

²²³ Ibid.

²²⁴ Ibid, A1, A2, C1, C2, W1, W1, J1, J2, Y1, Y2.

²²⁵ See Chapter Two s 2.5, Chapter Three s 3.5.

²²⁶ International Monetary Fund, ‘Implementing International Anti Money Laundering Standards’ (2020).

²²⁷ See A1, A2, C1, C2, W1, W1, J1, J2, Y1, Y2.

²²⁸ See A1.

standards for CDD in a variety of situations such as non-face to face customers and third parties (such as personal shoppers)²²⁹ as well as, ‘provide confidence when conducting CDD, without feeling like we need to keep checking our shoulder in the fear of not applying CDD correctly and facing prosecution’.²³⁰

Chapter Four identified that CDD training is provided by several jurisdictions to assist regulated entities in performing their obligations.²³¹ The training covers all aspects of CDD, including the process of identifying a customer, types of ID that can be accepted, and alterations to the process including non-face-to-face transactions.²³² Thus, proving dealers with CDD training is beneficial in improving their understanding and compliance.²³³ It is useful to acknowledge that several courses presently exist which address CDD requirements for individuals operating within regulated sectors.²³⁴ These courses are approved by Continuing Professional Development standards and provide training in relation to AML, including CDD requirements and how these are to be applied in practice.²³⁵ If HMRC cannot personally develop and deliver training that explains CDD requirements, it is suggested for dealers to be provided opportunities to attend the courses that presently exist.²³⁶ Individuals that have accessed these courses have stated they have increased their understanding and application of CDD, as well as improved their understanding of AML and adopting efficient controls to prevent criminal actions from taking place within the organisations.²³⁷

Additionally, Trinidad and Tobago conduct AML outreach awareness seminars for all supervised entities at least once a month.²³⁸ The Financial Intelligence Unit of Trinidad and Tobago also organises annual AML conferences addressing all aspects of

²²⁹ See J1.

²³⁰ See C2.

²³¹ See Chapter Four s 4.6.

²³² Ibid, Cayman Islands Government, ‘Designated Non-Financial Business Practices’ (2021).

²³³ Ibid.

²³⁴ Flick Learning, ‘Anti Money Laundering Training’ <<https://www.flicklearning.com/courses/financial-crime-training-courses/anti-money-laundering>> accessed 18th December 2021; UK Finance, ‘Conducting Effective Customer Due Diligence – September’ <<https://www.ukfinance.org.uk/events-training/conducting-effective-customer-due-diligence-september>> accessed 18th December 2021.

²³⁵ Ibid.

²³⁶ Ibid.

²³⁷ Ibid.

²³⁸ See Chapter Four s 4.6, Financial Intelligence Unit Trinidad and Tobago, ‘Anti Money Laundering Training’ <<https://fiu.gov.tt/compliance/becoming-aml-cft-compliant/aml-cft-training/>> accessed 20th March 2021.

the AML, including CDD controls.²³⁹ These initiatives are extremely beneficial in assisting dealers' understanding, application, and awareness of CDD controls.²⁴⁰ It is interesting to note that the Law Society also delivers conferences which address various aspects of CDD such as: how to conduct a risk assessment, how and when to tailor CDD to EDD and SDD.²⁴¹ These are recognised as assisting regulated entities in improving their understanding of CDD and ensuring they have effective controls in place.²⁴² Engaging in such initiatives will help increase dealers' knowledge and understanding of CDD.²⁴³

Further support is also required in assisting dealers to identify beneficial owners.²⁴⁴ Chapter Four acknowledged AUSTRAC's efforts in assisting dealers in this regard by issuing a 'factsheet' which explains how to verify beneficial owners.²⁴⁵ The factsheet simplifies stages in acquiring beneficial ownership which provides dealers with much-needed direction.²⁴⁶ Additionally, the guidance includes visual diagrams which make the process engaging.²⁴⁷ It is also useful to note that HMRC has issued a manual which explains beneficial ownership in the context of tax.²⁴⁸ This includes basic information regarding the concept of beneficial ownership and its importance.²⁴⁹ Issuing similar guidance in this regard to help dealers understand beneficial ownership and how to conduct CDD in relation to beneficial owners is recommended to improve compliance.²⁵⁰

²³⁹ Government of the Republic of Trinidad and Tobago, 'Anti Money Laundering Annual Conference' <<https://www.finance.gov.tt/2014/05/12/4th-annual-anti-money-laundering-conference/>> accessed 23rd March 2021.

²⁴⁰ Ibid.

²⁴¹ Law Society, 'Anti Money Laundering: Customer Due Diligence' <<https://www.lawsociety.org.uk/en/topics/anti-money-laundering/customer-due-diligence>> accessed 10th December 2021.

²⁴² Ibid.

²⁴³ Ibid.

²⁴⁴ See Chapter Two s 2.5, Chapter Three s 3.5.

²⁴⁵ See Chapter Four s 4.5, Australia Transaction Reports and Analysis Centre, 'Factsheet: Meeting your Beneficial Owner Obligations' (2018).

²⁴⁶ Ibid.

²⁴⁷ Ibid.

²⁴⁸ HMRC, 'International Manual: Double taxation treaties: Beneficial ownership: Importance of beneficial ownership' (2022).

²⁴⁹ Ibid.

²⁵⁰ Ibid.

The study acknowledged dealers' unfavourable views of CDD controls within their business practices.²⁵¹ The scrutiny, time, and potential financial losses due to CDD controls are recognised as creating negative outcomes for dealers.²⁵² These factors act as barriers to CDD compliance among dealers.²⁵³ In addressing these concerns and improving compliance it is useful to indicate the merits of applying CDD measures to dealers, with particular reference to how adequate CDD controls are useful for business practices.²⁵⁴ Dealers were not aware of how CDD controls within the MLRs can benefit their business and instead regarded the obligations as burdensome.²⁵⁵

In addressing this, the inclusion of information which highlights the benefits of CDD controls within the present guidance is useful.²⁵⁶ The guidance issued for DPMS in the Cayman Islands explains why CDD is important for dealers and the role it plays in helping detect and prevent money laundering operations.²⁵⁷ It is suggested for the guidance to explain the advantages of CDD such as, it protects organisations from being utilised by criminals; enables organisations to evaluate the extent to which the customer exposes it to risks; and allows businesses to make the best decisions to assist it in achieving its targets; it helps in ensuring that transactions are legitimate, it protects the business from fraudulent practices.²⁵⁸ Providing dealers with initiatives to adopt CDD procedures shifts the focus from considering CDD controls as burdensome to beneficial for the organisation.²⁵⁹

Zavoli and King's findings are also useful in addressing the issues voiced by dealers and improving compliance.²⁶⁰ They state that in the real estate context, estate agents manage the risk of losing a transaction by performing AML checks at an early

²⁵¹ See Chapter Three s 2.5.

²⁵² Ibid, A1, A2, C1, C2, W1, W1, J1, J2, Y1, Y2.

²⁵³ Ibid.

²⁵⁴ Patrick Kabamba, *Anti-Money Laundering and Know Your Customer* (Independently Published 2021).

²⁵⁵ Ibid.

²⁵⁶ HMRC, 'Anti-Money Laundering Supervision: Guidance for High Value Dealers' (2020).

²⁵⁷ See Chapter Four s 4.6, Financial Crimes Enforcement Network, 'Guidance Notes for Dealers, Including Certain Retailers, of Precious Metals, Precious Stones, or Jewels, on Conducting a Risk Assessment of Their Foreign Suppliers' (2018).

²⁵⁸ International Monetary Fund, 'Anti Money Laundering Benefits' (2020).

²⁵⁹ Ibid.

²⁶⁰ Ilaria Zavoli, Colin King, 'The Challenges of Implementing Anti- Money Laundering Regulation: An Empirical Analysis' (2021) 4 *Modern Law Review* 758.

stage, such as before putting an offer to their client – the vendor.²⁶¹ These pre-emptively CDD checks ensure that everything is in order and therefore if the transaction does proceed they reduce the risk of the sale collapsing at a later stage due to AML discrepancies.²⁶² Adopting a similar approach is useful for dealers that place an offer to customers for goods they wish to purchase.²⁶³ However, Zavoli and King raise concerns with this approach, stating that such a strategy will not always work, for example, where there is pressure to exchange contracts quickly it might not be possible to conclude full AML checks before completion.²⁶⁴ Such issues have also been recognised in the stocks and share context.²⁶⁵ Similarly from a luxury goods context businesses are pressured to ensure that sales meet financial targets and subsequently such an approach may not be favourable.²⁶⁶ Thus, lessons can be learnt from these industries in adopting CDD at an early stage to mitigate the risk of losing the client.²⁶⁷

The study has also indicated the need for increased scrutiny of non-compliant dealers to ensure that these practices are detected and prosecuted.²⁶⁸ The interviews showcased that dealers fail to implement CDD in accordance to the MLRs, with some opting to adopt alternative verification controls which run contrary to the requirements.²⁶⁹ This non-compliance generates an increased risk of money laundering.²⁷⁰ However, the number of penalties issued by HMRC to non-compliant dealers is extremely low.²⁷¹ Subsequently, there is a need for increased inspection of dealers in relation to the CDD controls they implement in practice and penalties issued for inadequate controls.²⁷²

Dealers were unaware of the repercussions they may face for non-compliance and subsequently allocated limited attention to CDD controls.²⁷³ Under the Money

²⁶¹ Ibid.

²⁶² Ibid.

²⁶³ Ibid.

²⁶⁴ Ibid.

²⁶⁵ Martin Gill and Geoff Taylor, 'Preventing Money Laundering or Obstructing Business? Financial Companies' Perspectives on "Know Your Customer" Procedures' (2004) 3 *British Journal of Criminology* 4.

²⁶⁶ See A1, A2, C1, C2, W1, W1, J1, J2, Y1, Y2.

²⁶⁷ Ibid.

²⁶⁸ See Chapter Two s 2.5, See Chapter Three s 3.5.

²⁶⁹ Ibid, A1, A2, C1, C2, W1, W2, J1, J2, Y1, Y2.

²⁷⁰ Ibid.

²⁷¹ HMRC, 'Corporate Report: HMRC Anti-Money Laundering Supervision Annual Assessment' (2021).

²⁷² Ibid.

²⁷³ Ibid.

Laundering Regulations, dealers can face penalties for breaches for failing to conduct CDD measures, as well as a £1,500 penalty administration charge.²⁷⁴ When informed of these penalties dealers demonstrated a willingness to comply with the MLRs, ‘I’m going to get my manager to make sure we have the correct CDD controls’²⁷⁵ and, ‘I’ll be speaking to my legal advisor about ensuring we comply with the CDD obligations’.²⁷⁶ It is suggested for the guidance to be improved to emphasise penalties for CDD non-compliance as a helpful deterrence to improve compliance.²⁷⁷ It is interesting to note that the Gov.UK website outlines penalties issued to non-compliant entities, such as HMRC issuing a record fine of £23.8 million to money service businesses for flouting Money Laundering Regulations, including CCD measures.²⁷⁸ Thus, adopting such an approach for non-compliant dealers is also beneficial in highlighting the importance of CDD compliance and encouraging dealers to ensure they have adequate controls within their business to identify clients.²⁷⁹

5.6 Reporting Suspicious Activity

Reporting suspicious activity is an important aspect of the UK’s AML regime as it alerts law enforcement with information of an individual’s activity being suspicious which assists in detecting money-laundering operations.²⁸⁰ However, the study has highlighted that dealers fail to comply with reporting requirements and submit SARs when faced with suspicious matters.²⁸¹ Various factors have been acknowledged to result in low reporting rates among dealers.²⁸² One of these includes dealers’ lack of basic knowledge and

²⁷⁴ Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017.

²⁷⁵ See W1.

²⁷⁶ See J1.

²⁷⁷ Daniele Nosenzo, Theo Offerman, Martin Sefton, ‘Encouraging Compliance: Bonuses Versus Fines in Inspection Games’ (2014) 3 *Journal of Law Economics and Organisation* 30.

²⁷⁸ HMRC, ‘HMRC issues record £23.8m fine for money laundering breaches’ <<https://www.gov.uk/government/news/hmrc-issues-record-238m-fine-for-money-laundering-breaches>> accessed 12th December 2021.

²⁷⁹ Ibid.

²⁸⁰ National Crime Agency, ‘Introduction to Suspicious Activity Reports’ (2021).

²⁸¹ See Chapter Two s 2.6, Chapter Three s 3.6, A1, A2, J1, J2, C1, C2, W1, W2, Y1, Y2.

²⁸² Ibid.

awareness of SARs and the National Crime Agency (NCA).²⁸³ When questioned about the guidance issued by HMRC which addresses SARs,²⁸⁴ none of the dealers had accessed the document nor were aware of the document being available for them to utilise.²⁸⁵ Dealers were also unaware of the SARs guidance and support issued by the NCA.²⁸⁶ In addressing this lack of awareness dealers suggested that paper forms of guidance be sent to them as not all individuals use the internet or have access to it.²⁸⁷

The subjectivity of ‘suspicion’ has also been flagged up by dealers as making compliance difficult.²⁸⁸ This issue has also been raised within other regulated sectors.²⁸⁹ The Law Commission allocated the lack of clarity in defining suspicion as contributing to ‘defensive reporting’.²⁹⁰ In clarifying suspicion, the Commission observed the prospect of amending Part 7 of POCA to include a statutory definition of suspicion.²⁹¹ However, two issues exist in implementing this approach.²⁹² First, as a matter of principle, an ordinary English word should only be defined in law where it is to take on a specific legal meaning distinct from the natural English one.²⁹³ Second, the considerable practical difficulties in formulating a precise yet practical legal definition that would add something to the ordinary, natural meaning of the word.²⁹⁴ Although dealers suggested that suspicion should be redefined to a simpler and clearer definition, legal consultants faced with the same issues highlighted that defining suspicion would be problematic.²⁹⁵ Additionally, Slaughter and May observe that ‘attempting to define what is a normal English word may leave potential reporters in a difficult position where they may feel suspicious in the ordinary sense of but not meet the elements of the definition’.²⁹⁶

²⁸³ Ibid.

²⁸⁴ Ibid, HMRC, ‘Anti-Money Laundering Supervision: Guidance for High Value Dealers’ (2020).

²⁸⁵ Ibid.

²⁸⁶ Ibid.

²⁸⁷ See C1, Y2.

²⁸⁸ See Chapter Two s 2.6, Chapter Three s 2.6, A1, A2, J1, J2, C1, C2, W1, W2, Y1, Y2.

²⁸⁹ Mohammed Emir Celik, ‘Regulated Sector Professionals and Reporting Suspicion of Money Laundering: is it a Disproportionate Burden?’ (2022) 2 *Journal of Money Laundering Control* 72.

²⁹⁰ Law Commission, ‘Anti Money Laundering: the SARs Regime’ (2019).

²⁹¹ Ibid.

²⁹² Ibid.

²⁹³ Ibid.

²⁹⁴ Ibid.

²⁹⁵ Ibid, Chapter Two s 2.6, Chapter Three s 2.6, A1, A2, J1, J2, C1, C2, W1, W2, Y1, Y2.

²⁹⁶ Slaughter and May, ‘Global Investigations Bulletin’ <

<https://my.slaughterandmay.com/insights/newsletters/global-investigations-bulletin-september-2021>> accessed 20th October 2021.

Subsequently, The Law Commission recommends a better approach as assisting regulated entities with the application of suspicion, rather than attempting to define it.²⁹⁷ In achieving this, it has been suggested for the Secretary of State to issue clear guidance which explains suspicion.²⁹⁸ This is understood to address difficult aspects such as ‘reasonable grounds for suspicion’ and clarify the approach that regulated entities must adopt in this regard.²⁹⁹ The proposals have been supported by various bodies including the Crown Prosecution Service, the City of London Police, The Metropolitan Police Service, and the NCA as providing clarity and consistency to SARs.³⁰⁰ Zavoli and King take this a step further by advocating for an approach which includes documentation that clarifies suspicion accompanied by supervisor-approved guidance for individual sectors resulting in greater clarity and consistency for EAs and other regulatees.³⁰¹ Sector-specific guidance which addresses suspicion from a luxury goods context has also been suggested by dealers as helpful in progressing their understanding.³⁰² The study advocates for further documentation explaining how to identify suspicion from a luxury goods context and to assist dealers in understanding, detecting and reporting suspicious matters.³⁰³

Furthermore, dealers’ knowledge of SARs can be further improved by providing additional support on best practices in submitting a useful SAR.³⁰⁴ In this regard, it is useful to acknowledge the guidance document issued by the Cayman Islands explaining ‘how to prepare and submit high-quality SARs’.³⁰⁵ It is encouraging to notice that the NCA has recently issued similar guidance which addresses ‘submitting better quality SARs’.³⁰⁶ The guidance includes extremely useful information on how to submit a SAR, how to structure a SAR, good practice tips as well as examples of useful SARs.³⁰⁷ This

²⁹⁷ Law Commission, ‘Anti Money Laundering: the SARs Regime’ (2019).

²⁹⁸ Ibid.

²⁹⁹ Ibid.

³⁰⁰ Ibid.

³⁰¹ Ilaria Zavoli, Colin King, ‘The Challenges of Implementing Anti- Money Laundering Regulation: An Empirical Analysis’ (2021) 4 *Modern Law Review* 769.

³⁰² See A2, J1, J2, W1, C2.

³⁰³ See A1, A2, J1, J2, C1, C2, W1, W2, Y1, Y2.

³⁰⁴ See Chapter Two s 2.6, Chapter Three s 3.6, A1, A2, J1, J2, C1, C2, W1, W2, Y1, Y2.

³⁰⁵ See Chapter Four, s 4.7, Financial Reporting Authority, ‘Guidance on Preparing and Submitting High Quality Suspicious Activity Reports’ (2020).

³⁰⁶ National Crime Agency, ‘Guidance on submitting better quality Suspicious Activity Reports’ (2021).

³⁰⁷ Ibid.

information is beneficial in improving dealers' knowledge and correct compliance with SAR.³⁰⁸ It is helpful to note that HMRC has included a link within its guidance for dealers to navigate to the NCA website and the support that it has issued.³⁰⁹ However, in ensuring that the guidance is accessible to all dealers it is suggested for the guidance also to be sent to dealers via email or post.³¹⁰

Workshops and seminars are also valuable in improving dealers' knowledge and understanding of SARs.³¹¹ Dealers suggested they would greatly benefit from initiatives which simplify reporting requirements and explain what to look out for in their industry.³¹² Trinidad and Tobago hosts regular seminars for dealers which address all aspects of reporting and provide clarity on how to judge suspicion of money laundering.³¹³ Seminars provide an opportunity for individuals to explore topics and increase their knowledge and understanding, which in turn, assists in improving compliance.³¹⁴ Furthermore, they provide the opportunity for networking and sharing thoughts and ideas with individuals in relation to the matter at hand.³¹⁵ From a dealer context, seminars are a beneficial method of providing sector-specific guidance concerning SARs and sharing experiences among dealers, both extremely useful in improving compliance.³¹⁶ Financial Crime Limited is an accredited provider delivering seminars across the UK which provide an overview of SARs and help individuals to understand their obligations, when to report suspicious activity and how to improve the quality of their SARs.³¹⁷ These courses are free and recognised as extremely useful in conveying the importance of SARs, providing a practical insight into reporting, and

³⁰⁸ See A1, A2, J1, J2, C1, C2, W1, W2, Y1, Y2.

³⁰⁹ Ibid.

³¹⁰ Ibid.

³¹¹ Ibid.

³¹² Ibid.

³¹³ See Chapter Four s 4.7, Financial Intelligence Unit Trinidad and Tobago, 'Anti Money Laundering/ Outreach Virtual Seminar' <<https://fiu.gov.tt/about-us/events/>> accessed 20th October 2021.

³¹⁴ Kate Exley, Reg Dennick, Andrew Fisher, *Small Group Teaching: Tutorials, Seminars and Workshops* (Taylor and Francis 2019) 45.

³¹⁵ Ibid.

³¹⁶ Ibid.

³¹⁷ Financial Crime Limited, 'Suspicious Activity Reports' <<https://www.financialcrimelimited.com/training-programmes>> accessed 20th June 2021.

increasing entities' confidence in reporting.³¹⁸ Thus, if HMRC cannot personally deliver seminars, it is suggested for these seminars be made available for dealers to utilise.³¹⁹

The study also recommends for the SARs process to be developed to include the merits of reporting.³²⁰ The analysis has demonstrated that dealers feel discontent in relation to SAR due to its potential negative implications on their profits.³²¹ The SARs process and the guidance issued by HMRC fails to highlight the merits of reporting.³²² In switching this narrative, it is helpful to acknowledge that AUSTRAC has issued video content which indicates the benefits derived from reporting such as how SARs stop criminal operations from taking place.³²³ This information is useful in improving compliance as the information provides dealers with incentives to comply with their obligations.³²⁴ It is encouraging to outline that the NCA explains the wide-reaching value derived from SARs, such as providing immediate opportunities to stop crime, arrest offenders, helping uncover potential criminality that needs to be investigated, and providing intelligence which is instrumental in locating sex offenders, tracing murder suspects.³²⁵ The inclusion of this information within the SARs process is suggested as beneficial in allowing dealers to appreciate the importance of reporting, which is helpful in improving compliance.³²⁶

Dealers also indicated the need for further measures to guide them through the reporting process.³²⁷ A reference guide is suggested as useful in ensuring that all required aspects are completed when submitting a report.³²⁸ In this regard, Australia and Trinidad and Tobago have issued checklists which help direct dealers through the reporting process

³¹⁸ Ibid.

³¹⁹ Ibid.

³²⁰ See A1, A2, J1, J2, C1, C2, W1, W2, Y1, Y2.

³²¹ See Chapter Two s 2.6, Chapter Three s 3.6, A1, A2, J1, J2, C1, C2, W1, W2, Y1, Y2.

³²² Ibid.

³²³ See Chapter Four s 4.7, Australia Transaction Reports and Analysis Centre, 'Suspicious Matter Reporting: Reference Guide' (2019).

³²⁴ Ibid.

³²⁵ National Crime Agency, 'The Value of SARs' <<https://www.nationalcrimeagency.gov.uk/what-we-do/crime-threats/money-laundering-and-illicit-finance/suspicious-activity-reports>> accessed 13th March 2021.

³²⁶ Ibid.

³²⁷ See Y2, J1, J2, W1.

³²⁸ Ibid.

and ensure they have completed each stage.³²⁹ This is also helpful in increasing the number of correctly submitted SARs which provide useful intelligence for law enforcement.³³⁰ The NRA has highlighted issues within all regulated sectors in relation to incomplete and incorrectly filed reports.³³¹ In addressing this, the Institute of Chartered Accountants in England and Wales has produced a ‘help sheet’ for accountants to refer to in ensuring they have followed all the necessary stages when submitting a SAR.³³² Subsequently, the inclusion of a checklist which outlines key aspects to consider when submitting a SAR is recommended as helpful in ensuring that dealers follow all the relevant stages of SARs.³³³

Stricter surveillance is necessary for assessing the extent to which dealers comply with their SARs requirements and identifying non-compliant dealers.³³⁴ There is an increased need for HMRC to raise awareness of the importance of compliance and the repercussions that dealers face for failing to do so.³³⁵ In achieving this, it is recommended for HMRC to emphasise the penalties that non-compliant dealers face.³³⁶ This will act as a deterrent and assist in improving compliance.³³⁷ Under POCA Individuals in regulated sectors commit an offence if they fail to make a disclosure in cases where they have knowledge or suspicion, that another person is engaged in money laundering.³³⁸ An offence under Section 330 is punishable by a maximum penalty or indictment, of up to 5 years imprisonment.³³⁹ The guidance issued by HMRC³⁴⁰ and the NCA³⁴¹ fails to outline these penalties. It is suggested for the guidance to include information regarding failure to comply with the reporting requirements since these are useful in providing a deterrent

³²⁹ See Chapter Four s 4.7, Australia Transaction Reports and Analysis Centre, ‘Suspicious Matter Reporting: Reference Guide’ (2019).

³³⁰ Ibid.

³³¹ HM Treasury, ‘UK National Risk Assessment of Money Laundering and Terrorist Financing’ (2020).

³³² Institute of Chartered Accountants in England and Wales, ‘Suspicious Activity Report Help sheet’ <<https://www.icaew.com/-/media/corporate/files/helpsheets/technical/suspicious-activity-reports.ashx?la=en>> accessed 12th May 2021.

³³³ Ibid.

³³⁴ See Chapter Two s 2.6, Chapter Three s 3.6, A1, A2, J1, J2, C1, C2, W1, W2, Y1, Y2.

³³⁵ Ibid.

³³⁶ Ibid.

³³⁷ Harjit Sandhu, ‘The Global Detection and Deterrence of Money Laundering’ (2000) 3 *Journal of Money Laundering Control* 23.

³³⁸ Proceeds of Crime Act 2002 s 330.

³³⁹ Ibid.

³⁴⁰ HMRC, ‘Anti-Money Laundering Supervision: Guidance for High Value Dealers’ (2020).

³⁴¹ National Crime Agency, ‘Guidance on submitting better quality Suspicious Activity Reports’ (2021).

effect which assists compliance.³⁴² Such an approach is also helpful in addressing the issue of dealers opting to adopt alternative approaches instead of SAR.³⁴³

However, it is important to ensure that a balance is struck between highlighting penalties that dealers face for non-compliance and placing dealers in a position where they feel the need to submit defensive SARs.³⁴⁴ Defensive filing exists in various jurisdictions where regulated entities have submitted an eye-watering high number of reports due to the fear of facing penalties for not filing SARs.³⁴⁵ Zavoli and King also highlight that defensive reporting takes place within the real estate sector, where estate agents err on the safe side and submit a report if there is any suspicion to be protected from regulators.³⁴⁶ In preventing this from occurring within luxury goods sectors, it is critical to ensure that dealers understand when to file a SAR.³⁴⁷ Additionally, the initiatives highlighted above such as workshops, and seminars which explain SARs are particularly useful in helping dealers understand when to file SARs and, provide them with the knowledge required to confidently decide between situations that require a SAR and situations that do not.³⁴⁸

Furthermore, it would be useful to provide dealers with feedback in relation to submitted SARs, as presently dealers would not know ‘if a submitted SAR is correct’.³⁴⁹ Feedback is acknowledged as useful in a legal environment and has many benefits, such as showcasing value, providing motivation, and allowing development and continued learning.³⁵⁰ As identified within the previous chapter, Caldera and Richards advocate for

³⁴² Selina Keesoony, ‘International Anti Money Laundering Laws: The Problems with Enforcement’ (2016) 19 *Journal of Money Laundering Control* 2.

³⁴³ *Ibid.*

³⁴⁴ Carl Brown, ‘Not enough needles and too much hay: the problem with Suspicious Activity Reports’ *Financial Crime* (US 2 February 2021) <<https://www.greworldforums.com/financial-crime/not-enough-needles-and-too-much-hay-the-problem-with-suspicious-activity-reports/719.article>> accessed 20th March 2021.

³⁴⁵ *Ibid.*

³⁴⁶ Ilaria Zavoli, Colin King, ‘The Challenges of Implementing Anti- Money Laundering Regulation: An Empirical Analysis’ (2021) 4 *Modern Law Review* 763.

³⁴⁷ XiaoTong Loh, ‘Suspicious Activity Reports Regime: Reforming Institutional Culture’ (2021) 2 *Journal of Money Laundering Control* 24.

³⁴⁸ *Ibid.*

³⁴⁹ See A1, A2, J1, J2, C1, C2, W1, W2, Y1, Y2.

³⁵⁰ Scott Slorach, Judith Embley, Peter Goodchild, Catherine Shepard, *Legal Systems and Skills* (Oxford University Press 2017) 360.

SARs feedback as extremely useful for regulated entities.³⁵¹ The Financial Intelligence Unit within Spain provides regulated entities with basic feedback in relation to whether the agency detected suspicious activity in the SAR, whether it can be used as part of a wider investigation or whether follow-up information is required.³⁵² Dealers indicated a need for the system to change from a position where they are expected to ‘magically’ know what law enforcement want and need, to a system where they are provided with constructive feedback which is useful in improving the quality of their reports.³⁵³ The study advocates for the SAR system to be improved to provide dealers with feedback for submitted SARs as beneficial in improving knowledge and understanding and compliance with reporting.³⁵⁴

In addition to the above suggestions, Chapter Four identified that the reporting requirements within the US, Australia, and Canada extend to require threshold reporting of transactions above \$10,000.³⁵⁵ This is useful as it actively requires regulated entities to consider higher-risk transactions and ensure they have taken relevant measures to mitigate the risk of money laundering.³⁵⁶ Furthermore, this method of reporting provides useful insight to law enforcement in relation to the number of transactions that take place above a certain threshold.³⁵⁷ This is helpful for NRA when assessing money laundering vulnerabilities and introducing new measures.³⁵⁸ Adopting an approach which requires threshold reporting assists in strengthening luxury goods sectors from being utilised for money laundering operations as criminals will know that transactions over a certain limit

³⁵¹ Carl Brown, ‘Not enough needles and too much hay: the problem with Suspicious Activity Reports’ *Financial Crime* (US 2 February 2021) <<https://www.greworldforums.com/financial-crime/not-enough-needles-and-too-much-hay-the-problem-with-suspicious-activity-reports/719.article>> accessed 20th March 2021; Jim Richards, ‘The Future Financial Crime Landscape in the US’ *Financial Crime* (US 16 March 2021) <<https://www.fincrimeworldforum.com/post/the-future-financial-crime-landscape-in-the-us>> accessed 10th October 2021.

³⁵² Carl Brown, ‘Not enough needles and too much hay: the problem with Suspicious Activity Reports’ *Financial Crime* (US 2 February 2021) <<https://www.greworldforums.com/financial-crime/not-enough-needles-and-too-much-hay-the-problem-with-suspicious-activity-reports/719.article>> accessed 20th March 2021.

³⁵³ See A1, A2, J1, J2, C1, C2, W1, W2, Y1, Y2.

³⁵⁴ *Ibid.*

³⁵⁵ See Chapter Four s 4.7.

³⁵⁶ Financial Crimes Enforcement Network, ‘Interim Final Rule - Anti-Money Laundering Programs for Dealers in Precious Metals, Stones, or Jewels’ (2015).

³⁵⁷ *Ibid.*

³⁵⁸ *Ibid.*

will be reported and therefore create a paper trail.³⁵⁹ The US requires regulated entities to report transactions via form 8300.³⁶⁰ The inclusion of a form which follows this template is recommended as useful for the UK AML regime in further protecting luxury goods sectors against money laundering operations.³⁶¹

5.7 Supervision

Effective supervision is important in ensuring that regulated entities comply with their legal obligations to prevent money laundering practices from taking place.³⁶² HMRC has published its first self-assessment of its AML supervisory performance and acknowledges that it is broadly in line with the MLRs and Office for Professional Body Anti Money Laundering Supervision (OPBAS) sourcebook advice on best practices.³⁶³ The assessment outlines that there is room for improvement with numerous programs in hand to drive up performance and help assist in its vision of providing world-class, risk-based supervision.³⁶⁴ However, HMRC does not specify improvements from a luxury goods context.³⁶⁵ Whilst it is encouraging that HMRC is assessing its role as AML supervisor and allocating importance to ways in which this can be improved, it is important that future assessments specifically address shortfalls within the specific sectors that it supervises such as HVDs, Estate Agents.³⁶⁶ Without this acknowledgment, it is difficult to pinpoint progress in improving AML supervision of UK luxury goods sectors.³⁶⁷

The study has examined HMRCs supervision of UK dealers and highlighted several aspects which require further attention.³⁶⁸ HMRC supervises 46,746 entities through approximately 266 full-time employees.³⁶⁹ This raises concerns as to the extent to which HMRC is equipped to efficiently supervise this vast number of entities with

³⁵⁹ Ibid.

³⁶⁰ Inland Revenue Service, 'Form 8300 and Reporting Cash Payments of Over \$10,000' (2021).

³⁶¹ Ibid.

³⁶² Michael McNamara, *Supervision in the Legal Profession* (Springer 2020).

³⁶³ HMRC, 'Corporate Report: HMRC Anti-Money Laundering Supervision Annual Assessment' (2021).

³⁶⁴ Ibid.

³⁶⁵ Ibid.

³⁶⁶ Ibid.

³⁶⁷ Ibid.

³⁶⁸ See Chapter One, s 1.5, Chapter Two s 2.7, Chapter Three s 3.7.

³⁶⁹ HM Treasury, 'Anti Money Laundering and Counter Terrorist Financing: Supervision Report' (2021).

varying needs and money laundering risks.³⁷⁰ The government has indicated that the UK has a fragmented approach to AML supervision.³⁷¹ The wide-ranging remit of sectors that HMRC is required to supervise has labelled it as the ‘supervisor of last resort’.³⁷² Simon Fraud (from the HMRC) has explained HMRC's role as ‘really quite unfortunate’ concerning the sheer number of sectors that it supervises he explained that ‘there are some sectors that naturally sit with other organisations, banks with the FCA, casinos with the Gambling Commission, but in many ways, we are the supervisor of first resort. For the sectors that do not fit with anyone else, we are the place the Government come to ask us to deal with them’.³⁷³ This indicates that the breadth of sectors supervised by HMRC may not be allocated by choice but rather due to there being no other viable option.³⁷⁴

In reducing HMRC’s strain in relation to the large number of sectors that it supervises, the creation of an additional supervisory body tasked with supervising UK luxury goods sectors alone is useful.³⁷⁵ This approach has been adopted within the Cayman Islands where the DCI has been designated as the new regulatory body to supervise DPMS and real estate agents.³⁷⁶ The DCI covers fewer sectors than HMRC which is beneficial in allowing DCI to dedicate more time to the sectors that it supervises and understanding and assessing the risks that are exposed.³⁷⁷ Similarly, within the UK the OPBAS is responsible for supervising 22 Professional Body Supervisors within the legal and accountancy sectors.³⁷⁸ In its latest supervisory assessment, the OPBAS indicates its positive role in delivering a high standard of supervision to the sectors it supervises.³⁷⁹

³⁷⁰ Ibid.

³⁷¹ Ibid.

³⁷² Ibid.

³⁷³ Ibid.

³⁷⁴ Ibid.

³⁷⁵ See A1, C2, J2.

³⁷⁶ See Chapter Four s 4.8, Financial Action Task Force, ‘Cayman Islands Mutual Evaluation Report’ (2019).

³⁷⁷ Ibid.

³⁷⁸ Financial Conduct Authority, ‘Office for Professional Body Anti Money Laundering Supervision’ (2020).

³⁷⁹ Office for Professional Body Anti Money Laundering, Financial Conduct Authority, ‘Anti Money Laundering Supervision by the Legal and Accountancy Professional Body Supervisors: Progress and themes from our 2020/ 2021 Supervisory Assessments’ (2020).

However, the UK government has raised concerns regarding the operation of the OPBAS and the costs incurred in maintaining the body.³⁸⁰ Adam Harper, Director of Professional Standards and Policy outlined that there is ‘no clarity on how it will do, or on what its measures of success will be, as well as the ramifications from a fee perspective’.³⁸¹ Mr Harper has raised concerns concerning OPBAS incurring an estimated ‘£2 million per annum operating cost’.³⁸² Thus, the establishment of a new supervisory body which is tasked with supervising luxury goods sectors in the UK may be difficult in relation to the costs incurred in establishing and running the OPBAS.³⁸³ Nonetheless, the study advocates for the establishment of a new body tasked with supervising luxury goods sectors as useful in ensuring adequate monitoring and compliance.³⁸⁴

It is important for HMRC to ensure that it understands the unique money laundering risks within the sectors it supervises.³⁸⁵ HMRC states that it has a good understanding of the risks that exist within each of its supervised sectors.³⁸⁶ However, the analysis has identified money laundering risks within UK luxury goods sectors for the first time which have not been raised by HMRC or included within the NRAs.³⁸⁷ It is therefore doubtful that HMRC understands and recognises these risks and considers them when assessing relevant controls to reduce money laundering vulnerabilities.³⁸⁸ Fabian advocates that in addressing law enforcement and intelligence agencies' understanding of money laundering risks within the jewellery sector to anticipate and prevent undesired behaviour effectively, supervisors need to attend training programmes which improve their knowledge of the steps that criminals take and the risks present.³⁸⁹

Similarly, within Canada FINTRAC has been highlighted as having a good understanding of money laundering risks and DNFBPs were recognised as subject to

³⁸⁰ UK Parliament, ‘Economic Crime - Anti-money laundering supervision and sanctions implementations’ (2010).

³⁸¹ Ibid.

³⁸² Ibid.

³⁸³ Ibid.

³⁸⁴ Ibid.

³⁸⁵ See Chapter Two s 2.7, Chapter Three s 2.7.

³⁸⁶ HMRC, ‘Corporate Report: HMRC Anti-Money Laundering Supervision Annual Assessment’ (2021).

³⁸⁷ See Chapter Two s 2.7, Chapter Three s 3.7, A1, A2, J1, J2, C1, C2, W1, W2 Y1, Y2.

³⁸⁸ Ibid.

³⁸⁹ Fabian Teichmann, ‘Money Laundering in the Jewellery Business’ (2020) 23 *Journal of Money Laundering Control* 695.

appropriate risk-sensitive AML supervision.³⁹⁰ This is reflected through detailed training of money laundering risks, guidance explaining money laundering risks within individual sectors, and an increased level of feedback in relation to improving surveillance and monitoring.³⁹¹ Although HMRC highlights that staff are provided an extensive training when they join and that this training is on-ongoing it fails to explain whether the training touches upon money laundering risks within individual sectors.³⁹² The thesis advocates for the training undertaken by HMRC to address individual risks within the sectors it supervises to ensure that staff understand and possess the level of knowledge required for efficient supervision.³⁹³

Improvements are also suggested in increasing HMRC's level of engagement with dealers in relation to AML.³⁹⁴ Dealers indicated they were not aware of HMRC's role as AML supervisor or the NCA's role in AML.³⁹⁵ Engagement can be improved by significantly reaching out to regulated entities, which dealers themselves suggested.³⁹⁶ It is interesting to acknowledge that HMRC engages with Money Service Businesses (MSBs) through e-learning tools and by reaching out to individual firms directly by issuing emails that provide information to help businesses comply with their obligations.³⁹⁷ However, these efforts have not been extended to the luxury goods sectors.³⁹⁸ It is unclear as to why HMRC applies a more proactive approach towards engaging with regulated entities within other sectors in comparison to dealers, the study recommends for HMRC to also contact dealers through emails and e-learning to help them in complying with their AML obligations.

Additionally, a vital aspect of engagement is ensuring that individuals are able to access the help and support provided for them with relative ease.³⁹⁹ HMRC has issued

³⁹⁰ See Chapter Four s 4.8, Financial Action Task Force, 'Canada Mutual Evaluation Report' (2016).

³⁹¹ Ibid.

³⁹² HMRC, 'Corporate Report: HMRC Anti-Money Laundering Supervision Annual Assessment' (2021).

³⁹³ Financial Action Task Force, 'Guidance on Risk Based Supervision' (2020).

³⁹⁴ Chapter Two s 2.7, Chapter Three s 3.7.

³⁹⁵ Ibid, A1, A2, J1, J2, C1, C2, W1, W2 Y1, Y2.

³⁹⁶ Ibid. Harold Koster, 'Towards Better Implementation of the European Union's Anti Money Laundering and Countering the Financing of Terrorism' (2020) 2 *Journal of Money Laundering Control* 23.

³⁹⁷ Financial Action Task Force, 'United Kingdom Mutual Evaluation Report' (2018) 77.

³⁹⁸ See A1, A2, J1, J2, C1, C2, W1, W2 Y1, Y2.

³⁹⁹ Rebecca Tushnet, 'Rules of Engagement' (1998) 23 *Yale Legal Journal* 14.

video content which explains AML⁴⁰⁰ however, none of the dealers interviewed had come across this content and therefore had not accessed it.⁴⁰¹ This may be allocated to the fact that the link for the video content is only accessible after navigating through two web pages (individuals must click on the ‘help and support for money laundering supervision page’⁴⁰² and then select ‘high-value dealers’.⁴⁰³ As well as the fact that the link is positioned at the very bottom of the page, which requires individuals to scroll to locate it.⁴⁰⁴ It is useful to acknowledge that within Australia, AUSTRAC also includes video content to help dealers and this is easily accessible since it is pinned on the top of the government webpage.⁴⁰⁵ In making HMRC's video content more accessible it is suggested for it to be pinned onto the HMRCs homepage for dealers, as well as the video link included within the specific guidance issued by HMRC for dealers.⁴⁰⁶ This is useful in improving dealers' engagement with AML and supervision, as studies have noted that individuals are more likely to be attracted to and remember visual content such as video compared to textual information.⁴⁰⁷

HMRC's engagement with dealers can be further improved by communicating the merits of AML.⁴⁰⁸ The present guidance and information provided by HMRC fails to outline any benefits for dealers derived from AML compliance.⁴⁰⁹ The inclusion of this information provides incentives for compliance by allowing dealers to recognise that the measures they are required to implement are justified.⁴¹⁰ Dealers themselves suggested

⁴⁰⁰ GOV.UK, ‘Help and Support for Money Laundering Supervision’ <<https://www.gov.uk/guidance/help-and-support-for-anti-money-laundering>> accessed 26th December 2021.

⁴⁰¹ See A1, A2, J1, J2, C1, C2, W1, W2 Y1, Y2.

⁴⁰² GOV.UK, ‘High Value Dealers – What you need to Know From HMRC’ <<https://register.gotowebinar.com/register/2754374899152339724>> accessed 26th December 2021.

⁴⁰³ GOV.UK, ‘Help and Support for Money Laundering Supervision’ <<https://www.gov.uk/guidance/help-and-support-for-anti-money-laundering>> accessed 26th December 2021.

⁴⁰⁴ Ibid.

⁴⁰⁵ See Chapter Four s 4.8, AUSTRAC, ‘Overview’ <<https://www.austrac.gov.au/about-us/austrac-overview>> accessed 29th October 2021.

⁴⁰⁶ HMRC, ‘Anti-Money Laundering Supervision: Guidance for High Value Dealers’ (2020).

⁴⁰⁷ Maureen Taylor, Kim Johnston, *The Handbook of Communication Engagement* (Wiley 2018).

⁴⁰⁸ Alexander Dill, *Anti Money Laundering Regulation and Compliance: Key Problems and Practice Areas* (Edward Elgar 2021).

⁴⁰⁹ GOV.UK, ‘Help and Support for Money Laundering Supervision’ <<https://www.gov.uk/guidance/help-and-support-for-anti-money-laundering>> accessed 26th December 2021.

⁴¹⁰ See A1, A2, J1, J2, C1, C2, W1, W2 Y1, Y2.

they would find this information encouraging as it would allow them to see that ‘my business also benefits from such controls, as presently I saw the obligations as burdensome and not necessary’.⁴¹¹ It is encouraging to note that the International Monetary Fund provides information which explains the benefits of AML compliance, it is suggested for this information to be included within HMRC's guidance for dealers as useful in improving engagement.⁴¹²

Furthermore, the study has identified that there is an absence of outreach activities conducted by HMRC for those operating in luxury goods sectors in complying with their AML obligations.⁴¹³ HMRC states that it makes AML information, such as supervision, available to businesses via webinars, engagement with trade bodies, and speaking at conferences.⁴¹⁴ This statement is questionable since such efforts cannot be identified from a luxury goods context.⁴¹⁵ HMRC engages in outreach with MSBs through thematic reviews, hosting webinars targeted at individual MSB sectors, and presenting at speaking events.⁴¹⁶ Dealers indicated they would find workshops, seminars, and conferences useful in understanding AML supervision and their duties to HMRC.⁴¹⁷ Adopting such an approach can assist in increasing awareness and understanding of HMRC’s role as AML supervisor and provide a platform for dealers to ask questions and share experiences relating to AML.⁴¹⁸

Chapter Four recognised Canada and Japan’s efforts in increasing awareness of money laundering supervision through outreach work.⁴¹⁹ Both these jurisdictions deliver seminars, workshops, meetings with industries, and public/private sector forums to communicate key aspects of the AML regime, including supervision. Between 2009 and 2015 FINTRAC conducted 300 presentations for DNFBPs in Canada.⁴²⁰ Additionally, the DCI in the Cayman Islands has been acknowledged by FATF as gaining a better

⁴¹¹ See Y2.

⁴¹² International Monetary Fund, ‘Anti Money Laundering/ Combating of Terrorist Financing’ <<https://www.imf.org/external/np/leg/amlcft/eng/>> accessed 20th May 2021.

⁴¹³ Chapter Two s 2.7, Chapter Three s 3.7.

⁴¹⁴ HMRC, ‘Corporate Report: HMRC Anti-Money Laundering Supervision Annual Assessment’ (2021).

⁴¹⁵ See A1, A2, J1, J2, C1, C2, W1, W2 Y1, Y2.

⁴¹⁶ Financial Action Task Force, ‘United Kingdom Mutual Evaluation Report’ (2018).

⁴¹⁷ See A1, A2, J1, J2, C1, C2, W1, W2 Y1, Y2.

⁴¹⁸ See Chapter Four s 4.8.

⁴¹⁹ *ibid*, Financial Action Task Force, ‘Canada Mutual Evaluation Report’ (2016), Financial Action Task Force, ‘Japan Mutual Evaluation Report’ (2021).

⁴²⁰ *Ibid*.

understanding of the sectors it regulates and the individuals within the sectors.⁴²¹ DCI has achieved this through outreach work such as disseminated questionnaires to the sectors it regulates, including DPMS.⁴²² The questionnaires comprise of questions such as: how can we further assist you as an AML supervisor, what further support do you require, share your thoughts regarding your role as an AML gatekeeper.⁴²³ This is a useful method of providing ongoing support to regulated entities as it allows the regulator to gain practical insights into sectors and acknowledge ways in which improvement can be made.⁴²⁴ Furthermore, asking regulated entities questions in this regard assists in creating a positive relationship between the supervisor and the regulatees by highlighting that their viewpoints matter and are acknowledged.⁴²⁵ The study recommends for HMRC to conduct outreach work which assists dealers in complying with their AML obligations and helps in creating a positive working relationship between HMRC and dealers.⁴²⁶

The government website fails to provide any information about the NCA and its role in working with dealers.⁴²⁷ Although the guidance issued for HVDs briefly acknowledges the NCA, this also fails to provide any information on how the NCA seeks to work with regulated entities, such as dealers.⁴²⁸ It is useful to include information within the government webpage and the guidance issued for dealers which explains the NCA's role in combating money laundering and how it seeks to work with dealers in achieving this.⁴²⁹ This may include information such as the NCA is a legal enforcement agency within the UK. It is the UK's lead agency against organised crime, human weapon and drug trafficking, money laundering, and illicit finance.⁴³⁰ This basic information is useful in increasing dealers' awareness and understanding of the NCA's position toward AML.⁴³¹

⁴²¹ Ibid.

⁴²² Financial Action Task Force, 'Cayman Islands Mutual Evaluation Report' (2019).

⁴²³ Ibid.

⁴²⁴ Ibid, A1, C2, J1, J2.

⁴²⁵ Ibid.

⁴²⁶ Ibid.

⁴²⁷ Ibid.

⁴²⁸ HMRC, 'Anti-Money Laundering Supervision: Guidance for High Value Dealers' (2020).

⁴²⁹ See C1, W2.

⁴³⁰ National Crime Agency, 'What We Do' <<https://www.nationalcrimeagency.gov.uk>> accessed 26th December 2021.

⁴³¹ See A1, C2, J1, J2, W2.

Additionally, an important aspect of AML supervision is ensuring that individuals that fail to carry out AML obligations are subject to penalties.⁴³² HMRC states that it has adopted a tougher approach to sanctions for several years to make sanctions more effective proportionate and dissuasive, as required.⁴³³ However, the study has highlighted that a handful of dealers have faced sanctions for failing to comply with their AML obligations.⁴³⁴ Whilst it is important to contextualise this in relation to the limited number of dealers registered with HMRC, this is still extremely low.⁴³⁵ It is recommended for HMRC to proactively seek out dealers that fail to comply with AML obligations and issue relevant sanctions.⁴³⁶ All of the dealers interviewed within the study failed to comply with the MLRs in some way or another, many indicated that this noncompliance had continued over years and openly stated they had not faced any repercussion for operating in such a manner.⁴³⁷ HMRC states that it is working on increasing the number of supervisory interventions per year, both by increasing staff numbers and by improving productivity through better training and other improvements in supervisory processes.⁴³⁸ It is positive to note that HMRC has exposed breaches through a report to highlight the consequences of noncompliance.⁴³⁹ This is an encouraging initiative that should act as a deterrent in ensuring compliance among all regulated entities including dealers.⁴⁴⁰

5.8 Conclusion

This chapter has advanced suggestions to improve the UK AML regime applicable to luxury goods sectors.⁴⁴¹ The proposals have addressed ways in which: obliged entities, registration, assessing money laundering risk, customer due diligence, suspicious

⁴³² Melissa Van Den Broek, *Preventing Money Laundering* (Eleven International Publishing 2015).

⁴³³ HMRC, 'Corporate Report: HMRC Anti-Money Laundering Supervision Annual Assessment' (2021).

⁴³⁴ See Chapter Two s 2.7, Chapter Three s 3.7.

⁴³⁵ *Ibid.*

⁴³⁶ See A1, A2, J1, J2, C1, C2, W1, W2 Y1, Y2.

⁴³⁷ *Ibid.*

⁴³⁸ HMRC, 'Corporate Report: HMRC Anti-Money Laundering Supervision Annual Assessment' (2021).

⁴³⁹ HMRC, 'Corporate Report: Businesses that have not complied with the regulations, and suspensions and cancellations of Registration Between 2021 and 2022' (2022).

⁴⁴⁰ *Ibid.*

⁴⁴¹ See s 5.2, s 5.3, s 5.4, s 5.5, s 5.6, s 5.7.

transaction reporting and supervisor can be improved to reduce money laundering risk.⁴⁴² The findings have answered the research question by specifying ways each theme can be further improved to prevent money launderers from infiltrating luxury goods sectors.⁴⁴³ By advancing suggestions (for the first time) to address money laundering risks within UK luxury goods sectors the chapter has provided an original contribution to research.⁴⁴⁴ The suggestions are useful not only for luxury goods sectors but can be transferred across sectors to address similar issues.⁴⁴⁵ The table below summarises the key proposals put forward in this chapter.

Themes	Money Laundering Risks Identified	Proposals Advanced
Obligated entities ⁴⁴⁶	<ul style="list-style-type: none"> ○ Lack of knowledge and awareness of being obliged to adopt AML controls. ○ Considering AML controls as disproportionate and unreasonable and subsequently failing to comply. ○ Difficulty in complying with the AML regime due to obligations being complex to understand. ○ Operating below the €10,000 threshold to avoid AML controls. ○ Accepting cash payments above the threshold limit without AML controls ○ UK AML Regime fails to address payments below the threshold limit. ○ Failure to recognise merits of AML compliance. ○ Financial, logistical, and administrative costs derived from AML impede compliance. 	<ul style="list-style-type: none"> ● Removal of threshold limit and specifying luxury sub-sectors which pose high money laundering risk. ● AML regime to include a list of luxury items to provide clarity. ● HMRC to conduct outreach through seminars and workshops to increase dealers' knowledge, understanding and awareness of their AML obligations. ● Guidance improved to highlight the money laundering vulnerabilities in luxury goods sectors and the merits of AML compliance.

⁴⁴² Ibid.

⁴⁴³ Ibid.

⁴⁴⁴ Ibid.

⁴⁴⁵ See Conclusion.

⁴⁴⁶ See s 5.2.

Registration ⁴⁴⁷	<ul style="list-style-type: none"> ○ Low registration rates among dealers. ○ Failure to comply with the requirement to register even though dealers meet the definitions of HVDs and AMPs. ○ The system is deficient in detecting unregistered dealers. ○ Lack of awareness and understanding of the registration process. ○ Failure to recognise the importance of registration in combating AML. ○ Adopting alternative approaches instead of registration. ○ The ability for criminals to utilise registered status as a disguise to appear legitimate. ○ Discontent towards the registration fee. ○ Lack of support within the registration process/ form. ○ Difficulties in locating the registration form. ○ The ability for dealers to avoid registration by adopting a no-cash policy. 	<ul style="list-style-type: none"> ● Including information within the registration process which stresses the merits of registering with HMRC for AML supervision. ● HMRC to increase scrutiny in detecting non-compliant dealers. ● Highlight penalties for registration non-compliance. ● Improve guidance to include case studies which explain the importance of registration. ● Removal of threshold approach to assist in closing loopholes for dealers to avoid AML controls through no cash policies. ● Including an option within the registration form to seek help/ support. ● HMRC to seek out dealers who adopt alternative approaches instead of registration. ● Providing guidance and support in completing the registration process. ● Creating MLR100 in PDF format. ● Emailing registration requirements to dealers. ● Removal of registration fees/ clarification of fees. ● HMRC adopt additional controls to identify criminals registering as dealers as a legitimate front.
	<ul style="list-style-type: none"> ○ Dealers are unaware of the requirement to adopt an RBA to AML. ○ The vagueness of the RBA makes compliance difficult for dealers. ○ RBA fails to acknowledge individual risks within luxury goods sectors. 	<ul style="list-style-type: none"> ● Raise awareness of RBA through outreach initiatives such as workshops, seminars, and conferences. ● Make guidance accessible for dealers by sending it via email/ postal methods.

⁴⁴⁷ See s 5.3.

<p>Assessing Money Laundering Risk⁴⁴⁸</p>	<ul style="list-style-type: none"> ○ Dealers increase risk by failing to recognise risks due to a lack of knowledge and understanding. ○ Struggling to identify money laundering risks. ○ Unaware of risk-based guidance. ○ Absence of training/ workshops which explain the RBA to dealers. ○ RBA conflicts with business aims in relation to generating a profit, which is favoured over AML. 	<ul style="list-style-type: none"> ● Improve guidance to define what ‘risk’ means in the context of money laundering within luxury goods sectors. ● Provide the opportunity for dealers to ask questions if they are struggling with the RBA and publish these online as FAQs. ● Engage in training and workshops to improve dealers’ knowledge and understanding of the RBA. ● Simplify risk assessment into clear stages. ● Highlight the merits of the RBA for dealers within guidance.
<p>Customer Due Diligence⁴⁴⁹</p>	<ul style="list-style-type: none"> ○ Implementing alternative verification controls to those stipulated within the MLRs. ○ CDD controls are based upon incorrect money laundering risk assessment. ○ Failure to identify certain customers (e.g., known them for a long time). ○ Lack of knowledge and understanding of CDD requirements within MLRs. ○ Failure to understand how to tailor CDD controls to EDD and SDD. ○ Reduced verification measures due to the Covid-19 pandemic. ○ Failure to comply with CDD requirements. ○ CDD controls are unfavoured due to infringing business principles such as sales. ○ Struggle to identify beneficial owners. 	<ul style="list-style-type: none"> ● Send CDD guidance to dealers via email and postal methods. ● Simplify guidance by separating information into stages. ● Include examples of SDD and EDD within guidance. ● CDD training to improve dealers’ knowledge and understanding of CDD. ● HMRC to engage in outreach initiatives such as seminars and workshops to raise knowledge and awareness of CDD. ● Inclusion of information which explains how to identify beneficial owners. ● Highlight the merits of CDD compliance for dealers. ● Increased scrutiny of non-compliant dealers. ● Include penalties for failing to comply with CDD requirements within guidance.
<p>Reporting Suspicious Activity⁴⁵⁰</p>	<ul style="list-style-type: none"> ○ The subjectivity of ‘suspicion’ makes compliance difficult. ○ Lack of knowledge and understanding of SAR. 	<ul style="list-style-type: none"> ● Ensure dealers have access to SAR guidance issued by HMRC. ● Issue guidance which specifically addresses and clarifies the concept of ‘suspicion’ from a luxury goods context.

⁴⁴⁸ See s 5.4

⁴⁴⁹ See s 5.5.

⁴⁵⁰ See s 5.6.

	<ul style="list-style-type: none"> ○ Failure to comply with SAR requirements/ low reporting. ○ Absence of feedback for submitted SARs. ○ Alternative approaches are adopted by dealers when faced with a situation that raises suspicion instead of filing a SAR. ○ The negative financial impact of SAR on business. ○ Discontent regarding SAR infringing relationship building with clients. ○ The SAR process is flawed. The system is inadequate for situations with less suspicion. ○ Struggle to maintain confidentiality once SAR has been submitted. ○ Lack of awareness of NCA. 	<ul style="list-style-type: none"> ● Provide support on how to submit high-quality SAR from a luxury goods context. ● Workshops and seminars which address SAR. ● Include merits of reporting with SAR process. ● Reference guidance/ checklist of the SAR process. ● Stricter surveillance of reporting among dealers and detection of non-compliant dealers. ● Highlight penalties for failing to comply with SAR requirements. ● Feedback for submitted SARs. ● Threshold reporting.
Supervision ⁴⁵¹	<ul style="list-style-type: none"> ○ Dealers are not aware of HMRC or NCA. ○ HMRC supervises many sectors which raises the question in relation to its ability to efficiently supervise luxury goods dealers. ○ HMRC lack of understanding of money laundering risks within the UK luxury goods sectors. ○ Dealers fail to understand what AML supervision means. ○ Dealers not aware of guidance issued regarding supervision ○ Lack of engagement with dealers. ○ Absence of outreach in relation to AML compliance. ○ Insufficient measures to identify non-compliance 	<ul style="list-style-type: none"> ● Additional supervision body tasked with supervising luxury goods sectors. ● Training to improve understanding and awareness of risks in luxury goods sectors. ● Engaging with dealers in relation to AML. ● Ensure guidance is accessible for dealers to utilise. ● Further outreach work by HMRC targeted at dealers in complying with their AML obligations. ● Communicate the merits of AML compliance. ● Inclusion of information about NCA within the HMRC website. ● Proactive approach in seeking non-compliant dealers.

⁴⁵¹ See s 5.7.

6. Conclusion

6.1 Findings of the research

This research project aimed to assess the money laundering risks in the UK luxury goods sectors and consider ways the UK AML regime can be improved to reduce such risks.¹ Each chapter has contributed significantly to addressing this research question that has been analysed through a thematic approach.² The key findings of the research project are included below.

6.1.1 Obligated entities

The UK AML regime captures luxury goods dealers through the definitions of HVD and AMP.³ This includes any individual who accepts or makes high-value cash payments of €10,000 (£8,393.35) or more (or equivalent in any currency) in exchange for goods.⁴ Whilst this threshold approach seeks to capture high-risk transactions, it fails to recognise transactions below the threshold that are equally susceptible to money laundering operations.⁵ This creates a significant loophole through which dealers can avoid AML controls by operating below the threshold or stating that their business operations fall below the threshold when in practice this is not the case.⁶ Additionally, the limit does not guarantee that dealers will refuse payments above the threshold limit in cash.⁷ In this regard, dealers openly stated they are willing to accept such payments with no regard to AML in ensuring that the business's financial needs are met.⁸

¹ See Introduction s 1.2.

² See Chapter One, Chapter Two, Chapter Three, Chapter Four, Chapter Five.

³ See Chapter One, s 1.2.3, Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017, Regulation 14 (1) a.

⁴ Ibid.

⁵ European Commission, 'Report on the on the assessment of the risk of money laundering and terrorist financing affecting the internal market and relating to cross-border activities' (2019).

⁶ See Chapter Two s 2.2, Chapter Three s 3.2, HM Treasury, 'UK National Risk Assessment of Money Laundering and Terrorist Financing' (2020), A1, A2, C1, C2, Y1, Y2, W1, W2, J1, J2.

⁷ Ibid.

⁸ Ibid.

In addressing this issue and ensuring that all luxury goods transactions are captured within the AML regime, the study has suggested removing the threshold limit; an approach enacted in several jurisdictions.⁹ A better approach has been advocated as listing luxury sub-sectors that fall within the AML regime regardless of the amount they make or receive in cash.¹⁰ In adding further clarity to this approach, the study has recommended stipulating individual luxury items that pose a money laundering risk and therefore fall within each luxury sub-sector.¹¹ For example, in the jewellery sector, listing items such as gold, precious metals, precious stones, and watches.¹² This approach emphasises the money laundering risks generated by luxury items and reduces ambiguity concerning items requiring AML regulation.¹³

Indeed, dealers are in a significant position to detect and prevent money laundering transactions from taking place and are subsequently required to act as AML gatekeepers.¹⁴ However, dealers lack of knowledge and awareness is a barrier to compliance.¹⁵ Whilst HMRC states that it uses various tools to assist regulated entities in complying with their AML obligations,¹⁶ these efforts are largely underdeveloped for luxury goods, resulting in a top-down regulatory approach.¹⁷ In addressing these issues, the study has highlighted the need for HMRC to engage in initiatives that promote knowledge and awareness.¹⁸ In achieving this, reference has been made to the practices adopted by AML supervisors within other jurisdictions including guidance materials, e-learning, regular industry forums, workshops, seminars, and consultation processes.¹⁹ The

⁹ See Chapter Five s 5.2, Chapter Four s 4.3, Bank Secrecy Act 1970 (US); Proceeds of Crime Act 2000 (Canada); Anti Money Laundering and Counter Terrorism Financing Act 2006 (Australia); Proceeds of Crime Act 2020 (Cayman Islands); Money Laundering and Combatting the Financing of Terrorism Act 2015 (Trinidad and Tobago); Punishment of Organised Crimes Act 1990 (Japan).

¹⁰ Ibid.

¹¹ Ibid, Financial Intelligence Unit Trinidad and Tobago, 'AML /CFT Guidance for Dealers in Precious Metals and Stones/ Jewellers' (2018); National Police Agency, 'Anti Money Laundering Regime in Japan' (2018); Cayman Islands Monetary Authority, 'AML/CFT Legal Framework' (2018); Financial Transaction and Reports Analysis Centre of Canada, 'Dealers in Precious Metals and Stones' (2020).

¹² Ibid.

¹³ Ibid.

¹⁴ Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017, Regulation 14 (1) a.

¹⁵ See Chapter Two s 2.2, Chapter Three s 3.2, A1, A2, C1, C2, W1, W2, J1, J2, Y1, Y2.

¹⁶ HMRC, 'Anti-Money Laundering Supervision: Guidance for High Value Dealers' (2020).

¹⁷ See Chapter Two s 2.2, Chapter Three s 3.2, A1, A2, C1, C2, W1, W2, J1, J2, Y1, Y2.

¹⁸ Ibid.

¹⁹ See Chapter Four s 4.3, Financial Action Task Force, 'Mutual Evaluation Report: Australia' (2015) 76.

study has advocated for HMRC to engage in these educational outreach initiatives with dealers to improve AML awareness and compliance.²⁰ In addition to these suggestions, the guidance issued by HMRC requires further improvement to include information regarding dealer's role as AML gatekeepers.²¹ Information that highlights the money laundering vulnerabilities within luxury goods sectors and how AML measures assist in preventing these criminal operations has been proposed as useful in addressing the tension felt by dealers in this regard.²² This information not only helps dealers understand their role as AML gatekeepers but is also beneficial in improving compliance by allowing dealers to appreciate the importance of implementing AML controls.²³

These findings help one recognise the risks in the UK AML regime in obliging luxury goods dealers to implement AML controls.²⁴ Whilst the UK has adopted a progressive stance in extending its list of 'regulated entities' to include luxury goods dealers, the analysis has identified that the threshold approach is restrictive.²⁵ Not reconsidering this approach allows criminals to exploit the system for money laundering purposes.²⁶ For example, the ability to make several purchases in cash below the threshold limit without fear of detection.²⁷ In considering the extent to which dealers understand their role as AML gatekeepers, the analysis has highlighted the need for further measures to assist them in complying with the MLRs.²⁸ Without this support, dealers generate money laundering risk due to their inability to recognise and understand AML obligations and subsequently failing to implement AML controls, or implementing deficient controls.²⁹ Dealers are in a significant position to help detect and prevent money laundering operations from taking place by being on the forefront.³⁰ It is therefore vital to ensure that dealers can understand and recognise the importance of their role as AML

²⁰ See Chapter Five s 5.2.

²¹ *Ibid.*

²² *ibid*

²³ *Ibid.*

²⁴ See Chapter Two s 2.2, Chapter Three s 3.2.

²⁵ *Ibid.*

²⁶ *Ibid.*, A1, A2, C1, C2, J1, J2, W1, W2, Y1, Y2.

²⁷ *Ibid.*

²⁸ *Ibid.*

²⁹ *Ibid.*

³⁰ HMRC, 'Anti-Money Laundering Supervision: Guidance for High Value Dealers' (2020).

gatekeepers, and provided with the necessary support to ensure they can implement the required controls.³¹

6.1.2 Registration

Registration is critical in bringing dealers under the supervision of HMRC and requiring them to actively adopt AML measures according to the MLRs to reduce the risk of money laundering within their business practices.³² However, the study has identified that registration rates remain low among UK dealers.³³ Numerous factors have resulted in non-compliance with this requirement, including dealers being unaware of the requirement to register, failure to understand and recognise the importance of registration, and dealers opting not to engage in AML.³⁴

In increasing compliance, the study has considered several improvements beneficial for the MLR100 registration form.³⁵ The registration form has been recognised as failing to provide an option for dealers to seek help when completing the form.³⁶ The only opportunity for dealers to gain help concerning registration can be found at the end of the guidance document issued by HMRC, which provides the generic contact details for communicating with HMRC if regulated entities have any questions.³⁷ Dealers are unlikely to come across this guidance since it is not sent to dealers by HMRC; instead, they must search for the guidance online that none of the dealers interviewed had done.³⁸ In addressing this issue, the study recommended that HMRC improve the form to include avenues to gain help and support in completion and submission.³⁹ This is based upon the approach adopted by AUSTRAC in including options to gain virtual assistance when

³¹ See Chapter Five s 5.2.

³² See Chapter One, s 1.5.

³³ See Chapter Two s 2.3, Chapter Three s 3.3, HM Treasury, 'UK National Risk Assessment of Money Laundering and Terrorist Financing' (2020).

³⁴ See Chapter Two s 2.3, Chapter Three s 3.3, A1, A2, C1, C2, W1, W2, Y1, Y2, J1, J2.

³⁵ *Ibid.*

³⁶ *Ibid.*

³⁷ *Ibid.*, HMRC, 'Anti-Money Laundering Supervision: Guidance for High Value Dealers' (2020).

³⁸ Chapter Three s 3.3.

³⁹ *Ibid.*, A1, A2, C1, C2, J1, J2, Y1, Y2, W1, W2.

³⁹ See Chapter Five s 5.3.

completing the form as well as the publication of a guidebook that dealers are able to refer to if they face any issues.⁴⁰

In addition to the MLR100 form, the registration process has also been considered as requiring improvements.⁴¹ Locating the form online has also been identified as difficult since the government gateway does not include a direct link to navigate dealers to the registration form.⁴² In ensuring that dealers can access the registration process with ease, the study has recommended a direct link to the registration form to be included within the government gateway.⁴³ The form is only available in an electronic format, restricting individuals who seek to complete the process by hand.⁴⁴ Based upon the approaches adopted within other jurisdictions the study has suggested to make the form accessible in PDF format, which can be downloaded and completed with ease by hand.⁴⁵ Furthermore, issues have been highlighted in relation to the system not permitting submission unless all fields are completed, which dealers indicated as problematic when they do not have answers for all the questions.⁴⁶ In overcoming this issue, the thesis has highlighted the need to reconsider the format of the registration process to permit submissions from dealers struggling to complete certain sections to ensure that this does not create a barrier to compliance.⁴⁷

The study has also identified the benefits of including the merits of registration within the guidance issued by HMRC and the registration form in improving compliance.⁴⁸ Statements such as, ‘Dealers have been recognised as providing a loophole for money laundering operations; registration is the first stage in protecting your business from being used for such operations’ have been considered beneficial in providing dealers

⁴⁰ See Chapter Four s 4.4, Australia Transaction Reports and Analysis Centre, ‘About this Form’ (2021); Australia Transaction Reports and Analysis Centre, ‘Business Profile Form: Explanatory Guide for Enrolment and Registration’ (2020).

⁴¹ See Chapter Two s 2.3, Chapter Three s 3.2, A1, A2, C1, C2, J1, J2, Y1, Y2, W1, W2.

⁴² Ibid.

⁴³ See Chapter Five s 5.3, Australia Transaction Reports and Analysis Centre, ‘Business Profile Form: Explanatory Guide for Enrolment and Registration’ (2020).

⁴⁴ See Chapter Two s 2.3, Chapter Three s 3.2, A1, A2, C1, C2, J1, J2, Y1, Y2, W1, W2.

⁴⁵ See Chapter Five s 5.3, Financial Intelligence Unit Trinidad and Tobago, ‘Registration of Supervised Entities’ (2018); Department of Commerce and Investment, ‘Application for Registration of Designated Non- Financial Business and Professions - Real Estate & Dealers in Precious Metals and Stones’ (2019).

⁴⁶ See Chapter Two s 2.3, Chapter Three s 3.2, A1, A2, C1, C2, J1, J2, Y1, Y2, W1, W2.

⁴⁷ See Chapter Five s 5.3.

⁴⁸ See Chapter Five s 5.3.

with incentives to register for AML supervision.⁴⁹ Moreover, the registration process requires fees to be paid by dealers which have raised frustration among dealers.⁵⁰ Dealers consider the fees as a financial burden and fail to understand the justification for being required to act as AML gatekeepers and incur additional fees, yet receive no payment.⁵¹ The analysis of the registration processes within other jurisdictions has indicated that dealers are not required to pay a fee to gain registered status.⁵² The study has suggested that a similar approach be adopted within the UK, which removes the present fees involved in AML registration.⁵³ This is beneficial in alleviating the discontent felt by dealers and also assists in improving compliance.⁵⁴

Beyond the registration process, the study has highlighted an increased need for supervision of AML registration within luxury goods sectors in identifying non-compliant dealers.⁵⁵ Whilst HMRC states that it employs officers to check on businesses registered for money laundering supervision,⁵⁶ dealers in practice have not experienced any checks or faced penalties for non-compliance.⁵⁷ Dealers not registered for AML supervision generate money laundering risk by engaging in business practices without implementing AML controls, such as HVPs.⁵⁸ Subsequently, this thesis has emphasised the need for HMRC to adopt further measures to seek out non-compliant dealers and issue penalties for failing to register.⁵⁹ In addition to non-compliance, increased supervision is also necessary for seeking out dealers adopting alternative approaches instead of registering with HMRC.⁶⁰ For example, dealers have been recognised to employ internal individuals

⁴⁹ Ibid.

⁵⁰ HM Revenue & Customs, 'Money Laundering Regulations Application Form for Registration (MLR100)' <<https://public-online.hmrc.gov.uk/lc/content/xf/forms/profiles/forms>> accessed 25th March 2020, Chapter Three s 3.3, A1, A2, C1, C2, J1, J2, Y1, Y2, W1, W2.

⁵¹ Ibid.

⁵² See Chapter Four s 4.4, Australia Transaction Reports and Analysis Centre, 'Business Profile Form: Guidance for Motor Vehicle Dealers' (2018); Financial Intelligence Unit Trinidad and Tobago, 'Registration of Supervised Entities' (2018); Department of Commerce and Investment, 'Application for Registration of Designated Non- Financial Business and Professions - Real Estate & Dealers in Precious Metals and Stones' (2019).

⁵³ Ibid.

⁵⁴ See Chapter Five s 5.3, OECD, *Regulatory Compliance cost Assessment Guidance* (OECD Publishing, 2014).

⁵⁵ See Chapter Two s 2.3, Chapter Three s 3.2, A1, A2, C1, C2, J1, J2, Y1, Y2, W1, W2.

⁵⁶ HMRC, 'Corporate Report: HMRC Anti-Money Laundering Supervision Annual Assessment' (2021).

⁵⁷ See Chapter Two s 2.3, Chapter Three s 3.2, A1, A2, C1, C2, J1, J2, Y1, Y2, W1, W2.

⁵⁸ Ibid.

⁵⁹ See Chapter Five s 5.3.

⁶⁰ Ibid, See Chapter Two s 3.3.

to handle AML matters instead of registering with HMRC and consider these controls as adequate in reducing the risk of money laundering.⁶¹ Furthermore, the analysis has highlighted the ability of criminals to register as HVDs in an attempt to provide a legitimate appearance and conceal criminal funds.⁶²

Analysing AML registration in relation to UK luxury goods sectors has highlighted the important role played by registration within the UK AML regime and the need for further measures to ensure that dealers comply with this obligation.⁶³ Without the adoption of further controls such as: support in completing the registration form, the inclusion of information clarifying the importance of registration, and robust measures to detect non-compliance, dealers continue to generate significant money laundering risks.⁶⁴ Registration is one of the first stages within the UK AML regime and subsequently, a failure to engage with this requirement significantly reduces dealers chances of complying with measures such as implementing a RBA, CDD, and SAR within the MLRs.⁶⁵ Therefore, dealers' compliance with AML registration must be further improved through the initiatives suggested within this study.⁶⁶

6.1.3 Assessing Money Laundering Risk

The RBA to AML ensures that the controls adopted by dealers are commensurate to the risks exposed to the business.⁶⁷ However, dealers struggle to assess money laundering risks due to their limited knowledge of this area of law.⁶⁸ The analysis has identified a lack of understanding among dealers concerning what constitutes a money laundering risk and how the luxury items they sell can be utilised within money-laundering operations.⁶⁹ Thus although the plurality of the RBA intends to provide dealers with the

⁶¹ Ibid. A1, A2, C1, C2, J1, J2, Y1, Y2, W1, W2.

⁶² HM Treasury, 'National Risk Assessment of Money Laundering and Terrorist Financing' (2020)

⁶³ See Chapter One, s 1.5, Chapter Two s 2.3, Chapter Three s 3.3, Chapter Four s 4.4, Chapter Five s 5.3.

⁶⁴ Ibid, A1, A2, C1, C2, J1, J2, Y1, Y2, W1, W2.

⁶⁵ Ibid.

⁶⁶ Ibid.

⁶⁷ See Chapter One, s 1.5, Ehi Esoimeme, *The Risk-Based Approach to Combating Money Laundering and Terrorist Financing* (Amazon 2015).

⁶⁸ See Chapter Two s 2.4, Chapter Three s 3.4, A1 A2, J1, J2, C1, C2, W1, W2, Y1, Y2.

⁶⁹ Ibid.

flexibility in implementing AML policies in accordance to the risks exposed within the organisation,⁷⁰ in practice the absence of uniform measures makes compliance difficult for dealers.⁷¹

In addressing these issues, the study has considered several ways in which jurisdictions provide dealers with direction in identifying money laundering risks,⁷² such as ‘risk classification factors’ and ‘risk indicators’.⁷³ It is encouraging to note that HMRC has recently implemented similar controls for dealers which include ‘risk characteristics’ and ‘risks common to all HVDs’.⁷⁴ These factors have been highlighted as ‘bringing the risk-based approach to life’ and providing dealers with the necessary support in recognising and understanding money laundering risks.⁷⁵ To ensure that dealers are able to access this information, it has been suggested for a link to this guidance to be placed within the guidance issued for dealers.⁷⁶

In addition to risk factors, the study has also outlined the need for further initiatives to help increase dealers knowledge and understanding of the RBA.⁷⁷ Outreach work conducted within other jurisdictions involving seminars,⁷⁸ workshops,⁷⁹ and the publication of FAQs⁸⁰ has been recognised as beneficial in improving dealers’ knowledge and understanding of money laundering risks and the RBA.⁸¹ Additionally, positive practices have been identified within the UK, such as the Law Society delivering training events and workshops to assist legal professionals in raising awareness of their

⁷⁰ See Chapter Three s 3.4, The Wolfsberg Group, ‘Guidance on a Risk Based Approach for Managing Money Laundering Risks’ (2006).

⁷¹ See A1 A2, J1, J2, C1, C2, W1, W2, Y1, Y2.

⁷² *Ibid*, Chapter Four, s 4.5.

⁷³ Financial Transaction and Reports Analysis Centre of Canada, ‘Risk Assessment Guidance’ (2017), Cayman Islands Monetary Authority, ‘Guidance Notes on Assessing Risks and Applying a Risk-Based Approach’ (2020); Law Council of Australia, ‘Anti Money Laundering Guide for Legal Practitioners’ (2018).

⁷⁴ HM Treasury, ‘Guidance: Understanding Risks and Taking action for High Value Dealers’ (2021).

⁷⁵ *Ibid*, Joy Geary, ‘Light is the Best Antidote’ (2021) 12 *Journal of Money Laundering Control* 3.

⁷⁶ *Ibid*, Chapter Five, s 5.4.

⁷⁷ *Ibid*, Chapter Two, s 2.4, Chapter Three, s 3.4.

⁷⁸ Financial Intelligence Unit Trinidad and Tobago, ‘Anti Money Laundering/ Outreach Virtual Seminar’ <<https://fiu.gov.tt/about-us/events/>> accessed 20th October 2021,

⁷⁹ Cayman Islands Monetary Authority, ‘AML Risk Assessment’ <<https://www.cima.ky/regulated-sectors-videos>> accessed 21st March 2021.

⁸⁰ Financial Crimes Enforcement Network, ‘Guidance Notes for Dealers, Including Certain Retailers, of Precious Metals, Precious Stones, or Jewels, on Conducting a Risk Assessment of Their Foreign Suppliers’ (2018).

⁸¹ See Chapter Four s 4.5.

obligations in preventing money laundering through a risk-based approach.⁸² Considering these positive efforts, the study has advocated for HMRC to engage in similar initiatives to help increase dealers ability to adopt risk-based controls within their day-to-day practices.⁸³

Dealers have also flagged the task of conducting the risk assessment as complex and difficult to follow.⁸⁴ Dealers indicated they were unaware of how to conduct a risk assessment and the stages they are required to follow.⁸⁵ Thus, even if dealers wish to adopt a RBA to AML, they are restricted from complying with the requirement due to a lack of knowledge on conducting a risk assessment.⁸⁶ Considering these issues, useful practices have been identified in jurisdictions publishing a risk-based cycle,⁸⁷ a risk-based template, and a risk-based checklist.⁸⁸ Additionally, within the UK the FCA is acknowledged to simplify the RBA for financial institutions through guidance which is split into stages that entities are required to consider/follow.⁸⁹ Subsequently, the study has suggested that HMRC's guidance be improved to simplify how to conduct a risk assessment in an engaging manner for dealers to follow, such as a diagram or listed stages.⁹⁰ These efforts will add further clarity to the RBA dealers and are also useful in improving risk-based compliance within luxury goods sectors.⁹¹

Whilst the RBA is beneficial for dealers in implementing controls to protect their business practices against money laundering operations,⁹² the study has highlighted that dealers fail to recognise the benefits of the approach and instead consider it to conflict

⁸² The Law Society, 'Anti Money Laundering Initiatives' <<https://www.lawsociety.org.uk/topics/anti-money-laundering>> accessed 20th May 2021.

⁸³ See Chapter Five s 5.4.

⁸⁴ See Chapter Two s 2.4, Chapter Three s 3.4, A1 A2, J1, J2, C1, C2, W1, W2, Y1, Y2.

⁸⁵ Ibid.

⁸⁶ Ibid.

⁸⁷ Financial Transaction and Reports Analysis Centre of Canada, 'Risk Assessment Guidance' (2017), Financial Intelligence Unit Trinidad and Tobago, 'Money Laundering and Terrorist Financing Risk' (2018).

⁸⁸ Australia Transaction Reports and Analysis Centre 'A Guide to Preparing and Implementing an AML CTF program' (2020).

⁸⁹ See Chapter Four s 4.5, Financial Conduct Authority, 'Anti Money Laundering Systems and Controls' (2021).

⁹⁰ See Chapter Five s 5.4.

⁹¹ Ibid.

⁹² Financial Action Task Force, 'Guidance for a Risk-Based Approach: Effective Supervision and Enforcement by AML/CFT Supervisors of the Financial Sector and Law Enforcement' (2015).

with their business aims.⁹³ The time, training, and cost of implementing the RBA is perceived negatively by dealers and recognised as conflicting with businesses' primary aims, including ensuring a profit.⁹⁴ In alleviating this discontent, the study has suggested improvements to HMRC's guidance, which explains how the RBA assists business operations and the advantages it brings to businesses.⁹⁵ The inclusion of information such as the RBA protects businesses from criminal abuse, ensures that systems are in place to identify and prevent fraudulent sales, and, ensures that measures are commensurate to the risks exposed, have been regarded as helpful in improving compliance.⁹⁶

In examining the RBA to AML within UK luxury goods sectors, the study has acknowledged numerous interesting points from inadequate controls to challenges faced by dealers which impede risk-based compliance within day-to-day practices.⁹⁷ The analysis has demonstrated that dealers require further help and support in understanding money laundering risks and conducting efficient risk assessments⁹⁸ Without this assistance, compliance will likely remain low among dealers, resulting in increased laundering risk.⁹⁹

6.1.4 Customer Due Diligence

CDD is vital in ensuring that dealers know who their customers are.¹⁰⁰ The analysis has identified that whilst dealers incorporate measures to verify the identity of customers, these measures are not established following the MLRs to reduce the risk of money laundering.¹⁰¹ Instead, they are largely based upon business practices without regard to potential criminal operations.¹⁰² Dealers are unaware of how criminals manipulate their

⁹³ See Chapter Two s 2.4, Chapter Three s 3.4, A1 A2, J1, J2, C1, C2, W1, W2, Y1, Y2.

⁹⁴ Ibid.

⁹⁵ See Chapter Five s 5.4, HMRC, 'Anti-Money Laundering Supervision: Guidance for High Value Dealers' (2020).

⁹⁶ Ibid, Financial Intelligence Unit Trinidad and Tobago, 'Money Laundering and Terrorist Financing Risk' (2018).

⁹⁷ Chapter One, s 1.5, Chapter Two s 2.4, Chapter Three s 3.4, Chapter Four s 4.5, Chapter Five s 5.4.

⁹⁸ Ibid.

⁹⁹ Ibid.

¹⁰⁰ See Chapter One, s 1.5.

¹⁰¹ See Chapter Two s 2.5 Chapter Three s 3.5, A1, A2, C1, C2, Y1, Y2, W1, W2, J1, J2.

¹⁰² Ibid.

identity to facilitate money laundering operations and how CDD controls can reduce this risk.¹⁰³ The CDD requirements within the MLRs are regarded negatively by dealers who consider implementing the controls as financially disadvantageous for businesses.¹⁰⁴ The intimidation involved in ensuring that a client is who they present to be is recognised as detracting away from potential sales, alienating clients, and creating friction.¹⁰⁵ Subsequently, dealers do not feel comfortable in policing customers and questioning them in relation to their identity.¹⁰⁶

In addressing this friction, the study has acknowledged numerous useful practices, including the guidance issued for DPMS in the Cayman Islands explaining the importance of CDD and its role in helping detect and prevent money laundering operations.¹⁰⁷ In this regard, the guidance issued by HMRC fails to explain how CDD assists in detecting money laundering operations and their significance.¹⁰⁸ Consequently, the study has suggested for the UK's AML guidance to be further improved to include information which explains the relevance of CDD in relation to AML.¹⁰⁹ This allows dealers to appreciate the importance of implementing CDD controls in reducing the risk of money laundering, which is useful in improving compliance and allowing dealers to consider the controls positively.¹¹⁰

Although the CDD requirements applicable to dealers have been clarified through guidance issued by HMRC, none of the dealers interviewed had accessed it, nor were they aware of its existence (since it is not sent to them to utilise).¹¹¹ Instead, dealers lack knowledge and understanding of their CDD obligations.¹¹² Consequently, dealers struggle to understand how to tailor CDD controls in accordance with the money

¹⁰³ Ibid.

¹⁰⁴ Ibid.

¹⁰⁵ Ibid, Dina Alyacoubi, 'Challenges in Customer Due Diligence for Banks in the UAE' (2020) 2 *Journal of Money Laundering Control* 52; Martin Gill, Geoff Taylor, 'Preventing Money Laundering or Obstructing Business? Financial Companies' Perspectives on "Know Your Customer" Procedures' (2004) *British Journal of Criminology* 582.

¹⁰⁶ Ibid.

¹⁰⁷ See Chapter Four s 4.6, Financial Crimes Enforcement Network, 'Guidance Notes for Dealers, Including Certain Retailers, of Precious Metals, Precious Stones, or Jewels, on Conducting a Risk Assessment of Their Foreign Suppliers' (2008).

¹⁰⁸ HMRC, 'Anti-Money Laundering Supervision: Guidance for High Value Dealers' (2020).

¹⁰⁹ See Chapter Five s 5.5.

¹¹⁰ Ibid.

¹¹¹ Ibid, HMRC, 'Anti-Money Laundering Supervision: Guidance for High Value Dealers' (2020).

¹¹² Ibid.

laundering risk exposed within a transaction, e.g, SDD and EDD measures.¹¹³ The lack of knowledge makes it difficult for dealers to understand and implement the correct CDD controls within their business practices and has therefore been identified as a barrier to compliance.¹¹⁴

In improving dealers knowledge and understanding of CDD obligations, the study has considered several useful practices adopted within other jurisdictions.¹¹⁵ These include simplifying CDD controls into a five-part system,¹¹⁶ training,¹¹⁷ seminars¹¹⁸, and FAQs.¹¹⁹ These initiatives have been recognised as extremely beneficial in assisting dealers' understanding, application, and awareness of CDD.¹²⁰ Based upon these useful practices, the study has suggested that HMRC provide dealers with training in CDD requirements.¹²¹ Additionally, the analysis has recommended that the CDD guidance be simplified to include numbered stages that are easy to understand and follow in practice.¹²² Furthermore, the study has advanced the benefits of providing dealers with an opportunity to ask questions in relation to CDD controls and publishing these online for dealers to refer to.¹²³

The analysis has also acknowledged that dealers struggle to identify beneficial owners and understand how beneficial ownership operates.¹²⁴ In assisting dealers, the study has referred to AUSTRACs efforts in assisting dealers through the issue of a factsheet explaining how to verify beneficial owners.¹²⁵ The factsheet simplifies what

¹¹³ See Chapter Three s 3.5.

¹¹⁴ See A1, J1, C2, W1. Alexander Dill, *Anti Money Laundering Regulation and Compliance: Key Problems and Practice Areas* (Edward Elgar 2021) 98.

¹¹⁵ See Chapter Four s 4.6.

¹¹⁶ Ibid, Cayman Islands Monetary Authority, 'Guidance Notes on the Prevention and Detection of Money Laundering, Terrorist Financing and Proliferation Financing in the Cayman Islands' (2020).

¹¹⁷ See Chapter Four s 4.6, Financial Crimes Enforcement Network, 'Information on Complying with the Customer Due Diligence (CDD) Final Rule' (2021).

¹¹⁸ See Chapter Four s 4.6, Government of the Republic of Trinidad and Tobago, 'Anti Money Laundering Annual Conference' <<https://www.finance.gov.tt/2014/05/12/4th-annual-anti-money-laundering-conference/>> accessed 23rd March 2021.

¹¹⁹ See Chapter Four s 4.6, Financial Crimes Enforcement Network, 'Information on Complying with the Customer Due Diligence (CDD) Final Rule' (2021).

¹²⁰ See Chapter Five s 5.5.

¹²¹ Ibid.

¹²² Ibid.

¹²³ Ibid.

¹²⁴ See Chapter Two s 2.5 Chapter Three s 3.5, A1, A2, C1, C2, Y1, Y2, W1, W2, J1, J2.

¹²⁵ See Chapter Four s 4.6, Australia Transaction Reports and Analysis Centre, 'Factsheet: Meeting your Beneficial Owner Obligations' (2018).

beneficial ownership means and how to conduct CDD of beneficial owners through step-by-step instructions.¹²⁶ Additionally, the analysis acknowledged that HMRC has issued a manual explaining beneficial ownership in the context of tax, which includes basic information regarding beneficial ownership and its importance.¹²⁷ These practices have been identified as useful for UK dealers in clarifying and understanding how to identify beneficial owners.¹²⁸

In analysing CDD requirements within UK luxury goods sectors the study has provided useful insights into the sector.¹²⁹ In relation to all the themes selected within the study, CDD has the highest level of engagement among the dealers interviewed.¹³⁰ However, although dealers implement verification controls, the study has identified that these fail to address money laundering risks.¹³¹ Subsequently, there is an increasing need to ensure that dealers understand their CDD obligations within the MLRs and know how to tailor these according to the money laundering risk exposed within any said situation.¹³² In ensuring this, the educational initiatives identified within the study provide several useful options in addressing the issues identified and increasing AML compliance among dealers.¹³³

6.1.5 Suspicious Activity Reporting

This study has identified the importance of SARs within the UK AML regime.¹³⁴ However, the analysis has acknowledged poor SARs compliance among UK dealers which generates money laundering risk.¹³⁵ The data collection has showcased that dealers

¹²⁶ Ibid

¹²⁷ See Chapter Five s 5.5, HMRC, ‘International Manual: Double taxation treaties: Beneficial ownership: Importance of beneficial ownership’ (2022).

¹²⁸ See Chapter Five s 5.5.

¹²⁹ See Chapter One s 1.5, Chapter Two s 2.5, Chapter Three s 3.5, Chapter Four s 4.6, Chapter Five s 5.5.

¹³⁰ See A1, A2, C1, C2, Y1, Y2, W1, W2, J1, J2.

¹³¹ Ibid.

¹³² Ibid.

¹³³ See Chapter Five s 5.5.

¹³⁴ See Chapter One s 1.5, Chapter Two s 2.6, Chapter Three s 3.6, Chapter Five s 5.7.

¹³⁵ Ibid, HM Treasury, ‘UK National Risk Assessment of Money Laundering and Terrorist Financing’ (2020); HM Treasury, ‘UK National Risk Assessment of Money Laundering and Terrorist Financing’ (2017); HM Treasury, ‘UK National Risk Assessment of Money Laundering and Terrorist Financing’ (2015).

fail to comply with their reporting requirements, increasing the risk of money laundering.¹³⁶ Dealers have been identified as lacking knowledge and awareness of SAR.¹³⁷ Most dealers interviewed had never heard of a SAR, nor were they aware of their legal obligation to report suspicious matters and how to do so.¹³⁸ Additionally, dealers were unaware of the NCA and its role in SAR.¹³⁹ This lack of basic knowledge and awareness of SAR makes compliance difficult.¹⁴⁰

In overcoming these issues, the study has suggested that HMRC provide dealers with workshops and seminars addressing all reporting aspects.¹⁴¹ These initiatives have been acknowledged as extremely useful for dealers within other jurisdictions.¹⁴² For example, if HMRC cannot personally deliver these initiatives, the study suggested that dealers be provided with the opportunity to attend SAR seminars delivered by private trainers in this area.¹⁴³ These courses are free and recognised as extremely useful in conveying the importance of SAR, providing a practical insight into reporting, and increasing entities' confidence in reporting.¹⁴⁴

Improvements have also been suggested in relation to submitted SARs as valuable in progressing dealers understanding.¹⁴⁵ The UK SAR system fails to provide any follow-up information or feedback to regulated entities when they have submitted reports.¹⁴⁶ Feedback has been acknowledged as particularly helpful in a legal environment to showcase value, provide motivation, and allow development and continued learning.¹⁴⁷

¹³⁶ See A1, A2, C1, C2, W1, W2, Y1, Y2, J1, J2.

¹³⁷ Ibid.

¹³⁸ Ibid.

¹³⁹ Ibid.

¹⁴⁰ See Chapter Three s 3.6, Peter Reuter, *Chasing Dirty Money: The Fight Against Money Laundering* (Institute for International Economics 2004) 56.

¹⁴¹ See Chapter Five s 5.7.

¹⁴² See Chapter Four s 4.7, Financial Intelligence Unit Trinidad and Tobago, 'Anti Money Laundering/ Outreach Virtual Seminar' <<https://fiu.gov.tt/about-us/events/>> accessed 20th October 2021.

¹⁴³ See Chapter Five s 5.7, Financial Crime Limited, 'Suspicious Activity Reports' <<https://www.financialcrimelimited.com/training-programmes>> accessed 20th June 2021.

¹⁴⁴ Ibid.

¹⁴⁵ See Chapter Five s 5.7.

¹⁴⁶ See Chapter Two s 2.6, Chapter Three s 3.6, A1, A2, C1, C2, W1, W2, Y1, Y2, J1, J2.

¹⁴⁷ See Chapter Five s 5.7, Scott Slorach, Judith Embley, Peter Goodchild, Catherine Shepard, *Legal Systems and Skills* (Oxford University Press 2017) 360; Carl Brown, 'Not enough needles and too much hay: the problem with Suspicious Activity Reports' *Financial Crime* (US 2 February 2021) <<https://www.grcworldforums.com/financial-crime/not-enough-needles-and-too-much-hay-the-problem-with-suspicious-activity-reports/719.article>> accessed 20th March 2021; Jim Richards, 'The Future Financial Crime Landscape in the US' *Financial Crime* (US 16 March 2021)

The study has advocated for the SAR system to be improved to provide dealers with feedback for submitted SARs as beneficial in improving knowledge, understanding, and compliance with reporting.¹⁴⁸ In implementing a feedback system, the study has made specific reference to Richards ‘feedback loop framework’ comprising of ‘Tactical or Strategical Value’ SARs.¹⁴⁹

In addition to increasing dealers’ knowledge of reporting, simplifying the SAR process has also been acknowledged as useful in improving compliance.¹⁵⁰ The NRAs have constantly highlighted issues within regulated sectors in relation to incomplete and incorrectly filed reports.¹⁵¹ Dealers consider the SAR system as complex to follow due to their limited understanding of the area of law.¹⁵² In this regard, the study referred to Australia and Trinidad and Tobago’s publication of checklists which help direct dealers through the reporting process and ensure they have completed each stage.¹⁵³ Similarly, the Institute of Chartered Accountants in England and Wales has been identified as producing a ‘help sheet’ for accountants to refer to in ensuring they have followed all the necessary stages when submitting a SAR.¹⁵⁴ The study has advocated for such an approach to be adopted in a luxury goods context to assist dealers in complying with their reporting obligations.¹⁵⁵ The study has also highlighted that providing dealers with support on best practices in submitting a useful SAR is useful in ensuring efficient reporting.¹⁵⁶ In relation to this, the guidance document issued by the Cayman Islands ‘how

<<https://www.fincrimeworldforum.com/post/the-future-financial-crime-landscape-in-the-us>> accessed 10th October 2021.

¹⁴⁸ Ibid.

¹⁴⁹ See Chapter Three s 3.6, Jim Richards, ‘The Future Financial Crime Landscape in the US’ *Financial Crime* (US 16 March 2021) <<https://www.fincrimeworldforum.com/post/the-future-financial-crime-landscape-in-the-us>> accessed 10th October 2021.

¹⁵⁰ See Chapter Five s 5.7.

¹⁵¹ HM Treasury, ‘UK National Risk Assessment of Money Laundering and Terrorist Financing’ (2020); HM Treasury, ‘UK National Risk Assessment of Money Laundering and Terrorist Financing’ (2017); HM Treasury, ‘UK National Risk Assessment of Money Laundering and Terrorist Financing’ (2015).

¹⁵² See Chapter Two s 2.6, Chapter Three s 3.6, A1, A2, C1, C2, W1, W2, Y1, Y2, J1, J2.

¹⁵³ See Chapter Four s 4.7, Australia Transaction Reports and Analysis Centre, ‘Suspicious Matter Reporting: Reference Guide’ (2019).

¹⁵⁴ See Chapter Five s 5.7, Institute of Chartered Accountants in England and Wales, ‘Suspicious Activity Report Help sheet’ <<https://www.icaew.com/-/media/corporate/files/helpsheets/technical/suspicious-activity-reports.ashx?la=en>> accessed 12th May 2021.

¹⁵⁵ Ibid.

¹⁵⁶ See Chapter Two s 2.6, Chapter Three s 3.6, A1, A2, J1, J2, C1, C2, W1, W2, Y1, Y2.

to prepare and submit high-quality SARs'¹⁵⁷ and the NCA guidance addressing 'submitting better quality SARs'¹⁵⁸ have been flagged as beneficial for dealers.¹⁵⁹

The decision of when to file a SAR has been considered problematic in practice.¹⁶⁰ The plurality of 'suspicion' largely differs from one individual to another and has been recognised as making compliance difficult for dealers and other regulated sectors.¹⁶¹ Subsequently, in practice, the lack of clarity in defining 'suspicious' makes dealers unsure when to file a SAR and when not to.¹⁶² In clarifying suspicion, the study has considered the Law Commissions prospect of amending Part 7 of POCA to include a statutory definition of suspicion.¹⁶³ However, this approach has been critiqued due to the considerable practical difficulties in formulating a precise yet practical legal definition which adds something to the ordinary, natural meaning of the word;¹⁶⁴ and, as a matter of principle, an ordinary English word should only be defined in law where it is to take on a specific legal meaning distinct from the natural English one.¹⁶⁵ A better approach has been identified as assisting dealers with the application of suspicion, rather than attempting to define it.¹⁶⁶ In achieving this, the study has recommended for clear guidance to be issued which explains suspicion as well as supervisor-approved guidance for individual sectors.¹⁶⁷

Reporting requirements have been recognised as negatively impacting the relationship between dealers and their clients.¹⁶⁸ The study has acknowledged that these

¹⁵⁷ See Chapter Four, s 4.7, Financial Reporting Authority, 'Guidance on Preparing and Submitting High Quality Suspicious Activity Reports' (2020).

¹⁵⁸ National Crime Agency, 'Guidance on submitting better quality Suspicious Activity Reports' (2021).

¹⁵⁹ Ibid, See Chapter Five s 5.7.

¹⁶⁰ See Chapter Two s 2.6, Chapter Three s 3.6, Chapter Five s 5.7, A1, A2, C1, C2, W1, W2, Y1, Y2, J1, J2.

¹⁶¹ See Chapter Five s 5.7, Mohammed Emir Celik, 'Regulated Sector Professionals and Reporting Suspicion of Money Laundering: is it a Disproportionate Burden?' (2022) 2 *Journal of Money Laundering Control* 72; Law Commission, 'Anti-Money Laundering: SARs Regime Consultation Paper' (2018).

¹⁶² See A1, A2, C1, C2, W1, W2, Y1, Y2, J1, J2.

¹⁶³ See Chapter Five s 5.7, Law Commission, 'Anti-Money Laundering: SARs Regime Consultation Paper' (2018).

¹⁶⁴ Ibid.

¹⁶⁵ Ibid.

¹⁶⁶ Ibid.

¹⁶⁷ Ibid, Ilaria Zavoli, Colin King, 'The Challenges of Implementing Anti- Money Laundering Regulation: An Empirical Analysis' (2021) 4 *Modern Law Review* 769.

¹⁶⁸ See Chapter Two s 2.6, Chapter Three s 3.6, A1, A2, J1, J2, C1, C2, W1, W2, Y1, Y2.

concerns have also been raised by regulated entities within the real estate,¹⁶⁹ banking,¹⁷⁰ solicitors,¹⁷¹ and art¹⁷² sector as making compliance difficult.¹⁷³ Dealers failed to recognise the personal benefits derived from submitting SARs and indicated frustration in having to dedicate their time and money in this regard without receiving any payment.¹⁷⁴ Dealers have also been identified as failing to comply with the requirement to appoint a 'nominated officer' and voiced that this creates increased costs and time commitments they were not prepared to allocate to AML.¹⁷⁵ In helping dealers to recognise the benefits of reporting the study has made reference to AUSTRAC's publication of video content which highlights the merits of reporting, such as helping uncover large-scale money laundering operations.¹⁷⁶ Additionally, the NCA has been identified as explaining the wide-reaching value derived from SAR.¹⁷⁷ Subsequently, the study has advocated for an approach which includes this information in the SAR process as beneficial in allowing dealers to appreciate the importance of reporting, which helps improve compliance.¹⁷⁸

Increased surveillance has been recommended as necessary in identifying non-compliant dealers.¹⁷⁹ The study has suggested that guidance be improved to highlight the penalties that non-compliant dealers face.¹⁸⁰ This has been considered a deterrent and assisting in improving SAR compliance.¹⁸¹ It is however important to ensure that a balance is struck between informing dealers of the penalties they face for non-compliance

¹⁶⁹ Ilaria Zavoli, Colin King, 'The Challenges of Implementing Anti- Money Laundering Regulation: An Empirical Analysis' (2021) 4 *Modern Law Review* 740.

¹⁷⁰ Robert Axelrod, 'Criminality and Suspicious Activity Reports' (2017) 24 *Journal of Financial Crime* 231.

¹⁷¹ Sarah Kebbell, 'The Law Commission: Anti Money Laundering and Counter Terrorist Financing- Reform of the Suspicious Activity Reporting Regimes' (2018) 2 *Criminal Law Review* 880.

¹⁷² Saskia Hufnagel, Colin King, 'Anti-Money Laundering Regulation and the Art Market' (2020) 40 *Legal Studies* 140.

¹⁷³ See Chapter Three s 4.6.

¹⁷⁴ See Chapter Two s 2.6, Chapter Three s 3.6, A1, A2, C1, C2, W1, W2, Y1, Y2, J1, J2.

¹⁷⁵ *Ibid.*

¹⁷⁶ See Chapter Four s 4.7, Chapter Five s 5.7, s 5.6, Australia Transaction Reports and Analysis Centre, 'Suspicious Matter Reporting: Reference Guide' (2019).

¹⁷⁷ National Crime Agency, 'The Value of SARs' <<https://www.nationalcrimeagency.gov.uk/what-we-do/crime-threats/money-laundering-and-illicit-finance/suspicious-activity-reports>> accessed 13th March 2021.

¹⁷⁸ *Ibid.*, See Chapter Five s 5.7.

¹⁷⁹ *Ibid.*

¹⁸⁰ *Ibid.*, HMRC, 'Anti-Money Laundering Supervision: Guidance for High Value Dealers' (2020).

¹⁸¹ *Ibid.*

and placing dealers into a position where they feel the need to make a SAR out of self-protection.¹⁸² The analysis has raised concerns in ensuring that dealers are not pushed into a position where they file SAR as a defence to facing potential prosecution for failing to do so.¹⁸³ The risk of ‘defensive filing’ in other jurisdictions has been highlighted as creating an eye-watering number of SARs, making it difficult for law enforcement to find useful reports.¹⁸⁴ This method of filing creates numerous issues including, a backlog of SARs for law enforcement to shift through, reports which fail to provide useful intelligence in detecting money-laundering operations, and reports which go against the primary purpose of SAR.¹⁸⁵ Subsequently, the study has advocated for the approach which ensures that dealers are not put in this position by educating dealers about SAR and enabling them to clearly understand when to file a SAR and feel confident in doing so.¹⁸⁶

In addition to reporting suspicious activity, the study has acknowledged that some jurisdictions require threshold reporting of certain transactions in their SAR regime.¹⁸⁷ In this regard, the US, Australia, and Canada have been identified as requiring regulated entities to report transactions above \$10,000 since these involve a high suspicion of money laundering.¹⁸⁸ Extending reporting requirements to include threshold reporting has been proposed as useful for luxury goods sectors by actively requiring dealers to consider higher-risk transactions and ensuring they have taken relevant measures to mitigate against the money laundering risk.¹⁸⁹ Additionally, transaction reporting provides useful

¹⁸² Ibid, Carl Brown, ‘Not enough needles and too much hay: the problem with Suspicious Activity Reports’ *Financial Crime* (US 2 February 2021) <<https://www.grcworldforums.com/financial-crime/not-enough-needles-and-too-much-hay-the-problem-with-suspicious-activity-reports/719.article>> accessed 20th March 2021.

¹⁸³ Ibid.

¹⁸⁴ Ibid, Brian Monroe, ‘After Scratching Parliamentary AML Inquiry, AUSTRAC takes aim at quality, quantity of suspicious matter reports in quest to bolster Financial Crime effectiveness’ (Certified Financial Crime Experts 2021), Daniel Bethencourt, ‘Coronavirus Pandemic Fuelling Suspicious Transactions in Canada’ (Canada, 20 October 2020) *Money Laundering News* <<https://www.moneylaundering.com/news/coronavirus-pandemic-fueling-suspicious-transactions-in-canada/>> 21st March 2021, Michael Klein, ‘Number of Suspicious Activity Reports Increased’ *Cayman Compass* (Cayman Islands 11th June 2019).

¹⁸⁵ Ibid.

¹⁸⁶ See Chapter Five s 5.7.

¹⁸⁷ See Chapter Four s 4. 7, Bank Secrecy Act 1970 (US); Proceeds of Crime Act 2000 (Canada); Anti Money Laundering and Counter Terrorism Financing Act 2006 (Australia).

¹⁸⁸ Ibid.

¹⁸⁹ See Chapter Five s 5.7, Financial Crimes Enforcement Network, ‘Interim Final Rule - Anti-Money Laundering Programs for Dealers in Precious Metals, Stones, or Jewels’ (2015).

insights into the number of transactions that occur above a certain threshold, which is valuable for NRAs when assessing money laundering vulnerabilities and introducing new measures.¹⁹⁰

In assessing the SAR regime applicable to UK luxury goods dealers this study has provided critical insights which are useful in reducing the risk of money laundering.¹⁹¹ By being at the front line, dealers are in a vital position to identify suspicious matters and provide useful intelligence to law enforcement in detecting money-laundering operations.¹⁹² However, the study has identified numerous factors that restrict compliance and result in low reporting among dealers.¹⁹³ In improving compliance, the study has advanced several educational initiatives which are valuable in increasing dealers, knowledge and understanding of reporting.¹⁹⁴ Without these measures, dealers will continue to struggle with SAR and reporting rates will remain low.¹⁹⁵

6.1.6 Supervision

The study has highlighted the importance of supervision in ensuring AML compliance among dealers.¹⁹⁶ The analysis has examined HMRC's supervision of AML in UK luxury goods sectors.¹⁹⁷ The findings have identified that HMRC supervises 46,746 regulated entities through 266 full-time employees.¹⁹⁸ This has raised concerns about the extent to which HMRC is equipped to efficiently supervise the large population of individuals within and ensure adequate monitoring of AML.¹⁹⁹ Whilst the dealers interviewed openly declared AML non-compliance, they had not received any penalties or checks from

¹⁹⁰ Ibid.

¹⁹¹ See Chapter One s 1.5, Chapter Two s 2.6, Chapter Three s 3.6, Chapter Four s 4.7 Chapter Five s 5.6.

¹⁹² Ibid.

¹⁹³ Ibid, A1, A2, C1, C2, W1, W2, Y1, Y2, J1, J2.

¹⁹⁴ Ibid, Chapter Four s 4.7 Chapter Five s 5.6.

¹⁹⁵ Ibid.

¹⁹⁶ See Chapter One s 1.5, Chapter Two s 2.7, Chapter Three s 3.7, Chapter Four s 4.8, Chapter Five s 5.7.

¹⁹⁷ Ibid.

¹⁹⁸ See Chapter Two s 2.7, HM Treasury, 'Anti Money Laundering and Counter Terrorist Financing: Supervision Report' (2021).

¹⁹⁹ Ibid.

HMRC.²⁰⁰ Accordingly, merely a handful of penalties have been issued to dealers for AML non-compliance.²⁰¹

In ensuring that HMRC can provide the attention required to the AML supervision of UK luxury goods sectors, the study has considered the DCI's role as the new regulatory body to supervise DPMS and real estate agents.²⁰² The fact that the DCI covers fewer sectors than HMRC has been acknowledged as beneficial in allowing DCI to dedicate more time to the sectors that it supervises and understanding the risks exposed.²⁰³ Similarly, OPBAS has been acknowledged as adopting a similar approach in supervising legal and accountancy sectors in the UK.²⁰⁴ Although concerns have been raised in relation to the cost incurred in setting up this supervisory body, the study has advocated for the consideration of an additional body to supervise luxury goods sectors.²⁰⁵ This is useful in reducing HMRC's strain in relation to the number of sectors it supervises and beneficial in ensuring tailored monitoring and compliance.²⁰⁶

The study has considered HMRC's awareness of money laundering risks in UK luxury goods sectors.²⁰⁷ Although HMRC states that it has a good understanding of the risks in each supervised sector,²⁰⁸ the study has highlighted that HMRC has not acknowledged the money laundering risks raised in the project.²⁰⁹ In ensuring that HMRC can understand and recognise the money laundering risks in luxury goods sectors the study has highlighted educational initiatives adopted in other jurisdictions.²¹⁰ These include detailed training on money laundering risks, detailed guidance, and an increased level of feedback delivered to regulated entities in improving AML compliance.²¹¹ In addition, upon reliance on these positive practices, the thesis has suggested that HMRC

²⁰⁰ Ibid, A1, A2, C1, C2, Y1, Y2, W1, W2, J1, J2.

²⁰¹ HMRC, 'Corporate Report: HMRC Anti-Money Laundering Supervision Annual Assessment' (2021).

²⁰² See Chapter Four s 4.7, Financial Action Task Force, 'Cayman Islands Mutual Evaluation Report' (2019).

²⁰³ Ibid.

²⁰⁴ See Chapter Four s 4.8, Financial Conduct Authority, 'Office for Professional Body Anti Money Laundering Supervision' (2020).

²⁰⁵ Ibid, Chapter Five s 5.7.

²⁰⁶ Ibid.

²⁰⁷ See Chapter Two s 2.7, Chapter Three s 3.7.

²⁰⁸ See Chapter Five s 5.7, HMRC, 'Corporate Report: HMRC Anti-Money Laundering Supervision Annual Assessment' (2021).

²⁰⁹ See Chapter Two s 2.7, Chapter Three s 3.7, A1, A2, C1, C2, Y1, Y2, W1, W2, J1, J2.

²¹⁰ See Chapter Four s 4.8, Financial Action Task Force, 'Canada Mutual Evaluation Report' (2016).

²¹¹ Ibid.

undertake training to address individual risks in the sectors it supervises to ensure that staff understand and have the required level of knowledge to undertake efficient supervision.²¹²

The thesis has recommended improvements to be made in relation to HMRC's engagement with dealers.²¹³ Whilst HMRC has recently issued guidance for HVDs and AMPs, the guidance fails to address vital elements of AML compliance, such as explaining the merits of AML and why the MLRs have been extended to include dealers.²¹⁴ Additionally, the guidance is difficult to access since dealers must search for it on a web browser to locate it.²¹⁵ HMRC mentions that it conducts outreach activities for the sectors it regulates in complying with AML obligations.²¹⁶ However, the analysis has uncovered an absence of outreach activities conducted by HMRC for those operating in luxury goods sectors.²¹⁷ Subsequently, HMRC has been recognised as failing to engage in educational outreach initiatives which provide additional AML support to dealers.²¹⁸ In improving engagement, the study has referred to jurisdictions engaging with regulated entities through informative seminars, public/private sector forums, and meetings with industries.²¹⁹ These initiatives have been identified as particularly useful for dealers in the UK in increasing their understanding of AML and forming positive relationships with regulated entities.²²⁰

Additionally, in this regard, the DCI has been recognised as undertaking annual self-assessments of its AML supervision of luxury goods sectors.²²¹ The assessments allow the DCI to review its supervision strategies and assess how its practices can be further improved to increase AML compliance among regulated entities.²²² This involves

²¹² See Chapter Five s 5.7, Financial Action Task Force, 'Guidance on Risk Based Supervision' (2020).

²¹³ Ibid.

²¹⁴ See Chapter Two s 2.7, Chapter Three s 3.7, HMRC, 'Anti-Money Laundering Supervision: Guidance for High Value Dealers' (2020).

²¹⁵ Ibid, E.g. searching 'HMRC AML Guidance' within a Google Web browser.

²¹⁶ See Chapter Three s 3.7, HMRC, 'Corporate Report: HMRC Anti-Money Laundering Supervision Annual Assessment' (2021).

²¹⁷ Ibid, A1, A2, C1, C2, Y1, Y2, W1, W2, J1, J2.

²¹⁸ See Chapter Three s 3.7.

²¹⁹ See Chapter Four s 4.8, Financial Action Task Force, 'Canada Mutual Evaluation Report' (2016), Financial Action Task Force, 'Japan Mutual Evaluation Report' (2021).

²²⁰ See Chapter Five s 5.7.

²²¹ See Chapter Four s 4.8, Department of Commerce and Investment, 'DNFBP Annual Supervision Report' (2020).

²²² Ibid.

reviewing compliance programmes, training programs, the execution of AML measures, educational and outreach interventions, and enforcement measures taken.²²³ DCI has also been recognised for disseminating questionnaires to the sectors it regulates, such as DPMS, which involve questions such as: how can we further assist you as AML supervisor, what further support do you require, and share your thoughts regarding your role as an AML gatekeeper.²²⁴ These practices have been considered useful in progressing AML supervision in accordance with changing needs of regulated sectors.²²⁵ HMRC has undertaken similar efforts in its recent self-assessment which reviews AML supervision strategies concerning the sectors it supervises.²²⁶ The thesis has subsequently advocated for the continuation of these efforts.²²⁷

In relation to issuing penalties for non-compliance, the study has suggested for further scrutiny of luxury goods sectors.²²⁸ Over the years HMRC has adopted a tougher approach to sanctions to make them more effective, proportionate, and dissuasive.²²⁹ However, a handful of dealers have faced sanctions for failing to comply with their AML obligations.²³⁰ In ensuring that noncompliance is detected and penalized, the study has advocated for HMRC to implement a rigorous approach.²³¹ This will not only act as a deterrent but is also useful in ensuring that dealers that fail to comply with the MLRs are issued the relevant penalties for operating in such a manner.²³²

The study has identified several risks from HMRC's approach to AML supervision of luxury goods sectors.²³³ In reducing these risks, the study has suggested that HMRC engage in further initiatives with dealers concerning AML compliance, such as seminars, workshops, and training events.²³⁴ Additionally, the study has highlighted the

²²³ Ibid.

²²⁴ Financial Action Task Force, 'Cayman Islands Mutual Evaluation Report' (2019).

²²⁵ See Chapter Five s 5.7.

²²⁶ Ibid, HMRC, 'Corporate Report: HMRC Anti-Money Laundering Supervision Annual Assessment' (2021).

²²⁷ Ibid.

²²⁸ See Chapter Five s 5.7.

²²⁹ See Chapter Three s 3.7, HMRC, 'Corporate Report: HMRC Anti-Money Laundering Supervision Annual Assessment' (2021).

²³⁰ Ibid.

²³¹ See Chapter Five s 5.7.

²³² Ibid.

²³³ See Chapter One s 1.5, Chapter Two s 2.7, Chapter Three s 3.7, Chapter Four s 4.8 Chapter Five s 5.7.

²³⁴ Ibid.

need for HMRC to ensure that it understands the individual money laundering risks in the sectors it supervises.²³⁵ In achieving this and reducing the strain in supervising a vast number of sectors, the study has suggested the establishment of an additional supervisory body tasked with observing luxury goods sectors.²³⁶ These suggestions are vital in ensuring that dealers can gain the required support in fulfilling their AML obligations and HMRC is equipped to operate as a AML supervisor.²³⁷

6.2 The Overall Result of the Research

This research examined: What are money laundering risks in the UK luxury goods sector? And how can the UK AML efforts be further improved reduce such risks?’²³⁸ In answering the first part of the research question, several factors have been identified in the study that generate money laundering risk in UK luxury goods sectors.²³⁹ One of these factors involves the unique characteristics of luxury goods, making the items useful for money laundering operations and subsequently generating risk.²⁴⁰ The fact that luxury goods dealers are often cash-based, with a significant turnover is ideal for money laundering operations since it allows criminals to move large funds without a footprint, reducing the chances of detection.²⁴¹ The emphasis on anonymity and the lack of transparency in luxury sales make it difficult to detect money laundering operations.²⁴² This allows criminals to distance themselves from the criminally acquired funds, making it difficult to trace sales and transactions.²⁴³ The transportability of luxury items such as

²³⁵ Ibid.

²³⁶ Ibid.

²³⁷ Ibid.

²³⁸ See Introduction s 1.1.

²³⁹ See Chapter One, Chapter Two, Chapter Three, Chapter Four, Chapter Five.

²⁴⁰ See Chapter One s 1.3, Transparency International, ‘Tainted Treasures: Money Laundering Risks in Luxury Markets’ (2017).

²⁴¹ Ibid, Nicholas Gilmour, ‘Blindly obvious and frequently exploitable’ (2017) 20 *Journal of Money Laundering Control* 105; HM Treasury, UK National Risk Assessment of Money Laundering and Terrorist Financing (2015) 58.

²⁴² See Chapter One s 1.3, Noah Charney, *The Art of Forgery* (Phaidon Press 2015); Saskia Hufnagel, Colin King, ‘Anti Money Laundering Regulation and the Art Market’ (*Legal Studies*, 2020) 40.

²⁴³ Ibid.

diamonds and watches provides ease in moving wealth across borders.²⁴⁴ For instance, raw diamonds may be sewn into an individual's clothing or 'carried in launderer's pocket'.²⁴⁵

Additionally, the fact that luxury items such as gold and art increase in value allows them to serve as long-term investments.²⁴⁶ Criminals subsequently favour these items in comparison to modern forms of money laundering such as cryptocurrencies (bitcoin) which do not have the same ability to generate further value.²⁴⁷ Furthermore, the absence of standard pricing among luxury goods makes it difficult to ascertain the price paid for items.²⁴⁸ This provides criminals with the scope for discretion and manipulation, making it impossible to assess money laundering operations accurately.²⁴⁹ Moreover, the status conferred to individuals making luxury purchases attracts criminals to luxury items.²⁵⁰ Items such as supercars, yachts, and expensive jewellery appeal to criminals as they can serve as 'badges of wealth'²⁵¹, becoming a highly desirable consumption target.²⁵² These characteristics increase money laundering risk in UK luxury goods sectors by being useful in concealing criminal gains and subsequently attracting criminal operations.²⁵³

In addition to the unique characteristics of luxury items, the absence of AML controls among luxury goods dealers creates money laundering risk.²⁵⁴ The UK AML regime seeks to detect, respond and eliminate money laundering risks by requiring private

²⁴⁴ See Chapter One s 1.3, Fabian Teichmann, 'Money Laundering in the Jewellery Business' (2020) 23 *Journal of Money Laundering Control* 692; Nicholas Gilmour, 'Blindingly Obvious and Frequently Exploitable' (2017) 20 *Journal of Money Laundering Control* 105; Transparency International, 'Tainted Treasures: Money Laundering Risks in Luxury Markets' (2017) 14.

²⁴⁵ *Ibid.*

²⁴⁶ See Chapter One s 1.3, Saskia Hufnagel, Colin King, 'Anti-Money Laundering Regulation and the Art Market' (2020) 40 *Legal Studies* 136; HM Treasury, UK National Risk Assessment of Money Laundering and Terrorist Financing 2020.

²⁴⁷ *Ibid.*, Nicholas Gilmour, 'Blindingly Obvious and Frequently Exploitable' (2017) 20 *Journal of Money Laundering Control* 105.

²⁴⁸ See Chapter One s 1.3, Fabian Teichmann, 'Twelve Methods of Money Laundering' (2017) 2 *Journal of Money Laundering Control* 20.

²⁴⁹ *Ibid.*

²⁵⁰ See Chapter One s 1.3, Organisation for Economic Co-operation and Development, *Money Laundering Awareness Handbook for Tax Examiners and Tax Auditors* (2019).

²⁵¹ *Ibid.*

²⁵² Transparency International, 'Tainted Treasures: Money Laundering Risks in Luxury Markets' (2017) 5.

²⁵³ See Chapter One s 1.3.

²⁵⁴ *Ibid.*, Chapter Two, Chapter Three, A1, A2, C1, C2, W1, W2, Y1, Y2, J1, J2.

sectors to take a risk-based approach.²⁵⁵ By failing to adopt the controls stipulated in the MLRs and acting as AML gatekeepers, luxury goods dealers are vulnerable to being targeted by criminals to disguise illicit funds.²⁵⁶ For example, dealers that fail to conduct a risk assessment and implement risk-based AML controls are unable to mitigate against money laundering operations.²⁵⁷ The absence of AML controls makes dealers more likely to engage in high-risk transactions such as accepting HVPs in cash without any checks.²⁵⁸ Criminals can take advantage of this non-compliance and target their operations in purchasing luxury items with significant ease to launder criminal proceeds.²⁵⁹

A further factor which produces money laundering risk is related to dealers lack of knowledge and understanding of the UK AML regime.²⁶⁰ In examining the AML regime through a thematic approach the study has identified that dealers lack basic knowledge of their obligations.²⁶¹ All the dealers interviewed demonstrated a lack of awareness of the measures in the MLRs, with many operating for years without any AML controls.²⁶² This lack of knowledge results in dealers implementing deficient AML controls that fail to adequately attend to the money laundering risks exposed.²⁶³ For example, whilst dealers adopt verification controls, these are not in line with the MLRs resulting in dealers accepting practices that pose a high money laundering risk, such as not requiring ID from individuals they have known for a long time.²⁶⁴ This lack of knowledge creates money laundering risk as dealers cannot implement the necessary controls to protect their businesses against money laundering operations.²⁶⁵

²⁵⁵ HM Treasury, 'Anti Money Laundering and Counter Terrorist Financing: Supervision Report' (2021); Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017, Proceeds of Crime Act 2002.

²⁵⁶ See, A1, A2, C1, C2, W1, W2, Y1, Y2, J1, J2.

²⁵⁷ Ibid.

²⁵⁸ Ibid.

²⁵⁹ Ibid, Nicholas Gilmour, 'Blindingly Obvious and Frequently Exploitable' (2017) 20 *Journal of Money Laundering Control* 105; Transparency International, 'Tainted Treasures: Money Laundering Risks in Luxury Markets' (2017) 5; Fabian Teichmann, 'Twelve Methods of Money Laundering' (2017) 2 *Journal of Money Laundering Control* 20.

²⁶⁰ See Chapter Two, Chapter Three, A1, A2, C1, C2, W1, W2, Y1, Y2, J1, J2.

²⁶¹ Ibid.

²⁶² Ibid.

²⁶³ Ibid, HM Treasury, 'UK National Risk Assessment of Money Laundering and Terrorist Financing' (2020); HM Treasury, 'UK National Risk Assessment of Money Laundering and Terrorist Financing' (2017); HM Treasury, 'UK National Risk Assessment of Money Laundering and Terrorist Financing' (2015).

²⁶⁴ Ibid, A1, A2, C1, C2, W1, W2, Y1, Y2, J1, J2.

²⁶⁵ Ibid.

Similarly, dealers lack of knowledge of money laundering also generates risk.²⁶⁶ Dealers who fail to understand how money laundering operations take place and how criminals exploit business operations are unlikely to fully understand the risks they are exposed to.²⁶⁷ This makes it difficult for dealers to implement efficient controls which reduce money laundering risk.²⁶⁸ Dealers may consider their controls to mitigate against money laundering risk when in practice they fail to do so.²⁶⁹ For example, dealers indicated they appointed a person to handle suspicious matters however, this individual was unaware of SAR.²⁷⁰ Thus, without the knowledge required to understand and recognise money laundering risks dealers generate risk by implementing deficient AML controls.²⁷¹

The AML regime also gives rise to money laundering risk.²⁷² Although the regime includes several controls which are beneficial in reducing money laundering, the addition of luxury goods sectors through the definitions of HVDs and AMPs includes loopholes for money laundering operations.²⁷³ The regime only applies to individuals making or receiving payments of €10,000 or more in cash.²⁷⁴ Cash payments below this threshold limit fail to be captured in the regime even though they pose a money laundering risk.²⁷⁵ Subsequently, criminals can make several purchases in cash under the threshold limit without fear of facing any AML controls.²⁷⁶ The threshold definition also allows dealers to avoid AML controls by stating that their business operations fall below the threshold limit when in practice this is not the case.²⁷⁷ Similarly, dealers have been acknowledged to avoid AML controls by implementing no cash policies.²⁷⁸

²⁶⁶ See Chapter Two, Chapter Three, A1, A2, C1, C2, W1, W2, Y1, Y2, J1, J2.

²⁶⁷ Ibid.

²⁶⁸ Ibid.

²⁶⁹ Ibid.

²⁷⁰ Ibid.

²⁷¹ Ibid.

²⁷² Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017.

²⁷³ Ibid Regulation 14 (1) a, Chapter Two, Chapter Three.

²⁷⁴ Ibid.

²⁷⁵ See Chapter Two s 2.2, European Commission, 'Report from the Commission to the European Parliament and to the Council on the assessment of the risks of money laundering and terrorist financing affecting the internal market and relating to cross-border situations' (2017).

²⁷⁶ Ibid.

²⁷⁷ See Chapter Two, Chapter Three, A1, A2, C1, C2, W1, W2, Y1, Y2, J1, J2.

²⁷⁸ Financial Action Task Force, 'Mutual Evaluation Report of the United Kingdom' (2018).

Identifying these risks allows for the consideration of ways in which the UK AML regime can be further improved to address the second part of the research question.²⁷⁹ The thesis has advocated several practices to decrease the risk of money laundering in UK luxury goods sectors.²⁸⁰ These suggestions include improving AML compliance among luxury goods sectors.²⁸¹ Effective AML compliance is essential in protecting business operations against money laundering practices.²⁸² To increase compliance, the study has suggested for further educational outreach to be provided by HMRC to increase dealers knowledge and understanding of the AML controls in the MLRs.²⁸³ Initiatives such as training events, workshops, and seminars are useful in increasing dealers comprehension of AML and application of the MLRs in their day-to-day practices.²⁸⁴ This significantly reduces money laundering risk as dealers are better placed to mitigate the factors that facilitate financial abuse.²⁸⁵

Additionally, the thesis has recommended increased scrutiny of AML compliance in luxury goods sectors.²⁸⁶ Further measures are necessary to detect non-compliance and ensure the issuing of appropriate penalties.²⁸⁷ Presently, only a handful of penalties have been issued to dealers which creates a lax approach to compliance.²⁸⁸ The deterrent effect generated from penalising non-compliance reduces money laundering risk as dealers are more inclined to ensure they have the relevant controls in place.²⁸⁹ This reinforces the importance of AML in luxury goods sectors and dealers role as gatekeepers.²⁹⁰

Furthermore, removing the threshold limit in the MLRs and replacing this with an approach which lists luxury sub-sectors is beneficial in reducing money laundering

²⁷⁹ See Chapter Five.

²⁸⁰ Ibid.

²⁸¹ Ibid.

²⁸² See Chapter Five, International Monetary Fund, 'Anti Money Laundering/ Combating of Terrorist Financing' <<https://www.imf.org/external/np/leg/amlcft/eng/>> accessed 20th May 2021.

²⁸³ See Chapter Four, Chapter Five.

²⁸⁴ Ibid.

²⁸⁵ Ibid, International Monetary Fund, 'Anti Money Laundering/ Combating of Terrorist Financing' <<https://www.imf.org/external/np/leg/amlcft/eng/>> accessed 20th May 2021.

²⁸⁶ See Chapter Five.

²⁸⁷ Ibid, Harjit Sandhu, 'The Global Detection and Deterrence of Money Laundering' (2000) 3 *Journal of Money Laundering Control* 23.

²⁸⁸ See Chapter Two, Chapter Three, A1, A2, C1, C2, W1, W2, Y1, Y2, J1, J2.

²⁸⁹ Ibid.

²⁹⁰ Ibid.

risk.²⁹¹ Extending the AML regime to apply to dealers regardless of the amount they make or receive in cash ensures that all luxury goods transactions are captured in the MLRs.²⁹² Under this approach, dealers are unable to avoid AML controls by operating below the threshold limit or implementing no cash policies.²⁹³ Removing the threshold limit reduces money laundering risk by legally requiring all dealers to implement AML controls in their business practices.²⁹⁴

In addressing the research question, the study makes a significant contribution to the existing literature by filling a gap in research.²⁹⁵ In identifying the money laundering vulnerabilities in UK luxury goods sectors the study has provided insights which have not been considered in the literature.²⁹⁶ The findings highlight the importance of addressing loopholes in UK luxury goods sectors that criminals can exploit for money laundering operations.²⁹⁷ Therefore, the main implication of this research is that it provides pioneering knowledge of the money laundering risks in UK luxury goods sectors and suggests ways to reduce money laundering practices.²⁹⁸ As the first study to critically analyse this money laundering typology, the analysis paves the way forward for future discussion in this area of law.²⁹⁹

In analysing the AML regime and its application in UK luxury goods sectors the study has provided practical insights beneficial for all regulated sectors.³⁰⁰ The interviews provide a valuable outlook of knowledge, experiences, opinions, motivations, and problems in relation to the UK AML regime.³⁰¹ These issues have not been considered in the present discourse and subsequently, the study raises points which are useful in understanding the regime.³⁰² The data is particularly valuable in understanding the extent to which dealers implement AML controls and the challenges they face in complying with

²⁹¹ See Chapter Five.

²⁹² Ibid.

²⁹³ See Chapter Two, Chapter Three.

²⁹⁴ Ibid.

²⁹⁵ See Chapter One, Chapter Two, Chapter Three, Chapter Four, Chapter Five, A1, A2, C1, C2, W1, W2, Y1, Y2, J1, J2.

²⁹⁶ Ibid.

²⁹⁷ Ibid.

²⁹⁸ Ibid.

²⁹⁹ Ibid.

³⁰⁰ Ibid.

³⁰¹ Ibid.

³⁰² Ibid.

these obligations.³⁰³ By acknowledging dealers' voices, the thesis has provided dealers with the capacity to influence future regulations, toward a shared governance approach in terms of policies.³⁰⁴ Other regulated entities may also experience the compliance challenges faced by dealers in implementing the AML controls.³⁰⁵ The knowledge is therefore beneficial in reviewing the regime and considering ways compliance can be improved among regulated sectors in the future.³⁰⁶

6.3 Broader Implications of the Research

Money laundering is a global phenomenon and the findings of this study provide knowledge which has wide-ranging implications for AML policy and practice.³⁰⁷ The research is beneficial for regulated sectors beyond luxury goods.³⁰⁸ The issues identified and suggestions advocated are transferrable in sectors which face similar issues.³⁰⁹ The study, therefore, has expansive implications which are significant in the UK's fight against crime.³¹⁰ In studying AML regimes in the US, Canada, Japan, Australia, Cayman Islands, and Trinidad and Tobago the project provides innovative insights into alternative AML regimes.³¹¹ The knowledge consumed from identifying good and bad practices in these regimes is useful in addressing similar aspects within other sectors.³¹² For example, issues surrounding the subjectivity of 'suspicion' in SAR have also been raised by regulated entities within the legal, financial, accountancy, and real estate sectors.³¹³ Subsequently, the suggestions advanced in assisting dealers to identify suspicious activity

³⁰³ Ibid.

³⁰⁴ Ibid.

³⁰⁵ Ibid, see s 6.3 for explanation of broader implications.

³⁰⁶ Ibid.

³⁰⁷ Dennis Cox, *Handbook of Anti Money Laundering* (Wiley 2014), Chapter One, Chapter Two, Chapter Three, Chapter Four, Chapter Five.

³⁰⁸ See Chapter One, Chapter Two, Chapter Three, Chapter Four, Chapter Five.

³⁰⁹ Ibid.

³¹⁰ Ibid.

³¹¹ See Chapter Four.

³¹² Ibid.

³¹³ See Chapter Five, Mohammed Emir Celik, 'Regulated Sector Professionals and Reporting Suspicion of Money Laundering: is it a Disproportionate Burden?' (2022) 2 *Journal of Money Laundering Control* 72.

³¹³ Ibid, Law Commission, 'Anti Money Laundering: the SARs Regime' (2019).

are helpful for entities in these sectors.³¹⁴ The analysis, therefore, has the potential to inform AML changes within a variety of regulated sectors.³¹⁵

The research is also useful for HMRC, law enforcement, and the UK Government in gaining an insight into how the AML obligations are perceived by those operating in luxury goods sectors, and seeking ways to assist regulated entities to ensure compliance.³¹⁶ The issues acknowledged within the AML regime have not been considered before and are beneficial in understanding the money laundering risks within luxury goods sectors.³¹⁷ The knowledge provided by the study is useful in considering ways to close loopholes, such as changes in the AML regime and policies.³¹⁸ For example, the study has identified that although HMRC has issued AML guidance, dealers were unaware of its existence and have not utilised the support.³¹⁹ Indeed, dealers require this support as they lack basic knowledge and understanding of their AML obligations.³²⁰ By highlighting this issue and suggesting avenues through which HMRC can make the guidance more accessible for dealers; the findings have the prospect to impact changes in the UK's approach to AML and assist in shaping policy recommendations in the future.³²¹ HMRC has recently issued a 'Call for Evidence' to review the UK's AML regulatory and supervisory regime.³²² The findings are extremely useful in gaining an insight into luxury goods sectors, especially since the only submission made from a luxury goods context has been from the art sector.³²³

The analysis provides academics with knowledge which is beneficial in understanding this area of law.³²⁴ As the Introduction identifies, money laundering through luxury goods has not been analysed extensively in academic literature.³²⁵ The study introduces new ideas and concepts within this area of law which provides

³¹⁴ See Chapter Five.

³¹⁵ Ibid.

³¹⁶ See Chapter One, Chapter Two, Chapter Three, Chapter Four, Chapter Five.

³¹⁷ Ibid.

³¹⁸ Ibid.

³¹⁹ Ibid, A1, A2, C1, C2, W1, W2, Y1, Y2, J1, J2.

³²⁰ Ibid.

³²¹ Ibid.

³²² HM Treasury, 'Call for Evidence: Review of the UKs AML/CTF Regulatory and Supervisory Regime (2021).

³²³ Ibid.

³²⁴ See Chapter One, Chapter Two, Chapter Three, Chapter Four, Chapter Five.

³²⁵ See Introduction.

interesting points for further discussion.³²⁶ The insights gained within the study are also useful for academic development within other sectors.³²⁷ For example, an academic who has researched a completely different sector, such as the unregulated construction sector, can benefit from the study by identifying common threads, shared issues, challenges and suggestions. The findings, therefore, can trigger academic discussion beyond UK luxury goods.

The study also provides a valuable contribution to luxury trade associations.³²⁸ These bodies can consider ways to reduce the risk of money laundering practices through the knowledge acquired within the study.³²⁹ Trade associations seek to promote legitimate business within luxury goods sectors, and the study's analysis provides valuable points in achieving this.³³⁰ For example, the study has suggested several ways to improve CDD compliance among dealers to reduce the risk of fraudulent transactions.³³¹ The study, therefore, provides the opportunity for trade associations to reduce money laundering risk as many of the issues identified in practice through the interviews with dealers have never been raised before.³³²

³²⁶ See Chapter One, Chapter Two, Chapter Three, Chapter Four, Chapter Five.

³²⁷ Ibid.

³²⁸ Ibid.

³²⁹ Ibid.

³³⁰ Ibid.

³³¹ Ibid.

³³² Ibid.

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