A critical examination of the anti-money laundering legislative framework for the prevention of terrorist finance with particular reference to the regulation of alternative remittance systems in the UK

Karen Anne Cooper

University of Leeds School of Law

Submitted in accordance with the requirement for the degree of Doctor of Philosophy

May 2014

The candidate confirms that the work submitted is her own and that appropriate credit has been given where reference has been made to the work of others.

Clubb K ‘The terrorist Asset Freezing etc Act 2010: harnessing proportionality to secure prevention without punishment’ Covert Policing and intelligence Law Review Issue 1 2014

This thesis draws on the most recent material up to January 1st 2014.

Acknowledgements

I would like to especially thank my Mum, Anne, for her support and her unwavering faith in me. Thank you also to my wonderful daughters, Eleanor and Rachel for your love, patience and understanding when my work has been a distraction, and to my friend Neil for providing much needed moral support throughout.

No person's success comes without the help, support and wisdom of others. I would like to express my heartfelt thanks to my supervisors, Professor Clive Walker and Professor Andy Campbell. This work would not have been possible without your patient and diligent support and guidance.

Thank you to all those participants who so generously gave of their time to take part in this research.

Abstract

In the climate of insecurity post 9/11states sought to limit the operational capacity of terrorist groups by restricting their access to funds. Alternative remittance systems such as Hawala, were suspected to have been used to transfer the funds for use in the 9/11 attack. Consequently they became a source of international concern in light of the 'new models' of terrorism that emerged which have since warranted a review of national and international counter terrorist strategies. This work has sought to investigate the historical origins and model of operation of traditional Hawala, considering the risks these system pose for assisting terrorist financing. A normative framework has been presented against which counter terrorist strategies and the measures enacting their aims are considered for their protection of fundamental rights and their capacity for promoting financial inclusion. This framework has been presented as a driver to international action to address the international threat posed from terrorism in order to protect human rights and human security. This thesis has considered the UK remittance population and the capacity of the UK remittance operators, regulated as money services businesses, to promote financial inclusion within the UK. The central focus and originality of this work has been the critical review of the UK regulatory framework for terrorist finance relating to remittance services. This work has presented a critical review of the effectiveness of the regulatory framework for these businesses which was investigated through fieldwork research. This investigated the views of money service business operators and regulators as to the effectiveness of the Money Laundering Regulations 2007 for preventing terrorist finance. Additionally this fieldwork research aimed to consider the impact of regulation on these businesses and the money service sector. This work has drawn on the findings from the research fieldwork to conclude as to whether the regulatory framework has been effective in controlling the risks of misuse for terrorism associated with traditional hawala, in relation to money services businesses in the UK context. The work has concluded as to whether regulation in the UK context has effective for and normatively compliant in the regulation money service businesses in the UK.

Table of contents

List of Tables

Abbreviations

ADB	Asian Development Bank
AIAI	Al-Itihaad Al-Islamiya
AML	Anti-Money Laundering
APEC	Asia Pacific Economic Group
API	Authorised Payment Institution
ARS	Alternative Remittance Systems
3MLD	The Third EU Money Laundering Directive
BPE	Black Peso Exchange
BNI	Bearer Negotiable Instruments
BOP	Balance of Payments
CDD	Customer Due Diligence
CTF	Counter Terrorist Finance
CMIR	Currency Monetary Instrument reports
CMP	Closed material proceedings
CNPT	Customer Not Present Transactions
CTCor	Counter-Terrorism Co-ordinator
CTC	Counter -Terrorism Committee
CTED	Counter-Terrorism Executive Directorate
CTR	Currency transaction Report
CTS	Counter Terrorist strategy
DFID	Department for International Development
DPA	Deferred Prosecution Agreement
GOR	Government Office Regions
GTA	Global Terrorist Assessment
GTO	Geographic Targeting Orders
GA	General Assembly United Nations
GDP	Gross Domestic Product
FATF	Financial Action Task Force
FSB	Financial Stability Board
FSRB	FATF styles Regional Bodies
FDI	Foreign Direct Investment
FFT	Formal Fund Transfer
FSA	Financial Services Authority

FSMT	Financial Services Market Tribunal

HMRC	Her Majesty's Revenue and Customs
ICPO	International Criminal Police Organisation
ICRG	International Cooperation review Group (FATF)
IEEPA	International Emergency Economic Powers Act
IMF	International Monetary Fund
IRS	Informal Remittance Systems
IVTS	Informal ValueTransfer System(s)
JMLSG	Joint Money Laundering Steering Group
JTAC	Joint Terrorist Analysis Centre
KYC	Know Your Customer
ML	Money laundering
MLD	Money Laundering Directive
MLR	Money Laundering Regulations
MLSOA	Middle Layer Super Output Areas
MSB	Money Service Business
MS	Member State
NPO	Non-Profit Organisations
NSS	National Security Strategy
NSRA	National Security Risk Assessment
OCG	Organised Crime Groups
OECD	Organisation for Economic Cooperation and Development
OFAC	Office of Foreign Assets Control
ONS	Office National Statistics
OSCT	Office for security and counter- terrorism
PSR	Payment Services Regulation
PSS	Public Sector Supervisors
RBA	Risk Based Approach
RICU	Research Information and Communications Unit
SAR	Suspicious Activity Reports
SC	Security Council (United Nations)

SCe	Sanctions Committee

SPI	Small Payment Institutions
STR	Suspicious Transactions Report
SOCA	Serious Organised Crime Agency
TF	Terrorist finance
TFTP	Terrorist Finance tracking Programme
UAE	United Arab Emirates
UN	United Nations
UNSC	United Nations Security Council (Sanctions Committee)
UNSCR	United Nations Security Council resolution

Chapter 1

The modern terrorist threat – reconsidering the suppression of terrorist finance.

1.0 Introduction and context

Remittance systems are century old systems that pre-date western formal banking systems. Whilst having a common core method of operation, they are subject to regional and local variations derived from local customs and practices reflecting the social context of their operation. Alternative remittance systems (ARS) are culturally entrenched value transfer systems that remain in use in third world and developing countries, where access to modern banking services is limited. They are also commonly used by the migrant diaspora now settled in developed states, to send money 'back home' to support their families. ARS have provided a central lifeline for developing countries in assisting in the dissemination of much needed financial development and humanitarian aid. The cultural context of their operation and association with specific cultural and ethnic groups, and their informality, has been misunderstood by western economies with developed and sophisticated financial sectors. ARS came under scrutiny in the wake of 9/11 where concerns focused on their potential misuse for terrorist finance, including the US assertion that the funds for the 9/11 attack were in part transferred using these systems. The US responded swiftly in regulating these systems, with the expectation that the international community would replicate this action. Their subsequent exposure to wider international scrutiny has been a catalyst to their regulation, prompting the recognition by remittance providers of the need to promote a greater understanding of these systems generally. Remittance operators in the United Arab Emirates (UAE) agreed through the 'Abu Dhabi declaration',[1] on the adoption of international FATF standards.

[1]Abu Dhabi Declaration on Hawala , International Conference on Hawala UAE, 16 May 2002

This thesis considers the impact of the UK anti-money laundering and counter terrorist finance (AML/CTF) framework for the regulation of ARS. This chapter sets out the central research question and outlines the structure of this thesis, detailing the content and focus of each chapter and its contribution to the originality of this work. This chapter reviews the research to date into the nature and context of the operation of ARS, to justify the focus of this thesis and identify its unique and original approach and contribution to the research question.

Furthermore, this chapter presents an overview of the relevant counter terrorist finance agenda and policy as a backdrop to the context of regulation of ARS at international and UK level, identifying the global concerns and international approaches to addressing the current terrorist threat. These are reviewed in light of the concept of 'new style/model' terrorism and the rise in fundamentalist terrorism which informs both international and UK counter-terrorist strategy (CTS), to which the suppression of terrorist finance is a key element. The relevant international stakeholders and their roles in supporting and driving the international counter terrorist finance agenda are identified in outline, regarding their contribution to the post 9/11 counter terrorist finance (CTF) agenda. The chapter concludes with a review of the terminology used to refer to these systems and provides a clear definition of ARS for the purposes of this study.

1.1 Aim of thesis

This thesis aims to consider the risks posed by ARS regarding their potential misuse for the laundering of terrorist funds. For the purposes of this study, misuse includes the deliberate and intentional transfer of funds in the knowledge of the terrorist purpose[2] by customers or ARS providers, and additionally, where providers may be unaware of the terrorist purpose. The

[2]Terrorism Act 2000 s18 defines the offence of laundering of terrorist property. s14 defines terrorist property as including s14(1)(a) money or property likely to be used to the purposes of terrorism.

general criminal misuse of these systems is also considered. This thesis aims to identify the risks posed by ARS systems, analysed in light of the 'new model' terrorism, which demands a review of existing legislation and policy approaches to combating the suppression of terrorist finance, to ensure that they remain effective. ARS are analysed to consider whether the risks they present justify the need for their regulation. A normative framework of rights and values is presented against which the regulatory framework for ARS is critically appraised to review the effectiveness of CTF strategies for preventing terrorism and its finance, and maintaining the balance between preserving peace and security and the protection of fundamental human rights engaged by these measures. The impact and effectiveness of AML/CTF measures is investigated through fieldwork research, which focuses on the application of the MLR 2007 and their regulation of alternative remittance services, termed Money Service Businesses (MSBs) within the UK.

1.2 Originality

To date there has been little research into ARS; that which has been undertaken has largely focused on the description of ARS from an ethno-cultural perspective, mainly confined to their operation in areas of historical origin. Few studies have sought to investigate the effect of AML regulation on remittance services within an international context and there is no research into ARS operation in the UK, nor has research to date investigated the views of remittance operators as to the impact of regulation on these businesses.

Research by Passas[3] has focused on the collation of evidence as to the vulnerability of ARS misuse, with evidence of cited misuse confined to general money laundering. This research draws on this evidence to justify

[3]N Passas, 'Informal Value Transfer Systems and Criminal Organizations; a study into so-called underground banking networks' (2004) SSRN December 1999 N Passas N, 'Informal Value Transfer Systems Terrorism and Money Laundering' (2003) November Northeastern University.

ARS regulation without reference to any specific jurisdiction or form of regulatory regime. Research by Sharma[4] has explored the operation of ARS from a socio-cultural perspective considering both legitimate use and criminal misuse of Hawala. This exploratory research has investigated the socioeconomic factors influencing the use of Hawala providing a 'descriptive and multifaceted' analysis of [5] ARS drawn from qualitative[6] interviews of a small sample of twelve operators and twenty seven customers in the Punjab and Delhi areas of India.

Qualitative research by Caroll for Interpol[7] was based on survey questionnaires and telephone interviews and focused on determining the extent of ARS activity in countries in the Indian sub-continent and the Asia Pacific region. This study aimed to 'delineate the operational characteristics' of ARS and to classify these systems by their operational type, as either Hawala/Hundi or Asian/Oriental systems. This classification was designed to identify their prevalence, characteristics of operation and vulnerability according to their identified type, outlining the efforts of authorities as to their regulation. This study did not assess the need for regulation nor did it evaluate any existing regulatory frameworks for ARS. The research aimed to categorise methods of ARS operation by type, risk and prevalence over broad geographical areas to identify and assess their operational characteristics to indicate their potential misuse.

Further research by Passas for the International Monetary Fund (IMF)[8] focused on broad concerns arising from international and national regulation but without reference to any specific jurisdiction. Maimbo has also investigated the regulation of Hawala within Afghanistan, but this study did not address the issue of regulatory impact.[9]

[4]D Sharma 'Historical Traces of Hundi, Sociocultural Understanding,and Criminal Abuse of Hawala' September (2006) 16 (2) IJCJR 103
[5]Sharma (n4)
[6]Sharma (n4)
[7]L Carroll, 'Alternative remittance systems distinguishing sub-systems of ethnic money laundering in Interpol member countries on the Asian continent' Interpol June (2004)
[8]N Passas N, 'Formalizing the Informal? Problems in the National and international Regulation of Hawala' IMF *Regulatory Frameworks for Hawala and Other Remittance Systems* (IMF 2005)
[9]SM Maimbo, 'Challenges of regulating Hawala' IMF *Regulatory Frameworks for Hawala and Other Remittance Systems* (IMF 2005)

Sharma has conducted descriptive and exploratory research into ARS in India, focusing on the historical origins of Hawala, drawing on the existing research and literature relating to these systems and their method of operation. This jurisdictional focus was problematic given that Hawala has for some time been indirectly prohibited[10] in India, and has little application in the UK context, and the research did not address the form and effectiveness of regulation.

The only research to date that has addressed the effectiveness of regulation of ARS in relation to the prevention of money laundering and terrorist finance, is that by Rees[11] in Australia. This funded study investigated the views of operators and customers and can be distinguished from the UK context, given the jurisdictional differences in the population composition and the regulatory framework.

Research by Muller[12] into the misuse of ARS for terrorist finance merged considerations of the regulatory form and sources of fundraising alongside a critique of Hawala as a method of transfer. There was no examination of the CTS linked to the legislative aims and the impact of regulation in achieving these outside a consideration of US policy. This research did not draw on fieldwork data to support its findings.

The originality of this thesis lies in the investigation, through fieldwork research, of the impact and effectiveness of the regulatory regime. This is gained through fieldwork investigation of the views and attitudes of ARS operators, and stakeholders who have an interest or role in the implementation of the regulatory framework for CTF as applied to remittance services in the UK. The originality of this work is its focus on the CTF regime

[10]The Foreign Exchange Regulation Act 1973 which criminalised hawala transactions was repealed but the Foreign Exchange and Management Act 1999 The latter FEMA provision provide for a financial civil penalty on breach of its provision prohibiting the transfer of acquisition of assets outside India of transfer of assets from this jurisdiction.

[11]D Rees, 'Money Laundering and terrorism Financing risks posed by alternative remittance in Australia' Australian Government, AIC Research and Policy Series 106 (2010)

[12]SR Muller, *Hawala: An Informal Payment System and its Use to Finance Terrorism* (1st edn, Lightening Source 2006)

for ARS, drawing on fieldwork research to assess the impact and effectiveness of the regulation of ARS in the UK with particular reference to the MLR 2007.

This work intends to consider the effectiveness of the current AML/CTF regulatory regime in the UK for enabling the detection of terrorist funds to enable their seizure and confiscation. Whilst there has been some limited research by Vaccani[13] into ARS and terrorist finance from a risk management and regulatory perspective, this was limited to a consideration of Financial Action Task Force (FATF) Special Recommendation VI contrasting licensing and registration regimes. By comparison, the originality of this work lies in a critical evaluation of the UK legislative framework as to its compliance with the normative framework presented, in ensuring CTF measures are justified and operate proportionately in protecting human rights.

This work will consider the justification of, and necessity for, specific legislation for the suppression of terrorist funding, rather than resorting to general AML provisions, which are considered in the context of the nexus between organised crime[14] and the funding of terrorism.

This thesis aims to identify and consider any cultural factors relevant to the users and operators of these services in the UK, assessing the relevance of this context to the relationships between the service users, operators and regulators. The impact of regulation on these relationships and the operational context are considered to assess the effectiveness of regulation in controlling the risk of terrorist finance that these systems present.

Respect for fundamental human rights is at the core of any democracy; the protection of these rights is increasingly articulated within counter terrorism policy and strategy at international and regional level. This study will review

[13]M Vaccini, 'Alternative remittance Systems and Terrorist Finance; Issues in Risk management' Paper No.180, (World Bank Nov. 2009)
[14]I Bantekas,'Current Developments: the International Law of Terrorist Finance'(2003) 97 Am.J Int'l L 315, 318

the current AML/CTF framework within the UK in the context of the international CTF agenda, to consider the international obligations by which the UK is bound. The effectiveness of UK CTF measures and their concordance with the protection of the normative values presented is considered and necessitates an enquiry into the relationship between international, regional EU CTS[15] and UK CTS.

1.3 Outline of thesis

The following section details the specific focus and substance of each chapter and outlines their contribution to the research aims.

1.3.1 Chapter 2 The nature and operation of ARS by specific reference to Hawala.

The aim of this chapter is to present an overview of the historical development of Hawala, drawn from a review of the current literature, to consider the reasons for its continued use to date and the socio-economic and cultural context of its current operation. Reference is made to Hawala as the dominant remittance transfer system. The objective is to identify the nature, structure and characteristics of Hawala operation, identifying the potential risks for misuse for terrorist finance. This risk of misuse is contextualised by reference to the geographical extent, frequency of use as well as the social, economic and cultural relevance of ARS. This chapter will critically evaluate the interplay between these factors identifying the degree of risk these systems pose. Evidence of the misuse of these systems, both generally and specifically for terrorist finance is presented within a consideration of the challenge posed to regulators seeking to manage the risks these systems present.

[15]EC, 'The EU Counter-Terrorism Policy: main achievements and future challenges' Brussels 20 July 2010 SEC (2010) 911 para11

1.3.2 Chapter 3 – Research methodology: design and application.

This chapter presents and justifies the selected qualitative methodology by reference to the research aims and objectives and the overall research question, to demonstrate a robust approach to the fieldwork research and the data generated. The aim is to capture the values, attitudes and perspectives of operators and regulators, who are directly involved in the regulation of ARS in the UK. The fieldwork is critical to this and central to the originality of this work in enabling an assessment of the impact and effectiveness of regulation on ARS, which cannot be accurately ascertained without generating data from interviews undertaken with the selected participant groups.

The methodology outlines the ethical issues arising from undertaking the proposed fieldwork and details how these have been incorporated into the research design to secure ethical approval. The potential difficulties and challenges in undertaking the fieldwork research, including risks to researcher and participant recruitment confidentiality, and the process for providing information to potential participants to secure consent, are detailed.

The research design is presented, justifying the selection of participants and the use of semi-structured interviews for data collection. The research design demonstrates the selection and the accommodation of specific variables, including the geographical areas, ethic population, business sizes, relevant to producing a viable participant sample group to justify the sampling strategy and the selected methodology as appropriate for the research question. The strategies for managing confidentiality and research ethics in relation to the development of interview schedules, interview transcription and subsequent thematic analysis, data handling and storage, are also detailed. The Money Laundering Regulations (MLR) 2007 were the selected focus for interview schedules since they afforded an accessible contact point for the participant groups, limiting the ethical constraints that may have arisen in relation to the investigation of other aspects of the regulatory

framework for CTF in the UK. The MLR were selected since they most directly influence and control the operation of ARS in the UK and would be a dimension within the experience and knowledge of the participant groups.

1.3.3 Chapter 4 – A normative framework for the regulation of ARS

Chapter four considers the justification and mandate for the regulation of remittance services as part of an international approach to security and to developing an international CTS, and in light of the UK's commitment to implementing international obligations. A normative framework of critical values is proposed to guide this internationalised and cosmopolitan approach to suppressing terrorist finance and preserving security. This chapter contributes to the thesis by proposing clear normative standards as rights, the protection of which justifies the imposition of the regulation of ARS. This framework is applied to assess the extent to which these systems are ethical in their operation and concordant with protection required of the normative framework, identifying operational characteristics which render this protection weak. The normativity of these systems is assessed, to consider whether they should be tolerated and their risks managed through regulation.

A case study of the Al-Barakaat Somali remittance operator is presented by way of analysis of the humanitarian and economic consequences of regulatory action, which are critically reviewed to assess the normativity of international CTF responses. An overview of the remittance sector in the UK is presented to assess the capacity of these systems for financial inclusion and to evaluate their normative compliance. The chapter concludes with a brief consideration of new technologies and services that offer the possibility for enhanced financial inclusion within the UK and beyond.

1.3.4 Chapter 5 - Critical analysis of the legal framework for the regulation of ARS in the UK.

This chapter critiques the effectiveness of the UK regulatory framework for suppression of terrorist finance, considering a variety of modes of regulation, drawing on the role of the criminal law, civil and criminal powers of confiscation and quasi criminal asset freezing measures. The chapter considers international measures, such sanctions, which are critically evaluated as to their normative compliance and the degree of protection of fundamental rights they afford. These are considered as to their implementation and impact within the UK context and are evaluated to assess their compliance within the normative framework presented in chapter four. The UK AML/CTF framework is critically evaluated for its effectiveness in achieving its intended aims in suppressing terrorist finance

Particular reference is made to the MLR 2007, since these require the registration and control of ARS, regulated as MSBs, imposing AML standards on these businesses within the UK. The application of the MLR[16] and the risk based approach they adopt is critiqued in relation to the regulation of MSBs. The chapter further considers the SARs reporting regime and its capacity to yield financial intelligence in relation to terrorist finance and the privacy concerns this raises in relation to personal financial data.

1.3.5 Chapter 6 – A critical analysis of the fieldwork research data.

Having analysed and critiqued the regulatory framework, this chapter presents a robust analysis of the data from the fieldwork research. The chapter briefly critically reviews the challenges in applying the research methodology in practice, identifying the resulting constraints and their impact and bearing on the quality of data yielded.

[16]Money Laundering Regulations 2007 In force from 15th December 2007.

The data is presented in two sections; the first dealing with the findings from the operator interviews and the second section dealing with the regulator and stakeholder interviews. Brief biographical outlines of these participant groups are provided followed by a critical analysis of the data from the interviews; this analysis is presented thematically. The selected themes allow for comparison across interview groups and alignment with the aims of the central research question.

The chapter critiques the relationships, attitudes, values, processes and structures revealed to analyse their relevance to and support of the effectiveness of the MLR 2007 in contributing to the suppression of terrorist finance. The challenges identified from the impact of regulation that hinder or assist regulatory efficacy are analysed from the perspective of both participant groups. The chapter considers the effectiveness of the current regulatory and supervisory model for securing the effective application of regulatory framework and the RBA. Chapter six concludes with an overall critique of key themes relevant to the central research question and identifies issues which require further enquiry for the future.

1.3.6 Chapter 7 – Conclusion

This final chapter concludes by considering the extent to which the research aims and objectives have been achieved, highlighting the key issues and concerns revealed by the fieldwork research. The chapter reviews the capacity of the current regime to respond to new terrorist threats and new models of terrorist operation and funding to conclude as to the effectiveness of the existing international and UK CTF regime. The chapter considers the normativity of the international and UK regime for CTF to identify policy considerations for relevant stakeholders for any future review of this framework. This chapter summarises the impact of regulation on ARS and its model of operation within the UK, highlighting the implications raised and the challenges presented within the UK context of operation. This chapter

reviews the aims of the legislative framework within the UK, critically evaluating its 'fitness for purpose' generally, and in enabling the UK to comply with international standards. The chapter further considers potential improvements or changes to the current regime to enhance its effectiveness in preventing the financing of terrorism, whilst also providing protection of fundamental rights.

The chapter concludes by identifying areas for further comparative research in relation to developing more fully some of the concerns and issues raised by the fieldwork research and the UK CTF regime in general. These are relevant in adding value to the national and international CTF agenda and policy development and regulatory oversight of this area.

1.4 The global terrorist threat

The terrorist threat is one that has challenged a number of states, including Ireland, Spain and Sri Lanka, who have grappled with the threat from 'home grown' state confined terrorist groups, at some point in the past. The more recent trend has been to international terrorism, with attacks on targets and civilians outside the state of origin to effect political pressure for change. In the past this transnational element has been relatively predictable and confined. The move from right wing and politically motivated terrorism to fundamentalist, religious based terrorism has highlighted the transnational dimension and raised concerns internationally as to this threat.

Terrorist organisations (TO) target specific states, their citizens, or public officials perceived as representing the targeted state, whom the organisation considers to be at odds with their ideology or posing an obstacle to the furtherance of their cause.[17]Terrorist attacks, even where small scale, can cause significant loss of life and injury. The World Trade Centre bombing on

[17]House of Commons 'Report of the Official Account of the Bombings in London on 7th July 2005' HC 1087 11th May 2006 [5] [8] [28] refers to Al Qaida issuing a fatwa 1998 calling for 'jihad' to 'kill Americans and their allies'

Feb 26th1993, for which radical Islamists were subsequently held responsible, killed 26 and injured 1,000. The Bali bombings of 2002 killed 202 people, including 24 British nationals, estimated to have required US $74,000 to fund.[18] The Istanbul bombings of November 2003 were estimated to have cost US $40,000 and killed over 40, including British consulate staff. The London bombings carried out by four individuals resulted in 56 deaths, injuring over 700[19] and yet only required £8,000. The more recent US Boston bomb on 15th April 2013 killed three and wounded 250, making use of a homemade device at minimal cost. The challenge to CTF is preventing access to funds, where the cost of terrorist attacks is very low, yet these have the potential for significant loss of life.

Globally there were 11,000 terrorist attacks in 2009 resulting in over 15,000 fatalities, injuring over 30,000 individuals,[20] with over 200 arrests for all forms of terrorism in the UK alone. In Europe for 2008 there were over 750 arrests for terrorism, over 200 of these were linked to Al Qa'ida.[21]These figures do not reveal the organisational bases of the terrorist groups or their targets. Whilst the number of attacks appear to be relatively modest when reported as isolated incidents, what is critical in light of the 'new model' terrorism referred to later in this chapter, is that figures indicate a threat posed to British nationals abroad.

The 9/11 attack has been the most significant single terrorist attack for its unprecedented loss of 2,973 lives[22] and the scale of injuries, causing a sense of shock worldwide by striking against a world super power on its own soil. The 9/11 attack refocused world attention on the international dimension of terrorism, having the capacity to reach beyond borders and compromising international peace, security, and stability. It illustrated the potential of terrorist groups to draw membership from numerous jurisdictions; 9/11

[18]Muller(n12)39
[19] 1087 (n17)1
[20]SoS Home Dept, Annual Report 'United Kingdom's Strategy for Countering International Terrorism' (Cm 7833, March 2010) 7
[21]CM 7833 (n20)
[22]Final Report of the National Commission on Terrorist Attacks Upon the United States 'The 9/11 Commission Report' July 22nd (2004) U.S. Government Printing Office Washington DC 311, [9.2]

involved 26 conspirators from seven different states.[23] The network model adopted by Al Qa'ida relies on individual cells operating at arm's length from the main organisation, allowing for coordinated support and action, posing a challenge to detect. The 9/11 attackers spent some time in the US prior to the attack, hidden in plain sight but equally could have drawn more operational support from supporters within the US. The concerns raised by the 9/11 attack were considered to represent a change in the 'trend' in the operational activity of terrorist organisations, suggestive of a 'new model' of terrorism which is critiqued below.

1.5 'New model' terrorism – emerging trends and new threats

Whilst it is acknowledged that terrorism represents a global international threat, there has been considerable debate as to whether 9/11 signified the emergence of a 'new style' of terrorism. Terrorist groups of the 1970's/1980's have disbanded, or abandoned their violent campaigns, in favour of political engagement to secure political influence to achieve their goals. The Irish Republican Army (IRA) have called a 'permanent cease fire', decommissioned their arsenal and are now engaged in a power sharing executive. Whilst there remains a need for vigilance due to a continued threat from a small number of dissident Republicans, it is acknowledged that the current terrorist threat to the UK is largely from international terrorism.[24] Other organisations such as the Palestine Liberation Organisation, at one time perceived to be a terrorist group, are now legitimately recognised as representatives of the Palestinian people since their acknowledgment of the state of Israel and their public denouncement of terrorism. As 'old' terrorist groups have disbanded new groups such as Al Qa'ida have raised their profile and their operational capacity to full effect.

[23] J Roth, D Greenburg, S Willie. 'Staff report to the Commission on terrorist Attacks Upon the United States- Monograph on Terrorist Financing.' Of the 26 membership of the 9/11 terrorist plot support the notion of the breath and reach of terrorist organisations rarely confined to one geographical location and included one Lebanese, one Egyptian, two Yemenese, one Moroccan, one Pakistani,18 Saudies, 2 Emiratis citizens.

[24] Government Reply to Report by Lord Carlile of Berriew Q.C. 'The Definition of Terrorism' (CM 7058, 2007) 5

This ‘new style’ terrorism proposes a shift in the structure and operational activity of terrorist groups, the selected targets and degree of violence differing from previously. The ‘new style’ terrorism favours ‘soft targets’ and more indiscriminate attacks, using violence to increase mass casualties. Acts perpetrated by ‘new style’ groups support different ends, religious fundamentalist ideological aims prevail, linked to greater violence and unpredictability, with targets more widespread. These organisations are perceived as being more dangerous,[25] in light of the socio-political context and circumstances in which they operate. The concept of ‘new model’ terrorism has been subject to considerable academic criticism, suggesting the key characteristics delineating this model have been watered down and used to justify political rhetoric and ill-conceived CT policy and counter measures. The concept of ‘new’ is more reflective of a ‘shift’ in the paradigm of terrorist groups and their context of operation with a different interplay between their emerging characteristics; structural, operational and organisational.[26] The context and circumstances of social change are relevant for triggers to the changing nature of terrorist organisations and this ‘new style’ terrorism is indicative of the political and social climate of decision making and policy, which determines the response to the suppression of terrorism.

This ‘new style’ terrorism requires a reassessment of existing counter-terrorist strategies and policies[27] in light of these emerging trends and the changing structure of terrorist organisations. This is essential to secure the continued effectiveness of CTS in suppressing all forms of terrorism, including this ‘new model’ of terrorism. The ‘evolutionary change’[28] raised by the ‘emerging trends’ raises implications for the suppression of terrorist financing. ‘New style’ terrorism has the characteristics of a horizontal not hierarchical structure[29] rendering detection of individual cells and members

[25]P Neumann, *Old and New Style Terrorism,* (1st Edn, Polity Press 2009) [3]
[26]EN Kurtulus, ‘The “New Terrorism” and its Critics’ (2011) 34 (6) Studies in Conflict and Terrorism 476-500, 477-484
[27](n15) para 1
[28]Neumann(n25)12
[29]Kurtulus (n26) 490

more difficult. The more fluid organisational structure results in a different selection of operational targets, communication and funding of activity within the organisation. These structural changes affect the nature and demands of terrorist financing, sources of funds, methods of transfer and costs of operational activities. 'New terrorism' requires a reassessment of the approaches to preventing the raising and movement of funds, in response to the distinct characteristics of the underlying structure of these 'new style' networks.

1.5.1 The changing nature of the terrorist threat

The threat from international 'new style' model terrorism derives largely from Al Qa'ida represented by its core leadership, offering guidance to an organisation more closely resembling a 'movement' consisting of affiliated groups loosely bound by a shared ideology.[30] This ensures the survival of the 'organisation' beyond any fragmentation of its structure and in absence of its leader, following the death of Osama Bin Laden.[31] Al Qa'ida desires revenge against the US and those perceived to be its allies. International pressure has been brought to bear on countries, including Pakistan, who previously offered support to terrorist groups. International action has been successful in limiting access to funds and the operational capacity of Al Qa'ida in Pakistan and Afghanistan, and has also disrupted activity in the UK, US, Europe, Africa and South East Asia. As Al Qa'ida affiliates and associated groups continue to expand, new sub groups such as the AQ-AP and AQ-M have emerged in Algeria.[32] Other terrorist groups including Al-Shabaab operating in Africa, have sprung from this shared ideology. The death of Osama Bin Laden may have little impact long term on the ideological goals of Al Qa'ida and its 'cause' since the 'new style' terrorism relies on leadership for strategic guidance only, 'middle managers' of

[30] LK Donohue, *The Cost of Counterterrorism*: *Power, Politics and Liberty* (1st edn, Cambridge University Press,2008) 154

[31] <http://www.bbc.co.uk/news/world-13257972> reporting death of Osma bin Laden on 2nd May 2012

[32] Cm 7833 (n20) [6],[7] AQ-M was responsible for the kidnap and subsequent murder of British national Edwin Dyer in 2009

individual networks and groups enjoy autonomous decision making, funding and operational freedom. Al Qa'ida relies on a core of respected scholars acting as lieutenants to promote ideology and engage in central fundraising and provide training. 'Middle managers' develop local strategies in line with pronouncements from the central leadership as whole.[33]

Fundamentalist ideology binds these separate groups creating a fragmented network of terrorist groups operating in isolation from each other, having separate and distinct membership; self-funding cells are connected by their shared ideology.[34] These networks have considerable geographical coverage, offering the possibility of combined operational efforts and the potential for additional recruitment and development of new cells, requiring a reconsideration of existing CTS to address this. This structure has led to the emergence of small cells and lone terrorist operatives engaging in attacks[35] from within the UK, a form of 'neighbour' terrorism in support of a shared terrorist ideology.[36]

Al Qa'ida funds have been provided from the personal wealth of Osama bin Laden, from illicit drugs, the diamond trade and misuse of charitable donations. Whilst some terrorist groups have strong links with the use of organised crime to fund their activities, Al Qa'ida operations draw on different funding sources to support their international reach, their operational capacity assisted by access to a worldwide network of ethnically based informal ARS to transfer funds; this makes these systems a key concern in limiting terrorist funding.

1.6 International counter-terrorist strategy

The 9/11 attack galvanised international commitment in the fight against terrorism, evident in the increased number of ratifications to the terrorist

[33]Neumann (n25) 58
[34]TJ Biersteker and S Eckert, *Countering the Financing of Terrorism,* (1st edn, Routledge 2008) 57
[35]Secretary of State for Home Department 'CONTEST-The UK Strategy for Countering Terrorism' (Cm 8123, 2011) [2.23], [5.73]
[36]Walker C, 'Neighbor Terrorism and the All Risks Policing of Terrorism' Journal (2009) Dec 3 National security Law and Policy 121, 123

finance convention in the six months following 9/11.[37] The convention illustrates the impetus to international cooperation and a common international framework for the criminalisation of terrorist acts and the harmonisation of measures to seize, confiscate and forfeit terrorist funds. This required states to enact measures to prevent the use of terrorist property and remove access to terrorist funds. [38] The importance of funding for the operational effectiveness of terrorist groups for recruitment, training, and attack, is increasingly recognised as is the potential for international action targeting terrorist finance to reduce the terrorist threat. Given the international nature of the terrorist threat and the speed with which funds can be moved through different jurisdictions to the sites of operational activity, a coordinated international response to CTF is needed to incapacitate terrorist groups and their supporters and secure global security.

The threat from international terrorism extends beyond the borders of individual states and requires a global response to ensure pro-active states are not compromised by the inaction, inadequate strategy and lack of effective legislation in other jurisdictions, that may create terrorist 'safe havens'. The 9/11 attack resulted in the US, UK and many other states reappraising their national assessments of the terrorist threat, these informing the assessment of the international threat. Effective CTS requires the alignment of national and international CTS and the legislative infrastructures on which these are reliant for their implementation.[39]

The 9/11 enquiry scrutinised the financial intelligence and data[40] to identify how the funds for this operation were transferred to, and accessed within, the US, given the attack required an estimated US $400,000 to $500,000.[41] The possible misuse of informal remittance systems to transfer funds for 9/11

[37]<https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=XVIII-11&chapter=18&lang=en>date accessed 29/04/2014
[38]UNGA International Convention on Suppression of Terrorist Financing (adopted 9th December 1999 opened for signature 10th January 2000) (2000) 39 ILM 270 Articles 2, 8
[39]Staff Statement No.12 'Reforming Law Enforcement, Counterterrorism and Intelligence Collection in the United States' Tenth Public Hearing on "Law Enforcement and the Intelligence Community" was held April 13- 14, 2004 in Washington, DC
[40]TR Eldridge and others 'Staff report to the Commission on terrorist Attacks Upon the United states- Monograph- 9/11 and Terrorist Travel' 2
[41](n22) 169 [5.4]

was investigated, highlighting the risk these systems pose as a vehicle for assisting terrorist finance,[42] placing ARS at the centre of international scrutiny. The religious and cultural context of these services became politically and socially sensitive in the aftermath of 9/11, the US promptly enacting the Patriot Act[43] to strengthen its AML provisions and secure the regulation of informal ARS. The US reviewed its CTS[44] to restrict terrorist funds entering the US, and sought to influence the international CTF agenda, in an effort to secure internal security by protecting its borders and its financial systems against the threat of terrorism from other jurisdictions.

The US sought to disrupt future terrorist operations by deploying measures aimed to detect and freeze terrorist assets, working to exert pressure within the UN,[45] to robustly apply the sanctions regimes. The US continues to be a significant political and economic force in the international fight against terrorism, to which end it has developed specific jurisdictional agreements with the EU and indirectly the UK.[46] This has not been without its problems given the divergence in the level of rights protection afforded by these parties.

The UN mandate to protect international peace and security places the UN as a key stakeholder in developing the international CTS[47] to secure a coordinated and consistent approach to CTF internationally, avoiding fragmented unilateral state responses. UN CTS is rooted in strengthening coordination and cooperation[48] both internationally and regionally, ensuring full implementation of existing CT measures, supporting the adoption of FATF standards, drawing additionally on the support of the World Bank

[42] G Bush , 'Bush Announces Al Qaeda Crackdown: Transcript of an Address to the White House', The Washington post 7th November 2001

[43] The Patriot Act 2001 (PL -107-56)

[44] Staff Statement No.9 'Law Enforcement, Counter terrorism, and Intelligence Collection in the United States prior to 9/11' 9 /11 Commission Tenth Public Hearing on "Law Enforcement and the Intelligence Community" was held April 13-14, 2004 in Washington, DC, 4

[45] Y Terlingen, 'The United States and the UN's Targeted Sanctions of Suspected Terrorists: What Role for Human Rights?' (2010) 24(2) Ethics and International Affairs

[46] Commission (EC) 'Agreement between the US and the EU on the processing and transfer of financial messaging data from the EU to the EU for the purposes of the TFTP' 27 July 2010 OJ L 195/5 – L 195/14

[47] UNCTC 'Conference Report Special Meeting Hosted by OSCE' 6th (2003) Vienna

[48] UNGA 'The United Nations Global Counter-Terrorism Strategy' (20 September2006) UN Doc A/Res/60/288

(WB), IMF and United Nations Office on Drugs and Crime (UNODC) to implement these. The CTS is implemented through the sharing of best practices and the provision of technical and financial support for capacity building. Implementation aims to be complimentary to, and reinforce the protection of, fundamental rights in accordance with international obligations supported by the role of the United Nations (UN) Special Rapporteur (SR). The UN Convention on the Suppression of Terrorist Finance makes specific reference to the need for supervision and licensing of all money transmission agents.[49] CTF measures include the strengthening of the specific 1267 sanctions regime and the general UNSCR 1373[50] requires states to criminalise terrorist fundraising and enact measures to enable the tracing and freezing of terrorist funds. Whilst the strategy does not make specific reference to an international risk assessment, it draws on state reports to the Counter Terrorism Committee (CTC) and interstate dialogue to secure effective implementation.

1.6.1 International stakeholders

Terrorism presents an international threat, but not all members of the international community have the political will or the financial or structural capacity to effectively prevent terrorism and its finance. Some stakeholders have no territorial claim or legislative capacity but offer effective support and guidance as to policy and international CTS. Through their international presence they have exerted pressure to develop international standards of financial regulation, guiding legislative action by states to underpin CTS.

FATF, as an international intergovernmental organisation, has been the driving force in the development of global AML standards; its mandate is now inclusive of CTF[51] It exerts international pressure to secure implementation of its standards, supported by the European Commission, the Gulf Co-

[49]International Convention for the Suppression of the Financing of Terrorism New York, 9 December 1999 No. 38349 Article 18(2)(a)
[50]UNSC Res 1373 (28 September 2001) UN Doc S/RES/1373[f] [g]
[51]FATF 'Revised Mandate 2008-2012' (2012)

operation council and international and regional organisations. Membership is conditional upon a state's political commitment to implementation,[52] participation in regional bodies and submission to multilateral assessment and evaluation to secure compliance. [53] Non-cooperative and high risk jurisdictions are identified by the International Cooperation Review Group, with other states expected to protect against any dealings with these jurisdictions. FATF's 'soft law' standards developed and informed by the risk assessments and typologies of its membership, contribute to the development of international CTS. Its requirement for national ML and TF risk assessments[54] are a critical pre-requisite to developing AML/CTF strategies to effectively address jurisdictional risks. They also provide an evidence base from state contributions, to assess the risk of money laundering (ML) and terrorist financing (TF) at regional and international level. Its standardised approach to the assessment of these risks enables the consistent and effective application of CTF strategy, drawn from consultation with relevant national bodies and securing political support to enable a wider dissemination of findings.

The World Bank's focus on poverty reduction and financial development supporting third world developing or transition countries with financial aid, aims to avoid state debt in establishing economic and financial infrastructures, critical to economic development. Its role requires that state financial systems and infrastructures are protected from the risk of ML and TF, providing technical assistance to develop financial capacity to recognised FATF standards to securely develop the financial governance necessary for sustainable economic development central to achieving its Millennium goals.[55] Robust financial systems have the necessary financial integrity and sound governance to implement measures to protect against the risk of

[52]FAFT '40 Recommendations' June 2003. FATF 'Special Recommendations on Terrorist Financing,'22 October 2004. FAFT IX Special Recommendations October 2001(Incorporating all subsequent Amendments until February (2008)

[53]FATF 'Methodology for Assessing Compliance with the FATF 40 Recommendations and (Special Recommendations' 27th February 2004 (Updated February 2009)

[54]FATF 'FATF Guidance National Money Laundering and Terrorist Financing Risk Assessment' February 2013

[55]World Bank 'The Millennium Development Goals and the Road to 2015: Building on Progress and Responding to Crisis' 2010

money laundering or terrorist finance. The WB and the IMF have, in conjunction with FATF, adopted a single assessment methodology to assess the AML/CTF risks. This policy takes account of the pre-existing financial structures, both formal and informal, the latter more the norm in under-developed countries, conflict zones and weak states.

The WB[56] endorses FATF standards exerting political and economic pressure on countries to secure compliance, conditional to financial support. It supports the research of the Asia Pacific ARS working group disseminating its findings,[57] and works with other stakeholders, including the Egmont group, to develop AML and CTF practice. It works collaboratively at policy level with the IMF, undertaking research into Hawala to ascertain the monetary flows of these systems and their economic and financial impact, and their propensity for misuse.[58] Further partnership with states (UK Department For International Development (DFID) for example) has sought to implement best practices within the current regulatory framework. The capacity of all states to address the AML/CTF agenda is critical given the globalised nature of the financial system, for which the support of the WB for capacity building is critical.

The IMF, having almost near worldwide membership,[59] oversees the international monetary exchange system, securing exchange rate stability and removing the individual controls which restrict international trade. It promotes economic development through microeconomic policy and economic co-operation. Globalisation of financial markets has increased the financial interdependence between countries which are now susceptible to economic instability, destabilising the global financial economy. This impacts on the trade and development of states who have terrorist 'hotspots,' posing a risk to the international financial system. The IMF seeks to improve the

[56]FATF 'Policy on Observers' June 2008
[57]P Schott P, 'Reference Guide to Anti-Money Laundering and Combating the Finance of Terrorism: Second Edition and Supplement to Special Recommendation IX' (IMF, 2006) [x-10]
[58]World Bank 'The World Bank in the Global Fight Against Money Laundering and Terrorist Financing' 2003,15
[59]IMF, 'The IMF and the Fight Against Money Laundering and the Financing of Terrorism', March 2011

resilience of states with undeveloped and vulnerable financial systems.[60] It recognises the complexity of ARS in posing a challenge for regulation, which is not seen as a panacea for their misuse.[61] The IMF promotes economic development and resilience through financial and technical assistance and policy surveillance, endorsing FATF standards[62] and the regulation of ARS.[63]

1.6.2 The European dimension

UK membership of the EU requires a consideration of the EU context and the influence of the EU CTS and its aims. The EU is founded on the concept of freedom of movement within a single European area to facilitate trade, evident in the creation of the borderless 'Schengen Area'.[64] EU policy aims to reduce obstacles to the provision of financial services to assist cross-border financial transactions to promote economic development. EU legislation aims to facilitate the movement of funds through the harmonisation of financial regulation and institutional practice, supervision and regulatory control.

Erosion of financial borders has led to the risk of terrorist funds potentially being moved more readily within the EU. This requires measures to promote the exchange of investigatory information[65] and financial intelligence[66] between supervisory and investigatory bodies of member states and third parties, such as the US.[67]These measures aim to promote the prompt

---

[60]<http://www.imf.org/external/about/howwedo.htm>date accessed 05/05/2011

[61]SM Maimbo 'The regulation and Supervision of Informal Remittance Systems: Emerging Oversight Strategies' Presented at the IMF Seminar on Current Developments in Monetary and Financial Law Washington DC May June 4 2004 ,5

[62]IMF/WB, '2011 Review of the Standards and Codes Initiative' February 16 2011,7

[63]IMF 'Intensified Work on Anti-Money Laundering and Combating the Financing of Terrorism (AML/CFT):Joint Progress Report on the Work of the IMF and World Bank' September 25, 2002 paras 60-61

[64]EC,'The Stockholm Programme – An Open and Secure Europe serving and Protecting Citizens' (2010/C 115/01) [4]

[65]Council Decision (EC) 2005/671/JHA 20 September [2005] OJ L 253/22

[66]Commission (EC) 'Overview of information management in the area of freedom, security and justice' 20 July 2010 COM (2010) 385 final

[67]Commission (EC) 'Agreement between the US and the EU on the processing and transfer of financial messaging data from the EU to the EU for the purposes of the TFTP' 27 July 2010 OJ L 195/5 – L 195/14

detection and seizure of terrorist funds to suppress terrorist finance. [68] The collation and dissemination of financial intelligence by MS is supported by Europol and cooperation between FIU across the EU.

A common EU threat assessment derives from the intelligence from MS and third parties[69] enabling the EU to respond dynamically to disrupt new threats and vulnerabilities, given the shift in the nature of terrorist activity since the 1990's. Tracking terrorist assets facilitates the detection of terrorist membership, preventing attacks and promoting financial investigation central to the EU CTS. The EU CTS recognises the different funding methods of terrorist groups, dependent on their ideological base, some having links to organised crime.[70] Islamist TOs are more successful in raising funds, largely from fraud[71] suspected to be channelled through ARS to move funds within, and external to, the EU.

Separatist terrorism continues to be a concern from attacks by right-wing groups totalling 257arrests and 278 convictions for 2012,[72] with 397 attacks associated with internal separatist groups for 2009 reduced to 167 for 2012. These were mainly perpetrated by EU citizens in France and Spain. There has, however, been a rise in Islamist terrorism with 50% of the 384 verdicts related to terrorist offences in 2008 linked to Islamist terrorism.[73] The number of groups associated with 'home-grown terrorism' is rising, linked to MS involvement in 'conflict zones'. In 2008 there were 515 failed, foiled or successfully perpetrated terrorist attacks;[74] by 2012 only six related to religiously inspired terrorism. Convictions in relation to Islamist terrorist groups are higher in the UK, Germany, Spain and Belgium.[75] In terms of arrests, 159 for religiously inspired terrorist suspects for 2012 reveal plots by home grown Islamist groups aiming to cause mass casualties. These were

[68]Council (EC) 2007/845/JHA 6 December [2007] OJ L 332/103
[69]Council (EC), 'EU Action plan on Combating terrorism' 13 February 2006 5771/1/06 REV 1 paras 13,24
[70]European Security Strategy Brussels 'Secure Europe in a Better World' 12 December 2003 paras 46,9,12
[71]Europol, 'TE- SAT EU Terrorism Situation and Trend Report' 2009 6,13,40
[72](n71) 7
[73](n71) 6
[74](n71)11
[75](n71) 13, 15 UK convictions for 2008 for Islamist groups was 53, decreasing to 21 in 2012

planned by small autonomous cells bound to a central ideology rather than controlled specifically by the network or the membership of the TO. The majority of those arrested on suspicion of Islamist terrorism in the EU for 2008 were suspects of non-EU states[76] and could not be linked to a known TO but demonstrated an adherence to 'global Jihad'.

The EU aims to protect its citizens from the internal and external terrorist threats, requiring a common response through solidarity[77] drawn from the cooperation of Member States (MS),[78] who maintain responsibility for combating terrorism within their own territories based on subsidiarity.[79] The EU is committed to combating terrorism globally and promoting security through the principles of freedom, security and justice,[80] and the adoption of a criminal justice model[81] which is sensitive to the protection of fundamental rights. Mutual recognition of legal measures promotes cooperation, drawing on the requirement for a mix of judicial, military and intelligence responses.[82] EU CTS like, that of the UK, aims to disrupt existing networks by limiting their access to funds, underpinned by an intelligence led approach supported by the implementation of AML/CTF legislation across all states in accordance with FAFT standards,[83] to enable the freezing of terrorist assets[84] within the EU.

The EU recognises modern terrorism aims to use 'unlimited violence'[85] to cause mass casualties. Europe remains a potential target and a base for terrorist activities, with Al Qa'ida bases being uncovered in the UK, Germany, Spain, Italy and Belgium. The EU CTS has four key dimensions; protect, prevent, pursue and respond,[86] mirroring the UK CTS. The 'new model terrorism' may require EU states, including the UK, to reappraise their CTS

[76]Algeria,Morocco and Tunisia.
[77]EC, 'Stepping up the Fight Against Terrorism' 6 November 2007, COM (2007) 649 final , 4
[78]Council (EC), 'Counter-Terrorism Strategy Brussels' 30 November 2005 14469/4/05 REV 4 [6]
[79]The Stockholm Programme (n64) paras 5,12
[80]'The Stockholm Programme (n64) 17, 24
[81]Council (EC), 'EU Counter terrorism Strategy Discussion Paper' 12 May 2012, 11
[82]Council Decision (EC) 2008/919/JHA 28 November [2008] OJ L 330
[83](n78) 11, 29
[84]Art 75 TFEU
[85](n70) 3
[86]EC, 'The EU Counter-Terrorism Policy:main achievements and future challenges' Brussels 20 July 2010 EC(2010)911 [2]

not least because of the number of persons of Muslim faith in Europe estimated to be 15-20 million[87] and 41% of those arrested in the period 1993-2004 were naturalised citizens and second generation converts to Islam, a potential source for radicalisation. To this end the EU supports the implementation of FATF standards and the regulation of ARS, recognising the need to balance their misuse for TF with 'safeguarding legitimate use.'[88]

The EU acknowledges the need for collaboration with the UN in developing and implementing an international CTS[89] and has adopted measures complying with UN financial sanctions[90] in addition to the autonomous EU regime.[91]

1.6.3 The UK perspective

The UK has historical experience of dealing with the terrorism in Northern Ireland, the IRA posing a threat until the mid1990's, associated with the struggle for rule in Northern Ireland. This threat has reduced considerably following the declaration of a ceasefire and the progress of the peace making and power sharing process. A lesser threat still remains from dissident republican groups aiming to disrupt the peace making process,[92] but this terrorist activity is now confined to Northern Ireland. The events of 7/7, the London suicide bombings of 2005 in which 56 people died, brought the vulnerability of the UK from terrorist attack into sharp focus. The UK has experienced a credible terrorist attack about once a year since 9/11,[93] foiled plots including the '*Airline liquid plot'* 2006,[94] '*Fertiliser plot'* and '*Gas Limos*' plots lead to successful prosecutions in 2007, and more recently the '*Birmingham ruck sack plot'* 2010 and the '*Luton Territorial Arms Base plot* '

[87] D Keohane Centre for European Reform, 'The EU an counter – Terrorism' (2005) [8] Figures refer to period 2005.
[88] Council (EC), 'EU revised Strategy and Terrorist Financing' (2008) Brussels 17 July 2008 para 3.1
[89] (n74) [4],[7],[14]
[90] Council Regulation (EC) 881/2002 27 May [2002] OJ L 139/9
[91] Council Regulation (EC) 2580/2001 27 December [2001] OJ L 344/70
[92] Evident in the killing a police officer and two army personnel in March 2009
[93] D Anderson QC 'The Terrorism Acts in 2012' (London Stationary Office 2013) 1
[94] <http://www.cps.gov.uk/publications/prosecution/ctd.html> date accessed 18/011/2013

2012.[95] The murder of Lee Rigby is a stark reminder of the threat from 'home grown' Al-Qa'ida inspired terrorists. UK nationals in conflict zones in Africa also remain at risk; these incidents are reflected in a UK threat level, which is currently assessed as substantial.

The UK Government accepts that the international terrorist threat will continue to be determined by four factors: conflict, instability, ideology and associated radicalisation. The UK 'Contest' CTS comprises of four key objectives: pursue, prevent, protect, and prepare, which continue to be informed by the identified threats, conflicts, instability, ideology and associated radicalisation and technology. The UK CTS aims to prevent terrorism by disrupting the operational capacity of terrorist groups by limiting their access to funds, and also by seeking to tackle the underlying causes of terrorism[96] and the support of the selected ideology and its links with violent extremism.[97] The effectiveness of the CTS is assessed by reference to an outcomes based agreement linked to 'Contest' aims, Office for Security and Counter Terrorism overseeing this.[98] Central to the delivery of the UK CTS, as with the UN and the EU, is in recognition that CTS responses must be implemented with regard to respect for human rights and the rule of law.[99]

The Government recognises that the threat to the UK from Al Qa'ida will remain despite the loss of the leadership of Bin Laden and despite changes in the organisational structure, since broad support for the core ideology remains.[100] The Prevent strand of the 'Contest' strategy, launched in 2007, aims to prevent the spread of terrorist ideology and radicalisation by disrupting recruitment and building community resilience. This is particularly significant given that the UK Muslim population is currently 2.9 million but is

[95] Anderson (n93) [2.8-2.38]
[96] Government Reply to Ninth report from HAC session 2088-09 'Project CONTEST the Government's Counter- Terrorist Strategy' (CM 7703, September 2009) 4
[97] Report HAC 9th session 2008-09 'Project CONTEST the Government's Counter-Terrorist Strategy 7 HC (2009-09) 212
[98] Cm 7833 (n20) [26] PSA 26 introduced 2008/11
[99] Secretary of State for Home Department 'Pursue, Prevent, Protect, Prepare: The United Kingdom's Strategy for Countering International Terrorism' (Cm 7457, 2009) [5]
[100] Cabinet Office, 'The National Security Strategy of the United Kingdom: Update 2009, Security for the next Generation' (Cm 7790, June 2009) [77]

set to more than double from 4.6% to 8.2% of the UK population by 2030.[101]The fact of being of Muslim faith is not determinant of the propensity to terrorist activity or shared ideology, but is viewed as an indicator of the potential for shared religious ideology; Islamist. This may lead to the adoption of, or radicalisation to, fundamentalist ideology, and allegiance to groups in support of such views, linked to identified terrorist groups. It also enables terrorists to blend invisibly into a cultural group under the guise of mainstream religious doctrine and within the ethnic diaspora communities that now exist. The concept of Al Qa'ida as an international terrorist organisation also lends itself to consideration as a domestic one, as evident in the 7/7 London bombings. Here, a global ideology and cause were the triggers for an attack by 'home grown terrorists'.[102]

The strategies developed to limit the finance of terrorist organisations need to be considered in light of the changing nature of terrorist finance, state sponsored terrorism being less significant than previously.[103] The Pursue element of the UK 'Contest' strategy aims to disrupt terrorist activity by drawing on measures to limit access and use of terrorist funds. The report into the 7/7 bombings cited intelligence agencies as inadequate in their contribution to suppressing terrorism and its finance. The report prioritised the need to identify and limit terrorist funding activities seen as critical to identifying the 'next plot,'[104]and preventing the move from facilitation to attack. A recent review of 'Contest' highlighted concerns about the misuse of charitable funds diverted for terrorist support; the MSB sector was also identified as at risk for misuse for the transfer and diversion of charitable and migrant support overseas[105] for terrorism.

[101]The Pew Forum on Religion and Public Life available at http://features.pewforum.org/muslim-population/ Accessed on 22/04/2011

[102]Intelligence and Security Committee, 'Report into the London Terrorist Attacks July 2005' (Cm 6785, 2006) [11]
All of London bombers except for Jermaine Lynsdey were British nationals of Pakistani origin [4.9]

[103] Neumann (n25) 51,59

[104]Cm 6785 (n102) 30-32

[105]Home Office 'CONTEST -The United Kingdom's Strategy for Countering Terrorism Annual Report' (Cm 8583 London 2013) [2.26-2.27]

Within the UK Her Majesty's Revenue and Customs (HMRC) supervises the registration of MSBs for the purposes of the MLR 2007, and works co-operatively alongside the National Crime Agency (NCA) to collate, disseminate and act on intelligence derived from SARs and investigation to indicate MSB sector and TF risks. AML / CTF regulatory standards and best practices are supported and guided by professional and industry bodies, including the Wolfsberg Group and the Basel Banking Committee. The UK Money Transmitters Association UKMTA provides sector representation[106]and has adopted a charter of customer satisfaction[107] and promotes 'best practices' in relation to AML standards.

A UK, as a member of the EU, actively contributes to the development and implementation of the EU CTS, [108] with UK legislation now mirrored in EU measures[109] to provide equivalence for terrorist offences. The UK, however, retains an opt-out to criminal justice measures under the Treaty of Lisbon, which may jeopardise its contribution to the development of CTS for the future.

1.7 Defining terminology - alternative remittance services

This thesis aims to investigate the impact of the MLR on alternative remittance services, the term money service business applying to businesses regulated under the MLR 2007. This section justifies the selected terminology relevant to defining the scope and focus of this work. Remittances are ordinary financial transactions which can be processed through the formal banking sector or ARS. ARS derive from, and operate within a particular socio-cultural and ethnic context, aligned to that from

[106]<http://www.ukmta.org/about.aspx>date Accessed 27/05/2011
[107]<Charter launched by DFID Jan 2008 and adopted by IAMTN and UKMTA. Available at http://webarchive.nationalarchives.gov.uk/+/http://www.dfid.gov.uk/Media-Room/Press-releases/2008/Customer-charter-promises-better-deal-for-families-who-send-money-to-loved-ones-abroad/> date accessed 01/06/2011
[108]Anderson (n93) [3.17]
[109](n82)

which they originated.[110] Their historical development, method of operation and their socio-cultural context of operation is critiqued in chapter 2. Formal sector processing of remittances lacks these ethnic and cultural characteristics.

Terminology reflects the different types of ARS,[111] their mode or operation and the distinct context of their operation and its characteristics for transferring funds or value from one location to another.[112]The landscape of terminology is problematic given there is no single accepted definition of ARS, but a clear and selected definition is required for the purposes of this study. The terminology used refers to the nature of the systems or the form of property transferred or their degree of formality; 'informal' is, however, an imprecise term.[113]

The IMF refers to 'remittances' as including the transfer of funds or value through the formal or informal sectors, and encompasses ARS such as Hawala if limited to cash, and branded operators such as Western Union. The IMF refers to 'remittance providers' to overcome the conceptual difficulties associated with defining remittance services by the nature of the transfer or degree of formality utilised.[114] It identifies informal remittance systems[115] and services,[116] as those not subject to regulation, but does not distinguish between jurisdictions lacking regulation as opposed to the avoidance of regulation by the provider. There is a lack of consistent distinction between formal and informal remittance services derived from variations in the transaction purpose.[117] Remittance operators in some

[110]N Passas,'Informal Value Transfer Systems.Terrorism and Money Laundering' Report to the U.S. National Institute of Justice (2003) November. Document No.: 208301 Note that Passas prefers the term IVTS citing reason for this and defining terminology at 11-13 and 22-35
[111]Passas (n8) 7
[112]Passas (n110)14,15
[113]F Pieke F, N Van Hear N, A Lindley, 'Synthesis Study: Report On Informal Remittance Systems in Africa, Caribbean and Pacific (ACP) Countries Ref: RO2CS2008, Centre on Migration Policy and Society (2005) 3
[114]IMF monetary and Financial Systems Dept 'Approaches to Regulatory framework for Formal and Informal Remittance Systems: Experiences and Lessons' February 17 2005, [10] para 12
[115] S Maimbo (n61) 1,5
[116]IMF Monetary and Financial Systems Department,' The Netherlands- Supervision of Money Remittance Offices', Bokkerrink MJ, 'Regulatory Frameworks For Hawala and Other Remittance Systems' Washington DC (2005)
[117]S Ingves, 'Approaches to a Regulatory Framework for Formal and Informal Remittances Systems: Lesson Learnt', IMF 17 February 2005 ,6

jurisdictions[118] are recognised as formal and regulated involving transfers of the same form. ARS offer the capacity to transfer equivalent values in a different form and provide remittances for the ethnic diaspora, but also includes those systems operating in contravention of regulatory frameworks, as well as those prohibited entirely. [119]

FATF defines an ARS as an 'informal money or value transfer system …also refers to financial services whereby funds or value are moved from one geographic location to another,'[120] referring to Hawala within this category. FATF refers to an alternative remittance as:

> A financial service... provided by a distinct category of non-bank financial institutions – whereby funds are moved for individuals or entities through a dedicated network or through the regulated banking system.[121]

FAFT's definition of 'Money Value Transfer' (MVT) is limited to cash transfers[122]:

> A financial service that accepts cash, cheques, other monetary instruments or other stores of value in one location and pays a corresponding sum in cash or other form to a beneficiary in another location by means of a communication, message, transfer or through a clearing network.[123]

MVT may be provided 'formally through the regulated financial system or informally through entities that operate outside the regulated system'[124] including transactions performed by intermediaries or third party payments. FATF acknowledges the lack of clarity in the term 'Hawala' and now refers to

[118] S Keene 'Hawala and related Informal Value Transfer Systems – An assessment in the context of Organised Crime and Terrorist Finance. Is there cause for concern?' Dec (2007) The Defence Academy Journal December 1-18, 7

[119] PM Jost, HS Sandhu, 'The Hawala Remittance System and is Role in Money Laundering. Interpol Secretariat. 1- 27. Jan (2000) [11] whilst in Pakistan and India the outright prohibition of hawala is indirect as it arises from legislation that restricts remittance transaction and prohibit specific kinds of foreign and currency exchange transactions.

[120] FATF Guidance Notes for the Special Recommendations on Terrorist Financing and the Self - Assessment Questionnaire FATF Secretariat 27 March 2002 , 5 [31]

[121] (n120)5 [30]

[122] FATF 2005

[123] FATF, 'Combating the Abuse of Alternative Remittance Systems: International Best Practices' 20 June 2003 ,2 [4]This is based on the interpretative note Special Recommendation VI

[124] FATF(n123) 2 [4]

Hawala and other similar service providers (HOSSP) characterised by their settlement methods, which are transfers of equivalent value by systems with ties to 'specific geographic regions or ethnic communities' defined by service not by legal status.[125] The typology elaborates the definition to include legitimate regulated, and unwitting and wittingly complicit modes of operation. It is unfortunate that FATF have sought to refine their definition by reference to the criminal misuse rather than the operational characteristics, given that all financial transactions, whether formal or informal, are capable of misuse for ML or TF.[126] The new categorisation fails to distinguish between Hawala as legitimate in origin,[127] with the risk of subsequent misuse, and other systems such as the Black Market Peso Exchange System (BMPE), which was created to facilitate criminality and lacks the cultural and ethnic context of operation. The latter systems are not within the scope of this thesis.

The lack of distinction between Hawala and the formal sector in the provision of MVT is perhaps illustrative of the need for regulation of all MVT systems.[128] ARS have been identified as:

> Underground (or parallel) banking systems. Often these systems have ties to particular geographic regions and are therefore described using a variety of specific terms. Some examples of these terms include Hawala.[129]

FinCen refers to networks facilitating the transfer of value that operate:

> Outside of the conventional banking system through non-bank financial institutions or other business entities whose primary business activity

[125]FATF, 'FATF Report the Role of Hawala and other similar Service Providers in Money Laundering and Terrorist Laundering Terrorist Financing' October 2013,9
[126]N Ryder, The 'Financial Services Authority and Money Laundering Game of Cat and Mouse' (2008) 67(3) Cambridge Law Journal,637
[127]N Ryder 'Islamophobia or an important weapon? An analysis of the US financial war on terrorism' (2009) 10 Journal of Financial Regulation, 309
[128]FATF 'Special Recommendations on Terrorist Financing,' 22 October 2004 [2] para VI
[129]FATF, 'Combating the Abuse of Alternative Remittance Systems: International Best Practices' 20 June 2003 [2] [4-5]

> may not be the transmission of money. The IVTS transactions occasionally interconnect with formal banking systems.[130]

This definition clearly includes Hawala but distinguishes IVTS from those remittance services offered by regulated businesses, referring to the transmission of funds of equivalent value.

Austrac refers to registrable remittance services,[131] whilst Interpol uses the term remittance system.[132] The APG refers to alternative remittance systems including Hawala as 'financial services, traditionally operating outside the regulated financial sector, where value or funds are moved from one geographic location to another'.[133]

The term informal value transfer system (IVTS) is favoured in some quarters given the term 'alternative remittance' suggests an alternative to formal banking, which these systems pre-date, and an association with diaspora transfers.[134]

The variance in the terminology reflects the method and form of funds moved, the degree of 'informality' of the provider to regulatory requirements and the interface with formal banking institutions. Some terms additionally refer to the ethnic context of the user group.

For the purposes of this thesis the term ARS is selected to denote the transfer of equivalent value of the same or different form, from one location to another where remitted through a system operator who secures the resulting payment of equivalent value by another system operator to the end beneficiary. ARS refers to systems that include informal and/or regulated

[130]Fincen 'Informal Value Transfer Networks.' United States Department of the Treasury Financial Crimes Enforcement Network (2003) Advisory Issue 33 March,1-11, 1
[131]The Anti-Money Laundering and Counter-Terrorism Financing Act 2006 s5. (Australia)
[132]Jost (n119)
[133]Asia/Pacific Typologies Working Group on Alternative Remittance &Underground Banking Systems, Alternative Remittance regulation Implementation Package' July 2003 [4]
[134]Passas(3)

systems as an ‘alternative’ to remittances solely made through the formal sector. Reference to Hawala illustrates an identified form of ARS activity.

1.8 Conclusion

This chapter has sought to present a clear and cogent rationale for this thesis in considering the misuse of ARS for terrorist finance. The chapter has presented a clear outline of the thesis, justifying the originality of this research within the consideration of the regulation of alternative remittance systems in the UK.

This chapter has sought to identify the concept of ‘new model style terrorism’ and outlined its relevance to the development of CTS and measures which need to be flexible in addressing the changes in terrorist operational activity and the new and emerging terrorist threats. It also provides a premise for further re-evaluation of existing CTS. The UK CTS has been reviewed briefly alongside EU level and international CTS; this is justified by the threat and concern raised by international terrorism. This provides a platform for a more in depth critical review of the concordance of the UK legislative and regulatory framework for CTF and its normative compliance, and the relationship of UK counter terrorist strategy with obligations at EU level, and internationally, in enacting measures to suppress terrorist finance. This enables more in depth scrutiny of specific measures to assess their compliance with the normative framework which is presented and analysed later in chapter 4.

This chapter has purposefully reviewed the terminology currently employed by existing stakeholders to clarify the selected meaning of alternative remittance systems for the purposes of this work. The definition of ARS enables a distinction to be made between the discussion of the historical origins and current socio-cultural context of their operation, which is analysed in chapter 2. The characteristics identified as associated with ARS will be

analysed alongside their method of operation in chapter 2, forming the basis of critique and comparison for the fieldwork analysis in chapter 6 and the identification of any impact of regulation on the model of operation of ARS on the UK, which is the critical scope of this work.

This chapter has sought to present a clear and cogent rationale for this thesis in considering the misuse of ARS for terrorist finance. A brief overview of the socio- economic, ethnic context and geographical relevance of ARS operations linked the heightened state of security and concerns for their misuse for terrorist finance, post 9/11 has been presented. These concerns have been linked to the allegations as to their use in supporting the 9/11 attack.

This introductory chapter has considered the events of 9/11 within the context of the new and emerging trends in terrorist operational activity, and the 'new model' terrorism, outlining the need for CTS to address new and emerging threats and the increasingly international dimension of terrorist activity. The chapter has sought to illustrate the need for a robust international CTS and the alignment of national CTS and legislative measures to support the effective implementation of CTS at national and international level. The relevant stakeholders and their contribution to the international CTS have been critiqued, and the relationship and between international strategies and the aims of the UK CTS have been outlined.

The chapter has presented a clear context within which the central research question is situated and has, through the critical overview of the relevant research to date into ARS, sought to justify the originality of this research. This work uniquely aimed to investigate the impact and effectiveness of UK regulation of alternative remittance systems as money service businesses in the UK. The chapter has outlined the structure of this work by presenting a brief overview of each chapter, identifying their relevant themes and substantive content, and clarifying the distinct focus of each chapter and its contribution to the central research question.

This chapter has purposefully reviewed the terminology used by existing stakeholders to clarify the selected meaning of ARS for the purposes of this work. The definition of ARS enables a distinction to be made between the discussion of the historical origins and the current socio-cultural context of their operation, which is analysed in chapter two. It also provides for clarity, distinction and critique in the analysis of the fieldwork data in chapter six. The fieldwork is critical to the originality of this work in its investigation of the impact and effectiveness of the MLR as the selected element of the regulatory framework for ARS as MSBs within the UK.

Chapter 2
The nature and operation of alternative remittance systems with specific reference to Hawala

2.0 Introduction

Post 9/11, efforts have increasingly focused on pre-emptive strategies to prevent the financing of terrorism to limit the operational capacity of terrorist groups by restricting their access to funds.[1] This strategy can impede the operation of terrorist groups, denying them funds and so restricting their recruitment, training and capacity for physical attack on the civilian population,[2] particularly on the unprecedented scale of 9/11. Governments and international bodies[3] increasingly espouse the potential effectiveness of strategies tailored to disrupting terrorist finance, by identifying the mechanisms used to transfer funds,[4] which facilitate their potential operational capacity internationally.[5] The assets of known terrorist organisations and their supporters need to be identified, frozen or confiscated, in line with UN measures requiring that 'the international community should take the necessary steps to enhance co-operation to prevent and combat terrorism'.[6] The $112 million dollars of 'Al Qa'ida and Taliban' funds frozen since 9/11 is estimated to be only a fraction of the available funds. The movement of money is critical to the 'new model' and network based operation of groups such as Al Qa'ida, who require the means to move funds from their source to operational locations, since terrorist funds are not generally generated from within the target countries.[7]

[1]'Update on the Global Campaign Against Terrorist Financing' Second Report by Independent Task Force on Terrorist Financing, The Council on Foreign Relations (June 14th 2004) 5
[2] FAFT 'Terrorist Financing' Typology Report February 2008, OECD France, 34
[3]ASEAN Declaration on Joint Action to Counter Terrorism, Bandar Seri Begawan, (5 November 2001)
[4]Second report of the Monitoring Group established pursuant to Security Council resolution 1363 (2001) and extended by resolution 1390 (2002) S/2002/1050 [4]
[5]Update on the Global Campaign Against Terrorist Financing' Second Report by Independent Task Force on Terrorist Financing, The Council on Foreign Relations (June 14th 2004) 5
[6]GA A/RES/60/1 24th October 2005
[7]J Gillespsie Seminar on International Finance, Harvard law School, 'Follow the Money: Tracing Terrorist Assets',15th April (2002) [15]

Terrorists seek anonymity, preferring fund transfer methods and jurisdictions that lack transparency and scrutiny. The 9/11[8] investigation sought to identify the funding sources and the methods of transfer used in the attack to identify areas at risk of future abuse. ARS, and Hawala[9] in particular, were suspected to have been used to finance the 9/11 attack, giving rise to international concerns for their regulation. The climate of insecurity and moral panic post 9/11, in particular within the US, and internal pressure on US agencies to be seen as acting to address perceived insecurities, led to the targeting of Hawala by the Office of Foreign Asset Control (OFAC). US concerns led to raids on Hawala operators associated with Somali communities across the US, in particular in Minnesota, Washington and Massachusetts, as part of Operation Green Quest, based on their supposed links with Al Qa'ida. US pressure also secured the subsequent listing of the Al-Barakaat operator at UN level bringing Hawala to the attention of the international community, on the basis of the 9/11 association which was never substantiated. This form of precautionary logic stems from an absence of evidence that authorities appear unwilling to accept as evidence of an absence of criminality. [10] The sensationalising of ARS post 9/11has led to numerous misconceptions about the nature and risk these systems present. It is, however, the perception of risk post 9/11 that has come to dominate the security agenda and drive their regulation.

This chapter will begin by considering the historical, social and cultural context that is associated and recognised as a characteristic of Hawala operation, relevant to the development of these systems over many centuries, illustrating their flexible accommodation to changing circumstances over time. The chapter then analyses their mode of operation and the risks arising from this, specifically in relation to terrorist finance. The operational method and context of these systems is compared and contrasted with the formal banking sector to consider the risks ARS pose in

[8]N Passas N,'Informal Value Transfer Systems Terrorism and Money Laundering' Report to the ational Institute of Justice, (2003) November,15

[9]M El-Qorchi, SM Maimbo and F 'Wilson Informal Funds Transfer Systems an Analysis of the Informal Hawala System' Joint IMF/ World Bank Paper, Occasional Paper No.222 (IMF August 8 2003)

[10]M De Goode, 'Speculative Security: the Politics of Pursuing Terrorist Monies (University of Minnesota Press 2012) 100-112

their intersection with the formal sector. This is necessary in order to fully appreciate the concerns for the regulation of these systems internationally and to critically review the validity and justifications provided for this by domestic and international regulatory bodies. This critique aims to provide a nuanced understanding of their operation[11] avoiding reliance on myths[12] and mistaken facts perpetuated by repetition.[13] This analysis and outline of the risks these systems present, enables a later review of the UK regulatory regimes capacity for minimising these risks as presented in chapter five, and adds to the consideration of the effectiveness of regulation for achieving this as revealed by the fieldwork presented in chapter six.

The chapter also considers the normative values which underpin these systems to bind operators and service users through the social and cultural context of their operation, setting the scene for their further consideration in chapter four. These normative values are considered in more detail in chapter four which presents the normative framework. Data is presented to indicate the prevalence of these systems and to identify the significance of their usage within specific geographical areas. Reasons for the continued use of these systems today, linked to the advantages they afford are considered as to their importance in determining their selection over the formal banking sector.

2.1 Historical origins and cultural dimensions of alternative remittance systems

Hawala is the most prevalent type of ARS, often inaccurately termed an alternative or parallel banking system,[14] which is misleading since these systems pre-date formal banking when no 'alternative' systems were available.[15]ARS originated in about 5800 B.C.[16] and from about 1327 A.D.[17]

[11](n10) [513]
[12]S Keene, September 'Hawala and related Informal Value Transfer Systems – An assessment in the context of Organised Crime and Terrorist Finance. Is there cause for concern?' Dec (2007) The Defence Academy Journal December 1-18.
[13]WA Tupman, 'Ten Myths about terrorist financing' (2009) 12 (2) JMLC 189-205
[14]Passas N, 'Informal Value Transfer Systems and Criminal Organizations; a study into so-called underground banking networks' (2004) S.S.R.N. December 1999 1
[15]PM Jost, HS Sandhu, 'The Hawala Remittance System and is Role in Money Laundering Interpol Secretariat1-27,1 Jan (2000)
[16]Fin Cen Advisory Issue 33 (March 2003) *Informal Value Transfer Systems* United States

they were subject to Islamic law, having originated as payment systems in the Middle East,[18] Africa and the Indian subcontinent. They remain grounded in Islamic culture and law, and are prevalent today throughout the Middle East, Pakistan, Afghanistan, and South Africa.[19]

Hawala developed to facilitate trade[20] amongst merchants along the silk route and Indian Ocean, facilitating payment for goods and services. As Arab and Muslim traders became established in the Mediterranean and Red Sea areas, these systems became more prolific expanding through Iran, central Asia and China. 'Hawala' means 'transfer' or 'transform'[21] representing a bill of exchange or promissory note, a 'Hawala Safar'.[22] Specific terms denote the systems common to specific locations, 'hundi' being common to India, 'fei ch'ien' is indigenous to China and 'phoe kuan' operates in Thailand. These systems are rooted in the trade and socio-cultural practices of the regions in which they developed and continue to operate.[23]

Hawala and hundi differ, the former refers to the process whereas the latter denotes the instrument utilised to effect the transfer.[24] ARS used exchanges of promissory notes or bills of exchange, with the value paid on later receipt, often in different locations, to different persons, with payments between operators settled later. The promissory note ('hundi') or bill of exchange was honoured on presentation to any operator within that same 'coalition' or network. As trade expanded and competition increased, distinct networks of operation developed, co-operating with each other to honour the financial instruments inherent to each system. These systems have lawful origins,

---

Department of the Treasury Financial Crimes Enforcement Network

[17] SR Muller , *Hawala: An Informal Payment System and its Use In Terrorist Finance* (First Edition Lightening Source Milton Keynes 2006) 24

[18] L Buencamino, S Gorbunov, 'Informal Money Transfer Systems: Opportunities and Challenges for Development Finance.' DESA Woking Paper No 26 United Nations (Nov 2002) ST/ESA/2002/DP/26, 2

[19] IMF Monetary and Financial Systems Department '*Hawala: regulatory Frameworks For Hawala and Other Remittance Systems*' Washington DC (2005) 9

[20] Second report of the Monitoring Group established pursuant to Security Council resolution 1363 (2001) and extended by resolution 1390 (2002) S/2002/1050 14 [63]

[21] M De Goode, 'Hawala discourse and the war on terrorist finance' [2003] 21(5) Environment and Planning D: Society and Space 513, 532 513

[22] CB Bowers 'Hawala , Money lending, and Terrorist Financing: Micro Lending as an End to Illicit Remittance (2009) 37(3) Den.J. Int'l L & Pol'Y 377- 419, 379

[23] Passas(n14) 16

[24] R Ballard 'Hawala and Hundi:vehicles for the long-distance transmission of value' 6

having developed to facilitate the safe transfer of goods[25] and monies for traders, avoiding the problems of currency exchange and the need for large quantities of goods for exchange, safeguarding transactions in the absence of formal institutions and law enforcement. [26]

Remittance activity now extends worldwide, prevalent in countries of origin such as Asia, Africa, the Middle East, and China, but is now also evident in Paraguay, Mexico, Jamaica, Surinam, Canada, Trinidad and Tobago, Nepal, Japan, Turkey, the US, the UK and some European countries. ARS are now linked to the economic migration of the diaspora who make use of these culturally familiar systems, which have a vital role alongside the formal sector, contributing significantly to international remittance activity.[27] Their continued use, despite the development of the formal financial sector, stems from their social and cultural context as practices common to the regions in which they are embedded and their flexibility in accommodating different business, practices[28] operating effectively in different legal jurisdictions.

2.2 Method of operation

ARS are not 'underground banking systems,'[29] a common misconception arising that from the lack of visibility of their operation. They do not however offer the lending, deposit or the range of services associated with modern western banking. The term though is informative of the suspicion they are viewed with generally and the suggestions of illegality due to their informality and lack of transparency.[30]

[25] M El-Qorchi 'How does this informal funds transfer system work, and should it be regulated?' December 2002, 39 (4) Finance and Development

[26] EC Schaeffer, 'Remittances and Reputations in Hawala Money – Transfer Systems: Self Enforcing Exchange on an International Scale,' (2008) 24(1) The Journal of Private Enterprise 1-17, 2

[27] SM Maimbo, D Ratha, (eds) *Remittances: Development Impact and Future Prospects* (The World BankWashington 2005) [56] as at 2001. Chapter 2 by Sander C , Maimbo, S 55 Chapter 2 by Sander C, Maimbo, S. African and the sub- Saharan regions due to the formal remittance only accounting for 5% of the world remittance flow, and 15% of the flows to developing countries

[28] M Schramm, M Taube.,'Evolution and institutional foundation of the hawala financial system,' International Review of Financial Analysis12 (2003) 406

[29] Asia/Pacific Typologies Working Group on Alternative Remittance &Underground Banking Systems, 'Alternative Remittance regulation Implementation Package' July 2003, 10

[30] De Goode(10)

These systems transfer cash or equivalent value[31] often operating within a primary business that provides goods or services[32] with varied methods of operation.[33] The formal sector relies on deposit services to fund its capacity for loans and investment activity, profit incentivising the core business purpose. The formal sector is market focused, profit driven, and in a modern context any claim to personal banking is generally within an 'arm's length' customer relationship with little face to face interaction. ARS such as Hawala are the very antithesis of formal sector services. Their operational activity is not defined by the provision of loans or deposit services. Any micro-finance offered is limited, supported from the primary business activity within which ARS operate[34] and is generally interest free[35] aligning with the principles of Islamic law where the charging of interest or 'riba' is forbidden.[36] In contrast, western banking is founded on the charging of interest derived from the early banking systems originating and operating in Greece and Rome in the fourth century B.C., which were regulated from around the second century A.D. The charging of usury by the Christians and Jewish faiths was prohibited, but Jewish bankers flourished in Europe during the 11th to 13th centuries, charging interest to non-Jews.

Modern banking in the formal sector focuses on product development and the marketing of services to generate demand and maximise profit, predicated on the normative values of commercialism, increased commercial presence and market share and growth, derived from considered fiscal and corporate planning and risk control.

ARS emerge as services designed to meet customer needs through their opportunistic operation tailored to customer demand, based on the strong social and commercial relationships and context that underpin their operation. The normative values and model of practice are predominantly

[31] Jost (n15)
[32] Muller (n17) 18
[33] Passas(n8)
[34] De Goode (n21)513
[35] Buencamino (n18)
[36] M Ainley and others, 'Islamic Finance in the UK: Regulation and Challenges' FSA November (2007) 4

social, not commercial, serving customers as members of a social group; the social context and the relationships are central to their mode of operation and use. Western banking operates according to a corporate or conglomerate model; competition not co-operation between banks is the norm, with relationships driven by objective financial, not social, criteria.

2.2.1 Form and practice

ARS operate as an adjunct to another primary business, providing a cash pool to facilitate remittance payments. Hawaladars (Hawala operators) can offer cash/value transfers, currency exchange, trade finance or microfinance, according to their structure and size of their operations and ancillary business. Whilst these services bear similarities to formal banking services, research suggests that Afghanistan 'money exchange dealers' developed historically according to the business opportunities, offering microfinance [37] only where necessary to further their business interests and where in accordance with ethnic and religious practice.[38] ARS are not completely uniform and vary according to the prevailing cultural and social context of their operation, posing a challenge for authorities in firstly identifying what constitutes ARS activity, and further in seeking to regulate them within this context.

The formal sector is readily identifiable by its physical presence, market dominance, and product diversification aimed to generate product demand. It is however subject to considerable regulation nationally and internationally, having formal mechanisms of arbitration, scrutiny and accountability, with external supervision, monitoring and control exerted through legal regulation. Operational methods and practices are uniformly regulated through national and international standards applied across the sector rendering the formal

[37] Buencamino (n18) 8, 1

[38] SM Maimbo 'The money Exchange Dealers of Kabul: A study of the Hawala System in Afghanistan A Study of the Hawala System in Afghanistan' Working Paper No.13 World Bank August 2003, 4 The author refers to the term money exchange dealers to connote both hawaladars who operate unregistered and those that operate in compliance of the pre-requisite for registration required until December 2002,when a system of regulation was imposed.

sector less susceptible to risk but operationally less adaptable to social conditions, than ARS. Banking services are less individually tailored; they are designed for specific 'groups' and 'markets' and therefore less culturally, geographically and socially sensitive.

The transfer of funds without their direct physical movement is not a defining feature of ARS;[39] banks also perform this function. Whilst FATF defines 'remittance services' by reference to cash transfers only,[40] ARS allow for the transfer of the value of goods or services or different currencies between locations, whereas banks mostly process cash transfers.[41] ARS are more flexible in settling transfers over a period of time through multiple transactions[42] making the detection of their activity problematic.

Modern banking practice is dependent on market penetration and sector reputation, evidenced by the quality and range of services offered and compliance with sector and regulatory standards, with profitability and financial stability viewed as signs of success. ARS operate through networks of locally based Hawaladars and individual client transaction agreements. The delivery of value to the recipient is through a Hawaladar in the destination location, across geographical boundaries[43] and legal jurisdictions,[44] effected with speed and accessing remote regions to deliver within 24 hours. In the absence of any physical movement of funds ARS transactions pose a problem for authorities and regulators in terms of the visibility of their activity. They are an ideal vehicle for circumventing currency controls,[45] import / export duties and reporting requirements. Tracing the transaction pathway and value from source to destination is more accessible through the formal sector, each jurisdiction having their own regulatory framework guided by international banking standards regulating cross-border

[39]Passas(n8)
[40]FATF 'Money Laundering and Terrorist Financing Typologies 2004-2005' 10 June 2005
[41]M Vaccini, ' Alternative remittance Systems and Terrorist Finance; Issues in Risk management', Paper No. 180, World Ban, Washington DC (2009)
[42]D Sharma, 'Historical Traces of Hundi, Sociocultural Understanding, and Criminal Abuse of Hawala.' September (2006) 16 (2) I.J.C.J.R 99-121, 105
[43]Buencamino (n18)
[44]El-Qorchi (n25)
[45](n29)10

banking activity. In the absence of regulation, ARS lack the compulsion to apply and adhere to standardised methods of operation, and recording and accounting processes, relying solely on their normative values and the informality of established custom and practice to determine their operation.

ARS are often ancillary to cash intensive businesses [46] including the import/export of goods, sale of high value goods, travel services and currency exchange. A symbiotic relationship exists between the two;[47] the core business provides a 'cash pool' for remittance operation, enabling the payment of funds to the recipient in advance of receipt of payment from the sender. The 'core business' enhances the customer base and evidences 'trust' in the Hawaladar for entry into the network. This social status and business reputation represents a personal 'stake' as 'community capital' in the network subject to the local accountability of the network, customers, and community.

Conversely, the formal sector is defined by a 'corporate personality' as the basis for operational engagement, employees and managers largely remaining unidentified and indistinct, with limited face to face customer contact. Formal sector compliance is governed by legal regulatory requirements determining operational status, activity and business relationships. Accountability is to shareholders for performance and profit, with ethics and social norms being less relevant and accountability managed through external supervision. For formal institutions market share, profit and commercial viability are commensurate with reputation, and longevity of operation is managed through regulation and risk management. The formal sector is less sensitive to cultural practice or preference, and customer trust is expressed and evident within service delivery and regulatory enforcement creating customer confidence.

The Hawala relationships are dynamic and multidirectional, operating both horizontally between Hawaladars and their clients, and vertically and

[46] Jost (n15) 14
[47] (n29) 13

horizontally between Hawaladars to enable the consolidation of debts owed between Hawaladars and fulfilment of transactions at different levels of the network. This requires the presence and support of Hawaladars from within the same network (network relationships) covering specific geographical locations and those forged with other networks providing services in different locations. These latter peripheral structural relationships extend the operational capacity and geographical reach of networks resulting in an extensive and complex hierarchical network.[48]

The systems are premised on trust essential to maintaining network cohesion and relationships between operators across different networks, creating a vast operational network, a 'Hawala community'. In similar ways the formal sector is comprised of individual branches, local or regional banks or building societies, and national and multinational corporate groups. Formal sector relationships are driven by formalised commercial contractual and legal relationships. Transactions between regulated financial institutions are facilitated by CHAPS, SWIFT[49] and use of ATMs by customers of any group member. The distinction between the formal sector and ARS is that the latter can provide single transactions at any time without the client needing to become a member. Transactions in the formal sector require membership via a bank account and customer allegiance is often predicated on the 'best deal' and the 'commercial context'. ARS have no obvious membership requirements for service use, access is determined by the commitment to the shared social values and cultural context.

ARS can accommodate delivery to the recipient's home using couriers, including bus drivers,[50] taxi drivers and local merchants, widening their penetration into rural areas, unmatched by the formal sector. Remittances are often made to households where the male family members have migrated, with females remaining in the country of origin. ARS accommodate delivery where travel to a bank location by unescorted females would be a

[48]Schramm (n28)
[49]Secretary of State for Home Department 'CONTEST-The UK Strategy for Countering Terrorism' (Cm 812, (2011) 53
[50]FATF (n40) 9

hindrance and contravene religious observance and social practice. Couriers move funds in the course of their ordinary business activity, couriers forming a peripheral network of relationships. This places ARS at risk of smuggling and support of terrorist finance, since there are no restrictions on the personnel used as couriers,[51] and, given the lack of transparency as to network membership, this poses a concern for regulators.

2.2.2 Typology of alternative remittance systems

Two models of operation have been identified, the 'basic' or 'traditional' model (see appendix 1) and the 'contemporary' or 'modern' model (see appendix 2), the difference between these being that the interface with the formal sector is only present in the 'contemporary' model.[52] The basic model operates in accordance with the diagram in appendix 1. The sender contacts Hawaladar A in location A, requesting a transfer of funds to recipient B in location B. The sender may be known to the Hawaladar personally, or referred by mutual acquaintance. Customer identity checks are not usual, an advantage in areas such as Africa where formal identity documents are difficult to obtain. This does, however, promote a 'take on trust approach' where trust is presumed in those of the same ethnic group or applied to those known only superficially.

Hawaladar A contacts counterpart Hawaladar B in location B, who delivers to the recipient who confirms receipt with the sender. On confirmation the sender pays the value to Hawaladar A. Neither the client nor the recipient need be in the same geographical location or legal jurisdiction[53] for the transfer.[54] Hawaladar A has received payment for the transaction which Hawaladar B has paid to the recipient, creating a debt from one Hawaladar to another and an asymmetry.[55] This promotes reciprocal trust, co-

[51]GW Bush ,White House ,Terrorist Financial Network Fact Sheet- 'Shutting Down the Terrorist Financial Network', November 7, 2001, 25
[52]Keene(n12) 10
[53]El-Qorchi (n25)
[54]De Goode (n21) 523
[55]Bower (n22) 380

dependence and network cohesion to generate network allegiance and co-operative working for future settlements of debts between Hawaladars.

System transactions utilise two transmission pathways, one relating to the transfer of the goods/value and one pertaining to the transaction information; these are separate and distinct transmission pathways. In the formal sector the transaction information follows the same pathway as the funds transferred, supported by SWIFT technology and legal regulation[56] securing the capacity to trace and track transaction information. The fragmentation of the transaction pathway compromises the tracing of transactions made problematic by lack of standardised record keeping within ARS.

ARS have mistakenly been termed 'paperless' systems, in light of the lack of uniform methods for verifying and recording transactions. Records may be handwritten making use of mutually agreed codes, usually banknote serial numbers, passport numbers or unique information known only to the parties to the transaction. Records can be idiosyncratic, often meaningful only to the parties and impenetrable to outsiders making the identification of clients and the tracing of transactions problematic for regulators, hampered by the lack of consistent methods for central data collection.

The transaction code, when received by the recipient, enables verification of their identity allowing the collection of funds from Hawaladar B, the recipient then confirms payment to the sender. Single transactions of small value may not be recorded,[57] with records often only kept until the transaction is complete,[58] except in relation to relief aid and development payment transactions, where detailed records are maintained[59] for accountability.

This informality of record keeping is commensurate with the values and informality of the system and the nature of trust between parties. In the

[56]The Transfer of Funds (Information on the Payer) Regulations 2008 (SI 2007/3298)
[57]Vaccini (n41) 4
[58]Passas N, 'Law enforcement challenges in hawala- related investigations' (2004) 12(4) JFC, 112-113
[59]Maimbo (n38)13

formal sector, regulation imposes mandatory transaction and 'identification' checks and data recording, mostly automated, the form determined by institutional practice. Identification and tracking of transactions in the formal sector is easier due to consistent standardised practices and central computerised data recording systems. These features are absent in ARS since transaction verification and recording methods vary between Hawaladars and potentially offer anonymity to client and Hawaladar transactions.

The formal sector retains transaction information including the transaction amount, identification/originator information and other features pertaining to the transmission pathway. This facilitates the identification and tracking of transactions in relation to value, source, destination and parties, and connects the identities[60] of the sender and beneficiary. In the formal sector payment into the client account signals transaction completion to which clients have access to records and receipts for all transactions. Transaction information is critical to successful CTF strategy, providing vital intelligence for authorities to draw on to identify the terrorist financial footprint [61] and disrupt terrorist networks, enabling the tracing of transactions between terrorist cells and supporters in order to identify membership.

Hawaladars are viewed as 'ordinary' businessmen, the primary business providing the ARS business with legitimacy. The presence of ARS is difficult to identify, often only visible to other operators and customers. Access to the network is dependent on recognised socio-economic status and community standing controlled informally with the assumption of integrity regarding transactions, based on a 'no questions' asked, approach to trust.[62] Operational relationships lack impartiality and objectivity in assuming the legitimacy of transactions on the basis of shared ethnicity, where enquiry as to the transaction purpose may transgress social norms. Since ARS operate as social networks with extensive geographical reach they offer potentially

[60]Jost (n15)13
[61]J Roth, D Greenburg D, S Willie S. 'Staff report to the Commission on terrorist Attacks Upon the United states- monograph on Terrorist Financing,' 61
[62]Passas(n58)113

unhindered access, a concern for authorities seeking to exclude access to ARS by criminal elements and terrorist organisations, to prevent their misuse.

Roles within the formal sector are more transparent with information concerning corporate structures required to be publically accessible, and with more stringent controls of employee/management selection and accountability. The operation of ARS as socially rather than commercially driven networks poses challenges for regulators in managing risks that these systems present whilst also preserving the benefits of their efficiency.

2.2.3 Consolidation and settlement

The basic model has no interface with the formal sector, the debt between Hawaladars is fulfilled by reverse or parallel transactions[63] for clients of Hawaladar B[64] through a 'settlement process'. Hawaladars rely on mutual repeat business and repayment of debts to re-stock their cash pool, unless drawing on cash from a primary business, which is necessary since payments by Hawaladar B are made in advance of any receipt of funds from Hawaladar A, evidencing reciprocal trust between clients[65] and Hawaladars. The formal sector requires all funds to be paid over and transaction chain is followed in advance of pay out, with no prior presumption of trust to waive this requirement, acting as a safeguard against default of payment. This raises no concern for ARS[66] since their alignment to Islamic principles allows for the transfer of funds for 'usufruct,' where there is a right to their use stemming from debts in the settlement process.[67]

The contemporary model (see appendix 2) offers greater flexibility and sharing of commitments, with Hawaladars acting co-operatively and

[63]Maimbo(n38)5
[64]Schaeffer (n26)14
[65]Schramm (n24) 413
[66]E Thompson, 'Misplace Blame: Islam, Terrorism and the Origins of Hawala,' Yearbook of UN Law 11 (2007) 279-305
[67]Ainley (n36)

collectively to consolidate and settle debts for each other or for third parties. A pre-requisite to consolidation and settlement is access to a bank account, either business or personal,[68]unless the operator has a sufficient cash pool. The funds transferred indirectly represent the payment to the client, facilitating covert access to accounts by outsiders[69] with clients free from the usual checks applying to account ownership. Hawaladars may use business accounts for larger transfers, avoiding the suspicion of illicit purposes if these are connected to cash intensive ancillary businesses. Third party accounts may also be used for payment, consolidation or settlement, limiting transparency as to parties' identities and hindering financial audits.

Transactions are settled on behalf of Hawaladars in different networks or regions by consolidating the debts of several operatives into one settlement payment, this being timely, cost effective and manageable. The formal sector's ability to move funds between businesses to support operational activities of 'sister' companies is restricted by regulation. Hawaladars determine the timing and methods for consolidation and settlement,[70] and bilateral or 'reverse' consolidation and settlement between networks is common.[71] Settlement offers flexibility given the volume and number of transactions and flexible time frames. The lapse of time between the transactions and later settlement and the volume and scale of batched low value individual transactions [72] fractures individual transaction pathways. Preserving the originator and recipient information along the transaction pathway is necessary to provide meaningful financial intelligence. ARS methods leave systems vulnerable to systematic placement and integration of illicit funds through low value multiple transactions. These become disguised amid transaction volumes, and consolidated without detection.[73] The settlement process exposes these systems to the potential layering of

[68]Keene(n12)
[69](n51) 25
[70]Maimbo (n 38) 7
[71]Vaccini (n41) 5
[72] World Bank 'Global Development Finance The Development Potential of Surging Capital Flows: Review, Analysis and Outlook' (2006) Washington 1-22, 1, 3 The World Bank's 2005 estimates suggest the annual global flow of migrant remittances through formal channels exceeded $233 billion worldwide, of which developing countries received $167 billion
[73]Jost (n15) 13

illicit transactions, disguising the origins of funds and parties beyond detection, with third parties and intermediaries remaining anonymous. Authorities wishing to undertake the financial investigation of property ownership and transaction purpose require transparency of the parties' identity and the transaction purpose.[74] The speed of transactions and use of third parties without scrutiny potentially places these aspects beyond detection and untraceable post placement, critical given that the terrorist purpose is hidden at the placement stage with detection of TF dependent on the backward tracing of transactions.

Settlement in the contemporary model interfaces with the formal sector, which is functional and minimal, since Islamic principles prohibit the exchange of interest, allowing service charges only.[75] Consolidation prior to settlement is through 'wholesale' Hawaladars' who make single large payments from combined transaction settlements[76] through their personal or business accounts. Large amounts transferred frequently through personal accounts indicate a suspicion of Hawala.[77] Wholesale Hawaladars, as international operatives at the pinnacle of the network, capitalise on their geographical reach and network contacts to facilitate settlement, often through multiple accounts.[78]

The interface with the formal sector increases the transparency of transactions and their capacity for monitoring, but this is outweighed by the layered and aggregated nature of the prior consolidation and settlement processes whose fragmentation leads to lack of discernible transaction information. Individual remittance transactions are submerged and indistinguishable amongst the volume of consolidated transactions, and subsequently merged with formal sector funds.[79] Tracing of remittance transactions in the formal sector is limited to the segment of the transaction

[74](n20)13 para 60
[75]Ainley (n36)
[76]R Ballard 'Hawala: Criminal Haven or vital financial network' October (2006) 42 International Institute of Asian Studies, University of Leden 8-9, 9
[77]N Passas, 'Indicators of Hawala operations and criminal abuse', JMLC 2004 8(2),168
[78]Keene(n12)
[79]De Goode(n21) 517

processed at this point, having limited value. The vulnerabilities and risks identified within the ARS settlement process are transferred to the formal sector, disabling the protection of its regulation. Consequently these systems transfer the risk of handling illicit funds, possibly terrorist funds, through the comingling of funds within the formal sector during the settlement process.[80] This makes both systems vulnerable to the transfer of illicit, potentially terrorist, funds particularly in jurisdictions with weak regulation of the formal sector.[81] Customer identity and transaction purpose, connected to the legitimacy of funds, is a pre-requisite to ensuring the credibility of the 'financial system' to limit access by terrorist groups.

Isolating the relevant factors to link or distinguish transactions forming the consolidated value is impossible for an outsider and without adequate records. Bifurcation of pathways relating to funds and transaction information preceding consolidation and settlement, and later de-consolidation hinder the capacity to trace the transaction pathways to identify those related to individual halawadas and their customers. Large settlement transactions are made by 'corporate Hawaladars' through major clearing houses located in New York, London, Hong Kong, Singapore and Switzerland, and are particularly prevalent in the UAE, and Dubai.[82] In 2003 105 Hawala 'exchange houses' were located in Dubai.[83] The high volumes require Hawaladars to draw on the 'formal sector' for currency exchange through clearing houses. Following settlement further disruption of the transaction pathway occurs on deconsolidation when the original amounts paid over to settle the debts of Hawaladars in other networks or locations are redistributed.

Transactions through the formal sector are between accounts by wire transfer, in areas where banking services are accessible. ARS consolidation

[80] Roth (n61) 26 Cites lack of regulation in UAE and Pakistan as allowing use of hawala by AlQa'ida to flourish
[81] (n20)13
[82] Keene (n12)
[83] JF Wilson, 'Hawala and other Informal Payment Systems; An Economic Perspective' IMF paper prepared for the Seminar on Current Development in Monetary and Financial Law 1-18 [6]

draws on currency conversion furthering the risk of the comingling[84] of lawful and unlawful funds and their integration into the formal sector and the wider ARS network on deconsolidation. This is problematic in jurisdictions where the authenticity of domestic currency cannot be guaranteed,[85] and where currency restrictions operate. Increased volumes through structured cash deposits and wire transfers by Hawaladars inconsistent with account activity indicate ARS operation,[86] but the benefit of this indicator is lost, disguised within the operation of the primary business.

2.2.4 Use of business accounts

Migrant remittances are one way transactions from the diaspora to the country of origin, commonly balanced by reverse trade based transactions, here the contemporary model dominates given that remittance are mainly unidirectional. This practice makes it difficult to differentiate ARS from ordinary business activity, undermining the potential scrutiny provided by the regulated formal sector. Suspicious transactions[87] are submerged and disguised within ordinary business transactions,[88] since it is the business rather than the parties to the transaction which are visible.

ARS developed in furtherance of lawful trade and in the context of business practice, so their use today is unsurprising and are viewed as culturally and socially acceptable. Use of mis-invoicing through the under or over valuation of goods imported/exported is a common settlement method, and one of a number of methods identified[89] and used to disguise ARS activity. In the Middle East and Turkey mis-invoicing accounted for 30.7% of the total exports from these countries for the period 1970-1979, and 17.4% for 1980-

[84](n51) 10
[85]Maimbo (n38)9
[86]FinCen Advisory Issue 33 (March 2003) *Informal Value Transfer Systems* United States Department of the Treasury Financial Crimes Enforcement Network, 8
[87](n20) 14 [62]
[88]Jost (n15)13
[89]R Ballard 'A Background Report on the Operation of Informal Value transfer Systems (Hawala)' April (2003)1-39, 25

1990.[90] Mis-invoicing itself is difficult to identify within the operation of a lawful business, often only evident through auditing and specialist forensic accounting. Inspection by the authorities may reveal an imbalance in payments to unrelated traders or businesses. Illicit smuggling of goods, particularly of high value commodities or drugs, yielding proceeds on their sale, can be used for 'settlement'. The use of illegal methods for settlement compromises the integrity of ARS exposing them to the laundering of illicit funds and may become an operative form of ARS. These risks concern regulators as to the potential risk of the laundering of terrorist funds since ARS methods of operation disguise the purpose of the transaction, and the legitimacy of the existing business can enable the operation of ARS for illicit purposes without raising suspicion.

2.3 The concept of trust

A key feature of ARS is their informality, and their role of trust and honour in their operational relationships, considered to pose a risk of their misuse for terrorist financing. Reliance on honour and trust is common to many cultures, particularly those relying on Islamic principles, where speculative behaviour is prohibited, contractual duties are sacred and the sharing of information and co-operative behaviour[91] underpins commercial relationships.

Operators and clients share the risk of non-payment for the mutual benefit and promotion of long term relationships based upon the duty to maintain the sanctity of their agreements.[92] Modern banking systems also evidence a commitment to honour their obligations through their operational management, trust here being contractually based with legislation pre-determining the boundaries of commercial relationships and securing the enforcement of obligations. The robust regulation and oversight of the financial sector at all levels by independent bodies furthers this 'calculative

[90]Schaeffer (n26)
[91]Z Iqbal, 'Islamic Financial Systems,' [2007] 34(2) Finance and Development43
[92]Schramm (n28) 411

trust' arising from the compulsion of legal regulation and the threat of loss of market share.[93]

The notion of trust associated with Hawala is voluntary[94] and known as 'guanxi',[95] stemming from conformity to the prevailing social values and norms. It is internally, not externally, driven, and is self-serving and self-regulating for mutual support and commercial benefit. This 'altruistic trust' arises from the conduct and behaviour of the parties in the context of socio-economic relationships that have existed over time[96] observing the ethnic and social norms to honour transactions. It is often misconceived when compared to western banking, from which it differs markedly. Compliance between Hawaladars is driven by the need to obtain settlement of outstanding debts, creating a 'lock-in contract' and risk laden relationship.[97] Admission to the system is determined by past conduct demonstrating honour, integrity and social allegiance to ARS or families' operations[98]and shared socio-cultural or religious affiliation and values, demonstrating social acceptance and allegiance to the network.[99] Fear of social and economic exclusion secures compliance, protecting entry to and misuse of the system by 'outsiders'. [100] ARS appear to operate as a 'cultural clan', in limiting access to those with shared ethnicity. The normativity of their operation is analysed more fully in chapter 4. More favourable transaction terms are offered to 'known' customers and other Hawaladars.[101] The formal sector, in contrast, relies on legal formalities and contracts for dispute resolution, prevented from imposing cultural restrictions but doing so indirectly through its operational formalities (the pre-requisite of customer literacy and provision of identity).

[93]M Martin, 'Hund/Hawala: the Problem of Definition' Modern Asian Studies (2009) 43(5) 909-937,910
[94]FATF (n40)10
[95]Passas (n17)
[96]Vaccini (n41) 4
[97]Schramm (n28)
[98]Bowers(n22) 384
[99]Schaeffer (26)11,12
[100]Buencamino (n18)
[101]Maimbo (n38) 11

Hawaladars are motivated to adhere to the unwritten code of practice to maintain business relationships and preserving their personal reputation and social standing. This network of operation requires the sharing of sensitive commercial information, promoting allegiance and compliance to secure confidentiality for all.

> It is ironic that an ancient South Asian banking system which had earned a reputation for trust should today be widely regarded as an opprobrious marker of the black market economy.[102]

Western mistrust of ARS stems from the climate of insecurity post 9/11 where risk has come to be regarded requiring control and governance through transparency, accountability, proof of provenance and a traceability of the movement of funds. The lack of enforceable service standards, external control and impartial scrutiny also raise the presumption of increased risk. The formal sector operates through clear transparent standardised procedures for dealing with complaints and misconduct. ARS are self-regulating, focusing on the 'trust' relating to external social and cultural obligations, which, whilst functional and self-serving, lacks uniformity. Little research has been undertaken to investigate how allegiance to religious and cultural values assists self-regulation given these can be feigned to gain access to the system. The cultural and religious values on which ARS are based are relevant to large geographical areas, including the Middle East and South East Asia, binding local operators and promoting 'cross-ethnic collaboration'[103]across networks. This challenges regulators seeking to minimise the risks through compliance to formalise ARS, whilst also 'respecting' their cultural and religious context, values and the social conditions of operation over centuries. Regulation needs to avoid the perception of discrimination in targeting the nature of these risks assisted by objective typologies of risk indicators[104] to avoid alienating the communities that use these systems. Regulation therefore needs to be uniform[105] in form

[102]Martin(n93)909
[103] Passas(8) 7
[104]Roth(61) 56
[105]*Regulatory Frameworks For Hawala and Other Remittance Systems* (Monetary and Financial Systems Department 2005 IMF) Chapter 3 Comparing Mature and Nascent Remittance Corridors :U.S.- Mexico and Canada – Vietnam, 29

and effect and be effective in its capacity to address risk inherent to ARS operation and accountable for its effectiveness here. [106]

The popularity of and lack of dissatisfaction with ARS by customers or operators, even where they operate in areas of high corruption, raises questions as to the motivation and compulsion for genuine operation and formal investigation of their potential misuse.[107] The lack of a formal regulatory framework imposing procedures, compelling audits and external oversight and investigation, fails to secure valuable information for CTF.[108] The normativity of these systems in their reliance on 'trust' exclusively and internal self-regulation is analysed more fully in chapter 4 in light of the normative framework presented. The lack of formal monitoring, accountability and scrutiny of ARS afforded by regulation has raised concerns as to their integrity, leading to a sense of mistrust by the formal sector and of the communities making use of these systems. This risk of misuse can only be quantified by reference to their prevalence and presence globally, balanced against the benefits they afford to the communities that use them, which is now considered.

2.4 Prevalence of alternative remittance systems - data collection

In assessing the risk that ARS present it is relevant to consider the areas and prevalence of their operation as to the volumes of remittances channelled through these systems. Specific data is, however, difficult to obtain, since the nature of ARS activity makes the detection and monitoring of these systems challenging in the absence of regulation. The lack of consensus and consistency as to data collection across different jurisdictions hinders meaningful comparison of ARS data with data relating to the formal sector. The legal status of Hawala affects its visibility making any assessment of the

[106] C Walker, 'Report of Committees: The Jellicoe Report on the Prevent of Terrorism (Temporary Provisions) Act 1976' 46 (4) (1984) MLD 484,487

[107] Maimbo (n38) 17

[108] House of Lords European Union Committee 'Money Laundering and the Finance of Terrorism' 19th Report session HL (2008-09) 132-I ,151 evidence given to EU Committee by Mr Webb and David Thomas (Director UKFIU SOCA)

scale of its activity across geographical areas challenging, unless as in the UAE, it is perceived as a valuable commercial activity. Remittance activity through the formal sector is recorded in the balance of payments figures,[109] and by international bodies, but this excludes informal ARS activity.[110] Data relating to ARS activity is often based on 'estimates' assessed by drawing on data relating to general remittance within the formal sector. Current data is insufficient to fully indicate the scale of ARS activity to inform policy and regulatory decisions necessary to maintain the economic balance between remittance sending and receiving countries. Regulation is often a pre-requisite to compulsory data collation, with regulation preceded by impact assessments. The recording of formal remittance activity yields data but compromises its integrity since the interface of ARS with the formal sector[111] is not identified and isolated within this.

Annual global remittance flows are vast, increasing as a significant revenue source for economically reliant countries. Individual remittance amounts are low value averaging $200-$300 a month in 2002.[112] Total formal remittance volumes were $401 billion for 2012, increasing by 5.3% from 2011 with an expected increase of 8.85%.[113] Informal remittance flows are estimated to be half of formal flows.[114] Remittance volumes to developing countries are expected to total $ 515 billion for 2015,[115] Pakistan and Bangladesh are dominant remittance receiving countries, with SE Asia being the largest remittance receiving region for 2012.[116] Assessments of private capital transfers estimate the annual value of Hawala transactions for the twenty year period from 1981-2000 to be $10-$35 billion.[117] Remittance activity is prevalent in Pakistan, India and the Persian Gulf States, home to the largest

[109] De Goode (n21) 514
[110] US GAO 'Report to Congressional Requesters Terrorist Financing U.S. Agencies Should Systematically Assess the Use of Alternative Financing Mechanisms' November (2003) GAO-04-163 [2]
[111] IMF, *International Transactions in Remittances, Guide for Compilers and Users,* Washington USA (2009) [1] Remittances are defined as representing a form of household income that originates from migrant workers, temporary or permanent to foreign jurisdictions, who remit funds to residents in their country of origin.
[112] Bowers (n22) 381 Figures here refer to US and Latin America
[113] World Bank 'Migrant and Development Brief No. 20' 20 April 2013
[114] Bowers (n22) 381
[115] (n113)
[116] (n113)
[117] Schaeffer (n26) 8

concentration of Hawala operators. Forty percent of Pakistani migrants transfer remittances through the Hawala system,[118] estimated to value $5 billion; remittances comprise the country's largest source of hard currency.[119] Pakistani nationals hold an estimated $40-$60 billion in overseas assets, equivalent to the country's GDP, some of which is remitted to Pakistan having created a reliance on foreign currency.

The dynamic economic relationships between remittance sending and receiving countries and the social value of cultural systems present challenges for policy makers[120] in regulating these vast volumes in countries that may lack the institutional and technological infrastructures to implement regulation.

2.4.1 Alternative remittance systems – selection and advantages

Alternative remittance systems, despite having operated over many centuries, remain in use today. The factors that determine their selection and continued use are now considered, as these are relevant to their regulation and to ensure the benefits of these systems are not lost through their formalisation. The identification of these factors is important in sensitising regulators to the need to tailor regulation to maintain or replicate these within the formal sector, and to anticipate and compensate for any potential socio-economic consequences where this cannot be achieved.

2.4.1.1 The development of 'remittance corridors'

Two stages in the development of remittance corridors have been identified,[121] 'nascent' and 'mature'. Mature remittance corridors arise where

[118] Schaeffer (n26)
[119] Buencamino (n18) Demand for ARS in China is largely due to the fact that the formal sector cannot adequately service the country's need to for foreign currency to support the economy.
[120] R Mc Clusker 'Underground Banking: Legitimate Remittance Network or Money Laundering System?' Trend and Issues in Crime and Criminal Justice No.300 July (2005) Australian Institute of Criminology,5
[121] *Regulatory Frameworks For Hawala and Other Remittance Systems* (Monetary and Financial Systems Department 2005 IMF) Chapter 3 Comparing Mature and Nascent Remittance Corridors

informal remittances have 'shifted' to predominantly operate through the formal sector. Nascent remittance corridors are those sufficiently developed to provide for a shift from the informal to the formal sector. Whilst some features are specific to particular remittance corridors, general incentives and customer preferences promote the transfer from the informal to the formal sector. Remittance transactions have three stages: 'first mile,' 'intermediary' and 'last mile' stages.[122]

The 'first mile' refers to reasons[123] for the selection of ARS at the point of placing the funds for transfer, with the following features relevant to their selection: anonymity, cultural familiarity, personal characteristics, and accessibility. The 'intermediary stage' focuses on the range of services, and their profitability and method of funds transfer, either electronically by wire transfer or the formal fund transfers (FFT) or by communication between operatives for ARS. The 'last mile' stage represents the deconsolidation and delivery to destination.

Client preference for formal fund transfer FFT depends on the frequency, type and purpose of the transaction and the amounts remitted.[124] In the initial first mile stage the following factors were identified as being relevant: personal, economic and customer service levels. Cultural familiarity was identified as an important personal factor in the selection of ARS over FFT.[125] Personal contact and valued social and business relationships were factors positively lending to the selection of ARS. The need for women to interact in a culturally appropriate context[126] in accordance with cultural traditions through trusted intermediaries and a service offering home delivery were also important. Access to FFT is limited where formal services are centred in large cities necessitating travel. The strength of ARS lie in their cultural sensitivity and the promotion of a shared sense of community identity

---

:U.S.- Mexico and Canada – Vietnam [17]

[122]R Hernadez- Coss ' The Canada-Vietnam Remittance Corridor : Lessons on Shifting from Informal to Formal Transfer Systems' Working Paper No.48 World Bank March 2005.[58/59]

[123]Maimbo (n38)

[124]Informal Funds transfer Systems in the APEC Region: Initial Findings and a Framework for Further Analysis APEC and ARS Working Group Report sept 1-5 2003 World Bank.[29]

[125]FATF 'Money Laundering and Terrorist Financing Typologies 2004-2005' 10 June 2005 [10]

[126]El-Qorchi (n25)

and heritage for migrants. A 'cultural inertia'[127] exists with preference determined as much by familiarity and previous use as by distrust by some cultures of western banking systems, whose principles conflict with traditional Islamic and Muslim values.

2.4.1.2 Accessibility

Accessibility is also relevant to the use of ARS, which is critical for funds transfer in zones of conflict and instability and remote areas where the formal sector is unable to operate. Accessibility is critical where ARS may be the only means of moving funds, these systems having been used by aid agencies in Thailand after the 2005 tsunami,[128] when the formal banking system was decimated. ARS operate within networks of structured relationships, not infrastructure networks. The efforts of regulators to attract remittances to the formal sector is misguided, in supposing that all the advantages of ARS, such as the cultural context, can be replicated by the formal sector. The increasing use of IT by the formal sector is appropriate for clients in developed countries, but operates as a barrier where access to and use of technology is limited and unfamiliar in developing countries. Language difficulties may compound customer access to the formal sector influencing the selection of ARS where operators often have language skills or can access interpreters from the local diaspora. The extent to which this is relevant in the UK context will be confirmed by the field work research.

2.4.1.3 Preference for alternative remittance systems

The continued use of ARS stems from several factors, but critical are culture and ethnicity. The cultural obligations and associated family duties, deriving in part from Islamic principles are common to many cultures in the area of the Middle East that requires the honouring of 'zakat', charitable giving,[129]

[127] Passas(n8)
[128] Thompson(n66) 280
[129] Final Report of the National Commission on Terrorist Attacks Upon the United States 'The 9/11 Commission Report' July 22nd (2004) U.S. Government Printing Office Washington DC. [170] [372]

requiring Muslims to donate a percentage of their income. This charitable and family obligation amongst the diaspora binds them to continued remittance, often over ten years[130] after their settlement, the frequency and value of remittances increasing with income.

Economic and individual factors are key to the continued use of ARS[131] allowing the support of social needs and facilitating microeconomic development through property purchases, poverty reduction, access to education and medical services and cultural practices and commitments (dowry).[132] Maintaining these benefits in unstable, remittance dependent and developing economies, where these systems are prevalent, is not without its difficulties given the popularity of ARS amongst the diaspora in enabling the fulfilment of cultural and religious obligations.[133] The perils of regulation restricting the operation of the Al-Barakaat remittance providers in relation to Somalia and the challenge of requiring regulation where states lack the financial capacity are considered more fully in chapter 4.

2.4.1.4 Customer satisfaction

Customer satisfaction with ARS service levels appears to be high, underpinned by the personal nature of the client/operator relationship, and trust in the operators evidenced by their reputation for honouring the loss of funds and reliance on informal dispute resolution.[134] The complaints system in the formal sector is formalised, less personal, and inaccessible to those with limited literacy and education, despite the diverse range of financial services offered. Cultural familiarity with ARS is a strong factor in their selection[135] but in some areas there simply is no accessible alternative. The low, almost absent, incidence of complaints reported in the literature may

[130]IMF, *International Transactions in Remittances, Guide for Compilers and Users,* Washington USA (2009) [6]
[215](n108)148 Sir James Sassoon
[132]Sharma (n42)103
[133]Ainley (n36)
[134]FATF (n40) 10
[135]Schaeffer (n40)1

suggest that customers see little value in complaining in the absence of an alternative provider and the lack of process to support this. An inherent distrust of western banking also adds to the perception of 'satisfaction'.

2.4.1.5 Efficiency and cost

ARS are efficient and cost effective fund transfer systems, charging considerably less than the formal banking sector, with charges increasing for transactions to regions where ARS are prohibited or problematic. Flat fee rates are proportionate to the small amounts remitted, increasing the end value and accommodating single transfers of variable forms of value and variable transfer patterns without penalty.[136] Profit margins per transaction are low, with operators gaining on volume and repeat business.[137] The use of 'bartering' over the transaction rates is common in the traditional context. Costs are supported by the primary business within which the ARS is situated.[138] Bank accounts, credit balances or identification documents are not required and paperwork is minimal;[139]and it can be completed by the operator on behalf of the customer, in contrast to reliance on identification documentation in the formal sector.[140] Documentation is difficult to obtain in some remittance areas, being unavailable or unreliable. 50% of South Africans do not have a bank account and only 44% have a formal address; 38% of those with existing accounts have low incomes. ARS readily accommodate the limitations of the variety of languages and dialects across areas of operation and the lower standards of literacy and education that affect the completion of documentation.[141]

[136]Maimbo(n38) 4 ARS can support sums as large as US$1,000,000 in a single transaction.
[137]Maimbo(n38)11 Author suggests regular customer s are offered more favourable rates and hawaladars bid for the service of agencies who use ARS regularly.
[138]Bowers(n22)
[139]El-Qorchi (n25)
[140]Martin (n93) 928, 937
[141]Mc Clusker (n120) 2

ARS remain in use largely due to their informality and ease of access, (flexible operating hours). As social networks they have cultural familiarity promoting social allegiance and shared religious ideology. The formal sector operation is separate from civic and religious duties contractual duties dominate. This in contrast to areas of ARS operation where the separation of these values is contrary to Islamic principles[142] and no such distinction is made within financial transactions. Banks operate as profit driven corporate entities[143] and are often reluctant to commit resources to developing infrastructures where the financial returns are low, in areas of political unrest or economic instability, due to shareholder accountability and their regulatory burden. The low operating cost of ARS within existing infrastructures and networks provide greater geographical reach,[144] filling the gap in formal banking services.

2.5 The threat posed from Hawala

The threat posed from Hawala relates to potential misuse for terrorism and ML, the former a significant focus post 9/11, with authorities also concerned as to the potential illicit diversion of 'charitable donations' through ARS. Scrutiny of the nexus of terrorist fund-raising derived from general criminal activity and organised crime[145] is essential given the ease of misuse of these systems for general criminal purposes.

Chapter one proposed the 'new model' of operation of terrorist groups requiring extensive transmission networks with geographical reach enabling rapid transaction processing to deliver funds to locations 'just in time' as needed, so reducing the opportunity for prior detection and operational disruption. Terrorists require anonymity of their organisation, supporters and activities, targeting opaque systems lacking regulatory oversight, which offer easy penetration without regulatory protection and so exploiting 'regulatory

[142]Roth (n62) 21
[143](n18)One of the reasons cited for the development of the hawala system in the Australian and African continents, to meet the needs of expatriates
[144](n 29)10
[145]FAFT (n2) 15

arbitrage'.[146] Systems making use of third parties and beneficiary accounts can be readily used, where requests for references or identification are absent or waived. Terrorists seek methods that offer minimal records and flexibility in delivery, timing and volumes of transactions, guaranteed through 'trusted' personnel.

ARS such as Hawala satisfy the very criteria terrorists seek, in offering locally based services with international reach capable of transferring funds at speed to virtually anywhere in the world.[147] Their lack of regulation waives the compulsion for verification of identity, offering anonymity of the ultimate beneficiary and transaction purpose. Their informality allows for the modification of procedures on request with shared kinship receiving preferential treatment. The lack of uniform records[148] and the fractured transmission[149] pathways prevent post transaction event analysis failing to deliver a 'financial footprint' and actionable intelligence. In the absence of regulation they offer an ideal vehicle for misuse by terrorists, where the shared values, religion[150]and ethnicity relevant to their operation places penetration by terrorists above suspicion.[151] Their lack of regulation paces them beyond the control of international and regional CTS compromising the protection of the formal sector. [152] A review of the risks presented by these systems supports the assertion that they are 'efficient system[s] for the laundering of money,' [153] and for terrorism. The extent of risks entails a review of not just what may go wrong but how likely this is to occur quantified by evidence of actual misuse, which further justifies international policy towards regulatory intervention. The following section will analyse the evidence base for the misuse of ARS to date.

---

[146]FATF (n40) 36

[147]CTC note to COREPER/ Council Revised Strategy on Terrorist Financing , Document 11778/1/08 Rev 1 DHG 2B 17th July 2008

[148]El-Qorchi (n25)

[149]US GAO 'Report to Congressional Requesters Terrorist Financing U.S. Agencies Should Systematically Assess the Use of Alternative Financing Mechanisms' November (2003)GAO-04-163 [29]

[150]FAFT Global Money Laundering and Terrorist Financing Threat Assessment July 2010 [27]

[151]Sharma(42) 110

[152]FAFT (n2)14

[153]L Carroll , 'Alternative remittance systems distinguishing sub-systems of ethnic money laundering in Interpol member countries on the Asian continent' Interpol June 2004

2.6 Evidence of misuse of ARS

The previous sections have vigorously analysed the operation methods and mode and structures of ARS as to the risk they give rise to in relation to terrorist finance and general money laundering. This section now moves from the scrutiny of the potential risk of these systems to a consideration of the evidence base indicating actual misuse, firstly in relation to general criminal misuse, and subsequently, in relation to the specific misuse for terrorist finance as well as a wider consideration of unsubstantiated claims of misuse. This is necessary to support the justification for the international regulation of these systems.

2.6.1 Substantiated general risk of misuse of ARS

ARS have lawful origins in contrast to systems such as the BMPE, but their regulation requires justification on the basis of established risk of misuse. Research into 'informal funds transfer' have summarised the key risks as:

> speed, lower transaction costs, cultural convenience, versatility, and potential anonymity, contribute to their widespread legal and illegal use.[154]

Evidence of general criminal misuse lies in the practice of mis-invoicing in a business context to settle remittance transactions, countering unidirectional remittances, often associated with general fraud and tax and revenue evasion,[155] common where ARS operate within import/export businesses. They have also been misused to avoid currency controls, effect payment of bribes to corrupt officials and facilitate human trafficking,[156] the smuggling of

[154](n9)
[155]FATF (n40) 27 case study 11
[156]Jost (n15)

aliens,[157] and payments for the trade in human organs. Passas has identified eleven forms of criminal activity served by IVTS on the basis of documented cases, which additionally include: evasion of currency controls, payment for illegal commodities,[158] ransom payments, intellectual property violations and fraud, laundering of criminal proceeds[159] and the financing of terrorist attacks.

The evidence illustrating their misuse for the laundering of general criminal funds is substantial but it does not justify the policy approach necessitated and oft applied in response to the increased security risks posed by terrorism and the consequently more stringent regulatory controls applied. Funds from general criminal activity can be diverted for terrorist purposes, remaining hidden within the large volumes laundered. Terrorist organisations have been aligned to criminal groups and large scale criminal activity to source their operations, favouring drugs, arms and human trafficking and smuggling;[160] the Madrid bombings were financed entirely from the proceeds of drug trafficking.[161] Whilst evidence suggests some nexus between general criminal activity and terrorist funding, this is largely confined to specific locations such as Afghanistan, where the terrorists exert control over the criminal organisations and their illicit activity. Evidence of general criminal misuse can inform the parallel risk of misuse for terrorist finance, an approach developed by FATF in their typologies of ARS misuse identifying seven types of ARS operation.[162] The incidence of criminality and risk of ARS misuse for terrorist financing are higher in the absence of regulation and where ARS are an adjunct to the illegal operation of other businesses.

Allegations of specific terrorist misuse of ARS are largely unsubstantiated or scant; the evidence of general criminal misuse identifies the presence of ARS and their operators with subsequent investigation deterring and disrupting their misuse for TF. FATF indicators, include smurfing, anomalous

[157](n29) [6]
[158]Sharma(n42)107
[159]Passas(n14)
[160]FAFT (2) 16
[161]K Thachuk, 'Countering Terrorist Structures' Defence Against Terrorism Review 1(2008) 13-28 [17]
[162]FATF (n40) 14, 26

use of bank accounts and unusual bookkeeping practices, assist the identification of general criminal misuse offering potential indicators for previously unidentified risks of TF, but the typologies focus on the operational processes linked to criminal not terrorist methods of operation. Effective CTS needs to take account of not only the use of ARS as a means of transferring funds but also their vulnerability related to the specific sources of criminal funds.

The aftermath of 9/11 has driven pre-emptive approaches to CTF endeavouring to disrupt terrorist activity by denying access to funds, requiring intelligence on the nature, source and transmission of terrorist funds to achieve this. FAFT concerns remain:

> the disruption of terrorist finance is naturally harder when authorities are confronted by "informal" support networks that do not operate as part of well-structured organisations with clear roles and lines of accountability. In such circumstances, the links between financial activity and terrorist activity become more opaque and the targets for disruption harder to identify.[163]

FATF[164] consider remittance systems, formal and alternative to be 'attractive to terrorists for funding their activities', the risk of misuse is however not hypothetical and requires further quantification. FAFT have reported the misuse of 'network[s] of registered and world-wide operating money transfer companies to send or receive money' by terrorist groups in case studies. The term 'registered' would suggest that this evidence is confined to the regulated sector only, with little evidence of the actual misuse of unregulated ARS from relevant international bodies and governments. This demonstrates that regulation does not fully eradicate risk. The interface between the formal and informal sector at the point of settlement may be the point at which the current regulation actually detects successfully the misuse of the informal sector, but the degree of misuse of ARS remains difficult to quantify as studies lack precision and detail.

[163]FAFT Global Money Laundering and Terrorist Financing Threat Assessment July 2010 [21]
[164]FAFT (n2) 22

The evidence of general criminal misuse of ARS merged may give rise to the irresistible inference of the heightened risk of misuse for TF, the recent merger of the AML/CTF regimes fuelling this derivative risk, despite of the lack of evidence to indicate that ARS are more predisposed to the risk of misuse for TF than the formal financial sector.[165] The UN 1267 sanctions committee[166] has reported the misuse of ARS for TF as fact, with little evidence is cited in support of this. That cited by US Government departments has sometimes been questionable where evidence relates to a breach of MSB registration requirements where no terrorist charges were brought.[167] Such a breach may indicate the overall business or sector risk but it is a leap to infer a risk of terrorist finance and falls far short of evidencing it. Policy makers need to guard against unfounded allegations of misuse of ARS, and whilst the lack of transparency and accountability posed places them at risk of potential abuse of by terrorists, it falls short of evidencing this[168] and activities exemplifies the dangers of unsubstantiated allegations.[169]

2.6.2 Unsubstantiated misuse of ARS for terrorist purposes

Despite the clear risk of misuse of ARS, evidence of their misuse for terrorism is scant at best. APG typologies[170] refer to some limited misuse of Hawala, which was also suspected to have funded the assassination of an Indian politician,[171] and provided the explosives used in the Indian bombings of 1993. The subsequent attacks on the US embassy in Nairobi and Dar es Salam in1998 were also suspected to have made use of funds transferred through ARS and Hawaladars in the UK, Dubai and India. Both the 2000 Red

[165] M De Goode 'Speculative Security: the Politics of Pursuing Terrorist Monies (University of Minnesota Press 2012) 107

[166] S/2004/679 25 August 2004 'Letter dated 23 August 2004 from the Chairman of the 1267 (1999) SCC concerning Al-Qaida and the Taliban and associated individuals and entities addressed to the President of the Security Council' [13]

[167] (n149) [17]

[168] Second report of the Monitoring Group established pursuant to Security Council resolution 1363 (2001) and extended by resolution 1390 (2002) S/2002/1050 p14 para 66 The UN here refer to the views of hawaladars themselves arising in the context of the International Hawala Conference in Dubai May 15/16th May 2002

[169] (n149) [27]

[170] Asia/Pacific Group on Money Laundering 'Typologies Report' 11July 2008 [26]

[171] Sharma (n42) 110

Fort and the 2008 Mumbai attacks[172]are alleged to have been supported by funding payments received through Hawala.

Following the East African bombings, attention focused heavily on the formal financial network, and latterly unregulated ARS, with 9/11 marking a re-evaluation of the regulatory framework for suppression of terrorist finance and terrorist finance methods. Al Qa'ida are held to have made use of ARS to transfer funds whilst based in Afghanistan and ARS were suspected to have been the main vehicle for the movement of Al Qa'ida funds for the 9/11 attack. It was, however, subsequently revealed that the $400,000 to $500,000 required to fund 9/11 was transferred to the nineteen attackers in the US using the formal sector through wire transfers or by cash; $300,000 of this was transferred through their own bank accounts.[173] These funds were moved, stored and spent in ordinary ways that did not arouse and would not today raise any suspicion of terrorist activity. The only unconfirmed use of ARS related to $120,000 transferred to one of the 'plot facilitators' in the UAE and subsequently wired to the U.S. hijackers,[174] but the latter transfer would likely be contextually relevant to the jurisdictions in question.

The 9/11 terrorists obtained bank accounts in their own names, used them to purchase their flights, made ready use of ATMs for cash withdraws and made credit card payments. All transactions were processed through the banking system and failed to arouse suspicion.[175] Access to financial information of the 9/11 plotters would not have been available in time to disrupt the plot, despite stringent regulation, even if suspicion had been raised. The original source of the funds remains unknown, with the US Government citing the unconfirmed use of Hawala to transfer funds to the UAE for later support of the 9/11 attack, but this allegation has not been evidenced.[176]

[172]Vaccini (n41) 7
[173]Roth(n61) Executive summary 3
[174](n51) 25
[175](n51) 13
[176]Final Report of the National Commission on Terrorist Attacks Upon the United States 'The 9/11 Commission Report' July 22nd (2004) U.S. Government Printing Office Washington DC [172]

2.6.3 The Al-Barakaat case

The Al Barakaat case is briefly mentioned here to demonstrate the perils of CTF measures applied on the basis of 'suspicion' absent any supporting factual basis. Subsequent to 9/11, US attention focused on the Al-Barakaat remittance provider, monitored by the FBI since 1999 and suspected of having terrorist affiliations. Three Minneapolis Al-Barakaat operators had SARs filed against them in 1996 bringing them and the Al-Barakaat organisation under US investigation. Al-Barakaat an international ARS operator[177] was alleged to have connections with suspected terror group Al-Itihaad al-Islamiya (AIAI) and Osama Bin Laden (suspected to have been a silent partner in Al-Barakaat). Despite Fincen analysis, the purpose and source of the suspect transfers to the UAE prior to the 9/11 attack remains unknown. The suspicion of Al-Barakaat role in financing terrorism[178] led to the closure of eight of its US offices and the seizure of over $1.1million, disrupting the flow of $65 million in remittances from the US.[179]

The US exerted pressure for the international listing of Al-Barakaat to support US internal action, however concerns arose given that the suspicion that charitable cash transfers used for the building of a mosque, made through Al-Barakaat, had been diverted for terrorist purposes remained unsubstantiated. The severity of international action against Al-Barakaat, which had led to the collapse of the Al-Barakaat operation, required that suspicion be well founded. Despite OFAC having received the benefit of full disclosure and cooperation by the UAE,[180] it was unable to provide sufficient evidence to support criminal charges against Al-Barakaat operatives in the US, raising doubts over the seizure of funds in other locations.

[177] De Goode (n21)532, 520
[178] (n51)
[179] Roth (n61)
[180] (n51)10

Minneapolis operators filed[181] suit against OFAC leading to the delisting of Al-Barakaat and two Swiss remitters, by the US. The normativity of UN listing of Al-Barakaat, at US insistence, and the consequences of this listing in terms of the protection of fundamental rights and values, is critiqued in detail in chapter four.[182] The Al-Barakaat case exemplifies the difficulties in investigating financial transactions and the complexities in gathering information regarding terrorist organisations and their supporters, demonstrating the need for authorities to be accountable for evidencing and so justifying their actions. The inability of the authorities to adduce evidence of the misuse of ARS for terrorist finance does not mitigate the risks previously identified as inherent in ARS aligning with the characteristics sought by terrorists in transferring funds. Nor does it render the need for regulation to manage this risk redundant[183] as the regulatory process aims to enhance the ability to trace and track the terrorists' financial footprint in this capacity, deterring their misuse.

2.6.4 Substantiated misuse of alternative remittance systems

There is limited evidence or reference to prosecutions of ARS operators for misuse relating to terrorist finance or evidence to substantiate this in absence of prosecution but this is unsurprising given their covert operational methods. In the absence of regulation what is regarded as suspicious to warrant reporting external to the system is unlikely to raise suspicion amongst operatives and clients, given the cultural and ethnic allegiance associated with ARS operation. Some have argued that the focus on the vulnerability of ARS within the financial 'system' is misplaced and diverts attention from the effectiveness of the compliance regime in the formal sector,[184] the misuse of which is supported by a clear body of evidence.

[181] April 2nd 2002 Abdullahi Farah and Garad Nor
[182] De Goode (n21)521
[183] Secretary of State for Home Department 'CONTEST-The UK Strategy for Countering Terrorism' (Cm 812, 2011) [52] An aim of the *Pursue* arm of CONTEST is to continually review legislative measures for data collection and identify any need to further enhance these measures.
[184] De Goode(n21),532 518

Evidence of the misuse of ARS for TF has been cited in relation to attacks in North East India by its Central Bureau of investigation[185] citing ARS having been misused for transferring $23,000 - $108,000 to India for terrorist purposes from1992 to 1997.[186] In Sweden in 2004 two Iraqi citizens, Ferman Abdulla and Ali Kemal Berzengi, were arrested for transferring US $148,000 to Northern Iraq using these systems in Malmo.[187] Further investigation resulted in the arrest in 2006 of Khalid al-Yousef on suspicion of terrorist finance.[188] FATF also cites evidence of money transfers by terrorist groups in the Netherlands by wire transfer, but is not clear as to whether these are ARS transactions interfacing with the formal sector or solely formal sector transactions.[189] The FATF 2008 typologies only evidence one case of misuse in Belgium relating to terrorism by an African national.[190]

Prosecutions involving ARS are rare, but in 2008 a Pakistani national, Anjum Ranhja[191] residing in the US was convicted of activities relating to TF for his involvement in providing remittances for terrorist purposes,[192] and 21 transactions relating to US $13,000 - US $300,000 to support Al Qa'ida [193] were made during 2003 - 2007 using ARS.

The evidence of actual misuse of ARS for terrorist finance to date is limited. The evidence to support the argument that regulation is necessary to identify and trace TF transactions and to support prosecution of TF, remains elusive. CTS and regulation do not rely solely on prosecution; these also enable valuable intelligence gathering and the monitoring and of financial transaction patterns to enable the tracing and freezing of terrorist assets. The

[185] Jamwal N.S. 'The Invisible Financing system of Terrorism' Strategic Analysis 26(2) (2002)
[186] Sharma(n42)116Table 1
[187] Vaccini (n41) 8
[188] Jane's Intelligence review February 2 2007 <http://www.silkroadstudies.org/new/docs/publications/2007/0701JIR.htm> date Accessed 26/07/2011
[189] FAFT(n2) 22
[190] FAFT(n2) 24
[191] *USA v Saifullah Anjum Ranjha et al*., Second superseding indictment Criminal No. MJG-07-0239
[192] U.S. Department of Treasury' Audit of the Department of Treasury Forfeiture Fund's Fiscal years 2009 and 2008 Financial Statements' OIG-10-012 November 24th 2009 4
[193] Vaccini (n41)8

capacity and effectiveness of regulation to achieve this is considered more fully in relation to the UK context in chapter 5.

2.7 UK remittance communities

The migrant diaspora are the main users of ARS in the UK and globally, since over 175 million persons worldwide live outside their home countries.[194] India has a migration of 10 million and was ranked third for emigration in 2005, Bangladesh 4.9 million, ranked 6th and Pakistan ranked 13th with a migration population of 3.4 million.[195] The use of ARS is culturally and ethnically engrained, appearing to survive relocation.

The risk of misuse of any part of the financial system for terrorist finance is of international concern given the transnational nature of terrorism. This requires an assessment of the UK relationship as a remittance receiving/sending country and its contribution to global remittance activity, the UK being placed fourteenth worldwide as a remittance recipient country and seventh within the EU. Since 2004, remittance flows from the UK have reached a growth rate of 12% in 2008. UK remittances totalled GBP 2,735 million in 2005, twice that of the previous decade.[196] High volume remittance destinations include Pakistan, accounting for 7-10% of the total UK remittances for 2006/07 and for Bangladesh 8-15% for the same period, linked to the prevalence of ARS in these countries and their migration to the UK.

In order to quantify the UK risk from ARS, it is necessary to consider statistical evidence relating to the value, volumes and relevant remittance corridors. Remittance inflows for the UK totalled GBP 4,230 million for 2005. Inflows are generally higher than the outflows for Australia, Canada, the US,

[194] UKWG, 'The UK Remittance Market' DFID (2005) 4,5

[195] World Bank, *Migration and Remittances Fact Book* 2008 3

[196] CV Silva, 'Briefing : Migrant remittances to and from the UK' The Migrant Observatory Oxford University, 12/03/2011 2

Ireland, Spain and New Zealand.[197] As a developed country the UK is not economically dependent on remittances for income in contrast to other states. [198] In 2009, the UK population comprised of 303,000 Indian, 190,000 Pakistan, 99,000 South Africa, 98,000 Nigeria, 77,000 Bangladeshi and 59,000 Somali nationals resident in the UK.[199] The UK's population comprises 11.2% of immigrants, mainly from India, Africa, Bangladesh, Jamaica, and Kenya.[200] Remittances are supplemented by second generation migrants, who potentially maintain the cultural and traditional use of ARS. The UK remittance population for 2005 was estimated to be 2.78 million[201] resulting in a total value for potential remittances estimated at £13.8bn for the UK market,[202] based on the salary estimates for this group. The data on the amounts remitted by migrant workers is variable at best, and balance of payment figures suggest a range of £1,042 - £1,303 per annum per migrant worker.[203]

Table1 : Population Statistics 2001/2011 Source : Office National Statistics

Religious groups	**Population % 2001 E & W**	**Population % 2011 E & W**		**Ethnicity**	**Population % 2011 E & W**
Christian	71.7	59.3		White	86
Muslim	3	4.8		Mixed	2.2
Hindu	1.1	1.5		Black African	3.4
Sikh	0.6	0.8		Asian Chinese	0.7
Jewish	0.5	0.5		Asian Bangladeshi	0.8
				Asian Pakistani	2
				Asian Indian	2.5
				Other	1

[197](n196) 3
[198]DFID, 'UK Remittances Working Group Report' (2005) [18]
[199]C Smith, 'Population Trends' Office for national Statistics Winter edn 142 (2010).
[200]World Bank, Moapatra S, Ratha D, Siwal A, 'Migration and Remittances Fact book 2011'
[201]UKWG (n194) 6
[202]UKWG (n194) 7
[203]UKWG,(n194) 4

Ethnicity Distribution England and Wales 2011 Source : Office National Statistics					
	White	**Mixed**	**Asian**	**Black African**	**Other**
Wales	95.6	1	2.3	0.6	0.5
South West	95.4	1.4	2	0.9	0.3
South East	95.3	0.9	2.9	0.5	0.4
North East	90.8	1.9	4.8	2	0.5
East England	90.7	1.9	5.2	1.6	0.6
North west	90.2	1.6	6.2	1.4	0.6
East Midlands	89.3	1.9	6.5	1.8	0.6
York & Humber	88.8	1.6	7.3	1.5	0.8
West Midlands	82.7	2.4	10.8	3.3	0.9
London	59.8	5	18.5	13.3	3.4
England/ Wales	86	2.2	7.5	3.3	1

The UK population in 2011 was 56.1 million;[204] the WB estimates the UK population of 61.8 million will increase by 4.3 million by 2018, 45% due to migration to the UK. The UK has 4.6 million persons of ethnic minorities (2.3 million born in the UK) and 4.90 million (only 1.7 million born in developed countries) born abroad and living in the UK.[205] See the table below for census data relating to the percentage of population relative to religious and ethnic groups.

Census statistics for 2001 reveal that whilst the UK remains predominantly Christian, Muslims comprised 51% of the non-Christian population, the main religious group after Christianity, and Hindus comprised 18% of the total 11% non-Christian population.[206] Statistics for the distribution of ethnic groups show ethnically mixed populations dominated in the North East, with Asian groups centred in the East Midlands and York and Humber; Black African and Caribbean communities are concentrated in East England and the Midlands.

[204] Office of National Statistics 2014
[205] UKWG (n194) 6
[206] <http://www.statistics.gov.uk/cci/nugget.asp?id=954> date accessed 13/06/2011

Distribution of religious groups living in the UK for 2001 indicated that 38% Muslims were located in London, 14% in W. Midlands, N. West 14%, and Yorkshire & Humber 12%.The highest concentrations of Sikhs were in London 31% and the S. East 52%. Hindus were centred mainly in E. Midlands 56%, Midlands, 12%, W Midlands10% with the greatest number in London and E. England. Of those who described themselves as Muslim, 74% are of Asian heritage[207] and 6% of Muslims are of Black African descent; 92% of all Pakistanis and Bangladeshis are of Muslim faith.[208] The following groups of specific ethnic origins indicate the percentage of the group that are likely to remit as follows: Caribbean (37%), Pakistani (30%), Chinese (27%), Bangladeshi (21%) and Indians (14%).[209] This data not only illustrates the potential ARS community of consumers within the UK, but further informs the locations selected for the fieldwork research, set out within the research methodology and design outlined in Chapter 3.

The temporary and settled migrant population are more likely to remit in accordance with entrenched cultural, social and religious practice associated with their country of origin. A third of non-British citizens are from EU countries[210] associated with increased internal migration from countries such as Poland, to which the UK contributed a third of inbound Polish remittances for 2007. This remittance activity takes place almost exclusively through the formal sector. The use of ARS according to the manner of operation and context referred to earlier in this chapter is not aligned with this location and population group. Given that ARS activity is largely confined to the migrant diaspora and given the ethnic and religious composition of the UK population and UK migration statistics, the potential remitting population in the UK is considerable. The country of birth and length of time in the UK have been identified as relevant to the duration of use of remittance services, formal or otherwise.[211] Remittance destinations do indicate that transactions dominate

[207] A Atkinson, 'Migrants and Financial Services: A Review of the situation in the United Kingdom' Research Report for Bristol University (2006) [5]
[208] (n207)5
[209] Silva (n196) 6
[210] <http://www.statistics.gov.uk/cci/nugget.asp?id=260> date accessed 13/06/2011
[211] UKWG (n194) 6

for destinations correlating to areas of significant terrorist activity or support, in particular Pakistan and India.

Shared religious beliefs as a basis for extended ideology connected to the strategy of radicalisation align with the concept of new style model terrorism. The UK migrant population and religious and ethnic composition of the UK population aligns with locations in South Asia and the Middle East associated with the support of terrorist groups such as Al Qa'ida. It would however, be naïve, unfair and a discriminatory generalisation to suppose that shared ethnicity or religion is confined only to areas where new model style terrorist groups have originated or operate, indicating terrorist support. The cultural entrenchment and familiarity of ARS and their common use within areas of terrorist support/activity does, however, render them susceptible to the risk of misuse for terrorist finance.

There is little information on the characteristics of UK remittance activity and UK remitters.[212] Remittance provision is regulated in the UK, with 3,628 MSBs registered with HMRC for 2011.[213] The UKMTA at March 2011 has 750 money transfer payment companies registered.[214] There are no recent accurate figures available to indicate the number of unregistered operators or the value of remittances made through the unregulated sector. HMRC estimated remittance flows through MSBs for 2005 to total £5.56 bn.[215] Of the MSBs registered in 2005, 810 were sole traders,174 had between 2- 4 outlets and only 15 had over 40 plus outlets. This suggests that UK MSBs service locally based communities, aligning with the characteristics of the traditional models referred to earlier. UK population centres identified as associated with particular ethnic groups indicate potential remittance sending locations and are relevant to the methodology outlined chapter three and the selection of areas of the areas for the fieldwork research.

[212]Silva (n196) 2
[213]See Letter from HMCR 10th June in2011 Appendix B.
[214]<http://www.ukmta.org/About/Regulation.aspx> date accessed 13/06/2011
[215]UKWG (n194) 4

The UK regulatory regime aims to effectively protect the integrity of the UK financial system and secure compliance with international standards requiring the regulation of ARS. The UK is driven to protect the safety of UK citizens and the reputation of the UK as a major financial centre from the security risks and the economic and political damage resulting from misuse of the sector for terrorist finance. This chapter has sought to outline the risks of ARS and their potential misuse for terrorism, justifying the need for their regulation within the UK and internationally, in line with the global CTS.

New style terrorism is predicated on the furtherance of a global cause through local support. Relevant to this is the concern that UK citizens and diaspora who share a common religion or ethnicity with communities in overseas jurisdictions, may be targeted for recruitment or innocently misused for terrorist finance, through charitable giving associated with and driving remittance activity.

2.8 Conclusion

This chapter has sought to consider the risks associated with Hawala presented from the context of perceived insecurity that has dominated the security agenda and financial regulatory landscape post 9/11. This insecurity has created increased suspicion about the provenance of funds, reflected in the need to trace transactions, verify their purpose and the source funds, problematic for economies reliant on cash based transactions. Indeed, western communities have become deeply suspicious of Hawala systems given their suggested but unconfirmed association with the funding of 9/11. Whilst this chapter has clearly outlined the evidence of their misuse for ML, there is little evidence to support their actual misuse for terrorist finance. It is, however, their actual risk and the perception of this that drives the suspicion of these systems, despite the lack of evidence to suggest that they are any more disposed to misuse for TF than the formal financial sector.

The drive to regulate these informal systems is predicated on their risk for misuse for the financing of terrorism; whilst there is no evidence to suggest that they are the preferred method of choice of terrorists, the critique of their operational risks has demonstrated that they have many characteristics that would be desirable to terrorists. This chapter has presented their unique method of operation considered within the ethnic and social context in which these systems developed and continue to operate today. The general characteristics that distinguish their operation from the formal sector have been outlined and have been considered in light of the concerns they present given their distance from western values and styles of regulation.

These systems have shown to have continued relevance in supporting the economies of developing countries which lack a developed formal sector with sufficient geographical penetration. These systems, whilst informal, offer tangible economic and commercial benefits in terms of efficiency, cost, speed and service coverage, the very characteristics that many globalised western businesses and terrorists aspire to. The presenting risks have been qualified and quantified in light of their prevalence, geographical extent and monetary volumes associated with these systems at international and UK level. In the context of insecurity post 9/11 these benefits in relation to the considerable worldwide remittance flows and those populations who remain economically reliant on these, have largely remained unacknowledged, but need to be considered more fully in balance with the risks these systems have been shown to pose. Despite the benefits of these systems, they present clear risks to the formal sector and raise concerns in western states as systems that they are potentially culturally familiar to terrorists and create doubt concerning the dual loyalties of the migrant diaspora.

The risks associated with ARS operation have been analysed to consider the challenges they present to regulators in seeking to manage these through a national regulatory frameworks, which support the international CFT agenda. The risks have been further analysed in relation the UK's remittance sending status and the UK's ethnic, racial and religious population that indicates potential remittance communities. Although there is scant data on informal

flows and UK customer characteristics for this sector, the data presented does indicate the value of remittances and potential risk to UK remittances and provides a platform for the consideration of the impact of regulation in addressing these risks, considered in future chapters.

The challenge at international level is to achieve a uniform approach to the regulation of remittances and regulation for CTF generally, preventing 'regulatory arbitrage' for exploitation by terrorists, which increases security risks. Further regulation needs to ensure that it does not remove the tangible benefits these systems offer including the valued socio-cultural practices they represent, and so result in driving these systems underground.

Any regulatory framework must be accountable in its capacity and effectiveness for addressing the operational risks which these systems present whilst being sensitive to maintaining the advantages of and values relevant to these systems. The capacity of the regulatory framework to achieve this and protect the fundamental human rights connected with their use to protect those who remain economically reliant on remittances and ARS, is considered more fully in chapter four.

Chapter 3
Research methodology

3.0 Introduction

The previous chapters have outlined the overall aims and objectives of this thesis as a critical investigation into the impact of the current regulatory framework for the prevention of money laundering for terrorist finance using ARS. The previous chapters have reviewed the definitions of Hawala, with particular reference to that drawn upon by the relevant stakeholders, to justify the selected terminology for the purpose of this research. Previous chapters have reviewed both the mode and context of the operation of ARS by reference to a review of the literature and research to date, to consider both their historical and modern day operation. The literature review confirmed that whilst ARS have been the subject of academic critique on an international scale in relation to their risk of misuse for money laundering for general purposes, there is an absence of research into their misuse for terrorist finance, in particular within the UK context. Nor had previous research considered the effectiveness of regulation and its impact on these systems. The originality of this thesis lies in the investigation by fieldwork research into the impact and effectiveness of the regulation of ARS, now termed Money Service Businesses (MSBs) as regulated by the Money Laundering Regulations 2007 (MLR 2007). Having outlined the phenomena of ARS in chapter 2, this chapter details the specific research questions and the selected methodology applied to the research design, which is justified against each stage of the research process to demonstrate that it is both robust and appropriate in fulfilling these research aims and is ethical in its application.

3.1 Research aims and objectives

This work aimed to explore and identify the effect of the regulation of ARS under the MLR 2007, which require the registration of remittance businesses as MSBs which are supervised by HMRC for the purpose of the regulations. The research aimed to

investigate the impact of regulation on MSBs, informed directly by the fieldwork to capture the views of operators as to the application and impact of regulation on their businesses. Additionally the research aimed to evaluate the effectiveness of UK regulation for preventing the misuse of MSBs for ML and TF the latter the primary focus of this study to which the fieldwork research was critical.

Firstly, the research aimed to identify the relevant characteristics of MSB operation within the socio-cultural context relevant to the UK. Secondly research additionally aimed to investigate the perceptions of MSBs as to the need for regulation in the first instance, as well as their views on the form of regulation and its enforcement. This would enable an effective comparison of this context along with the operational characteristics, risks and pertaining to these businesses within the UK, alongside those identified as relevant to the traditional context as analysed in chapter 2.

Thirdly, in relation to these aims, any enquiry into the regulatory impact would draw on an investigation into any perceived cultural impact of regulation, and the nature of this. This is relevant to the cultural context in which ARS have traditionally operated and have been associated and to a consideration of its relevance to MSB operation with the UK and the regulatory impact on this.

Fourthly, the fieldwork research aimed to investigate the relationships critical to UK MSB operation, namely those between MSBs, their customers and the regulators, to identify the nature of any impact, if any, of regulation upon these. This additionally included operators' perceptions and understanding of their customer's reasons for selecting MSBs and their views on the impact of regulation on service use and patterns of remittance activity.

The research also aimed to gain the views and insights of stakeholders as parties directly involved in the development of regulatory policy and the supervision of MSBs. Finally, the research aimed to identify relevant areas for future research including factors which may impact on future policy development and identify the need for any further regulatory changes.

These research objectives were determined following a systematic and extensive review and analysis of the literature in this area, including visits to access the collections and materials held by the British library. This has ensured that literature and research material that related specifically to the UK context was reviewed as part of the research process, along with additional international sources.

There was limited research on ARS prior to this research project and this remains the case. That which had been undertaken to date was largely at the behest of stakeholders such as the IMF and the World Bank and therefore had a distinct economic focus. Previous research had centred on the historical origins and nature of ARS in locations of origin identifying the need for regulation and considering the challenges in applying this, drawing on Hawala as the main example. Chapter 2 illustrated the macroeconomic benefits of ARS in supporting migrant labour remittances in South Asia, but did not illustrate their importance in the UK context, beyond data as to remittance volumes, which was central to this work.[1] The only research that has previously investigated the impact of regulation on ARS, focused on Australia[2] and arguably has little relevance to the UK given the different geographical location and population composition. This research aims to address the lacuna in the research into the effect of AML/ CTF regulation of ARS in the UK.

3.2 Model of practice in the UK

Chapter 2 considered the operation of remittance services and the roles of operators working cooperatively as part of larger remittance networks. In seeking to address the impact of legislation on ARS in the UK, this thesis needed to consider the nature of ARS operation within the UK, and the characteristics pertaining to UK businesses. There were no models of operation identifying characteristics relevant to the UK, nor research into the values and attitudes that pertaining to these systems or their actors. This research aimed to focus on the effects of regulation of ARS through a

[1] IMF S Hagan, 'Anti-Money Laundering and Combating the Financing of Terrorism (AML/CFT)—Report on the Review of the Effectiveness of the Program' May (2011)
< http://www.imf.org/external/np/pp/eng/2011/051111.pdf > date accessed 10/07/2011
[2] D Rees, 'Money Laundering and terrorism Financing risks posed by alternative remittance in Australia' Australian Government, AIC Research and Policy Series 106 (2010)

consideration of their method of operation, the normative values relevant to these systems and their presenting risks, in order to shed light on the impact of regulation of these systems within the UK. The fieldwork also aimed to investigate the effectiveness of the MLR for addressing the risks presented by these systems in relation to general money laundering and specifically for terrorist finance, none of which had previously been investigated in the UK context.

The fieldwork was grounded in the socio-legal approach, which required a consideration of the legal framework in form and substance within the social context of its operation, recognised as appropriate since it is 'inextricably linked to the proposition that legal institutions cannot be understood without consideration of their role and operation within their entire social environment'.[3] The socio-legal approach is driven by need to secure answers to research questions from direct investigation of the context and application of the law in practice. This is most valuably gained from investigating the attitudes and values of those directly involved in this sphere of activity and who, in terms of regulatory impact, are most affected by this.

The socio-legal approach enabled a more effective consideration of the social context of the legal framework, to capture the dynamics resulting from its implementation and the interrelationships between operational method, form, and the relevant social actors. This was critical to investigating and evaluating the impact of regulation within the social and commercial context, rather than being confined to a hypothetical and theoretical analysis of the issues. The socio-legal approach enabled the construction of a robust research strategy and methodology capturing not only the nature of the legal processes, but the attitudes of operators concerning the impact of regulation and its effectiveness for preventing terrorist finance.

Fieldwork enabled a probing of the relationship between the MSB and regulator groups, informing as to the management of risk and the degree of support and oversight provided by regulators. The aim was to explore the nature of 'regulatory capture' of MSBs and to explore the 'symbiotic nature' of the relationships between

[3]Boor A The 'Formalisation of Research Ethics' Bankers R Travers M *Theory and Methods in Socio-legal Research* (1st edn, Hart 2005) 308

MSBs and regulators and the relevant drivers. The degree of interdependence between MSBs post regulation was a further source of enquiry.

The study also aimed to analyse the complex relationship between the regulated MSBs and the regulators to discover the perceptions and attitudes of MSBs, not only as to the need and mode of regulation, but the challenges, benefits and burdens presented by subsequent compliance. This aimed to assess whether the impact of regulation was justified by terms of the effectiveness of measures for addressing the relevant risks. This was intended to illuminate as to the perceptions of both operators and regulators as to the effect of regulation and its impact, where the interests of these groups were possibly diametrically opposed.

It was also crucial that the social as well as the commercial context of operation relating to remittance services in the UK was investigated. Research into these systems in other jurisdictions had indicated a clear social and ethnic dimension to remittance activity influencing their operation. The more commercial UK context and its influence on MSB operation therefore required investigation.

Investigation of the social, ethnic and cultural context is only possible through fieldwork and direct interviews of operators and stakeholders, providing the basis for comparison with the analysis of ARS presented in chapter 2. Specific research into the UK perspective would assist in identifying where possible, the characteristics of ARS practice that were universal or geographically specific, the latter being relevant to the application of regulation in ensuring its effectiveness. The values and attitudes of MSB operators, regulators, and customers were important in contributing to developing a typology of MSB operation in the UK, drawing on these multiple perspectives.

The research, by necessity needed to include a consideration of any impact of regulation on customers, but since access to this group was limited by commercial sensitivity and Data Protection, this perspective was gained indirectly from the views of MSB operators. The reasons for this approach will be justified in 3.4.2, the section on sampling strategy. The assessment of regulatory impact further augmented the consideration of MSBs' perceptions of their relationships with their customers, the

impact of regulation on the servicing of their customers, and a consideration of the risk of their misuse by clients.

The perspective of the regulators was relevant to the perceived need for regulation and its effectiveness in practice, contributing to the central research question regarding the aims, form and impact of regulation, and the nature of the relationship of the regulators with MSBs in shaping MSB operation and regulatory compliance. The perspective of the regulator was intended to clarify the organisational culture of regulatory enforcement, central to the research question as to the supervisory approach adopted. The research aimed to identify the extent to which MSBs protect the integrity of their commercial activity and the role and influence of regulators in enforcing standards, and the resulting dynamic relationship between these two groups. Information about the expertise needed by regulators and their experience of enforcement was also perceived as crucial.[4] The relationship between organisational culture and attitudes to regulation and organisational operation, and the strategy and policy in which these were situated, were considered pertinent to the research question.[5] These issues could not be fully discovered from the documentary analysis of this policy area. Fieldwork was necessary to investigate these perspectives through interview, to address the research objectives.

The relationship and possible tensions between the perceptions of MSBs and regulators as to the aims and methods used to achieve regulatory compliance were then evaluated in line with the normative framework presented in Chapter 4.

3.3 Qualitative or quantitative methods

This section considers the two main approaches to the design of the research methodology and the suitability of each for effectively addressing the research questions and achieving the intended aims and objectives, justifying the selected approach. The relevant research methods and techniques derived from the selected

[4]JF Gubruin J, JA Holstein , *Handbook of Interview Research Context and Method* (1edt Sage London 2011) 476,477
[5]Gubruin (n4) 478

approach are presented and evaluated for their 'fitness for purpose' in addressing the central research question**.**

The quantitative approach relies heavily on the generation and /or collection of data to test out and investigate specific hypotheses, usually applied to large samples sizes, often requiring a control sample. The quantitative approach is highly structured proposing in advance a particular consequence arising from the impact of regulation on MSBs. The quantitative method based on deductive reasoning[6] is used to develop a hypothesis which is then tested out. This would be particularly problematic for the investigation of any sphere of activity and practice where there was no clear outcome or specific result in mind, given that the impact of any regulation of MSBs was the very essence of the investigatory process. In a broad sense, whilst the researcher sought to identify particular areas of likely impact, the research question was not confined to any one particular dimension, given the limitations of time, funding and access to research participants. The central research question was to identify the impact of regulation, not from a scientific measure of activity, but by assessing this impact from the views expressed by those involved in this sphere of activity. This required a multi-faceted approach rather than a single standard measure, and a methodology which did not focus on a single dimension of activity, or assume any preconceptions as to what the nature of the regulatory impact on MSBs was at the outset.

Further, the quantitative approach requires the possibility of measurements of activity to generate data, which can then be analysed statistically for successful application. Limited access to data to support quantitative research would limit the investigation of this work, leaving the research methodology dictating the success of the research and the practicalities of its implementation. There was insufficient data available relating to MSB operation to support quantitative analysis. Essential information from the main supervisor relating to the date of registration of MSBs, their previous history of practice in this area, the volume of transactions and the specific locations was limited or unavailable and compounded by the lack of comparable data relating to MSBs pre and post regulation. This made it impossible

[6]A Bryman, *Social Research Methods,* (3rd edn, OUP 2008)12

to adequately assess impact. Requests were made in relation to specific categories of data under the Freedom of Information Act (FIA), but since the agencies within the regulator group are classed as public bodies, exemptions applied[7] to prevent the release of this. Requests were not able to yield sufficient data to support a quantitative approach and even where the relevant agencies were able to collate and release this data, the considerable cost prohibited access for this unfunded research project. In some instances the burden of provision outweighed the obligations of the relevant organisations to provide information, as its collation and retention were not connected to the organisation's business purpose. Even if data had been available, access to this was no guarantee that it would be in a form that would allow meaningful comparison with that of other regulators to support the adoption of a quantitative approach overall, which relies on a standardised approach to data collection and analysis.

The generation of data through quantitative research design would have been difficult to construct in the commercial environment in which MSBs operate, constrained by the DPA 1998, with commercial sensitivity hindering participant involvement. Quantitative data collection would have been time consuming to generate, requiring a larger participant sample population than was realistically available given the anticipated number of MSBs the researcher had access to. Additionally, successful data generation would have been reliant on its supply by participants, limited by confidentiality and commercial sensitivity and, furthermore, subject to possible errors that the researcher would be unable to detect or to rectify. This would have led to inconsistencies affecting the quality and reliability of the overall data.

Crucially, quantitative research methodology is not designed to explain social phenomena nor to identify and explain the characteristics of behaviours or activity relevant to the research question for this thesis.[8] It is also limited by its reliance on numerical data and does not lend itself to the consideration of attitudes, perceptions and values demanded by the research question. This research objective was best

[7] FOA 2000 Schedule 1
[8] M Hennink M, Hutter I, Bailey A, *Qualitative Research Methods* (1st edn, Sage 2011) 9

suited to the qualitative not quantitative method of enquiry, based on inductive reasoning and social enquiry.

3.3.1 The selection of a qualitative approach

Qualitative research is useful for generating a theory as to the impact of regulation to inform further research questions.[9] Qualitative methods can be drawn on to generate and test a theory and a hypothesis, or a construct of issues[10] without reliance on statistical data. The investigation of the regulatory impact on MSBs, possibly negative, was the general hypothesis. The investigation of this was supported by qualitative research which enabled a consideration of the effectiveness of regulation on the MSB sector, gained through interviews of those directly affected by the regulatory framework.

Qualitative methods provided the possibility of rich data, gained from in-depth interviews, having the capacity to describe the phenomenon investigated through the participants' perceptions, values and attitudes in relation to this,[11] to yield resulting data that was descriptive of this.[12] This approach had the potential to identify not merely those affected by regulation but the source, nature and extent of these views, by capturing their explicit and tacit perceptions.[13] Qualitative methods were therefore more appropriate to formulating an understanding of the meaning ascribed to participant's views and using these to form a construct of MSB practice in the UK. This was drawn from the insights into their 'inner world' of perceptions and attitudes which influence their external relationships and operational activity,[14] provided by the interviews. Qualitative methods allowed for a more flexible capture of the strength and variety of the views of both operators and regulators to examine any tensions within these groups.[15] Qualitative fieldwork drawing on interviews offered the possibility of eliciting a depth of research data which would not have otherwise been

[9]Bryman (n6) 23
[10]Bryman (n6) 141
[11]JW Creswell, *Research Design :Qualitative ,Quantitative and Mixed Methods Approaches* (3rd edn, Sage 2009) 195
[12]Creswell (n11) 95
[13]H Arskey, P Knight, *Interviewing for Social Sciences* (1st edn, Sage 1999) 32
[14]Gubruin (n4) 106
[15]Rees (n2)10

accessible. Quantitative methods were too rigid to accurately measure and categorise personal perspectives; the statistical approach is confined to explaining relationships through, and between, fixed or identified variables, failing to fully explain the extent or the context of variables or the source and nature of individual perceptions. Neither do they explain how these are formed or allow analysis of external relationships with other participants and stakeholders,[16] per the practice of socio-legal research.

Qualitative methods allow scrutiny of 'relationships' linked to the attitudes and values on which these rest and enable the sensitive probing of the relevance of ethnicity between MSBs and their customers.[17] These methods potentially reveal what is important to participants, and their interpretations of their environment.'[18] This methodology aligned with the research question, and enabled an interpretative and evaluative approach to the meanings of relationships and events, by investigating and 'exploring and understanding of the meaning ascribed by individuals or groups, to a social or human problem.'[19] This approach enables probing, exploration and clarification[20] of issues central to the research question across small sample sizes and different participant groups, facilitating an understanding of these complex relationships and actions within their social context. Qualitative methodology was therefore more appropriately placed to enable the investigation of methods of MSB operation through fieldwork research, essential to the examination of the effects of regulation on this sphere of activity.

3.3.2 The selection of semi-structured interviews

The data was gathered using semi-structured interviews. The use of questionnaires was discounted in not facilitating the exploration of issues relevant to the research aims. Whilst questionnaires are easier to collate, they require large samples since they often yield a low response rate. Participants would have been limited by the

[16]Rees (n2) 10
[17]Hennink (n8)10
[18]A Bryman , *Research Methods and Organisation Studies* (1st edn, Routledge1995) 25
[19]Creswell (n11) 4
[20]Gubruin (n4) 113

number and structure of questions, with detailed written responses not likely forthcoming and time consuming for participants to provide. They are more suited to gaining factual information drawn from closed questions, or limited pre-selected optional responses,[21] and are not appropriate for eliciting in-depth, personal perspectives and attitudes.[22] Questionnaires also excluded the development and exploration of the topics relevant to the research aims and required to produce quality data.[23]

Fieldwork involving interviews of participants in their workplace offered the possibility of more in-depth responses and richer data, the interaction with the interviewer capturing the participants' views and enabling further exploration and clarification of these. Interviews were therefore the preferred research method given the anticipated sample size, enabling information to be gained instantly, in a less time intensive manner for participants. Questionnaires unhelpfully afford the opportunity for respondents to revisit and amend their answers to that which they considered the researcher was seeking and lacked the stimulus and motivation [24] of interview interaction, which instils a sense of contribution and purpose, engaging the participant.[25]

Telephone interviewing was considered to be used as a 'last resort' to enable access to interviewees at a distance, maximising time and reducing travel costs, and enabled out of hours access at the participant's request. This method is challenging in synchronising responses, relying heavily on the researcher's verbal utterances to maintain the flow. Telephone interviews can be vulnerable to inadvertent interruptions, the lack of non-verbal communication leaves them appearing 'stilted', but they at least offered the opportunity to capture an interview at a distance.

Semi-structured interviews enabled participants to feel relaxed, and engaged through the rapport with, and interest shown by the researcher, offering a flexible

[21]B Gillham, *The Research Interview* (1st edn, Continuum 2000) 14 -17
[22]L Noakes, E Wincup , *Criminological Research Understanding Qualitative Methods* (1st edn, Sage 2004) 76
[23]Rees (n2) 11-12
[24]Noakes (n22) 75
[25]Gillham (n21)15

method of enquiry beyond the confines of the individual questions, to gain an authentic participant perspective.

Interviews were carefully designed to ensure that they elicited the relevant perspectives, attitudes, values and the underlying rationale and justification for these.[26] Schedules for each participant group are located in appendix 3. Factors influencing the individual's experiences of the impact of regulation were also important. Latent content analysis reveals the rationale for the values ascribed to the views expressed during interviews.[27] The data analysis and critique of the interview data is presented in chapter 6.

Semi-structured interviews are a reliable method for the small sample sizes relevant to this study,[28] where simple one phrase answers do not suffice and where views cannot be conveyed through questionnaires. This captured the depth of explanations and nuanced[29] meanings crucial to this study, with attitudinal reasoning and intensity,[30] and the relationship between factors impacting on these.[31] This flexibly allowed unexpected responses to be revealed avoiding confining answers to only what the researcher hopes or expects to discover.[32] Participant views were later illustrated by the use of quotes, 'general statements no matter how well written, can convey less, and with less impact, than a direct quotation from an interview'.[33]

The impact of regulation on MSB operators was not overly sensitive, but was personal to the participants' mode of income and lifestyle, and required consideration through sensitive interviewing. Semi-structured interviews were particularly appropriate for canvassing participants' perceptions, attitudes and values and their individual insights.

[26] J Miller, B Glassner, 'The "Inside" and the "Outside" : Finding Realities in interviews' Chapter 2 Silverman D, *Qualitative Research,* (3rd edn, Sage 2011) 131 -133
[27] Miller (n26) 137
[28] Gillham (n21) 11
[29] H Arskey H, P Knight, *Interviewing for Social Sciences* (1st edn, Sage 1999) 34
[30] CM Judd, and others *Research Methods in Social Sciences* (6th end, Harcourt1991) 231
[31] JA Holstein, JF Gubrium, 'Animating Interview Narratives' Silverman D, *Qualitative Research*, (3rdedn, Sage 2011) 157
[32] FJ Fowler, *Survey Research Methods*, Applied Social Research Methods Series Vol 1 (3rd edn, Sage, 2002) 91
[33] Gillham (n21) 10, 11

Interviewing is a complex process requiring an underpinning structure to direct the data collection process[34] and ensured reliability using questions aligned to identified themes relevant to both participant groups. Standardised question sets used a balance of closed and open questions reflecting subsidiary aims[35] reviewed by PhD supervisors in place of participant testing (given a small participant population) to ensure impact.[36] Question content was informed by the interviewer's knowledge of the participant group to ensure responses on subject matter were within the participant's knowledge. Sequencing and wording were standardised to ensure consistency of meaning and clarity.[37] Standard prompts elicited clarification, reflection and prompted elaboration of participant explanations[38] where responses were incomplete, and enabled a 'teasing out' of views without resorting to leading questions.[39] This approach avoided the interviewer providing feedback as to the 'required' response.

The semi-structured process provided a degree of standardisation through the underpinning structure giving the interview focus,[40] balanced with the flexibility,[41]that ensured the interviews were dynamic, generating valuable relevant data by allowing the researcher to 'pin down' emerging themes from the interview dialogue.

Developing the interview schedules, accessing participants, conducting the interviews, post-interview transcription and subsequent analysis were all time intensive. Despite this, the interviews offered the potential for capturing the 'richness and vividness'[42] of data to achieve the research aims.

Semi-structured interviews were particularly appropriate for the elite regulator interview group[43] who required the 'freedom' and discursive interview style this approach yielded. This necessitated greater flexibility and management by the

[34]Arskey (n29) 44
[35]Noakes (n22) 80
[36]R Andrews, *Research Questions* (1st edn, Continuum Publishing 2003) 10
[37]BL Berg *Qualitative Research Methods For the Social Sciences* (7th edn, Pearson 2009) 118
[38]Hennink (n8) 131
[39]Judd (n30) 238
[40]Houtkoop- Steenstar, *Interaction and the Standardized Survey Interview: The Living Questionnaire* (1st edn Cambridge University Press, 2000) [9-13]
[41]N King, C Horrocks , *Interviews in Qualitative Research* (1stedn, Sage 2010) 53
[42]Noakes (n22)80
[43]Gubruin (n4) 302

interviewer in controlling the question structure.[44] The interviewer's demonstration of interest, active listening, knowledge and respect for their contribution were relevant during this process.[45] This group required a specific question set (see appendix 3) designed to capture their expert knowledge and experience,[46] and their role in relation to the regulatory framework. Elite groups are usually highly motivated to participate but their roles make great demands on their time, restricting their availability for interviewing.[47] These were therefore conducted in the elite groups' work environment to afford control and privacy, or by telephone.[48]

3.4 Generating the data

This section deals with specific aspects of the qualitative methodology that were applied to address the research question within the fieldwork research. The following sections detail how the fieldwork was undertaken. The development of the interview schedules (see appendix 3) and the accompanying sample strategy that provided the selection of the participant groups for interview. The subsequent classification of data yielded from the data generation process in relation to the individual participants and the presentation of key generic demographic information that was obtained by this process, is discussed. The findings from the field work research process are presented in chapter 6, where this data is robustly analysed and critically evaluated in relation to the participant and stakeholder groups.

3.4.1 The interview schedule

The interview schedule standardises the information given to the participants outlining the overall project aims and providing an explanation of the process for obtaining participant consent and withdrawal supported by the relevant documentation. Copies of these were given to the participants before consent, at the

[44]King (n41) 56
[45]King (n41) 52
[46]C Marshall, G Rossman, *Designing Qualitative Research* (5th edn, Sage 2011) 155
[47]Marshall (n47) 156
[48]King (n48) 42

point of the face to face interviews or in advance of telephone interviews, or by email.

Each of the schedules for each participant group, operator, regulator, and stakeholder was supported by standardised explanations of key terms and use of prompts.[49] Questions were designed to align to the research objectives and each set sought to collect participant demographic information pertaining to role and experience, both current and previous.[50] The questions focused on gaining the views, attitudes, and perceptions of participants in relation to the processes, practices, relationships, and roles, relevant to the regulatory framework, in particular focusing on the impact of roles. The questions were structured around core sections linked to themes applicable to both participant groups to enable cross-comparison. Prompts were used for development and investigation of issues revealed in relation to the core questions.

The interview schedules provided some degree of structure to secure a degree of reliability derived from this standardisation,[51] avoiding 'interview drift', leading questions, or endorsement of participant opinions.[52] The schedule focused primarily on relevant issues but the semi-structured process enabled participants to talk freely within the predefined topics and set questions, supported by the further probing of responses. The interview schedule was reviewed and amended in light of its application to the first geographical area. This provided an opportunity for the researcher to reflect on the emerging themes and concerns raised by participants,[53] enabling adjustment to incorporate new dimensions where they had not been anticipated but where these emerged as significant to the research and the existing themes. This enabled the researcher to compile additional questions phrased in different ways and adjust the language used where this was needed to accommodate the participants' experiences and promote clarity.

[49]King (n41) 40
[50]Berg (n37) 113
[51]Noakes(n22)79
[52]King (n4) 38
[53]Rees (n2) 12

3.4.2 Sampling strategy

The sample strategy requires consideration of the following characteristics: comprehensiveness, probability and efficiency. The core interview group should fairly represent the total MSB population, demonstrate comprehensiveness and reflect any relevant distinction within this group. The 'comprehensiveness' of the sample and the effects on the individual probability of selection were considered.[54]

The identification of the target research population was essential prior to selection of the interview sample, based on the quality of the contribution that the group could offer, perceived as a form of intensity sampling[55] where participants were selected with characteristics relevant to the research aims. To this end the period of experience of being directly engaged operationally or managerially in the provision of remittance services pre and post implementation of the MLR 2007 regulations was important. Also relevant was the provision of remittance services by the MSB, since this legal category is inclusive of other business types such as currency exchange.
There was also a need to isolate the business purpose to those businesses specifically dealing with private customers, not solely business clients. This was justified[56] by reference to the research aims. Steps were taken to ensure the application of the sampling techniques did not include sample groups/individuals that were not relevant to the research aims or the target participant group. A phone call prior to interview clarified the nature of the business and the operator's experience before selection.

The total sample group for the fieldwork was the number of MSBs currently registered with HMRC. Disclosure of information by HMRC was restricted by legislation[57]and a duty of confidentiality owed to registered MSBs,[58] and some information was not available where HMRC considered this to be outside their identified business purpose. The accessible data provided the total number of MSBs within specific post code areas which were mapped to indicate the density of MSBs

[54]Fowler (n32) 13
[55]Marshall (n46)111
[56]Hennink(n8) 84
[57]Freedom of Information Act 2000, Schedule 1
[58]Data Protection Act 1998

across the UK. This was cross-referenced against geographical areas within the UK that were identified from census data as having the relevant population aligned to UK remittance receiving countries,[59] narrowed to five areas for sampling for the fieldwork research (see Table 2).These five areas were selected which corresponded to known remittance populations and user groups within the UK; these were identified as the geographical areas M1, M2, M3, M4 and M5. This convenient and purposive sample population was representative of the group of MSBs most likely to be engaged in remittance activity with an ethnic dimension.[60] To further guarantee the reliability and quality of the data, the research was to be undertaken within the same time frame/period.

This sampling strategy enabled the construction of sampling groups within geographical areas where remittance businesses with an ethnic dimension were located and ensured that the research sample had the relevant expertise aligned to the research aims. Within each sample area a list was compiled of remittance operators from open source material/information, which facilitated access to the final sample group.[61] The open source information accessed included: telephone and commercial and business directories, internet searches, newspapers, advertising media, and the UKMTA membership list. From this list a target sample of 5 MSBs per location was selected at random, see Table 2. The use of multiple locations ensured that the results could be compared for reliability across different locations.

[59]D Ratha, S Mohapatra, A Silwal, *Migration and Remittances Factbook* (World bank 2011)
[60]Hennink (n8) 85
[61]Berg (n37) 47

Table 2 The geographical construction of the operator interview groups.

Sample Locations	M1	M2	M3	M4	M5
Total No. registered MSBs	30	21	78	136	29
Total No. MSBs identified for sample	15	10	25	30	4
Actual Sample Size	5	4	5	7	0

The total sample of MSBs selected for interview was confined to 25, after which 'theoretical sufficiency' or saturation was likely to be reached, enabling a size that met the research aims without being onerous in terms of cost, time and effort.[62] The latter are important in a time constrained project for which there was no external funding,[63] and where subsequent transcription and data analysis constraints were also relevant.[64] The areas sampled were in fact confined to M1- M4. Area M5 was not included since the 'saturation' point was reached rendering its inclusion unnecessary.

This strategy did not conform to the true principles of probability sampling, but was not considered to compromise generalisation of the wider population since it reflected the possible variance of the total population. Additionally, generalisation is

[62]Marshall (n46)103
[63]A Ryan, 'Ethics and Qualitative Research ' Silverman D, *Qualitative Research,* (3rdedn, Sage 2011) 429
[64]Hennink (n8) 88

limited to the UK MSB population included in the core population sample,[65] with no de-selection on arbitrary grounds.[66] Those not included in the final interview sample were those who did not wish to participate or who did, but arrangement for interview was problematic. The possibility of 'snowball sampling' to widen the sample using contacts provided by participant MSB operators who had already been interviewed, where they were willing to provide this contact, was limited by the knowledge that the contact would be agreeable and their identity as the referrer could be disclosed.

The stakeholder groups' participants were identified by their community associations relevant to each geographical area, examples are cited in the ethics proposal (see appendix 5). Regulator participants as elite groups are defined by their network relationships which are difficult for outsiders to penetrate, so 'referral' was usually from a gatekeeper of this network, approached by telephone, email, or letter. Additionally, 'snowball sampling' enabled further access[67] to this elite group.

3.4.3 The interview format

The general recruitment procedure was to approach the participants in the sample by telephone or email as the means of enlisting their participation; this is more practical given the distance between the sample areas, and their distance in relation to the researcher's base. This also prevented the disruption of appearing unannounced at the place of business.

There were discrete phases in the interviews that relate directly to the integrity of the research process. This included the introductory phase where the interviewer outlined the research project and its aims, and the interview process. At this point the researcher also provided participants with information about the interview process and completed the relevant consent and documentary requirements. Explanation was not limited solely to the purpose of the interview but the purpose of the research

[65] Bryman (n6) 375
[66] Social Research Association (SRA), 'Ethical Guidelines' 2003, 13
[67] Gubruin (n4) 307

itself.[68] The success of the semi-structured interview rests on the skill of the interviewer to establish a rapport[69] with the participant, gaining their trust,[70] as well in seizing opportunities to probe the participants' views to determine the reasons for these.[71]

The researcher drew on the rapport throughout[72] the interview to develop themes, given that questions were not limited to those within the schedule, nor any particular time frame, aiming to assess the impact of legislation on their operational role.[73] The rich subjective and personal viewpoints were subsequently captured in quotes as valuable illustrative examples, representing the unique views of participants and revealing 'interview discoveries' and the subtlety and 'shades' of opinions.

The use of prompts as key words and suggested variables provoked thoughts and comments about the topics under consideration. This ensured that all valuable opportunities to explore participant responses were captured. Probing questions enabled further justification for answers, rationale for thinking, and explanation of perceived attitudes and understandings, eliciting further detail, accuracy and specificity, and enabling the contextualisation of responses to ascertain relevance.[74] The interview schedule led to the interviews falling into sections: the introductory phase, the biographical phase, the data collection phase and the closing phase.

The investigation of underlying attitudes and perceptions requires skilful 'question wording, question sequence and interviewer effects'.[75] Participants are most engaged when the questions are presented with interest and when their relevance and importance is clear. Thematic grouping of questions and transitional comments linked questions to proceeding topics and the 'funnel effect' moved participants from general issues to greater specificity, focusing attention on pertinent issues.

[68]Gillham (n21) 40
[69]King (n41)48
[70]Marshall (n46)118
[71]Hennink (n8) 20
[72]MR Pogrebin *Qualitative Approaches to Criminal Justice: Perspective from the field* (1edn, Sage 2003) 44
[73](n40) 91
[74]Gillham (n21)78
[75]Judd (n30) 239,231

The elite interview group were particularly important to the central research question in considering the impact of regulation, requiring those interviewed to have a special knowledge of the regulatory process and a direct role in relation to its implementation. This group offered a potentially unique and varied perspective of their roles within different organisations. They offered credibility and authority to the research from their privileged access to information and processes, and their views on these, which were not transparent or accessible to outsiders. These interviews demanded greater preparation, with the interviewees exerting great autonomy over the process and demanding more flexibility from the interviewer. They had the potential to reveal previously unconsidered issues and required a dynamic response.[76]

The interview process was concluded with a broad and concise overview of the questions/content covered and a check with participants as to their wishes to comment or clarify further. Participants were thanked for their contribution and provided with information about the withdrawal process should they need this. The interviewer also had to comply with strategies outlined in their risk management process detailed in the approved ethics application (see appendix 5) where this was relevant.

3.5 Data collection and analysis

This section seeks to outline how the data collected from the fieldwork investigation was prepared for subsequent analysis and evaluation, which is presented in chapter 6. Although the in-depth analysis of research findings will be considered in future chapters, a justification of the selected coding methods and consequent thematic analysis is relevant, since this enabled the later thematic analysis and comparison of data from which later conclusions are drawn.

[76]Gubruin (n4) 82, 310

3.5.1 Transcribing the data

All audio interviews were transcribed word for word[77] maintaining participant anonymity and redacting information that would compromise this, accommodating the 'inductive' approach to data analysis.[78] Interview notes (none - audio interviews) were typed up as soon as possible after the interview. Transcripts were uniformly coded, and notations to mode, tone, feelings where relevant and discernable from the audio, including paralinguistic features[79] were originally intended to be added but were not. This was due to the audio distortion and the lack of value these would have added to responses and existing interview content. The anonymised transcripts were stored on an encrypted USB device. Although time consuming, the transcripts could not be created using voice activated software given the variance in accents and dialects in the participants' voices. The aim was for transcribing and analysis to take place as soon as possible after the interview to preserve the researcher's knowledge of participant replies. Transcribing was all undertaken by the researcher to preserve confidentiality allowing familiarity with the data prior to coding. Participant responses remain unaltered, retaining their authenticity and avoiding selection of phrases, preventing distortion of data.

3.5.2 Coding and content analysis

Following transcription, the interviews were read and reread in preparation for analysis by content coding. This was achieved through the process that is often referred to as 'immersion'[80] where the researcher develops familiarity with the data enabling selection and identification themes within the data, which were allocated individual codes. Codes were exhaustive prior to analysis and deductive, whilst also being exclusive where possible. The themes conceived were essential to the question of impact of the relevant legislation as well as to the participant ideas and concepts expressed in relation to this. In particular, coding was divided into several themes based on the relationships between participants, the perceived roles of

[77] King (n41)143
[78] Noakes (n22) 130
[79] Gillham (n21)89
[80] Hennink (n8) 205

participants, regulatory purpose, regulatory impact and transaction processes such as compliance or enforcement.[81] A starting point for coding was that which was 'expected' to arise following the literature review and in line with the research question, as well as that which was revealed in the data, as initial categories that would hold across the participant groups.[82]

The interviews were deconstructed according to similarities and differences in the views expressed by the participant groups[83] and the nature of the issues that arose. A single set of categories was developed distinctly for each group with some elements common to both participant groups. The use of both core and differentiating categories/codes ensured that there was a universal thematic approach to content analysis, which also reflected the individuality and distinctly differing roles and perspectives emanating from the participant groups in practice.

Coding was an important pre-requisite for structuring and ordering data prior to analysis, enabling the identification and categorisation of themes relating to relationships, patterns, communalities and also differences in perceptions and views. Additional categories were developed as data analysis progressed.[84] This grounded theory approach allows the researcher to immerse themselves in the data, allowing refinement and addition of categories inductively.[85]

The grounded theory approach was considered relevant since it aims to develop conceptual categories for analysis that shed light on the relationships and process dynamics,[86] allowing for the development of a theory to emerge from the data analysis.[87] This was relevant since this thesis sought to investigate the regulatory impact of the MLR 2007 on MSBs, but had no pre-conceived notion of the form of this impact, if any. Grounded theory allows for the creation of a theoretical

[81]Marshall (n46) 210
[82]CK Reissman, 'What's Different about Narrative Inquiry? Case Categories and Contexts' Silverman D, *Qualitative Research,* (3rdedn, Sage 2011) 311
[83]King (n41)153
[84]Noakes (22) 131
[85]Berg(n37) 347
[86]K Charmaz K Constructing Grounded Theory: A Practical Guide through Qualitative Analysis(1edn, Sage 2006)17-19
[87]A Strauss *Qualitative Analysis for Social Scientists* (1edn, OUP 1987) 22

construct/framework in a particular context of practice,[88] in this case a consideration of influencing factors and relationships in the context of financial regulation.[89] The theory that emerges is grounded in the data[90] supported by the phases of coding and cross comparison of transcripts, as well as the researcher's perceptions from any fieldwork notes. It therefore offers credibility, originality and resonance[91] within a small sample where there are considerable differences in experience, knowledge and positioning of participants in terms of their roles.

Categories were developed as themes and sub-themes to reflect the interrelationships between participants and their views as to the nature of the impact on practices, processes, and the economic, social and commercial aspects of activity. This way the narrative was broken down in a systematic and reliable manner to reveal further emerging patterns and themes to facilitate analysis, which were then compared. This constant comparison of data generates the coding and facilitates the analysis and theory of relationships and practices. Transcripts were reread, recoded and compared with each other, this comparison revealing further themes for coding as the latent meaning in the individual transcripts was revealed. Discerning the meaning from transcripts was a subjective process involving a high inference of content analysis with the meanings discerned from the participants' narratives. The subjective aspect of this coding process was underpinned by the overarching objective methodology for data analysis.[92] However, care was taken not to distort participant views by applying meaning and inference within the content that this could not reasonably support, in order to ensure that the processes, practices and relationships identified within the data were analysed from the participants' perspectives.[93]

Quotes from transcripts were noted for possible use, preserving authenticity and the individuality of the participant's 'voice' and were carefully selected to preserve

[88]G Glaser A Strauss *The Discovery of Grounded Theory: Strategies for Qualitative Research* (1st edn, Aldines Transaction Publishing 1967) 28, 37
[89]V Brown, V Leake *Successful Qualitative research – a practical guide for beginners* (1st edn, London 2013) 186
[90]Strauss (n87) 22
[91]Strauss (n87)151-155
[92]Respect Project, Code of Practice for Socio Economic Research 2004, 1
[93]Glaser (n87)99

participant anonymity.[94] The final stage was the identification of overarching themes as summaries of key issues.[95]

Coding ensured that the data was treated thematically in a comparable and consistent way allowing for a range of views to be identified and recognised as themes. This ensured that the interconnectedness of the data and its meaning was retained.[96] Other than the codes/categories referred to above relating to the content analysis, an attempt was made to construct measurement codes to indicate the frequency of comments relating to a particular theme,[97] in order to illustrate the intensity or importance to the participant. These codes were, however, difficult and time consuming to construct and were not drawn on in the final analysis as they failed to add to what was already obvious to the researcher from the data analysis process. Frequency categories[98] can add an additional element in terms of reliability, uniformity, enhancing validity and removing distortion of content analysis, ensuring a balanced consideration of the 'facts' and the emotion and meaning which accompanied this.[99] This is, however, more applicable and useful across a narrower range of themes and a larger sample size.

Analysis relied on the skilled and systematic use and construction of categories to identify themes relevant to the various aspects of the research question. These categories should be both exhaustive and exclusive to enable the allocation of responses to a single category. The data yielded comments that related to several categories, responses are usually allocated to a single category on assessment of the 'latent' meaning, but since some comments related to more than one category, they were rightfully considered in relation to each.[100]

Data analysis was robust and holistic, with the data viewed in segments but related to its totality to avoid distortion, which is imperative, since research is a process of impact and influence based on interpretation and associations by the researcher,

[94]Ryan (n63) 419
[95]King (n41)153
[96]R Wodak R, M Kryzyanowski M, *Qualitative Discourses Analysis in the Social Sciences* (1st edn, Palgrave Macmillan 2008)146
[97]Berg (n37) 348
[98]Hennink (n8)222
[99]Silverman.D, *Doing Qualitative Research: A Practical Handbook (*3rd edn Sage 2010) [225]
[100]Gillham (n21) 60,67,70

which must be genuine,[101] sustainable and capable of defence.[102] Data analysis conveys the researcher's subjective interpretation[103] of relationships and attitudes between participants, and the analysis must convey this by demonstrating respect for participants[104] without bias.[105] Data analysis is presented in chapter 6 accompanied by the demographic information and interview group characteristics.

The quality of the data coding and analysis was achieved throughout the research supervision process, and triangulation by the reflection of the researcher against the recognised parameters of credibility, transferability and conformability. The utilisation of different data and analytical triangulation methods was inappropriate given the size of the research sample and the restrictions on time and funding for this research project.[106]

Sound data coding was a pre-requisite to the later analysis of findings and the ability to construct typologies of practice for participant groups[107] Coding using several variables enabled analysis by topic, themes, sub themes, relationships, experience, context, process, and attitudes, to ensure that later analysis offered comparison, breadth and depth, and retained the context of the data to assist the development of typologies of practice.

Computer assisted packages such as Nvivo are available to assist data coding but were not used due to the small sample size; samples were coded using word searches and colour and letter coding and, additionally, Microsoft Excel.

[101](n92)1
[102]M Bloor, 'Addressing Social Problems through Qualitative research ' Silverman.D., *Qualitative Research, (3rd edt Sage London 2011 chapter 22) [400] cites (Bulmer 1982)*
[103]Arskey (n13) 54
[104] (n92) 1
[105]Creswell (n11) 92
[106]King(n41) 164
[107]Berg (n41) 230

3.6 Ethical issues

All research must have validity and credibility in relation to research design, derived from a clear methodology complying with local[108] and nationally[109] recognised standards of research practice[110] evidencing integrity. This was secured by addressing consent, confidentiality and data protection, and the principles of honesty, openness, fairness and respect for the participant. Approval of the research design was a crucial stage in this process but the application of the preceding principles applied throughout the whole research process. The consent of the participants and transparency as to the research aims and voluntary participation were seen as the cornerstone to ensuring the ethical compliance of this research.[111]

3.6.1 Confidentiality and data handling

The primary consideration in any qualitative research study is the protection of the identity and anonymity of all participants engaged in the research process.[112] This was essential since ethical approval for this research was sought and granted[113] conditional upon this. This requires disclosure of the research purpose and gaining informed consent[114] from the participants (see patient information and consent sheets appendix 6). Anonymity was only guaranteed in relation to the MSB group, since the roles and specialism of the elite regulator group may reveal their identities[115] despite anonymisation, and the participants were warned about this risk[116] for which all reasonable steps were taken to minimise this.[117] Participants were made aware that consent to the interview also included consent to the use of anonymised quotes[118] from the interviews and the use of the interview material and

[108]UREC (University of Leeds research Ethics Committee) – 'Draft Amended Guidance upon ethical issues' April 2008
[109]British Criminological Society code of Ethics 2006
[110]EC 'The European Charter for researchers, Code of Conduct for the Recruitment of Researchers' Europa 21620 2005
[111]Noakes (n22) 46
[112]Data Protection Act 1998
[113]Marshall (n66) 127
[114]Social Research Association (SRA), 'Ethical Guidelines' 2003, 27
[115](n92)
[116](n109)Point 4(iii)
[117]T Wengraff, *'Qualitative Research Interviewing'* (Sage Publications London 2006) [185]
[118](n109) 2003 4.2 page 28

quotes for subsequent academic publication[119] (see participant information leaflet interview schedule appendix 3).

Anonymity was secured by the allocation of participant identity numbers used at all stages of data handling. Access to research data was restricted to the researcher[120] for the purposes of transcription and data analysis, and to supervisors for the supervision process as needed.[121] Since confidentiality is a crucial element of respect for and protection of the participant's identity, this was extended to the protection of research material at all stages of the research process. Data was secured on an encrypted USB storage device, accessible to the researcher only.[122] Any handwritten notes relevant to the study were scanned and loaded into the encrypted USB and the paper notes were then destroyed. Paper copies of the participant consent forms were similarly dealt with.

Whilst confidentiality is a core principle of ethical research, there are circumstances in which the researcher is obligated to disclose specific kinds of information. All participants were made aware of the researcher's duty in this respect prior to the commencement of the interview,[123] although this was not a condition of ethical approval. This warning was also included in the participant information sheet (see appendix 3.) Despite careful question design it was recognised that the participants may inadvertently have disclosed an aspect of their behaviour that the researcher was under a legal obligation to report.[124] In this study the discussion of legal measures aimed at suppressing an aspect of terrorist finance were anticipated as possibly leading to a participant revealing knowledge of terrorist activity or support of a 'terrorist cause' that may amount to a criminal offence required to be reported by the researcher.[125] In addition to warning the participants of this in advance of their consent to be interviewed, the participants were informed that any perceived possibility of such information being divulged would result in the researcher suspending the interview. The researcher would then have to explain the kind of

[119](n109)point 2
[120](n114)38
[121]King (n41)119
[122]Data Protection Act 1998
[123](n109)Point 4 (iv)
[124]s38B Terrorism Act 2000
[125]Hennink (n8)73

disclosure that would invoke the duty of the researcher to report such activity, enabling the participant to decide as to what to disclose before the interview recommenced.[126]

Confidentiality also extends to the conduct of the interview.[127] If a participant reveals information after the end of the interview when recording has ceased, that is valuable to the research aims, the researcher is required to negotiate the inclusion of this information with the participant and the participant should indicate this inclusion on consent form provided. Participants were additionally asked to give specific consent to the use of audio recording of the interview which in most instances provides for a more accurate reflection of interview content. Where consent to audio recording was not forthcoming hand written interview notes were taken instead.[128]

The interview location needs to be secure, offer privacy and maintain confidentiality. Participants were invited to select their work location for this purpose,[129] minimising the burden of participation.[130] However, interruptions were commonplace and one interview was terminated for this reason. Relevant to this was the fact that the researcher shared a work environment that necessitated the careful timing of interviews to ensure that there was no disruption and that the confidentiality of parties was not compromised, maintaining privacy.

3.6.2 Research relationship

The concept of the protection of participant autonomy extends to the right of the subject to withdraw from the study.[131] Participants were provided with information on this at the outset (see participant withdrawal sheet appendix 3). For the purposes of this study the right to withdraw was limited to 12 months from the date of the interview, as otherwise the validity and reliability of the sample size would be

[126]Noakes (n8) 131
[127]Data Protection Act 1998
[128](n92)2.1.4 (b)
[129](n92)2.1.2 (b)
[130](n109)point 4(ii)
[131](n114)30

compromised and the researcher would have insufficient time to remedy this without compromising the integrity of the research project.[132]

The principle of 'do no harm' emerges in all research design[133] where the participants should not be exposed to any form of degradation or humiliation[134] and the risk of this to the participant should be minimised.[135] Respect for the participant's was demonstrated during the interview process and follows on to the integrity of the data analysis reflected in seeking separate consent for subsequent use of quotes in research findings. Some participants provided full and informed consent but one requested a copy of the interview and another requested a verification of the quotes to ensure confidentiality was maintained. These requests were complied with.

The researcher is obligated analyse the data fairly, without distorting the accuracy of the context underpinning the disclosures by the participants.[136] This also extends to the sector of activity and the relevant ethnic community from which the participants are drawn. The researcher must present a balanced analysis, forming conclusions capable of defence from the evidence the research yielded. Whilst some aspects of research were anticipated as possibly impacting negatively on those whose interests were affected, the researcher took all steps to present the findings with sensitivity as to the impact and its context.

3.7 Conclusion

This chapter has outlined the research methodology underpinning this research thesis, describing in detail the reasons for selection of the qualitative approach a as the overarching methodological approach. It has further sought to justify the relevance of qualitative approach by reference to the overall research aims and objectives, to demonstrate its appropriateness for ascertaining the views and

[132]UREC (University of Leeds research Ethics Committee) – 'Draft Amended Guidance upon ethical issues' April 2008
[133]Belmont Report, 'Ethical Principles and Guidelines for the Protection of Human Subjects of Research' The National Commission for the Protection of Human Subjects of Biomedical and Behavioural Research US Dept Health and Human Sciences April 18, 1979
[134](109)Point 4(i)
[135](n92)3(d)
[136](n114)35

attitudes of the two distinct participant groups to enable the fulfilment of the research aims. This application of the qualitative methodology and in particular the socio- legal approach ensured the fieldwork research was designed in a methodologically sound manner to apply the most relevant to the fulfilling the research aims in assessing the impact of an effectiveness of the MLR. Further the incorporation of the 'grounded theory' approach within this ensured that interviews offered the flexibility to capture new and emerging themes given that the nature of the impact of regulation and degree and dimensions relevant to regulatory efficacy were unknown in advance.

It also ensured that the research was conducted in an ethically sound manner.
Addressing ethical considerations is a key element of the research design that underpins the legitimacy and integrity of the design process and the implementation of the research in practice, and a necessary pre requisite to ethical approval. It demonstrates a robust protection of the interests of the participant groups. This reliability of the research was further supported by the consistency of the approach afforded by a single researcher undertaking all interviews, transcription, coding and analysis. This has delivered continuity and consistency to all aspects of the methodology adopted for this thesis.

At all stages, from the formulation of the sampling strategy, the development of the interview schedule, the interviews and subsequent coding and data analysis, have all been reviewed by reference to the research aims and objectives. The challenges and constraints of applying the research strategy in practice and the relevance of the grounded theory approach to enable the adjustment of the interview schedules to capture emerging and unforeseen concerns, will be briefly considered in chapter 6. The analysis of data yielded and the relevant findings are presented in chapter 6, to enable a comparison on the perspectives of the different participant groups and enabled the construction a typology of MSBs operation in the UK.

Chapter 4
A normative framework for the regulation of alternative remittance systems

4.0 Introduction

This chapter aims to present a normative framework for the regulation of alternative remittance systems such as Hawala, having at its central core the protection of fundamental rights as the values recognised by the international community and within the UK. The normative framework is relevant to the central research question of this thesis, which focuses on the impact of the regulation on remittance services regulated as MSB's. This research seeks to assess the legitimacy of regulation, internationally driven and implemented at national level, as being necessary to prevent the misuse of these systems for money laundering and terrorist finance. The normative framework goes beyond justification of the necessity for regulation of these systems based on the risks they present, which was considered in chapter 2. The framework presents relevant standards and values that should guide the form of regulation to ensure it protects existing fundamental rights. This framework is the critical point of reference from which this central research question and issues of regulatory impact are considered, critiqued and addressed in later chapters.

Previous chapters have considered the terrorist threat, models of terrorism and CTS, (see chapter 1). Chapter 2 focused on critiquing the operational model of ARS, setting out their potential risk of their misuse for terrorist finance. In order to fully address the impact and value of the MLR 2007 in regulating MSBs, it is now necessary to set out the normative standards against which legislative measures and state action are to be reviewed. This chapter presents a normative framework of rights, against which the regulatory framework for ARS is assessed and analysed as to its effectiveness in protecting these values. This enables the further consideration of the capacity of legal measures to effectively

manage the risks inherent to ARS and to effectively control these. The effectiveness of regulation cannot, however, be considered without first offering a normative framework against which the regulatory framework is to be assessed.

The normative framework presents fundamental human rights as core values and standards that are viewed as integral to an ethically sound approach to the development of counter-terrorism strategy. This framework acts as a guide to ensuring that responses to the threat of terrorism are normatively compliant at both national and international level.

The normative values of ARS are analysed to consider the ethical dimension of their operation and the extent to which this is concordant with fundamental rights, in order to evaluate whether, in light of the risks they pose, they should be tolerated at all within the current financial and regulatory climate. The chapter also considers the normativity of alternative remittance systems as to their capacity for financial inclusion and their normative capacity for protecting fundamental rights aligned to this. A case study of Al-Barakaat is considered within the Somali context as a backdrop to critiquing the normativity of the international CTS and the legitimacy of the regulatory action as to its protection of fundamental rights. This is distinct from the previous consideration of the Al-Barakaat case in chapter 2 which focused on the evidential basis to justify action. The analysis of Al-Barakaat in the Somali context questions the ethics of regulation in relation to state capacity and financial inclusion necessary to enable states to comply with regulation in a normative manner. The context in which alternative remittance systems operate is used to illustrate the jeopardy caused to normative values by the listing of the Al-Barakaat remittance operator. The chapter concludes by considering the normative compliance of remittance services in the UK and their capacity for financial inclusion. It briefly reviews the potential of new technologies to address system risks and maximise the benefits of these services in a normatively compliant way.

4.1 Fundamental rights - a normative guide to governmental action and the need for protection

The normative framework presented is premised on the need for legitimacy of state action as an aspect of sound governance including preventing the risk of misuse of remittance systems. The framework derives from internationally recognised standards of fundamental entitlements and inalienable rights[1] 'predicated on individualism' and a 'sense of right and of rights'[2] derived from human value and respect for humanity and human autonomy. The framework offers an objective standard, a 'cloak' of protection, as a fundamental safeguard against which governmental action can be assessed. State responses to countering the threat of terrorism need to be ethically sound in protecting rights, not merely offering a 'lowest common denominator compromise'.[3] Rights are most vulnerable at times of emergency when increased security threats require states to reassess their action.

At times of insecurity the level of rights protection is commonly readjusted with the content of rights 'recalibrated' risking indirectly importing a proportionality test in relation to unqualified rights, eroding their protection.[4] Rights are often 'downgraded' as security is prioritised. The normative framework requires security to be preserved without subverting rights, enhancing both, and ensuring rights cannot be 'balanced away'. Tony Blair commented in the wake of the 7/7 London bombings: 'the rules

[1]S Yankson 'Starving terrorists of their financial oxygen: at all costs?' (2010) 13(3), JMLC 282-306, 293

[2]D Mc Bernal, 'Transnational transactions, legal work, cross border commerce and global regulation'(1edn) Likosky M., '*Transnational legal processes-globalisation and power disparities'* (Butterworths London 2002) 37, 38

[3]Commission on a Bill of Rights, 'A UK Bill of Rights? The Choice Before Us' Vol 1 December 2012,6

[4]H Fenwick, 'Recalibrating ECHR rights and the role of the Human Rights Act post 9/11: Reasserting international human rights norms in the 'war on terror' ?' (2010) 63 (1) *Current legal problems* 153- 234 153-157

of the game are changing'[5] but the values that underpin rights protection should remain steadfast.

The normative framework offers a guide to regulation, which is necessary given the political pressure on states to address the challenge that terrorism poses to the fabric of democracy and the need to address security concerns. State action needs to continue to protect rights to avoid their alienation through responses derived from the perceived sense of 'emergency' that terrorism creates.[6] Successive governments have enacted measures countering terrorism that have compromised individuals' rights,[7] a position not unique to the UK. The normative framework requires balanced constitutional protection of rights limiting the extent of governmental action[8] in the name of security. This is critical since the UK, having an unwritten constitution, has no higher order of rights. Executive power does not countenance the suspension or unjustified interference of rights protected in domestic and international law. The perception of the terrorist threat has traditionally expanded executive powers[9] through control measures that act pre-emptively, often narrowing and compromising rights protection to achieve these ends. The normative framework ensures that legal and executive measures are scrutinised and accountable for standards of rights protection and counter terrorism norms which operate as a check on executive power.

The UK has a long tradition of rights protection dating back to the Magna Carta, illustrating the need for a prior commitment from states to determine the boundaries of legitimate use and accountability of state power in times of crisis. The UK, a signatory to the ECHR, has recognised its existing commitments to rights protection through the

[5]Times (London)6 August 2005,1
[6]D Anderson,'Shielding the compass: how to fight terrorism without defeating the law' (2013) 3 European Human Rights Law Review 233-246,235
[7]Commission on a Bill of Rights, 'A UK Bill of Rights? The Choice Before Us' Vol 1 December 2012, 8
[8]E Gross, 'Fighting Terrorism with one hand tied behind the back: delineating the normative frameworkfor conducting the struggle against terrorism within a democratic paradigm' (2011-2012) 29(1) Wisconsin International Law Journal, 23
[9]LK Donohue' The Perilous Dialogue' (2009) 97 Cal L Rev 357-392, 559-360

Human Rights Act 1998, enhanced by the incorporation of the European Charter of Fundamental Rights within the Lisbon Treaty.[10]

The UK recently considered a UK Bill of Rights to strengthen convention rights, a pre-requisite from which national 'core values which give us our identity as a free nation'[11] could be developed. This appeared to be driven by political concerns as to the role of the ECrHT and its jurisprudence reflecting its view that the convention is a 'living instrument' of rights protection. 'Expanding interpretations' of rights challenge the UK's capacity to deal with security interests,[12] which is evident in the legal difficulties the UK has encountered concerning the deportation of terror suspects.[13] The suggested resolution that the UK withdraw from the ECHR[14] is problematic, since these rights are recognized internationally[15] and regionally.

The UN Declaration of Human Rights outlines the inalienable, 'inherent or natural rights of man' connected to human dignity and applicable to 'all people by virtue of their common humanity'.[16] International consensus recognises the need for rights protection and the 'rule of law,' as fundamental determinants of legitimate governance and accountability.[17] Universally recognised rights include the right to equal protection by the law and equality before the law, secured without discrimination; rights to life, freedom from torture, and the liberty and security of persons are relevant to human security. Additionally, the right to a fair hearing, the protection of property, privacy and the freedom of association and

[10]Art 51 of Charter see also *NS v Secretary of State for the Home Department*, C-411/10 [2012] All ER (EC) 1011 (Court of Justice of the European Union (Grand Chamber) and *EM and MA (Eritrea) v. Secretary of State for the Home Department* [2012] EWCA Civ 1336
[11]Commission on a Bill of Rights, 'A UK Bill of Rights? The Choice Before Us' Vol 1 December 2012,6, 2 Citing David Cameron on 2006, 13
[12]*Buckley v United Kingdom* (1996) 23 EHRR 101 [75]
[13]*Othman (Abu Qatada) v the United Kingdom* (Application no. 8139/09) Final judgment 09/05/2012
[14]Hansard 24 Apr 2013: Columns 893-894 899-898 Theresa May
[15]Convention on the Rights of the Child (20 November 1989) 44th session UNGA Res 44/25
[16]Commission on a Bill of Rights, 'A UK Bill of Rights? The Choice Before Us' Vol 1 December 2012 53
[17]J Rawls, 'Theory of Justice' (1st edn, Belknap Press 2005) 4

participation in the community and cultural life[18]have all been recognised internationally, subject to varying degrees of protection. The UN has pledged to protect these fundamental freedoms, acknowledged as central to and reflective of legitimate governance.[19]

UK membership of the EU imports a hierarchy of rights norms akin to those recognised by the international community.[20] UK integration of the ECHR requires the reconciliation of qualified and limited, but not non-derogable rights, within the national context. Their protection is critical to, but not conditional upon, legal citizenship, as 'indivisible, universal values of human dignity, freedom and equality,'[21] to ensure that governmental action aligns to protect these.

Counter terrorist finance measures engage the right to a fair trial (Art 6), a limited right that cannot be balanced against or overridden by individual or public interests. Its scope is defined within the right itself and is engaged by criminal justice and quasi-criminal administrative measures, providing procedural guarantees critical to the determination and protection of the substance of other rights.

Qualified rights are subject to legitimate restriction in balancing these with recognised public interests. The right to a private and family life (Art 8), has become a more critical issue within the deployment of pre-emptive precautionary strategies. These strategies rely upon intelligence some of which is yielded from the extensive reporting obligations in the financial sector, allowing scrutiny and requiring disclosure of private financial data. Article 1, Protocol 1,[22] of the ECHR protects property rights, and whilst not absolute, limits the circumstances of their lawful interference allowing

[18]UNGA 'Universal Declaration of Human Rights' (10 December 1948) UN Doc A/Res/3/217 Art 12,17, 27
[19]UN Rule of Law Indicators: Implementation Guide and Project Tools (2011) para 2 UN Charter Article 1(2)(3)
[20]UNGA 'World Leaders Adopt declaration Reaffirming Rule of Law as Foundation for Building Equitable State Relations, Just Societies' (24 September 2012) UN Doc GA/11500
[21]European Charter of Fundamental Rights C 83/392 30.3.2010 Preamble
[22]*Marckx* v *Belgium* (Application no.6833/74) 13 June 1979, Series A No. 31

deprivations, confiscation or forfeiture where necessary in the 'public interest,' subject to proportionality. Remittance practices reflect religious adherence (Article 9) and all rights, once engaged, draw on the protection of Article 14 ECHR, prohibiting discrimination in their protection.

Art 15 ECHR allows for the suspension of limited and qualified rights in times of emergency, preferable to 'their unadmitted erosion, which may never be reversed.'[23] UK parliamentary process requires HRA certification of legislation and the independent review of terrorist measures is secured through the Independent Reviewer for Terrorism and ongoing judicial scrutiny. These independent and impartial reviews of measures are critical processes which offer a check on the protection of rights.

Protection of qualified rights in the context of security measures and terrorism requires the necessity and proportionality of measures,[24] restraining unnecessary action beyond the balancing of public interests.[25] Promoting fundamental rights, autonomy and freedom, as part of the greater protection of liberty[26] and security legitimises public goals in the prevention of terrorism. The normative framework provides a platform for scrutiny of state action to ensure that the values threatened by terrorism also underpin the protection of human security as a reflection of democratic and international values whose protection is enduring across time and geographical boundaries.

[23]O Gross 'Chaos and Rules: Should Responses to Violent Crises Always Be Constitutional?'(2013)112 Yale LJ 1096 -1130
[24]Secretary of State for Home Department 'CONTEST-The UK Strategy for Countering Terrorism' (Cm 8123, 2011) [1.14],[1.17]
[25]UNGA 'United Nations Global Counter -Terrorism Strategy Review' (26 June 2012) UN Doc A/ 66 /L53 9
[26]A Coben, *Protection of Property Rights within the European Convention on Human Rights* (1st edn, Ashgate Publishing 2004) 80

4.1.1 Imperative for action - preserving human security

Terrorism poses the risk of catastrophic loss of life, demanding that states[27] respond to protect[28] their citizens[29] from national and international terrorist threats,[30] both actual and potential, to fulfil their governmental duty[31] and sovereign responsibility.[32] This accountability and responsibility to protect under the human security paradigm[33] extends beyond national borders, to the protection of the wider international community. The responsibility to protect is reflective of national sovereignty, supported at international level by UN membership and a commitment to preserving international peace and security. Individual protection is afforded through the state's protection of its, citizens but terrorism as an international concern invokes a consensus for protection by the international community derived from respect for individual rights, irrespective of nationality or residence. The UN has pledged to guarantee[34] to protect security and rights within the cosmopolitan community and to include these as a key concern shaping the international security agenda.

Human security paradigm places citizens[35] at the centre of security debates and concerns:[36]

> safeguarding persons from terrorist acts and respecting human rights both form part of a seamless web of protection incumbent upon the state.[37]

---

[27]HM Lomell 'Punishing the uncommitted crime' Hudson B, UgelvikS, (1st edn) *Justice and Security in the 21st Century rights Risks and the rule of law.* (Routledge 2012) 93

[28]Human Rights Watch 'In the Name of Security: Counterterrorism Laws Worldwide since September (2012 US)

[29]Government Reply to Report by Lord Carlisle of Berriew QC 'The Definition of Terrorism' (CM 7058, 2007) [16]

[30]A Zwitter, 'Human Security and the prevention of Terrorism' (1st edn, Routledge 2011) 8

[31]I Pacewicz, 'Human rights in the state of nature: indeterminacy in the resolution of the conflict between security and liberty' (2011) 17 UCL Juris Rev, 36

[32]A Ashworth, 'Crime Community and creeping consequentialism'(1996) Apr Crim LR 220-230,220

[33]Commission on Human Security, *Human Security Now: Final Report* (2003) 4

[34]G Evans, 'Responsibility to Protect ' (1 edn, Brookings Institution Press 2008) 37

[35]V Mitsilegas , 'Security versus justice and the individualisation of security and the erosion of citizenship and fundamental rights.' (1st edn) *Justice and Security in the 21st Century rights Risks and the rule of law.* (Routledge 2012) 200

[36]D Roberts D,' Global Governance and Biopolitics Regulating Human Security' (1edn, Zen Books 2010)15

[37]International Commission of Jurists, 'Assessing Damage Urging Action Report of the Eminent

The human security framework extends beyond physical security.[38] This protection is premised on the empowerment of individuals within conditions enhancing human fulfilment and freedoms fostering the protection rights, conceived of as a 'bundle' of inseparable needs and rights, denying the prioritisation of physical security. Human security redefines the relationship of individual needs and state obligations, viewed as interdependent[39] and inclusive of rights protection, not competitive and hierarchical. Human 'security without respect for human rights, does not exist,'[40] since rights are entitlements arising from citizenship and are not conceived as varying in substance according to the threat posed.[41] Rights act as normative standards and principles defining the legitimacy of state governance, transcending nationality in their universal value and justifying the necessity for state action and cooperation[42] to protect international security.

The human security paradigm has been criticised for being vacuous and opaque, a loose framework of connected but elastic values and principles, which are difficult to transpose into policy and action. The vagueness of its concepts leaves them open to flexible interpretation that may lack consensus and lead to variable protection. The human security paradigm has been questioned as to whether it is capable of effective protection of its norms or whether it merely operates as a policy guide for consideration.[43] Despite these criticisms it offers a normative position for assessing international action to protect community security interests

---

Jurists Panel on Terrorism, Counter-terrorism and Human Rights - Executive Summary, Geneva (2009)

[38]UNHSU, 'Human Security Theory and Practice' Office for the Coordination of Humanitarian Affairs United Nations (2009) 6

[39]S Tadjbakhsh, AM Chenoy, 'Human Security Concepts Implications' (Rouledge 2007) 18, 28

[40]Alberto Iribarne, Ministry of Justice, 'Security and Human Rights' 13 November 2006 EJP Southern Cone Hearing

[41]M Pash, 'Human Security and Exceptionalism (s): Securitisation ; Neo-Liberalism and Islam' (1edn) G Shani G, M Sato, M Pash, '*Protecting Human Security in the post 9/11 World. Critical and Global Insights*' (Palgrave Macmillan Hampshire 2007)

[42]G Shani, ' Democratic Imperialism' Neo Liberal Globalisation and Human (In)Security in the Global South' (1edn Shani G, M Sato, Pash M, '*Protecting Human Security in the post 9/11 World. Critical and Global Insights*' (Palgrave Macmillan Hampshire 2007) 17

[43]M McDonanld 'Human Security and the Construction of Security' *(*2002)16 (3) Global Society 277- 295,280

concordant with the parallel protection of internationally recognised individual rights, avoiding the prioritisation of either.

The framing of security threats 'remain[s] sealed from within, by those who stipulate what may constitute security.'[44] The security/liberty divide is evident where state responses conceive of security as 'low threshold' justifying state intervention. The human security paradigm balances the physical insecurity threatened by terrorism as an obligation requiring the paternalistic approach of states and the international community since rights protection is itself a security concern. The paradigm is not geographically bound, and neither is the protection it justifies. The weight attached to rights in developing security policy is consequentialist, defined by the presenting risk to justify pre-emptive action, and the curtailment of their operation is itself unjust. Rights should not be 'squeezed out by the imperatives of security and public safety'[45] which the impact of post 9/11 CTS has threatened. The duty to protect goes beyond the criminalisation of terrorist acts, inclusive of pre-emptive measures to suppress terrorist finance;[46] both approaches require the avoidance of 'curtailing hard won rights, and pursuing practices,' which fail to respect fundamental rights.[47] Rights as entitlements of citizenship[48] and are integrated into the protective cloak of the human security paradigm. They are not 'elastic' and the substance of their protection should not be compromised to accommodate CTS even where there is a responsibility to protect.[49] This paradigm resolves the juxtaposition in balancing rights and security, by conceiving of rights as complementary[50] not conflicting[51] with security concerns.

[44]Roberts(n36) 11
[45]Joint Committee on Human Rights, 'Counter Terrorism Policy and Human Rights', HL (2009-10) HL 86 HC 111 Summary
[46]UNGA International Convention for the Suppression of the Financing of Terrorism (adopted 9 December 1999, opened for signature 10 January 2000) (2000) 39 ILM 270 the Preamable and Article 4
[47]International Commission of Jurists, 'Assessing Damage Urging Action Report of the Eminent Jurists Panel on Terrorism, Counter-terrorism and Human Rights. Geneva (2009)
[48]HMSO 'The national security Strategy of the United Kingdom: update 2009: Security for the Next Generation' (Cm 7590, 2009) [3.4]
[49]International Commission of Jurists, 'Berlin Declaration' (August 2004) para 3
[50]UNGA 'The United Nations Global Counter-Terrorism Strategy' (20 September 2006) UN Doc A/Res/60/288
[51]Joint Committee on Human Rights, 'Counter Terrorism Policy and Human Rights', HL (2009-10)

The UN Global CTS illustrates the commitment of states to universal security and the parallel protection of rights, in drawing on the 'sovereign equality of states' in acting to address terrorism through unanimous recognition and cooperation in a coordinated effective response to maintain international peace and security. This strategy directly reflects the values and commitment of the international community in protecting human security within an international counter terrorism framework that promotes rights protection and fundamental freedoms while countering terrorism.[52] This reflects international solidarity and a commitment to the international community as a 'globalized society' in protecting shared security interests, shared values and fundamental rights[53] in accordance with existing international obligations aligning with the human security paradigm.

The normative standards presented act as a brake on excessively broad international policy, safeguarding fundamental rights in line with principles of fairness, natural justice[54] and the rule of law. As an international normative framework, it provides accountability against which global financial governance and AML and CTF measures can be evaluated (see chapter 5). It offers an ethical gateway to international governance and citizenship and is therefore relevant to promoting financial inclusion, considered in the Somali context later in this chapter (see 4.3). Inclusion is a necessary element of the normative framework, reaffirming the essential non-discriminatory requirement of individual rights protection, and is central to the fair opportunity and the capacity of states to apply CTF measures. It justifies and is justified by the concept of global constitutionalism and citizenship,[55] reflecting international consensus in framing CTF policy and the rights protection within this.

HL 86 HC 111, 5

[52]UNGA 'The United Nations Global Counter-Terrorism Strategy' (15 September 2008) UN Doc A/Res/62/272 Para 7

[53]UNGA 'The United Nations Global Counter-Terrorism Strategy Review' (12 July 2012) Un Doc A/Res/66/282 para 9

[54](n48) paras 53-55 Executive summary

[55]The Universal Declaration of Human Rights Adopted by UNGA on 10 December 1948 Article 22

4.1.2 Securitisation - balancing liberty and security

The justification for regulation of ARS in the 'fight against terrorism'[56] stems from the threat of terrorism to individual and community interests. The states' conception[57] of this and the perceived vulnerability shapes subsequent responses [58] and justifies the form of measures adopted to meet this threat, but often at the compromise of rights protection.[59]

The perception of an unknown and uncertain terrorist threat, which is difficult to quantify with accuracy, renders the assessment of the extent of the response to address this threat problematic, particularly where the threat is dynamic and pervasive.[60] Political pressure demands executive action to provide security reassurance in times of increased insecurity and risk, and may result in symbolic measures that lack efficacy. The climate of fear generated by terrorism and the consequent insecurity is powerful, the threat vivid and immediate, impacting on the public and the executive's consciousness. The nature of this threat can lead to 'cognitive panic and biases' increasing the fear of the prescient threat and the perceived value of security measures[61] to address this. Such 'cognitive failings' drive the often reactive and consequent symbolic responses to public 'panic'. This perceived insecurity requires executive reassurance, physical and psychological, that this threat is addressed and contained.[62]

Executive risk based management, addressing the collective threat of terrorism, lends to tipping the balance between security and liberty in favour of prioritising security, the latter being an immediate community concern. The danger is that 'prospective risk always threatens to

[56]Directive 2005/60/EC 26 October 2005 OJ L309 of 25 November 2005, recital 5
[57]UNHSU, 'Human Security Theory and Practice' Office for the Coordination of Humanitarian Affairs United Nations (2009),8
[58]E Van Brunschot, EGibbs, L Kennedy, 'Risk, Balance and Security' (1edn, Sage 2008)
[59]D Bigo, A Tsoukala, *Terror, Insecurity and Liberty. Illiberal practices of liberal regimes after 9/11* (1st edn, Routledge 2008) 15
[60]Walker C 'Keeping control of terrorist without losing control of constitutionalism' (2007) Vol 59 Stanford Law Review 1395-1463, 1396
[61]EA Posner, A Vermeule*, Terror in the Balance* (1st edn, OUP 2007) 27
[62]Posner (n61)1100

outweigh present interest[s].'[63] The notion of balancing security and liberty sets these as competing, not complimentary, interests,[64] failing to deliver an adequate solution, since neither liberty nor security can be protected without regard to both,[65] requiring these interests be carefully weighed against future risks.

Action taken in a climate of panic may lack rationality, and be over reactive since the presenting threat is an immeasurable representation of the increased insecurity. Current and future risks more readily outweigh rights protection, without scrutiny of whether restrictions on rights yield security benefits. The harm from restrictions on rights is less immediate, only emerging when measures are applied; their effects are less quantifiable but enduring often through permanent measures maintained long after the threat has abated.[66]

Security is the context for the operation and protection of rights since the former has little value without the latter. The balancing of security and rights implies that these values are separate, incompatible and competing elements. The concept of 'balance' recognises the need for increased security in the face of an increased threat from terrorism which 'makes necessary a new equilibrium'[67] and may rightly necessitate a change in the operation of rights as norms, but not their extinction. This reconfiguration prompted by fear and panic in responding to the immediate or prospective security interests often leads to measures constraining rights, normalizing this response as one that is necessary to address the terrorist threat.

Protection from terrorism should be conceived and delivered from a prevention orientated and rights centred framework, which places equal

[63]L Zedner, 'Securing Liberty in the Face of Terror: Reflections from Criminal Justice' (2005) 32(4) Journal of Law and Society, 516
[64]LK Donohue, 'The Perilous Dialogue' (2009) 97 Cal L Rev 357-392, 358
[65]Posner EA, Vermeule *A, Terror in the Balance* (1st edn, Oxford University Press 2007) 20-22
[66]Posner EA, Vermeule A, 'Emergencies and democratic failure'(2006) 92 Virginia Law Review 1091,1092
[67](n63) 509

importance to preserving rights within the securitisation process.[68] The perception of terrorism as an exceptional threat legitimises exceptional responses, which risk eroding rights protection where rights are viewed as conditional upon prior security[69] without the guarantee that measures will actually deliver this.

Derogating from fundamental rights is often justified in the protection of the majority as a public interest issue operating disproportionately against the protection of rights, the impact of which often targets minority groups.[70] The normative framework conceives security concerns equally alongside the protection of rights, with both as equal facets of human security. Any decision to depart from rights protection when faced with a terrorist threats and conditions of uncertainty is questionable. The resulting harm is not necessarily mitigated by justifying the effectiveness of measures if it can be achieved without this, in line with proportionality requirements.

Alternative perspectives consider liberty and security as co-dependent elements of the human security approach, 'security as a value for liberty, and liberty is a value for security', encompassing a wider range of 'rights' concerns.[71] This removes conflict in requiring their 'balancing,' one against the other, trading on the justification of their value. The notion of balancing these interests is an oversimplification; rights and security are both critical to the public interest.

Reliance on executive trust in securing appropriate security has previously proven misguided. Parliament often lacks the necessary information to contest any threat, the executive having authority here, with time frames and processes for proposed measures limiting their

[68]UNHSU (n57)7,10
[69]M Ignatieff *The Lesser Evil* (1st edn, Princeton University Press 2004*)* 5 "the liberty of the majority is utterly dependent upon their security"
[70]*A v Secretary of State for the Home Department* [2004] UKHL 56 Lord Bingham of Cornhill at 237
[71]C Walker, *Terrorism and the Law,* (1st edn, OUP 2011) [1.48], [1.55]

scrutiny.[72] Constitutional mechanisms, both political and legal, need to exert control over executive action, through processes allowing fair, full and transparent accountability for addressing security interests. A rights framework enables assessment of the intrusiveness and proportionality of measures rather than sensitivity to risk.[73] Constitutional mechanisms reviewing executive security measures need to yield structural and substantive accountability.[74] Judicial oversight increasingly acts as a powerful control, deferring to policy but reviewing the limits in which it chooses to operate to protect rights as existing legal obligations.[75] Executive justification for action is constrained and bound by judicial review, a constitutional constraint, its limits bound by the degree of interference with rights and of what is considered constitutionally appropriate.[76]

The normative framework presents rights as values that prevail even against the most extreme terrorist threat, remaining deserving of protection as standards against which international CTS and action can be assessed. It ensures that international community and individual state security interests are delivered on the basis of protection of rights as community values. These values derive from consensus as to their protection and the cooperation to achieve this, 'inclusion' a pre-condition to the both. Inclusion requires CTS to align with existing rights protection and so refrain from marginalising minority groups or interests through action designed to protect the wider international community.

[72] AW Neal 'Terrorism law making and democratic politics' (2012) 24 Terrorism and Political Violence 357,358

[73] Walker (n60) 1456-1459

[74] M Shepherd 'Parliamentary scrutiny and oversight of the British War on Terror: From accretion of executive power and evasion of scrutiny to embarrassment and concessions' (2009) 14 Journal of Legislative Studies 191-218, 196

[75] F De Londras, F Davis, 'Controlling the executive in times of terrorism: competing perspectives on effective oversight mechanisms' (2010) 30 Oxford Journal of Legal Studies 19-47, 44-46

[76] A Kavanagh 'Constitutionalism, counterterrorism and the courts: changes in British Constitutional landscape' (2011) 9 International Journal of Constitutional Law 172-199, 189,198

4.1.3 Cosmopolitan constitutionalism - the foundation for emerging norms

Modern terrorism threatens international peace and security necessitating the cooperation of the international community to address this through a cosmopolitan approach that draws on shared values and concerns for the human security of citizens. The human security paradigm creates a commitment to protecting global citizens beyond individual state borders, recognising the interconnected nature of security concerns and rights, which drive cooperative action.

Globally, states look to the actions of other states in assessing the limits of acceptable action and standards of expected protection. The normative framework presents universally accepted 'constitutional' values which have emerged from a 'cosmopolitan' and internationalised approach to guiding the protection of security and fundamental rights from terrorism.[77] These constitutional norms emerge from national values and collectively assert a form of international 'governmentality' marking out the right to protection, and placing limits on the exercising of international power in pursuance of CTS.

These constitutional norms, inclusive of *jus cogens*[78] norms of customary international law, and respect for the rule of law, are 'central to ensuring the predictability and legitimacy of international relations.'[79] They include substantive rights and due process guarantees protected in international legal instruments. These rights are indicative of human value reflected in national citizenship within states across the international community, regardless of the differences in nationality, ethnicity, race or religion in the states within the cosmopolitan community. Cosmopolitan

[77] N Beekarry, 'The International Anti-Money Laundering and Combating the Financing of Terrorism Regulatory Strategy: A Critical Analysis of Compliance Determinants in International Law' (2011) 31(1) North western Journal of International Law & Business 149

[78] Vienna Convention on the Law of Treaties United Nations 23 May 1969, Treaty Series, vol 1155, 331, Article 53

[79] UNGA Report of the Secretary-General 'Delivering justice: programme of action to strengthen the rule of law at the national and international levels' (16 March 2012) UN Doc A/66/749

internationalised governance is drawn from the state consensus to participation in the international community in order to protect these mutually accepted cosmopolitan values from the threat of terrorism.[80]

The normative framework presents cosmopolitan values as boundaries regulating action and decision making, and determining acceptable limits to confine action against normative conflict. This includes the presumption that existing international treaties and those measures promulgated under this framework to counter international terrorism, do not violate human rights and are interpreted as protective of these,[81] ensuring these ethical values secure regulatory justice.[82] The constitutional norms sit aside from the lack of consensus as to the definition of terrorism,[83] which should not detract from the need to protect inherent values.

Increased globalisation has prompted international cooperation to address international terrorism and the challenge of developing a coordinated, integrated global response based on collective international action[84] to provide security and protect fundamental values. Mutually recognised norms create a 'pressure for conformity [and] desire to enhance international legitimation', requiring adherence to and protection of these. These are elements on the basis of which a certain exercise of power is founded and legitimised,'[85] which removes 'undesirable moral subjectivity',[86] and the selective application of measures. This ensures that no state or individual within the cosmopolitan community should be

[80](n48) [9], [55]
[81]A/ 67/396 'Promotion and protection of human rights and fundamental freedoms while countering terrorism' 26 September 2012 [15], [17]
[82]C Walker C, 'Cosmopolitan liberty in the age of terrorism' in A Crawford International and Comparative Criminal Justice and Urban Governance Convergence and Divergence i*n Global, National and Local Settings*' (Cambridge University Press 2011)
[83]B Saul , 'Civilising the Exception: Universally Defining Terrorism' Masferrer A *Post 9/11 and the Sate of Permanent Legal Emergency* (1st edn, 2012) 79
[84]M Llobet, 'Terrorism: Limits Between Crime and War. The Fallacy of the Slogan 'War on Terror'' A Masferrer (1st edn) Post 9/11 and the Sate of Permanent Legal Emergency (Springer 2012)112
[85]M Foucault M, 'Abnormal' (1st edn, Picador 2003) 53
[86]D Roberts, 'Global Governance and Biopolitics Regulating Human Security' (1st edn, Zen Books 2010) 150,152

subject to unjustified differential treatment, since this framework requires inclusivity at all levels.

The cosmopolitan approach provides a framework of values engaging the international community in delivering CTF legislative and juridical processes, through international treaties and specific legal measures,[87] which protect these norms[88] and direct the scope of action.[89] Rights are presented as cosmopolitan values, interconnected with security,[90] and the credibility and justification of international action rests on the capacity of measures to protect these. States remain free to flex their own sovereignty, addressing national terrorist threats confined to avoiding conflict with cosmopolitan standards of protection.

4.2 Alternative remittance systems – self regulation and normative compliance

Having outlined the normative framework and standards of rights protection in the previous section, this section now seeks to critique the operation of ARS, such as Hawala against this normative framework to consider the protection they offer to fundamental rights and the obligation on states to address deficits in this protection. This draws on a critical analysis of the system values and their risks, as identified previously in chapter 2 to assess their normative compliance.

Chapter two presented a critical analysis of the model of operation of ARS, identifying the following features as common to these systems: trust, informality, social status, network relationships, compliance, unique systems for record keeping, lack of standardised procedures, fast transaction speed, multiple operators, unrestricted transaction values and

[87]UNSC Res 1373/2002
[88]Statement by the Special Rapporteur on the promotion and protection of human rights while countering terrorism at the 66th session of the General Assembly New York, 20 October 2011
[89]KL Scheppelle,'Global security law and the challenge to constitutionalism after 9/11' (2011) April Public Law, 356,358
[90]Commission on Human Security 20 *Human Security Now: Final Report*, New York: CHS, 4, 6

the context of operational activity often ancillary to a main business. These features are now considered in more detail as to their alignment with the protection of human security and international standards in the prevention of terrorism and their normative compliance.

4.2.1 Cosmopolitan networks and the protection of human security

Remittance systems derive from and operate within particular socio-cultural and ethnic contexts, supporting economic migration and serving the migrant diaspora in their preservation of cultural and family ties[91] within home countries, through financial support. They have become successful global cosmopolitan networks, reflecting their common community of values and shared morality internally and externally.[92] This common value base is a strength, binding its members to an allegiance to the communities they serve. They have provided community benefits beyond acting as a 'financial conduit' in facilitating the expression of religious and cultural heritage through mutual association.

Although international in reach and sharing common characteristics, without regulation there are no standardised processes for procedural operation applying across all levels of these networks. They remain self-regulated pursuant to unwritten understandings derived from a common model of operation and shared value base. Their independent method of operation does not invite a commitment to support the implementation of international standards to manage financial risk.

These systems contribute to human security by providing access to financial services, offering a financial lifeline to vulnerable communities in developing countries, reducing poverty and supporting microfinance. ARS have been valuably exploited by international aid organisations and

[91] Art 8 ECHR, Art 17 ICCPR, Art Art12 Universal Declaration of rights
[92] Walker (n82)

NGOs to assist in the distribution of financial relief.[93] In times of disaster they protect and sustain life.[94] This protection of life and support of family grounds their claim of legitimacy and their tolerance by the international community for the financial support they provide to communities where alternatives are absent. They have the capacity to deliver large volumes of finance to developing countries, at low cost and with speed, contributing to the protection of human security when threatened by natural disasters or conflict.[95]

The microfinance associated with remittances has delivered tangible quantitative and qualitative health, education, social and infrastructure benefits promoting regional stability and countering the very conditions giving rise to poverty, discrimination and exclusion, which further terrorism. This point is increasingly noted by developed states as important in reducing the spread of terrorism, countered by the promotion of financial inclusion and a sense of citizenship, both locally and globally. Remittance systems have relevance in offering a secure and trusted transfer mechanism, seeming to offer financial security. The literature suggests a low default rate for the delivery of funds, securing property, with operators paying out for any loss regardless of fault.

The effectiveness of these systems lies in their extensive geographical reach and penetration of rural areas through low cost methods drawing on the minimal but effective use of modern technology to transfer value at speed. Their low cost operational structures make them efficient, affordable and accessible for the financially impoverished. These networks facilitate connections with the migrant diaspora located in developed countries, promoting kinship across international migrant communities. Charitable gifting by these communities as part of religious

[93]SM Maimbo 'The money Exchange Dealers of Kabul: A study of the Hawala System in Afghanistan A Study of the Hawala System in Afghanistan' Working Paper No.13 World Bank August 2003, 12, 24 NGOs are estimated to have channelled us$200 million s thought the hawala system
[94]Article 2 ECHR, Article 3 UDR , Article 4 ICCPR
[95]Article 1 Protocol 1 ECHR, Art 17 Universal Declaration of Rights

adherence drives outgoing remittance from the migrant diaspora, often through these systems.

The underlying system values however are exclusive to specific ethnic, cultural and religious groups, not drawn from wider international consensus, and are not universally accessible and lack normativity. The system values prioritise internal values and interests over wider external global security concerns. Their risk of misuse for terrorism and risks to human security stem from the prevalence of ARS in conflict zones and areas of terrorist activity, where weak governance and corruption of both the formal and informal financial sector is rife. Their self-regulation in such circumstances is an inadequate safeguard against the threat from international terrorism where it derives from a value base that is subjective. This is at odds with the objective non-personal standards of the formal financial sector and the wider business community.

Consequently, ARS present an international security risk[96] as international networks allowing unregulated transactions which may compromise security. Their lack of ability to address these risks in a uniform manner fails to accord with recognised international CTF standards for risk management. The states in which these systems operate are compelled to ensure these systems are normatively compliant with international normative values to protect human security by addressing the risk that these systems present.

4.2.2 Self-regulation: adequacy of rights protection

The normative values of ARS were presented in chapter 2 as including flexibility, reciprocity, co-dependence and trust. The trust identified related to service expectations and the reputation of operators to act according to the system values and aims. Self-regulation offered no formal system for

[96]Art 2 ECHR, Art 3 UDR, Art 6 ICCPR

guaranteeing adherence to this internal code of conduct to protect the property rights of operators and consumers.

A key operational concern is the control over entry to these systems, which is subject to conditional factors including: social standing, shared culture, religion, with ethnicity and business contacts acting as signals demonstrating the shared values binding these systems. Social factors associated with caste, lineage and clan render ARS potentially inaccessible to outsiders. They appear to operate as a 'closed shop',[97] which is potentially discriminatory, rather than applying a neutral objective assessment of conduct related to service performance and presenting risks.

The lack of transparency in their operation and internal regulation provides a protective shield of secrecy, potentially concealing criminality, rather than being necessary for shared religious observance.[98] The strength and conviction of internal values and adherence to these has been considered to be more effective than the professional codes of conduct of the formal sector. These ASR however, lack a clear articulation of standards or the transparency required to secure their compliance and application in different settings/jurisdictions. The nature of their shared values is potentially discriminatory, excluding those who do not share these characteristics, contrary to the principles of non-discrimination which states, pursuant to the normative framework are required to uphold. These mutual values as an enforcement mechanism are a perilous reflection of the commitment to upholding these uniformly. This exposes ARS to exploitation for 'individual' ends, which may be illegitimate, placing personal allegiances and system values above wider security concerns, and risking the accusation of complicity for illicit ends, lacking normative compliance.

[97] SR Muller, *Hawala: An Informal Payment System and its Use to Finance Terrorism*(1st edn, Lightening Source, 2006) 32

[98] S Jabbar, 'Money laundering laws and principles of Sharia: dancing to the same beat?'(2011) JMLC 2011, 14(3), 198-209, 199, 203

The values of remittance systems are self-selected, personal and culturally relevant, more enduring in being self-imposed and reflecting community values but vulnerable to indiscriminate application. Conditions of entry and operation do not relate to service requirements, mode of operation, or system or security risks in terms of AML and CTF. Nor do they secure the protection of property or privacy concerning transactions and 'business' information. They have the potential to be self-furthering without accountability or legitimacy. Informal self-regulation does not imply an absence or insufficiency of any internal governance, but does lack transparency and objective standardisation, review and enforcement to protect against the threat of misuse from terrorism. These deficiencies leave these systems vulnerable to internal and external misuse, lacking accountability for sanctions against internal transgression of conditions of membership. They lack the externality required of international networks of operation and the normative compliance necessary to counter terrorist finance and prevent their penetration for criminal misuse.

Participation by Hawaladars is based on their existing community profile and reputation, relating to existing business interests without requiring any pre-requisite knowledge, skill or training.[99] Community presence is linked to the perception of service quality, reliability and trustworthiness, acting as a gateway to system membership. Underlying objective assessment of membership against risk based criteria to guide as to operator suitability in order to protect the system from misuse, is absent. No account is taken of previous business history, competence, criminal wrong doing or associations with organised crime or terrorism. No AML or CTF assessment is made of the underlying business supporting the remittance activity in providing cash pools. The arbitrary nature of 'values' and 'trust' as pre-conditions of entry and continuing operation, is contrary to international regulatory standards that are required to be sufficiently certain, precise and consistent, and non-discriminatory. The normative compliance of these systems is questionable and perpetuated where

[99]Maimbo (n90) Box 1 see case studies of Hawaladars

'entry' is based on personal recommendation and approval of existing members, which is internally driven and lacking objectivity and impartiality.

Unwritten and informal admission to the system can be revoked if the norms of operation are breached; failure to adhere to these is also considered a violation against the community. Community accountability as self-regulating standards of practice is a powerful ethical construct internally and externally but is ineffective in constraining action to secure compliance. Given that these systems operate in areas of prolific organised crime and terrorist activity, the concern is that 'illicit' values may permeate or reflect those of the wider community that these systems serve. Access to, or exclusion from, systems is not objectively based, lacking due process and transparency, challenging operator suitability and the sanctioning of operational transgressions.[100] These are difficult to enforce at local level where the wrongdoer has pre-existing community and business status and where there is no capacity to prevent continuance.

Disproportionate arbitrary penalties can potentially be applied to those operators who transgress system values, without accountability or redress contrary to the principles of natural justice and fairness. Internal sanctions appear to be an all or nothing approach, lacking proportionality in absence of a connection to the severity of the transgression, and failing to take account of the operator's role and responsibilities. Potential exclusion of 'wrong doers' denies access to the system but is ineffective in lacking a rational connection to AML and CTF standards. There is no formal record of sanctions or regulation of the sharing of this information across the system network, or externally with law enforcement where sanctions relate to criminal activity or actors. Penalties can be applied which impact on the reputation and livelihood of the operators without any process for adjudication/appeal.[101] The perception created is that self-

[100]Muller (n97)33
[101]Art 10 UDR right to fair hearing and art 8 right to effective remedy, Art 6,7 ECHR,

regulation serves to protect and prioritise the commercial interests of individuals and the network, overriding wider security concerns. They are potentially self-furthering without external accountability, applying disproportionate arbitrary penalties that fail to protect the system in a normatively compliant way.

The informality of their arbitrary self-regulation and lack of formal adjudication mechanisms supporting enforcement of internal regulation is contrary to the accepted notions of fairness and justice expected of an association of international reach. It fails to guarantee rights of redress for customers and the protection of property. Although sanctions may be imposed for breach, given their impact on livelihood, reputation and family life, mechanisms for adjudication and redress of complaints of misconduct and service quality go unaddressed. Given the volumes of transactions these systems handle, this lack of procedural protection for infringements of property rights, is a normative weakness. The exclusion of operators may be unenforceable in some areas where ARS are the only method of transfer, the financial inclusion they offer undermined. Allegations of misappropriation of property are rarely cited in the literature, suggestive of the practice of operators 'honouring' non-payment of funds without fault, but may also operate to trade-off accountability through financial appeasement, contrary to the concept of fairness and justice.

4.2.3 Balancing privacy and property rights

Remittance services fail to secure the transparency of parties to the transaction or their purpose through the lack of uniform standards for record keeping, restricting the capacity to trace transactions internally and in the formal sector. This is further hindered by the consolidation and settlement phases of their operations. This lack of transparency

ICCPR Arts 14,15

disproportionately protects the individual privacy of clients above wider community security, placing the community status, tied to the clan status, of the client above wider security risks. Since transactions with operators are based on existing relationships and client knowledge,[102] further scrutiny is prohibited by social codes that would undermine the social capital on which these networks are founded. Privacy remains protected with no transparent criteria for displacing this. Operators are at risk of community pressure and self-serving financial interests, which may facilitate potentially 'illicit' transactions without any obligation to disclose or subject these to external scrutiny by authorities. Exposure to misuse can remain hidden contrary to the key principles of CTF. These require transparency and scrutiny of action to protect human security threatened by terrorism, where privacy rights can legitimately and justifiably be proportionately displaced to protect against international terrorism.

Remittance systems as cosmopolitan networks of operation offer no mechanism for securing confidentiality of information related to business practices and customer transactions. There is no procedure to regulate information sharing within the network or procedure for disclosure to external law enforcement agencies, proportionate to the purpose or risk. Information appears to be communicated by word of mouth through informal networks without constraint. Records, uniquely personal, are traditionally kept until the completion of the transaction, then destroyed. Privacy, a social currency, is central to the system in preference to mandatory scrutiny, which would be perceived culturally as intrusive. ARS operate as a closed system to outsiders, raising concerns as to the motivation of operators to report illegality or misappropriation of property. This would likely be managed within the network itself, beyond external accountability, operating to their own standards and assessment in prioritising the risks to be acted on. Whilst informality enhances system efficiency, it limits external investigation by law enforcement and places the protection of property and security risks on a 'voluntary basis'.

[102]Muller(n97) 31, 36

These systems afford no protection against illicit transfers, since there is no protection against the risk of comingling of legitimate and illegitimate funds, to which customers have not consented and are entitled to protection against. The integrity of the whole financial system, and the formal banking sector and clearing houses, with which these systems interface, is therefore compromised. The lack of verification processes leave these systems reliant upon the individual ethics of the system operators for any detection and enforcement. States have an obligation to ensure the protection of the property rights of their citizens by providing a legal framework to protect these, contributing to the wider protection of the international financial system, rather than leaving this to the self-regulation of informal ARS. The international reach of these systems requires all states in which ARS operate ensure the same parity of protection of property and security in accordance with the international CTF agenda, to prevent the misuse of funds.

4.2.4 Servicing the community – promoting financial inclusion

The values of ARS promote a sense of community identity, delivering unity and cohesion which may also enable the concealment of illicit acts in absence of enforceable standards of conduct defining network relationships. Compulsion, driven by the consensus of international standards of accountability, is a more effective driver of CTF compliance. The informality of these systems explains their survival and their inability to blend with technological innovation and formality. The use of the formal sector for making large settlements between networks suggests the selective use of technology for self-interest and a reluctance rather than inability to utilise technology derived from resistance rather than a lack of capacity for formalisation through regulation. Preference for ‘traditional’ models of operation cannot justify compromising human security that benefits all.

The success of ARS lies in the appropriate use of low cost technology and select service provision requiring minimal capital investment and supporting infrastructures. Systems are designed to be basic, accessible, fast and low cost relative to transaction volumes and low profit margins. Customers can structure payments to individual requirements unfettered by restrictions. Cash pools assist transaction advances and act as insurance. The lack of documentary requirements promotes financial inclusion in areas where access to this evidence is problematic, but may enable access by illicit actors. In developing countries reliant on cash based economies and word of mouth recommendation, remittances align with common cultural practices and community norms, promoting accessibility. They cater for small value periodic transactions or large one off payments and allow for seasonal delivery of funds for charitable purposes[103] without minimum values. Provision of door to door services in remote areas aligns with religious customs critical to accessibility. They enable the financial inclusion of rural communities and enable developing countries to withstand economic volatility.

Efficiency and effectiveness do not, however, equate with normative compliance. As community driven initiatives they operate within a familiar and recognised culturally and ethically sensitive framework of practice valued by the communities they serve. These values are not, however, transparent, transferable or shared across the wider global financial community. Their normative compliance poses challenges for regulators given the juxtapositions indicated above and raises the question as to whether these systems can be successfully regulated, but firstly as to whether it is ethical to do so.

4.2.5 Squaring the circle – effectiveness and normative compliance

The concern as to whether ARS should be tolerated, regulated or simply made unlawful has been much debated; their claim to legitimate

[103]Muller (n97) 41

operation is connected to the balancing of benefits and demand for their services with their operational risks. Familiarity, the cultural context and economic efficiency along with limited access to the formal sector have secured their continued operation. The legitimacy of their aims and purpose as genuinely ethical underpins the argument against outright prohibition, which is unjustified given their underlying lawful purpose where their weaknesses can potentially be addressed by regulation.

The claim to legitimacy and tolerance is signalled by community benefits which give ease of access and system efficiency to their capacity to deliver large remittances volumes to developing countries. The micro-financial benefits provided are tangible, they deliver quantifiable benefits in health, education, support of social infrastructure, cohesion and regional stability. This counters the conditions of poverty and discrimination that can further terrorist ideology and financial exclusion, relevant to the CTS of states in reducing the spread of terrorism by radicalisation, promoting of financial inclusion and citizenship, both local and global.

These ethical dimensions and benefits would make their total prohibition lack proportionality given their considerable benefits and the possibility of mitigation of risk through regulation. Curtailing their operation removes their benefits without alternative. Western perspectives of risk and financial service provision have been tolerated by developing countries, who have struggled to accommodate this. Preventing the operation of ARS would be an unprincipled assertion of the dominance of the western values reflected in the formal sector's post-modern approach to financial service provision. It would be an affront to the cultural, ethnic and religious values of certain jurisdictions, leading to financial exclusion, undermining the social construct of these communities.

ARS remain rooted in a pre-modern context influencing the ethics of their operation. Their informality enables flexible adaption to changing economic and social contexts. The global cosmopolitan financial

community's shared norms, responsive to global risks, including terrorism, required the protection of rights, supported by an inclusive commitment from states to addressing these. Cosmopolitanism conceives a shared normative framework of both inclusion and obligation to promote cooperation and respect for global human rights norms, to ensure that these are not applied differentially to different financial, social or jurisdictional contexts.[104] Self-interest and selective normative compliance cannot be tolerated through failure to apply or adhere to international standards of rights protection and financial regulation. Normative compliance is based on equality of states, requiring the commitment of all to financial governance and risk management, to prevent terrorism and promote international security in order to claim the protection that the normative framework delivers. Equality also extends to the sharing of the burden and the cost of compliance across the international community, to prevent exclusion; whether this is currently proportionate is questionable.

Regulation is essential to ensure that remittance systems operate to the same objective AML/CTF standards that afford comparable compliance with human rights. Cosmopolitan citizenship can only be maintained if all members act responsibly through normative adherence protecting property, due process guarantees, privacy rights and human security. Self-regulation fails to distinguish between appropriate confidentiality and anonymity, trust and risk, to balance the rights of privacy and religious and cultural association in a proportionate manner with international security concerns.[105] State failure, in areas where these systems dominate, compromises the property rights of UK citizens especially within migrant diaspora communities. States need to ensure that remittance sending and receiving countries are not vulnerable to exploitation for terrorism or criminal misuse compromising community security. A balanced, proportionate and justified limitation of these risks to

[104]UNHSU (n57) 8
[105]Walker (n82)

secure increased protection from terrorism is necessary and can potentially be secured through regulation of these systems. States benefit from the protection of a cosmopolitan approach to global human security and must also adhere to their responsibilities to contribute to its delivery.

The need for the regulation of ARS pre-supposes that these systems are capable of being regulated, a concept that is not unconceivable; the challenge is to preserve the cultural relevance within regulation to prevent financial exclusion. Regulation should be conceived as a shield, not a sword, to preserve the benefits offered by these resilient financial networks given their contribution to sustaining developing communities.[106] This aim is for concordant regulatory standards to address risks through a normative framework that operates to protect rights without compromising the effectiveness of these systems. This should capitalise on the existing rights protection offered by ARS to avoid disenfranchising users and eroding the social capital and values underpinning these networks, and counter any potential for terrorist support.[107]

4.3 A Case study of the Al-Barakaat remittance provider – assessing the normativity and impact of international sanctions and the need for financial inclusion

This case study illustrates the need for cosmopolitan constitutionalism to unify the international communities' implementation of CTF strategy and secure the protection of rights in its application. This case study considers the consequences of Al-Barakaat listing previously discussed in chapter 2, for the Somali populous. It marks out the lack of proportionality of CT measures through a failure to consider and minimise the socio-economic impact of the listing decision. The Al-Barakaat listing is considered in

[106](n57) 10
[107]LK Donohue 'Anti-Terrorist Finance in the United Kingdom and United States' Georgetown Public Law and Legal Theory Research Paper No. 12-031 (2006) 424

relation to Somalia, a remittance dependent economy,[108] to assess its normativity and its effect on the protection of rights for the Somali populous, given the importance of the operator at the time of listing. This case study considers the wider impact associated with financial exclusion and the requirements for 'financial capacity' necessary to embed AML/CTF policy in a normatively complaint manner. Having considered the efficacy of the Al-Barakaat listing, this section concludes with a review of the UK context of remittance operation to compare its normative compliance. In particular, recent technological developments are considered for their potential to facilitate remittances in a normatively compliant manner and promoting further financial inclusion.

4.3.1 Somalia – a remittance dependent economy

Somalia, a 'failed state', had experienced three decades of war decimating its financial sector, and its legal and governmental institutions. Families were reliant on remittances to support Somali households and personal living costs. Incoming remittances were estimated to range from seven hundred million to one billion, with Somali operators handling US $700-800 million servicing a population of 6.8 million, of which 43% were confined to poverty.[109]

Somali society is predicated on strong cultural traditions of family support, with social, moral, and religious duties, driving incoming migrant remittances. This 'investment' in human capital and the social networks underpinning Somali culture enhance social and economic prospects. The majority of transfers occur between spouses (16%), siblings (39%), and children (20%) directed to female household members for child support, reducing child mortality and poverty and increasing lifetime survival rates and quality of life. Remittances also service loans, maintain

[108] UN and World Bank 'Somali Joint Needs Assessment Macroeconomic Development Framework and Data Development Cluster Report' August 2006, para 2 executive summary
[109] World Bank, 'Conflict in Somalia: Drivers and Dynamics' (Washington January 2005) 25

businesses and secure funds for investment, the Somali diaspora providing 80% of the start-up costs for small and medium enterprises.[110] Remittances reduce the impact of critical shock events enabling the support of remote pastoral and rural communities, and promoting macroeconomic development. [111]

4.3.2 The economic and social context of the Al-Barakaat listing

Al-Barakaat was the largest remittance operator and private employer in Somalia. Following listing, those rendered unemployed were reported to have re-joined militias, some with terrorist associations, as a means of financial survival. The listing alienated large sections of the Muslim population consequently leading to financial hardship. Other remittance providers were initially unable to bridge the service gap, with US $25-27 million in incoming remittances lost. Kenya and Ethiopia also restricted inward Somalia remittance transfers, and the Somali currency value plummeted, leading to exchange rate volatility, critical for a weak remittance dependent state.[112]

The Al-Barakaat listing compromised confidence in the transitional government. Remittance services were 'vilified' on an international scale; the US and Norway restricted outward remittances totalling US $7 million and US $7.6 million respectively denying much needed economic support.[113] This action was overly inclusive and lacked legitimacy in absence of evidence as to Al-Barakaat's support of terrorism. Listing was at US insistence, based on weak intelligence, which later proved to be unreliable. Action was discriminatory, since Somali remittances from the ethnic diaspora were targeted based on a presumption of 'community' risk. Listing was based on proximity or presence in terrorist areas as a

[110]UNDP H Sheikh H, S Healy, 'Somalia's Missing Million: The Somalia Diaspora and its role in development' (2009) 5
[111](n108) 2
[112](n109) 28
[113]UNDP Omer A, 'A Report on Supporting Systems and Procedures for the Effective Regulation and Monitoring of Somali Remittance Companies (Hawala)' UNDP (2002) 15,17

presumed rather than proven association of terrorist financing. Rather than mandate control mechanisms, Al-Barakaat was prevented from operating.

4.3.3 Evaluating normative compliance

Somali remittance transfer systems (the 'franco voluto' trade based system and the *Xawilaad* remittance system) provide vital financial services. Listing failed to consider existing internal control of remittance operations according to '*Xeer',* Somali customary law, requiring references for operation from respected and long standing clan elders. Listing was ineffective since Al-Barakaat agents continued operating informally, absent of any control, with risks remaining. Listing without purpose compromises the commitment of states to the enforcement of CTS, locally and internationally, and compromises communities' economic security, lacking normativity and credibility. Somali providers protected property rights by facilitating 'secure' delivery to remote areas through trust based transactions, protecting rights.[114] Remittances facilitated charitable donations[115] providing community support. Zakat, however, was perceived as a potential source of terrorist revenue and the restrictions on remittances compromised local development initiatives and international aid programmes.[116] Clan based post war injury compensation schemes (*Diya)* operating through remittance systems were limited, affecting rural communities. Remittances allowed for the observance of rights of property, religion, family and private life, observing cultural traditions connected to lineage and clan membership. Sanctions, whilst justified, offered a narrow protection of human security

[114] J Cockayne, L Shetret 'Capitalizing on Trust Harnessing Somali remittances for Counter Terrorism, Human Rights and State Building' Centre on Global Counter Terrorism Cooperation March 2012 USA

[115] UN CTS 'Global survey of the implementation of Security Council resolution 1373 (2001) by Member States S/2011/463 1 September 2011, para 74 'The annual operating expenditure of the non-profit sector is approximately $1.3 trillion, and the sector employs more than 40 million people worldwide'

[116] M Bradbury, (2002) *Somalia: The Aftermath of September 11th and the War on Terrorism.* Unpublished report for Oxfam, 24

in failing to address the humanitarian consequences and the resulting financial insecurity and instability. Normative compliance in the context of a civil society and according to the rule of law, promoting community engagement and security through stable governance, is more likely to lead to greater long term change. ARS offer a considerable degree of compliance in relation to many fundamental rights but unregulated they lack the capacity to deter misuse for terrorist finance.[117]

Sanctions lacked normative compliance in failing to segregate the assets of individual customers which were frozen alongside those of the Al-Barakaat, business. Normativity requires measures that do no more harm than the action seeks to prevent. Indefinite listing causing economic hardship in the face of a continuing terrorist threat to Somalia does not meet this requirement. Listing aimed to prevent potential support of the migrant diaspora for terrorism, discriminating on the basis of shared ethnicity and religion, targeting Muslim communities, with no distinction between 'Islam, its institutions and its practices by the majority of the population'.[118] This evidences the deep suspicion held towards Muslin communities immediately after 9/11, and the willingness of states, such as the US, to rely on vague intelligence fuelled this. Prevention of Somali terrorist finance was ineffective since funds were otherwise moved across Somalia's borders. Selective application of UN counter terrorism measures undermined normative compliance since violations of arms embargoes by western states went unaddressed as did Ethiopia's sponsorship of terrorism.

Sanctions of indefinite duration were disproportionate and not conditional on procedural compliance by Al-Barakaat. The international conference on Hawala and the subsequent Abu Dhabi Declaration[119] demonstrated the sector's motivation to 'effective but not overly restrictive'[120] regulation,

[117]Government Response to the secretary of State for Foreign and Common Wealth Affairs ' Piracy of the Coast of Somalia' Tenth report Session 2011-12 (Cm 8234, March 2012) 19
[118](n109) 42
[119]Abu Dhabi Declaration on May 16, 2002.
[120](n113) 18

not initially advanced in light of the listing. Sanctions offered no graduated or tailored approach to prevention and deterrence and were ineffective since other providers remained operational, the risks remaining. Listing lacked normative compliance since operators were made disproportionately accountable for 'failed' state governance and prevention of terrorist finance.

4.3.4 Continuing security concerns – terrorism and piracy

Somalia has recognised the inconsistency and unreliability of informal cooperation, which fails to protect human rights, and its membership of the Intergovernmental Authority on Development aims assist the formal cooperative development of a legal framework for preventing terrorism.[121]

Somali based Al-Shabaab continues to pose a threat internally as well as a seepage of insecurity to bordering countries. Somalia remains politically unstable, subject to internal conflicts and periodic clashes between rival groups. The Eritrean Government is alleged to have used the Somali Xawilaad network for terrorist fundraising from the Somali diaspora for terrorist attacks. US Somali migrants have also been prosecuted for using MSBs to transfer funds for Al-Shabaab.[122]

Piracy ransoms present a regional threat, but the low prosecution rates and high rewards justify the risk. Ransoms of US $ 4.7 million have been paid, with total payments for 2011 of $135 million,[123] suspected to have been used to fund the Al-Shabaab terrorist group, for Al Qa'ida training camps;[124] this nexus confirmed by Al-Shabaab in 2012.[125] Al Qa'ida

[121]Centre on Global Counterterrorism Cooperation, 'Fighting Terror Through Justice Implementing the IGAD framework for the legal Cooperation Against Terrorism' May 2012 [6]

[122]*United States of America v Mohamud Abdi Yusuf, et al.*, 4:10-cr-00547-HEA-TIA (E.D. Mo., 2010), [34-52] *United States of America v Amina Farah Ali and Hawo Mohamed Hassan*, CR-10-187- PJS/FLN (Minn, 2011)

[123]HC Foreign Affairs Committee, 'Piracy off the coast of Somalia' (HC 2010-12 1318) [16],[19] [27]

[124]US Report to the Committee on Foreign Relations United States Senate 'Al Qaeda in Yemen and Somalia: A Ticking Time Bomb' One Hundred and Eleventh Congress Second Session January 21 2010, 16

controlled 'piracy' vessels in the Somali region are used to transfer terrorist weaponry. UN resolutions[126] condemning terrorism and piracy are supported by the Somalian Transitional Federal Government, preserving Somali involvement in international action, notably lacking in the Al-Barakaat case. The listing of Al-Barakaat has not had a significant or lasting effect in reducing the risk of Somali or international terrorism but has damaged the international perception and reputation of remittance services.

UK government policy opposes ransom payments but hypocritically blocks UN sanctions to facilitate payments to terrorist groups to secure hostage release.[127] Regulation of remittance providers cannot alone stem the flow of terrorist funds; piracy groups continue to launder funds through UAE financial institutions, highlighting the need for the implementation of AML/ CTF regulation internationally. Ironically, Somali remittances businesses now potentially enable the tracing of the illicit proceeds of piracy, assisting prosecution, and allowing for asset freezes against piracy leaders.

4.3.5 Developing financial capacity and inclusion

Financial inclusion is critical to the efficacy of any international financial regulatory regime. Post 9/11, reducing 'risks' 'trended' towards prioritising regulatory processes and standards, failing to sufficiently consider state capacity and the need to balance competing priorities and resources. FATF standards are disproportionately burdensome for developing countries with limited resources where they lack the financial architecture and governmental structures to implement these.

---

[125]UN Report of the Monitoring Group on Somalia and Eritrea pursuant to Security Council Resolution 2002 (2011) Letter dated 27 June 2012 to the Chairman of the Security Council Committee pursuant to resolutions 751 (1992) and 1907 (2009) concerning Somalia and Eritrea, [32],[82]

[126]UNSC Res 733 (23 January 1982) UN Doc S/ RES/733

[127](n117) 17

FATF membership is conditional upon a governmental commitment to the implementation of standards within three years. Capacity, enhanced by the sharing of expertise and technical assistance is confined largely to support between FAFT members,[128] supported by the UN, IMF and WB. The high threshold of capacity for membership excludes states with the highest need for, and the least capacity for the implementation AML /CTF measures. This strategy fails to promote financial inclusion for states lacking capacity. FATF endorsement of the regulation of remittance services and the 'cultural and pragmatic reasons' for its operation in areas where banking infrastructures are weak or absent is at odds with an 'all encompassing' regulatory approach to risk management.[129] A 'one size fits all' approach to the implementation of financial regulation is counter-productive. The effectiveness of standards designed for the formal banking sector requires reconfiguring to the Somali context and principles of Islamic and Sharia finance, to harness existing remittance services and sector commitment to regulation.[130]

International financial inclusion is essential to secure an international harmonised regulatory framework. A phased implementation of standards is a more proportionate response for weak states, given the high threshold for financial 'inclusion',[131] to address capacity from within a framework of 'anticipated' compliance.[132] Peer review of compliance against a FATF methodology leaves non-compliant states subject to international pressure, sanctions and financial exclusion.[133] There is little consideration of conditions and structures for effective implementation of fiscal and regulatory supervision, which Somalia lacks. Exclusion cannot deliver compliance where states lack capacity, but continuing exclusion perpetuates security risks.[134] Current AML/CTF strategy focuses on

[128]FATF Mandate 2012-2020 Washington DC 20 April 2012 [2]
[129]FATF, 'Guidance on Capacity Building for Mutual Evaluations and Implementation of the FATF Standards Within Low Capacity Countries' 29 February 2008, 3
[130](n108)16
[131]Developing Market Associates Limited, L Issacs , 'Research on Migrant Remittances and Linkage to Broader Access to Financial Services' (London 2008) [3.2.2]
[132]<http://www.fatf-gafi.org/topics/high-riskandnon-cooperativejurisdictions> date accessed 30/05/2012
[133]FSA,'In or out? Financial exclusion: a literature and research review' July 2000, 40
[134]L De Koker 'Money laundering control and suppression of financing of terrorism: some

capacity, in relation to supporting states to implementation and needs additionally to address social inclusion.[135]

4.3.5.1 Limitations to developing the regulatory capacity and promotion of social inclusion in Somalia

Somalia's regulatory structure requires a consideration of the competing demands for internal resources balanced against the pressure to develop financial governance. Limited internal capacity for investment in financial regulation is matched by demands for action to tackle poverty and poor social living conditions within a predominantly agricultural economy, which is vulnerable to famine. Somalia remains reliant on external aid for financial development[136] and on the support of remittance systems to deliver incoming diaspora remittances totalling $1.6 billion annually. Financial inclusion should strive to capitalise on this support to prevent its misuse.

Financial inclusion is problematic for Somalia, a cash based economy, having a poorly developed banking system. ARS promote inclusion in a culturally acceptable and accessible manner. Only 31% of the Somali population have a bank account, of which 20.5% are used for remittances.[137] The Somali economy is consumption based with 26.2% of the population relying on family loans, creating financial dependence. The Somali population has little access to, and use of, financial products to drive the demand side of inclusion.[138] The cultural context of regulation including the roles of customary law, Sharia courts, local elders and

---

thoughts on the impact of customer due diligence measures on financial exclusion' (2006) 13(1), JFC , 43

[135] UNGA 'United Nations Global Counter -Terrorism Strategy: activities of the United Nations systems in implementing the strategy Report of the secretary General (4 April 2012) UN Doc A /66/762 122-127

[136] (n125)para 79 A famine was declared by the UN in Somalia on 20 July 2011

[137] World Bank 'The Little Date Book on Financial Inclusion' (Washington April 2012) 134

[138] (n133) 37,41 ,42

clansmen[139] is critical in supporting the merger of the formal and informal sectors[140] supported by financial incentives.

The normative framework drives inclusion but requires the capacity for implementation at national level. FATF standards require pre-requisite conditions, such as formal identity systems[141] for customer identification, which are problematic in Somalia. Standards do not allow for phased or sequential implementation,[142] leading to a disproportionate regulatory burden for low income countries lacking private sector support for the development of implementation.[143] Regulation itself does not address the context and challenge of implementation, nor the overall status of a state's economy and security. The issues of capacity are now beginning to be addressed by the IMF, WB and FATF, but this is largely based on assessing existing implementation strategies rather than addressing the social exclusion of the world's most vulnerable states.

Somalia's weak political and financial governance and lack of regulation[144] have afforded little protection against misuse for terrorism. The challenge is to secure financial compliance alongside developing citizenship, compliance with the rule of law, and political governance to counteract terrorism. Somalia needs to progress from an 'economy without a state',[145] with financial inclusion forming part of its security approaches. International aid should be conditional upon promoting the rule of law, and access to justice but critically developing financial regulation.[146]

---

[139](109) 42

[140]UNDP Roundtable Summary 'The Potential Role of Remittances in Achieving the Millennium Development Goals - An Exploration' 16 January 2006, 2

[141]V Owuor , 'Somalia Banking: Transfers, Challenges And Opportunities' January 2013, 6

[142]CGAP L De Koker, I Isern, 'AML/CFT: Strengthening Financial Inclusion and Integrity' No. 56 2009,3

[143]IMF S Hagan, 'Anti-Money Laundering and Combating the Financing of Terrorism (AML/CFT) Report on the Review of the Effectiveness of the Program' May (2011) 44 Compliance with FATF 40 recommendations in 46 advanced economies was 56,8% compared to that of 37 for 115 emerging economies.

[144]FAFT 'Terrorist Financing' Typology Report February 2008, OECD France 19

[145]Cockayne (n114)12

[146]UNGA United Nations Global Counter -Terrorism Strategy: activities of the United Nations systems in implementing the strategy. Report of the secretary General (4 April 2012) UN Doc A /66/762

4.3.5.2 Conclusion as to normative compliance

This case study has considered the listing of Al-Barakaat from a normative perspective, considering the ethics and impact of the listing decision. Whilst the decision was clearly justified in terms of CTF, it lacked proportionality and unfairly froze customer assets. The Al-Barakaat listing had a negative effect on the Somali economy, hindering the delivery of financial humanitarian aid,[147] but this has not been matched by a significant reduction in terrorism or associated risks and has led to the financial exclusion at both individual and state level. Concerns that shared cultural values[148] risk terrorist support[149] from the Somali diaspora, are discriminatory, assuming illicit purposes on behalf of whole communities[150] rather than the specific evidence required to justify sanctions. Targeting risk by association follows the model of terrorist proscription, but here it has applied been disproportionately and inappropriately.

Al-Barakaat was denied the opportunity to change its practice to avoid sanctions or conditional delisting. Listing was also not reviewed in light of the changing terrorist threat. Listing tainted the international reputation of remittances services, creating mistrust within western banks, who refused to process remittance payments. The case study illustrates the lack of understanding of the cultural context of remittances and their invaluable contribution to fragile economies, and their potential for financial inclusion. The targeting of remittance systems within CTF strategy has been selective, actions against charcoal exports a source of Al-Shabaab,

[147] Donohue (n107)
[148] UNGA United Nations Global Counter Terrorism Strategy (26 June 2012)UN Doc A/ 66 /L53 18
[149] Secretary of State for Home Department 'CONTEST-The UK Strategy for Countering Terrorism' (Cm 8123, 2011) [4.45-4.46]
[150] A Cronin, Adena, A Frost, B Jone, 'CRS Report for Congress Foreign Terrorist Organizations' February 6 2004 11- 28

has not been as vociferous, with breaches of UNSCR going unpunished. The US has taken no action in relation to piracy, refusing to prosecute US businesses engaging in ransom payments which breach US law.[151] This double standard is also reflected in the lack of enforcement of arms embargoes and the failure to deal with corruption[152] in the financial sector furthering the misuse of financial aid and exclusion.[153] The selective targeting of remittance services has had a high negative human impact; it has yielded little value in terms of the reduction of terrorism and risks a loss of credibility and political support for international sanctions. It also prevents states such as Somalia from using remittance income to develop a civil society, establish economic viability and reduce reliance on international financial support.[154]

4.4 UK remittance services – assessing normative compliance and financial inclusion

Whilst the UK model of remittance operation may share similarities with Somalia, these are not presumed to operate or be relevant to the same extent in the UK context, given the economic and social differences between the two jurisdictions. The UK financial sector is one of the largest worldwide, having an international reputation, comprising of 39 complex retail groups and 43 major wholesale groups securing 80% of retail business.[155] As a sophisticated sector it is subject to comprehensive regulation and 'accounted for 5.3% of national income' for 2002.[156] The reputational risk for this sector from the taint of unwittingly dealing with terrorist funds is significant.

[151]U.S. issued Executive Order 13536
[152](109) 9
[153](n125) 48,117
[154]Donohue (n107) 424
[155]IMF, 'United Kingdom: Anti-Money Laundering/Combating the Financing of Terrorism Technical Note' IMF Country Report No. 11/231 (July 2011) [39]
[156]HM Treasury, 'Promoting Financial Inclusion' December 2004 [1.3]

The UK remittance sector performs a vital function in providing financial support from UK diaspora communities to developing countries. Migration fuelling remittance demand reflects the human aspects of globalisation, prompting further migration.[157] Government policy encourages 'migrants to remit and perhaps to return', recognising that 'remittances are private financial flows and recipients should be free to choose how they spend or invest their funds'.[158] The UK needs to ensure that migrants have access to, and the capacity to send, funds back to their home countries and the communities and families with whom they maintain ties. Religious practice and charitable donation is also relevant to securing financial inclusion in the UK context which requires regulation of remittance providers in accordance with AML/CTF standards.[159] This secures consumer protection within an environment that facilitates risk assessed remittance activity.

UK remittance outflows from 1003 UK MSBs for 2005 was estimated at £5.56 bn.[160] The Organisation for Economic Cooperation and Development has identified US $1.32bn of remittances originating from the UK, of which US $0.40bn goes to non-OECD countries.[161] Other more conservative estimates based on World Bank figures for 2009 estimate total UK outflows of migrant transfers US $3,670 mn, of which US $1,160 mn were migrant transfers.[162] UK outward remittance flows have not yet peaked, and although affected by the recent economic crisis,[163] have increased annually by 4%. The amount available for UK

[157] K Data 'Migrant and their money surviving financial exclusion' (1sr Policy Press University of Bristol 2012) 157

[158] House Commons International Development Committee 'Migration and Development: How to make migration work for poverty reduction: Government Response to the Committee's Sixth Report of Session 2003–04' HC 163 (2003-04) 20December 2004 [39]

[159] House of Lords European Union Committee 'Money Laundering and the Finance of Terrorism' 19th Report session HL (2008-09) 132-I, para 150 "Hawala and other alternative remittance systems are in law treated in exactly the same way as more conventional systems"

[160] UKWG, 'The UK Remittance Market' DFID (2005) 4

[161] Vargas –Silva C 'Briefing Migrant Remittances to and from the UK' Migrant Observatory University of Oxford First revision 11/07/2011

[162] World Bank, S Moapatra, S Ratha, A Siwal, 'Migration and Remittances Fact book 2011' 251

[163] World Bank, S Moapatra, D Ratha, A Siwal, 'Migrant Development Brief No 17 Outlook for Remittance Flows 2012-14' December 2011,12

personal remittances is £13.8 bn,[164] highlighting their considerable capacity for assisting development and humanitarian intervention.

UK outflows accounted for 7% of the total remittances to Bangladesh and 14% to Pakistan for 2012/13.[165] Statistics indicate that 34% of black African, 14% of Indian, 12% of black Caribbean and 12% of the Pakistani population in the UK, remit funds abroad annually. Nigerians make up 15% of the total UK remitting population, Indians 10% and Pakistanis 8%.[166] Mixed ethnicity households (12%) also increase the potential remittance capacity. Just over half of remitters are male, reversing for the Asian remitter group, with a peak age for remitters of 25-44, comprising 68% total remitters, which is surprising given that these may be second generation migrants.[167] Remitted values increase with customer age, with averages being: 24% remit over £1,000, 21% £500-£1000, and 32% under £500; 60% of remittances are for personal use. The sector is highly competitive but offers limited profitability given the low charges applied.

Thirteen percent of the UK population are born outside the UK, half having arrived in the last ten years, with migration accounting for 55% of the UK population increase in the last 10 years.[168] Surprisingly, in addition to this, one in four remitters were born in the UK,[169] confirming that the cultural tradition and value of remittances is transferred across generations, linked especially to Muslim communities. The UK Muslim population is 1.5 million representing a significant potential user group, with Asians comprising 68%, Pakistanis 38%, and over half of all Muslims (53%) born outside the UK. The common UK ethnic groups engaged in remitting include Indian, Pakistani, Asian, and Bangladeshi communities, totalling over 4.5 million. Language is important to the selection of

[164] (n160) [2.2.4]
[165] Vargas –Silva C 'Briefing Migrant Remittances to and from the UK' Migrant Observatory University of Oxford Second revision 23/10/2013,2
[166] Boon M 'BME Remittance Survey Research Report' ICM research prepared for the DFID (July 2006),16 see Table 7
[167] (n166)
[168] Office for National Statistics, '2011 Census: Key Statistics for England and Wales, March 2011' (2012)2, 7
[169] Boon (n160) 20 Tables 8,9,10,

operators; shared language and ethnicity facilitating access and trust in service quality.

Although 91% of UK households speak English, the quality and number of household members who do so is not indicated; in 4% of households no household member speaks English, rising to 26% for some regions.[170] There are clear and distinct UK remittance communities that have and will continue to remit over the long term in considerable volumes. This support offers tangible benefits to overseas communities in line with UK Government policy on financial aid to support overseas development and as part of the UK's ongoing financial commitment to the IMF and the UN. The UK supports humanitarian relief, governance development and debt relief as well as a variety of other development projects, contributing to the existing support and benefits delivered by UK remittances and their micro economic benefits.[171]

4.4.1 UK models of operation

The sector appears to be dominated by a franchise/agency model and cash to cash model, with larger companies dominating, and operating through agent franchises. The fieldwork research offers the opportunity to critically investigate and examine this in more detail. Market dominance is linked to UK network coverage promoted largely through Post Office outlets promoting accessibility and confidence through a familiar high street trusted brand to secure property.

The agency model enables larger operators to extend their presence through small local businesses, promoting accessibility and increasing opportunities for financial inclusion. Operators are often members of the same ethnic groups served by the remittance business, speaking other languages and are generally known within their locality of operation and

[170](n168)18

[171]DFID, 'Statistics on International Development 2007/08 – 2011/12' October 2012

well respected. Language is critical to developing financial inclusion and literacy, the UK remittance model would appear to support the preference of those who wish to transact in their first language.[172]

Businesses rely on customer referral, and advertising is unusual amongst these low cost community businesses.[173] It remains to be seen as to what extent ongoing regulation professionalises these services to which the fieldwork is relevant.

Some operators specialise in servicing particular regions or remittance corridors[174] and, whilst not discriminatory, this does lead to cultural entrenchment but also encourages confidence from specialisation; this is relevant given that 98% of Somalian and 94% of Brazilian remitters use a niche provider.[175] In general, high street remittance providers have the highest level of service availability linked to their remittance preference with 62% use compared to 24% for high street banks with19% of these preferring to use a high street remitter.

The relationship between regulation, its effectiveness and impact on the sector are discussed more fully in chapter 6 and in relation to the analysis of the fieldwork findings. Online service provision in the UK is limited, illustrating the preference of these communities for face to face contact. This highlights the continued importance of these services for maintaining contact within distinct and local communities, underscoring the value of smaller local remittance providers.

[172] L Isaccs , 'A Report to UK Remittances Task Force Research on Migrant Remittances and Linkage to Broader Access to Financial Services' May 2008
[173] UKWG (160) 20
[174] DFID 'Supply side Constraint for Remittances Service Providers in the UK' DMA March 2010, 30
[175] (n157) 163

4.4.2 The need for financial inclusion

The UK has a considerable choice of providers with less distinction between remittance services offered by MSBs and those by banks, compared to developing countries. All UK operators have to be registered and are subject to AML/CTF regulation requiring customer and transaction checks which may be perceived as intrusive of customers' privacy but are limited to that necessary to confirm identity and transaction purpose. This information is exploited for marketing purposes by large brand MSBs through loyalty card schemes, with disclosure of customer data permissible for official reporting purposes. There appears little scrutiny of the protection of customer sensitive information amongst small MSB networks; limited only by competition, management of this across agencies may be problematic, but a formal mechanism for recourse is provided under the DPA 1998.

UK MSBs remain more accessible than banks, the latter requiring an account, having higher costs and longer delivery times, offering less coverage and lacking flexible ID requirements. Over 33% of customers were refused a bank account due to failure to comply with ID requirements, which are not consistently applied across the sector. Account sharing overcomes this but this exposes vulnerable migrants to exploitation and denial of funds. No such issue arises in relation to property and use of MSBs. Mistrust of banks generally within the migrant population [176] deters their selection in preference for MSBs.

MSBs remain the preferred remittance provider their selection being on the basis of service quality for 40% of customers, relevant factors being: ease of use 38%, transaction speed 34% and security 32%.[177] Cost is important, not just in terms of charges but also the exchange rate offered, but this does not outweigh the concern for secure delivery.

[176] HM Treasury, 'Promoting Financial Inclusion' December 2004, [3.18]
[177] Boon(166) table 13 and para 6,3

The bank account requirements exclude undocumented migrant workers; MSBs a viable alternative. Remittances can be made by customers as a one-off visit providing easy access for newly located mobile migrants, in contrast to banks' restrictions to existing customers. The strength of remittances is their flexibility and accessibility, promoting competition and service quality to incentivise repeat business.

Around 2.8 million adults, representing 8% of UK households, are unbanked, 25% residing in areas of financial exclusion, '68 percent live in ten percent of the most financially excluded postcode districts.'[178] Remitters often maintain an overseas bank account but this is unused for remittances due to insecurity and limited geographical coverage.[179] Transaction costs are a potential barrier, which[180] lend to the preference of MSBs over banks, given the frequency and amounts remitted to maximise end value.

The UK migrants are generally well banked compared with other jurisdictions, with 78% of remitters having a bank account but only 47% a credit card. 62% remit using high street MSBs compared to 24% using UK banks, and 12% using foreign banks.[181] Those unbanked include: failed asylum seekers, illegal entrants and 'over stayers' as well as students, the retired, unemployed and those working in the underground cash based economy. These groups need to retain access to MSB services to support outgoing remittances, which is preferable to the use of unregulated channels and the physical transport of cash by family.[182]

[178](n176)para 2.18
[179]DFID 'Sending Money Home A Survey of Remittance Products and Services in the United Kingdom' 2005,18
[180](n153) [41]
[181](n166) [6.5] ,[21]
[182]UKWG (n160)7

4.4.3 Normative compliance in the UK sector

UK remittance services secure the protection of property from misuse through the AML and CTF regulatory standards and may offer greater protection than overseas banks given levels of overseas corruption.

Trust relates to the reputation to deliver and the quality of service provided. Banks notably have a higher failure for delivery, and seeking compensation is arduous and often unforthcoming. Five percent of remitters reported a failure to deliver funds and security of property lending to a preference of MSBs over banks, even where jurisdiction specific. Prevention of property misuse determines provider selection. Financial exclusion is not as prevalent in the UK as in developing countries, but within the UK the migrant diaspora are the most exposed to financial exclusion. MSBs remain the preferred choice for remittances due to cultural preferences for cash based transactions. Regulatory requirements unfairly and indirectly discriminate against ethnic remittances since these fall within mainly Muslim communities, and are linked to areas of terrorist activity, leading to the potential for their categorisation as a 'suspect community'. Remitters are likely to arouse suspicion in being most likely to lack relevant ID, given the circumstances of migration and their mobility in the labour market. The risk profile of customers or products is linked to access to the formal sector and financial inclusion, creating a lack of trust and confidence in the informal sector.[183]

MSBs are not bound by any code of confidentiality, only the DPA 1998, but confidentiality is relevant to securing a reputation and repeat custom in a highly competitive market. Reliance on word of mouth and the presence of agencies situated within other businesses ensures compliance for fear of loss of custom, or agency franchise. The UK has clear and more enforceable expectations of the protection of privacy

[183]Financial Services Consumer Panel, ' Further evidence to the Treasury Committee Inquiry into Competition and Choice in the Banking Sector January 2011'Jaunuary 2011 [2.1] ,[2] ,[6.2]

rights where expectations have transposed from the public to the private sector. MSBs offer narrow but more competitive service products, with operators instilling confidence through their knowledge of the sector, providing information to assist customer choice. Network coverage, prompt delivery at convenient locations and a more personalised service are also strengths of MSB operation. MSBs are valued for their community presence and their community function, assisting the diaspora communities to improve the quality of life back home.[184] This social function is one that UK MSBs could more effectively embrace to strengthen their market position. [185]

Barriers to financial inclusion include consumer financial literacy, product availability, and regulatory burden. The use of mobile phone technology to engage those who are financially excluded in relation to remittances has not been fully explored, and remains an opportunity for service expansion and increased inclusion. It may become critical to the survival of UK MSBs to capture levels of internet and mobile phone penetration in order to maintain low cost accessible and secure services. Remittance consumer groups indicate that 44% would consider using their mobile phone for remittances, and 63% would consider using pre-paid cards for remittances.[186] The current cash to cash model promotes inclusion only if identification requirements are flexibly applied, cash requiring greater protection. It remains a weakness for financial exploitation that MSBs still focus on cash transactions through traditional models of operation in the UK given that banks are driving their technological investment, and with the payment of wages in cash now rare, the distinction between and advantages offered by MSBs over banks may be fading.

The UK Financial Inclusion Task Force Working Group works alongside HM Treasury, ministerial groups and the Remittance Working Group[187] to

[184]Boon (n166)
[185]DFID(n179) 12-15
[186]Isaccs (n172) 2
[187](n153) para 40 The Remittances working groups was set up by Government in June 2004 comprise of representation from DFID, FSA, HM Treasury, Customs and Excise and representation from the private sector

inform Government policy promoting financial inclusion. Policy oversight of remittances is fractured and issues of migration and benefits from remittances for humanitarian aid are separated from the context of financial regulation, despite the latter having an impact on the former. This fails to secure adequate protection of human security in financially dependent states. UK financial aid contributes to global human security to address the risk of poverty and terrorism. The UK provides financial assistance to countries such as Bangladesh and Nigeria, enhanced by reducing barriers to capture remittance payments, promoting financial inclusion,[188] but warrants further development in scale and scope to be meaningful. UK MSBs could more purposefully act in association to promote these social benefits within the Government agenda.

The UKMTA represents MSBs but lacks representation equivalent to the banking sector at policy level; operators servicing particular remittance corridors remain unrepresented as are the communities they serve. [189] UK MSBs lack representation internationally to effect sector change, the IAMTA has provided sector representation for international remitters at Westminster meetings to consider the relationship between the MSB sector and the banking sector; smaller providers are unrepresented.[190] Membership of trade associations is not currently linked to registration and poor sector representation limits MSB competition, excluding their customers' interests also. A formal code of practice to regulate representation and consultation and the provision of banking services to the sector would prevent market dominance by banks jeopardising the benefits of remittances, but this lacks Government support for intervention in private commercial matters.[191]

[188]HM Treasury 'Financial inclusion: an action plan for 2008-11' December 2007 para 2.10
[189]UKWG (n160)17
[190]<http://www.iamtn.org/international-money-transfers-news/276-money-transfer-accounts-services-by- banks> date accessed 7/11/2013
[191]Government Response to the Committee's Sixth Report of Session 2003–04' HC 163 (2003-04) 20 December 2004, 42

Cultural factors and social norms associated with financial transactions and 'cash based' cultures[192] can lead to exclusion. Cultural traditions are reinforced by co-ethnicity; migrants seeks out their own cultural communities, 'ethnic enclaves', in areas where they settle. Attitudes of migrant remitters are based on a 'strong sense of cultural heritage that is embodied in religion, family values and manifested in their striving for financial security.'[193] These rights and values are protected, preserved and enhanced by the UK MSB sector, with numerous MSBs offering bespoke services to distinct corridors.

Remittances are driven by migration, the 'extent of the migration ….involves millions of people and affects a large number of states in the international community.'[194] Migrant workers' rights are protected by international law (not ratified by the UK); the convention on migrant workers' right protects the fundamental rights parallel to the protection in the HRA1998, requiring the equal treatment of migrants, free from discrimination based on language, race ethnicity or religion and protection and promotion of their cultural identity. Other international instruments protect minority rights,[195] and social and cultural rights,[196] but protection outside the limits of the HRA in the UK is weak. More could be done allied to this to promote financial inclusion and reduce the documentary burden to promote access to the financial sector and MSBs in the UK.

The UK remittance context shares some parallels with the Somali context in terms of reasons for their selection. Regulation in the UK offers protection of property rights and has deterred, but not completely prevented, the misuse of MSBs by customers,[197] operators[198] and

[192](n176) 3.10
[193]UKWG (n160)19
[194]International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (adopted 18 December1990) UNGA Res 45/158 (UNCHR)
[195]Council of Europe 'Framework Convention for the Protection of National Minorities' Strasbourg, 1.II.1995
[196]International Covenant on Economic, Social and Cultural Rights Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966 entry into force 3 January 1976.Article 15 in particular imparts a right to cultural life.
[197]*Regina v Sharma* [2012] EWCA Crim 677
[198]*R v R and Others* [2006] EWCA Crim 1974

criminal enterprises.[199] Whilst the UK AML/CTF regime aims to improve the protection of MSBs and their property transfers, this is balanced by intrusive inroads into customer privacy where information from mandatory screening is a necessity justified on the basis of security. It remains the case that 'if the potential of remittances is to be maximised,[200] then more needs to be done to understand remittance use and increase their flows from the UK to harness financial inclusion.'[201]

4.5. Modern approaches to securing normativity and financial inclusion of remittance services

The focus on the regulation of remittance services has now moved from the need to regulate to the form of regulation, which needs to enhance remittance activity in a normatively sound manner, securing rights protection and promoting financial inclusion, without compromising the distinct characteristics that are valued by users.

Remittance providers continue to service developing countries, demonstrating their capacity to operate in a modern context and in line with regulatory compliance. The Dahabshiil Company, operating through a mix of agents and online presence, exemplifies family values and a continued commitment to the ethnic and cultural context of the Somali culture. The service is accessed through local agents, as part of a wider international network. Internet services and language support promote inclusion and accessibility. Service is based on transparency of regulatory compliance, customer service and a commitment to community projects, supported by 5% of annual profits. It combines the benefits of technology and local presence, engendering trust through customer care guarantees and preferential rates[202] for repeat custom. Customer privacy is protected limiting disclosure to that necessary for mandatory reporting. Its success

[199] *Regina v Abdul Hammed Sakhizada* [2012] EWCA Crim 1036
[200] (n158) [38]
[201] (n176)
[202] http://www.dahabshiil.com/send-and-receive-money.html date accessed 12/01/2013

has led to the provision of an Islamic bank in Djibouti, driving private sector development within the context of cultural values.

This model could be readily be applied within the UK where Internet access is high, reducing transaction costs, enhancing access and removing the need for agents. Charitable donations could be maximized by pooling the profit contributions of several operators for donations to nominated 'charities,' ensuring funds are not diverted for illicit use. Discounted rates for repeat custom are already linked to loyalty card schemes and privacy is protected by home access.

The Pakistani remittance initiative aims to support faster, cheaper, convenient and efficient flows of remittances though the State Bank of Pakistan, with Government contributions supporting transactions costs.[203] The bank may broker agreements with overseas banks to expand the formal sector capture of remittances. This provides opportunities for increased funds for savings and promotion of other financial products,[204] for investment. Profits are used to extend ATM networks. The scheme is normatively compliant, providing financial incentives for use by the formal sector, with guaranteed protection of funds and service levels with compensation for any delayed payment.

The scheme allows for UK fiscal supervision and the sharing of AML expertise addressing and countering formal sector mistrust of overseas entities. Partnerships are, however, limited to other banks, but could possibly be extended to large international MSBs. The scheme could operate more widely based on agreements with other jurisdictions to improve their regulatory standards incentivised by mutual cooperation and financial support.

[203] Qualifying transactions have to meet the following criteria: Transaction should be a home Remittance transaction (from individual to individual), and should be at least 100 US$ or equivalent.

[204] IMF, S Gupta, C Pottilo, S Wagh, Impact of Remittances on Poverty and Financial Development in Sub-Saharan Africa' WP/07/38 (February 2007) 23, 24

The Kenyan M-Pesa system[205] initiative between the Safaricom and Vodafone mobile networks illustrates the use of modern technology to promote remittance transfers. This draws on high mobile phone access in developing countries such Kenya and Somalia (70%),[206] despite the Al-Shabab ban on these.[207] Access requires a mobile phone 'account' for the security of funds, removing the possible illicit diversion of cash. This model supports personal, private accessible family communication and financial support.[208] The cost of providing regulation is met by phone companies' contract contributions and investment secure technological development, in return for a potential market share.

The initiative offers accessibility through local agents offering 'credit top up'. These systems have enabled the secure delivery of microfinance loans to impoverished rural communities.[209] These mobile networks dealt with more transactions in Kenya than Western Union globally.[210] This is readily applicable to the UK with mobile phone penetration of over 90%, but the regulatory model will need adaption to ensure security.[211] M-Pesa was not initially subject to AML regulation but informal guidance,[212] and regulation is essential for UK projects. 'Pay As You Go' services are most often used by the financially vulnerable, raise due diligence concerns as to their potential for cloning and criminal misuse. These services however offer a cost effective way of using existing regulation and services to bring remittances into the formal sector, aligning with government policy.[213] This remote service model removes the need for agents but does not align well to cultural needs and would require a bank

[205]Developing Market Associates Limited , L Issacs 'Research on Migrant Remittances and Linkage to Broader Access to Financial Services' (London 2008) [4.8.1]
[206]V Owuor, 'Somalia Banking: Transfers, Challenges And Opportunities' January 2013,4
[207]UNDP,' Cash and Compassion The Role of the Somali Diaspora in Relief, Development and Peace Building' Vol 1 December 2011,52 October 2010
[208]< http://www.remittancesgateway.org/index.php/press-clippings/other-news/1710-dahabshiil-ceo- and-dr-laura-hammond-discuss-preliminary-findings-of-remittance-research> date accessed 12/01/2013
70% of Somali families now own at least one mobile phone.
[209]DFID, 'The engine of development: The private sector and prosperity for poor' 2011 14 The DFID UK supported this project.
[210]MW Buku, MW Meredith, 'Safaricom and M- Pesa in Kenya: Financial Inclusion and Financial Integrity' (2013) 8 Wash JL Tech Arts 391
[211]S Keene, '*Threat Finance'* (1st edn, Gower Publishing)149
[212]Alliance for Financial Inclusion, 'Case study Enabling mobile money transfer The Central Bank of Kenya's treatment of M-Pesa' 2010 Bangkok 5
[213](n174) 6, 8

account. Low operational costs remain attractive[214] and UK MSBs are well placed given their current accessibility to the use of this model to retain their market share.

Inclusion is fostered by recognising fundamental rights, beyond contractual property rights. Barclays' service remittance operators in Africa require all MSBs to apply UN guiding principles on human rights, the 'Thun declaration', as a normative approach to inclusion. 'Remittance operators have been successful in capitalizing on trust and the social capital' used to rebuild war torn communities.[215] They transect clan divisions and are well placed to foster cooperation and promote cohesion at an international level. Inclusion in the UK has largely centred on transaction costs, and more needs to be done to improve the literacy of senders, given their conservative tendencies, and to extend Islamic banking services to remittances.

Within the UK the credit union model has also not been fully exploited to include remittance services. Pre-paid cards potentially deliver secure transactions in the UK and abroad and could easily be integrated into UK utility pre-payment systems and access points.

The challenge lies in tailoring regulation to mitigate specific risks from different service types and delivery approaches without imposing an undue burden.[216] The challenge in securing normative compliance in the UK requires a consideration of the remittance operation in receiving countries having different jurisdictional and financial environments.[217] New initiatives need to respond to the challenge of meeting these operational contexts in an effective, inclusive and normatively compliant way.

[214](n172) [7.2.1.6]
[215]Cockayne (n114) 54 see reference to the Thun declaration / group
[216]ATISG Report, 'Innovative Financial Inclusion Principles and Report on Innovative Financial Inclusion from the Access through Innovation Sub-Group of the G20 Financial Inclusion Experts Group' 25 May 2010, 29
[217]CGAP(n142)1

4.6 Conclusion

> If our values are truly fundamental and enduring, they have to be relevant whatever the level of the threat.[218]

'Human rights are often the first casualties of a crisis.'[219] This chapter has sought to consider the tensions and concerns arising in the presence of the threat of terrorism that requires a consideration of security alongside the protection of rights. The normative framework presented provides a set of predetermined principles and rights as values against which the boundaries of acceptable CTS can be assessed. These values are drawn from international consensus as necessary pre-conditions to sound governance and state action. This cosmopolitan constitutionalism transcends issues of sovereignty in recognition of shared community security interests and a commitment to human security. The human security paradigm presented views security as one of a bundle of equal rights to be protected. The normative framework provides protection for rights in accordance with international standards to ensure these do not become hostage to international security policy. Global security interests are subject to the democratic deficit of political power struggles in developing international CTS, from which rights need protection as individual entitlements. Their protection as an international concern prevents them falling victim to the unilateral political assessment of terrorist security threats. Security should rightly operate as a shield to protect human rights through normative compliance which acts as a moral compass and provides a permanent safeguard to secure future protection. CTS aiming to deliver protection from terrorism is a hollow gain, without the inclusive protection of fundamental rights to uphold the accepted standards of fairness and justice.

The protection of the financial sector and the promulgation of financial standards to detect, prevent and deter terrorist laundering and financing

[218] Shami Chakrabarti, the Director of the human rights group Liberty, as cited in Lord Phillips of Worth Matravers, Lord Chief Justice, ' Impact of Terrorism and the Rule of Law' American Bar Association Conference, London, 3rd October 2007.

[219] E Hafter-Burton, ' Emergency and Escape: Explaining Derogations from Human Rights Treaties' (2011) 65 International Organization, 673

is a critical aspect of CTS. It is heavily reliant on risk focused compliance, which fails to consider the wider context of financial activity. The application of a rights based framework reconceptualises the presenting of the risks of alternative remittance services in light of their capacity to endanger fundamental rights, but is equally balanced in considering how alternative remittance systems protect rights and their social and financial benefits. The framework starts from a position of financial capacity and rights protection, addressing risks in relation to their capacity to threaten rights, removing these through normative action without removing existing protection. The case study of Somalia clearly demonstrated that the lack of proportionality of action resulting from the Al-Barakaat listing caused financial and social hardship, where political motivation for an instant result jeopardised human security, without any consideration of humanitarian exceptions. For CT regimes to have credibility they need to protect against the very 'moral hazard of unintentionally reinforcing the very behaviour one is seeking to change'.[220] Security concerns do not justify the waiving of rights protection that terrorism itself threatens, where this is a disproportionate interference without benefit. The normative framework secures rights protection, acting as a positive impetus to developing CTS and financial inclusion through regulation that is fair, just, and context specific. Developing CTS which fails to accommodate this based on services in a 'failed and war torn state' adopts an inappropriate 'one size fits all' approach to CTS, ignoring the relevant context of operation.

The Somali case study illustrates that securing the effectiveness of regulation is a multifaceted concern requiring a prior assessment of state capacity and the need for social and financial inclusion. The security interests of the international community may prevail over domestic interests, but the success of the implementation of CTF measures is conditional upon the capacity to implement these and the support of the

[220](n207) 9

international community to achieve this. Measures to tackle global insecurity are only effective where they are applied internationally in a manner consistent with inclusion and the protection of fundamental rights. The consideration of the UK remittance context from a regulated perspective, demonstrates that regulation does not appear to hinder the benefits of their operation but enables the UK to protect rights with some gains in property exchanged for increased intrusion into privacy. The UK remains committed to financial inclusion, the accessibility and service design of UK remittance services promoting this. The UK context further reveals some of the burden of regulation for operators and customers, the relevance of will clarified by the fieldwork in chapter 6. The assessment of the normative compliance of CTF measures does not operate in a vacuum, but a social and financial context alongside political, economic, cultural and security considerations. The presentation of the Somali case study and a consideration of the UK context, has enabled a more meaningful critical analysis of the context of normative compliance of alternative remittance provision.

Remittance systems present a bridge between financial services operating in different cultural contexts and with differing degrees of formality. Their global reach acts as an imperative for their commitment to protecting the global financial and physical security in applying CTF measures to address the risks they present in relation to terrorist finance. Modern technology challenges their mode of operation and their presenting risks, and requires adaptation in a purposeful way to continue to offer an efficient and cost effective means of transfer. The strength of these systems has often been highlighted as being the social capital of the network itself and its operators, a misnomer. The real social value is not internal but external, in the social networks promoted by these systems between the migrant diaspora who use these systems and the value of the cultural heritage and social communities with whom they maintain ties across generations despite geographical cleavage.

This dimension needs to be the focus of approaches to counter terrorism finance and the need to regulate their operation, to ensure their capacity to continue to serve distinct communities and embrace their changing diversity. Whilst traditional methods of operation have been maintained through need, it is the remittance purpose and its value that ultimately sustains remittance activity. It would be a missed opportunity for the future if remittance services failed to capitalise on technological developments to maximise their effectiveness and reduce their misuse for terrorism, assisted by normatively compliant regulatory control.

Chapter 5
A critical analysis of the legal framework for the regulation of alternative remittance systems

5.0 Introduction

This chapter critiques the counter terrorism finance regime in the UK and the Government strategy and policy underpinning which aims to draw on the totality of counter terrorist finance measures available to protect the UK. It also aims to demonstrate a commitment to contributing to building an 'international framework of financial measures that now provides a critical bulwark' against terrorism.[1] This approach draws on criminal measures, reporting systems and asset freezes,[2] to deter, detect and disrupt in an effective and proportionate manner.

The chapter begins with a consideration of criminal law measures enabling prosecution for terrorist property offences, considering whether special terrorist offences are necessary, justified and effective in preventing terrorist finance. The chapter then considers administrative and quasi-criminal measures operating outside the criminal justice system, which are used to freeze terrorist assets. In particular the UN sanctions regime is highlighted for its lack of rights protection, and the resulting difficulties for UK implementation are considered in light of the changes needed to secure normative compliance.

This chapter further considers the protection that CTF measures afford to rights, evaluating their effectiveness as an element of normative compliance. Effectiveness is relevant to the legitimacy of measures, requiring them to be capable of meeting their intended aims in a proportionate manner in relation to the effort and burden of compliance. Moreover the impact of any

[1] HM Treasury, 'The Financial Challenge to Crime and Terrorism' (February 2007) HMSO, 5

[2] Ryder N 'The fight against illicit finance: A critical review of the Labour government's policy' (2011) 12 Journal of Financial Crime, 262

interference with fundamental rights must also be justified as necessary in enhancing the effectiveness of CTF measures.

The chapter also presents a critical overview of the scope and application of the MLR 2007 in regulating ARS services as MSBs. Central to the risk based approach is the consideration of the relevant guidance supporting its application within this sector. The effectiveness of the SARs regime is critiqued to consider its role in developing evidence based typologies and suspicion indicators to enhance the effectiveness of the regime. The importance of financial intelligence is considered in relation to the potential for the MLR and SARS reporting regimes to contribute to the collation and dissemination of this, and considers the implication raised for privacy rights. The chapter concludes by assessing the overall impact of the UK CTF regime, highlighting the key concerns relevant to the central research question and the fieldwork research presented in chapter 6.

5.1 Criminalising terrorist finance – deterrence, prevention or symbolism

Responses to terrorism have increasingly drawn on pre-emptive strategies for prevention. Whilst there remains a clear role for criminal law,[3] the preferred approach is to draw on ordinary rather than special measures and procedures. The latter are more likely to impact on fundamental rights and require clear justification.[4] Special measures carry the danger of becoming a normalised response to dealing with terrorism, with potential 'seepage' to non-terrorist activity. A range of potential responses to controlling terrorist finance is needed, to which criminal law contributes in enabling the UK to fulfil its international obligations. Criminal law is the ultimate 'coercive tool' within the criminal justice system, having 'enormous symbolic power,'[5] marking out prohibited conduct recognised as harmful to society and

[3] D Anderson QC 'The Terrorism Acts in 2011' (London Stationary Office 2012) [10.1-10.2]
[4] Lord Carlile of Berriew QC'The Definition of Terrorism' (Cm 7052 London 2007) [25]
[5] V Tadros 'Criminal Responsibility' (Oxford University Press Oxford 2005) 1

stigmatising offenders for transgressing socially accepted moral and legal values. It communicates state condemnation through public denunciation of acts, legitimising their punishment for their harm against society.[6]

Resort to criminal law enables censure, sanction and punishment of terrorist conduct to deter future acts, having a strong declaratory, preventative and censuring role in incapacitating offenders through imprisonment. This paternalistic approach encompasses the risk of future 'endangerment' since terrorism poses as a threat to the 'polity as whole'.[7] Criminalisation signals 'symbolic solidarity'[8] to cosmopolitan constitutionalism, driving the cooperation of the international community to implement this as a necessary 'common defence'[9] within CTS.

5.1.1 International obligations

The Terrorist Financing[10] Convention requires the criminalisation of the wilful collection or provision of funds, direct or indirect, where provided intentionally or with the knowledge that these may further terrorist ends[11]; this was reinforced by UNSCR 1373.[12] Measures effectively target the anticipated use of funds, acting preventatively and capturing all modes of liability from assistance, cooperation, and direction of terrorist groups and members, connected to knowledge of the terrorist purpose, inclusive of liability for legal entities. Measures enable the identification, tracing, seizure and forfeiture of property without reliance on a conviction to trigger confiscation/forfeiture of property. The Council of Europe Convention reinforces these provisions, based on intentional provision of funds with knowledge of terrorist purpose,

[6]D Ormerod 'Smith and Hogan's Criminal Law ' (1st edn, OUP 2011) 7
[7]A Ashworth ,J Horder , 'Principles of Criminal Law (7th edn, OUP 2013) 16, 29 - 34
[8]C Walker , 'The Impact of Contemporary Security Agendas Against Terrorism on the Substantive Criminal Law' Masferrer A (1st edn) *Post 9/11 and the Sate of Permanent Legal Emergency (Springer 2012)* 142-143
[9]U Beck , 'Cosmopolitan Vision' (2nd edn, Polity Press 2006) 36
[10]FATF recommendation 5 requires ratification of UN Convention Terrorist finance.
[11]UNGA International Convention on Suppression of Terrorist Financing (Adopted 9th December 1999 opened for signature 10th January 2000) (2000) 39 ILM 270 Articles 4, 8
[12]UNSC Res 1333 (19 December 2000) UN Doc S/ RES 1333

with offences punishable by imprisonment of more than a year, linked to confiscation requirements.[13]

UNSCR 1373 ensures that measures enable terrorist financiers to be 'brought to 'justice' and punished for 'serious offences', recognising the need to implement measures in accordance with national and international standards of human rights. UNSCR 1624[14] further criminalises the incitement of terrorism, including fundraising that may arise from targeting charitable donations provided from the migrant diaspora.

Criminal law is increasingly necessary to deter 'neighbour terrorism' and the threat from 'home grown' terrorists[15] following a re-evaluation of the control order regime. Criminal law measures secure legitimacy through a transparent and publically accountable process founded on due process guarantees supported by access to legal aid. It excludes the use of intercept evidence and CMP 'balancing the interests of parties and interests of justice'[16] to legitimise the label of 'fair process.' Criminalisation acts as a deterrent by focusing on individual culpability removed from the collective activity of the terrorist organisations, denying the glorification of terrorism and downgrading terrorists from martyrs to ordinary offenders. Pre-emptive, precautionary strategies penetrate measures, drawing on the mental elements of knowledge or suspicion of terrorist purpose, without proof of actual harm,[17] normalising the criminalisation of the potential harm to provide security in the present. Terrorist offences, a 'special category,'[18] capture the unique dimension of terrorist acts, the criminal process providing a longer term solution to terrorist funding[19] through deterrence and prevention.

[13]Council of Europe Convention on in Laundering, Search, Seizure and Confiscation of the Proceeds of crime and Terrorism Art 9
[14]UNSC Res 1624 (14 September 2005) UN Doc S/RES/1624
[15]C Walker , 'The Impact of Contemporary Security Agendas Against Terrorism on the Substantive Criminal Law' Masferrer A (1st edn) *Post 9/11 and the Sate of Permanent Legal Emergency (Springer London 2012)* 124
[16]*Ali v Revenue and Customs Prosecutions Office* [2008] EWCA Crim 1466
[17]C Murphy , 'EU Counter-Terrorism Law: Pre-Emption and the Rule of Law' (1st edn, 2012) 13
[18]Lord Carlile of Berriew Q.C.'The Definition of Terrorism' (Cm 7052 London 2007) [38],[40]
[19]V Nguyen, 'Stop the Money, Stop the Attacks**:** A Categorical Approach to Achieving an International Terrorist Financing Sanction Regime' (2012) Vol1(1) Penn State Journal of Law and International Affairs , 159

Knowledge of 'terrorist purpose' can be supplanted by 'reasonable cause to suspect', which does not require proof of membership status, role, or membership of a prescribed group. Funds need not be used for terrorist purposes; liability is prospective as to the possibility and intention of future use. Criminalisation draws on inchoate liability, possession, 'precursor crimes,'[20] and preparatory offences linked to illicit purpose, without the commission of terrorist acts. Criminalisation is justified since future risk threatens 'basal security'.[21] This 'net widening,' approach is enhanced by the broad definition of terrorism and recourse to 'special offences' targeting terrorist support without any further acts of perpetration. [22]

Knowledge of the terrorist purpose[23] removes the need for assessing the risk of the proximity of harm and likely consequences for the defendant's acts.[24] Sections 11-13, TA 2000 illustrate offences based on the support of a proscribed organisation, drawing on knowledge of the organisations activities or reasonable suspicion of membership. Whilst rarely used, these terrorist offences remain important measures in the prosecutors' armoury.[25]

Criminal law measures fell behind the use of executive measures in the immediate aftermath of 9/11 and 7/7; with distance they are preferred as effective measures in tackling terrorism in line with recognised normative values.

5.1.2 Terrorist financing offences

Terrorist property offences include terrorist fund raising, use and possession, arranging to deal with terrorist property, and the laundering of[26] terrorist

[20]C Walker, 'Blackstone Guide to Anti- Terror Legislation' (2nd edn, OUP 2009)
[21]J Wolfendale , 'Terrorism, Security, and the Threat of Counterterrorism' (2006) 27(9) Studies in Conflict & Terrorism 759
[22]*R v Gul* [2013] UKSC 64
[23]AP Simester, A Von Hirsch, *Crimes, Harms and Wrongs: On the Principles of Criminalisation* (1st edn, Hart 2011) 81
[24]A Ashworth, L Zedner, 'Prevention and Criminalization: Justification and Limits' (2012) 15(4) New Crim L Rev, 548 554-555
[25]D Anderson QC 'The Terrorism Acts in 2012' (London Stationary Office 2013) [5.21]
[26]*R v Meziane* [2004] EWCA Crim 1768

funds including their removal from the UK. Intention as to terrorist use applies, but excludes requiring its use to advance terrorist goals. Knowledge or reasonable cause to suspect operate as alternatives to intention with liability also based on the reckless provision of funds where there is uncertainty as to future use. 'Reasonable cause' acts as a negligence based test. The terrorist purpose is satisfied by proof of a terrorist association, combining subjective and objective mental elements to capture all scenarios. Entering into an arrangement to deal with terrorist property[27] is criminalised despite being remote from any terrorist act or use of property. Property is widely construed, including tangible and intangible property, and including the sale of property,[28] or providing funds, passports[29]or weapons.[30]

Section 17 TA 2000 mirrors s328 POCA 2002, and relates to becoming concerned with an identified and concluded arrangement which may result in the transfer of property for terrorism.[31] Section18 TA applies strict liability for assisting another to retain terrorist property; the defence of lack of knowledge or reasonable cause to suspect applying, with the defendant having the legal burden of proof [32] of facts, this being fair since these are within the defendant's knowledge.

The interference with property rights offers protection against terrorism, ensuring that individual rights do not oust wider 'community' security interests. The UK complies with international standards[33] through a combination of 'special' and ordinary provisions.[34] The TA 2000 allows for prosecution[35] of fundraising and use of funds by proscribed organisations, lone terrorists, isolated terrorist plots and individual terrorist cells.

[27]TA 2000 s14, 17
[28]*R v Saleem* [2009] EWCA Crim 920.
[29]*R v Kamoka, Bourouag, and Abusalem* [2009] EWCA 684
[30]*R v Mc Donald, Rafferty and O'Farrell* [2005] EWCA Crim 1945
[31]*Dare v Crown Prosecution Service* [2012] EWHC 2074
[32]TA 2000 s118
[33]FATF special recommendation 2
[34]FATF' Third Mutual Evaluation Report Anti-Money Laundering and Combatting the Financing of Terrorism: United Kingdom of Great Britain and Northern Ireland' 29 June 2007 [144-146]
[35]TA 2000 s117

Criminal law offers public protection by targeting general funding capacity and support, protecting societal interests and deterring support through the transparent accountability of the criminal justice process,[36] securing legitimacy through due process guarantees. Criminalisation communicates censure by illustrating the states determination to punish violent action, which threatens normative values and community security. The broad definition of terrorism does however draw the criminal process into the political arena, where media coverage and political commentary risk compromising fairness and jury objectivity. It does, however, offer the opportunity for social inclusion, rarely placing actors beyond 'civil redemption'.[37] The defendant's rights are robustly protected by Art 6, contrasting with UN quasi-criminal sanctions, of indefinite duration. Executive measures, in contrast allow terrorist supporters to potentially continue to offer support and afford more limited due process guarantees.

The criminal process adds 'bite' to the duty to disclose information which may assist in preventing terrorist acts or assist their investigation,[38] and offences are 'far reaching'[39] including the duty to disclose information received in the course of a trade, profession, business or employment, s19. Employment is also inclusive of voluntary work, s77, CTA 2008, the latter capturing the charitable sector. The failure to disclose information has arisen in immigration cases and allegations of terrorist financing.[40] It illustrates the drive by authorities for information related to terrorist activities and the 'value' placed on this to compelled by disclosure to assist investigation and deter support. The duty on the part of the regulated sector,[41] including MSBs, is more onerous, triggered by 'reasonable grounds to suspect', and informed by sector guidance. This is proportionate, since property transactions affect third party property rights requiring protection from intermingling with terrorist funds. Criminal law[42] secures the cooperation of the regulated sector through

[36](n19)
[37]H Carvalho 'Terrorism Punishment and Recognition' (2012) 15 (3) New Crim. L. Rev , 367, 7
[38]TA 2000 s19-22
[39] Anderson Report 'The Terrorism Acts in 2011' David Anderson Q.C (Home Office 2012) [5.5]
[40]*The Queen (on the application of Chockalingam Thamby) v Secretary of State for the Home Department* [2011] EWHC 1763
[41]TA 2000 Schedule 2 Part III,s21A
[42]TA 2000 s15-17

compulsion, ensuring that protection against terrorism is not ousted by financial considerations, protecting the integrity of investigations to criminalise 'tipping off'.[43] Information received in the context of legal privilege is protected[44] per Arts 8 and 6.[45] The effectiveness of reporting requirements is however questionable, given the diverse range of terrorist funding sources.[46]

A broad duty applies to 'public' disclosure, s38B, TA 2000 based on knowledge or belief of facts that may assist in preventing the commission of a terrorist act and has been used to prosecute the friends/family of terrorists for failure to report prior knowledge of terrorist activity, with criminalisation deterring passive encouragement.

5.1.3 General versus specific laundering offences

The FATF endorses an 'all serious crimes' approach[47] to predicate ML offences in line with the Vienna Convention and EU Directive 2005/60.[48] General confiscation orders are triggered by proof of criminal conduct/property and the benefits thereof,[49] including a criminal lifestyle. Offences of directing terrorism in relation to proscribed organisations apply to lifestyle assumptions.[50] The UK adopts an 'all crimes' approach for predicate offences, including all terrorist offences.[51] These[52] do not require a conviction[53] (satisfied by reliance on circumstantial evidence). Criminal proceeds need not derive from a particular offence[54] drawing on the

[43]Anderson D, QC 'The Terrorism Acts in 2010' (London Stationary Office 2011) [5.5]
[44]TA 2000 s21A
[45]*Michaud and France* (Application no. 12323/11) 06.12.2012 (Chamber Judgment) Final 06/03/2013
[46](n2)
[47]House of Lords European Union Committee 'Money Laundering and the Finance of Terrorism' 19th Report session HL (2008-09) 132-I [102]
[48]Article 3
[49]POCA 2002 s320
[50]POCA 2002 s56,s75 sch2
[51]Complying with FATF SR II FATF 'International Standards on Combatting Money Laundering and the Proliferation and the Financing of Terrorism and Proliferation: The FAFT Recommendations' February 2012
[52]POCA 2002 s327-329
[53]*Regina v Mumtaz Ahmed, Ghulam Quereshi, Muntaz Ahmed* [2004] EWCA Crim 3094
[54]*R v F* [2008] EWCA Crim 1868

'irresistible inference'.[55] Where fund transfers occur, or are attempted, in circumstances that evade the usual procedures, lacking transparency or suggesting concealment of the funds or the actor's motives, then the general offences suffice. Terrorist laundering could be addressed by an aggravated sentence[56] but given the complexity of POCA[57] the incorporation of terrorist funding offences within general offences has previously been rejected.[58]

Terrorist funding offences implement UK international obligations[59] assisting international cooperation, and demonstrating solidarity to cosmopolitan constitutionalism and a commitment to human security. Terrorism differs from organised crime, in being an attack 'on society and its democratic institutions'[60] posing the threat of physical harm. General laundering is backward facing, aiming to hide the source of funds to preserve the criminal benefit. Terrorist laundering is forward facing, attempting to disguise the purpose and use, not the source of funds, to conceal the destination and protect the recipients' identities. The placement, layering and integration processes also differ. General laundering involves large volumes integrated and converted to conceal their source, with layering assisting removal from the jurisdiction. Terrorist laundering targets the purpose, key to providing financial intelligence to prevent the intended use,[61] and placement of funds is transparent but the terrorist purpose remains hidden. These elements are reflected in offence structures and definitions of property, which are wider for terrorist laundering where the benefit of possession and acquisition relate to the terrorist purpose, not the individual or prior criminality. The different qualities of these acts and threats favour separate offences, affording two opportunities for prosecution, particularly where terrorism is supported by criminal funds.[62] Different risks reflect the differing mental elements;

[55] *R v Anwoir* [2008] EWCA Crim 1354 at 21
[56] CTA 2008 s30-32
[57] C Walker , *Terrorism and the Law,* (1st Edition OUP 2011) 9,124
[58] Rt Hon Lord Lloyd of Berwick, Inquiry into legislation against terrorism, 1996, Cm 3420, vol. 1, [13.23]
[59] EU framework decision 2002/475/JHA as amended by subsequent 2008/919/JHA
[60] (n58) xi [29]
[61] T Parkman, G Peeling, *Countering Terrorist Finance : A training Handbook for Financial Services'* (1st edn, Gower 2007) 31
[62] Z Abuza 'Funding Terrorism in Southeast Asia: The Financial Network of Al Qaeda and Jemaah Islamiyah' *(2003) 15(5) NBR Analysis, 12*

subjective suspicion for general laundering need not be founded on reasonable grounds or specific facts.[63] In comparison a more stringent burden operates for terrorist offences where liability requires proof of the terrorist purpose.

A combined offence would capture the terror/crime nexus[64] and the mirroring of current offences[65] but oust critical distinctions. Section 17 has no counterpart under POCA,[66] illustrating the different characteristics of criminality captured by the separate offences. Notification orders in the CTA 2008[67] offer additional protection, which is not mirrored in POCA. Separate offences capture the differing policy aims and nature of criminality, whilst the 'terror label' and specialist offences are not always justified.[68] Where the act is mirrored in a general offence, property offences are marked out as an exception. The handling of property would not be unlawful without the fair labelling of the terrorist purpose connected to it. Terrorist offences rely on an inchoate liability to target the underling terrorist purpose through special offences and procedures which 'defend further up the field'[69] where this mode of liability, absent the terrorist threat, would not be justified.

Northern Ireland terrorism has traditionally demonstrated a clear nexus with organised criminal activity as a source of funding terrorist of paramilitary groups, with half the criminal gangs identified in Northern Ireland in 2002 having links to paramilitary organisations, and with 80% of IRA activity at that time linked to crime.[70] Here prosecutions under POCA were preferred,[71] despite the lesser penalties, in order to remove the difficulties in proving the terrorist connection, assisting effective confiscation[72] and forfeiture of

[63] *R v Bowman Fels* [2005] EWCA Civ 328
[64] JMLSG 'Prevention of money laundering/ combating terrorist financing, Guidance for the UK Financial Sector Part 1' November 2009 [9]
[65] R Alexander , 'Money Laundering and terrorist financing: time for a combined offence' (2009) 30(7) Company Lawyer 202-204
[66] TA 2000 s18
[67] CTA 2008 s41
[68] D Anderson QC 'The Terrorism Acts in 2011' (London Stationary Office 2012) paras 10.3, 11.3
[69] D Anderson , 'Shielding the compass: how to fight terrorism without defeating the law' (2013) 3 European Human Rights Law Review 233-246,237
[70] HC Northern Ireland Affairs - The Financing of Terrorism in Northern Ireland Fourth Report HC (2001-02) 978-I [13-21]
[71] Northern Ireland Terrorism Legislation: annual Statistics 2012/13 Table 4
[72] *Warnock & Ors, Re Proceeds Of Crime Act* [2005] NIQB 16

assets.[73] However, the nature and degree of this nexus to justify reliance on ordinary criminal measures does not translate to all terrorist groups and activity, since they have different and specific sources of funding. The use of general offences therefore requires caution.

5.1.4 Seizure, restraint and forfeiture of terrorist funds

The ATCSA 2001[74] enables cash seizures and forfeiture where investigating officers have reasonable grounds to suspect terrorism, enabling the detention of cash pending further investigation, which is reasonable in preventing the dissipation of assets alerted by investigative processes. Property is protected by procedures allowing for the release of funds up and until the commencement of criminal proceedings, preserving control through interim measures and allowing time for charging and prosecution. These measures assist civil forfeiture where no prosecution results, or on acquittal, but apply the lesser civil standards of proof. Terrorist cash includes property 'earmarked as terrorist property' facilitating seizure of all proceeds from property obtained through terrorism, without proof of a link to the specific terrorist or the individual concerned. The interference with property is proportionate in being limited to that necessary to prevent terrorism with protection of third party rights. Earmarking provisions apply retrospectively but do not contravene Art 7 in being proceedings '*in rem'* against the property not the person. [75]

Restraint orders are directed to named persons during investigation[76] and prosecution, aiming to prevent the dissipation of terrorist property [77] on evidencing proof of terrorist purpose on the balance of probabilities[78]

[73](n2)

[74]Anti-Terrorism Crime and Security Act 2001
[75]ATCSA 2001 Pt sd1,5,7 Sch 1
[76]ATCSA 2001
[77]TA 2000 schedule 4
[78]*R (on the application of Director of the Assets Recovery Agency) v Jia Jin He (No.2)* [2004] EWHC 302

compliant with Art 6[79] as a reasonable constraint on property rights. Application by the prosecution[80] before the court allows for ex parte hearings, with orders reviewed after 14 days, preventing the dissipation of assets[81] removing control of property until the making of forfeiture orders[82] fulfilling international obligations[83] and enabling the enforcement of overseas orders.[84] The interference with property rights is justified by the need for public protection where reasonable grounds for suspicion as to the terrorist intention and propose of use are connected to the named person,[85]avoiding speculative infringement of property rights. Orders operate proportionately in allowing access to assets for ordinary living and legal expenses in accordance with Art 8 and A1-P1.

Forfeiture orders during trial, or on conviction, for terrorist property offences apply where property has been or was intended for terrorist use, and s15 TA 2000 applies reasonable cause to suspect this, 'would or might' be used in relation to the possession. Any reward obtained through ss15-18 can be forfeited. Forfeiture applies to offences with a 'terrorist connection' to the control or possession of the property held to facilitate terrorism, justifying forfeiture. Interference is constrained by protection of third party rights, s23B,[86] and proof of the 'terrorist connection' to criminal standards. The ACTSA also 2001 provides for account monitoring orders and financial information orders[87] to detect terrorist property identifying other assets for seizure and assisting the investigation stage. Forfeiture permanently removes terrorist assets from terrorist actors. Review of the TA 2000 has indicated a lack of clarity as to whether the £597,000 and US$18,000 terrorist funds seized/forfeited for 2008 were under TA 2000 or POCA

[79] *Gale v Serious Organised Crime Agency* [2011] UKSC 49
[80] *G (restraint order*) [2001] EWHC Admin 606
[81] EC 'Proposal for a Directive on the European Parliament and the Council on the freezing and confiscation of proceeds of crime in the European Union' COM(2012) 85 final Brussels, 12.3.2012
[82] Practice Direction RSC 115 Restraint Orders and Appointment of Receivers in Connection with Criminal Proceedings and Investigations [3.2]
[83] *Council of Europe Convention n Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism Warsaw, 2005, article 3 ,5,6*
[84] Terrorism Act 2000 (Enforcement of External Orders) Order 2001/3927 Part 1 [4] column 1
[85] *Perinpanathan v City of Westminster Magistrates' Court* [2010] EWCA Civ 40
[86] TA 2000 Part III s23, s23A
[87] ATCSA Pt 1 Sch 1,Sch 6 Pt IV Sch 1

powers[88] reflecting the confusion and lack of accurate data about the usefulness of these measures.[89]

5.1.5 Effectiveness of measures

Despite the low thresholds for liability, the number of prosecutions for terrorist finance is quite low and conviction rates remain unpublished.[90] Assessing the effectiveness of criminal measures is problematic given that Home Office data collection is inadequate, therefore constraining an effective review.[91]

Table 3 indicates the charges and convictions for terrorist funding offences ss15-19 compared to those for all offences under the TA 2000. For 2007, of 15 prosecutions, two resulted in convictions under POCA s328 and three under s17, TA 2000.Data for the period 2001-2007 reveals that terrorist finance offences comprised 17% of 104 terrorist charges for the UK, averaging 18 charges per annum.[92] Funding offences (s15-18) constituted 15 principal charges, with 25 of the 47 terrorist funding offences being discontinued. Prosecutions for 2008 concerned s15, TA 2000, 2009 yielded one prosecution for s15, with a further one in 2011 along with one prosecution for s328 of POCA. Prosecutions for 2012 related to s15 concerning the transfer of funds to Somalia through MSBs.[93] Home Office statistics indicate161 terrorism charges for 2010-2012, 13% related to terrorist funding offences, resulting in only one trial.[94] A total of 40 charges

[88]Lord Carlile of Berriew Q C' Report on the Operation in 2008 of the Terrorism Act 2000 and Part 1 of the Terrorism Act 2006' (London Stationary Office 2009) [93]
[89]N Ryder 'To confiscate or not to confiscate? A comparative analysis of the confiscation of the proceeds of crime
legislation in the United States and the United' (2013) 8 Journal of Business Law,789
[90]D Anderson QC 'The Terrorism Acts in 2010' (London Stationary Office 2011 [10.26]
[91]Intelligence and Security Committee 'Could 7/7 have been Prevented? Review of the Intelligence on the London Terrorist Attacks on 7 July 2005' (Cm 7617 London 2009) [88-89] [291]
[92]P Sproat 'Counter-terrorist finance in the UK: a quantitative and qualitative commentary based on open-source materials' (2010) 13(4) JMLC 315-335,319 Table I
[93](n92)322
[94]Home Office Statistical Bulletin,' Operation of police powers under the Terrorism Act 2000 and subsequent legislation: Arrests, outcomes and stops and searches Great Britain 2011/12' HOSB 11/12 13 September 2012 [1.9],[16]

have been brought for terrorist funding offences since 2001 resulting in a total of 16 convictions.[95]

Appendix 4 indicates cases prosecuted by the CPS for the years from 2007-2013,[96] but must be viewed with caution since this includes prosecutions not terrorist related. For 2013 there were 40 trials with only 3 relating to terrorist funding.[97]

Table 3 : Home Office Statistics 2001-2012
Charging of Terrorist Fund Raising Offences s15-19

Year 2001-02	01	02	03	04	05	06	07	08	09	10	11	12	Total
Total No. of charges s15-19	6	8	1	7	4	2	6	1	1	1	1	2	40
Total No. of charges TA 2000 all offences	14	40	32	15	38	40	30	9	6	3	19	19	265
Total No. of convictions s15-19	2	0	0	0	4	1	3	1	0	1	2	2	16
Total No. of convictions all offences TA 2000	5	12	4	4	25	21	15	8	3	3	14	9	123

The data indicates that a small percentage of charges lead to conviction, with property offences sacrificed for more serious offences attracting longer sentences. The former, offer valuable 'back-up' on acquittal or successful appeal,[98] given that only half of the prosecutions succeed. Most charges occurred prior to 2008, and of the 384 charged since 2001, 10% comprise terrorist funding offences.[99] Funding offences are often subsumed within

[95](n94)
[96]Available at http://www.cps.gov.uk/publications/prosecution/ctd.html Date Accessed 14/08/2013
[97](n94)
[98]FATF Third Mutual Evaluation Report Anti Money Laundering and Combating the Financing of Terrorism the United Kingdom of Great Britain and Northern Ireland, Financial Action Task Force, Paris, 29 June 2007 163
[99]Home Office ' Operation of police powers under the Terrorism Act 2000and subsequent legislation:

other offences and are a small proportion[100] of all terrorist charges.[101] Their usefulness is difficult to quantify given the lamentable lack of transparent[102] quality data,[103] which is much criticised, despite financial investigation[104] being an element of all terrorist investigations.

Terrorist funding offences remain important tools[105] for disrupting terrorist plots and enabling the incarceration of suspects and the freezing of their assets pending conviction.[106] The length of investigations and resources required for detailed financial investigation makes successful prosecution problematic. Where terrorist funds derive from ordinary criminality, POCA 2002[107] offers broader scope for confiscation,[108] although having a narrower concept of future use[109] of criminal property.[110] Different policy objectives here may preclude this application for terrorist finance.

The UK AML/CTF strategy associated with the criminal process demands more in-depth evaluation, given the low[111] conviction rates for terrorist funding offences. Assessment of the effectiveness and capacity of measures to disrupt networks, foil plots, and identify unknown associations adversely affecting critical roles[112] and infrastructures, is needed. Security issues should not outweigh meaningful scrutiny of this[113] and the policy and resource allocation controlling their use.

---

arrests, outcomes and searches , quarterly update to 30 June 2013 Great Britain' 12 December 2013

[100](n92)

[101]Arrest and Outcome Data Table Home Office 2012 available at <https://www.gov.uk/government/publications/tables-oeration-of- police-powers-under-the-terrorism-act-2000-and-subsequent-legislation date accessed 22/07/2013

[102]Intelligence and Security Committee 'Could 7/7 Have Been Prevented? Review of the Intelligence on the London Terrorist Attacks on 7 July 2005' (Cm 7617 London 2009) [284-286]

[103]D Anderson QC ' The Terrorism Acts in 2012' (London Stationary Office 2013) [1.4] ,[6.3] [6.45]

[104](n98) [44] [268]

[105]Sproat P' Counter-terrorist finance in the UK: a quantitative and qualitative commentary based on open-source materials' (2010) 13(4) JMLC 315-335, 321

[106] (n1) [1.16]

[107] POCA 2002 Part 7 s327-340

[108](n25)[6.8]

[109]*R v Akhtar* [2011] EWCA Crim 146 re limitations of s328

[110]*R v Geary* [2010] EWCA Crim 1925

[111](n94)15

[112]FATF' Third Mutual Evaluation Report Anti-Money Laundering and Combatting the Financing of Terrorism: United Kingdom of Great Britain and Northern Ireland' 29 June 2007, 45

[113](n94)

The effectiveness of seizure, forfeiture and restraint orders[114] is difficult to assess[115] given the lack of data at UK level and internationally. The AML regime has yielded small volumes of confiscated funds, given the even smaller amounts required to support terrorist plots the detection and seizure of terrorist funding is unlikely to fair better. Effectiveness is a critical justification for the intrusive interference with property rights and private life, central to the justification and proportionality of measures.

The value of general criminal assets seized in the UK is small,[116] and has been hindered by the poor enforcement of cross-border forfeiture orders within the EU. The values seized are low in relation to the cost of recovery, and there have been difficulties tracing assets and regarding state's agreement as to division on confiscation.[117] CTF is not central to policy and action plans at all levels, with terrorist funding measures watered down to become organised crime strategies,[118] depriving CTS of the nuances for investigation, detection and confiscation. This raises concerns, given the lack of evidence to support the effectiveness of incorporating CTF alongside AML approaches. Recent EU proposals aim for improved statistical collation and analysis, presently confined to criminal funds.[119] UK agencies break even in respect of service costs and recovery volumes[120] for civil recovery[121] but there are insufficient indicators for an effective review of terrorist finance.

Terrorist funding offences are justified by the harm prevented. Their broad reach targeting remote harms[122] requires a connection to the terrorist purpose to maintain confidence in their proportionate operation. This is

[114]LK Donohue, 'Anti-Terrorist finance in the United Kingdom and the United States' (2007) 96(3) JCLC 303-435, 405
[115]EC' Assessing the effectiveness of EU Member States' practices in the identification, tracing, freezing and confiscation of criminal assets' Matrix ,June 2009, [6.1]
[116] (n47) [69]
[117] (n1) [75-77]
[118]EC, 'EU Efforts in the fight against terrorist financing in the context of Financial Action task force's nine special recommendations and the EU counter Terrorism finance strategy' Financial report ,John Howell 1 February 2007, 6
[119](n81) Annex 3 [7.4],[3.1]
[120]CJJI 'Joint Thematic Review of Asset Recovery : restraint and Confiscation Casework' March 2010 [6.12]
[121]EC' Assessing the effectiveness of EU Member States' practices in the identification, tracing, freezing and confiscation of criminal assets' Matrix ,June 2009, 58
[122]*Angus v United Kingdom Border Agency* [2011] EWHC 461

questionable where targeted property relates to vague threats and low values. The *Farooqi*[123] conviction and subsequent forfeiture proceedings against the family home[124] expose the consequences of the net-widening approach where a terrorist connection, despite no actual harm or financial gain, also interferes with the property and family rights of third parties. It lacks proportionality where the terrorist purpose was restricted to the defendant's use of the property and forfeiture operates to punish third parties. The broad definition of terrorism and reliance on the targeting of remote harms, require careful application to prevent over criminalisation.

5.2 Sanctions and asset freezes - administrative or quasi-criminal measures

The 1267 international sanctions regime directed measures to the Taliban and Osama Bin Laden and subsequently Al Qa'ida, and associated individuals were brought within this. The progress towards reconciliation between the Taliban and the Afghan Government and a distancing of the Taliban from Al Qa'ida ideology, were the impetus for the cleaving of the 1267 regime. UNSCR 1988 deals with Taliban extremists and UNSCR 1989 now deals with Al Qa'ida.[125] Sanction regimes, elaborated in the wake of 9/11 aimed to 'maintain and restore international peace and security,'[126] which is increasingly relevant to addressing the 'new' terrorist threat.[127] Smart sanctions[128] required states to adopt 'all means' necessary to act pre-emptively to suppress terrorist finance.[129] Administrative measures are not dependent upon a criminal conviction apply through legally binding UNSCR. ,[130] Asset freezes target individuals[131] but have failed to secure full

[123]*R v Farooqi* [2013] EWCA Crim 1649
[124]http://www.independent.co.uk/news/uk/home-news/familys-torture-as-they-face-losing-home-under-antiterror-law-8654524.html Accessed 23/08/2013 TA 2002 s23 A
[125]UNSC Res 1989 (17 June 2011) S/RES/1989 (2011)
[126]UN Charter Art 1
[127]UNSC Res 731 (21 January 1992) UN Doc S/RES/1992 see also UNSC S/RES 1368 (12 September2001) [1]
[128]G Willis 'Security Council Targeted Sanctions, Due Process and the1267 Ombudsmen' Georgetown Journal of International Law Vol 42 2011 673-745,679
[129]UNGA International Convention for the Suppression of the Financing of Terrorism (adopted 9 December 1999 opened for signature 10 January 2000) (2000) 39 ILM 270 Article 3
[130]UN Security Council Committee pursuant to Res 1267(1999) Res 1989 (2011) concerning Al –

protection of human rights,[132] evoking criticism[133] of UN action as 'unworthy of an international institution',[134] committed to upholding fundamental rights in tackling terrorism.[135] The regime worryingly[136] failed to protect rights giving rise to a 'double deficit', with the UNSC lacking democratic legitimacy, scrutiny and accountability. [137] The deficits of UN measures were replicated at state level, creating tension between national and EU judicial oversight and the UNSC processes. The UN, a political not judicial body, in imposing binding measures[138] absent from judicial oversight,[139] failed to secure the necessary procedural and rights protection.[140] Constitutionalism protecting human security must encompass core rights as values to guide policy and action. [141]

5.2.1 Interference with fundamental rights

Property rights are protected within international[142] and regional treaties, such as the ECHR,[143] and within the UK.[144] A1-P1 ECHR secures property rights without discrimination[145] preventing arbitrary interference. Non-discrimination and the proportionality[146] of UN sanctions are questionable,

---

Qaida, Guidelines of the Committee on the Conduct of its work 30th November 2011, [6]

[131] KL Scheppelle , 'Global security law and the challenge to constitutionalism after 9/11'(2011) April Public Law , 361

[132] UN Charter 41

[133] T Bierkster , S Eckhart , 'Addressing the Challenge to Targeted Sanctions An Update of the "Watson Report" (Watson Institute October 2009) 4

[134] International Commission of Jurists, 'Assessing Damage Urging Action Report of the Eminent Jurists Panel on Terrorism, Counter-terrorism and Human Rights.-Full Report, Geneva (2009) 116-117

[135] UNGA A /66/762 United Nations Global Counter -Terrorism Strategy: activities of the United Nations systems in implementing the strategy. Report of the secretary General (4 April 2012) [12]

[136] S/ 2007/132 8 March 2007 Sixth Report of Monitoring Team pursuant to resolution 1526 (2004) [15]

[137] Y Terlingen, 'The United States and the UN's Targeted Sanctions of Suspected Terrorists: What Role for Human Rights?' Ethics & International Affairs, Volume 24(2) (Summer 2010)

[138] M Happold M Security Council Resolution 1373 and the Constitution of the United Nations' (2003) 16 Leiden Journal of International Law 593-610

[139] C Eckes, '*EU Counter Terrorist Policies and Fundamental Human Rights'* (1st edn, OUP 2009) 26

[140] Sir Jeremy Greenstock, 'Measures to eliminate international terrorism' 01/10/2001 Available at http://www.undemocracy.com/United_Kingdom/greenstock Accessed 19/04/2013

[141] Pacewicz l, 'Human rights in the state of nature: indeterminacy in the resolution of the conflict between security and liberty' (2011) 17 UCL Juris. Rev,36

[142] UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III), Article 17(1) everyone has the right to own property alone as well as in association with others

[143] ECHR Article 1 Protocol 1

[144] HRA 1998

[145] Article 14 ECHR

[146] *A and Others v United Kingdom* (Application No 3455/05) (2009) 49 EHHR 29 H 45

where the majority listed are Muslim.[147] Property rights are not absolute,[148] deprivations are legitimate in the 'public interest' or 'general interest'[149] affording states latitude[150] in enacting CTF measures. Interference must be the minimum necessary[151] to limit the use of property[152] for effective reduction of the terrorist threat, balancing public and private interests.[153] Asset freezes as 'precautionary measures'[154] are disproportionate[155] in being of indeterminate duration with 'far reaching' effects[156] are not considered to extinguish property rights. This is questionable given their indeterminate duration[157] and the problems with securing delisting that would rendering them akin to a punishment'[158]or a confiscation as 'quasi-criminal' measures. They impose severe restrictions on family[159] and private life, Art 8,[160] mitigated by licences which provide access to funds for basic living and medical legal expenses.[161] States often lack effective procedures for implementing humanitarian exceptions and licences and there is little monitoring of exemptions within the UN regime. [162] These measures are constrained to limiting access to funds[163] for terrorist use only, and the targeting of funds essential for survival[164] lacks proportionality. Resolution 1267 required states to freeze assets owned or controlled by the Taliban, Osama Bin Laden and Al Qa'ida,[165] and associated individuals/entities.

[147](n134)115
[148]Tay Za *v Council of the European Union* (C-376/10 P) [2012] 2 C.M.L.R. 27 AG100,101
[149]Beyeler v Italy *Application no. 33202/96* ECHR (GC) 2000-I at 108
[150]*Maria Atanasiu and Others v. Romania*, nos. 30767/05 and 33800/06at 165
[151]*Brumarescu v Romania Application* no. 28342/95 (ECtHR 28 October 1999) [78]
[152]JE Penner, *The Idea of property in Law* (1st edn, Clarendon Press 1997) [139] [152]
[153]*Sporrong and Lönnrothv. Sweden*, A52 (1982) at 73
[154]Case T-306/01 Yusuf and Another v Council of the European Union and Commission of the European Communities (United Kingdom, intervening) [2005] at 320
[155]ACoben , *Protection of Property Rights within the European Convention on Human Rights* (1st edn Ashgate Publishing, 2004) 92, 98
[156]Joined Cases C-402/05 P & C-415/05 P, Kadi & Al Barakaat v. Council of the European Union, 3 CMLR 41 (2008) at 47
[157]*Kadi v Commission of the European Communities* (Council of the European Union and others, intervening) (Case T-85/09) 30 September 2010 at149,150 Kadi was listed on 20 October 2001
[158]A/HRC/12/22 United Nation High Commissioner for Human Rights 'Report of the United Nations High Commissioner for Human Rights on the protection of human rights and fundamental freedoms while countering terrorism' 2 September 2009 [42]
[159]*Ahmed and others v HM Treasury* [2010] UKSC at 4 Lord Hope
[160] ECHR
[161]UNSC Res 1452 (20 December 2002) UN Doc S/RES/1452 [34]
[162] S/2012/729 [53]
[163]R (on the Application of M and Others) v *HM Treasury* [2010] 3 CMLR 31 at AG 40-61 and 89
[164]Al-Qaeda and Taliban Order 2006 enacted in the UK to give effect to regulation 881/2002 giving effect to UN SC res 1390(2002) and 1490(2002)
[165]UNSC Res 1390 (28 January 2002) UN Doc S/RES/1390

States propose listing, [166] providing supporting information[167] through national focal points,[168] to demonstrate the required threshold of threat[169] promoting consistent application[170] and avoiding arbitrary proposal derived from subjective political motivations.[171] Proposals draw on 'intelligence, law enforcement and judicial,'[172] information to evidence the terrorist association. UK designation requires a 'terrorist association', not current involvement,[173] and association[174] is proportionately limited to the aims of the measures.

The UN listing regime requires unanimity;[175] the political nature of the UNSC and the sanctions committee (SCe) lends to deference to proposing states, who are able to remain anonymous. [176] The suppression of evidence on the basis of security concerns,[177]is critical to challenging listings and compromises transparency and the rights of defence.[178] This violates the right to know your accuser in accordance with core due process guarantees protected in customary law.[179] Individuals unable to challenge the evidential basis of a listing are left to adduce evidence to counter the listing, reversing the burden of proof. Inadequate procedural guarantees fail to protect property rights limiting challenges to, and remedies[180] for wrongful listing.[181] Failure to provide reasons is only justified in advance of listing to avoid

[166]UNSC Res1546 (8 June 2004) UN Doc S/RES/ 1546 [16],[34]
[167]UNSC Committee pursuant to resolutions 1267(1999) and 1989(2011) Concerning Al-Qaida and associated individuals and entities, 'Guidelines for the Committee on the Conduct of its work' 30 November 2011 [6]
[168]UNSC Res1904 (17 December 2009) S/RES/1904 (2009)
[169]UNSC Res/2004/679Letter Chairman of the Security Council Committee established pursuant to resolution 1267 to President of SC 23 August 2004 UN Doc S/Res/679 para 5 see also UNSC Res1617 (29 July 2005) S/RES/1617 (2005) para 2
[170]*Youssef, R (on the application of) v Secretary of State for Foreign & Commonwealth Affairs* [2012] EWHC 2091 at 50 Lord Justice Toulson
[171](n169)
[172] Explanatory notes for the standard form for listing individuals, 4 Available at http://www.un.org/sc/committees/1267/fact_sheet_listing.shtml Accessed 08/01/2013
[173]S/2011/447 22 July 2011 Second report of the Ombudsperson to the Security Council has stated that the 'absence of recent information no way determinative' of delisting decisions.
[174]Tay Za *v Council of the European Union* (C-376/10 P) [2012] 2 CMLR 27 at 48, 65 - 66
[175](n167) [6](h)
[176](n125) [14]
[177](n167)
[178](n169)
[179]A/67/396 Promotion and protection of human rights and fundamental freedoms while countering terrorism ,Note by the Secretary-General. 26 September 2012 [15]
[180]Joined Cases C-402/05 P & C-415/05 P, *Kadi & Al Barakaat v Council of the European Union*, 3 CMLR 41 (2008) at 358, 349
[181]R Goldman R 'Report of the Independent Expert on the Protection of Human Rights and Fundamental Freedoms while Countering Terrorism' E/CN.4/2005/103 7 February 2005, [63]

compromising the 'surprise effect' of measures.[182] Summary narratives provided by states[183] on listing,[184] are 'unsubstantiated, vague and unparticularised' failing to meet the required standards[185] and lacking specificity.[186] Delisting was reliant on securing the commitment of petitioning states[187] through diplomatic not judicial process, leaving delisting hostage to executive discretion, and compromised where support would undermine diplomatic relations[188] underpinning the enforcement of CT measures between states reliant on mutual cooperation.

The delisting required SCe to review its previous decisions, contrary to the principle 'no man shall be judge his own case'.[189] The lack of judicial review contrasts starkly with EU rights protection[190] with the ECJ annulling implementing measures in *Kadi*,[191] to uphold constitutional guarantees securing the right to reasons for listing. This includes scrutiny of the evidence on which listing is based. In derogating from internationally recognised normative values and standards of rights protection, the UN compromised its authority and credibility to act on behalf of the international community, indirectly determining those qualifying for rights protection.[192]

Petitions for delisting are now reviewed by the Ombudsperson[193] who gives recommendations as to delisting, although the SCe are not bound to accept this, but absent any objection recommendations are final.[194] States may veto evidence[195] and the regime remains hostage to secrecy and political pressures, failing to deliver adequate procedural protection. Delisting should

[182]Case T-306/01 Yusuf and Another v Council of the European Union and Commission of the European Communities (United Kingdom, intervening) [2005] E.C.R. II-3533at 308 -309,314,322
[183]UNSC Res 1822 (2008) [13]
[184]UN SC Res 1455 (2003) 7 November 2002 amended 10 April 2003
[185]Kadi v Commission of the European Communities (Council of the European Union and others, intervening) (Case T-85/09) 30 September 2010 at 60,130, 133,157.
[186]Joined Cases C-402/05 P & C-415/05 P, Kadi & Al Barakaat v. Council of the European Union, 3 CMLR 41 (2008) at 53
[187]Guidelines of the Sanctions Committee for the conduct of its work" November 7, 2002 s7(a-d)
[188]*Youssef, R (on the application of) v Secretary of State for Foreign & Commonwealth Affairs* [2012] EWHC 2011 at 61,90
[189](n179) [15]
[190]Common Position 96/746/CFSP Regulation 467/2001, succeeded by Regulation 881/2002
[191](n180)
[192](n134)16
[193]UNSR Res 2083 (17 December 2012) S/RES/2083 (2012) [19]
[194]UNSCR 1989 (2011)
[195](n157) at 128 and 147

include a review of all relevant material, including exculpatory evidence, assessing its quantity, quality, factual accuracy,[196] and probative value,[197] to evaluate if this is reasonably and credibly justifies continued listing.[198] Petition for delisting under the Taliban regime now reliant on the Afghanistan Government for briefing as to individuals meeting the relevant reconciliation criteria for delisting, operating according to different procedures and criteria. This undermines the normative standards that should inform the uniformity of the UN sanction regimes.

5.2.2 Rectification - responding to protect fundamental rights

These improvements in the 1267 regime still fall short of impartial and independent judicial review,[199] and adequate procedural protection reflecting international standards of justice and fairness. They lack disclosure of exculpatory material or opportunity for cross examination, procedurally imbalanced and unfair in failing to afford 'equality of arms' and rights of defence. Recommendations remain confidential countering principles of transparency and due process. The Special Rapporteur has recommended 'sunset clauses'[200] fixing the term of sanctions with states having the burden of justifying continued listing. This limits the capacity of sanctions to amount to a 'punishment' triggered by past association disconnected from present threats. Reform of UN processes has led to delistings, totalling: 29 (2010), 26 (2011), and 43 (2012). [201] Delisting is an arduous process, with the petitioner bearing their legal costs in challenging the SC, an international organisation, which is problematic given that funds are frozen, and given the lack of timeframes securing prompt state 'cooperation'.

[196](n173) [3],[7],[8], [11] [14] [17]
[197](n158) [42]
[198]*People's Mojahedin Organization of Iran v Council of the European Union* (T-284/08) [2008] E.C.R. II-3487 [2009] 1 CMLR 44 at 53, 50, 55, 65
[199]Watson Institute, S Eickert ,S Biersteker, 'Due Process and Targeted Sanctions: An Update of the "Watson Report"' December 2012,24
[200] (n189) [45],[50] [58]
[201] S/2012/968 paras 12 Annex III [14], [22]

Resolutions now address human rights[202] mandating that implementation of counter terrorism legislation should fully respect rights and comply with international law[203] to operate proportionately.[204] CTS is 'rooted in a legal approach' to protecting human rights[205] in order to improve procedural fairness and accountability.[206] Deficits identified at national level in failing to provide 'effective judicial mechanisms' to challenge asset freezes and secure humanitarian exceptions, need to be addressed by a 'top down and bottom up' securing of normative compliance. [207]

Kadi[208] highlighted deficits in the UN regime, with the ECJ confirming that EU regulations implementing UN sanctions remain subject to judicial review to guarantee the protection of fundamental rights. Effective challenge requires reasons for listing including the totality of supporting evidence to assess the legality of listing, with the absence of this risking ECJ ruling that evidence available does not justify the listing decision.[209] Where ECJ declares EU implementing measures unlawful, a conflict arises given that member states remain bound to adhere to UN resolutions, resulting in [de]listing that is prone to becoming a revolving door with the individuals potentially relisted at EU level.

ECJ enforcement has secured some degree of UN accountability for addressing rights protection within terrorist measures as normative values of constitutional governance which the UN charged itself with protecting. Although the UN is not legally bound by international human rights treaties, its commitment to observing these international norms is integral to its strategy, authority and credibility in enacting counter terrorism measures.

[202] UNSC Res 1456 (20 January 2003) S/RES/1456 (2003)
[203] UNGA Res 64/168 (22 January 2010) Protection of human rights and fundamental freedoms while countering terrorism,4, 5
[204] Human Rights Watch 'In the Name of Security. Counterterrorism Laws Worldwide since September (2012 US) 7
[205] UNCTC ' Survey of the Implementation of Security Council Resolution 1373 (2001)by Member States' (2010) 65, 71
[206] Report of the Secretary-General, 'Uniting against Terrorism: Recommendations for a Global Counter-Terrorism Strategy', UN Doc. A/60/825 (27 April 2006) [42]
[207] UNCTC Background Paper 'Thematic discussion of the Counter-Terrorism Committee on the human rights aspects of counter-terrorism in the context of resolution 1373 (2001)' 7 October 2010 [3],[9]
[208] (n157)
[209] Joined Cases C-584/10 P, C-593/10 P and C-595/10 P (18 July 2013)OJ C 252, 31.8.2013 at 111-126

Securing normative compliance legitimises action securing global human security, to ensure that security concerns are addressed from within a framework of rights compliance through effective and consistent implementation.[210]

Kadi, however, offers no compensation at EU level for the infringement of Art 8 and A1-P1 and the resulting hardship and reputational damage from unlawful listing. This requires proof of 'flagrant inexcusable misconduct' and a 'manifest disregard' [211] not applicable to EU actions implementing UN measures in accordance with constitutional commitments and binding international law obligations.[212]

5.2.3 International sanctions: evaluating effectiveness

Efficacy of international measures is assessed by crude indicators including treaty ratification, rather than a nuanced results driven review. The UN pressed for state[213] ratification and implementation of terrorist suppression conventions, which increased significantly post 9/11. [214] The CTITF is responsible for implementation of UN measures, overseeing effectiveness through interstate cooperation and coordination, providing technical assistance to 'weak' states. Recent focus aims to secure rights protection within UN CTS through pooling expertise and cooperation. More needs to be done to assess the effectiveness of UN CTS, which drives international effort, directing resource allocation and warranting a cost/benefit assessment. [215]

[210] A/C.6/66/L.25 (8 November 2011) Measures to eliminate international terrorism
[211] Case T-341/07, Sison v Council at 28-81
[212] Case T-527/09 Chafiq Ayadi v European Commission, Order of 31 January 2012 [34-40]
[213] UNSC Res 1373 (28 September 2001) S/RES/1373 (2001) and UNSC Res 1566 (8 October 2004) S/RES/1566 (2004)
[214] UN CTS 'Global Survey of the implementation of Security Council resolution 1373 (2001) by Member States S/2011/463 1 September 2011, 7
[215] A/RES/66/10 United Nations Counter-Terrorism Centre 7 December 2011

Data indicating the volumes of assets frozen internationally and at state level under sanctions regimes,[216] is notably lacking; $136 million is estimated to have been frozen internationally of which $36 million was by the US.[217] By 2002, 80% of assets frozen worldwide were blocked immediately following 9/11, and a further $80 million was frozen in the following eighteen months, with the worldwide total estimated at $200 million.[218] Volumes are crude indicators failing to illuminate as to the impact of sanctions in disrupting specific organisations, threats or identified 'plots'.

Legal challenges to the UN regime have compromised confidence in measures, and their efficacy and effectiveness in targeting individuals. Since the inception of the Al Qa'ida list there have been 137 delistings, from a peak of over 500, with 488 listed at 2010.[219] Rights protection may be compromised where states act unilaterally and politically in maintaining national designation[220] following international delisting[221] without justification. The decline in listings indicates a more purposeful use of sanctions against individuals associated with international terrorism, with measures applied where necessary and justified in relation to the threat. The lack of overall transparency has hindered the assessment of the 'appropriateness' of measures to address the threat where past terrorist involvement justifies measures. Concerns remain as to whether sanctions are an appropriate and effective response, given the various methods deployed to raise, move and use funds.

The lack of procedural consistency regarding identifying information has compromised the effectiveness and integrity of the regime, leading to

[216] UN Report of the High-level Panel on Threats, Challenges and Change, A More Secure World, Our Shared Responsibility, UN Document 1/59/656, on 2 December 2004 [178]

[217] US, John Roth, Douglas Greenburg, Serena Wille, National Commission on Terrorist Attacks Upon the United States, Staff Report to the Commission 'Monograph on Terrorist Financing,' November 27, 2002 August 21, 2004,45

[218] CRS Report for Congress 'Terrorist Financing: The 9/11 Commission Recommendation February 25, 2005

[219] (n199)11

[220] *Yassin Abdullah Kadi v Timothy Geithner et al*, Civil Action No. 09– 108(JDB), 2012 WL 898778 (DDC) Kadi's US challenge to US listing was overruled 13th March 2012

[221] Kadi I was successfully removed from the UN sanctions list on 5 October 2012 following review by the Ombudsperson

mistaken listings, which has now been addressed.[222] A single process for all sanctions regimes with comparable procedural safeguards and timeframes is needed. Instances of individuals[223]delisted from the1267 regime but added to other regimes raise concerns where based on Al Qa'ida association. UN credibility relies on consistency, transparency, and effective application based on 'current' threats, to which past terrorist involvement and national threats requires assessment for relevance at international level.

The UN high level panel previously noted that the sanctions regime is ineffective, the array of UN terrorism measures leading to 'sanctions fatigue'. [224] Sanctions remain a necessary tool to deter and prevent international terrorism, symbolically reflecting the global commitment and condemnation of terrorism, despite the difficulty in demonstrating impact.

A recent review of the1373 regime concluded that the effectiveness of law enforcement measures requires additional integration within legal and social policy at state level. Effectiveness requires the coordination of all states' CTS.[225] Clear, complete and consistent legal frameworks for implementation, specifying terrorist acts as serious criminal offences with penalties establishing a 'comprehensive legal regime'[226] to combat the financing of terrorism are needed. States' failure to implement sanctions creates 'safe havens' damaging the efficacy of international efforts to prevent and deter. Expertise and experience of investigation and prosecution are key to underpinning effectiveness, sabotaged where states lack procedures for the prompt freezing of terrorist assets.[227] The risk based approach applied across the financial sector secures the detection of terrorist property, which is critical for successful prevention and deterrence of the 1373 prosecution model.

[222](n125)
[223]Ahmed Ali Jim'ale delisted on 17 February 2012
[224] (n216) [77], [81],[179]
[225]UNSC Res 1963 (20 December 2010) S/RES/1963(2010)
[226](n214) [7], [71], [73]
[227]S/2012/729 [49] [16] Member States have been rated compliant or largely compliant with Special Recommendation III

5.2.4 UK measures - implementing international obligations

Deficiencies in UN sanctions have been replicated at UK level by enactment of TO 2006 giving effect to UNSCR 1373, and Al-Qaida Order 2006 implementing UNSCR 1267. Both orders, considered in *Ahmed*, were enacted as Orders in Council[228] under the UN Act 1946 giving effect to international obligations.[229] TO 2006[230] adopted procedures not suited for primary legislation, lacking parliamentary scrutiny contrary to the rule of law and the separation of powers. This is essential to guaranteeing democratic accountability and protecting fundamental rights, described as 'an attempt to effect the basic rights of the citizen without the clear authority of parliament.' [231] TO 2006 applied to those who '*may*' be involved in terrorism on the basis of reasonable suspicion, and widened the scope of UNSCR 1373 beyond that necessary under the UN resolution; the TO was held ultra vires re the UN Act. The replacement TO 2009 required designation be 'necessary' for the public protection and measures be rationally connected to this. This prevented the executive drawing on distant past terrorist involvement unconnected to current threats for designation, but *Ahmed* confirmed that had the 2009 Order[232] been before the court, it too would have been quashed.

The Al Qa'ida Order (AQO) giving effect to UNSCR 1267 was held to be permissible in relation to the UN Act but lacked procedural safeguards for effective challenge of those listed at UN level, failing to afford a right of appeal against AQO 2006. The UK proposed G's listing in the *Ahmed* case. The court suggested a merits based review of the delisting to assess UK support for this, but this fell short of the procedural protection obligated within UK measures. It would also not avail any challenge by a UK citizen against

[228] The Terrorism (United Nations Measures) Order 2006 2006/2567 (TO) and the Al-Qaida and Taliban (United Nations Measures) Order 2006, SI 2006 /2952 AQ Order
[229] United Nations Charter Article 25
[230] The Terrorism (United Nations Measures) Order 2006 SI 2006/2567
[231] *Ahmed and others v HM Treasury* [2010] UKSC Lord Hope at 5, 48, 61 63 77
[232] The Terrorism (United Nations Measures) Order 2009 SI 2009/1747

listing by another state, which may veto the availability of evidence for listing. The AQO was held not held to be disproportionate in its interference with A1-P1, and Art 8. The failure of the UNSC to separate delisting from reliance on the diplomatic support of the proposing state denied a legal remedy.

Ahmed held that 'even in the face of international terrorism the safety of the people is not the supreme law. We must be careful to guard against unconstrained encroachments on personal liberty.'[233] *Ahmed* illustrates the lack of normative compliance of the Orders, the interference with property rights 'when the intrusion upon the right to enjoyment of one's property is so great, so overwhelming and so timeless that the absence of any effective means of challenging it means that this can only be brought about under the express authority of Parliament.'[234] The deficiencies in the UN regime were replicated at UK level eroding normative compliance of the procedural safeguards secured by Art 6.

Ahmed illustrates the dilemma for the UK in implementing the international sanctions regime, recognising that 'parliament not the executive should make the final decision as to this system, with its inherent problems, should be introduced into our law.'[235] The need for parliamentary accountability and endorsement is, however, more critical where 'ordinary human rights restraints do not apply.'[236] Fundamental rights were engaged but not breached, sidestepping the consideration of whether these were adequately protected at UN level. To leave the legal challenges and due process guarantees of rights protection dependent on intergovernmental cooperation, diplomacy and the need to enlist the support of national states was plainly unfair and unjust. Procedural deficiencies from lack of independent and impartial judicial review at UN level denied natural justice and procedural fairness, replicated at UK level and could not be remedied by UK judicial review which was fruitless. The UN regime unfairly and unacceptably

[233](n231Lord Hope at 62
[234](n231)Lord Hope at 38,39,62 76
[235](n231)Lord Rodger of Earlsferry at 186
[236](n235)Lord Rodger of Earlsferry at 186

prioritised state political and security interests over the right to due process guarantees.

5.2.4.1 The UK context - assessing effectiveness of the UK asset freezing regime in combatting terrorist finance

TAFA 2010 implements UN Res 1373 and EU regulation 2580, enabling the enforcement of EU listing and independent UK listing. Interference with property is proportionate, distinguishing between temporary and permanent designations. Temporary designation justifies the lesser threshold of reasonable suspicion (reasonable belief applying to permanent designation) enabling swift action to prevent the dissipation of funds. Measures prohibit dealing with funds or economic resources, limited to financial assets, and the benefits or provision of financial services to the designated person, inclusive of money remittances.[237]

No conviction is required and current or past terrorist involvement need not be related to specific acts. Measures must be 'necessary' for and 'connected' to protecting the public from terrorism, limiting the use of past terrorist acts as a trigger for designation. Offences underpin the effectiveness and enforcement, criminalising the provision of funds, financial services or economic resources to those designated. This requires reasonable cause to suspect the individual is designated, an easy threshold to cross in the regulated sector. Licences ensure compliance with Art 8 allowing access to funds for legal and living expenses, specifying conditions of access and accountability.[238]

Listing is subject to executive discretion rather than judicial authorisation for effectiveness and speed of application. Designated persons have no entitlement to reasons[239] for listing, but HMT in practice provides these. Appeals against designation and renewal requires evidence, with security

[237]TAFA 2010 s2,11,40 (iv) 2(b)
[238]TAFA s11 – 15, s33-35, s17(7)
[239]D Anderson '*The Second Report on the Operation of the Terrorist Asset-Freezing Act Etc.2010*' (London: Stationary Office, 2012) recommendation 10 [7.9]

sensitive information protected from disclosure to the designated persons through the use of closed material proceedings (CMP) using special advocates[240] on the grounds of public interest and security. The danger of specialised terrorist security measures is their extension to 'ordinary' situations where the infringements in rights may not be proportionate the harm prevented. CMP have come to be applied to ordinary civil proceedings, arguably used to protect political rather than national security. [241]

Article 6 determines the level of disclosure[242]of evidence and reasons for TAFA listing, ensuring sufficient information to effectively refute the basis of designation. *Bhutta[243]* viewed the infringement of convention rights[244] as a 'side effect,' Mastafa, however, held that Art 6 applies to the determination of civil rights, securing an 'irreducible minimum'[245] of protection. This includes access to sufficient information[246] to effectively instruct his counsel '*gisting.*' [247] The proportionality and legality of asset freezes can only be tested against the evidence justifying the threat that the designated individual poses. The CMP remain inherently unfair, distorting the adversarial process.[248]

TAFA secures compliance through offences criminalising breaches of its provisions. Mandatory reporting by the financial sector secures financial information to support the investigation of breaches[249] and the production of financial documents; these offences are mirrored in the Al Qa'ida regulations.[250]

[240]TAFA s applies 28 s66-68 CTA 2008 Sch 7 Pt 79 CPR
[241]Justice and Security Act 2013
[242]Joint Committee on Human Rights, 'Counter Terrorism Policy and Human Rights', HL (2009-10) HL 86 HC 111 [54]
[243]*Bhutta v HMT* [2011] EWHC 1789 paras 14-15
[244]*R (on the application of Khaled) v Secretary of State for Foreign and Commonwealth Affairs* [2011] EWCA Civ 350 [2012] QB 477 Lord Justice Sedley
[245]*Mastafa v H.M. Treasury* [2012] EWHC 3578 J Collins at 31 see also 14, 20,31.36
[246]*A and Others v United Kingdom* (Application No 3455/05) (2009) 49 EHHR 29 at H58
[247]*AF (No 3)* [2009] WLR 74
[248](n134) 99
[249]TAFA s19-s22
[250]Al Qaida (Asset Freezing) Regulations 2011 s10,11,12 and Schedule 1 [1-5]

The Al Qa'ida regulations, 2011 implement UNSCR 1267 and EU Reg 880/2002. Operationally they mirror TAFA but are silent on the appeals process since appeal against designation requires petition to the Ombudsperson, the support of the FCO, or petition to ECJ. Those listed under TAFA benefit from appeal before a UK court. Following *Kadi III,* the 1267 regime and the 1373 regime are more concordant in limiting the impact of restricted access to security sensitive material, reflecting that the 'interests of national security and of justice are not completely reconcilable.'[251] The ECJ has secured procedural safeguards protecting due process, [252] property and Art 8 rights. Appeal for delisting at UN level is more onerous and cannot guarantee provision of all relevant information where security sensitive. The EU regime does, however, provide for judicial review. The disparity between the two regimes could be overcome by duplicate listing of 1267 under the 1373 regime to afford greater accountability in cases of MS proposing listing, and would prompt more effective national application of exemptions.

5.2.4.2 Discretionary directions

The CTA 2008 applies Treasury directions against overseas Governments, corporations, or individuals reasonably believed to present a significant terrorist risk to UK interests, enabling UK action in accordance with FATF counter measures against high risk or non-cooperative jurisdictions. Directions are applied by regulated financial institutions, requiring enhanced due diligence, monitoring, reporting, or the cessation of trade. Measures are contained to that needed to address the risk with licences facilitating the continuance of legitimate business.[253]

Mandatory production and disclosure of information is supported by powers to enter and seize information and deliver financial intelligence central to the

[251]Anderson D QC '*The First Report on the Operation of the Terrorist Asset-Freezing Act Etc.2010*' (London: The Stationary Office, 2011) p4.1] ,[7.6],[11.21]
[252]Joint Committee on Human Rights, 'Counter Terrorism Policy and Human Rights', HL (2009-10) HL 86 HC 111 [61]
[253]CTA 2008 Sch 7 Pt 3- 6

effectiveness of directions. Breach is an offence without having taken '*all* ' reasonable steps to comply, with enforcement through 'effective, proportionate and dissuasive' civil penalties as an alternative to prosecution. Appeals against directions allowed for CMP in the public interest.[254]

The *Mellat* case considered a direction[255] against Bank Mellat's alleged provision of financial services to support Iran's nuclear weapons programmes. The Supreme Court held that the statutory process for making the direction did not exclude the common law duty to consult, required by good administration and fairness, given the draconian effects of the measure. The direction itself was held to be arbitrary, irrational and disproportionate in targeting *Mellat* on the mistaken belief of its control by the Iranian Government. The risk of general financial sector misuse made the direction discriminatory, disproportionate and ineffective. [256] *Mellat* illustrates differential treatment favouring financial institutions having advance notice of orders, denied to individual asset freezes. The Supreme Court applied CMP to review 'secret' evidence to avoid potential injustice. These procedures remain inherently unfair.[257]

5.2.4.3 UK CTF measures – assessing effectiveness

The effectiveness of TAFA and the Al Qa'ida Regulations are enhanced by their hybrid nature with criminal liability for their breach.[258] Adherence requires timely publication of HMT directions applied through AML/CTF processes and controls drawing on the RBA to identify and apply measures. Provision of funds to a designated person incurs criminal liability and invokes mandatory reporting to HMT and the filing of a SAR.

[254]CTA 2008 s66
[255]Financial Restrictions (Iran) Order 2009 (SI 2009/2725)
[256]*Bank Mellat v Her Majesty's Treasury (No. 2)* [2013] 39 UKSC Lord Sumption at 23 ,31, 32,44
[257](n256) UKSC Lord Hope at 88, see also 81- 86
[258]JMLSG 'Prevention of money laundering/ combating terrorist financing, Guidance for the UK Financial Sector Part III' October 2010 [4.3]

The impact of measures in contributing to disrupting terrorism in the UK and abroad is difficult to quantify. The 1267 regime requires states to inform the Monitoring Committee of assets frozen, but the UN reports a lack of detail and evidence to support effectiveness.[259] Evidence as to the specific impact of asset freezes on terrorism is notably lacking. Data as to volumes frozen under this regime attributable to individual states would assist in monitoring compliance. The 1373 regime suffers similar treatment and effectiveness, and the UK contribution to this other than by domestic implementation, is impossible to quantify.

Assets frozen under the Al Qa'ida regime have totalled £73,000 in relation to 28 accounts and 290 designations. Assets frozen under TAFA have ranged from as little at £44,000[260] up to £102,000, relating to 36 TAFA and 39 EU designations. The assets frozen under the 1373 regime within the UK totalled a mere £11,000 in relation to 10 accounts.[261] UK designation triggered EU listing under the 1373 regime for a significant proportion of individuals and entities, reflecting the UK's contribution to tackling international terrorism. Current listing at EU level requires a cross border dimension to terrorist activity, EU proposals drawing on Art 75 TFEU will allow 'listing' without this.[262]

The volume of assets frozen provides some indication of effectiveness in removing funds available to support terrorism, but fails to illuminate as to the specific impact in disrupting operational roles within terrorist groups. Information, even in generalised redacted case study format, is unavailable. The volumes frozen have declined overall, to a modest £1,000 per account under TAFA and EU 2580 regime, and £3,000 for the A Q regime. Whilst values are low they are potentially significant in contributing to terrorism given the low costs of funding attacks. Designation marks the individual for

[259] S/2013/467 Letter 2 August 2013) Fourteenth report of the Analytical Support and Sanctions Monitoring Team [3H] [3F]
[260] HM Treasury 'Written Ministerial Statement Operation of the UK's Counter-Terrorist Asset Freezing Regime: 1 January 2013 to 31 March 2013' Ninth Report
[261] HM Treasury 'Written Ministerial Statement Operation of the UK's Counter-Terrorist Asset Freezing Regime: 1 April 2013 to 30 June 2013' Tenth report
[262] (n239) [2.9-10]

their terrorist support, reducing their operational effectiveness by limiting access to property. The decline in designations under TAFA[263] reflects more selective use of measures, acknowledging the effects on property and family rights. The higher threshold of proof and mandatory review have contributed to their purposeful and justified application, with orders effective whilst the threat posed by individuals remains, therefore securing proportionality. Whilst the effectiveness of orders is questionable given the proportion of listed individuals in custody, they have been applied against five individuals at liberty in the UK. The new TPIMs regime also provides for financial restrictions[264] and prohibitions on property, but operates in a different context. Most of the individuals listed under all regimes are overseas, with UK measures providing international support and cooperation to prevent the movement of assets between jurisdictions. HMT reports and scrutiny by the Independent Reviewer of Terrorism offer a review of their effectiveness, and TAFA appeals have added further judicial protection and impartial scrutiny of rights protection.

Proscription offers a more comprehensive regime, based on the Home Secretary's belief that organisations are concerned with terrorism, triggering provisions restricting terrorist property and criminal offences for terrorist funding, see sections 5.1.4 and 5.1.6. It provides a more transparent, accountable and arguably fairer process and justification for targeting the individual assets of members or supporters of proscribed organisations.[265] The use of quasi-criminal administrative measures against individuals is viewed as unfair in the absence of prosecution or proscription and given their harsh effects and the withholding of reasons for listing. Fifty two international organisations[266] are currently proscribed, and forty were proscribed between 2001 and 2005. Proscription is a single threshold test compared to measures in TAFA and TPIMS, but is limited in not being an international regime. It

[263](n261)
[264]Terrorism Prevention and Investigation and Measures Act 2011 Schedule 1 part 1 [5-6]
[265]TA 2000 Part II s3s11-13
[266]HMT, 'Proscribed Terrorist Organisations' December 2103

does not therefore offer international support comparable to the UN and EU sanctions regimes. [267]

5.3 The application and scope of the MLR 2007

The MLR implement EU directives requiring registration or licencing of MSBs, in recognition of their 'witting and unwitting'[268] misuse for ML and TF identified internationally;[269] this risk having been identified through ML and TF investigations,[270]prosecutions and case law.[271] MSB activity includes cheque cashing, money remittance and bureau de change businesses,[272] with registration a pre-condition to lawful operation. Exemptions for occasional/limited transactions do not benefit MSB operation.[273] The high risk of misuse of MSBs for ML and TF arises from cross-border remittances[274] and wire transfers, justifying this exclusion.[275] Defining MSBs by their activity fails to distinguish between risks related to business size and provision of services, given that MSBs generally offer a discrete product range compared to banks. The regulations target risk but lack proportionality in their application to small businesses, as the majority of registered MSBs have a small turnover[276] and limited resources.[277] The fieldwork research aims to investigate the attitudes of MSBs to regulation and the impact of these constraints in applying the MLR.

Banks can draw on more extensive expertise and resources and greater profit margins from a more diverse range of services to manage regulatory

[267](n3) [4.3] [4.16]
[268]HM Treasury, 'The Regulation of Money Service Business: A Consultation' (September 2006) [6.2]
[269]FATF, 'Money Laundering through Money Remittance and Currency Exchange Providers' (July 2010) executive summary , [22]
[270]HMRC, 'Money Service Business Action Plan C' (2009) [9]
[271]*R v Patel* [2012] EWCA Crim 2479
[272]HMRC 'Notice MLR9a Registration Guide for Money Service Businesses'[1.1] February 2011
[273]MLR 2007 Reg 4(2) Sch sch 3, reg 20-30
[274]HMRC MLR8 [9.3.1]
[275]HMSO, Explanatory Memorandum Money Laundering Regulations 2007 No. 2157 Regulatory impact Assessment [1.37],[140]
[276]HMRC, 'Anti-Money Laundering Annual Report to Her Majesty's Treasury' 2010-2011 [2],[6],[10]
[277]N Ryder The 'Financial Services Authority and Money Laundering Game of Cat and Mouse' (2008) 67(3) Cambridge Law Journal,637

costs. MSBs lack comparable resources for implementation, with high transaction volumes offset by low profit margins. [278] The RBA aims to targeting resources effectively to address existing and potentially new risks. MSBs are responsible for their agents compliance, the fieldwork aims to illuminate as to the impact of this approach and the responsibilities under the MLR. [279]

Registration or licensing[280] identifies legitimate businesses for supervision of compliance[281] connected to the 'fit and proper' test,[282] preventing ownership or control[283] of MSBs for illicit exploitation.[284] FATF review of the UK implementation of its standards criticised the 'fit and proper' test as offering inadequate sanctions against directors of non-compliant businesses.[285] These deficits have recently been remedied,[286] by a test assessing the 'suitability' of MSB operators through accountability and screening. The PSR 2009 requiring MSB registration with the FCA applying a more onerous test assessing competence and financial soundness.[287] Objective registration criteria counter ethnic affiliations operating as a gateway to MSB control. Registration is denied on evidence of previous investigation of, or convictions for, ML,[288] financial crime, proceedings under POCA 2002, disqualification as a company director and the 'risk of terrorism'. 'Suitability' is also excluded for previous failures in supervisory compliance.[289] Information shared between HMRC and the FCA[290] accords with Art 8, limited to regulatory functions and business knowledge, governed by a MOU[291] regulating disclosures.[292] The

[278](n1) [3.64]
[279](n274) [5.3.1]
[280]MLR 2007 Reg 26
[281]HM Treasury, 'The Regulation of Money Service Business: A Consultation' (September 2006) [7.3]
[282]MLR 2007 Reg 28
[283](n269) [8]
[284]*Regina v Ajit Singh Arora* [2012] EWCA Crim 26
[285]IMF, 'Country Report' 'United Kingdom: Anti-Money Laundering/Combating the Financing of TerrorismTechnical Note' Report No. 11/231 (July 2011) [43]
[286]Money Laundering (Amendment) Regulations 2012/2298 Reg 10, 11
[287] *First Financial Advisers Limited v The Financial Services Authority* [2012] WL 2500434
[288]TA 2000 s 16,18,27
[289]Money Laundering (Amendment) Regulations 2012/2298 Regs 10,11,13
[290]Commissioners for Revenue and Customs Act 2005 s19, Financial Services and Markets Act Regulations 2001, Payment Services Regulations 2009 Reg 119
[291]FCA 'Memorandum of understanding between HMRC and FCA' Available at http://www.fca.org.uk/static/fca/documents/mou/mou-hmrc.pdf Date Accessed 22/08/2013
[292] ATCSA 2001 s19 MLR 2007 s49(a)

MLR enable action by HMRC against unregistered operators,[293] 'extending the hostile environment'.[294] Failure to satisfy the fit and proper test results in deregistration. Intelligence as to unlawful or non-compliant operators may originate from the public sector whistle blowers, through SARs filing by registered businesses.[295] The latter approach is supported by FATF.[296]

The 2007 MLR apply an RBA in line with international FATF standards, which is necessary to manage global risks and secure financial intelligence through the compulsion of regulation. The RBA is central to embedding the regulatory framework, targeting resources to the areas of highest risk to prevent system abuse.[297] The inclusion of MSBs within this framework is pivotal to the successful reduction of TF and ML risks,[298] for securing compliance with Treasury directions[299] to implement national and international sanctions.

MSBs must apply the RBA to all levels of business activity, considering transaction type, nature of the business relationship, customer, product and jurisdictional risks, informed by industry,[300] and supervisory guidance. Senior management[301] through the role of MLRO[302] must secure the application of policies to implement the RBA[303] and mitigate risks through due diligence processes, providing staff education and resources to support effective implementation. Internal systems facilitate the detection, investigation and reporting of suspicious activity.[304] Internal policies and customer records are retained to assist in assessing business compliance and enable investigation

[293](n268) [2.5]
[294](n1) [2.12]
[295]EC 'Final Study on the Application of the Anti-Money Laundering Directive) Deloitte report' 24th January 2011 Brussels, 25
[296]FATF, 'FATF Report the Role of Hawala and other similar Service Providers in Money Laundering and Terrorist Laundering Terrorist Financing' October 2013
[297](n281) [2.4] [2.5], [3.5] Box
[298]MLR 2007 Reg 18
[299]CTA 2008 s62 Pt 3,4,Sch 7
[300]POCA 2002 s330
[301]HMRC, 'AML Guidance for Money Service Businesses' MLR8 (April 2009) [4.1] http://www.hmrc.gov.uk/mlr/latest-news.htm
[302]Wolfsberg Group , 'Wolfsberg Statement, a Risk Based Approach for Managing Money Laundering Risks' 2006 [8]
[303]JMLSG 'Prevention of money laundering/ combating terrorist financing, Guidance for the UK Financial Sector Part 1' November 2009 [1.18]
[304]POCA 2002 Pt 7, TA 2000 Pt 3

of SARs. The burden of regulation is likely to be more onerous for small to medium sized businesses, where management and administrative support roles are merged across small staff teams. The fieldwork research presented in chapter 6 aims to ascertain whether this is the case in practice. [305]

The proportionality of the MLR and the RBA rests on the application of graduated tiers of due diligence (simplified and enhanced) to manage risks. Customer due diligence (CDD), requires the verification of identity for new and existing customers drawing on hierarchical independent[306] and reliable original documentary sources[307] as well as verifying the transaction purpose and nature of the business relationship,[308] which is an ongoing requirement. CDD promotes transparency, reduces anonymity and deters the misuse of MSBs[309] increasing detection through audit. The application to low transaction values is disproportionately burdensome as occasional transactions are time consuming and due diligence is intrusive given their brief transaction period,[310] where the questioning of customers is intrusive and undermines customer/operator trust, potentially compromising repeat business. Further enquiry depends on the risks associated with particular customers or sectors.

MSBs monitor transactions through customer accounts and loyalty cards, recording transaction details.[311] Guidance[312] requires verification of the source of funds, from bank statements, and clients' business or employment details. If CDD cannot be applied, the business relationship must be terminated and transactions cannot proceed, and a SAR may need to be filed.[313] CDD penalises the unbanked and those migrants who may lack appropriate documentation.

---

[305] MLR 2007 Reg 5,20
[306] (n301) Annex 5 [5.1.2], [8.2] http://www.hmrc.gov.uk/mlr/latest-news.htm
[307] HMRC 'Anti-money laundering guidance for money service businesses' MLR8 MSB July 2010 App 5 [5.2.1]
[308] MLR 2007 Reg 5, 7
[309] (n1) [1.23]
[310] HM Treasury, 'The Regulation of Money Service Business: A Consultation' (September 2006) para 9.5
[311] Regs 7,8, 20 MLR
[312] http://www.hmrc.gov.uk/mlr/your-role/resposibilities.htm Accessed 6/10/12
[313] MLR 2007 Reg 11(1)(d)

Simplified due diligence (SDD) for transactions under 15,000 Euros and occasional transactions,[314] the mainstay of remittance services, is excluded unless allowing for the 'timely' application of CDD. This is difficult for MSBs' activity[315] given the brief transaction periods. SDD is also excluded where amounts are larger than the average transaction amount, penalising remittances with average low values with increases reflecting religious festivals and charitable gifting. Large remittance payments made on behalf of several persons require detailed checks and records of the separate but combined transactions.[316] SDD applies to financial institutions in jurisdictions of equivalent regulation, determined by HM Treasury in conjunction with FATF.

MSBs can 'rely' on the risk assessment of other MSBs but remain liable for 'any' failures in compliance. MSBs interact with other financial institutions to consolidate transactions, exchange currency and/or make payments, requiring EDD and mutual compliance checks.[317] HMRC guidance removes any presumption that banked funds are lawful, requiring the verification of banked funds resulting in a duplication of effort and further intrusion into customers' private financial matters. It further deters cooperative relationships across the sector affecting service levels, [318] the impact of which can only be discerned from the fieldwork research.

EDD applies for customers at arm's length, or where the risk of ML or TF is high. Remittances as cross-border transactions necessitate CDD for third parties in non-EU states to ensure regulation in the destination/host country [319] mirrors that in the UK regulation, controlling risk. MSBs require knowledge of wider regulatory frameworks extending the protective reach of

[314] *Ali Nekooi v The Commissioners for Her Majesty's Revenue and Customs* [2007] WL 2187100
[315] MLR 2007 Reg Sch 2
[316] http://www.hmrc.gov.uk/mlr/your-role/assess-risk.htm Date Accessed 21/08/2013
[317] Reg 17 MLR 2007
[318] FCA 'Anti-money laundering annual report 2012/13' July 2013 para 7.9
[319] MLR Reg 15

the MLR. EDD applies to Treasury directions[320] to which there is no relevant tipping off offence.

While there appear to be elements of proportionality[321] in terms of transaction thresholds, actual advice from regulators implies that guidance is not definitive and should be accompanied by further assessment to identify linked transactions; these are common where one person remits a single payment to a geographical area for distribution to several different persons, family members or business contacts,[322] and commonly apply to remittance activity. Agents have to be registered[323] by their principals, and separately where operating independently.[324] Principals have responsibility for overseeing their agent's compliance [325] requiring on site investigations and transaction monitoring to review AML/CTF compliance. Regulations impose self-assessment for managing individual business risks within a common regulatory framework. Different perspectives of risk assessment and management within the sector compromise effectiveness, to which end external supervision is critical to offering guidance on the identification of risk to enforce regulatory standards.

Proposals for a fourth ML directive elaborate the RBA despite the scant evidence as to its effectiveness for AML/CTF at UK or EU level. [326] Changes will further challenge MSBs, given their business size and the current economic climate.[327] SDD is restricted to prescribed circumstances in recognition of too great a reliance on the customer's word rather than objective verification. [328] A 1,000 euros threshold triggering due diligence requirements is proposed for occasional, single or linked transactions increasing the regulatory burden and capturing more remittance

[320](n301) [7.12]
[321]MLR 2007 Regs 7, 13(8) Sch 2
[322](n274)[7.1.9] [7.9.2]
[323](n276) As at 31/03/2011 there were 3633, registered MSB at 44, 222 premises
[324](n272) [4.2.8]
[325](n301) [5.1]
[326](n1) 9-11
[327]EC 'Final Study on the Application of the Anti-Money Laundering Directive) Deloitte report' 24th January 2011 Brussels, 44
[328]EC 'Proposal for a directive in the European Parliament and the Council of on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing' COM/2013/045 final 5/02/2013 Brussels, 286

transactions.[329] UK data collection is currently confined to SARs, general ML confiscation and mutual cooperation requests,[330] and will need to include prosecutions, investigations and judicial processes to review effectiveness [331] for the future. States are required to produce AML/CTF threat assessments, detailing their internal risk linked to global risks, underpinning a cosmopolitan approach to CTF.[332]

5.3.1 Effectiveness of regulation

The commitment and motivation of businesses to apply the RBA is challenging; being time and resource intensive, this form of regulation is more usually associated with the banking sector. The MLR make no concession for business size except by transaction thresholds, and discretion in its application is moderated by HMRC guidance. Integrating AML/CTF processes in a fast paced sector dealing with high volumes at low profit, with short periods of customer contact offers little room for error, challenging small local and family based business. The fieldwork research in chapter 6 will clarify the perception of the regulatory 'burden' and the adaption of MSBs to this.

Effectiveness rests on proportionate implementation to ensure that effort, skill, resources, time and costs are matched by the delivery yielded in detection and prevention. To date there has been little data provided as to the effectiveness of the regime other than NCA SARs reports and supervision reports by HMRC. No system can eliminate risks completely.[333] The RBA requires expertise and sector knowledge, requiring small business to make use of FATF guidance, to establish beneficial ownership,[334] without having had previously a central register to assist. The need to identify

[329] HM Treasury 'Report to the European Parliament and to the Council on the application of the Directive 2005/60/EC on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing – UK Comments'13th June 2012
[330] (n328)136
[331] Article 33 -41 Fourth Money Laundering directive
[332] (n328) [6.15], [7.1]
[333] (n302) JMLSG [4.5]
[334] MLR 2007 Reg 5, 6

PEPs[335] through commercial databases or open source intelligence is time consuming and expensive, placing the resourcing of compliance beyond the reach of small firms.[336] Treasury lists must be consulted to apply sanctions and licences, and automated screening systems are not cost effective for smaller businesses.

A precondition to detecting ML and TF is the identification of normative behaviours of client groups to identify deviations arousing suspicion,[337] to which the customer relationship is pivotal. Suspicion is individualised, hinging on the subjective assessment of the relevant circumstances and facts. The POCA 2002 and TA 2000 rely on reasonable suspicion, informed by HMRC guidance advising MSBs to take 'all reasonable steps to ensure that transactions are not suspicious,' in effect reversing the effect of the RBA. SARs have traditionally relied on preventing the placement of criminal funds; their usefulness in detecting terrorist activity at this stage can only be fully ascertained from the fieldwork.[338]

Identification of TF is difficult where MSBs have little or no experience of detection or filing of SARs, and requires specific guidance based on characteristics relevant to TF as distinct processes. Customer data reveals transactional behaviour to arouse suspicion through deviations from normative standards assisted by HMRC guidance and FATF typologies. Developing standard customer profiles is time consuming given the transaction volumes across a range of remittance corridors.

The AML regime has been applied to the MSB sector without consideration of its effectiveness for CTF purposes, since ML and TF operate as 'distinct phenomena with differing drivers'.[339] The financial monitoring and reporting regime aims to deter, detect and disrupt through proportionate application of regulation, effectiveness here can only be revealed by the fieldwork

[335]MLR 2007 Reg 14(5)
[336](n328)286
[337](n302)JMLSG [4.5],[4.7]
[338](n277) 1
[339](n1) [1.15] [1.11] [2.35]

research. Pre-emption is a critical element of CTF, and the detection of terrorist funds is an almost impossible task given they are lawful at the point of placement, rendering detection of the terrorist purpose problematic.[340] The approach is best described as: 'trying to starve terrorists of money is like trying to catch one kind of fish by draining the ocean,'[341] despite the fact that 'financing may become decreasingly relevant to efforts to contain the threat.'[342]

The regulatory regime requires holistic application for consistency removing 'loopholes' for exploitation. Discretion as to the extent of measures to be adopted is informed by supervision, the sector largely policing itself. Sector commitment to the ongoing demands of the RBA requires compulsion through sanctions to act against inadequate compliance exposing the sector to risks. Sanctions are critical in a commercial sector where non-compliance may yield economic advantages.

Regulation can only offer protection against AML and CTF if applied at all organisational levels within an internal compliance culture. The HSBC £1.2 billion fine pursuant to a deferred prosecution agreement (DPA) [343] for its failure to adhere to US AML and CTF provisions in respect of affiliate activity illustrates that even well resourced, large international corporate financial institutions with access to expertise, can fall foul of non-compliance. Failures included inadequate due diligence, KYC, and resourcing of AML programmes leading to 17,000 unreviewed alerts, and 28,000 undisclosed STR[344] disregarding terrorist connections and proceeding with suspicious transactions circumventing regulatory control. No senior management have been prosecuted, but the DPA at least secures a change in management, and the termination of high risk business. The case raises concerns

[340](n302) JMLSG [9]
[341]National Commission on Terrorist Attacks upon the United States, 9/11 Report, [12.3]
[342]R Barrett, 'Time to re-examine regulation designed to counter the financing of terrorism' (2009) 7 Case Western Reserve Journal of International Law,11
[343]*United States of America v HSBC Banks USA, N.A. and HSBC Holdings PLC Case 1:12-cr-00763-JG 07/01/13*
[344]US Permanent Subcomittee on Investigations 'U.S. Vulnerabilities to Money Laundering, Drugs,and Terrorist Financing: HSBC Case History' July 17, 2012, 2- 5

regarding the use of DPA against UK financial institutions,[345] linked to the lack of individual accountability for non-compliance for larger businesses, which is denied to smaller one man operations. The collapse of the Crown Currency MSB with a loss of £16 million demonstrates accountability through criminal prosecution in relation to poor regulatory and business management that risks criminal exploitation.[346]

5.3.2 Supervision and sanctions

The RBA relies upon external hierarchical supervision and guidance to promote compliance. HMRC has a sector wide knowledge [347] to guide as to the relevant risks and draws on a variety of supervision techniques to instil sector confidence and secure compliance in light of changing risks. These include education, guidance[348] and onsite inspections[349] Sector compliance is underpinned by proportionate sanctions for breach,[350]enforcement of these standards[351] is critical to maintaining long term sector compliance.[352] Supervision must be sensitive and informed as to the changing market dynamics and risks, and consistent [353] to be meaningful. HMRC has a range of effective, appropriate and dissuasive[354] civil sanctions that can be applied to penalise regulatory infringements, all subject to final tribunal appeal.[355] Rights of appeal allow penalties to be cancelled, varied or upheld, with the MSBs able to make representations.[356] The initial 'stepped approach' to

[345]Crime and Courts Act 2013 Sch17
[346]http://www.theguardian.com/uk-news/2013/aug/16/seven-charged-crown-currency-collapse The Guardian 16 August 2013 The article reports the charging by the CPS of the former Company Directors with fraud related and false accounting offences.
[347](n311)
[348]*Moneygram Payment Systems, Inc v The Commissioners for Her Majesty's Revenue and Customs (Money Laundering Regulations*) [2010] UKFTT 132 (TC)
[349](n276) 4,6, 7
[350]HMT 'Anti-Money Laundering and Counter Terrorist Finance Supervision Report 2010' November 2011 [2.15], [2.17]
[351]Travers Smith Regulatory Investigations Group, 'FSA enforcement action: themes and trends' Compliance officer Bulletin' 2011, 87(Jun), 2-35, 10
[352]*R v Rollins* [2010] UKSC 39
[353]Royal Bank of Scotland Plc, National Westminster Bank Plc, Ulster Bank Ltd, Coutts & Company (Decision Notice: August 2, 2010)
[354]Money Laundering (Amendment) Regulations 2012/2298 Regulation 14 amends Reg 42 MLR 2007, and is in force form October 12th2012
[355]MLR 2007 Reg 43
[356]*Mohammed Naeem Esmail Mamaniat v The Commissioners for Her Majesty's Revenue and Customs* [2007] WL 2375101

providing warnings before individual prosecution has been replaced by more rigorous enforcement due to an identified compliance gap. Prosecution for regulatory breaches[357] is supported by evidence of compliance. HMRC guidance only applies to MSBs[358] to support prosecution. HMRC has no prosecution powers but works closely with the CPS and NCA to provide evidence to support this and other than a peak for 12 for 2011-12 the number of positive charging decisions for the period 2010-14 is 5 a year.[359]

The proposed fourth ML directive proposes to restrict the operation of non-compliant businesses until effective controls are in place through temporary operational bans, but these may render small MSBs inoperative. Robust minimum sanctions are recommended for 'systematic' breaches with minimum fines relating to total annual turnover to remove profit from the breach. Fines are hefty and punitive deterring non-compliance and may terminate business viability.[360]

Supervisory visits enable advice as to corrective action; HMRC visits revealed a 45% non-compliance rate for 2005.[361] Insufficient guidance can lead to overzealous application of MLR countering proportionality. The current supervision adopts a RBA,[362] targeting supervision where most needed and effective in managing resources. Supervision must be informed, of quality and consistent to promote effective application of regulations and confidence in the supervisory and the regulatory regime.

A recent Government review of the AML/ CTF supervisory regime has identified that regulatory efficacy is not to be assessed by the extent of regulation but the effectiveness of supervision and compliance in reducing

[357] *Amanullah Haji Moosa v The Commissioners for her Majesty's Revenue and Customs* [2010] UKFTT 248 (TC)
[358] (n285) IMF [25]
[359] HMRC FOI request 1137/1424 February 2014
[360] Articles 39,43, 56
[361] (n268) [3] [6.21-6.26]
[362] EC 'European Commission Report to European Parliament on the application of Directive 2005/60/EC on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing' COM(2012) 168, 3

the threat to the financial system from illicit transactions. Whilst the aim is for transparent and accountable supervision and enforcement a need for more robust supervision by public sector supervisors (PSS) is needed to align with the new FATF methodology for assessing compliance with FATF standards. This now focuses on the effective application of measures rather than the extent of regulation. PSS have the lowest compliance rate per the number of onsite audits and the highest number of partially compliance businesses. [363]An element of effective supervision is the early identification of non-compliance, viewed as weak in the public sector, with low levels of enforcement action which is overly reliant on warning letters and fines, with the fit and proper status removed in only 86 cases, and little use of action plans to remediate poor practice.[364] The review concludes that PSS need to apply a greater variety of risk profiling and supervisory strategies to deliver effective supervision and to deal more robustly with persistent breaches. A more effective application of the RBA approach to supervision may remediate these concerns, but the extent to which these are perceived as concerns within the MSB sector can only be realised through the fieldwork research.

5.3.3 Suspicious activity and reporting

The success of the MLR in stemming TF hinges on the capacity to accurately assess, detect and manage risks, and to yield information to support further investigation. To this end, SARs reporting is required before entering into any suspicious arrangement, unless reasonable excuse exists, with the failure to comply incurring criminal liability.[365] The SARs regime funnels identified risks to the NCA[366] for further investigation. The MLRO is key to securing the application of internal systems supporting the detection and internal investigation[367] of SARs reporting and compliance with Treasury

[363]HM Treasury Anti-money laundering and counter terrorist finance Supervision Report 2012/13, 1 [4.3] [5.2- 5.3] total no. visits (1160) complaints (228) non-compliant (85) partially compliant (847)
[364]HM Treasury Anti-money laundering and counter terrorist finance Supervision Report 2012/13,para
[365] TA 2000 s21A POCA 2002 s330-332
[366](n301) [6.1] App 6 , [6.3]
[367]FATF 'International Standards on Combatting Money Laundering and the Proliferation and the

directions.[368] *Shah* confirms that suspicion does not have to be firmly grounded; once the MLRO has formed a relevant suspicion, a SAR must be filed. FATF recommendations reinforce the SARs process, and mandatory reporting, with criminal penalties for failure. Conflicts arise in connection with business obligations and the nature of the financial business relationship where refusal to process a transaction is protected from breach of contract where connected to SARs reporting.[369] Consent is only presumed where refusal has not been granted to an on hold transaction within 7 days. The 30 day moratorium period limiting transaction processing, allows NCA investigation and the opportunity for restraint or seizure orders, but rightly does not apply to SARs in connection with TF[370] given the need to act promptly. Delay can incur financial losses for the customer, placing MSBs in a difficult position in dealing with customers face to face, given the tipping offence[371] and confidentiality of SARs.

Whilst FATF refers to suspicious transactions, the UK regime, HMRC and NCA guidance refers to suspicious 'activity' for ML and TF, the latter a broader category widening the potential for policing from within and mandating reporting of *any* suspicious activity, including that of other financial institutions.

Shah indicates the level of suspicion required to justify the filing of a SAR includes a possibility that is more than fanciful, as to ML or TF, but need not be firmly grounded, nor based on reasonable grounds, since POCA and TA 2000 offences are satisfied by the alternative of suspicion.[372] Suspicion must be honestly and genuinely held, and evidenced.[373] The issue of 'negligently' induced and mechanically generated SARs has not yet been considered by the courts.

Financing of Terrorism and Proliferation: The FAFT Recommendations.' February 2012
[368]CTA 2008 Sch 7
[369]*Shah v HSBC Private Bank* (UK) Ltd *[2012] EWHC 1283*
[370]TA 2000 S21A 21ZB
[371]POCA ss333- s337
[372]POCA s330, TA 2000 s21A
[373]*Shah and another v HSBC Private Bank (UK) Ltd* [2010] EWCA Civ 31 at 32

An evidence based assessment of factors triggering suspicion derives from previous investigations, case studies, and prosecutions. Supervision, sector knowledge, and sector alerts assist the identification of risks.[374] Knowledge of the business, supported by the MLRO, on the job training and regular business risk reviews are essential. Local knowledge of customer and business relationships is critical and possibly more relevant than guidance. Trade associations have a role in identifying sector risks from the pooling of experience and knowledge, which essential given the low incidence of SARs in the MSB sector.

The forming of suspicion requires an understanding and awareness of the nature of risk and the capacity to identify this in practice, with subsequent action taken to address this. The subjective nature of risk renders identification likely to be inconsistent, to which training, education, and support, both internal and external, are important to businesses to support effective SARs reporting. Knowledge of reporting processes is important but less so than the capacity to spot and act on risk activity.

Pre-existing transactional and behavioural patterns derived from customer knowledge establish deviations from the 'norm' to arouse suspicion for which the mandatory retention of records is essential. Transaction context and operator experience are relevant to forming suspicion and identifying unusual or non-routine transactions which *may not* be 'suspicious', ruled out by further scrutiny or reporting. Customer identity,[375] behaviour, transaction difficulties, or concerns regarding destination may arouse suspicion; relevant factors are potentially limitless and checklists may promote reliance rather than critical reflective vigilance.

The SARs system is integral to assessing sector risks, identifying emerging thematic trends, and contributing to the UK AML/CTF threat assessment and wider risks external to the UK. This requires inter agency cooperation

[374] C Taveres, G Thomas, M Roudaut, 'Money laundering in Europe Report of work carried out by Eurostat and DG Home Affairs' Eurostat 2010,14

[375] (n274) [6.2 -6.7] [11.3]

between NCA, HMRC and HMT supported by consultation and engagement with trade associations. The new model of engagement places MSBs in category three, with each category supported by a dialogue team working alongside supervisors to promote 'member' only feedback through tailored sector analysis of risks.[376]

Despite the value of SARs to criminal investigations, their 'sensitivity' may limit disclosure for prosecution[377] subject to Public Interest Immunity (PII).[378] This may be necessary where they relate to sensitive security issues and there is a need to protect the 'reporter's' and their physical safety. Judicial scrutiny of PII ensures protection of the defendant's right to fair trial balanced against public interest and any security concerns evoked by the terrorist context. SARs may also be used in civil proceedings[379] and may form evidence for asset freezes, and be subject to CMP.[380]

5.3.3.1 Guidance

Guidance sets out standard parameters for raising suspicion, where transactions are unusually complex in size or pattern, lack economic or lawful purpose or are terrorist related.[381] Suspicion relating to TF can rarely rely on knowledge and experience as the terrorist intention remains hidden and problematic to detect.[382] Transaction characteristics are generic to different types of criminality and generic guidance; identifying suspicion indicators may well align with increased risk but not for a specific sector. Transactions may trigger suspicion if they do not make commercial sense, but may signal cultural and religious practice representing the 'norm' rather than economic and commercial logic. Guidance is just that, the MLRO and supervisors have pivotal roles in educating and contextualising risk and

[376]NCA, 'Engagement with the UKFIU' October 2013
[377]Criminal Procedure and Investigations Act 1996 and statutory CPIA Code of Practice [6.12]
[378]Attorney General's Guidelines on the Disclosure of Information in Criminal Proceedings 2005
[379]CPR Pt 3
[380]Home Office Circular 53/2005 ' Money Laundering: The confidentiality and sensitivity of SARs and the identity of those that make them'
[381]MLR 2007 Reg 20
[382](n302)[3][6]

suspicion, bridging the gap between lack of experience and generic guidance to enhance vigilance.

Criminal law measures ensure that gatekeepers to the financial sector are incentivised to robust application of the legislative framework, placing a heavy burden on individuals to monitor transactions and act on suspicions. The burden of regulation is unfavourably disproportionate and discriminatory for MSBs, given their size structure and model of operation. The extent of the impact of regulation on effective implementation of the regime can only be determined through the fieldwork research. The recent division of supervision between HMRC and the FCA adds to this burden fracturing the continuity of the supervisory relationship critical to consistency, confidence and effectiveness.

The risk based approach intrudes into private personal financial transactions, and whilst due diligence checks may be proportionate, the sharing of data outside the SARs regime, however, lacks objective oversight and accountability to protect privacy rights. The proposed fourth ML directive does little to rectify this.

Effectiveness is critical to justifying the interference with rights, and public sector tolerance of the burden of regulation founded on accountability for effectiveness of measures must be demonstrated. There is currently little evidence to demonstrate the effectiveness of the MLR and SARs regimes for TF, which is critical in incentivising confidence and commitment to their application.

5.3.3.2 Evidence based typologies and behaviour profiling

Typologies assist effective identification of sector risk, activity and customer transaction risks, acting as bench marks for ‘typical’ behaviours and risks associated with categories and types of misuse in sector contexts. Where they rely solely on a conduct based approach they deliver more false

positives than those incorporating a risk assessment. Typologies are informed by SARs and prosecutions, guiding risk assessment through suspicion indictors to enhance reporting. Typologies are backward facing and their usefulness predictively is unquantifiable, yet they offer a common approach to articulate risk and suspicion, and consistent reporting.[383] The value of typologies rests on their precision, underlying data quality and their focus on TF as a priority.[384] HMRC revealed that of the 246 ML investigations undertaken between 2002 and 2005, one fifth directly involved MSBs. For NCA and HMRC combined investigations, one in five involved the misuse of MSBs, with 19% of SARs filed identifying this.[385]

Typologies do not always distinguish between the profiling of terrorist supporters, and businesses misused for TF. Typologies indicate the misuse of MSBs, 11% using structured deposits, 5% using camouflage techniques and 3% through cash smuggling. The layering stage reveals a link between existing typologies and ML for TF. Only 1% of all typologies revealed connections to terrorist organisations. Typologies support links between TF and suspicion relating to customers. MSB misuse is indicated in 9% of typologies, with an additional 4% citing Hawala 'underground banking'. The potential for laundering of large amounts, in excess of that relating to 9/11, by unlicensed remittance operators is suggested, but is questionable in relying on a single typology with no supporting data.[386] The detection of amounts laundered for TF compared to general proceeds of crime are low, with terrorist financers relying on selected techniques and the use of gatekeepers.

MSB misuse for TF was reported in 36% cases for 2008-2010,[387] 287 cases disclosing TF, and 34% involving suspected predicate ML offences. Fintrac TF profiles identify most operators as middle aged males, not generally

[383]A Siminova , 'The risk-based approach to anti- money laundering: problems and solutions' (2011) JMLC 14(4), 346-358, 349, 355
[384]FATF (n98) 5
[385](n268) [6.18]
[386]A Irwrin , K Choo , L Lui , 'An analysis of money laundering and terrorism financing typologies' (2012) JMlc15(1), 85-111, 98,105 -106
[387]Fintrac, Typologies and Trends Reports : Money Laundering and Terrorist Finance Trends in Fintrac Cases Disclosed 2007-2011' April 2012 [8] [22] [28]

connected through business relationships, with businesses having familial ties, employed as professionals, in the service sector, in the food industry or students; this is too broad for meaningful application. For 2008-09, 197 out of 556 SARs related to MSBs, and 12% related to TF, with 52 cases concerning MSBs.[388] Other indicators of TF relate to multiple senders to the same beneficiary within the same time frame from a common address, and receipt of funds by the same beneficiary from more than one MSB in different locations.[389] Again these typologies indicate risk but do not distinguish between terrorist facilitators internal and external to the financial sector.

5.3.4 The effectiveness of the reporting regime

Due diligence processes intrude on privacy and family rights, requiring data retention to assist the identification of transaction norms, but their proportionate application to MSBs[390] is questionable. They are, however, considered vital in enabling the detection of suspicion to enable the filing of SARs.

The NCA entered 1.5 million SARs into the Elmer database in 2009.[391] There has been an overall increase in the number of SARs filed since 2008 with 316,527 filed for 2013, an increase of 38,000 on the previous year. MSBs were the second largest reporting sector with a 9.64 % increase in new reporters and 66.49% of the SARs relating to money remittance. However, only 815 were forwarded to the NFIU, an 23% increase on the previous year representing a decline on the figures for 2007-09.[392] SARs relating to money transmission totalled 25, 2.92% of the total TF SARs for 2013.[393] Activity

[388] Fintrac,'Typologies and Trends Reports: Money Laundering and Terrorist Finance (ML/TF) Typologies and Trends for Canadian Money Service Businesses (MSBs)' July 2010 [19] ,[14]
[389] FATF, 'Money Laundering through Money Remittance and Currency Exchange Providers' (July 2010) 38-43
[390] NCA, 'Suspicious Activity Reports (SARs) Annual Report 2013' MSB for the period Oct 2010 to Sept 2011comprised 9.46% of the total SAR's reported
[391] European Select Committee Sixth Report, Money laundering: data protection for suspicious activity reports (HL 82, 2010-2011,1-22) [3] [6] Home Office, *SARS Annual Report 2011*,10
[392] Serious Organised Crime Agency ,'The Suspicious Activity Reports Regime Annual Report 2008' 11 'The Suspicious Activity Reports Regime Annual Report 2009', 42
[393] NCA, 'Suspicious Activity Reports (SARs) Annual Report 2013' 5,7,9, Annex E

rather than business type classification makes it impossible to discern the origins of SARs relating to remittances. The lack of purposeful sector feedback in annual reports is now being enhanced by a 'case study' type approach.[394]

Agency agreements allow access to SARs by other FIU,[395] and relevant UK public bodies through the Moneyweb platform. Data sharing raises concerns, per Art 8, as to subsequent dissemination and use connected to the reporting purpose. The *Shah* case indicates the importance of previous SARs to assist in forming suspicion. A review of the SARs regime recommended ending the ten year retention period,[396] which lacked proportionality and usefulness for 'unsubstantiated' SARs.[397] Retention is justified only where actively and effectively assisting investigation, and is critical to consent cases.[398] The fourth EU directive proposes extended data retention for AML/CTF purposes but is 'light' on procedural safeguards. The SARs regime enables the UK fulfilment of international obligations and standards regarding intelligence sharing. For 2013, 40% of requests through Elmer were from partner agencies, some overseas, which revealed 'relevant information.'[399] UK CTF data is limited[400] suggesting that SARs relating to TF may be of limited value to instigate investigations, assisting conviction and seizure of assets, but adds to existing intelligence and ongoing investigations. A targeted review of 35% of SARs for 2013, identified SARs potentially relevant to terrorism for further action and dissemination.[401]

5.3.5 Data sharing

The potential for the financial sector to reveal terrorist transactions and trace the terrorist financial footprint, has made suspicion a central tool for financial

[394]Sir Stephen Lander , 'Review of the Suspicious Activity Reports Regime (SARS Review)' March 2006 [76-79] see recommendations 16 and 17
[395]Home Office, *SAR's Annual Report 2011,* Figure III 13,31
[396]SOCA 'Suspicious Activity Reports Regime: Annual Report 2011' [35]
[397]*S and Marper v The United Kingdom* (Application Nos 30562/04 and 30566/04, 2008)
[398]MLR 2007 Reg 42
[399]NCA(n389)27
[400]Home Office, *SARs Annual Report 2011*,7,8,33
[401]NCA (n390)27

investigation. A speculative security approach to financial intelligence has prompted the drive for actionable suspicion[402] for pre-emptive action to limit terrorism. This drive for intelligence is limitless, limited only by its incompleteness,[403] since not all of what is of value is accessible and not all that is accessible is of value**.** [404] The value of SARs and financial data as financial intelligence is linked to the extent to which this is accessible and shared across the financial sector and between the FIUs across jurisdictions. Jurisdictional agreements are usually brokered to regulate formal data sharing, with informal sharing through the Egmont group, and across the business sector. Both formal and informal systems reflect the public and private sector partnership necessitated by MLR and international AML/CTF standards.

The cosmopolitan approach to CTF requires state cooperation to intelligence sharing to secure purposeful access to data but pursuant to the protection of security sensitive confidential data. The EU - US SWIFT agreement [405]assists the US TFTP enables US access to EU financial data, initially criticised for its disproportionate interference with privacy rights, Art 8, protected at EU level. It has been amended to secure procedural safeguards. Periodic reviews have revealed inadequate guarantees to curtail mass US data mining. Access based on over broad indicators failed to ensure an established link with existing data to demonstrate value. Deletion periods were overlong with weak review of end use, and systems did not allow for the correction of false information. Dissemination of data to third parties also needs regulating and the failure to direct EU requests through Europol devalues intelligence by fragmenting the assessment and response to this. More needs to be done to justify the effectiveness of the regime, the US reluctantly submitting to transparency and accountability. With increased data sharing at international level supporting the CTF agenda, there is a

[402]M De Goode, 'Speculative Security: the Politics of Pursuing Terrorist Monies (University of Minnesota Press 2012) 73

[403]'Review of Intelligence on Weapons of Mass Destruction' Lord Butler HC 898, July 2004 *HC 898,* [49]

[404](n91) [18]

[405]Council (EC) EU-US agreement on financial messaging data for purposes of the US Terrorist Finance Tracking Programme (28 June 2010) 11575/10 Presse 194

case for international standards to ensure the protection of privacy rights which are easily overridden within the CTF agenda; interference needs to be bound by proportionality secured by procedural review and safeguards. [406]

While the SWIFT agreement regulates access to general financial data, excluding SARs, access to SARs requires the protection of confidentiality**.** Not all jurisdictions share SARs due to a lack of capacity, political will, or domestic legislative restrictions. The Egmont group promotes SARs exchange through the 'enterprise approach' bound by a set of agreed principles.[407] This approach enables SARs sharing between global financial businesses[408] across jurisdictions, limited to the individual jurisdictional controls. The aim is to improve capacity across global businesses in the financial sector in order to view risk holistically and internationally and is limited to larger financial institutions, best positioned to use information to inform risk and improve AML/CTF compliance.

Concerns that dissemination may lack oversight, and may be self-selected in focusing on SARs that 'add value' to reporting, suppressing those that reveal poor internal performance,[409] are reminiscent of the criticisms of internal reporting by ARS prior to regulation. SARs information may be used for adverse commercial action against competitors, and high risk businesses without knowledge of the outcome of the SAR process, and even where a SAR was not filed.

Global data sharing supports the consistency of the RBA and SARs reporting, enhancing the FIU role. UK banks adopt this approach, sharing information on risk across their group, but their risk adverse attitude

[406] EC 'Report on the second joint review of the implementation of the Agreement between the European Union and the United States of America on the processing and transfer of Financial Messaging data from the European Union to the United States for the purposes of the Terrorist Finance Tracking Program' SWD(2012) 454 final Brussels 14.12.201[2.2] [2.1.6] , [3.1] [7.1]

[407] Egmont Group, 'Egmont Group of Financial Intelligence Units Principles for Information Exchange between Financial Intelligence Units' 28 October 2013

[408] Egmont group,' Statement of Purpose of the Egmont Group of Financial Intelligence Units' Guernsey, 23 June 2004 [2,19]

[409] Egmont Group, 'Enterprise-wide STR Sharing: Issues and Approaches' February 2011. Executive summary [5 -16] Available from <http://www.egmontgroup.org/library/egmont-documents > date accessed 16/06/2012

highlights the gap between filed SARs and internal investigation of potential SARs, and has been linked to the withdrawal of bank accounts for some MSBs. The Dahabshiil Company[410] has recently been awarded an interim injunction pending full trial, preventing closure of its Barclays account, challenging the rationality of the decision as an abuse of its market dominance since Barclays provides services to approximately 69% of MSBs.[411] Funds transferred to Somalia through Dahabshiil were alleged to have been used for Al-Shabaab in Somalia,[412] but it is unrealistic to make MSBs liable for the subsequent misuse of funds that does not arise from regulatory non-compliance. If unsuccessful, the termination of Dahabshiil's UK operations will act as a form of unregulated sanctions, but remains a contractual issue despite the considerable potential effects on the Somali populous and Oxfam. Banks operate a profit driven service model and the costs of risk management and reputational damage from any terrorist association outweigh moral and humanitarian considerations, in absence of any legal duty.

The risk adverse attitude of the banks to suspicion mirrors the treatment of charitable organisations such as Interpal UK, listed by the US[413] since 2006 and subject to legal action in the US.[414] This has prompted UK banks to close Interpal accounts despite Interpal being subject to two reviews by the Charity Commission also endorsed it continued operation.[415] The needs served by Interpal and the service provided by Dahabshiil are important in supporting humanitarian relief. Dahabshiil remains lawfully operational and not subject to any national or international sanctions.

---

[410] http://www.bbc.co.uk/news/business-24348565 October 1 2013 "Barclays' reprieve for Dahabshiil welcomed by Oxfam"

[411] D*ahabshiil Transfer Services Limited v Barclays Bank plc Harada Limited, Berkeley Credit and Guarantee Limited v Barclays Bank plc* [2013] EWHC 3379 Justice Henderson at 57

[412] UNSC S/2013/413 Report of the Monitoring Group on Somalia and Eritrea pursuant to Security Council resolution 2060 (2012): Somalia (12July 2012) Annex 1.2 [7]

[413] OFAC List December 2013 http://www.treasury.gov/ofac/downloads/t11sdn.pdf Accessed 18/12/2013

[414] NatWest loses first round in court case over charity linked to Hamas, Phillip Inman Guardian Friday 29th September 2006 http://www.theguardian.com/business/2006/sep/29/israel.internationalnews Accessed 18/12/2013 see also 'National Westminster Bank Wins Summary Judgment in Anti-Terrorism Act Lawsuit', Cleary Gottlieb press release, 7 May 2013

[415] HC Standard Note 'Interpal' SNIA/6778 Ben Smith 12 December 2013

The financial sector adds an additional layer of regulation that lacks accountability, with action going beyond what is reasonable in relation to unsubstantiated risks. SARs sharing internationally increases the protection of the financial system, but may lead to economic sanctions against competitors and minority sector activity, disguised and legitimised as risk management endorsed by regulators.[416] Informal mechanisms for sharing information relating to customer and business risk occur both within the criminal justice system and intelligence communities. Whilst unregulated, this is often a practical and purposeful strategy to protect commercial self-interest, manage risk[417] and proactively protect and deter criminality.

The SARs regime is internationalised but not standardised and requires accountability and oversight with uniform safeguards for confidentiality, data use and retention. FATF mandates SARs reporting and information sharing between FIU but is silent about the management of these processes. SARs shared by corporate entities and foreign FIUs are constrained, lacking comparable domestic protection. The UK threshold for SARs reporting[418] aligns with the criteria for an interim freezing order,[419] variable in other jurisdictions. SARs shared between several entities related to one business may duplicate the perception of risk. The EP approach[420] enhances the support of the FIU role[421] but requires risk management for implementation within internationalised businesses and should be inclusive of large internationalised MSBs, subject to the same MLR regulations, but their operation in jurisdictions deemed high risk for terrorism and regulatory non-compliance probably precludes this possibility.

[416]Fincen, Financial Institutions Outreach Initiative,' Report to Outreach to Money Services Businesses' July 2010 [24 32-35]
[417]S Hufnagel *Policing Cooperation Across Borders: Comparative Perspectives on Law Enforcement within the EU and Australia* (Ashgate, 2013)
[418]POCA 2002 Pt 7 s330, TA 2000 Pt 3
[419]TAFA 2010 s6
[420]Egmont Group, 'FIU Definition Countering of terrorist Finance' Complementary Interpretative Note (2006) [2][3]
[421]Egmont group,' Statement of Purpose of the Egmont Group of Financial Intelligence Units' Guernsey, 23 June 2004 [B7] 2 The Egmont purpose states that law relating to confidentiality should not restrict information exchange. Available from <http://www.egmontgroup.org/library/egmont-documents > date accessed 16/06/2012

5.4 Conclusion

This chapter has sought to outline the regulatory framework for countering the finance of terrorism and the regulation of MSBs with particular reference to the MLR 2007, but not limited to these. What is evident is that the legislative and regulatory framework is complex and hierarchical, comprising of a web of interconnected measures. These operate in parallel at national, regional and international level but also in a complimentary manner, having different purposes and targeting different stages of terrorist funding activity. [422] This framework relies on criminal, quasi-criminal and civil measures to prevent the funding of terrorism. Criminal measures, confined to national level, are informed by and fulfil international obligations. UK measures rely on targeting remote harms with low thresholds relating to proof of the terrorist purpose or connection, to compensate for the high burden of proof required by prosecution. The criminal process offers more robust procedural protection, transparency and public accountability than administrative asset freezes, but funding offences are not often used and their effectiveness in disrupting terrorist activity is questionable and unlikely to deter hardened terrorists, offering punishment after the fact. Terrorist support offences triggered by the proscription of organisations, allow for the forfeiture of individual property, but Government preference appears to favour asset freezes. Criminal measures require the parallel support of seizure and forfeiture to prevent the dissipation of assets during the investigation and prosecution stage and beyond. Offences essentially underpin regulatory compliance, offering greater deterrence than regulatory sanctions and securing financial sector adherence to reporting obligations for fear of criminal liability.

Sanctions as quasi-criminal and pre-emptive measures are compelled internationally by the UN, the 1267 regime having been subject to lengthy criticism for its infringement of due process guarantees and lack of rights protection. Judicial protection of rights at EU level has forced piecemeal

[422] Ryder N The 'Financial Services Authority and Money Laundering Game of Cat and Mouse' (2008) 67(3) Cambridge Law Journal,309

amendments to the UN regime, but still falls short of adequate protection. The ECJ and EU institutions, whilst protecting fundamental rights, have offered little support to member states bound to compliance with the 1267 regime, leaving the schemes' deficits to be reconciled at national level. Without further political pressure from states, further UN reform is unlikely. Continuing deficiencies in rights protection compromise state commitment to cosmopolitan constitutionalism and undermine confidence in the regime. The 1373 implemented at national level highlights further the differential rights protection, and the need for a more robust UN oversight of its implementation, which is critical to its effectiveness. Lack of audit of the effectiveness of measures is common across all levels of the regulatory framework for CTF, but relevant to their necessity and justification.

UK asset freezes have not been without controversy; initial measures have been implemented without parliamentary scrutiny and have gone beyond that required by international obligations. Judicial protection, independent review and legislative changes have secured the protection of human rights at UK level, but not without compromise to accommodate security sensitive procedures. These procedures cannot be adopted at UN level in the 1267 regime absent judicial review, with reliance in the Ombudsperson's role to fill this gap. UK asset freezes have, to some extent, been effective in freezing potential terrorist assets; their specific effectiveness is however, unclear, but necessary to justify their interference with property and family rights, given that their application is not reliant upon a conviction.

The MLR, derived from EU directives and the influence of FATF international standards, enables the detection of ML and TF within the financial sector, reliant on the RBA for efficient and effective application. The merger of ML and TF within one framework has some advantages but, given the limited success in relation to facilitating the confiscation and seizure of criminal funds, is questionable. The necessity of distinct terrorist laundering offences has been presented but, whilst in some specific contexts reliance on general measures may be appropriate, this is dependent on the funding sources for

each particular terrorist group. Specific terrorist offences are therefore preferred since the harm they protect against justifies their breadth.

The merging of the CTF agenda with the AML regime enables the terror/crime nexus to exploit these measures; in some instances AML measures may be preferable and are likely to be more familiar to investigators and practitioners, and easier to prosecute, since not requiring proof of a terrorist purpose. Whilst a convenient merger, there remains a difference between these agendas and regimes that needs to be maintained, and more needs to be done in general to establish and isolate the effectiveness of the CTF regime overall in respect of the different measures within this.

The scope of the financial sector has expanded to include MSBs within the regulatory framework to enable detection of both criminal and terrorist funds, but this needs the support of specific suspicion indicators. The detection of TF as the placement stage appears problematic and unlikely if not impossible, but the MLR offer further potential protection against wider risks of misuse. Critique indicates the RBA has a disproportionate effect on MSBs in practice, given it requires business skill, experience and resources .The recent HSBC case demonstrates that robust regulation is no guarantee to effective implementation and compliance, and demonstrates the favourable treatment of banks, fined but with individual actors rarely subject to criminal sanctions.

Sound supervision and guidance is needed to secure effective implementation and address new risks, to continue to yield actionable financial intelligence. Public sector supervision needs to adopt a more effective risk based approach to supervision based on more penetrating profiling of sector risks. Additionally it needs to underpin regulatory compliance by drawing on a wider range of penalties and to ensure persistence non-compliance is dealt with more robustly including resort to deregistration.

The current regulatory approach assumes that all ML and TF risks can be identified, managed effectively and proportionately, and be reported. This chapter has demonstrated that a range of specific CTF measures are needed at national and international level to effectively combat TF; the impact of these on human rights is only justified by the necessity of measures and their capacity to effectively address risk and prevent terrorist funding. The challenge for MSBs in applying the regulatory regime can only be confirmed through the fieldwork research presented in chapter 6.

Chapter 6
Analysis of fieldwork research

6.0 Research

This chapter presents a critical review and thematic analysis of the fieldwork undertaken for this thesis**,** the aim of which was to investigate the impact of the MLR 2007 on the regulation of MSBs. The aims of this thesis were to assess the impact of the MLR as the main legislative provision regulating MSBs to prevent ML and TF, and to investigate the model of MSB operation in the UK, drawing on the literature review presented in chapter 2 for comparison.

Access to unregistered providers was excluded since this was problematic in raising ethical considerations in interviewing participants who were operating outside the law, potentially triggering legal reporting requirements for the researcher.[1] These operators would also be challenging to identify, given their covert presence, and consent was not likely to have been forthcoming from non-registered businesses for fear of reporting and subsequent investigation.

Two participant groups were interviewed: MSB operators and a stakeholder group. The data for each is analysed separately, beginning with a brief biographical summary leading to a common thematic analysis for cross-group comparison. The data analysis draws on: method of operation, perception and assessment of risk, legislative efficacy, impact of the regulatory regime, and attitudes to supervision and guidance. Quotes from interviews illustrate and support the data analysis, and are confined to interviews that were audio recorded and where consent to use was given. In other instances, analysis is supported by a review of interview transcripts.

[1]S38B Terrorism Act 2000

The chapter concludes by drawing together the main findings of the fieldwork research to conclude as to the implications for academics policy makers, regulators and practitioners. Further areas of research, drawing on the findings of from this work are presented that will contribute to expanding on this work and offer a comparative perspective.

6.1 MSB operator group research sample

Twenty interviews were undertaken, with the sample derived from open source intelligence, advertising, and the UKMTA membership list. MSB registration data from HMRC or the FCA registers, which provide business contact details, was not available, despite a freedom of information request. Access was restricted by the DPA 1998. Snowball sampling was not used because MSBs view each other competitively, and this method raised issues of consent in revealing the identity of the forwarding business. The final sample size is a reflection of limited data access, time frames, and difficulty in accessing interviewees in the context of the operating environment. Approaching businesses directly from identified street signage in sample areas where MSBs were known to be located was abandoned in favour of telephone contact due to the pressure of operating environments. Contact details were obtained from open sources, the UKMTA membership list, and advertising. Business names or addresses were ascertained, and HMRC and FCA registers were accessed to obtain specific contact details. Such access was limited to six searches per day, making this time consuming. Businesses were approachable and willing to participate, but access was limited by the logistics of the operating environment. Scheduling difficulties prevented a number of interviews. For each interview that was arranged, an additional two hours were spent attempting to contact businesses, and the relevant people within these. Operators were selected at random, although any bias in the representation of businesses operating in the Pakistan or Bangladeshi corridors was purely coincidental.

The interview environment was challenging, requiring travel, the arrangement of interviews, and their rearrangement with little notice.

Interviews were undertaken on business premises, and often disrupted by business activity, causing one interview to have to be abandoned. A significant number of interviews were conducted by telephone, and audio recorded. The availability of, and access to, quiet private areas also constrained the timing and length of interviews. One participant completed the questions in written form due to time constraints.

Despite the small interview sample, interviews reached a natural ‘saturation’ point, with responses revealing little ‘new’ information or perspectives, adding only to the context rather than to critical issues. Sourcing a larger sample was therefore considered unnecessary. The sample represents a very small number of the approximate 3,600 MSBs registered in the UK. The sample as a total of those businesses which could be potentially contacted in the sample areas is indicated in Table 2 chapter 3. The methodology is not based on survey or representative samples; neither is there an intention to generalise findings across the population, since it would be impossible to obtain a representative sample due to the variation in key operational characteristics across the sector. The sample is valid only for generalisation within it. The sample is a random selection, reflecting the informed opinion of those involved in operational roles within MSB businesses in the UK, and who are able to potentially offer critical perspectives of MSB operations, and the regulatory, social, and ethnic context in which they operate.

6.1.1 MSB operators - a biographical overview

Table 4 below presents a summary of the biographical data from the operator interviews.

Table 4 MSB Operator group - Summary of biographical data and classification.

Code	Sex	Age	Ethnic origin	Experience	Status	Ethnic	Other business	Business remittances	Incoming remittances	Travel
M101	M	30-40	P	2	A +/ SM	Y *	Y	N	Y	N
M102	M	40-50	ME	2	I / M	Y	Y	Y	Y	Y
M103	M	60+	AB	4	A/ SM	Y *	Y	N	Y	N
M104	M	60+	I	3	A/ SM F	Y *	Y	N	Y	N
M1105	F	30-40	S	1	A+/ SM F	N	Y	N	Y	N
M106	M	60+	EA	4	A/ SM	N	Y	N	Y	N
M107	M	30-40	BP	2	A+/ SM	Y	Y	N	Y	N
M108	F	40-50	H	4	I/ M F	Y	Y	Y	Y	Y
M109	M	40-50	BA	2	A+/ SM	N	Y	N	Y	N
M111	M	30-40	BP	2	I/ M	Y	Y	Y	N	N
M112	M	40-50	AP	2	A+/ SM	Y *	N	Y	Y	N
M113	M	30-40	P	2	A+/ SM	Y	Y	Y	Y	N
M114	M	30-40	B	1	A+/ SM	Y	Y	N	Y	N
M115	M	40-50	A	1	I /P/L	Y *	N	N	Y	Y
M116	F	20-30	B	4	I/ P/L	Y*	N	Y	N	Y
M117	M	50-60	W	2	I/ P/L	N	N	Y	N	N
M119	M	30-40	WB	2	I/P/L	N	N	Y	N	Y
M120	M	30-40	WB	2	I/P/L	N	N	Y	N	N
M121	M	50-60	WB	2	I/P/L	N	N	N	Y	Y
M122	M	20-30	B	1	P/L	Y	N	N	N	N
M123	M	50-60	W	4	I/M	Y	N	N	Y	N

Experience 1 = 0-5 yrs 2 = 6-10 yrs 3 = 11-15 yrs 4 = over 15 yrs

Y* link between operator's ethnicity and that of main corridor served and/or main used group

Ethnicity Asian=A Asian British = BA Asian Pakistani =AP Bangladeshi =B East African = EA Hindu = H Indian = I Middle Eastern = M Pakistan = P Pakistani British = PB Somali = S White= W White British = WB

SM = single man operation; M = medium one location, reliant on large staff team; L = operates from several locations/use of agents

Status A = agent; I = independent; P= principal; A+ = multi-agency relationship; F = business has a family connection

The distinction is made between principals and independent businesses, where the former make use of agents and the latter generally do not in the UK. The number of medium-sized independents was a small percentage of businesses across all areas. Larger principal businesses have an international presence, operating from several locations in the UK and overseas. They are located mainly in area M4, an area of dense population,

a mobile workforce, and mixed ethnicity. Smaller agent-type operators were located in areas M1, 2, and 3, with agents commonly having relationships with more than one principal. Agents lacked independent operational capacity outside their agency relationships.

Of those interviewed, only three participants were female, two having an operational role in 'family' businesses, and one acting as a MLRO. This is in keeping with the status of males within the ethnic groups served by these businesses, and the male dominance of senior positions within the financial sector generally. MSB operators predominantly fell within the 30-40 age band, but there were also three in the over-60 band. The peak period of experience was six to ten years, suggesting that most enter the business in their late twenties and early thirties. Those aged over 60 had operated and lived in the same locality for the duration, the remittance business being a 'one-man' operation. Only two businesses had a family connection, contrary to expectations, the link between MSB and family associations was insignificant.

The participant group represents the diverse nature of the business sector, having a clear ethnic focus, mainly Asian, Bangladeshi, or Pakistani. Ethnicity was highly relevant to the agent and independent category, the agents' ethnicity correlating to the remittance corridors served, the main remittance areas,[2] or the main customer groups. Interviews revealed this was relevant to the selection of these businesses by their consumers. Some operators (except the small number of white British), were first generation migrants, all of whom fell into the over-50 age bands, where in some cases previous experience of using remittance services was a critical impetus for their business operations and commitment to MSB provision. A few interviewees had made personal use of remittance services, enhancing their perspective of the customer experience. The interviewees from larger businesses were predominantly white British, and given the size of the businesses, drew on larger staff teams, where financial experience rather than ethnicity was the focus for key management roles.

[2]M3-114, M3-111, M3-113, M2-107, M3-114

Fieldwork aimed to gain a perspective of the model of MSB operation within the UK, rather than rely on the historical model of Hawala, in order to consider the effectiveness of the current legal framework for UK regulation.

The interviews reveal that the model of MSB operation in the UK is hierarchical, with larger business at the apex having a direct linear relationships with their agents below on whom they rely for geographical coverage.

Independent MSBs are small businesses, present in all areas and isolated by their independent working, with operators having the longer operational experience.[3] Whilst well established and having a strong reputation, they were regarded as a 'dying breed' given the recent regulatory changes and the difficulties for new businesses entering the sector.[4]

The larger principal MSBs, in area M4, had a number of UK branches, an extensive network of UK agents and offices in other jurisdictions, and/or an internet presence. This group, along with the independent group, travelled abroad to develop relationships with overseas banks and agents, and to manage business affairs:.

We do every year travel back to Pakistan…, but that is normally to see how things are going over there; to date I have not actually met anybody in the regions we would use as agents.[5]

Agents had no need for travel, their presence and operational capacity being confined to their immediate locale.

MSBs considered themselves part of the wider community. For larger principals, this was the financial community, while small independents and agents focussed on the consumer and the local community, for whom trust was important.

[3]M1-103
[4]M1-102
[5]M2-108

> As a family we have been established in this part of xx for the last 40 years by my grandparents who have set up businesses here. So the family name is well recognised. The vast majority of the community know who we are so there is a lot of trust based in us.[6]

Principal MSBs identified with the financial, business, professional, and technological communities, with the sense of community defined by reference to the business context and successful business operation rather than to a cultural perspective, thereby evidencing a 'sense' of objectivity. Principal and independent businesses demonstrated a more sensitive and in-depth sector knowledge and business confidence, which was evident in the quality of their responses and their capacity to objectively review the legislative framework. Their appreciation of the sector was more reflective, informed, and considered. The medium independent group were mixed, with one making use of overseas agents or banks. This group experienced the impact of regulation most acutely in terms of the demands of effort and cost.

Just half of the interviewees were agencies run as one-man operations, with most selecting agency operation by choice, and only one expressing a desire for independent operation, but deterred by the legislative burden. 'No, always been an agent here. It's much easier to be an agent working with somebody else. Directly is a bit too much hassle I think.'[7]

Agencies operated alongside other businesses, including export businesses, accountancy services, internet cafés, fax and photocopying services, and travel agencies. 'The MSB was set up on the side to our travel agency based on the same premises. … our MSB business on a par with our travel agency is about 50:50.'

Business diversification enables exploitation of the existing customer base, providing additional income[8] which acts as a 'safety net' to support the MSB business: 'the margins are so low that it's hard to survive and you have to

[6] M3-111
[7] M2-107
[8] M1-101, M1-104, M1-1105

combine with another business'[9] in recognition of it being 'a very hard time for businesses'.[10] These parallel businesses matched the operators' existing knowledge and skill sets, but this dual operation poses the risk of funds from MSB operations being diverted to support other business interests. Operators' contact with customers provides the opportunity to identify risks and anomalies, which is critical for raising suspicion, but is potentially compromised where the operators' attention is challenged by running several businesses side-by-side in the same environment, thus impairing attention to detail, precision, and accuracy. The multi-agency model enablesrequires operators to capitalise on the selection of the most advantageous exchange rate, maximising the cost effectiveness of transactions, and enabling access to wider jurisdictional coverage.[11] 'So more range for customer. ... It's all about the customer.'[12] Whilst also allowing the selection of the most favourable commission rates,[13] it does however require familiarity with the AML procedures of different principals, which may not be compatible overall with sound risk management.[14] Only the agent group received incoming remittances.

The role of wholesale MSBs, referred to in previous chapters, was not evident to any significant degree in the interviewees. Only a few interviewees made mention of this, as a minor aspect of their business roles.

> We do have some links with other bigger exchange companies in the UK who have better contacts or better buying power than us; we will use them to transmit to certain transactions overseas.[15]

In conclusion, there appear to be four main types of MSBs: agents, independents, principals, and wholesalers, the latter lacking sector prominence and visibility. Small and medium independents are the smallest group; larger principals dominate the market share; whilst agents make up the largest number of operators, nearly all having multi-agency relationships.

[9] M1-101
[10] M1-101
[11] M1-101
[12] M2-107
[13] M113
[14] M106
[15] M111

Larger principals and their agents offer incoming remittances; independents and principals offer, on request, business remittances. Operators' ethnicity was relevant to areas M1, M2, and M3 at agent and independent level, and the operation of the MSBs alongside other businesses was also common to these areas, but absent in area M4 for the principal group. OThe relevance of the operators' ethnicity was most relevant at agency level, but appeared selected by the operator rather than the customer. The relevance to the customer was the operator's perceived experience, and language capacity to assist transactions.

6.2 Model of operation

The UK MSB operational structure is hierarchical, with larger principal businesses having wide geographical coverage in the UK and overseas, confined to location M4.

The API and SPI structure has further entrenched this model of operation, with APIs as principals supervising their agents.

Small independents remain operationally separate in all areas, isolated by their independence and having a durable reputation to safeguard their continued operation.[16] The absence of a network model removes a number of risks, since the horizontal operational relationships at agent and principal levels appeared absent, given the limited use of wholesale MSBs. The linear model affords greater transparency in the identity of, and interaction between MSBs.

A network structure appears absent, and is only evident amongst agents derived from the multi-agency model and overlapping principal relationships. The UK model of operation enhances geographical coverage through market dominance and agency coverage, rather than cooperation required for consolidation and settlement. Consolidation between agents and principals is confined to the 'batching' of customer transactions within individual

[16] M1-102

businesses. The settlement of transactions is undertaken by banks, with business accounts balancing transaction payments. Wholesale MSBs, common to other jurisdictions of origin were necessary to enable settlement for agent and independents, not so much of a concern in the UK.

The independent/principal MSBs are characterised by remittance activity, with a few engaging in wholesale settlement and currency exchange activity, absent from the agency group. Some independents and principals engaged in a small proportion of business remittances (high value), undertaken as an occasional on request service where risk was low and customers trusted.

IT systems were used at all levels for record keeping, with agents heavily reliant on these for compliance checks and accessing exchange rates. Agents and smaller independents made more use of open-source resources rather than bespoke packages. Larger independents and principals had sophisticated systems for transaction recording and screening, at considerable investment cost. A few operators kept paper records as 'backup'.

The agent/principal relationship is formal, with operations contractually regulated. This formality permeates the agent/customer relationship, reducing risk, and increasing control and procedural compliance. Agency operation is motivated by economic factors, although one stated he operated 'just for fun'.[17] There was a notable absence of trust between all MSBs at all levels of operation. Whilst aware of each other's competitive presence or physical proximity, there was no shared operational activity or support, in stark contrast to traditional Hawala. All UK MSBs viewed themselves as separate entities, driven by competitive market forces and self-interest: 'No, we don't talk to them too much; there is a kind of rivalry here.' The lack of trust protected business interests,[18] was often born of having experienced 'poaching' of business, to avoid the disapproval of the banks regarding the risk of cooperative working.[19] Cooperative working was rare, arising from

[17]M1-103
[18]M1-103
[19]M1-102

reluctant acceptance of exceptional conditions of short-term necessity, which were viewed as compromising independence.[20]

The duration and continuity of business presence were important sources of business recognition and reputation, reflecting the business presence and a commitment to delivering the expected service, and leading to repeat custom and community trust. Customer loyalty was only maintained whilst transaction rates remained competitive, suggesting price is important to the preference of MSBs to banks. Business competition through standards of customer service was the primary objective, contrasting with the community service focus presented in chapter 2.

Agents had a local community presence and respect,[21] whilst larger principals described their community as relevant to business, financially aware, professional, and familiar with technology.[22] The sense of community articulated included references to ethnicity where operators' ethnicity matched that of the main consumer group or remittance corridor served.[23] The possibility of ethnic allegiances posing a risk in ousting the 'judgment' of operators and their regulatory compliance was not evident from the interviews. Ethnicity was relevant, even where the operators' ethnicity did not match that of the consumer group,[24] to the reputation of niche operators, and reflected successful sector penetration. Operators cited the importance of customer rapport, 'familiarity', and putting customers at ease in securing repeat business. Trust was conceived from the quality of service delivery and customer relations,[25] but customer loyalty or ethnicity did not circumvent AML requirements.

Ethnicity was relevant to customers' selection of operators and repeat business, with agents noting that MSBs were selected over banks for enabling customers to feel at ease because they were dealt with by

[20]M1-102
[21]M1-103, M1-104
[22]M4-119, M4-120
[23]M1-105, M2-107, M2-109, M3-111, M3-112, M3-113, M3-114, M3-115, M4-117, M4-121
[24]M4-121
[25]M3-113

operators of the same ethnic/cultural backgrounds. Operators' language skills were relevant in assisting customer transactions. In one instance, a conscious decision was taken by an operator not to service a particular corridor due to the expectation of credit and that their payments to be taken on trust. The interviewee acknowledged that UK regulations and business context prevented this approach, and that even friends and family using the service were subject to the relevant checks.[26] One operator cited cultural practices as being at odds with MSB operations, with formal AML requirements causing 'social problems' in relation to ID checks of religious/community leaders.[27]

There was a considerable and notable mistrust of the standards and ethical practice of other operators who were regarded as having inferior or questionable ethics,[28] thereby posing compliance risks. This prompted independent operations, and countered cooperative working, to ensure adherence to personal standards and principles.[29] The shared business context and operator ethnicity did not override an independent assessment of the risk and operator suitability. Some MSBs 'come and go',[30] failing to offer long-term commitment, and compromising reputation. Lack of trust permeated all relationships, and was the antithesis of the model presented in chapter 2.

UK operations are driven by risk management procedures and commercial relationships, and are pervaded by a sense of distrust between MSBs, stemming from the competitive context. There was a sense of unfairness where those unregistered were left unchallenged, thereby gaining commercial advantage and risking customers' trust, service standards (the protection and delivery of property), and sector reputation. Interviewees had 'heard of instances where MSBs have disappeared overnight'.[31]

[26] M3-1105
[27] M3-113
[28] M1-103, see also M3-114
[29] M2-114
[30] M1-101
[31] M3-111

6.3 The identification and management of risk

The research aimed to explore the views of MSB businesses about their understanding of the business risks relative to ML and TF, and how these are identified and managed through the application of MLR 2007. The RBA assists this, to which end suspicion is critical, alongside policies and procedures guiding subsequent action. This section considers operators' views of their business risks, and how these are managed.

6.3.1 Identifying risks relating to terrorist financing

The RBA requires the identification and management of sector and individual business risks, one interviewee stating that terrorist finance risks could not be assessed in isolation from business risks, the starting point being a thorough understanding of business operations.[32]

Terrorist finance risks were more difficult to identify than ML risks, especially for agents, whose narrow role and local focus hindered the extent of their knowledge and experience. This explains the contrast in the attitudes, perception, and understanding of risks between agents and independent/principal groups. The latter played a more strategic role in the identification of business risks, exerting influence over internal AML strategy, and presented a more considered and holistic view of the risk of TF and the effectiveness of regulation in controlling this.

Agents focussed on existing controls addressing ML risks, struggling to recognise the inherent operational risks from MSB activity, perhaps explained by the fact that regulation is sufficiently embedded and the focus is now successful application of the MLR rather justification. ML rather than TF had more relevance to daily business activity and was at the forefront of operational decision making: 'It's not something that has taken much of my

[32] M3-115

attention, which is far more geared toward money laundering.'[33] This view likely results from the risk of ML being viewed as more likely with operators having direct experience of ML even if 'small scale,' this being the focus of supervision.

The main TF risk identified was jurisdictional risk,[34] particularly high risk jurisdictions identified where relevant transactions were considered: 'instantly suspicious of, or I would treat with my full attention.'[35] The risk of remitting to large subcontinents which subsequently allowed free unhindered movement of funds on receipt,[36] was seen high risk where these jurisdictions had less stringent regulation.[37] Interviewees were unable to identify objective TF factors here or 'country profiles' that might warrant the assessment of a jurisdiction as 'high risk' nor could they identify further action they would take to mitigate this TF risk.

> I think there are certain corridors that are much more high risk than others. If you are a remit to Somalia or Pakistan, there are Hawala operators that remit to Afghanistan and the Middle East. … we don't operate in corridor that I consider to be even medium risk from a terrorist financing point of view.[38]

The assessment of jurisdictional risk indicated some classification and differentiation of risk levels, but objective criteria related to this categorisation were not fully articulated nor were these transposed into operators risk management responses. The ability to identify, classify and rationalise jurisdictional risk is also relevant to the application of Treasury directions requiring action against non-cooperative countries. There was some evidence of assessment of the current corridor serviced and some examples of high risk jurisdictions were identified, but the detail or the rationale for this classification was not evident.

[33] M4-120
[34] M4-121
[35] M4-120
[36] M1-103
[37] M1-104
[38] M3-112

Interviewees recognised the necessity post 9/11, of CTF measures to control TF risks. Independent operators referred to 'Hawala' as high risk, associated with jurisdictions where regulation was insufficient or absent.[39] The was clear indication that regulation offered some general risk control, mitigation and protection against TF risks that unregulated high risk MSBs lacked: 'On the unauthorised and unregulated side it's wide open to abuse, especially towards terrorism.'[40]

> Without the controls in place anyone can see that they [MSBs] would be open to abuse because you can transfer money around … with the minimum of information to actually do so.[41]

MSBs risk for TF were linked to their international funds transfers, and whilst not explicitly stated the implication that UK communities may support overseas terrorist activity, illustrated by one interviewees referring to the previous funding of Irish attacks in the UK[42] and vice versa. The specific TF risk for the MSB sector was difficult to identify and quantify,[43] transaction speed was considered relevant.[44] Some commented that TF risk were equal to those of banks, suggesting a sensitivity to MSBs being considered higher risk. [45]

Operators were reluctant to consider their 'community' of customers as potential terrorist supporters:[46] 'Most of the regular customers we know personally that they have jobs … but the people we don't know well we are always checking.' Operators regarded their customers as being free of suspicion of terrorist support, emphasising their sacrifice, good morals, sense of family commitment, and charitable support. These views were more pronounced where operators shared the same ethnicity as customer or match that of a corridor serviced.[47] Discussion of TF provoked a defensive and protective response in some instances, the assessment interpreted as

[39] M1-102
[40] M4-117
[41] M4-117
[42] M1-104
[43] M2-107
[44] M1-102
[45] M4-117
[46] M1-104
[47] M3-111

implying that ethnicity and cultural values were linked to suspicion of selected communities, [48] and customer risk.[49] The link between terrorism and religion was noted by one interviewee stating his customers' Muslim beliefs were opposed to terrorism.[50] The interviews did not indicate any ethnic, community, or religious allegiance by customer or operators compromising regulatory compliance. The concept of suspicion is difficult to apply, and the perception of 'suspicious communities' is a dangerous route. The assessment of suspicion is influenced by the assessor's position external or internal to the community and can be divisive of community relationships.

This was illustrated by principal MSBs who considered that small MSBs were at risk from the 'community pressure' from shared ethnicity to waive regulatory compliance.[51]

> The money has to travel for terrorism so it is possible to travel by this method. I would have thought the ethnic element was quite important here although one isn't supposed to say so … the focus should be on the ethnicity.[52]

The quote does illustrate the difficulties inherent in the linkage of jurisdictional risk and cultural association.

Most viewed the risk of misuse for terrorism[53] as absent or unlikely[54] mainly due to average remittance values of less £500 sent twice a month.

> There are limits on the money you can send nowadays … if you were a terrorist … who buys guns and ammunition … they don't cost £500 … they cost hundreds of thousands.[55]

Operators are insufficiently informed about terrorist funding requirements or sources, or the amounts operationally valuable for terrorist activity, lacking

[48] M2-108
[49] M3-114
[50] M3-113
[51] M4-116
[52] M3-117
[53] M4-120
[54] M3-112
[55] M4-109

clear guidance,[56] and information from recent prosecutions[57] to illustrate the significance of low values. They were also unaware of the low value single transactions disguised as charitable donations.

There was some awareness of the relevance of the political agenda, identification of conflict zones and areas of high-risk terrorist activity in TF and jurisdictional risk. The seriousness of the terrorist threat was viewed as justifying regulation as to the potential consequences:[58] 'The 9/11 bombers used many ….agents to receive their money and others could do so in the future.'[59]

Screening of sanctions lists[60]was the most common TF compliance process applied verifying the identity of customer as non-terrorist.[61] Detection of the terrorist purpose was seen a challenging and a specialist area beyond the current expertise of operators.[62] Complicit MSBs supporting TF were considered difficult to detect, where the motivation is support, rather than financial gain,[63] risks pertaining to other MSBs identified by due diligence checks are easily explained by the different business operations.

The risk of MSB misuse for TF was considered the same as any other 'nefarious activity' and akin to ML in general;[64] but this was at odds with the perception of MSB a 'high risk line of work'.[65] This demonstrates a lack consistent perception of TF risk and consequential harm across the sector, linked to the lack of understanding of terrorist threat assessments relative to the extent, nature, and immediacy of risk.

Detecting terrorism remains problematic. MSBs were unable to refer to specific guidance, typologies or risk/ suspicion indicators. Operators' applied

[56]Basel Committee on Banking Settlements, 'Sound management of risks related to money laundering and financing of terrorism', January 2014 [59]
[57]*Menni v HM Advocate* [2013] HCJAC 158
[58]M4-117
[59]M4-123
[60]M1-1105
[61]M1-1105
[62]M3-114
[63]M1-1105
[64]M4-119
[65]M4-118

general compliance processes, motivated by their fear of personal criminal liability rather than regulatory sanctions. Operators stated they would not 'turn a blind eye',[66] and would report any TF suspicions, countering any concern of ethnic allegiance associate with Hawala. Interviewees identified that terrorist funds could be transferred to third parties without their knowledge,[67] potentially compromising the regimes effectiveness. 'If you can find five people in the migrant community that can all send money, however many thousand each, it is not going to look suspicious.'[68] Whilst MSBs seem able to identify the 'regulatory gaps,' there was lack of clarity as to how these should be addressed.

The lack of reference to specific TF guidance, typologies or risk or suspicion indicators for TF, reflects their absence at UK level, reflective of the international position, with few regulators making these available.[69] The expectation is that general AML indicators[70] apply and will suffice to guard against TF. However given that these indicators were not mentioned by interviewees in relation to assessing TF risks, this argument appears weak and questions the value of the merger of CTF within the AML regime. This will have an effect on the quality and extent of SARs reporting as analysed in 6.2.2.4

Operators had difficulty in identifying factors raising suspicion of TF other than ML indicators.[71] The process-based customer interactions relying on standardised procedures, limit decision-making and do not appear linked to TF. Independents/principals had a more considered and informed perception of TF risk, considering risk beyond the UK aligned to their wider operational activities. Agents' narrower role confined their perspective of risk. All MSBs lacked direct experience of TF, none having filed a relevant SAR, although

[66] M1-1105
[67] M3-112
[68] M4-120
[69] 'Money Laundering and Terrorist Financing Trends and Indicators in the Middle East and North Africa Region' November 2010, 19-20
[70] Fintrac Guidelines< http://www.fintrac-canafe.gc.ca/publications/guide/guide-eng.asp> date Accessed 20/01/2014
[71] M3-114

one independent had been visited by counterterrorism officers,[72] offering future contact/support, viewed as more beneficial than HMRC guidance. Only one independent MSB considered small transaction values as relevant for TF and cited attitude changes post 9/11 linked to a 'misunderstanding of Hawala in other jurisdictions,'[73] One MSB had dealt with a customer enquiry concerning a 'blocked' transaction due to a suggested 'mismatch' of customer name with the sanctions list.[74]

Interviews do not support the MLR as effective in identifying TF risks linked to MSB operation a crucial first stage to the RBA and AML /CTF compliance and critical for the subsequent reporting of SARs. The construction of TF risk and suspicion indicators is challenging, but if beyond the capacity of supervisors and experts at national and international level, then it is unrealistic to expect this of MSBs.

6.3.2 Identifying risks relating to money laundering

The risk of ML was recognised as the impetus for MSB regulation given the need for their control as high risk as cash intensive businesses,[75]offering prompt transaction processing:[76] 'What you are doing is moving money around the world and its risk for anybody doing that.'[77] One operator cited HMRC statistics, indicating that 40% of ML misuse arises from MSBs.[78] Agents considered larger MSBs as high risk: 'I don't think that people who have illegal money to launder will use a small business like this,' [79] given the large sums that criminal groups would need to launder that would be readily transparent on collection and in requiring multiple transactions to launder.[80]Smaller MSBs were considered lower risk given that they dealt with lower personal transaction values.[81] Operators had a greater appreciation

[72]M3-111
[73]M1-102
[74]M2-107
[75]M4-123
[76]M3-112
[77]M4-119
[78]M1-102
[79]M1-101
[80]M2-108
[81]M2-108

and understanding of the nature of ML risks and how these arose, linked to transaction size. Agents' perception of risk was narrowed by their limited experience and isolated operational role. Interviewees cited illegal migrant income as the most likely illicit source.[82] The most significant risk to MSBs was their poor regulatory compliance considered as possibly evidencing criminal complicity.[83] Customer trust was a potential source of exploitation, criminals relying on known, trusted MSBs willing to launder funds, unwilling to entrust large volumes of illicit cash to a stranger seen as 'a gamble'.[84] Unregistered businesses were regarded as high risk: 'It's the unregulated ones which are the cause for concern and that is recognised by the industry.' [85]

6.3.3 Indicators of suspicion

Indicators of suspicion were much more informed in relation to ML than for TF across all operators, and were linked to the nature of compliance checks. TF measures are contained in separate legislative provisions, but TF Treasury directions rely on the ML framework for their application.

The application of low thresholds triggering due diligence measures and operators knowledge of customers[86]assisted the arousal of suspicion for ML. Factors identified as relevant to triggering suspicion related to customer transaction characteristics, patterns, timings, average transaction amounts, and purposes, mandatory but not standardised record keeping critical to assisting the detection of anomalies and variations in customer behaviour. Interviews demonstrated an awareness and application of due diligence procedures and relevant transaction thresholds[87] triggering suspicion but limited since: 'you can't prescribe … beyond a certain point'.[88]This illustrates

[82]M2- 107
[83]M3-116
[84]M2-108
[85]M3-116
[86]M1-102
[87]M4-121
[88]M4-121

circularity between due diligence checks that assist in verifying suspicion and the need for suspicion to trigger further due diligence.

Customer knowledge was important in underpinning suspicion and key to risk assessment,[89] to identify deviation from the norm to trigger suspicion. Customers were mainly migrant workers, of temporary residence, and first and second-generation migrants permanently settled here. Most were employed in the service sector or IT. Larger independents had professional and business clients, and were exposed to the risk of dealing with PEPs.

Average amounts remitted were under £500, and sometimes as little as £30-100,[90] timed to maximise exchange rates, with amounts sent 'regularly', often weekly, monthly, or twice monthly. Regular transactions were associated with general family support, living costs, and education, and occasionally with special occasions and religious festivals (Ramadan, Eid) relevant to the corridors served,[91] or related to an international crisis.[92] The Muslim religious obligation of 'Zakaat' was relevant to remittances for charitable support.[93] Larger 'one-off' amounts between £1000 and £5000, and 'occasionally' over £5,000,[94] were linked with payment of medical bills, investments, purchase of property, and weddings. These sums represented 'out of bank' savings.[95] Business payments and those for property comprised the largest remittance values. Transaction patterns are easily discernible for static clients,[96] and more problematic for transient groups.[97] The jurisdictional aspect was less relevant for ML, suspicion raised by other transactions and customer characteristics.

Knowledge of customer transaction patterns assists the detection of anomalies and raising suspicion, the presumption being: 'We think our customers are law-abiding citizens sending money they have worked hard

[89]M1-102
[90]M3-112
[91]M4-117
[92]M1-1105
[93]M2-107, M2-108
[94]M2-106
[95]M4-120
[96]M1-102
[97]M1-103

for.'[98] Customer screening prior to the commencement of the business relationship and ongoing in customer selection, important to mitigating risk: 'you have to choose your customer who you want to do service with and who you do not'.[99]

For agents, over 80% of clients live locally,[100] with a male to female ratio of 60:40. The age of remitters varies according to the corridors served, and the timing of migration.[101] In most instances, the general but individual specific transaction purposes were known: 'Why they are sending is not absolutely known to me.'[102]

Behavioural indicators triggering suspicion included customer non-compliance:[103] 'People who are dodgy are the ones who have got illegal money and will not give you their ID.'[104] Customers who put 'pressure on you to execute transactions quickly',[105] or appear difficult, uncooperative, or resist providing information.[106] Clients acting inconsistently, making mistakes and[107] 'often just a hunch at the way the customer presents'.[108] A further trigger is anything unusual: 'Looking for anomalies it is anomaly based';[109] and 'to highlight risks requiring further checks of the source of funds[110] and customer'.[111] Also, deviations from usual behaviour are a trigger, including variations in amounts[112] and transaction frequency[113] to the same person or jurisdictions.[114] The ability to 'engage with a client talk to them … can catch a client off guard'[115] was an important check. New customers lacking a transaction history are treated with caution. In contrast to TF the identification

[98]M4-117
[99]M3-114
[100]M3-113, M1-101
[101]M4-119
[102]M1-104
[103]M1-103
[104]M1-101
[105]M4-120
[106]M3-116
[107]M1-106
[108]M2-106
[109]M4-119
[110]M2-109
[111]M1-102
[112]M4-121
[113]M3-112
[114]M3-115
[115]M3-117, M2-109

of ML risk and triggers of suspicions were not seen as posing any challenge in practice: 'so simplistic it's ludicrous.' [116]

Larger volumes, more frequent transactions, volumes remitted which do not correspond to known purposes, and increased amounts exceeding known income, were suspicion indicators across all groups, requiring further scrutiny of funds.[117] 'If we get a new client off the street who wants to send hundred thousand pounds … theoretically that would automatically have alarm bells ringing.'[118]

Agents focused on customer cooperation, transaction amounts, and transaction purpose. Principals and independents relied on sophisticated, random, automated, specifically configured checks using IT systems for data analysis of large transaction volumes to arouse suspicion as a back up to human assessment.

> We have a very sophisticated IT systems and central monitoring transactions here which on a daily basis we watch … if you asked for a pattern our system would produce it for you.[119]

Initial suspicions raised by staff dealing with customers face-to-face are forwarded to the MLRO. Low remittance values increase the risk of illicit transfers without further checks.[120] Due diligence was critical for internet based MSBs.

> But notwithstanding that we don't meet our customers face-to-face we check where they are accessing the system from and we do a bunch of checks to make sure that we believe the documentation to be valid.[121]

The effectiveness of IT systems depends on their search parameters: 'We had to decide what was a regular customer … and we found we had few regular customers.'[122] Such parameters need configuring for accuracy.

---

[116] M4-121
[117] M4-116
[118] M3-111
[119] M4-121
[120] M1-103
[121] M4-119
[122] M4-121

Independents servicing business clients needed to verify that transactions made economic sense,[123] identifying the risks of 'structuring of a transaction, identifying the central beneficiary things to do with large values of cash, dirty used notes.'[124]Limited reference was made to HMRC guidance, perhaps due the knowledge and familiarity with AML process. Guidance prescribing mandatory screening thresholds[125] was considered problematic in ousting individual business risk assessment, illustrating 'regulatory creep' extending the scope of regulation where supervisors deemed this necessary for managing sector risks, the necessity of this was successfully challenged by some MSBs.

Numerous factors were identified as potentially arousing suspicion[126] with prescribed lists viewed as restricting vigilance. Principals rely on their agents' vigilance and compliance: 'The face-to-face pieces that verifies, yes we have seen them, they are who they say they are.'[127] Agents and staff were audited to identify suspicious behaviours:[128] 'agent was doing perfectly ordinary business … small amounts of money and then this shot up suspiciously to thousands.'[129] Selection and ongoing screening of staff including agents were linked to suspicion: 'A point of weakness tends to be an agent who is "bent" for want of a better word', or fails to apply due diligence. [130]

Due diligence is critical to managing risk and raising suspicion to preventing the placement of terrorist or criminal funds. The inability of operators to the identify in any depth the risk of MSB misuse for TF is also match by the failure to identify factual circumstances that should arouse suspicion of TF. Further the limited reference to specific guidance or typologies relating to terrorist finance was evident in the sole reference by operators to ML risk indicators which were not perceived as relevant TF, were transaction

[123]M4-121
[124]M4-121
[125]M4-121
[126]M4-120
[127]M4-119
[128]M4-116
[129]M4-121
[130]M4-117

focused and were not aligned to any terrorist financing profile. This confirms the conclusion drawn in the 9/11 report that the detection of TF is difficult if not impossible to detect, and the development of indicators is key to assisting SARs reporting. There was little assessment of customer TF risk, linked to a customer acceptance policy.[131] The Basel group has identified the need for distinction between ML and TF indicators to reflect their different processes,[132] but this distinction was not evident in the operator interviews. The Basel group has recently asserted that TF screening should not be regarded as risk sensitive where reliant on due diligence derived from automatic processes, which is evident in operators' sole reliance on sanctions screening.

Suspicion permeates the financial sector, with UK banks highly suspicious of MSBs[133] risk for the layering of illicit funds to facilitate integration. All MSBs reported UK banks as being risk aversive, querying MSBs' transactions,[134] imposing higher compliance standards[135] than required by regulation,[136] and restricting the operation of MSB bank accounts.[137] Banks were viewed as having a lack of understanding of risk management outside their own sector,[138] and posed significant ML[139] and TF[140] risks themselves which operators evidenced by reference to reported cases.[141]

6.3.3.1 Suspicious activity reporting

SAR is dependent on sound due diligence, internal compliance regimes, and robust records to assist internal investigation: 'Business … is open to risk especially if the business concerned does not have the internal controls there

[131] Basel Committee on Banking Settlements, 'Sound management of risks related to money laundering and financing of terrorism', January 2014, [32]
[132] (n132) [59]
[133] M3-112
[134] M3-112
[135] M4-121
[136] M1-102, M4-123
[137] M3-111, M4-122
[138] M1-102
[139] M2-109
[140] M3-112
[141] M2-108

necessary to pick up any suspicious transactions.'[142] Agents had an onerous burden in ensuring their records were up to date to facilitate prompt reporting.[143]

Some but not all MSBs were aware of circumstances which require reporting, having 'investigated internally as far as you can to get … as much information from the customer to support the transaction'.[144] Some,[145] but not all, agents were aware of the reporting process: 'Well the helpline I can report my suspicion that the money is not black' and 'report through the website or you can ring the crime stoppers'.[146] Agents were a first line of defence,[147]needing to act promptly on suspicions raised. Interviewees were aware of the need to refrain from processing suspicious transactions, and that any money handed over, once suspicion was raised, could not be returned.[148] Interviews indicated some confusion amongst agents about when to file a SAR,[149] with agents seeking advice from head office, which then alerted other agents.[150] The interviews raised concerns about whether the declining of transactions was accompanied by subsequent reporting: 'I started the process but for some reason I did not like them, so I tell them that my computer had broken,'[151] screening of customers' risk operating informally. 'Tell them to go away sorry mate I am not cooperating today',[152] but it was unclear whether a SAR has also been subsequently filed.[153] The refusal of customers, commonly by offering an unfavourable rate, also required SARs filing but agents appeared uncertain about this. Agents policed from within alerting each other to suspicious customers who were known to have been declined service elsewhere when they reported prior refusal due to the 'system was down'.[154] Informal monitoring between

[142]M3-111
[143]M1-1105
[144]M4-120
[145]M1-1105
[146]M2-109
[147]Basel Committee on Banking Settlements, 'Sound management of risks related to money laundering and financing of terrorism', January 2014, [20]
[148]M3-114
[149]M3-114
[150]M2-106
[151]M1-104
[152]M1-104
[153]M2-109
[154]M2-106, M1-103

MSBs appears to operate in place of, rather than parallel to, the SARs regime, a concern for regulators and risk management.

MSBs focused on suspicious *'transactions'*, mirrored until recently in HMRC guidance, and now amended to '*activity*', a broader concern. Suspicions around the attempted placement of funds required operators to be warned of similar attempts. Independent businesses bridged the operational distance between cashiers or agents through internal reporting processes to alert the MLRO. Staff education and training were seen as important to SARs compliance, particularly by principals: 'They are all trained to raise suspicious transaction reports.'[155] Prompt internal reporting was seen as critical: 'Right at the beginning before you figure it out even if you don't quite know what it is.'[156] One independent interviewed all staff who had raised suspicions to improve procedures.[157]

Interviewees were aware of SARs confidentiality and the need to refrain from alerting customers,[158] to avoid liability for 'tipping off'. Agents were exposed as the initial point of customer contact, needing to balance caution in gaining more information to assist filing a SARs whilst dealing with customers' queries whilst awaiting consent. Few mentioned this as presenting any problems in practice, but this may due to refusal of custom rather than SARs filing. Some MSBs had the facility to discretely stop transactions without alerting customers.[159]

Few agents had filed SARs for ML, possibly due to providing customer compliance information in advance of transactions.[160] Larger operators had filed SARs, some relating to internet transactions:[161] 'I can say we are very au fait with the process.' One example cited the reporting of unregulated Hawala.[162] Some businesses had received approaches to undertake illicit business transactions at higher rates: 'Send a couple of grand and he want

[155]M4-117
[156]M4-121
[157]M4-122
[158]M4-119
[159]M1-1105
[160]M3-113
[161]M2-108, M2-106, M2-104, M3-114, M4-121
[162]M4-117

to give extra for the safe transaction, people psychology … we don't find anyone paying extra',[163] this instantly arousing suspicion. One MSB invested in telephone recording systems, to protect from such approaches for the future and to assist reporting.[164]

Feedback on SARs was not expected: 'very rarely do we get feedback from them or more information unless it's a consent issue',[165] although some considered this potentially useful[166] in relation to individual SARs and general sector feedback.

Interviews indicate that some MSBs are not fully aware of the SARs process or may be circumventing this by refusing business in preference to acting on suspicion, since refusal is often linked to a suspicion, even if not firmly grounded. The inability of MSBs to identify TF risk and circumstances that would raise suspicion is likely hindered by the lack of specific TF indicators or guidance here, unless the transaction exhibits characteristics aligned to general ML indicators. If not in light of possible criminal sanctions, there are grounds to contest 'reasonable cause' in relation to suspicion of terrorist laundering, and raises concerns about the effectiveness of the merger of the AML and CTF regimes, given the distinction between these processes. This also explains the concerns by supervisors in chapter 5 as to the low incidence of SAR reporting in the MSB sector for TF linked to the failure to identify suspicion, or where linked to the declining of transactions to avoid filing.

6.4 Effectiveness of regulation

MSBs have been 'nudged into the formal financial system',[167] regulation warranted due to the 'illegality' of the sector previously subject to: 'very little regulation and [having] a lot of illegal players … what you saw were a lot of

[163] M3-114
[164] M3-111
[165] M4-116
[166] M2-108
[167] M4-120

customers being ripped off.'[168] Informality posed considerable risks but the type and volume of cross-borders transactions necessitates control through regulation seen as a 'good thing.'[169]

Regulation is regarded as offering protection from illicit unregistered operators, thereby protecting customers' property:[170] 'The clients were not very well protected … it has increased safety and protection for us as well.'[171]

Compulsory compliance sets consistent sector standards to 'police the system'[172] to prevent exploitation for ML and TF. In a competitive environment, self-regulation potentially leads to a waiving of standards to gain commercial advantage turning a 'blind eye' to risk for profit.[173] Regulation provides a sense of 'legitimacy' in standards of operation and protection, customers now ask about registration:[174] 'They know we operate in a certain way with standards … is a good thing that this is the law we are bound by.'[175] Regulation has imposed a commercial, formalised model of risk management and compliance, and trust is now conceived within risk.

Regulation was viewed as positive,[176] effective, and 'imperative'[177] in deterring and preventing illicit operation and reducing sector exploitation: 'The point of greatest resistance … sadly the criminal will always be trying to test the system rather … they will establish a point of vulnerability and attack it.'[178] Regulation protects the sector's reputation[179] and operators[180] through registration,[181] which is perceived as requiring minimum knowledge and competency.

---

[168]M4-119
[169]M4-119
[170]M1-103
[171]M1-101
[172]M1-103
[173]M102
[174]M1-1105, M3-111
[175]M1-101
[176]M104
[177]M117
[178]M119
[179]M1-102
[180]M3-112
[181]M2-108

Interviewees were unsure as to the effectiveness of the MLR for addressing the ML and TF in particular, but these activities were however perceived as important goals:

> It's a difficult thing to identify, these people take great effort to conceal their activities … the vast majority of it goes undetected … it's difficult to know how widespread a problem this is … nobody wants to quantify the problem.

Some were sceptical of the effectiveness of regulation in reducing international terrorism,[182] but agreed that it generally deterred and prevented TF: 'The regulation definitely curtailed the extent of misuse.'[183] The UK was regarded as well positioned compared to other jurisdictions having extensive regulation,[184] making misuse for TF more difficult to undertake.

> It must have done a huge amount to frustrate terrorism … the sophisticated way this whole global infrastructure of AML … everybody coordinating their regulation must have caused an immense problem.[185]

MSB were however aware that regulation did not afford watertight protection and could be circumvented by determined terrorists.

> I don't think it would be difficult if you were a terrorist financier to bypass these things especially if you were in a close knit community … you could have x number of people … send money on your behalf.[186]

The MLR were viewed as effective in disrupting general criminal laundering making this more difficult, with this now seen as easier through banks: 'It is getting a lot more difficult for criminals to launder money through MSBs … easier to launder it through banks',[187] noting that '85% of the risk has been removed from within the industry simply because of the amount of regulation and the amount of compliance required'.[188] Regulation may, however,

[182] M3-112
[183] M4-116
[184] M3-111
[185] M4-121
[186] M1-102
[187] M4-121
[188] M3-111

displace and not cure criminality,[189] and lead to a 'trade-off … greater regulation will potentially drive some of the remittance traffic underground'.[190]

Effectiveness was viewed as linked to the regulatory compliance of other countries,[191] UK MSB required to guard against risks associated with the use of overseas agents, extending regulation to bridge the regulatory gaps in other jurisdictions: 'When it comes down to compliance we tend to treat them like our own branches, so they have to adhere to the same [regulation].'[192] 'Our agent has to be on the top level of the AML side of things because we carry the can … it focuses you on the agents.' There was little reference to guidance assisting the assessment of cross-border jurisdictional risks for larger principals with global business networks, a concern in relation to TF risk where jurisdiction risk was seen as important but there was a lack of clarity as to how to determine this (see 6.2.1). This is a concern given operators regarded regulatory efficacy as compromised by its complexity in requiring knowledge of other AML regimes.[193]

Regulation promotes transparency, removing reliance on trust[194] in requiring objective assessment of risk to provide an audit trail from standardised record keeping in order to yield intelligence for detection.[195] 'I think the fact that there is an audit trail in place is quite a worthwhile thing.'[196] Due diligence was regarded as essential for monitoring and detection[197] of risk. The vagueness of the RBA created uncertainty: 'You can never get a straight answer out of the regulators on what you should do in a specific situation.'[198] Differential application also compromised effectiveness and confidence: 'If you sit down with the policies and procedures of say five different companies you will see big difference between them.'[199] The comment that regulation 'in

[189] M1-104
[190] M4-119
[191] M1-103
[192] M4-116
[193] M2-107
[194] M3-115
[195] M1-102
[196] M4-119
[197] M1-101
[198] M4-120
[199] M4-122

past has been slightly vague in areas'[200] suggests that guidance and supervision are key for the successful application of the RBA, necessary to 'make sure we focus resources on the areas that we consider to be the greatest risk'.[201] The flexibility of the RBA in adapting to new risks and different business sizes is traded off against its ambiguity. It requires confidence, competence, business knowledge, and experience for application, not evident amongst all the operators: 'It really comes done to there being no defined standard…completely subjective. It is very difficult … to be completely sure that what you are doing is ok.'[202]

Regulatory compliance is underpinned sanctions[203] compelling operators to be constantly vigilant[204] to avoid inadvertent human error.[205] 'It's not easy to be in this business.. … if you make a slight mistake you can be done with it.'[206] Operators were mindful of sanctions even where they had done their best,[207] concerned for the possible reputational damage from investigation or penalties leading to loss of registration or agency role,[208]promoting compliance.[209]

Regulation does not capture nor contain all criminality, MSBs were aware of the methods used to circumvent regulation including,[210] the use of false identification, and the use of third parties. MSBs who refused custom had no doubt that this would be accepted elsewhere. Sector dialogue is important in making regulators aware of potential loopholes, ensuring that regulatory 'gaps' are addressed through supervision.

Whilst the SARs regime was considered effective for ML, MSBs doubted they would ever have cause to report TF, uncertain as the effectiveness of regulation here with but criminal sanctions never the less securing

[200]M4-116
[201]M4-119
[202]M3-120
[203]M4-116
[204]M1-1105
[205]M1-103
[206]M2-107
[207]M1-1105
[208]M2-106
[209]M1-103
[210]M2-106

compliance.[211] The SARs regime is dependent on 'internal controls … to pick up … suspicious transactions'.[212] Some operators desired 'more clarity as to what kind of issues'[213] to report in relation to TF with only one operator having received SARs feedback,[214] and the lack of sector feedback overall called into question the value of SARs reporting overall: 'lots of SARs are filed and action is taken on only a small number … purely because they have finite resources to follow these things up.' Prompt feedback on consent to avoid customer queries was seen as critical to avoid tipping off.[215] Principals acted promptly to alert agents to risks: 'A good network of contacts kicking around … They all tend to know each other and if there is anything untoward it will get out.'[216] A central database[217] of high-risk customers and reported anomalies was suggested as potentially useful.[218] Sanctions lists were the main TF screening tool, but in practice effectiveness was compromised by false matches, which caused hardship and inconvenience to customers, effective against specific ethnic groups, who as genuine customers were made feel like criminals.[219] This also had a cost in terms of regulatory confidence , adding to the compliance burden.

Compliance is driven by sanctions for agents, and threat to professional business reputation for independents and principals, with the latter highly motivated regulatory implementation. Agents viewed effectiveness in light of the demands on time, effort and the cost of resourcing: 'I am quite a simple person really I don't want to go into too much into it'[220] relying on direction and support from their principal. Regulation has made compliance a condition for improved sector reputation and for maintaining business relationships.

[211] M1-1105
[212] M2-111
[213] M3-116, M2-111
[214] M4-117
[215] M4-116
[216] M4-117
[217] M1-101
[218] M4-119
[219] M2-107
[220] M1-103

Regulation limited the control of MSBs through the fit and proper test was considered weak, excluding only the most obvious wrongdoing, and viewed as easy to circumvent: 'Anyone can, you can start tomorrow, you just need to apply … anyone can have a licence.'[221] The HMRC test was not perceived to be as vigorous as that of the FCA,[222] where knowledge and business acumen[223] were regarded as essential requirements for operation of an API and securing effective regulatory implementation. 'You need a certain amount of intellectual confidence about your risk analysis and what approach you take, you have to take decisions about the risk.'[224] Prerequisite[225] minimum qualifications or experience for agents for HMRC registration[226] was considered necessary: 'You need to know an awful lot … I don't see how someone could come into this business my God they would have to do their homework.'[227] Smaller businesses bear the burden of regulatory compliance, this often falling on one person, the view that for: 'one-man bands there simply isn't the intellect there to have the confidence.' The fit and proper test excludes unsuitability at a basic level,[228] but successful regulatory compliance requires more[229] particularly given the decision making surrounding complex assessments of risk and its management in a very dynamic service sector.

6.4.1 Impact of MLR and regulatory framework

This section considers the impact of regulation and the proportionality of its application across a diverse but discrete sector of operation. Customer satisfaction was a key concern amongst agents as the first point of contact: 'Customers they don't always know why we are asking them these questions

[221] M3-114
[222] M4-120
[223] M2-109
[224] M4-121
[225] M3-114
[226] M4-122
[227] M4-121
[228] HM Treasury 'Anti Money Laundering and Counter Terrorist Finance Supervision Report 2012-13'HMRC withdrew the fit and proper status from 86 individuals and removed 71 businesses from its register for this period.
[229] M2-109

… and they don't fully understand the regulations.'[230] Due diligence checks were seen as burdensome and ID requirements intrusive,[231] but effectively limited discretion:[232] 'From a customer point of view it is annoying, they are not worried about AML.'[233] Due diligence created a delay,[234] eroding the informality that made MSBs preferable to banks,[235] making customers feel doubted, and treated like 'criminals'[236] creating an 'awkwardness'[237] and a 'barrier' to the business relationship: 'Can you imagine telling someone we need to know where your money is coming from and I am an ordinary shopkeeper.'[238] Customers had concerns about the misuse of identification[239] despite MSBs guarding against this.[240] Privacy may be mistaken for suspicious behaviour where customers are reluctant to divulge private information. The effect on business was however considered insignificant: 'Less than 2% customers who work out as an unsatisfied customer is due to the regulation.'[241] Regulation requires a cultural shift for customers and operators the lack of privacy here may relate to MSBs operation within parallel businesses. Customer education[242] as part of staff training[243]promoted understanding and protected operators by justifying compliance processes.[244] Ethnic groups were reported as feeling targeted by regulation, with one operator reporting Muslim communities being sensitive to this.[245]

Regulation has increased the demands on time and record keeping challenging agencies in securing trusted personnel to assist,[246] and in a competitive sector with more operators than is commercially viable[247] and

[230]M4-116
[231]M2-108, M2-107
[232]M1-102 (I/S)
[233]M4-120
[234]M2-107, M2-109
[235]M3-114
[236]M2-108
[237]M2-108
[238]M2-109
[239]M3-113
[240]M1-103
[241]M4-122
[242]M2-108, M3-113
[243]M4-122
[244]M1-101
[245]M2-108
[246]M1-1105
[247]M3-112

narrow profit margins, adding to the regulatory burden on small businesses.[248] This was most acute for agents and independents, creating a sense of unfairness, smaller MSBs felt 'targeted' [249] since larger business and banks were better positioned to manage this. The burden[250] and effort of compliance was considered almost unworkable, and disproportionate in relation to their earning potential.[251] All interviewees recognised the unequal impact of regulation across the sector and in treating MSBs akin to banks where risks were not regarded as comparable.[252] Some desired change here: 'There has to be a distinction … there has to be an understanding of how the industry works and looked at differently from a bank.'[253] Regulation remains risk focused with MSB and banks quite fairly subject to parity of regulation based on risk not business size.

The impact of compliance appears linked to competence and previous levels of compliance, regulation being less burdensome where this gap is narrow: 'Even before … we very much prided ourselves on having very good compliance.' [254] Even larger previously diligent businesses were affected: 'Yes we have had to change a fair amount different aspects of the way … we work. The regulations have made us streamline things.'[255]

> The regulations are onerous we seem to be forced to in terms of policing the industry ourselves, if we fail on this responsibility the burden will come down on our shoulders.[256]

Larger principals stated: 'Don't have a problem with it, it is commensurate with running a business without being onerous … I don't think it is intrusive',[257] although 'not completely easy to work'.[258] Another commented: 'The level of compliance is phenomenal I spend at least two hours every day

[248] M2-108
[249] M2-108
[250] M2-108, M1-102
[251] M2-108
[252] M3-115
[253] M3-116
[254] M4-119
[255] M4-116
[256] M3-111
[257] M4-121
[258] M4-116

on third party alone and that is not a lot of clients.'[259] Smaller businesses were considered to be most affected: 'The smaller organisations … it does becomes quite onerous on them …with more regulations, to comply with it.'[260] Larger 'companies are better equipped'[261] in operating out of several corridors and able to spread costs because they have extensive resources, including experienced and trained staff.[262] Larger MSBs have the capacity to invest against market volatility and further legislative change, reducing their risk with the banks, more problematic for small or single operators where compliance and training were limited by cost and time.[263]

It was clear in section 6.3.3 that due diligence requires IT support for record keeping, data analysis, access to sanctions lists, HMT alerts and transaction analysis. Commercial packages were uneconomical for small businesses who relied on 'open sources'[264] or their principals for 'updates'.[265]

The RBA is dynamic and ongoing requiring a: 'constant process of upgrading and adapting as different guidance has come out.'[266] All businesses reported significant increased compliance costs[267] as 'having [a] disproportionate impact for businesses having a smaller capital base and … a lot of this stuff is fixed costs rather than variable costs'.[268] Regulatory compliance was challenging for all MSBs in the current economic environment with falling prices,[269] with businesses needing to minimise costs and invest to survive[270] and future proof against further regulation. This was beyond the capacity of smaller MSBs, but embraced by larger firms whose compliance raised capital for expansion.[271]

[259] M4-117
[260] M4-116
[261] M4-116
[262] M1-102
[263] M3-113
[264] M3-112, M2-109
[265] M2-109
[266] M4-120
[267] M3-112
[268] M4-119
[269] M4-119
[270] M3-111
[271] M4-119

> Requires investment on behalf of those MSBs in having a compliance function and having access to information that is not necessarily free, that will allow them to improve their KYC.[272]

The view was that the regulatory burden necessitated that 'to be able to bear that overhead you have to be of a certain size'.[273] Larger businesses bore the additional cost of agent supervision. This top down and bottom approach exerts pressure for compliance within the sector, the quality of which is essential for continued registration to sector standards which were not met by all: 'a number of unprofessional MSBs that don't apply regulation in the way that we think they should be applied. This is a problem in the industry.' [274]

The RBA requires skill, experience, and sector knowledge, which are challenging for smaller MSBs lacking 'the level of expertise to get that structure in place to run a compliant business … It has forced them to sell up or become agents'.[275] The MLR require banks to risk assess the MSBs: 'Even as an SPI you can't open banks accounts now … bottom end that have not made it into SPI probably I suspect because they were not being properly run.'[276] MSB perceptions of their status as financial institutions was that 'we are big enough to say that is perfectly reasonable but not a small SPI a one-man band, to lump them with banks and put them under the same regulation …its a bit of a tough thing.'[277]

Regulation requires risk assessment and EDD of business relationships between MSBs and verification of funds, adding to the compliance burden.

> Even if the sender is giving you money from his bank account you still have to verify the source of funds. … it not only increases the workload but [is] also putting extra pressure on the sender.[278]

[272] M4-119
[273] M4-119
[274] M4-119
[275] M4-120
[276] M4-120
[277] M4-121
[278] M4-122

This has resulted in reliance on wholesale MSBs to access corridors and transmit funds to 'maintain as a many different channels as they can for remitting funds so they wouldn't rely on a single bank and nobody else'.[279] The limited use of wholesale hawaladars revealed in interviews may increase as in response to MSBs limited access to the formal banking sector.

Proportionate application of the RBA, and interpretation of the MLR, avoids an unnecessary burden on businesses, achieving 'a proper balance of what the regulations actually require and getting rid of those things that are onerous to the business',[280] and helps to 'strip away anything that makes life more difficult for the ordinary little customer'.[281]

The MLR control sector access: 'The barriers to entry are I suppose … are rising.' Categorising MSBs as financial institutions and SPI or API has reduced operators at the lower end of the sector, limiting market access,[282] with new businesses not remaining operational for long.[283] Regulation has subjected MSBs to increased scrutiny[284] by customers, MSBs and banks, creating a sense of unfairness.[285] Regulation has been a pre-requisite for the API/SPI model: 'professionalises the sector has also 'chopped out the very bottom part of the market',[286]and 'weeding out' non-compliant and unprofessional businesses,[287] the resulting structural changes now threaten competition.[288]

6.4.2 Attitudes to supervision and guidance

HMRC has responsibility for ensuring MSB compliance with the MLR through on site audit inspections and enforcement action, the FCA is limited to

[279]M4-120
[280]M4-121
[281]M4-121
[282]M3-112
[283]M2-106
[284]M2-108
[285]M3-112
[286]M4-120
[287]M4-116
[288]M4-119

oversight of MSBs for the purposes of the PSR. Effective supervision requires effective sector dialogue and a clear supervisory strategy. HMRC was generally viewed as accessible,[289] visible,[290] and approachable,[291] the FCA was perceived as more experienced, competent, and more readily enforcing regulation but lacking sector knowledge. 'So I think the FSA [FCA] generally is pretty good. I think HMRC are pretty good to if your benchmark is what is happening in the rest of the world.'[292]

Enforcement strategies appeared to be a common source of criticism in interviews[293]

> It all comes back to enforcement, it's all very well having a great law but if there is no checking that you comply with it and people can see that you are never going to check.[294]

HMRC enforcement action against unregistered businesses was considered weak, where the ability to profit from circumventing regulation[295] was not prevented. Some regarded enforcement as intrusive,[296] questioning the effectiveness of the supervisory style in achieving results: 'I think the regulators see themselves in the role of policeman role rather than a liaison role when it comes to the industry.'[297] Few operators cited instances of enforcement action for regulatory breaches, and criminal rather than regulatory sanctions motivated compliance.

Effective supervision requires sector knowledge, consistency, flexibility, and accessibility and should inspire sector confidence. Supervision models minimum standards for registration, but seeks maximum compliance. MSBs aim for 'optimal functional compliance', balancing legislative demands, business efficiency, and cost control to achieve this. Action beyond minimal

[289] M4-122
[290] M2-106
[291] M3-115
[292] M4-119
[293] M4-120
[294] M4-120
[295] HM Treasury, 'Anti Money Laundering and Counter Terrorist Finance Supervision Report 2012-13'HMRC have been criticised for their failure to make effective use of civil sanctions for serious and deliberate reaches.
[296] M1-102
[297] M4-119

compliance to limit the risk of ML is linked to improved customer service, protection of reputation, and operational risks.

The quality of supervision and guidance was important to the effective application of the RBA, in particular by small and independent MSBs, given the lack of formal financial training across the sector: 'I think HMRC guidance is very good … if you went by the regulation themselves you wouldn't to be told an awful lot so you do need the guidance.'[298] HMRC guidance is accessed by website, telephone,[299] and email alerts',[300] the latter being the most valuable for agents.[301] HMRC consult on specific issues,[302] with a view to obtaining sector feedback about current practice and to develop further guidance and regulation.

Principal MSBs proactively sought guidance: 'We maintain a dialogue with the FCA and SOCA [NCA] both through the industry bodies and individually finding people there that we can talk to and engage.'[303] Dialogue was perceived as critical in affording a sector voice for consultation on future changes.

> Companies like ours are very keen to engage … others … are less educated, less staffed and less wanting to go down that route and that colours the relationship with the regulators or has to date.[304]

The sector appeared passive overall in their demands of HMRC, perhaps due to limited sector representation, particularly for small MSBs: 'The feedback mechanism does tend to knock out anyone who does not have a dedicated corporate affairs team because it is reasonably involved process.'[305]

[298] M4-122
[299] M4-115
[300] M3-112
[301] M2-109
[302] M4-121
[303] M4-119
[304] M4-119
[305] M4-119

AML guidance appeared sufficient for implementation:[306] 'The misuse of funds for criminal purposes. We have received lots of guidance on that and we proactively go out and seek guidance on that.'[307] Few could recall specific TF guidance and none had sought this despite the difficulty in isolating TF risk and circumstances arousing suspicion. This could suggest that AML guidance suffices or that the risk of TF is considered so remote as to not warrant concern.

HMRC was reported to be reticent in giving conclusive responses, and queries were often frustratingly left unaddressed.

> They come back and say do what you think is right. That's all very well until you are caught or something, when they have a very clear idea of what is right and what is wrong.[308]

Guidance needs clarity to promote confidence in supervision and compliance: 'HMRC guidance says … for whatever the limit is … the regulation would leave you pretty much in the dark so you do need some kind of guidance.'[309] Views as to the of quality of guidance received during onsite audits was mixed, some considered this: 'very helpful …. If I made a mistake they gave me information, they always they give ideas … to follow the rules and regulations it's more awareness.'[310] Guidance is important in securing confidence in compliance levels, given the threat of sanctions, and preventing overzealous regulatory application. The quality of onsite audits and resulting guidance was revealed to be inconsistent and a potential source of contention between HMRC and the sector. Divergent views on supervision reflect the quality of knowledge and business experience across the sector, indicative of business reliance but also the need for more clear, targeted and consistent guidance to enable MSB to improve compliance by addressing identified shortcomings.

[306] M1-102
[307] M4-119
[308] M4-120
[309] M4-121
[310] M2-107

> Saying that these are the regulations, this is how it must be done and if you can't do it there will be penalties applied … never took the opportunity to explain what the weaknesses were we were just told that you're not complying with the regulations.[311]

Whilst audits were considered appropriately intrusive[312] and stringent,[313] but the knowledge and experience of the audit teams were considered inadequate by principal MSBs.

> The people doing that audit should not really be doing that job … they don't demonstrate any deep understanding of the business or even know what they are looking at… they feel they are woefully inadequate.[314]

Audits failed to deal with sector priorities and problematic areas: 'No point in visiting people who you are confident have got systems in place and are pretty low risk.'[315] Principals considered that audits lacked depth, were not cross-cutting, and failed to address issues relevant to guidance. Supervision was more effective for smaller business, but appeared to challenge HMRC for larger businesses. HMRC resourcing was considered relevant here: 'HMRC is looking tough and looking like a regulator but does not have the resources to do this.'[316] This sector identified the need for improved resourcing of supervision: 'I think HMRC and the FSA [FCA] put some extra resources in following up then the MSBs would be automatically would become more expert in this.'[317] Larger MSBs advocated increased registration fees to resource[318] more frequent audits[319] which were currently not perceived as an accurately assessing compliance through competence in regulatory efficacy.

> What you have got to do is 'appear' to be doing the right thing … if you have got the policies and procedures in place … that satisfies us, but

[311] M3-111
[312] M2-102
[313] M4-117
[314] M4-120
[315] M4-121
[316] M4-121
[317] M4-117, M4-120
[318] M4-120
[319] M4-122

> what they really should be looking at is whether people are applying them.[320]

HMRC was considered to lack sector knowledge and experience of audits

> They don't understand the business and you spend a lot of the time explaining … they should be a bit more knowledgeable. … they need to really up their game … they don't instil confidence.[321]

Views on the quality of audits and guidance were divided, others operators expressed confidence in HMRC: 'Quite knowledgeable in this area … able to offer insights into how other businesses … get around this.' [322]

Audits are critical to business planning and investment; inconsistent standards hamper the resource allocation for effective compliance and undermine confidence in supervision. Not all MSBs had been audited by HMRC, for agents this was usually by their principal, interviews indicated inconsistent audit periods not linked to a clear supervision strategy. Long periods between audits risk the loss of business confidence and declining standards, effective supervision needs to be risk based, underpinned by guidance, timely audits, and prompt enforcement.

HMRC's approach was considered to be generally supportive and reasonable and offering some degree of flexibility to enable the successful application of the RBA.

> I wouldn't say it's soft touch but I wouldn't say it's hard touch either. It's not like these are the rules this is what you have to do … there has to be some flexibility in applying the regulation.[323]

Some desired a more relaxed[324] and supportive approach with more guidance, criticising the focus on minor breaches,'[325] whilst others advocated a more proactive educational role: 'When things come up and they finalise

[320]M4-121
[321]M4-117
[322]M3-111
[323]M4-121
[324]M3-113
[325]M3-113

the new regulation we have to learn these things from the website and check regularly for our own safeguard.'[326]

A common point of sector dissatisfaction related to guidance on EDD requiring the verification of the source of funds from other financial institutions, including those from banks.[327] EDD aims to target MSB to MSB relationships, a flexible interpretation of the MLR by the supervisors, extending the scope and the burden of their application. This strategy has had unfortunate consequences between MSB and banks, and has also been criticised for duplication of effort and increasing the intrusion for customers.

Guidance had been challenged by larger businesses as being too prescriptive,[328] HMRC not always receptive to this: 'You try and convince HMRC about this it falls on deaf ears.'[329] Some had succeeded and challenging guidance,[330] one agent successfully averted HMRC requiring single agency operation.[331] HMRC's lacked an understanding of the sector's use of unregistered agents in destination countries, despite their applying due diligence equivalent to UK regulation and the use of banks where possible.[332]

6.4.3 Summary

Interviews demonstrated mistrust between MSBs and banks,[333] thereby precluding cooperation, leading to restrictions on banking services and increasing the need for MSB cooperation. This was previously confined to being functional and short term, in contrast to Hawala. MSBs remain aware of the sector threat from unregulated businesses,[334] 'Imperative that they tighten up on control',[335]misuse tainting industry reputation.[336] At every level,

[326]M3-114
[327]M4-117
[328]M4-122
[329]M4-117
[330]M4-122
[331]M2-113
[332]M2-113
[333]M1-101
[334]M4-117
[335]M4-117

trust was displaced in favour of regulatory compliance. MSBs remain vigilant, scrutinising transactions, with suspicion pervading all aspects of operation. Supervision, guidance, knowledge, experience, resources, and motivation to professionalism were seen as key to securing effective compliance. MSBs were well aware of the risk misuses for ML, but less clear in relation to TF risks, with mandatory registration, the extent of regulation and the threat of criminal sanctions seen deterring TF. Operators appeared unable to detect TF to isolate circumstances arousing suspicion compromising SAR reporting and undermining the effectiveness of regulation. Reliance on generic deterrence and the possibility of TF being revealed nebulously draw the conclusion that the MLR offer little protection against TF other than from due diligence thresholds enhancing overall vigilance. These grounds do not justify impetus for regulation founded on TF protection.

Larger MSBs viewed smaller independent MSB as having inadequate compliance, lacking professionalism, and allowing self-interest to dominate over sector protection. 'I struggle to believe that those run at the very bottom end of the market were professionally run.'[337] Regulation controls MSB operational risks through a framework of accountability and supervision by principals, and HMRC imposing a RBA to risk management.

> If you take partial responsibility it gradually becomes more. I do not use the regulatory side of it … I do not want to keep it as cannot keep up to date so I leave it to the professional.[338]

Most MSBs viewed HMRC as approachable and supportive, but lacking consistent guidance and enforcement, agents viewing HMRC as indifferent to the impact of their regulatory burden. Perceptions as to HMRC supervisory competence were divergent, some regarded HMRC as having a working knowledge of the industry.[339] Others were more critical, some considering 'the most important thing is to keep the regulator [supervisor] happy.'[340]

---

[336]M3-111
[337]M4-120
[338]M1-104
[339]M4-116
[340]M3-111

Supervision was generally considered appropriately balanced[341] but lacking a clear and consistent strategy.

MSBs considered their designation as a financial institution justified[342] by their activity and risk,[343] but the inequality of resourcing required some differentiation within existing regulation: 'No really we should be a separate entity we don't operate the same facilities as banks they have got to look at tailoring it to be more effective and fair.'[344] One suggestion was to regulate MSBs as payment companies,[345] akin to credit card companies,[346] to enhance regulation. Interviews conveyed a sense of unfairness about the disproportionate effect of the MLR on a sector previously dominated by small and medium businesses, outstripping profit and effort.

The sector lacked cohesion, purpose, or the appetite for sector representation, despite the presence of trade associations such as UKMTA: 'An excellent forum every meeting of theirs is extremely helpful … for us raises our concerns and we see a lot of guidance and information from them.'[347] Forums did not seem to be used proactively by MSBs to promote sector concerns, or as platforms[348] for debate.[349]

Banks' suspicions of MSBs,[350] and EDD between MSBs, have resulted in an additional layer of internal regulation and monitoring,[351] increasing 'suspicion' across the sector. MSBs felt unfairly targeted compared to the banking sector[352] where serious infringements were not matched by sanctions,[353] banks being perceived as 'getting away with murder'.[354] Risk-based regulation drives compliance from within, and additional regulation having

[341] M3-111
[342] M4-120
[343] M3-111
[344] M4-117
[345] M3-114
[346] M4-119
[347] M4-116
[348] M119
[349] M117
[350] M3-112
[351] M3 -112, M2-109
[352] M1-102
[353] M3-112
[354] M3-108

further eroded the scope for small independents, with the agency /principal model dominating.

Given the association between ethnic groups and remittances to jurisdictions considered high risks for terrorist activity, there was some limited mention of communities feeling targeted by suspicion.[355] MSBs were keen to dispel any perception of their customers as being potential terrorist supporter,[356] on the basis of shared ethnicity or religion.[357] In the absence of clear suspicion indicators, the sector had not resorted to relying on ethnicity as a single suspicion indicator.

6.5 Regulator and stakeholder groups

These groups were selected for having roles or interests connected to MSB regulation and which were relevant to the effective application of the MLR. The groups included representatives of relevant trade associations, supervisory agencies, agencies with a policy remit, public and private investigators of financial and criminal conduct, banks who service MSBs, and charitable organisations which make use of MSBs. Not all of the stakeholders approached consented to interview because research concerned sensitive policy areas, and decision-making where information regarding operational role relationships was security sensitive. Ten interviews were undertaken, limited by access to this group. More would have been preferable in order to canvas a wider sample and range of views. Participants' experience was appropriate in relation to their roles and areas of responsibility, but this did not align to terrorist finance in particular. Access to specialist CTF personnel for interview, given the sensitivity of the issues and the need for high-level security clearance, was precluded within the time frames available.

[355] M3-113
[356] M1-1105
[357] M3-112

6.5.1 Biographical profile of regulator and stakeholder groups

In order to preserve the anonymity of the participants, they will not be identified individually by their category, since this may inadvertently reveal too much about their identities. The categories included: supervisors, policymakers, investigators, trade representatives (8); and charitable organisations (2).

Most participants had at least five years' experience in their current or previous roles, involving direct engagement with the MSB sector, with the exception of the charitable sector. The interview data below is presented is in line with the central research questions and compared with that of the MSB group.

6.5.2 Model of operation

MSB interviews revealed a linear and hierarchical approach, not the network model, and there was no evidence of a 'take on trust approach' that characterised Hawala. The term 'Hawala' was little evident in operator interviews,[358] but there were more frequent mentions in regulator investigator interviews, associated with illicit operations. The model of Hawala referred to in chapter 2 was not recognised as currently operating within the UK.

> I actually don't think the perception we have is that the traditional way of doing Hawala without the actual movement of money is almost non-existent in the UK, it does not take place.[359]

The quote illustrates the problem with generic terminology. If this definition is assumed to encompass the movement of value outside the formal, then regulation has rendered Hawala obsolete, now confined to informal and unregistered operators. Additionally, trade-based laundering is an area recognised by MSBs as not currently addressed by regulation. MSBs share some characteristics with Hawala at agency level which operates alongside

[358] S201
[359] S111

parallel businesses from the same premises, and has a strong ethnic focus,[360] offering niche services to specific corridors; and at agency and independent level, it has community presence. Informal unregistered operation[361] is prohibited by regulation,[362] but unregistered providers, by necessity, are used in other jurisdictions.[363] The regulator group considered family connections essential to the operation of MSBs, but this was not borne out by the operator interviews, only two revealing family connections as operationally significant.

Legislation defines MSB by activity type, each having its own particular method of operation and risks. The MLR show limited distinction between these activity types (bureau de change, cheque cashing, or remittance) for CDD. The regulator/stakeholder (RS) group cited supervision and investigation as differentiating between these, but in practice many MSBs provide multiple services:

> The way we look at MSB are essentially in two different sectors, money transmitters and money exchange business. They both present quite different threats.[364]

Interviews confirmed a diverse range of MSBs,[365] with larger concerns having wide international coverage, being brand led, specialising in single corridors, and making use of agents, with some businesses having an ethnic focus.[366] The regulators' model was conceived as including three business categories: international, high street, and 'backstreet'.[367] Interviews confirmed the need for regulation derived from the 'wide criminal abuse'[368] of MSBs for ML, and the high risk of misuse for TF.[369]

Regulators confirmed that regulation, and more rigorous supervision and enforcement, have reduced the number of operational MSBs, with family-run and 'one-man' businesses ceasing to be the norm.[370] The initial threshold for

[360] S209
[361] S111
[362] S201
[363] S111
[364] S206
[365] S2023
[366] S201
[367] S206
[368] S111
[369] S201
[370] S111

regulation was set low, a policy decision to incentivise registration to prevent illicit underground operation.[371] Regulation was perceived as needing to be: 'sufficiently relaxed that we don't drive people out' to ensure that: 'you have some visibility of them to pull them up.'[372] Subsequent phases of supervision have tended to reduce the numbers of independent and small MSBs, an intentional effect, with the more onerous fit and proper test under the PSD resulting in a dominance of the principal (API) and agent (SPI) models.

The network model derived from cooperation, wholesale activity, and trust between MSBs was not part of UK MSB operations. Regulators were aware of wholesale MSB but the identification and the extent of this was difficult to quantify: 'There are an awful lot of MSBs supplying an awful lot of MSBs',[373] mainly linked to currency exchange. Wholesale MSBs, due to their role and sector links, were seen as a 'pitch point' for improved regulatory compliance.

Larger principals have an international presence which relies on established cash pools to avoid using banks,[374] offering wholesale services to smaller MSBs. For 'illicit' businesses the cash pools enabled the comingling of legitimate and illicit funds.[375] Transaction 'bulking', and use of third party payments within wholesale capacity, requires:

> Cash pooling accounts and balancing money … to make all of this work. It really does muddy the water in terms of what is migrant remittance and what is a business transaction.[376]

The detection of genuine remittances was made more difficult by this structure,[377] where MSB operation is parallel to another business.

Subsequent regulation, improving the fit and proper test and requiring parallel registration (independent agents) has been accompanied by a decline in the number of overall MSBs, and changed the sector structure. Larger MSBs are reliant on agents for managing customer contact: 'they will have a head office in one location and an agent in every major city.'[378]

[371] S201
[372] S201
[373] S111
[374] S204
[375] S201
[376] S111
[377] S111
[378] S201

Smaller independents, as SPIs, are likely to decline further or morph into the middle layer of wholesale MSBs. The banks' risk adverse attitude to MSBs in restricting accounts has impacted negatively, driving an increasing demand for wholesale MSBs, which lack visibility. This is comparable to the observation of the operator group. Regulators regarded banks' actions as beyond their control; smaller operators were, however, angry at the lack of support from regulators to address this.

The operator group defined the model of operation by service provision and the ethnic/community group, with operational activity determined by regulatory compliance in method and form. In contrast, regulators classified operational characteristics according to misuse, and three models emerged: registered MSBs with inadequate compliance; misuse associated with deliberate evasion of regulation/registration; and deliberate criminal complicity. The latter category can encompass the first two, but motivation and deliberate criminality is a critical characteristic. The misuse of registration to thwart further investigation derives from a hidden illicit intent; parallel books and the misuse of identity documents[379] were used to obscure this.

> We are seeing higher number with sets of records like that and there are specialists at this in producing false documentation specifically for the purpose of getting around compliance visits.[380]

These criminal businesses mainly operate through[381] links with wholesale MSBs, and the resulting control of these businesses and their misuse is 'deliberately engineered'[382] to hide illicit transactions to thwart detection.

The concept of trust underpinning MSB operations was a clear theme.

> Literature that talks about trust and the problem is that they don't define what they mean by it when you look at the definition of trust is it not an unreasonable word to use but I don't think it is the right one to concentrate on.[383]

[379] S105
[380] S111
[381] S105
[382] S111
[383] S209

An overwhelming sense of mistrust was present in the operator group, but did not compromise operational effectiveness since consolidation and settlement processes are largely effected through the banks. The network model identified by regulators is linked to criminal networks and business misuse.[384] Regulators saw trust as representing a reputation for the commercial delivery of service without loss of customer funds,[385] thus ensuring repeat custom,[386] a perception confirmed by the stakeholder group[387] which viewed regulation as signalling trust and a guarantee of delivery of funds: 'Organisations which are legitimate, regulated and signed up [registered] … we use them.'[388]

The concept of trust controlling operational activity, as associated with Hawala, was irrelevant:

> 'Everything is based on trust to a greater or lesser degree … if it's trust based it destroys the trust base to have criminal money in the system it is rubbish. It is reputation.'[389]

Reputation for service can relate to lawful or unlawful activity: 'so long as they [MSBs] can trust you not to disrupt their livelihood they don't want to know what you do.'[390] For stakeholders, reputation was conceived in terms of guarantee of delivery, protection of fund transfers, and the need for legitimate operation since stakeholders required MSBs to be 'whiter than white', [391] and free from the taint of any criminal or terrorist association.

The regulator group (RG) articulated an additional supervisory model of regulation comprised of policy, supervision, and enforcement, with agencies having distinct but overlapping and sometimes multiple roles. These were informed by mutually agreed goals and priorities which agencies implemented, with interagency liaison and cooperation creating a regulatory

[384] S201
[385] S209
[386] S209
[387] S112 CN101
[388] S112
[389] S111
[390] S201
[391] S112

network: ‘If we have the right risk based approach to it, between all of us then the whole sector',[392] is protected.

Regulators perceived wholesale MSB operations as closely resembling traditional Hawala in being difficult to identify in form and hard to distinguish genuine form illicit operation, the MSB structure here vulnerable to criminal misuse. The complexity of transactions flowing from this model is not immediately apparent to customers or other MSBs. The stakeholder group (SG) viewed banks and MSBs as regulated in the same manner to service remittances. The move post 9/11 to use banks had now reverted to using MSBs because they provide penetration to rural areas, have banks accounts with the same banks as the stakeholders, and offer better rates[393] and faster service delivery.[394]

The RG considered future operations in the light of new risks from emerging technology, and the need to anticipate regulatory changes to prevent criminal abuse from new operational methods and structures. This did not feature in the business strategies of MSBs, despite the potential for mobile and internet technology to provide low cost access.[395] The risk from new technology warrants concern, given that Somali initiatives have been associated with Al-Shabab terrorist finance.

6.5.3 Risk assessment and management

The risk associated with MSB operation was summarised as follows.

> Widely been used in both terrorist funding and what I would term serious organised criminal activity. In the past this has been substantially in drugs activity and tax fraud which is very substantial and damaging to the national economy.[396]

Remittances were seen as offering cost effective speedy mechanisms for moving money: ‘Benefits to the criminal in that it has no single line audit trail of the cash going from the customer in the UK to the overseas

[392] S209
[393] S112
[394] S201
[395] S204
[396] S204

beneficiary.'[397] Despite regulation improving record keeping, risk assessment, risk management processes, and external accountability, which the Hawala lacked, MSB operations continue to pose a challenge to the identification of illicit transactions.

The SG group confirmed that regulation enabled MSBs to provide a paper trail that was previously absent or problematic, this being critical to the detection and retrieval of diverted funds: 'Tracking systems are in place so we know MSBs are regulated in the same way' to 'make sure there is always a paper trail'.[398]

Operators focussed on risk assessment to protect against misuse by 'customers' who are criminals and terrorists. Regulators focussed on countering complicity by MSBs for ML, seen as the greatest threat. Supervision and investigatory policy centred on educating businesses about methods of exploitation for criminal misuse, promoting compliance to improve sector protection. Whilst the RG did not include specialists in TF, the issue of education about TF is probably not played out to protect covert investigation methods, roles, and the identity of investigators.

The low threshold for registration, a sector risk, has implications for increasing reliance on MSBs to facilitate payments and enhance jurisdictional coverage, thereby justifying EDD requirements. This needed regulatory adjustment to limit access to the sector by undesirable operators who lack competence.

> A number of cases … where a criminal MSB has entered a relationship with one of these wholesale MSBs and have put some money through ….. whatever country.[399]

Wholesale MSB transactions and third party settlements obscure transaction transparency: 'This provides a level of anonymity to criminals for money transfer, a further obstacle to clear audit trails for criminal investigation.'[400] The use of intermediaries also disrupts the audit trail.

---

[397] S204
[398] S112
[399] S204
[400] S204

> The complete information on the payer follows the money … the transfer rather than going to the beneficiary … goes to a third party who does not know why they have got this as they are not the beneficiary. The country where the beneficiary is they don't get the complete payer information so the trail goes dead.[401]

The EDD required between financial institutions was a point of divergent opinion. Operators viewed this as unnecessarily increasing their compliance burden, duplicating effort, and requiring internal policing of the sector. One operator considered this lacked purpose since HMRC audits did not address this. Regulators, however, supported this approach, with sector risk and evidence of misuse necessitating action. The regulators' position was linked to their responsibilities and accountability; action against risk was taken with a broader view of the financial sector and reputational risk to the UK.

Agent operators' viewed risk as emanating from customers or businesses outside the sector. Regulators' perceptions assumed criminality as a norm in the sense that there would always be a risk of misuse, and that it was unrealistic to expect that this could be completely eradicated. Operators viewed risk as exceptional, with service quality the priority and customer integrity the norm. ML investigations and compliance audits have revealed criminal misuses of MSBs through wholesale transactions. Requiring EDD of MSB to MSB relationships aims to identify and trace wholesale transactions that are not otherwise apparent to supervisors, to restrict the capacity for illicit transactions between businesses. This protects against misuse remaining hidden within wholesale transactions, which lack transparency, and which EDD aims to expose, since registration is not an indicator of ongoing compliance and protection. Operators opposed this burden, but regulators viewed this as justified and effective in addressing risk, and whilst acknowledging sector concerns that EDD exposes sensitive commercial information which compromises competitive advantage, considered these concerns did not outweigh the risks.

> An objection to that has come from the business that say that if we as a retail MSB let other MSB's see who all our customers are we will get cut out and lose the business.[402]

[401] S204
[402] S204

The competitive nature of the sector, and the need to run MSB operations parallel to other businesses, is also recognised as exposing MSBs to the risk of misuse, poor compliance, and the diversion of funds.

> If you are running a corner shop and you have a bill to pay the temptation is to use the money that they have taken for you to pay their bills. That means people lose out.[403]

The stakeholder group identified transactions to foreign banks as being at high risk for the loss of property from poor the regulatory compliance of overseas entities. Whilst this was subsequently reimbursed this risk prompted the selection of MSBs instead. The rates offered by some MSBs were considered an indicator of misuse, suggesting that criminal funds sustained the MSBs as a 'front' to criminal laundering.

> Supported, by criminal finances so the only way they are able to offer such rates is because they take a large amount of money that is knowingly or unknowingly to them the proceeds of crime.[404]

Operators considered third party transactions time intensive, and their assessment of the effectiveness of regulation was inclusive of this impact balanced with risk. Regulators, however, focus solely on risk, with essential due diligence securing the identity of parties and the transparency of transaction purpose to avoid illicit misuse.

> All the money laundering … seems to be around situations where there is no ID or there is no proof of where the money came from and there have been no questions asked or answers provided. It's just general ignorance.[405]

Regulators were sensitive to the cultural context of MSB operation:

> Cultural thing in the Pakistani communities that is a normal thing to take money and give it to this person, but that looks more suspicious in a different context.[406]

This underlies the importance of context to suspicion, and the need for specific indicators for TF. Regulators had a more objective view of the context, which was different to that of operators, and was informed by a

[403] S202
[404] S206
[405] S111
[406] S203

different set of normative standards and perception of risk, emphasising further the need for TF suspicion indicators.

The risk of MSB misuse is their capacity for high volumes of transactions, enabling the intermingling of illicit funds: 'giving the money layer of legitimacy.'[407] These are difficult to detect at the placement stage, thereby compromising the integrity of funds when placed into bank accounts, and making subsequent detection and traceability problematic.[408] MSBs are high risk if criminal elements perceive them as lacking regulatory compliance, or motivated to complicit operation for profit.[409]

> A number of businesses are run essentially run by criminals as well as those businesses who are either turning a 'blind eye' or who are through capacity constraints just not able to properly protect themselves.[410]

Terrorist finance risks remain an important goal in light of the continued threat to the UK, and international AML/CTF standards aim to minimise this risk. The risk of misuse of MSBs post 9/11 was recognised.

> There was a lot of speculation that the funding of 9/11 was through money transfer through outlets ... in the States. That put a lot of weight behind the need to regulate money transfer systems. Then … we had the FATF special recommendations which … targeted to CTF and special recommendation 7 … we have to have an audit trail for MSB.[411]

The risk to reputation for stakeholder charitable groups was a clear threat, given the areas they remitted to were mainly in 'Asia, Middle East and Indian subcontinent',[412] where the risk of funds being diverted for terrorism was high. Charitable organisations recognised the need to monitor all partners, including MSBs, banks, and other organisations used to disseminate funds at destination.[413] The effectiveness of the MLR in protecting against the misuse of funds beyond the UK is limited for overseas charitable operations.[414]

---

[407] S201
[408] S105
[409] S205
[410] S206
[411] S204
[412] S112
[413] CN101
[414] S112

There was a divergence of opinion about the risk of MSBs misusing money for TF. Operators considered this unlikely considering the customer group and the low values remitted. Regulators regarded these amounts as potentially having an impact for terrorist groups,[415] but recognised the difficulty in identifying these as terrorist: 'How do you know that that individual you are dealing with is going to send £300 that is going be used to contribute to a bomb?'[416] Whilst regulation may be sensitive to detecting 'smurfing', where TF transactions are below the thresholds triggering EDD as linked transactions,[417] low value remittance patterns disguise this. Terrorist purposes remain hidden,[418] with both groups agreeing that detecting terrorist intent was impossible: 'given the money..of legitimate provenance [could be] paid in by individual, into a legitimate business, who would withstand scrutiny.'[419] The interviews fortunately revealed little evidence of the need to resort to ethnicity as a suspicion trigger here.[420]

The link between areas of terrorist activity, migrant diaspora populations, and associated charitable donations were seen as potential risks/sources of terrorist support. [421]

> The CTF and insurgency funding where money is collected to be sent overseas … is more in keeping with the normal business transaction size but may be more significant in relation to terrorist hotspots.[422]

Stakeholder groups stated that many distinct communities made private Zakaat donations. Informal charitable: 'community collection you can corrupt quite easily you only need to know the right people,'[423] emphasising the need for donations through the regulated charitable sector. Charities prefer to capture donations by direct debit to provide a paper trail[424] and maximise charitable potential.

---

[415]S201
[416]S202
[417]S105
[418]S209
[419]S201
[420]S2023
[421]S105
[422]S209
[423]S201
[424]CN101, S112

The capacity to trace high-risk transactions across the transaction journey is essential to link any diversion of charitable funds to specific terrorist groups.[425] Jurisdictional risk is also relevant where MSBs operate in high-risk corridors.

> Often deal with developing countries or countries that might traditionally be associated with terrorist finance or a terrorist risk to the UK. Those countries that you tend to have concern about from a terrorist perspective are also the countries that tend to have large remittance communities and operate Hawala in the UK and in their home countries.[426]

MSBs' capacity for moving money at speed to other jurisdictions was perceived as an inherent risk,[427] but terrorist transactions were recognised as unlikely to arouse suspicion.

> It is more difficult for the MSBs to identify because of the size of the transactions and the routing of the transaction may seem very similar to other ones that are coming across their counter. It may be they are routed within a community. [428]

The attractiveness of potentially using a small MSB for TF was viewed as substantial.

> If I were involved in terrorism I would far rather go to a small money remitter who has very limited resources in terms of checking who I am and what my motives are than go to the bank … a small perhaps a one-man business in a particular community … then I have a much better chance of getting my transaction completed … my anonymity maintained.[429]

The distinction in the misuse of MSBs for ML, and the use of complicit MSBs, was not as relevant for TF: 'It may be that they prefer to use a [branded high street providers] as they know they can get the money in safely and they know it will be delivered.' [430]Evidence suggests that: 'people who have then been found out to be terrorists they have used as many good regulated MSB as they illegitimate ones.' [431]

---

[425]S105
[426]S206
[427]S105
[428]S209
[429]S204
[430]S209
[431]S209

Regulators were aware that low values could easily be structured and readily disguised within usual remittance activity: ‘a cloaking activity to deal with illicit money.’[432] The TF risk for complicit MSBs compared to legitimate MSBs is unquantifiable but high, given their propensity to depart from regulation to facilitate illicit transactions. Providing the sector with accurate information and profiles of TF is difficult given the rarity of misuse, thus preventing the collation of evidence of patterns for TF activity and actors.

Both interview groups recognised regulation as challenging but in different ways. Regulators perceived the challenge as relating to regulatory compliance to control the misuse of MSBs, and the capacity of due diligence processes to arouse suspicion of TF. Regulation secures more robust standards, considered by both groups to deter potential misuse generally through enhanced risk of detection. Regulators did not seem to question the weakness of the regulatory regime for preventing terrorist finance, seeming to regarding it as necessary to give effect to international obligations and to be seen to be protecting against risks. Issues of effectiveness were touched on, and the conclusion appears to be that the regulatory regime here is not designed to be proactive or pre-emptive, but to afford after-event intelligence analysis for investigation. The value of the latter is unquantifiable, and often not made public, and does little to incentivise the sector or inform it about TF risks, given the threat of criminal sanctions. It also weakens the strategy underpinning the merger of the AML and CTF regimes.

Trust was conceived by regulators in terms of reputation concerning service delivery, and the loss of reputation was seen as a pressure point for compliance. Community pressures were considered relevant to inducing non-compliance, but this did not align with evidence in the operator interviews.

> Because of the pressure that is on them within those communities, they are small communities where everybody knows each other, they present a greater risk at the moment than perhaps other sectors do.

Regulators more than operators, are attuned to the misuse of MSBs beyond poor regulatory compliance, where parallel criminal associations within

[432] S201

communities trigger this: 'they have a symbiotic relationship.'[433] Terrorists and criminals share the need to exploit effective systems for moving money without detection.

The degree and risk of misuse of MSBs for TF was not clear. Regulators reflected the views of operators that detecting TF was difficult.

> There is objectively very little you can do to know whether that customer is a terrorist or not. You can always check all of your customers against the HMT list … but the chances are that one of your customers is one of the 8,000 people on that list … very very little chance.[434]

It was also recognised that HMT sanctions lists are publically accessible to terrorists, although anonymity is crucial.

> The terrorists also know who is on that list and they are not going to use those to send money … how will anyone know they are providing a service for a potential terrorist.[435]

This makes the drive pre[436] and post 9/11 for international TF regulation of MSBs questionable if measures are ineffective in achieving these aims. Measures not capable of detecting terrorist finance are unlikely to be effective in preventing it.

Motivation to support terrorism stems from ideological concerns, personal morality, and a desire to support terrorist goals,[437] mixed with other concerns: 'Terrorists in the countries concerned are often seen by the local population as altruistic care organisations. In Palestine, Hamas is doing all the social care.'[438]

The concern of terrorist groups parallel support of social welfare, supports the view that MSBs were targeted to prevent the misuse of charitable funds for TF, although how this can be effectively achieved given the constraints in detecting suspicion and the relevant volumes is uncertain. Regulators used

[433] S201
[434] S202
[435] S202
[436] Convention on the Suppression of Terrorist Financing Convention Article 18(2)(a)
[437] S105
[438] S202

the exploitation of humanitarian funds to: 'try and find a resonance with people'[439] to incentivise community diligence about MSB selection, purposely drawing on community and religious interests to protect community interests through community intolerance for the exploitation of charitable donations.[440]

Regulators were more aware of how risks arise and need to be addressed based on their experience, sector knowledge, and knowledge of the laundering methods available to exploit risks. The focus of the investigator groups was predominantly on ML for criminal exploitation. TF was conceived within this, with the possible links between organised crime justifying this approach and risk. [441]

> I think it is about the same personally and ultimately saying it is terrorism is just putting a label on it. It is criminal activity and if you convince people that what is going on is criminal. [442]

The terror/crime nexus was not evident at policy or operational level. Regulators remain divided according to funding purpose, with joint ML and TF investigations not evident from interviews. The terror/crime nexus and AML measures may have been historically relevant for funding of Irish terrorist groups,[443] but there is little evidence to justify this approach for ideologically based groups, particularly in the UK.

The banks' perception of the risk of MSBs, and the limitation of services to APIs,[444] was understood as outweighing their supervisory effort and risk to reputation: 'If they [MSBs] are involved unwittingly in a substantial ML case that hits the press they [banks] don't regard that as worth the candle for the bad publicity they would get.'[445]

This unintended consequence of the RBA was regarded as problematic, but regulators considered this beyond their influence although they were aware it may drive MSBs to greater wholesale activity, high risk, and less transparent. MSBs viewed this as unfairly restricting their operative capacity. Charitable

[439] S201
[440] S111
[441] S201
[442] S111
[443] S105
[444] S111
[445] S204

organisations made no mention of the withdrawal of banking services to MSBs when dealing with high-risk corridors, but the Dahabshill litigation was not an issue at the point of interview.

Risks were viewed by regulators as the first stage in a coordinated response to addressing these, requiring flexibility since risks shift over time as new threats emerge: 'The risks vary over time depending on how well law enforcement regulators and what the trade do about keeping the risky businesses out.'[446] Regulators viewed the RBA as effective in enabling MSBs to proportionally and effectively manage new risks. They did not appear to appreciate the value of additional guidance to achieve this, but probably did not want this to bridge gaps in operator competence.

6.5.4 Detecting suspicious activity

Trust, or reputation, within a community was perceived as offering the capacity for increasing the arousal of suspicion derived from operators' knowledge of the community and customers.

> It may be that it is routed within a community if they are registered and doing everything right with their AML recording, may be at less risk because they know the community better.[447]

Operators did not perceive their knowledge offered any advantage for the specific detection of terrorist finance, with many considering it unlikely within their existing customer base. Regulators considered the fact that MSBs 'know their local communities and who people are' afforded and advantage in raising suspicion here.[448]

The provision of information about sector risks was seen as a strategically important element of risk reduction, and an integral element of sector supervision, with audits informed by information from the investigation of criminality and past prosecutions and previous regulatory non-compliance. Policy aimed at sector education about risks aimed to ensure the sector was

[446] S209
[447] S209
[448] S201

well informed and to improve its capacity for protection. This only extended to ML and not TF investigations, the latter being security sensitive. The strategy was commendable but was also punitive, with awareness operating to establish knowledge as an unchallengeable platform from which suspicion should be triggered. Later failure by operators to address these risks presented the threat of criminal sanction by regulators for non-compliance. This strategy emerged from MSB evidence in ML prosecutions; their initial exploitation without knowledge was not subsequently capable of providing a defence to their recurring misuse.[449] This addresses what is perceived as the sector's 'blind eye' approach. TF offences require reasonable cause to suspect the terrorist purpose, lack of which is a defence for failure to disclose. Reasonable cause can only be drawn in the regulatory context from factors identified by regulators that should have caused the formation of suspicion. The financial sector is liable for negligence in failing to act on these. The effectiveness of TF reporting is compromised where indicators relied on are general to ML and not TF processes, and reasonable cause is open to question here.

Positive partnership and education, rather than sanctions in the first instance, are preventative enforcement strategies. Compliance is secured through the threat of personal criminal liability, unlike banks which are subject to regulatory sanctions and fines, and where individuals are insulated from liability, commercial and criminal.

Regulators conceived the MSB presence within local communities as both a driver and a barrier to the operation and reporting of suspicion.

> Because they operate in small communities they are also quite exposed to the riskier parts of those communities and less willing therefore to report suspicious … they might suffer or the business might suffer.[450]

Operator interviews did not indicate customer ethnicity or community allegiances as ousting the need to apply full due diligence, MSBs were motivated to protect personal and business reputations. TF remains an area to which too little consideration is given as the formation of suspicion. HMRC

[449] S204
[450] S206

approved guidance is relevant to assessing the obligation to disclose in any prosecution, but does not address TF sufficiently. This is perhaps due to the secrecy surrounding TF investigations, with prosecution being a rarity and ML forming the mainstay of prosecutions. It was, however, recognised that:

> With terrorist financing we are looking at very small amounts of money that are below the threshold for the ML … to get suspicion you have to do a lot of digging and most small business would not be able to do that … they won't have the resources.[451]

The need to investigate further is only triggered when suspicion is raised, and this is unlikely if customers, values, and transaction patterns are not considered to be relevant for TF. Terrorists need do no more than remit regularly in small values, and then increase this across several operators at peak times of religious festivals to avoid suspicion. Factual circumstances relating to the customer or transaction to arouse suspicion and prompting the need for further investigation, only apply where these are unusual, the key issue being: 'at what point does unusual become suspicious'.[452] Terrorists and criminals aim to: 'enter this normal banding.'[453] Suspicion is only triggered when:

> 'the activity is so far out of what is normal business.. unusual is something not quite right and if you cannot apply rational thought to it then.. perhaps you would become suspicious.'[454]

Applying due diligence controls at a level to reveal suspicion to bridge the gap in the lack of TF indicators goes beyond what is demanded of the transaction risk, and is overly burdensome, but nonetheless appears to be the preferred approach.

Regulators were keen to enforce compliance to improve financial sector confidence. The use of 'comfort indicators' to assist businesses in assessing the suitability of MSBs was dismissed as unreliable and customer service focussed, undermining the RBA which has legal force.

[451] S204
[452] S201
[453] S201
[454] S201

> Comfort indicators around essentially saying if your say that you find this characteristic in an MSB you would always want to do business with them, you would never want to do that, you would always want them to take a risk based approach.[455]

Regulators were aware of the banks oversight of MSBs operating as an additional layer of supervision, requiring greater due diligence than that mandated by regulation. This was considered useful for promoting compliance despite the risk of isolating MSBs from the formal sector and driving 'them further underground'.[456] Removing this valuable layer of oversight was thought to weaken the effectiveness of the regulatory framework.

Interviews revealed a desire for more information to assist the RBA, since many MSBs found risk assessment challenging: 'If someone tells me what I have to do I'll do it but if they don't tell me what I have to do I won't do it.'[457] Regulators rely on the skill and business knowledge of MSBs to effectively apply regulation; this was not assumed from registration but should be. Supervisors see their role as guiding not educating, since they lack the resources for this given the breadth of operational risks.

> The point is nobody has actually come up with any kind of granular approach that you will enable to you to say I am a money transmission company on the Pakistan corridor so what do I have to do particularly because it's going to Pakistan. [458]

Whilst more information from investigation and supervision can illuminate risks and circumstances that should arouse suspicion, there is no template to assist risk assessment in all situations. The sector was keen for: 'case studies specific to their business areas.. and how the risks came about and what the risk looks like.'[459] Regulators endeavoured to provide information on risk, the communication between supervisors and the MSBs assists the sector's capacity to apply the MLR and provide 'intellectual confidence' in the RBA.

[455] S206
[456] S206
[457] S202
[458] S202
[459] S201

6.5.4.1 Suspicious activity reporting

Regulators were keen to improve compliance with SARs in respect of quality and incidence. The free form nature of the reporting process avoided a prescriptive tick box approach,[460] but did not always yield the quality of information needed, leaving regulators feeling that they were undertaking 'due diligence' in place of the MSB filing the SAR.[461]

Whist aware of the efforts of MSB investigation prior to filing,[462] the quality of SARs was not uniform across the sector. Regulators were aware,[463] and operators confirmed, a significant level of operator misunderstanding about the circumstances triggering the filing of a SAR, and were keen to address this. Most operators were aware of the process for filing, but it is the circumstances triggering this which are critical.[464] After-event filing and defensive reporting were acknowledged as problematic, limiting the operational effectiveness of subsequent investigation. Operators mistakenly thought that post-transaction filing provided a defence to ML charges, with regulators relying on education and the threat of prosecution for enforcement.

Regulators wished to achieve prompt reporting before transactions because this is critical to protection where suspicions are terrorist related and is key to investigation. This may necessitate communication with overseas agencies to obtain and verify intelligence revealed in the SAR, enabling further investigation and a determination of the need for refusal of consent. TF SARs are limited by the seven-day consent period, but no moratorium period applies since assets will either be immediately seized or refusal will not occur immediately, and the transaction will be subject to subsequent 'ongoing surveillance'. Offences for non-disclosure of terrorist funding activity capture both non-disclosure and late disclosure where there is no reasonable excuse

[460] S201
[461] S201
[462] S2023
[463] S111
[464] S202

for failure to comply.[465] For TF, timely disclosure is critical to prevent the fulfilment of the terrorist purpose, as opposed to the mere prevention of the movement of already criminal funds for ML. Regulators know that MSBs are unaware of the importance of the obligation to report suspected offending before entering into any arrangements, but failed to fully capitalise on this to improve timely disclosure.

Persistent refusal of business in preference to SARs filing was recognised as a feature of non-compliance,[466] evident in operator interviews. Regulators considered this as possibly indicating complicity, alerts from the supervisors having provided information on risks to arouse suspicion,[467] but this was not acted on by the sector.

Regulators' concerns also centred on the low incidence of SARs for both ML and TF to that expected, given the volumes of remittances and the servicing of jurisdictions associated with terrorist activity. This begs the question as to how regulators determine the 'correct' number of SARs, in particular for TF, and if this is truly quantifiable, and why the relevant parameters have not been shared with the sector to achieve this given that the use of formal reporting systems is critical. Operators made little comment about the relevance or effect of any 'transaction hold period' pending consent, surprising given the fact given that face-to-face interaction with a customer requires a prompt refusal, especially for terrorist funding cases. The low incidence of SARs is probably explained by the strategy of refusing custom, and avoiding filing, rather than the risk of future loss of custom.[468] Regulators rightly demonstrated limited concern for economic tensions surrounding SARs filing, but neither did they appear to advise the sector about how to balance an investigation needed to confirm suspicion, where further questions may alert customers to the operators' suspicions and the operators' duties to report. The risk of criminal liability arising from the tipping off offence was a real concern for operators.

[465] S330 POCA 2002
[466] S201
[467] S209
[468] S201

SARs are shared between regulatory agencies pursuant to a data agreements confined to the supervision purpose and general data.[469] Supervisors do not have access to SARs since these are confidential to the sender and recipient, but this regime is discussed during audits and supervision contact.[470] Regulators confirmed that the value of SARs for preventing terrorism lies in the additional intelligence yielded about current activity in relation to known suspects. They did not reveal new 'targets for investigation, but this did not undermine their value'[471] in alerting about the activity of known suspects not under current surveillance.

> 'SARS can be on the system for five years and have not meant anything but on a particular day when someone makes an enquiry it becomes ..the most important piece of information.'[472]

There was a slight disjunction between the regulator and the operator groups regarding the issues of SARs feedback. The former were keen to educate the sector about relevant risks to inform the SARs process, but also had the parallel agenda of knowledge of sector risks acting as a trigger for non-compliance and potential prosecution. Operators were keen to secure direct feedback to indicate the value of reporting activity, and to know that their suspicions were credible[473] and to be informed about risk, given the time and effort taken to complete SARs. Individual feedback currently offered by the regulators was viewed by operators as less valuable since it was subject to confidentiality, which only benefitted individual businesses. Individual feedback was only given where a SAR was defensive, filed retrospectively, and of poor quality through an 'educational correction' process and a warning about the need for future improvement and compliance. The sector's desire for more generic feedback was positive[474] regulators incorporating this into existing sector outreach projects which provided a 'broad brush picture .. the industry specific picture.'[475]

[469] S204
[470] S204
[471] S206
[472] S201
[473] S2023
[474] S201
[475] S201

Regulators were concerned that reporting was confined to suspicious transactions, and was not inclusive of 'activity' which they were keen to address. The benefit of enforcing this approach is no doubt intended to capture the reporting of the suspicious activity of other MSBs in alignment with the EDD requirement. This will further increase the sense of distrust between MSBs.

The SARs process is slightly modified to accommodate the investigatory process relevant to terrorist funding offences. This requires a different level and intensity of investigation, necessitating an interface with foreign security agencies within more focussed time frames, and involving different security parameters for effective prevention. However, it is a contradiction that terrorism should require 'specialist investigation' based on separate SARs reports in recognition of the difference between TF and ordinary criminality, but instead rely on SARs reporting triggered by general ML standards to assist in the detection of suspicion in the first instance.

6.5.5 Impact and effectiveness of the MLR 2007

Operators identified additional burdens resulting from regulation and in the context of the current economic climate, the sector dynamics, and reputational risk. Regulators' view of impact was very different. They were aware of, and sensitive to, the economic impact of legislation but remained firm in pursuing their regulatory agenda. 'Regulation has a cost, the more regulate you have the more compliance you need to have, every time you have compliance it puts a burden on the business.'[476] Disproportionate regulatory demands were recognised to adversely affect smaller businesses, failing to provide an: 'even playing field'[477] but was regarded by regulators as stemming from operators lack of skilled application. The demands of the legislative framework and risk of criminality were not excused by the burden of compliance. Policymakers are attuned to considering regulatory impact when reviewing measures and proposing changes to regulation, requiring

[476] S202
[477] S2023

these to be justified in line with government policy to minimise the burden on small businesses.[478] Regulators were surprised at the sector demand for more legislation; this contrasts with that of the small providers who had little appetite for increased regulation that was not necessary and effective. Whilst larger operators were more tolerant and supportive of regulation, smaller operators were opposed to this. Thus, there was a major divide between this group and the regulators.

Regulators and operators were both agreed about the importance of the sector's commitment to implementation,[479] and the distinction between those businesses misusing regulation to run corrupt businesses that appear legitimate, and those 'doing things in the spirit of the Act [even if] not strictly compliant.' [480]

Recent guidance on the determination of the average transaction does not necessarily reveal credible suspicion, but provides a 'statutory' model which attempts to prescribe a 'norm' to reveal anomalies for further investigation. In some instances, this only imposes an artificial calculation, making due diligence more onerous, but it is critical to supporting the finding of suspicion for some operators. Some operators considered this approach too prescriptive, ousting capacity for sensitive application of the RBA.

Regulators sought all means and opportunities to increase the impact and effectiveness of the MLR. Wholesale MSBs, being high risk, were regarded as a focal point connecting smaller and larger businesses.

> If we got them to comply because it is a pitch point, so basically we concentrated all our firepower on them to try and drive up the level of compliance and then that should start filtering down.[481]

An unintended consequence of creating a heightened awareness of risk is the action taken to address this. The size of the MSB sector makes this easily targeted by law enforcement, compared to the banking sector in cases of systematic abuse of considerable scale. The success of the RBA rests on a reassessment of risk once the relevant processes have been applied, and

[478] S111
[479] S202
[480] S201
[481] S111

more could perhaps be done to incentivise further compliance by re-categorising the sector risk in the light of regulation. The market dominance of banks, and their risk-averse attitude, has not been questioned. The RBA draws on supervision to apply minimum but effective standards of due diligence; however, over-zealous application can be damaging, and is not actionable or a concern of regulators.

The fit and proper test limiting sector access has caused concern because it is regarded as easy to circumvent. [482]

> Has not been that vigorous. There are no people who have failed … and the question is then whether or not they are still running money transfer business as shadow directors or in some other capacity. It is not difficult to get around.[483]

Others commented that 'you can fail the fit and proper test … there are people who have failed … who shouldn't have. It's quite broad brush'.[484] This suggests that the test does not effectively exclude those who are unsuitable, or those failing to comply with disclosure: 'People don't understand that they should disclose even if they got a caution from the police.'[485] Regulators agreed with operators that only obvious impropriety was excluded, and that registration could be manipulated to evade scrutiny.[486] Refusals of HMRC registration under the fit and proper test remain less than 22 for all years prior to 2012, with 55 rejections for 2012-13.[487] Interviewees anticipated that the effectiveness of the regime would be buttressed by the more robust FCA test,[488] but the impact of this on SPI registration[489] remains to be seen. Additionally, agents of SPI and API are not subject to either the HMRC or the FCA test, a situation regarded as warranting action based on evidence of manipulation of this loophole.[490]

Regulators considered their approach to be transparent and informative, having impact on SARs reporting, indicating the potential misuse of MSBs.

[482] S111
[483] S202
[484] S202
[485] S202
[486] S111
[487] See Freedom of Information request, HMRC response, 17 October 2013
[488] S202
[489] See Freedom of Information request, response from FCA dated 17 October 2013
[490] S111

This has maximised the opportunity for prompt investigation denied by defensive reporting, but was described as a 'carrot and stick'[491] approach. The sharing of information from investigations, prosecution, and supervision audits through targeted initiatives to reduce sector exploitation, has also led to possible later sanctions against businesses which fail to address actionable risk. Educating individual businesses about their SARs reporting to improve quality was one strand of sector education and feedback, but was narrow in effect and time intensive. A competence or qualification element in the fit and proper test would reduce the need for this.

> You have got to get people to understand what they are seeing and to report appropriately it is all about understanding risk which is why the thing we do is all about communication.'[492]

Feedback from investigators in addressing risks derived from often complicit and 'outright' criminal misuse was balanced by supervisory guidance to assist in the day-to-day risk management that MSBs face. Operator interviews revealed supervisors feedback to have been of variable quality and not always helpful in enhancing the effective application of regulation.[493]

Regulators considered that operators failed to take time to understand how the MLR applied by reference to current guidance. 'Regulation is good in so much as it has the effect of discouraging illegality, abuse of MSB for ML has reduced I am sure because of the MLR so that is a good thing.'[494] Regulators were, however, not as confident in their effectiveness in relation to TF. The RBA has given firms the option as to how they choose to manage the risks identified and mitigate their burden and cost. [495]

> They can choose how they interpret the law, obviously within the framework of guidance. They can look at HMRC guidance, look at the law and see what they want to do. That could mean that one firm will approach issues around customer due diligence ongoing monitoring … in a different way from another.[496]

[491] S111
[492] S111
[493] S111
[494] S202
[495] S2023
[496] S202

Operators considered that the potential flexibility of the RBA was hindered by its vagueness, given the risk of non-compliance, but prescriptive thresholds rather than guidance from the supervisor were unhelpful. Whilst HMRC assesses compliance, there is no clear overall assessment of the effectiveness of the regime to indicate deterrence and the value of prevention.[497] The RBA is predicated on the application of risk management processes without the quantification of success that would require cross-cutting audits, but these are unlikely to be actionable since they are time-intensive.

Operators considered that regulation was intrusive for customers, and HMRC provides support to assist complaint handling.[498] Regulators viewed these concerns as follows.

> Understandable concern and resentment amongst ordinary members of the public … that are being asked for ID for trivial sums … again and again. This is not a direct consequence of the regulation, it is as a result of business taking an over-cautious approach. [499]

Customer inconvenience did not oust regulation given that 'most people in the UK are law-abiding decent citizens that don't want criminals to abuse [MSBs] … they understand that we have to do something to weed out the bad transactions'.[500] An over-cautious approach to applying regulation derives from uncertainty from lack of experience or skill, or lack of guidance to assist in determining the level of risk and the appropriate response.

> Try to reach accommodation there, where we have effective control over their MSB customer without that being overbearing and risking the retail MSB loss of customers.[501]

Regulators were mindful that the effects of regulation remain unquantifiable: 'We can't say whether it has had a positive or negative impact.'[502] More indicators of its effectiveness would incentivise implementation. SARs remain the sole indicator, with regulators recognising that more could be done in 'providing cases that SARs submitted by that MSB on that day had an impact

[497] S202
[498] S204
[499] S204
[500] S111
[501] S204
[502] S202

in preventing this terrorist outrage'.[503] Security and intelligence considerations probably preclude this in relation to TF. Some were sceptical about the potential usefulness of SARs, given their volume, and questioned their scrutiny.

> Stay on the database retrospectively until someone comes to look at it with an objective or personal interest … a source of additional information but it won't necessarily trigger an investigation.[504]

Coordinated dialogue, and liaison between agencies with shared investigatory and supervisory responsibilities, was evident in interviews, and was critical to sharing information on new and emerging threats, supported by access to shared information resources.[505] There was, however, a divergence of views as to the perception of threats. MSBs saw these stemming from unregulated operators and the banks; investigators perceived them as complicit MSBs, non-compliant and regulated and unregulated businesses.[506]

Regulators seem to consider that MSBs:

> Do enough so they don't get caught out. The reality is that HMRC doesn't issue many fines for businesses being non-compliant, it issues fines for not being registered.[507]

The lack of regulatory enforcement is a potential lacuna in driving effective implementation through regulatory sanctions to incentivise MSBs to do the 'right' thing.[508] The move from light touch to a more mature and rigorous approach to supervision was seen as necessary.[509] However, intervening before misuse, or before criminal liability, is probably unnecessary since the threat of this already incentivises compliance for legitimate MSBs. Criminals using non-complaint MSBs will be undeterred by registration status, with the MLR assisting detection of misuse through financial investigation.[510] A proactive approach was considered essential to assisting the visibility and detection of unregistered businesses: 'Searching for businesses who are

[503] S202
[504] S202
[505] S202
[506] S201
[507] S202
[508] S205
[509] S201
[510] S105

offering services … proactively going out and finding those businesses making sure they registered.'[511] Unregistered business were recognised as problematic, the aim being to control these through registration.

The legislative framework provides a mechanism for prevention and deterrence, but is not an absolute guarantor of this[512], and the success of the MLR is conditional upon successful application of the RBA, requiring judgment and problem solving beyond literal interpretations.[513] To this end, one interviewee expressed that they would be instantly concerned and suspicious where the MLRO role was assigned to anyone who lacked the relevant knowledge, skill, or experience,[514] indicating a lack of commitment to effective compliance. The effectiveness of the MLR to investigate problem transactions hinges on SARs reporting to provide intelligence for investigation,[515] but while suspicions may be raised this is no guarantee that a SAR will be filed.[516] Risk assessment is designed to protect the whole business by targeting high-risk areas, but risks the possibility of insufficient application or over-prescription. The former fails to protect against risk, and the latter burdens business.

Regulators recognised that risk derives from 'any' amount of money potentially supporting terrorist activity, and the link between some remittance corridors and known terrorist hotspots.[517] Effectiveness is questionable where operators discount the importance of low values, and where terrorist funds can be readily disguised within genuine remittance transactions. Regulators recognised that occasional transactions can be enhanced through smurfing techniques,[518] capitalising on peak transmission periods associated with religious festivals, and probably making them beyond detection.

[511] S206
[512] S2023
[513] S205
[514] S205
[515] S205
[516] S201
[517] S201
[518] S201, S105

> Trying to spot that in the morass … some of the big MSBs have got turnover of over a half a million a year trying to spot those tiny individual transactions is very very difficult.[519]

ID requirements were also seen as unlikely to deter hardened terrorists; but improved transparency, and the capacity to trace, track, identify, and link senders, recipients, and beneficiaries and provided valuable deterrence.

> Tracing back from the person rather than detecting it upfront and following through. The legislation there means an electronic or paper trail exists. There is an evidential chain for investigators to follow that wasn't there beforehand and that is certainly the case for terrorist financing.[520]

SARs reporting was considered unlikely to prevent a terrorist attack, given the lack of specific indicators [521] and the likely difficulty developing these. Regulators perceived SARs as important in contributing 'to the investigation of an event after it has happened or in the process is conducting surveillance on a suspect rather than identify someone we didn't previously know about'.[522] Further investigation may reveal the purpose of transactions and the involvement of other actors: 'It can be preventive if it is used in conjunction with surveillance of individuals who are suspected of terrorist activity.' [523]

Realistically, there may always be an element of illicit MSB operation, increasing where MSBs find regulation is too burdensome and challenging, or when they are sanctioned or deregistered. More stringent regulation always runs the risk of displacement.

> Have stopped doing money transfer legally but are still doing … illegally as some aspects of their import/export business or their travel business. I am sure that is going on but no one has done any objective analysis … a task force group that said there was about 10% money transfer was illegal non-regulated.[524]

[519] S111
[520] S206
[521] S206
[522] S206
[523] S206
[524] S202

Improving effectiveness requires a shift in approach from ‘one that fits all in terms of the MLR and I think there is scope for saying some sectors need more regulation than others'.[525] There is currently little distinction between legislative requirements for specific types of MSB activity according to risk.

> This would reduce the burdens on business … that are low risk that the overhead imposed on them is substantial and arguably disproportionate to the risk. In some sectors we supervise, the level of regulation is perhaps insufficient to cope with the risk proposed.[526]

There was clear understanding that regulation ‘is good in so much as it has the effect of discouraging illegality, ML and abuse of MSBs for ML'. [527] Not all were agreed as to the appropriate extent of regulation. Regulators were divided about the value of EDD for MSB-to-MSB transactions: ‘I have to say that is an abjuration what is the point of the HMRC regime. What confidence can you have if you cannot have confidence in another MSB?’[528] Others considered that effectiveness is enhanced by lowering thresholds for triggering specific checks, but not all agreed.

> We do see people doing smurfing of transactions below the level you would catch that, but I am not convinced that lowering the thresholds is the answer. I think the answer is to do what we have been doing and make people much more risk aware.[529]

The MLR are seen as an essential element protecting the UK financial system,[530] and preventing MSBs from being a weak link. Criminal and regulatory investigation is essential for the detection of those complicit businesses which are operating within registration in order to identify their criminal role. This is difficult to detect from supervisory audits, requiring multi-agency investigation and cooperation. Regulators acknowledge that a balance must be achieved between risk and regulation, since no amount of regulation can completely eradicate non-compliance and misuse. The critical

[525] S204
[526] S204
[527] S202
[528] S202
[529] S111
[530] S111

issue is the effectiveness of the current regime in guarding against the risk of TF.

6.5.6 Attitudes to supervision and guidance

Regulator interviews revealed a clear strategy to improve contact and communication with the MSB sector, underpinned by specific projects and initiatives targeting the registered sector through forums and conferences. This approach was shared by trade associations, supervisors, investigators, and policymakers. Trade associations were consulted and included in initiatives and consultations on proposed legislative changes, using their network of membership for discussion and to promote improved regulatory compliance.[531] The extent to which trade associations will able to continue to influence change in their favour is questionable, given that regulator interviews indicated more contact with larger brand-named businesses. The position of trade associations may weaken further with changes in the sector structure as larger principals and branded businesses dominate, inevitably having more 'sway' in consultation.

Supervision, initially viewed as light touch[532] in order to encourage registration, is now more robust, and seen as a necessary shift to enforce standards effectively: 'Light touch was the idea but the reality is the regulator has now moved away from light touch regulation and is now very directive.'[533] Within any regime, there is a 'bedding-in period' to afford the sector time to adjust, understand and apply the regulatory regime, and initially focus on education to assist application. Inevitably, as the regime matures, the focus shifts as regulatory awareness increases, with the onus resting on enforcement and raising standards: 'Make sure they have got controls in place and have gradually been more prescriptive about the nature of the controls that need to be in place.' [534]

Enforcement is seen as key to ensuring ongoing sector commitment to improving the quality of overall compliance, perceived as remaining a weak

[531] S2023
[532] S2023
[533] S202
[534] S202

link in the AML/CTF regime. Supervisors were described as being 'in full-on defensive mode they don't want anything in the guidance to suggest that they encourage one MSB to be overly relaxed in relation to another MSB'.[535] HMRC 'making a conscious stand …and auditing businesses much more closely.'[536]

The quality and consistency of guidance was a source of comment by interviewees, some considered this to have improved over time.[537] Other considered it would impose: 'quite a lot more obligations on money remittance companies in terms of identifying the source of funds for customers'[538] was regarded by supervisors as necessary in relation to risk. Whilst the quality of general guidance has improved over time,[539] guidance relating to TF appears poor overall and non-specific, linked to general AML. Advice on sending money for charitable causes to high-risk jurisdictions was considered 'totally useless and totally ineffective but at least they can turn around and say at least they did give you guidance even if it is not particularly useful'.[540] This was despite most guidance being industry led, resulting from close sector consultation.

> They have put together most of the guidance and we have put out, once we are happy that it is effective, into our house style. We had working groups that contributed to that guidance … new areas of guidance where new risks have developed.[541]

Audits offer an opportunity for direct supervision, and are important for assessing compliance and detecting changes in sector practice. The approach to supervision was considered to be more penetrating and intrusive.[542] This reflects mature supervision,[543] and a more comprehensive and nuanced understanding of sector risks, reflecting the extent of guidance

[535] S202
[536] S2023
[537] S2023
[538] S202
[539] S2023
[540] S202
[541] S204
[542] S202
[543] S201

needed to support this. ‘I think they getting a better sense of what risk is and what is not risk, which is probably good.’[544]

All were mindful that an additional layer of supervision operates through the banks, which undertake their own MSB audits, and impose their own standards of due diligence. Large MSBs/APIs may adopt this role in future as the principal/agent model dominates, and APIs become sensitive to the risk of loss of market reputation.

> Banks will come in and do an inspection of MSB who are their client as they want to protect their own reputations … these aspects of supervision by the bank is as important as supervision by HMRC and the FSA [FCA].[545]

Banks, however, have a different set of priorities to the supervisors; the economic relationship and power they exert over MSBs are unequal and without accountability. Their actions should not oust the supervisor’s role, and the interviews evidenced that this relationship is affecting the sector’s structure, raising concerns for future competition.

> Then banks are regulating the sector, the sector is not regulating itself but the banks are. They are saying who can and cannot have a bank account and who can be active in the sector.[546]

The supervisors' role ‘is to play their part in the detection and prevention ML and TF through ensuring that any businesses supervised by … are fully aware of their responsibilities'.[547] This is critical to effective regulation to maintain standards, address new risks, and prevent MSB misuse. Supervision, guidance and evidence of past non-compliance constitute important tools for developing typologies to inform future compliance. Regulators aim to inform the sector through feedback and guidance about potential risks and methods of misuse, focussing on problem areas but clearly placing the responsibility on the sector to comply or face sanctions. The regulatory approach is responsive, proactive,[548] and protective of the sector. Improving standards inevitably increases the existing burden on

[544]S202
[545]S202
[546]S202
[547]S204
[548]S206

business, necessitating a payoff from increased protection and regulatory effectiveness.

The regulators appeared to lose sight of the regulatory burden, focussing on improving sector protection to ensure 'that the financial environment is hostile'[549] for criminal and TF misuse. Supervisors may ultimately not agree with the sector about the necessity for a particular action, but consultation is important in explaining the purpose of measures and buying-in sector commitment to these.

> Business have said they need clarification, and law enforcement have said there is a problem here, and we have try to address it with guidance and we consult with industry beforehand but we are under attention always and we need to be effective with supervision and we are also mindful that we need a thriving economy not to kill it.[550]

Supervisors viewed the RBA as offering businesses flexibility within guidance to apply the legislative framework.

> Small businesses only have limited resources and they understand where the risks are better than anyone else. So if they can be left to devote their resources to the highest risk area then that does seem eminently sensible. [551]

The RBA was seen as a practical mechanism, securing some degree of proportionality of action to risk where legislation cannot offer this in relation to business size. Risk and suspicion overlap in being subjective states of mind; but there is really no definitive template to assist detection except reliance on the experience and skill of operators.

Supervision cannot assist beyond informing about sector risks and providing guidance on this. Definitive suspicion indicators were considered unworkable, and this is an area of contention between operators and supervisors linked to operators' expectations.

> Tell us what's suspicious and we'll enforce it. It doesn't work like that we can't tell you that we can't transfer suspicion all we can do is

[549] S206
[550] S204
[551] S204

> transfer lots of information and you use that to decide whether you are suspicious or not.[552]

The comment does, however, illustrate the gap between the regulators, the law, and the challenge in developing SARs reporting, since the regulatory model and the criminal justice approach assess the formation of suspicion retrospectively and objectively, whilst the regulatory model aims for subjective action in the present.

The RBA is subjective, coloured by different roles and priorities, and is highly relevant to SARs reporting.

> It's a very subjective type of regulation … the onus is on you as an individual to make decisions about where the risks are and what is suspicious and these are in many ways these are quite sophisticated judgements … as a one-man business whose basic function is just to make money it can be very onerous.[553]

Different perceptions of risk are inevitable, given that supervisors are better informed because they have access to evidence and data from other agencies; but all are constantly working to improve the quality of risk awareness, and drive up the quality and frequency of SARs reporting. Sector feedback is horizontal between the different regulators and across the MSB sector.[554] SARs reporting remains a specific concern, with the sector regarded as 'highly resistant' to accepting advice,[555] and changing their approach from defensive reporting at some levels. The sector is viewed as still being at a 'very early stage in maturity in understanding risks and obligations in mitigating these',[556] requiring a shift from aiming for 'minimal' compliance.

Supervision has been criticised for lacking enforcement, despite having a range of sanctions, and little mention was made of using these in any of the interviews. The approach here seems over-cautious.

[552] S111
[553] S204
[554] S204
[555] S111
[556] S206

> Issue warning letters and we have the sanction of penalties and ultimately we have a sanction of criminal prosecution but I am only aware of that being that used on one or two occasions. [557]

Supervision has previously been over-reliant on law enforcement to bridge the accountability gap where MSBs are complicit in criminality, rather than seeking to create a more hostile regulatory environment in which compliance in advance of criminality is enforced more vigorously.[558] The current approach was articulated as 'increasingly inclined towards removal from the register on the basis that one or more of the people running the business is not fit and proper'.[559] The current focus of supervision 'is shifting from education and awareness to enforcement and that if businesses are not doing this that they are struck off and are not operating'.[560] The most significant challenge to effective supervision was perceived to be:

> Whether we are properly identifying all the businesses that should be regulated, whether they understand what they should be doing and whether they are complying. [561]

Effective supervision sets standards of operation for the sector that secure appropriate management of AML and CTF risks. It does not follow that this means that criminal misuse of MSBs will be eradicated,[562] and the interviews very much conveyed that seeking to use the legislative framework for this end would be impossible without harming legitimate business.

> A realisation that a certain amount of this goes on and that you really that it is impossible to stop as it is background noise it is below the level at which we can make a difference.[563]

Regulators used a variety of supervision methods, formal and informal, to disseminate guidance, educate, and to make AML and CTF effective. The methods included forums, conferences, web and email alerts, consultation, and trade briefings. Despite this, supervision has been criticised for not making effective use of resources. For the future, supervision will be more

[557] S204
[558] S206
[559] S204
[560] S206
[561] S206
[562] S204
[563] S111

risk-based,[564] targeting MSBs at risk of non-compliance, and focussing action where most needed.

> Ultimately it is the responsibility of the … HMRC to understand the risk in that sector and to ensure that their supervision of that sector and their engagement, their outreach and their enforcement, is risk based. [565]

Supervision strategy is obviously informed and overseen by relevant government departments, ensuring this aligns with other agendas, including the national organised crime strategy, international and national security threats, and international standards. Policy level review secures a coordinated strategy and holistic programme of activity as part of a multi-agency approach in accordance with nationally identified priorities.[566]

> To ensure that they know the unique risk those countries present and the vulnerabilities that may present, due to the lack of capacity or lack of political will and that takes those specific risks into account when deciding on the country's risk appetite and the measures they put in place including due diligence or whether they do business at all with other firms in those countries.[567]

Supervision draws on international, national, and regional threat assessments, regional studies, intelligence, evidence, and guidance at different levels[568] to identify and manage CTF risk. The sector diversity challenges their engagement, and the lack of effective representation is viewed by some as the 'reason for the lack of real relationship and supervision'.[569] The current quality of compliance is considered to be 'generally very poor and the level of resistance to compliance is very high'. [570] This contrasts with the attitudes portrayed in operators' interviews. MSBs need to develop a more thorough 'understanding of the risk they face and the unique pressures and risks they face in relation to the communities in which they operate'.[571] Effective supervision has not yet been achieved, but the UK has better AML and CTF protection than other jurisdictions, and is

[564] S204
[565] S206
[566] S206
[567] S206
[568] S206
[569] S206
[570] S206
[571] S206

assisted by the overall quality of the supervisory regime that is inclusive and supportive.

6.5.7 Summary

The attitudes of those who are partners to the process of implementing the legislative framework for the MSB sector influence its effective application. Operators demonstrated a positive and mainly deferential attitude to supervision, with criticism centring on the burden of implementation and the lack of consistent audits. The regulators' perception was that all businesses must bear the regulatory burden according to risk, even if this is disproportionate. 'We may think it's intrusive but the regulator doesn't care … well yes they may find it intrusive but what choice have they got?'[572] The risk of TF to the UK and internationally is too great to be excused in favour of commercial ease and profit. Operator interviews indicated that larger MSBs had a broader and more informed perspective of relevant issues and policy than smaller MSBs. Regulators/ stakeholders appreciated that most MSBs 'don't think about it in that policy orientated way as a whole they tend to think of what they have to do in terms of their customer'.[573] Regulators understood the competitive and protective attitude of operators to their business interests, an attitude which is seen as having a short-term focus: 'It's a transaction business, you are not investing money.'[574] This leads to a focus on operating costs, which is problematic since 'you can't necessarily rely on it the income from trading … the resources are not there to invest in training programmes'.[575] Regulators remain bemused and frustrated that businesses appear to place compliance costs above the benefits of AML/CTF protection.[576] Regulators regarded the wider benefits from the MLR, linked to the wider policy agenda, as hindered by the lack of pre-requisite knowledge for registration.

[572] S202
[573] S202
[574] S202
[575] S202
[576] S105

> The sector doesn't have any structure to it in terms of how you acquire the relevant knowledge and skills you can't get knowledge and skills really without actually running the business.[577]

Investigation and audits of businesses are time-intensive and potentially disruptive; but regulators were firm in the need and value of assessing compliance in situ.[578] The dialogue between regulators and MSBs is variable, effective for larger MSBs[579] but problematic for smaller businesses linked to limited accessibility and ineffective representation.[580] Larger MSBs were in favour of increased regulation to professionalise the sector, and drive out its 'lower end'.[581] A 'tension' was noted as inevitably arising from the differing agendas and priorities but constructive dialogue existed and was valued.[582] This was promoted by sharing platforms to promote key messages, demonstrating the value of consultation 'to indicate that we welcome their point of view'.[583]

The need for evidence of the effectiveness of the MLR was recognised:[584] 'Whatever politicians say or whatever empirical evidence suggests we are in a world where people want to feel safe. Safe means more regulation doesn't it?'[585] The CTF agenda prioritises safety in requiring businesses to take responsibility for their business risks. The attitude of supervisors and investigators was one of conditional support, with subsequent accountability to protect the reputation of the UK financial sector.

> Constantly seeking to improve the reputation of the industry … to use ..supervision as a means of clearing out the non-compliant businesses. So there is a will amongst the industry to achieve a better reputation. [586]

The current approach is inclusive and transparent to ensure that AML/CTF risks are addressed, placing the UK market in the best position to trade internationally, with the integrity of the UK financial sector adequately protected.

---

[577] S202
[578] S204, S105
[579] S206
[580] S206
[581] S209
[582] S204
[583] S204
[584] S202
[585] S202
[586] S204

6.6 Conclusion

This chapter has successfully drawn on the fieldwork research to evidence the current model of MSB operation in the UK, presenting the risks and a unique insight into the views of operators, regulators, and stakeholders in addressing these. These views are obtained from a discrete but relevant sample, and may not pertain to the whole sector. The operators' views indicated that remittances are sent for specific purposes and are driven by customer use, by cost and convenience. The 'cultural' context was relevant to the motivation to remit by customers, but not to the model of operation within the UK, which bears some superficial similarities with traditional Hawala in relation to wholesale activity; however, this arises from different factors hindering access to the formal sector. Many of the risks associated with a network 'trust'-based model of operation have been controlled or removed by regulation.

In the post 9/11 climate, MSBs were unfairly 'vilified' and 'demonised' for their lack of regulation. Regulation has formalised these services from community to business-orientated, commercially driven, regulated enterprises with a clear interface with the formal sector. The franchise model dominates; high street brands have a clear market presence; family firms and independents are the exception; and high risk 'one-man' bands have been largely driven from operation or confined to agency status. Regulation has to some extent standardised MSB operations through the risk management process, raising the standards of operation, with regulatory duties directing action, limiting discretion, and reducing the risk of misuse outlined in chapter 2. The MLR address operational risks, backed up by the PSR addressing prudential risk; yet there remains a risk to property from unregistered dealers and unscrupulous traders, critically in respect of TF.

The MLR have applied a system of due diligence, supporting the reporting of suspicious activity; but effectiveness is compromised by operators'

uncertainty about the nature of suspicion, and how and when to act on this. Effectiveness in the detection of TF remains problematic due to a lack of specific indicators, and poor understanding of the risk of terrorist financing generally. This poses a problem for regulators in improving effectiveness here if the construction of such indicators is impractical. Regulation has 'professionalised' the sector, securing responsible compliance, but not without cost. Implementation in an already competitive environment disproportionately affects small businesses, resulting in tangible constraints on business and regulatory efficacy. Regulators considered impact as inevitable and proportionate to the risks, and were certain that business size should not remediate this. The increasingly intrusive due diligence checks compromise customer privacy, causing inconvenience and requiring a cultural shift, viewed as proportionate where risk were outweighed by the increased protection offered generally, but not specifically, against terrorism.

Regulators are driven to address the high risk of MSB misuse, largely from illicit operations linked to ML, which also pose a risk for misuse for terrorism. The RBA is problematic because it relies on MSB skill, experience, and knowledge. These take time to develop, and have not traditionally been associated with, or required of this sector. The RBA also requires a sensitive balancing of risk and effort in relation to regulatory efficacy. This has not yet been achieved, creating tension amongst the different interests and agendas of operators and supervisors. The quality of guidance and supervision here is critical, and must be supported by enforcement. A gap was noted in the sanctioning of regulatory breaches, with room for improved assessment of and feedback on the quality of the supervisory regime.

Regulation is guided by informed policy, to which stakeholders contribute to address UK risks within the wider context of international concerns relevant to terrorist finance. The effectiveness of regulation has been difficult to assess, the benefits being deterrence, disruption, monitoring, and detection through enhanced vigilance and diligence imposed by MLR. These benefits have yielded financial intelligence, and enabled action to prevent terrorism, largely through after-transaction analysis.

The risk of terrorist finance justified the regulation of these businesses, but the main ongoing threat appears to be from criminal misuse; however, the terror/crime nexus addressed by the AML and CTF agenda is not relevant to all terrorist groups. The RBA has led to external and internal policing of MSBs and the financial sector, creating a risk-sensitive culture. Banks are now risk averse, and impose conditions of operation that may isolate remittance communities, jeopardising their support of charitable donations. Such an approach is not in line with the proportionality requirements of the MLR. This risks isolating UK remittance communities, and the providers who lawfully service high-risk jurisdictions, within a framework of regulation that has only ever aspired to manage and minimise the risks of terrorist funding, and not entirely eliminate them.

Chapter 7

Conclusion

This chapter revisits the original research aims and methodology to present a summary of the findings from this research, in particular drawing on the fieldwork research, to conclude as to whether, and to what extent, these aims have been fulfilled. The research findings briefly are summarised and analysed to consider their impact for academics, policy makers, regulators and the MSB business sector overall. The findings are presented in the context of broader concerns and themes viewed as important in addressing the regulation of MSBs in the UK and in their contribution to the effective implementation of the wider international framework for CTF. The chapter concludes by identifying further areas of research that may add to or broaden the scope of this work in illuminating further as to the effectiveness of the CTF regime relating to MSB operation within the UK and internationally.

7.1 Research aims

This research aimed to assess the effectiveness of the UK AML/CTF framework for the regulation of ARS, now termed MSBs, within the UK, narrowed in the fieldwork to a consideration of the application of the MLR 2007. This research aimed to identify the UK model of MSB operation to assess the relevance of the socio-cultural context to this and to additionally investigate the effectiveness of MLR for preventing the financing of terrorism. Further the research aimed to investigate the impact of regulation on MSB operation and critical operational relationships. The effectiveness of MSB regulation was assessed from the perspective of the participants through fieldwork which aimed to capture their attitudes to regulatory implementation, supervision and regulatory efficacy. The extent to which the research has fulfilled these aims is presented below.

7.1.1 The challenge of the fieldwork and its limitations

The fieldwork was challenging to implement in practice since access to both participant groups was problematic. Open source information was relied on to access the operator group, and contacting the operator/regulator groups posed difficulties, as did arranging the interviews given the participants busy schedules and limited availability (see 3.3). Time and concerns about the security sensitive issues raised, limited participation in some instances. Scheduling of interviews for both participant groups was problematic overcome to some extent by telephone interviews (see 3.4.3). Undertaking the interviews, subsequent transcription and data analysis were all time consuming but worthwhile, since the fieldwork has revealed rich data which confirmed its value. It has successfully revealed the attitudes and perspectives of the interview group as to the impact and effectiveness of regulation for CTF and fulfilled the research aims. These perspectives could not be obtained from any other source and are unique to the fieldwork, demonstrating the value of academic research, even where small scale and unfunded, in revealing rich perspectives that would not otherwise be shared by the sector.

7.1.2 The UK MSB sector – model of operation

The UK context of MSB operation now bears little resemblance to that referred to in the literature in chapter 2. The interviews indicate that the traditional model of Hawala had been more prevalent in the UK, but that post regulation its presence was now associated with unregistered illicit operation.

The current UK model of MSB operation only bears superficial similarities to traditional Hawala, these being wholesale operation as identified through the interviews but was not directly investigated within the fieldwork.

The socio-cultural context and trust derived from shared social values and ethnicity is not relevant to the UK model of MSB operation, its relevance now confined to driving the motivation of communities to remit. The practice of consolidation and settlement is limited to whole sale operation, since MSB operating independently with little operational cooperation, with settlement now occurs through the bank accounts. The UK model of operation includes agents, small independents, medium independents, wholesale, and principal MSBs. UK remittances are 95% outward unlike the traditional model referred to in chapter 2. Trust derived from shared ethnicity or operational interests has no relevance to operational relationships, these are defined within service quality and regulatory compliance.

The agency/principal model dominates, regulation appearing to have led to a market dominance of principals, APIs and branded MSBs, with the UK sector increasingly resembling a 'banking' style structure perceived to be an advantage in removing high risk MSBs. UK operation is characterised by formality, commercial focus, procedural compliance, sensitivity to risk and competitiveness as drivers of operational effectiveness. UK MSBs are selected for their low cost and prompt delivery, service quality and jurisdictional coverage; the ethnicity and social status of the operator were largely irrelevant. The MSBs' presence in the UK community is unconnected to selection other than in terms of convenience of location.

7.1.3 Effectiveness of regulation for CTF

The MLR controls many of the risks identified with the traditional operation of Hawala (see chapter 2). Operators were generally confident as to their compliance with the MLR but were unclear as to their effectiveness for preventing TF, struggling to identify circumstances which would arouse suspicion of TF. A concern was the lack of sector knowledge about TF, the presenting risks and the strategies to protect against this. From an academic perspective this is valuable in justifying existing and further research into TF and the implications for dissemination to a wider non-academic audience. It also informs investigators as to the balance between intelligence gathering

and dissemination, overriding security concerns countering the latter where this could improve regulatory efficacy.

The effectiveness of the MLR for CTF appears connected to general deterrence provided from the operational control exerted, with due diligence and improved record keeping deterring their misuse by enabling transaction transparency. In the case of CTF the value appears to derive from retrospective intelligence analysis. Regulation appears to have controlled many of the risks identified with the traditional model of operation referred to in chapter 2, securing normative compliance of these systems in the UK.

Specific guidance was identified as needed in relation to preventing terrorist funding and to support the application of the RBA. Indices of risk linked to the tiers of due diligence, and suspicion indicators would assist in maximising the effectiveness of the RBA. Reliance on general ML indicators appears inappropriate given the difference between ML and TF methods and meaningful typologies would assist here. The fieldwork supports the post 9/11 perspective that detecting TF at the point of placement is nigh on impossible, and failure here may incur criminal liability (see 6. 2.1). Further guidance in jurisdictional risk relevant to the TF risk would improve the quality and consistency of countermeasures across the sector. Existing intelligence and academic research into regulator and supervisory styles and the effectiveness of these in other jurisdictions, could support the development of further guidance.

The fieldwork revealed a disproportionate burden on smaller and independent MSBs, who had limited capacity for investment against further regulation, given the nature of their business and low profit margins. Regulators viewed this as arising from ineffective regulatory application, the demands of regulation beyond the skill set of small operators. The difference in the financial skills and knowledge of operators was revealed by the interviews and was notably linked to the lack of awareness of the TF context. This can only be addressed by a supervisory approach that provides more guidance to assist the application of the RBA or by a competence or qualification adjustment to the conditions of operation.

The research has valuably revealed that even with full compliance, measures may not be effective for the detection or prevention of terrorist finance. There are few indicators currently drawn on by supervisors to review the effectiveness of regulation or its impact. This will be of interest to academics, practitioners and regulators, in developing working partnerships to realise strategies and methodologies for assessing the effectiveness of regulation at all levels. Current reviews focus on regulatory implementation, not impact, but FATF assessment has resulted in a shift in focus here to effectiveness.

7.1.4 Impact on consumers

Interviews confirmed, albeit indirectly, that regulation had not adversely impacted on customer privacy nor led to a loss of business and, in respect of charitable stakeholders, had brought their business back to the MSB sector. Customers were reported to have adjusted to the regulatory changes, and the MSBs' 'education' of customers to support regulatory compliance is ongoing. Given the importance of outward remittances, their humanitarian value and charitable significance is often neglected, and more needs to be done to link policy across agencies having differing responsibilities, to protect these concerns and provide opportunities for customer representation. Consumer representation could be allied to DFID to promote the value of remittance activity and services for distinct communities in the UK and beyond.

Regulators actively drew on customer relationships to promote the use of registered operators. Charitable donations have been perceived as being at risk of diversion for TF, with the West suspicious of the loyalties of the migrant community and the gifting of aid. This concern goes beyond concern as to ARS regulation to viewing act of charitable giving and the religious association on which it is founded, as dubious and suspect. The UK charities regulator remains subject to criticism for ineffective sector supervision and regulatory enforcement (see 5.3.5).[1] TF concerns connect these sectors

[1]

through the need to verify charitable use at the end of the remittance transaction. The fieldwork revealed charities need to secure rural penetration through remittance services to deliver to areas of need. Little consideration has been given as to how charitable remittances can be controlled to minimise their risk of misuse, given the fieldwork indicated this to be a concern. Smaller charities lack the networks, contacts and FCO support available to larger international organisations. The development of 'white lists' indicating safe jurisdictions, would be helpful but does not alter the methods of collection and delivery. More cooperation between the charitable and MSB sectors to explore alternative models is needed to provide a more positive political and regulatory solution.

7.1.5 Supervision of the MSB sector

The research revealed concerns that there was insufficient action by supervisors to address unregulated and non-compliant businesses that compromise sector reputation. The focus of the regulators is on criminal misuse of MSBs, with little action taken for poor regulatory compliance. The field work revealed that a supervision lacked focus and a clear strategy for implementation.

The quality of supervision is directly relevant to the effectiveness of regulation. A RBA here would enable effective targeting of supervision and the much needed more rigorous enforcement of compliance and more purposeful use of a wider range of sanctions, the need for this revealed by the fieldwork. This would bring the supervision of MSB in line with other areas of public and private sector supervision (see 5.3.2)

The interviews revealed that on site audits were perceived as time consuming, infrequent and failed to target those who most required them, with little post action follow-up. HMRC would do to well to adopt an RBA to supervision in anticipation of the 4th MLD, and needs to include risk profiling within the audit process. HMRC appears to lack the expertise for supervision of large APIs, whose structure and use of technology is challenging. It would

be preferable for these businesses to be supervised by the FCA, since joint audits risk duplication of effort. Fieldwork suggested that HMRC was under-resourced for its role, but a moderate and scaled increase in registration fees could secure improved resourcing of supervision.

The supervisory relationship is critical to the successful implementation of the MLR, and supervision itself should be subject to review if its effectiveness, possibly achieved through partnerships between the sector, supervisors and the academic community to develop appropriate methodologies to assist this. This is critical since supervision can improve effective regulatory implementation and reduce the compliance burden for small businesses.

Research has identified a model of UK MSB operation, with the sector operating within a climate of risk and distrust. The presumption is that regulation should yield evidence of an absence of risk and criminality. Regulators need to be mindful of the consequences of over regulation of a discrete sector where small changes can have significant consequences for the sector dynamics and competition. These can undermine the social context of remittances and their humanitarian and socio- economic value. The policy of EDD for MSB to MSB transactions places a high burden on all MSBs rather than targeting wholesale activity as high risk. The Dahabshill litigation illustrates the consequences of supervisory risk management and policy requiring an internal policing of MSB relationships with unintended negative consequences that may yet have humanitarian impact.

7.2 Redefining the risk – CTF and alternative remittance services

Chapter 1 consider the effects of the heightened state of security post 9/11 prompting the internationalisation of CTS to secure a coordinated and effective response to countering terrorism and the threat it presents. Post 9/11 CTS was required to be adaptive to new global terrorist threats and the emergence of the ‘new model’ style terrorist groups such as Al Qa’ida. This ideologically and religiously motivated terrorism having a greater global reach raised concerns amongst stakeholders and policymakers for its the

potential support amongst the migrant diaspora, sharing ethnicity and religion, given the possibility of radicalisation. This concern led to the need to regulate these networks of kinship to reduce the potential risk of financial support being transferred through unregulated ARS. These factors and the deep western suspicion of ARS, appear to be implied drivers to the international regulation of ARS. The assumption that informal systems were more at risk of misuse for TF than the formal sector, has not to date been a feature of academic research but this research gap left the drive for the regulation of ARS without question.

Chapter 1 presented a complex internationalised and multi-layered global CTF agenda, with some key international players having enormous sway in policy implemented at national level. The UN Security Council has the ultimate responsibility for the assessment of the international threat to peace and security from international terrorism, informed through the country reports submitted to the CTC. It has, however, been subject to considerable academic and judicial critique for the lack of procedural protection afforded to human rights through its sanctions schemes that have lacked normative compliance. The weaknesses in the UN schemes demonstrate the value and importance of the normative framework offering, through a scholarly perspective, a check on executive and governmental action in times of crises.

The UN has more recently endeavoured to include human rights concerns within its CTS and within measures implementing this. The Special Rapporteur for Human Rights, while countering terrorism, recognises the value of a more protective rights based approach and the need for a critical independent review of UN measures and their implementation, to secure this. The appointment of the Ombudsperson for the 1267 regime similarly reflects a shift in approach towards securing a more accessible and transparent delisting process within the operation of the politicised sanctions regime. These changes reflect a more purposeful consideration of the importance of rights within the development of CTS and their regulatory frameworks. This concessionary approach is easier to concede when the post 9/11 terrorist threat has abated. The protection of the normative

framework remains essential particularly in times of heightened security, given the UN is unwilling to concede to national level the determination of the international threat of terrorism.

This work has demonstrated through the presentation of the Al-Barakaat case study (see 4.3) the need for financial inclusion as an aspect of normativity. There has been considerable academic critique of the AML/CTF regime and FATF standards, but little research into state capacity and effective implementation of these standards and CTF regimes. Powerful stakeholders have influenced the AML/CTF agenda and the development of regulatory standards potentially out of kilter with the pre-existing regulatory context of individual states. CTS measures need to be aligned to promote the financial inclusion for states with weaker regulatory regimes and those lacking capacity. More could be done to reflect on the effectiveness of current mechanisms to promote inclusion and will no doubt be of interest to academics already engaged in this area of research.

Financial inclusion within financial regulation has received scant attention in the promulgation of CTS and financial AML/CTF standards. CTS identifies broad goals, to which the consideration of rights protection is not clearly articulated. States and the UN, espouse the protection of rights within the CTF framework, but show greater deference to security in practice, leaving the protection of rights to appear to be a hollow promise. Consequently, the social needs and the socio-economic context driving remittance activity and the human cost in balance with regulatory control, received minimal attention until after the Al-Barakaat listing. This is despite stakeholders acknowledging at the outset that regulation could not prevent all misuse of ARS.

What has emerged post 9/11 was the near ‘demonization’ of ARS due to their assumed role in 9/11, although unsubstantiated, which has driven the agenda for their regulation, drawing on the prescient threat of terrorism for justification. A more transparent articulation of ARS risks prior their regulation would likely have incentivised greater support for regulation. The Abu Dhabi declaration by MSBs was not really seized on internationally as a focus for

cooperative implementation. This sharing of risks is a strategy now used by UK regulators to enhance regulatory compliance.

Whilst there is some academic literature describing the phenomenon of ARS systems, their complexity and their risks have not been fully understood replete with incomplete descriptions and conflicting descriptions of their operation. A 'Western' approach to regulation had dominated, with regulators struggling to agree on the terminology and definitions, essential to regulation. The understanding of these systems has become refined through the regulatory process but should have preceded regulation, along with a clearer evidence based assessment of risk and the benefits of regulation. Given the strength of the international drive for their regulation, there has been little research to assess the effectiveness of the regulation implemented and the selected method, registration or licensing. Nor has there been any review of the challenges of implementation, supervision and enforcement that could yield best practices for dissemination. There has also been no review of states that have failed to apply regulation or of the strategies to address the risk this poses to international CTS, a fertile area for comparative academic research. The lack of post regulatory review in light of the fearless drive to regulation suggests a western hegemonic approach to financial development and regulation in developing countries.

Lamentably, despite the lapse in time and the drive for their regulation, new FATF definitions and re-conceptions of ARS categorise ARS by the degree of criminality, not methods of operation.

This thesis has revealed that the regulation of ARS requires cooperation and action across the international community. The protection of UK regulation is compromised if not matched by regulation in remittance receiving countries, and further compromises the effectiveness international protection. State support of international CTS can be enhanced by being more strategically informed by regional and national CTS and threat assessments. The EU model could be applied more purposefully at UN level, more effectively aligning the roles, commitments and strategies of the international stakeholders and individual states. The success of international CTS

requires state commitment to regulation, a failure to regulate or enforce regulation of ARS, may indicate resistance to a mandatory requirements that favours Western style regulation, without a full consideration of alternative models that may provide a better cultural fit in the areas of historical operation, where the socio-economic context is relevant to the operational model.

7.3 Normative compliance and coherence

The Al-Barakaat listing is a stark illustration of the gap in regulatory efficacy and the failure to consider the cultural and socio-economic context in advance of regulatory action. States have a duty to protect security and fundamental rights, the normative framework providing an objective check on state action taken to address a terrorist threat, providing a framework to assess the legitimacy of CT measures. The framework justifies the need for international action in the fight against terrorism based on cosmopolitan constitutionalism, premised on the concept of human security and the effectiveness of measures.

The human security paradigm lacks its own global enforcement mechanism reliant on the individual states' commitment to rights protection and enforcement which risks becoming hostage to political security concerns. Rights risk being balanced away against the need to preserve delicate political and economic relations. The strong tradition of rights protection in the UK and rights are protected in international law. This international protection is supplemented by the UN and EU special rapporteurs and the UN sanctions Ombudsmen, offering influential accountability, supplemented by regional courts, the ECJ and EcrHR. These mechanisms of protection are necessary since the degree of rights protection has been shown to be relative to the immediacy of the terrorist threat and the moral panic created, resulting in cognitive failings. Legislative measures may disproportionately interfere with rights, and remain long after the threat has abated. Cognitive failings allow for exploitation of state interests for political advantage, which the normative framework seeks to constrain, to remove the disjunction

between aspirations expressed in CTS and adherence in reality. Normative compliance is reliant on internal political pressure within the global community and judicial enforcement and oversight of rights protection at state level.

International accountability through constitutional governance is dependent upon the constitutional cosmopolitanism and support of the human security paradigm. The UN has an international cosmopolitan mandate but its sanctions regime has lacked normative compliance in contradiction to its articulated principles and purposes. The UN as a political organisation is dominated by the political sensitivities of it permanent members enabling rights to be compromised in favour of security, unchallenged by internal accountability from a wider UN membership to justify the effectiveness of this policy approach.

The Al-Barakaat case study outlines the consequences of a one sided policy approach focusing on security interests and lacking normative compliance. For the regulatory action to have legitimacy it needs to be fair and proportionate or otherwise risk the allegation of discrimination of sections of the international community, compromising their commitment to implementation. The case study illustrates the lack of normative compliance in failing to attend to the humanitarian and economic consequences of sanctions to protect the benefits of remittances.

The traditional mode of ARS operation lacked normativity in compromising the protection of property rights through reliance on informal internal governance, incompatible with wider international security concerns. System risks were not effectively connected to the AML/CTF risks and system values were incompatible with existing standards of financial regulation. The importance of ARS in supporting worldwide remittance activity, places a duty on states to address security risks, rights and financial inclusion within regulation.

While states such as Somalia continue to lack the political, institutional, and financial capacity to support CTF strategy and financial regulation, undermining the effectiveness of international and UK regulation. Financial

regulation adopting a ‘one size fits all’ approach geared to full compliance with FATF standards fails to accommodate the individual states regulatory context and capacity. Regulation is predicated on Western styled standards and developed financial markets, promoting observance but avoiding financial inclusion and ignoring the socio-economic context of regulation. A more flexible and incremental approach to financial regulation is needed. Where states such as Somalia and Pakistan continue to pose a terrorist security risk from poor financial regulation, more guidance is needed internationally (FATF), and from state supervisory bodies, to enable the effective application of consistent counter measures in the UK to protect the benefits of regulation, as revealed by the fieldwork research.

7.4 The UK regulatory framework

The UK has a significant remittance community, with an active MSB sector, the fieldwork research confirming the socio-cultural value of remittance practice aligned to the selection of MSBs over banks linked to service quality, efficiency and accessibility in transaction jurisdictions. The UK has demonstrated some sensitivity to the social and economic aspects of remittances at policy level, but the consumer voice is poorly represented to a degree comparable with other financial sectors. A more purposeful consultation process and representation of consumer and sector interests, is required, with DFID taking a more active role here. The UK has potential to exploit new technologies to promote financial inclusion, linked to other jurisdictions, and to develop regulatory models concordant with this.

The UK CTF framework implements international obligations but terrorist funding offences though little used are justified in their distinction from general laundering crimes. The criminal justice model enables seizure and forfeiture of terrorist property and is less controversial than executive asset freezes. It provides greater protection of due process rights through a transparent accountable process that legitimises the interference with property rights and liberty, in being publically acceptable and trusted.

The UK framework is complex, comprising of measures implementing UN sanctions with rights protection pre-determined by UN processes and management of international sanctions schemes at a distance. Pre-emptive administrative and quasi-criminal measures largely implement UN, EU and national sanctions regimes. The UN 1267 regime has been described as unworthy of its international status, for the unfairness of its open ended measures and the lack of due process protection within, allowing disproportionate interference with property and Art 8 rights. Rights protection has been left to the ECJ and national courts to uphold, creating tension between international and regional constitutional orders. The lack of normativity of UN action has compromised its credibility and confidence in the effectiveness of CTF measures.

UK measures are exposed to parliamentary scrutiny and judicial review as the *Ahmed* case illustrated. Further independent oversight and accountability of terrorist measures provided by the Independent Reviewer for terrorism. The UK implementation of the 1267 regime compromised the normativity of the CTF measures since the UK remains hostage to the deficits in the UN regime and the challenges of exerting political pressure to obtain information as to the listing of UK subjects.

The UK framework for the regulation of terrorist finance is one element of the CTS, within a complex system of UN, EU and UK measures, interwoven, all offering differing degrees of rights protection and judicial oversight. The UK regime draws on a diverse range of measures, criminal and executive, that target terrorist finance at different stages, pre-emptively or preventatively, with varying degrees of impact on fundamental rights, but requiring that any interference to be justified by need for and the proportionality of measures, as well as the capacity to enhance their effectiveness.

Measures are increasingly more normatively compliant demonstrating a sensitive consideration of their impact on rights and more effective balancing of the proportionality of any interference. This shift reflects the distance from the once immediate threat and heightened sense of security pre and post 9/11 and 7/7. The UK has previously drawn on measures to detain without

trial and control orders, now revoked, these having given rise to considerable criticism for their infringements of the right to liberty. The hierarchy of rights places a higher value on restriction to liberty and due process rights than property rights and Art 8 rights, with measures restricting the latter receiving less attention given the value of these rights and the degree of permissible interference. Academic and judicial critique of UN sanction regimes has highlighted the impact of defects in due process guarantees essential to protecting qualified rights and necessary to check the proportionality of measures and their impact on these.

TAFA now demonstrates a more considered approach to managing TF risks by enabling EU listing at UK level, of those individuals and entities associated with terrorism. Orders now only last for a year with subsequent renewal on new evidence to effectively constrain terrorist property. Procedural safeguards and licences mitigate the impact on family life and financial liberty from the removal of access to all financial assets, without compromising the effect of measures.

Although TAFA relies on executive designation it provides for full judicial review, with security sensitive evidence relating to listing protected by CMP complaint with Art 6, balancing the protection of the rights of defence and security. Case law illustrates that the UK courts have not always been consistent in their protection of rights, more willing to demonstrate deference to the executive in times of emergency, providing more robust rights protection when security is restored. Use of CMP measures has not been deployed by the ECJ in reviewing the 1267 sanctions, as a compromise position against UN reluctance to release confidential information.

The UK MLR stems from a complex system of interwoven measures that implement international suppression conventions and EU directives. They enable the detection and freezing of terrorist assets through the application of the RBA to due diligence. The proposed 4th EU MLD entrenches the merger of the AML/CTF regime, the fieldwork indicating that the merits of this alliance require further research as to their effectiveness for CTF. Here, instead of the usual normalisation of exceptional CT measures, there is the

generalisation of ordinary criminal measures to the CTF context. This raises concerns given that the AML approach has not successfully yielded the anticipated confiscation of assets and is less likely to for TF given the difficulties in detecting terrorist transactions revealed by the fieldwork.

The MLR secure a framework of due diligence enabling transaction transparency and scrutiny assisting SARs reporting and enabling the application of asset freezes, Treasury directions, compliance with financial information orders and the application of jurisdictional counter measures. The sector bears the cost and burden of regulation, mitigated by a RBA and tiered diligence requirements to achieve a proportionate management of risk, limited by the categorisation of remittances and TF as high risk. The MSB sector was cited as having a low incidence of SARs reporting, the fieldwork identified this as linked to the vagueness of the RBA, the lack of suspicion indicators and the need for clearer supervisory guidance.

The capacity to trace the financial footprint to yield actionable intelligence has prompted increased regulation and the subsequent sharing of financial intelligence amongst states. The interference with privacy rights is readily justified by the CT purpose but the effectiveness of measures relevant to this justification is rarely challenged. In the absence of a global framework to regulate the collection and dissemination of financial data for TF and protect privacy rights, protection is left to individual states, where attitudes as to the level of proportionate interference vary. These differences have been overcome by individually negotiated agreements, the US-EU SWIFT agreement securing the necessary procedural safeguards and audits of procedural compliance and additionally effectiveness of the agreements purpose is conditional its renewal and continued protection of privacy rights. The agreement's benefits appear one sided, the US making the larger share of requests, with little information proffered in return. More could be done to maximise the role of Europol for dissemination of EU intelligence here. Enterprise sharing of SARs within global businesses to enhance SARs reporting is supported by FIU, subject to a framework of control, but is conditional upon the capacity for detecting suspicion, which the fieldwork revealed as problematic for terrorist finance

Regulators and MSB operators remain challenged by the lack of specific TF suspicion indicators and typologies. Sector compliance expected through reliance on general ML indicators. The fieldwork confirms the view that the detection of TF at the placement stage is difficult if not impossible, questioning the effectiveness and burden of measures designed to protect against this.

Regulatory compliance has demanded a new skill set of MSB operators and additional resources to manage the more formal, risk sensitive and process driven model of operation. The fieldwork confirms that regulation having changed the sector structure, entrenching the agency/principal model and leaving little scope for independent operation, but has effectively reduced the risk of ML and indirectly TF, although the extent of this remains unquantifiable. The pressure of criminal rather than regulatory sanctions drives compliance. Misuse of MSBs for criminal exploitation is minimised through registration, but the fieldwork reveals this protection is easily circumvented and may require additional regulation that will undoubtedly impact further on the sector diversity and structure.

7.6 Further research

This study has considered the effectiveness of the UK regime for TF and its capacity to address the risks associated with traditional Hawala. The effectiveness for preventing TF remains questionable. What is clear is that there has been considerable displacement of CTF risk management to the private sector and this adversely engages the interests of particular ethnic groups in respect of MSB services. It is important to consider whether the research findings presented in this work apply to different jurisdictions. In this regard further research in jurisdictions that have a strong traditional use of Hawala such as Pakistan, India and Bangladesh, as well as those states known to have operated as financial centres having ‘clearing and exchange’ businesses that service ARS, namely the UAE, in particular Abu Dhabi , Dubai, and also Kuwait and Yemen, would be valuable. In addition to the investigation of the impact and enforcement of regulation controlling ARS in

these areas, it is also useful to compare the impact of regulation in the UK context with other remittance sending countries that have well developed financial centres but a different ethnic population composition to the UK. This could draw on the US, Canada, Australia and New Zealand to provide a more detailed comparison of legislative provisions and their impact and effectiveness for CTS compared across selected jurisdictions to assess the impact on MSB operation and the resulting operational, supervisory and enforcement models. This squares the circle in assessing the regulatory impact on operational risks in the original and western context of operation, given that different dynamics apply, as these jurisdictions are all highly relevant to the effectiveness of UK regulation. At a more regional level, a comparison of the UK context with other EU states would inform as to how states have chosen to implement the MLD to regulate these systems. In particular within states having prominent remittance communities, notably France, Germany and Spain, as well as drawing on states with high numbers of remittance service providers including Sweden Finland and Denmark.

Given the limited parameters of this project, further research is needed to investigate the use of mobile phone and Internet technology to support remittance service transactions with a view to assessing their AML/CTF risks and the protection necessary to counter these. This is necessary given the emergence of this technology in developing countries and its potential to promote financial inclusion and the challenge of managing security risks, which may require innovative approaches to regulation to guard against phone loss, cloning and account hacking.

Further research into the use of agents in jurisdictions which have weaker regulation and enforcement, and the management of this relationship by UK principals, is imperative to gain a greater understanding of the assessment of CTF risks for UK MSBs operating in high risk corridors, to inform as to the effectiveness of counter measures applied by businesses against jurisdictions identified as non-cooperative and high risk.

7.7 Conclusion as to efficacy

In conclusion, the effectiveness of the current regime still remains conditional upon the capacity of the regulated sector to detect suspicious activity in relation to terrorist finance. The lack of clarity over the factual circumstances triggering this remains a concern. It would be useful to develop suspicion indicators and more effective typologies to avoid potential reliance on nationality and ethnicity, but some organisations have already concluded that this may not be possible. This would be reliant on access to SARs data, which may be limited due to security concerns, but remains an important consideration to justify not only the regulatory regime's contribution to security but the assurance, given the overall increased volumes of reporting and with no de minimis limit for TF reporting, that regulation does not actually impede security in directing resources to a fruitless end.

BIBLIOGRAPHY

Cases

A and Others v United Kingdom (Application No 3455/05) (2009) 49 EHHR 29

A v Secretary of State for the Home Department [2004] 2 AC

A v Secretary of State for the Home Department [2004] UKHL 56

A v Secretary of State for the Home Department [2005] (No 2) UKHL 71

Advocate General's Opinion in Joined Cases C-584/10 P, C-593/10 P and C-595/10 P, Commission, Council and United Kingdom v Yassin Abdullah Kadi, Court of Justice of the European Union Luxembourg, 19 March 2013

Ahmed and others v HM Treasury [2010] UKSC 2

Amanullah Haji Moosa v The Commissioners for her Majesty's Revenue and Customs [2010] UKFTT 248(TC

Ahmad (Mohammad) v HM Advocate [2009] HCJAC 60

Ali Nekooi v The Commissioners for Her Majesty's Revenue and Customs [2007] WL 2187100

Ali v Revenue and Customs Prosecutions Office [2008] EWCA Crim 1466

Al Rawi and others v The Security Service and others [2009] EWHC 2959

Al-Rawi v Security Service [2011] UKSC 34

Amanullah Haji Moosa v The Commissioners for her Majesty's Revenue and Customs [2010] UKFTT 248 (TC)

Azam v Iqbal [2007] EWHC 2025 (Admin)

Bäck v Finland (37598/97) (2005) 40 E.H.R.R. 48

Beyeler v Italy *Application no. 33202/96* ECHR (GC) 2000-I

Bosphorus Hava Yollari v Minister for Transport, Energy, and Communications Northern Ireland [1996] 3 CMLR 257

Brioniowski v Poland Application no. 31443/96 (EctHR 28 September 2005)

Bhutta v HM Treasury [2011] EWHC 1789 (Admin)

Brumarescu v Romania Application no. 28342/95 (ECtHR 28 October 1999)

Buckley v United Kingdom (1996) 23 EHRR 101

Chafiq Ayadi v European Commission (Case T-527/09) 31 January 2012

Chahal v United Kingdom (1996) 23 EHRR 413

Commission and Other v Kadi 18 July 2013) (Joined Cases C-584/10 P, C-593/10 P and C-595/10 P)

Dahabshiil Transfer Services Limited v Barclays Bank plc Harada Limited, Berkeley Credit and Guarantee Limited v Barclays Bank plc [2013] EWHC 3379
Dare v Crown Prosecution Service [2012] EWHC 2074
Dagher v Council Case T-218/11 (27 February 2012)
DPP of Mauritius v Bholah [2011] UKPC 44
Durgesh Mehta, Mathew Sharman, Gerald Patrick Reardon, Peter John Ratcliff v The Queen [2008] EWCA Crim 1491
E and F [2010] (Case C-550/09) ECR I-0000
El Haski v Belgium (649/08) (2013) 56 EHRR 31
EM and MA (Eritrea) v Secretary of State for the Home Department [2012] EWCA Civ 1336
European *Commission v Kadi* (C-584/10 P) [2014] 1 CMLR 24
First Financial Advisers Limited v The Financial Services Authority [2012] WL 2500434
First Contact Limited v The Commissioners for Her Majesty's Revenue and Customs [2012] UKFTT 84 (TC)
Fitzpatrick v Commissioner of Police of the Metropolis [2012] EWHC 12 (Admin)
Freitas v Permanent Secretary of Ministry of Agriculture, Fishing, Lands and Housing [1999] 1 AC 69 (PC)
Gale v Serious Organised Crime Agency [2011] UKSC 49
G (restraint order) [2001] EWHC Admon606
GG v Secretary of State for the Home Department [2009] EWCA Civ 786
Gillan and Quinton v United Kingdom Application No.4158/05 (2010) 50 E.H.R.R. 45
The Greek Case (1969) 12 YB 1
H re [2003] EWHC 3551 (Admin)
Hill Street Services Company Limited v National Westminster Bank PLC, Burjor Mistry [2007] EWHC 2379 (Ch)
Hussein v Chang Fook Kam [1970] AC 942
Hussain Shah v The Crown [2005] EWCA Crim 1788
Ireland v United Kingdom (1978) 2 EHRR 25
Israel v Government of Israel [2006] HCJ 769/02
Kadi v Council & Commission [2005] (Case T-315/01) ECR II-3649
Kadi v Commission of the European Communities (Council of the European Union and others, intervening) (Case T-85/09) 30 September 2010 [2011] 1 CMLR 24
Kadi v Council of the European Union [2008] (Joined Cases C-402/05 P & C-415/05 P) 3 CMLR 41
Klass and Others v Germany Application 5029/71

Lawless v Ireland (No 3) (1961) 1 EHRR 15
Liaquat Ali, Akhtar Hussain v Revenue and Customs Prosecutions Office [2008] EWCA Crim 1466
Mastafa v H.M. Treasury [2012] EWHC 3578
Marckx v. *Belgium* (Application no.6833/74) 13 June 1979, Series A No. 31
Michaud v France (application No. 12323/11) EcrHR 2 December 2012
Mohamed, R (on the application of) v Secretary of State for Foreign & Commonwealth Affairs [2010] EWCA Civ 65
Mohammed Naeem Esmail Mamaniat v The Commissioners for Her Majesty's
Moneygram Payment Systems, Inc v The Commissioners for Her Majesty's Revenue and Customs (Money Laundering Regulations) [2010] UKFTT 132 (TC)
Moon v France (application no. 39973/03) 9 July 2009
Natunen v Finland (application no. 21022/04) 31 March 2009
Nada v Switzerland (2013) 56 EHRR 18
NS v Secretary of State for the Home Department, C-411/10 [2012] All ER (EC) 1011
O' Driscoll v Secretary of State for the Home Department [2002] EWHC 2477
Othman v Secretary of State for the Home Department [2013] EWCA Civ 277
Othman (Abu Qatada) v UK European Court of Human Rights (Grand Chamber) 17 January 2012
Othman (Abu Qatada) v the United Kingdom (Application no. 8139/09) Final judgment 09/05/2012

People's Mojahedin Organization of Iran v Council of the European Union (T-284/08) [2008] ECR II-3487 [2009] 1 CMLR 44
Perinpanathan v City of Westminster Magistrates' Court [2010] EWCA Civ 40
Perry v Serious Organised Crime Agency [2012] UKSC 35
Regina v Abdul Hammed Sakhizada [2012] EWCA Crim 1036
R v Anwoir [2008] EWCA Crim 1354
R v Ali and others [2005] EWCA Crim 87
R v Ajit Singh Arora [2012] EWCA Crim 26
R v Akhtar [2011] EWCA Crim 146
R v Cheeema R v Begum [2010] EWCA Crim 1352
R v Da Silva [2006] EWCA Crim 1654
R (on the Application of K) v HM Treasury [2009] EWHC 1643 R (on the Application of M and Others) v *HM Treasury* [2010] 3 C.M.L.R. 31
R on the Application of Malik v Manchester Crown Court [2008] EWHC 1362 (Admin)

R (on the application of Gillan) v Commissioner of Police of the Metropolis and R (on the application of Quinton) v Commissioner of Police of the Metropolis [2006] UKHL 12
R (on the application of Quinton) v Commissioner of Police of the Metropolis
R (on the application of Director of the Assets Recovery Agency) v Jia Jin He (No.2) [2004] EWHC 302
R v Baldev Singh Aujla [2008] EWCA Crim 637
R v Balwinder Singh Chatha [2007] EWCA Crim 1087
R v Bowman Fels [2005] EWCA Civ 328
R v F [2008] EWCA Crim 1868
R v Farooqi [2013] EWCA Crim 1649
R v Geary [2010] EWCA Crim 1925
R v K [2007] EWCA Crim 491
R v Kamoka, Bourouag, and Abusalem [2009] EWCA 684
R. v Khanani [2009] EWCA Crim 276
R v Lambert [2001] UKHL 37*Regina (Maftah) v Secretary of State for Foreign and Commonwealth Affairs* [2012] Q.B. 477
R v Mc Donald, Rafferty and O'Farrell [2005] EWCA Crim 1945
Regina v Mumtaz Ahmed [2004] EWCA Crim 3094
R v Meziane [2004] EWCA Crim 1768
Regina v Mumtaz Ahmed, Ghulam Quereshi, Muntaz Ahmed [2004] EWCA Crim 3094
R v Patel [2012] EWCA Crim 2479
R v R and Others [2006] EWCA Crim 1974
R v Rollins [2010] UKSC 39
R v Saik [UKHL]18
R v Saleem [2009] EWCA Crim 920
Revenue and Customs [2007] WL 2375101
SSHD v AF (No. 3) [2009] UKHL 28
Regina v Sharma [2012] EWCA Crim 677
Rory Trainor trading as Best Rate Bureau v The Commissioners for Her Majesty's Revenue and Customs [2009] UKFTT 117 (TC)
Salabiaku v France App no 10519/83 Ser A 141 A (1998)
S and Marper v The United Kingdom (Application Nos 30562/04 and 30566/04, 2008)
Secretary of State for the Home Department v CD [2012] EWHC 3026
Secretary of State for the Home Department v CC [2012] EWHC 2837

Secretary of State for the Home Department v GG [2009] EWHC 142
Secretary of State for the Home Department v NN [2009] EWHC 142
Shah and another v HSBC Private Bank (UK) Ltd [2010] EWCA Civ 31
Sison v Council [2007] (Case T-341/07) ECR II-73
The Queen (on the application of Chockalingam Thamby) v Secretary of State for the Home Department [2011] *EWHC 1763*
Tay Za v Council of the European Union (C-376/10 P) [2012] 2 CMLR 27
United States of America v Mohamud Abdi Yusuf et al 4:10-cr-00547-HEA-TIA (E.D. Mo., 2010), paras. 34–52
United States of America v Amina Farah Ali and Hawo Mohamed Hassan, CR-10-187-PJS/FLN (Minn 2011)
United States of America v HSBC Banks USA, N.A. and HSBC Holdings PLC Case 1:12-cr-00763-JG 07/01/13
United States of America v Saifullah Anjum Ranjha et al., Second superseding indictment Criminal No. MJG-07-0239
Warnock & Ors, Re Proceeds of Crime Act [2005] NIQB 16
Yassin Andullah Kadi & Al Barakaat International FoundationCouncil of the European Union & Commission of the European Communities (Joined Cases C-402/05 P & C-415/05 P) CMLR 41 (2008)
Yassin Abdullah Kadi v Timothy Geithner et al Civil Action No. 09– 108 (JDB), 2012 WL
Yousseff and Secretary of State for Foreign Affairs [2103] EWCA Civ 1302
Youssef, R (on the application of) v Secretary of State for Foreign & Commonwealth Affairs [2012] EWHC 2091
Yusuf and Another v Council of the European Union and Commission of the European Communities [2005] (Case T-306/01) ECR 11-3533

Table of Legislation

Statutes

Anti-Terrorism Crime and Security Act 2001
Counter Terrorism Act 2008 Part 5 Schedule 7
Commissioners for Revenue and Customs Act 2005
Criminal Justice Act 1993 Part IV
Crime and Courts Act 2013
Data Protection Act 1998
Financial Service and Markets Act 2000

Freedom of Information Act 2000 Schedule 1
Human Rights Act 1998
Proceeds of Crime Act 2002
Serious Crime Act 2007
Serious Crime and Organised Police Act 2005 Chapter 6
Terrorism Act 2000
Terrorist Asset Freezing etc Act 2010

Statutory Instruments

Al-Qaida and Taliban (United Nations Measures) Order SI 2006 /2952
Financial Restrictions (Iran) Order 2009 SI 2009/2725
Financial Services and Markets Act Regulations 2001 SI 2000/2256
Justice and Security Act 2013
Money Laundering Regulations SI 2007/2157
Money Laundering (Amendment) Regulations SI 2007/3299
Money Laundering (Amendment) Regulations SI 2012/2298
Proceeds of Crime Act 2002 and Money Laundering Regulations 2003 (Amendment) Order SI 2006/308
Proceeds of Crime Act 2002 (Business in the Regulated Sector and Supervisory Authorities)
SI Order 2007/3287
Proceeds of Crime Act 2002 (Investigations in different parts of the United Kingdom) (Amendment) Order SI 2008/298
Terrorism Act 2000 and Proceeds of Crime Act 2002 (Amendment) Regulations 2007 SI
2007/3398
Terrorism Act 2000 (Enforcement of External Orders) Order 2001/3927
The Terrorism (United Nations Measures) Order 2006 SI 2006/2567
The Terrorism (United Nations Measures) Order 2009 SI 2009/1747
The Transfer of Funds (Information on the Payer) Regulations 2008 SI 2007/3298

Bills

Draft Enhanced Terrorism Prevention and Investigation Measures Bill HL Paper 70 HC (2012-13) 495

Rules of Court

Practice Direction RSC 115 Restraint Orders and Appointment of Receivers in Connection with Criminal Proceedings and Investigations

International

Anti-Money Laundering and Counter-Terrorism Financing Act 2006 s5 (Australia)
Foreign Exchange regulation Act 1973 (India)
Foreign Exchange and Management Act 1999 (India)
Patriot Act 2001 (PL -107-56) (US)
US Executive Order 13536 'Blocking Property of Certain Persons Contributing to the Conflict in Somalia' (12 April 2010) (US)

European Union

Council Decision (EC) 2002/475/JHA 13 June [2002] OJ L164/3
Council Decision (EC) 2005/671/JHA 20 September [2005] OJ L 253/22
Council Decision (EC) 2007/845/JHA 6 December [2007] OJ L 332/103
Council Decision (EC) 2009/62/EC 26 January [2009] OJ L23/25
Council Decision (EC) 2008/342/EC 29 April [2008] OJ L116/123
Council Decision (EC) 2008/583/EC 15 July [2008] OJ L118/21
Council Decision (EC) 2008/919/JHA 28 November [2008] OJ L 330
Council Regulation (EC) 1110/2008 OJ L 300/1
Council Regulation (EC) 2009/62 15 June [2009] OJ L151/14
Council Regulation (EC) 2580/2001 27 December [2001] OJ L 344/70
Council Regulation (EC) 881/2002 27 May [2002] OJ L 139/9
Council Directive (EC) 2005 /60/EC on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing The Third Money Laundering Directive.26th October [2005] OJ L 309/15
Council Directive (EC) 2000/12/EC relating to the taking up and pursuit of the business of credit institutions. 20th March [2000] OJ L 126/1
Council Directive (EC) 2007/64/EC on payment services in the internal market, Payment services Directive. 13 November [2007] OJ L 319 05/12/2007 0001 – 0036
Council Directive (EC) 2006/24 on the retention of data generated or processed in connection with the provision of publicly available electronic communications services or public communications networks. 15 March [2006] OJ L 105, 13.4.2006, p. 54–63

Commission Directive (EC) 2006/ 70/EC laying down implementing measures for Directive 2005/60/EC of the European Parliament and of the Council as regards the definition of politically exposed person and the technical criteria for simplified customer due diligence procedures and for exemption on grounds of a financial activity conducted on an occasional or very limited basis. 1st August [2006] OJ L 214/4

Commission Directive (EC) Proposal for a Regulation of European Parliament and Council on the protection of individuals with regard to the processing of personal data and on
the free movement of such data (General Data Protection Regulation) Brussels, 25.1.2012 COM (2012) 11 final

International treaties and Conventions

Vienna Convention on the Law of treaties 1968 (adopted 23 May 1969, in force 27 January 1980) 1155 UNTS 331
International Covenant on Economic, Social and Cultural Rights (Adopted 16 December 1966 entry into force 3 January 1976) General Assembly resolution 2200A (XXI) (UCHR) article 27International Convention on Suppression of Terrorist Financing (Adopted 9th December 1999 in force 10th January 2000) (2000) 39 ILM 270 UNGA Res 54/109
International Convention for the Suppression of Terrorist Bombings (adopted 15th December 1997in force 23 May 2001) UNGA Res A/RES/52/164
UNGA International Convention against Illicit traffic in Narcotic Drugs and Psychotropic Substances (adopted 20th December 1988 opened for signature 11 November 1990) UNTS 1582
OAS Inter-American Convention Against terrorism (adopted June 3 2002, in force 7th October 2003) A-66 UN AG/RES1840 (XXXII-O/02)
UNGA Convention against Transnational Organized Crime (adopted 15th November 2000) GA Res 55/25 opened for signature 12th December 2000, in force 29th September 2003) (2000)
International Covenant on Economic, Social and Cultural Rights (Adopted 16 December 1966) UNGA Res 2200A (XXI) (UNCHR) article 27

International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (adopted 18 December1990) UNGA Res 45/158 (UNCHR)
International Covenant on Civil and Political Rights (adopted 16 December 1966 in force 23 March 1976) UNGA Res 2200A (XXI) in accordance with Article 49
Convention for the Protection of Human Rights and Fundamental Freedoms Rome, 4.XI.1950 Protocol No.14 (CETS No.194) in force from June 1990
Convention on the Rights of the Child (20 November 1989) 44th session UNGA Res 44/25
Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (adopted 8thNovember 1990, in force September 1993) CETS No.141
Council of Europe of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (adopted 16th may 2005, in force 1st may 2008) CETS No.198
Council of Europe Convention on the Prevention of Terrorism Adopted Warsaw 16th May 2005. In force 1st June 2007 CETS No.196
Council of Europe Convention on the Suppression of Terrorism adopted Strasbourg 27.1 1977. ETS No.90Council of Europe 'Framework Convention for the Protection of National Minorities' Strasbourg, 1.II.1995 ETS 157
European Charter of Fundamental Rights (18 December 2000) C C2000/C 364/01

United Nations

UNGA 'Report by Special Rapporteur Ben Emerson 'Promotion and protection of human rights and fundamental freedoms while countering terrorism' (26 September 2012) 67th session UN Doc A/67/396
UNGA 'World Leaders Adopt declaration Reaffirming Rule of Law as Foundation for Building Equitable State Relations, Just Societies' (24 September 2012) UN Doc GA/11500
UNGA 'The United Nations Global Counter-Terrorism Strategy Review' (12 July 2012) Un Doc A/Res/66/282
UNGA 'United Nations Counter-Terrorism Centre' 66th session (7 December 2011) UN Doc A/RES/66/10
UNGA 'United Nations Global Counter -Terrorism Strategy Review' (26 June 2012) UN Do A/ 66 /L53

UNGA Report of the secretary General United Nations Global Counter -Terrorism Strategy: activities of the United Nations systems in implementing the strategy' (4 April 2012) UN Doc A /66/762
UNGA 'Secretary General's Report of the High-level Panel on Threats, Challenges and Change, A More Secure World, Our Shared Responsibility'(2 December 2004) UN Doc A/59/656
UNGA 'Promotion and protection of human rights and fundamental freedoms while countering terrorism' 67th session (26 September 2012) UN Doc A/ 67/396
UNGA 'Measures to eliminate international terrorism' (8 November 2011) Sixty-sixth session, Sixth Committee UN Doc A/C.6/66/ L.25
UNGA 'Protection of human rights and fundamental freedoms while countering terrorism'on the report of the Third Committee (A/64/439/Add.2 (Part II) (22 January 2010) UN Doc Res 64/168
UNGA 'The United Nations Global Counter-Terrorism Strategy' (13 October 2010) UN Doc A/RES/64/297
UNSC UN Security Council and the Rule of Law, Chapter VI (The Security Council and Individual Rights) (7 May 2008) UN Doc A/63/69–S/2008/270
UNGA Report Secretary General Uniting Against Terrorism: Recommendations for a global counter- terrorism strategy May (2 May2006) UN Doc A/Res/60/288
UNGA 'The United Nations Global Counter-Terrorism Strategy' (20 September2006) UN Doc A/Res/60/288
UNGA 'The United Nations Global Counter-Terrorism Strategy' (15 September 2008) UN Doc A/Res/62/272
UNGA 'Report of the Secretary-General, 'Uniting against Terrorism: recommendations for a Global Counter-Terrorism Strategy' (27 April 2006) UN Doc A/Res/60/825
UNGA '2005 World Summit Outcome '24 October 2005 UN Doc A/Res/60/1
UNGA 'Measures to eliminate international terrorism' (17 December1996) UN Doc A/Res//51/210
UNGA 49/60 'Measures to Eliminate International Terrorism UN' (9 December 1994) 84th plenary meeting Doc A/Res/49/60
UNGA 'Universal Declaration of Human Rights' (10 December 1948) UN Doc A/Res/3/217
UNGA Report of the Secretary-General 'Delivering justice: programme of action to strengthen the rule of law at the national and international levels' (16 March 2012) UN Doc A/66/749

UNGA Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (18 December 1992) 92nd plenary meeting UN Doc A/Res/47/135

UCHR 'Report of the United Nations High Commissioner for Human Rights on the protection of human rights and fundamental freedoms while countering terrorism' (2 September 2009) 12th session UN Doc A/HRC/12/22

UNCHR Framework principles for securing the accountability of public officials for gross or systematic human rights violations committed in the course of States-sanctioned counter-terrorism initiatives' (1 March 2013) UN Doc A/ HRC/22/52

UNSC Report 'First report of the Analytical Support and Sanctions Monitoring Team appointed pursuant to resolution 1526 (2004) concerning Al-Qaida and the Taliban and associated individuals and entities' (25 August 2004) UN Doc S/2004/679

UNSC 'Report of the Counter-Terrorism Committee to the Security Council for its consideration as part of its comprehensive review of the Counter-Terrorism Committee Executive Directorate (18 December 2006) UN Doc S /2006/989

UNSC 'Report 'Report of the Informal Working Group of the Security Council on General Issues of Sanctions' (22 December 2006) UN Doc S/2006/997

UNSC 'First report of the Ombudsperson to the Security Council' (21 January 2011) UN Doc S/2011/29

UNSC 'Second report of the Ombudsperson to the Security Council' (22 July 2011) UN Doc S/2011/447

UNSC 'Third report of the Ombudsperson to the Security Council' (20 January 2012) UN Doc S/2012/49

UNSC 'Fourth report of the Ombudsperson to the Security Council' (30 July 2012) UN Doc S/2012/590

UNSC 'Letter dated 21 July 2011 from the Ombudsperson addressed to the President of the Security Council Annex III Approach to and standard for analysis, observations and principal arguments' Report of the Office of the Ombudsperson pursuant to Security Council resolution 1989 (2011) (21 July 2011) S/2011/447

UNSC 'Global survey of the implementation of Security Council resolution 1373 (2001) by Member States' S/2011/463 1 (2011)

UNSC 'Second report of the Monitoring Group established pursuant to Security Council resolution 1363 (2001) and extended by resolution 1390 (2002) UN Doc S/2002/1050

UNSC Report 'Third report of the Analytical Support and Sanctions Monitoring Team appointed pursuant to Resolution 1526 (2004) concerning Al-Qaida and the

Taliban and associated individuals and entities.' (9 September 2005) UN Doc S/2005/572
UNSC 'Twelfth report of the Analytical Support and Sanctions Monitoring Team established pursuant to resolution 1526' (2004) (1 October 2012) UN Doc S/2012/729
UNSC 'Thirteenth report of the Analytical Support and Sanctions Monitoring Team established pursuant to resolution 1526 (2004)' (31 December 2012) UN Doc S/2012/968
UNSC 'Sixth Report of Monitoring Team pursuant to resolution 1526' (2004) (8 March 2007) UN Doc S/2007/132
UNSC 'Report of the Secretary-General on the rule of law and transitional justice in conflict and post-conflict societies' (23 August 2004) UN Doc S/2004/616
UNSC 'Report by the EU to the 1373 Committee' (28 September 2001) UN Doc S/2001/1297
UNSC 'UN Analytical Support and Sanctions Monitoring Team Ninth Report pursuant to resolution 1822 (2008)' (13 May 2009) UN Doc S/209/245
UNSC 'Report of the Counter-Terrorism Committee to the Security Council for its consideration as part of its interim review of the work of the Counter-Terrorism Committee Executive Directorate' (4 June 2009) UN Doc S/2009/289
Security Council Press release (26 November 2001) SC/7222
Security Council Press release (9 November 2001) SC/7206
Security Council Press release 'UNSC Committee pursuant to resolutions 1267(1999) and 1989(2011) Concerning Al-Qaida and associated individuals and entities, 'Guidelines for the Committee on the Conduct of its work' (30 November 2011) SC/10467
SC Committee of the Security Council established pursuant to resolution 1267 (1999) of 15 October 1999 is known as the Al-Qaida and Taliban Sanctions Committee 'Guidelines of the Sanctions Committee for the conduct of its work' (7 November 7 2002)
UNSC 'Fifth report from the United Kingdom of Great Britain and Northern Ireland' (12 September 2005) UN Doc S/2005/583
UNSC Letter dated 16 January 2008 from the Executive Director of the Counter-Terrorism Committee Executive Directorate addressed to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism'(8 February 2008) UN Doc S/2008/80
UNSC 'Report of the Counter-Terrorism Committee to the Security Council for its consideration as part of its comprehensive review of the Counter-Terrorism

Committee Executive Directorate' (18 December 2006) UN Doc S/2006/989
UNSC 'Fourteenth report of the Analytical Support and Sanctions Monitoring Team submitted pursuant to resolution 2083 (2012) concerning Al-Qaida and associated individuals and entities' (2 August 2013) UN Doc S/2013/467
UNSC established pursuant to resolution 373 Policy Guidance regarding human rights and the CTC' (25 May 2006) UN Doc S/AC.40/2006
UNSC Res 733 (23 January 1982) UN Doc S/ RES/733
UNSC Res 731 (21 January1992) UN Doc S/RES/731
UNSC Res 1267 (15 October 1999) UN Doc S/RES/1267
UNSC Res 1333 (19 December 2000) UN Doc S/ RES 1333
UNSC Res 1390 (16January 2002) UN Doc S/RES/ 1390
UNSC Res 1368 (12 September 2001) UN Doc S/RES/1368
UNSC Res 1373 (28 September 2001) UN Doc S/RES/1373
UNSC Res 1377 (12 November 2001) UN Doc S/RES/1377
UNSC Res 1440 (24 October 2002) UN Doc S/RES/1440
UNSC Res 1452 (20 December 2002) UN Doc S/RES/1452
UNSC Res 1455 (17 January 2003) UN Doc S/RES/1455
UNSC Res 1456 (20 January 2003) UN Doc S/RES/1456
UNSC Res 1516 (20 November 2003) UN Doc S/RES/1516
UNSC Res 1526 (30 January 2004) UN Doc S/RES/1526
UNSC Res 1530 (11 March 2004) UN Doc S/RES/1530
UNSC Res 1535 (26 March 2004) UN Doc S/RES/1535
UNSC Res 1546 (8 June 2004) UN Doc S/RES/1546
UNSC Res 1566 (8 October 2004) UN Doc S/RES/1566
UNSC Res 1611 (7July 2005) UN Doc S/RES/1611
UNSC Res 1617 (29 July 2005) UN Doc S/RES/1617
UNSC Res 1618 (4 August 2005) UN Doc S/RES/1618
UNSC Res 1624 (14 September 2005) UN Doc S/RES/1624
UNSC Res 1735 (22 December 2006) UN Doc S/RES/1735
UNSC Res 1803 (3 March 2008) UN Doc S/RES/1803
UNSC Res 1805 (20 March 2008) UN Doc S/RES/1805
UNSC Res 1816 (2 June 2008) UN Doc S/RES/1816
UNSC Res 1822 (30 June 2008) UN Doc S/RES/1822
UNSC Res 1988 (17 June 2011) UN Doc S/RES/1988
UNSC Res 1989 (17 June 2011) UN Doc S/RES/1989
UNSC Res 1904 (17 December 2009) UN Doc S/RES/1904
UNSC Res 1963 (20 December 2010) UN Doc S/RES/1963

UNSC Res 1973 (17 March 2011) UN Doc S/RES/1973
UNSC Res 2083 (17 December 2012) UN Doc S/RES/2083

Books

Agamben G, '*Home Sacer'* (1st edn, Stanford University Press 1998)
Alldridge.P *Money Laundering Law: Forfeiture, Confiscation, Civil recovery, Criminal Laundering and taxation of the Proceeds of crime* (1st edn, Hart Publishing 2003)
Allen T, *Human Rights Law in Perspective Property and the Human Rights Act 1998,* (1st edn, Hart Publishing 2005)
Andrews R, *Research Questions* (1st edn, Continuum 2003)
Amoore L and De Goode M, '*Risk and the War on Terror'* (Routledge 2008)
Arskey H and Knight P, *Interviewing for Social Sciences* (1st edn, Sage 1999)
Ashby Wilson R *Human Rights in the 'War on Terror'* (1st edn, Polity 2005*)*
Ashworth A and Horder J, 'Principles of Criminal Law (7th edn, OUP 2013)
Bazely S and Haynes A., 'Financial Services Authority Regulation and Risk- based Compliance' (2nd edn, Tottel Publishing 2007
Beck U, *World at Risk* (1st edn Polity Press 2009)
Beck U, *Power in a Global Age* (1st edn, Polity Press 2005)
Beck U, 'Cosmopolitan Vision' (2nd edn, Polity Press 2006)
Bennett T, *Money Laundering Compliance* (2nd edn, Tottel Publishing 2007)
Bianchi A, '*Enforcing international Law Norms Against Terrorism'* (1st edn, Hart 2004)
Bigo D and Tsoukala A, *Terror, Insecurity and Liberty Illiberal practices of liberal regimes after 9/11* (1st edn, Routledge 2008)
Biersteker TJ and Eckert S, *Countering the Financing of Terrorism,* (1st edn, Routledge 2008)
Berg BL *Qualitative Research Methods For the Social Sciences* (7th edn, Pearson 2009)
Brown V and Leake V *Successful Qualitative research – a practical guide for beginners* (1sr edn, Sage 2013)
Brummr C, *Softlaw and the Global Financial System Rule Making in the 21st Century* (1edn, Cambridge University Press 2012)
Bryman A, *Social Research Methods, (3rd edn, OUP 2008)*
Bryman A, *Research Methods and Organization Studies* (1st edn, Routledge 1989)
Burleigh M, *Blood & Rage: a Cultural History of Terrorism* (2nd edn, Haper Collins 2009)

Chamir, Barajas A, Cosimano T, Fullenkamp C, Gapen M, Monteil P, *Macreconomic Consequences of Remittances* (IMF 2005)
Charmaz K, Constructing Grounded Theory: A Practical Guide through Qualitative Analysis(1edt Sage London 2006)
Chatain P, McDowell J, Mousset.C, Schott PA , Van Der Does E, *Preventing Money Laundering and Terrorism Financing: A Practical Guide for Bank Supervisors* (World Bank Publications 2009)
Coben A , *Protection of Property Rights within the European Convention on Human Rights* (1st edn, Ashgate Publishing 2004)
Council of Europe, *Cyber terrorism: The use of the internet for terrorist purposes* (Council of Europe 2008)
Creswell JW, *Research Design: Qualitative ,Quantitative and Mixed Methods Approaches* (3rd edn, Sage 2009)
Daniels.RJ, Macklem P, Roach K (eds) *The Security of Freedom: Essays on Canada's Anti- Terrorism Bill* (1st edn, University of Toronto Press 2001)
Data K 'Migrant and their money surviving financial exclusion' (1st edn, Policy Press University of Bristol 2012)
Davies M, *Property: Meanings, histories, theories, Abingdon* (1STedn, Routledge Cavendish, 2007)
De Goode M, *Speculative Security: the Politics of Pursuing Terrorist Monies* (University of Minnesota Press 2012)
Didier B and Tsoukala A. *Terror, Insecurity and Liberty: Illiberal Practices of Liberal Regimes after 9/1* (1st edn, Routledge 2008)
Donohue LK, *The Cost of Counterterrorism*: *Power, Politics and Liberty* (1st edn, Cambridge University Press 2008)
Duchrow.U and Hinkelammert FJ, *Property for People not for profit: Alternatives to global tyranny of capital* (1st edn, Zed Books 2004)
Eckes C, '*EU Counter Terrorist Policies and Fundamental Human Rights'* (1 edn New York OUP 2009)
Ehrefield R *Funding Evil* (1st edn Bonus Books, Chicago 2003)
Enders W, and Sanders T, *The Political Economy of Terrorism* (1st edn Cambridge University Press, 2006)
Evans G, *Responsibility to Protect* (1st edn, Brookings Institution Press 2008)
Foucault M, *Abnormal* (1st edn, Verso 2003)
Fowler FJ, *Survey Research Methods, Applied Social Research Methods Series* vol 1 (3rd edn, Sage 2002)
Gelemerova L, *The anti-money laundering system in the context of globalisation:*

a Panopticon built on quicksand? (Wolf 2011)
Gillham B, *The Research Interview* (1st edn, Continuum 2000)
Glaser G *The Grounded Theory Perspective: Conceptualization Contrasted With Description* (1st edn, Sociology Press 2001)
Glaser G, Strauss A *The Discovery of Grounded Theory: Strategies for Qualitative Research* (1st edn, Aldines Transaction Publishing 1967)
Graham T, *Money laundering* (2nd edn, Butterworth's Press 2003)
Grgiæ A, Mataga Z, Longar M, Vilfan A,*The Right to Property under the Convention on Human Rights: A Guide to the Implementation of the European Convention on Human Rights and its Protocols* (Council of Europe June 2007)
Gross O, Aolain ,F *Law in Times of Crisis: Emergency Powers Theory and Practice* (1st edn, Cambridge University Press 2006)
Gubruin JF, Holstein J A, *Handbook of Interview Research Context and Method* (1st edn, Sage 2011)
Gummesson E, *Qualitative Methods in Management Research* (2nd edn, Sage 1936)
Harris JW, *Property and Justice,* (1st edn, Clarendon Press 1996)
Haynes P, Furlong R, Rudolf N, *International Money Laundering and Terrorist Financing: A UK Perspective* (1st edn, Sweet and Maxwell 2008)
Hennink M, Hutter I, Bailey A, *Qualitative Research Methods* (1st edn, Sage 2011)
Hernadez-CossR, 'Comparing the Mature and Nascent Remittance Corridors: U.S.-Mexico and Canada-Vietam' *Regulatory Frameworks for Hawala and other Remittance Systems* (IMF 2005)
Hewitt S, *The British War on Terror; Terrorism Counter -Terrorism the Home Front since 9/11* (1st edn, Continuum Books 2008)
Houtkoop-Steenstar, *Interaction and the Standardized Survey Interview: The Living Questionnaire* (1st edn Cambridge University Press 2000)
Hudson B and Ugelvik S, *Justice and Security in the 21st Century rights Risks and the rule of law* (1st edn, Routledge 2012)
Ignatieff M *The Lesser Evil* (1st edn, Princeton University Press 2004*)*
IMF Legal Department *Suppressing the Financing of Terrorism A Handbook for Legislative Drafting* (IMF 2003)
IMF, *International Transactions in Remittances, Guide for Compilers and Users (*IMF 2009)
IMF Monetary and Financial Systems Department '*Hawala: regulatory Frameworks For Hawala and Other Remittance Systems*' (IMF 2005)

Judd C.M., and others *Research Methods in Social Sciences* (6th edn, Harcourt 1991)
Keene S, *Threat Finance* (1st edn, Ashgate 2012)
King N and Horrocks C, *Interviews in Qualitative Research* (1stedn, Sage 2010)
Koh J, *Suppressing Terrorist Financing and Money Laundering* (1st edn, Springer 2006)
Lilley P, Dirty Dealing: *The Untold Truth about Global Money Laundering, International Crime and Terrorism* (2ndedn, Kogan Page 2003)
Likosky M, *Transnational legal processes- globalisation and power disparity* (1st edn Butterworth 2002)
Maimbo SM and others *Migrant Labour Remittances in South Asia* (The World Bank 2005)
Maimbo S.M and Ratha D (ed) *Remittances: Development Impact and Future Prospects* (The World Bank 2005)
Martin A, and Petro P, *Rethinking Global Security: media Popular Culture and the War on Terror'* (1st edn Rutgers Press 2006)
Marshall C and Rossman G, *Designing Qualitative Research* (5th edn, Sage 2011)
Masferrer A,*Post 9/11 and the Sate of Permanent Legal Emergency* (1st edn, Springer 2012)
Matthews B, Ross L, *A practical Guide for Social Scientists* (1st edn, Pearson Education 2011)
McGarrity N, Lynch A, Williams G, *Counter-Terrorism and Beyond the Culture of law and Justice after 9/11*' (1st edn, Routledge 2010)
Monetary and Financial Systems Department IMF, *Regulatory Frameworks for Hawala and Other Remittance Systems* (MF 2005)
Muller SR, *Hawala: An Informal Payment System and its Use to Finance Terrorism* (1st edn, Lightening Source 2006)
Muller WH, Kahlin CH, Goldsworth JG, *Anti - Money Laundering; International Law and Practice* (Wiley and Sons 2007)
Munzer SR (ed) *New Essays in the legal and Political Theory of Property* (1st edn, Cambridge University Press 2001)
Murphy C, *EU Counter-Terrorism Law: Pre-Emption and the Rule of Law* (1st edn, Hart 2012)
Napoleoni L, *Modern Jihad: Tracing the Dollars Behind the Terrors Networks* (1st edn, Pluto Press 2003)
Naylor RT, *Satanic Purses Money, Myth, and Misinformation*, (McGill- Queen's University Press 2006)

Neal AW, *Exceptionalism and the Politics of Counter Terrorism. Liberty, security and the War on Terror* (1st edt, Routledge 2010)
Neumann P, *Old and New Style Terrorism* (1st edn, Polity Press, 2009)
Noakes L and Wincup E, *Criminological Research Understanding Qualitative Methods* (1st edn, Sage 2004)
Ormerod D *Smith and Hogan's Criminal Law* (13th edn, OUP Oxford 2011)
Parkman T, Peeling G, *Countering Terrorist Finance: A training Handbook for Financial Services'* (1st edt, Gower 2007)
Passas N, *Formalising the Informal?* Problems in the National and International Regulation of Hawala' *Regulatory Frameworks for Hawala and other Remittance Systems* (IMF 2005)
Penner JE, *The Idea of property in Law* (1st edn, Clarendon Press, 1997)
Pogrebin M. R. *Qualitative Approaches to Criminal Justice: Perspective from the field*(1st edn, Sage 2003)
Ratha D, Mohapatra S, Silwal A , *Migration and Remittances Factbook* (World bank 2011)
Rawls J, *Theory of Justice* (1st edn, Belknap Press 2005)
Richard AC, *Fighting Terrorist Financing: transatlantic Cooperation and International Institutions,* (John Hopkins University 2005)
Roberts D, *Global Governance and Biopolitics Regulating Human Security* (1st edn, Zen Books 2010)
Rose CM, *Property and Persuasion essay on the history, Theory and Rhetoric of Ownership* (1st edn, Westview Press 1994)
Rubin G, '*Freedom and Order How Democratic Governments Restrict Civil Liberties After Terrorist Attacks - And Why Sometimes They Don't'* (1st edn, Lexington Books 2010)
Sambei A, Du Plessis A, Polaine M, *Counter Terrorism Law and Practice and International Handbook* (1st edn, Oxford University Press 2009)
Sened I *The Political Institution of Property* (1st edn, Cambridge University Press 1997)
Silverman D, *Qualitative Research; Issues of Theory Method and Practice* (3rd edn, Sage 2011)
Silverman D, *Doing Qualitative Research: A Practical Handbook (*3rd edn, Sage 2010)
Silverman D, *Qualitative Research* (3rdedn, Sage 2011)

Simester AP and Von Hirsch A *Crimes, Harms and Wrongs: On the Principles of Criminalisation* (1st edn, Hart 2011)
Stainforth A, Police National Legal Database, *Blackstone's Counter -Terrorism Handbook,* (1st edn, OUP 2009)
Strauss A, *Qualitative Analysis for Social Scientists* (1st edn, OUP 1987)
Tadjbakhsh S, and Chenoy AM, *Human Security Concepts Implications* (Routledge 2007)
Tadros V, *Criminal Responsibility* (Oxford University Press 2005)
Turner J *Money Laundering Prevention Deterring Detecting and Resolving Financial Fraud* (1st edn, Wiley 2011)
Van Banning T. *The Human Right to Property* vol 14 (1st edn, School of Human Rights Research Studies Intersentia 2002)
Van Brunschot E, Gibbs E, Kennedy L, 'Risk, Balance and Security' (1edn, Sage2008)
Walker C, *Terrorism and the Law,* (1st edn, OUP 2011)
Wergaf T*, Qualitative Research interviewing* (1st edn, Sage 2001)
Wodak R and Kryzyanowski M, *Qualitative Discourses Analysis in the Social Sciences* (1st edn, Palgrave Macmillan 2008)
World Bank, *Migration and Remittances Fact Book* (World Bank 2008)
Wouter H and Muller C *Anti-Money Laundering: International Law and Practice* (Wiley 2007)
Yoram B, *Economic Analysis of Property Rights* (1st edn, Cambridge University Press 1983)

Contributions to books

Berman J, 'The initial core' from bare Life to the Biopolitics of Human Security' South.' Shanis G, Satao M, Kampal Pasha M (eds) *Protecting Human Security in a Post 9/11 Critical and Global insights* (Palgrave Hampshire 2007)
Bloor M, 'Addressing Social Problems through Qualitative research' Silverman D, *Qualitative Research, (3rdedt Sage 2011)*
Boor A The 'Formalisation of Research Ethics' Bankers R Travers M *Theory and Methods in Socio-legal Research* (1st edn, Hart 2005)
Bronnit S and Donkin S, 'Australian Responses to 9/11: New World Legal Hybrids' Masferrer A (ed) (*Post 9/11 and the Sate of Permanent Legal Emergency (Springer 2012)*

Freemen M ‘Order, Rights and Threat: terrorism and Global Justice’ Ashby Wison (ed) *Human Rights in the ‘War on Terror’* (Cambridge University Press 2005)
Galli F, ‘The War on Terror and Crusading Judges: Re-Establishing the Primacy of the Criminal Justice System’ Masferrer A *Post 9/11 and the Sate of Permanent Legal Emergency* (1st edn, Springer London 2012)
Henk van de Bunt ‘The Role of Hawala Bankers in the transfer of Proceeds from Organized Crime’ Seigal D, Nelen H (eds) *Organized Crime, Culture, Markets and Policies* (Springer 2008)
Holstein.J.A and Gubrium JF, ‘Animating Interview Narratives’ Silverman D (ed) *Qualitative Research* (3rdedn, Sage London 2011)
Lap A.L, ‘Constitutional Exceptionalism’ Ugelvik S (ed)*Justice and Security in the 21st Century rights Risks and the rule of law.* (1st edn, Routledge Oxon 2012)
Llobet.M, ‘Terrorism: Limits Between Crime and War. The Fallacy of the Slogan ‘War on Terror’’ Masferrer A (ed) *Post 9/11 and the Sate of Permanent Legal Emergency (Springer London 2012)*
Lomell H M’Punishing the uncommitted crime’ Hudson B and Ugelvik S (eds) *Justice and Security in the 21st Century rights Risks and the rule of law.* (Routledge Oxon 2012)
Maimbo S M ‘Challenges of regulating Hawala’ IMF *Regulatory Frameworks for Hawala and Other Remittance Systems* (IMF 2005)
Mc Bernal D, ’Transnational transactions, legal work, cross border commerce and global regulation’ Likosky M (ed) *Transnational legal processes- globalisation and power disparities* (Butterworths 2002)
McGarrity N, Lynch A, Williams G, ‘The Emergence of a Culture of Control’ in McGarrity N, Lynch A, Williams G (eds) ‘*Counter-Terrorism and Beyond the Culture of law and Justice after 9/11*’ (1st edn, Routledge 2010)
Mine Y, ‘Downside Risks and Human Security’ Shanis G, Satao M, Kampal, Pasha M (eds) *Protecting Human Security in a Post 9/11 Critical and Global insights.* (Palgrave 2007)
Miller J and Glassner B, ‘The “Inside” and the “Outside”: Finding Realities in interviews’ Silverman D (eds) *Qualitative Research, (3rdedn, Sage 2011)*
Mitsilegas V, ‘Security versus justice and the individualisation of security and the erosion of citizenship and fundamental rights.’ Ugelvik S and Hudson B (eds) *Justice and Security in the 21st Century rights Risks and the rule of law.* (Routledge 2012)

Pash M, 'Human Security and Exceptionalism (s): Securitisation ; Neo-Liberalism and Islam' Shani G, Sato M, Pash M (eds) '*Protecting Human Security in the post 9/11 World. Critical and Global Insights*' (1st edn, Palgrave Macmillan 2007)
Passas N, 'Formalizing the Informal? Problems in the National and international Regulation of Hawala' IMF *Regulatory Frameworks for Hawala and Other Remittance Systems* (IMF W 2005)
Reissman CK, 'What's Different about Narrative Inquiry? Case Categories and Contexts' Silverman D (ed) *Qualitative Research, (3rdedn, Sage 2011)*
Ryan A, 'Ethics and Qualitative Research' Silverman D (ed) *Qualitative Research, (3rdedn, Sage 2011)*
Saul B, 'Civilising the Exception: Universally Defining Terrorism' Masferrer A (ed) *Post 9/11 and the Sate of Permanent Legal Emergency* (Springer 2012)
Shani G, 'Democratic Imperialism' 'Neo Liberal Globalization' and In/Security in the global South' Shanis G, Satao M, Kampal Pasha M (eds) *Protecting Human Security in a Post 9/11 Critical and Global insights.* (1st edn, Palgrave 2007)
Shani G, 'Globalisation the 'War on terror' and Human In/Security in South Asia' Shanis G, Satao M, Kampal Pasha M (eds) *Protecting Human Security in a Post 9/11 Critical and Global insights.* (Palgrave 2007)
Walker C, 'The Impact of Contemporary Security Agendas Against Terrorism on the Substantive Criminal Law' Masferrer A (ed) *Post 9/11 and the Sate of Permanent Legal Emergency (Springer 2012)*
Walker C, 'Cosmopolitan liberty in the age of terrorism' Crawford A (ed) *International and Comparative Criminal Justice and Urban Governance Convergence and Divergence in Global, National and Local Settings'* (Cambridge University Press 2011)

Journal Articles

Abuza Z 'Funding Terrorism in Southeast Asia: The Financial Network of Al Qaeda and Jemaah Islamiyah' (2003) 15(5) NBR Analysis
Acharya A, 'Small amounts for big bangs? Rethinking responses to "low cost" terrorism' (2009) 12(3) JMLC 285-298
Ai L, 'Rule-based but risk-oriented" approach for combating money laundering in Chinese financial sectors' (2012) 15(2) JMLC 198-209
Allen W. 'The war against terrorism financing' (2003) 6(4) JMLC 306-310
Alexander R, 'Money Laundering and terrorist financing: time for a combined offence' (2009) 30(7) Company Lawyer 200-204

Anderson D, 'Shielding the compass: how to fight terrorism without defeating the law' (2013) 3 European Human Rights Law Review 233-246

Arnone M, Borlini L, 'International anti-money laundering programmes: empirical assessment and issues of regulation' (2010) 13(3) JMLC 226-271

Asada M, 'Security Council Resolution 1540 to Combat WMD Terrorism: Effectiveness and Legitimacy in International Legislation' (2008) 13(3) J Conflict and Security 303

Ashworth A, 'Crime Community and creeping consequentialism' [1996] Apr Crim LR 220-230

Ashworth A, 'Four Threats to the Presumption of Innocence' [2006] South African Law Journal 123, 63-97

Ashworth A, Zedner L, 'Prevention and Criminalization: Justification and Limits' (2012) 15(4) Crim L Rev 542 -574

Aufhauser DA, 'Terrorist Financing: Foxes run to ground' (2003) 6 (4) JMLC 301-305

Ajayi K, Abdulkareem H, 'Insulating the vaults from the tide of dirty money: are the floodgates secure?' (2010) 13(1) JMLC 33-44

Baker DN, Price BE, 'Counter- Terrorism Post 9/11: the Hidden Agenda of Exclusion' (2010) 3(2) Int J of Crim & Soc Theory 531-542

Baldwin F, Di Perna T, 'The rule of law: an essential component of the financial war against organized crime and terrorism in the Americas'. (2007) 14(4) JFC 405-437

Ballard R, 'Coalitions of reciprocity and the maintenance of the financial integrity within informal value transfer systems: the operational dynamics of contemporary hawala networks' (2005) 6 (4) Journal of Banking Regulation 319-352

Ballard R, 'Hawala: Criminal Haven or vital financial network' October (2006) 42 International Institute of Asian Studies, University of Leden 8-9

Ballard.R, 'A Background Report on the Operation of Informal Value transfer Systems (Hawala.' [2003] April 1-39 Available at <http://archiv.ub.uni-heidelberg.de/savifadok/volltexte/2009/271/pdf/hawala.pdf> date accessed 27/01/2011

Ballard R, 'Hawala and Hundi: vehicles for the long distance transmission of value' Centre for Applied South Asian Studies. Available at <http://www.casas.org.uk/papers/hawala.html>date accessed 08/03/2011

R. Barrett', 'Time to re-examine regulation designed to counter the financing of terrorism' (2009) 7 Case Western Reserve Journal of International Law

Bantekas I 'Current Developments: the International Law of Terrorist Finance'

[2003] 97 Am J Int'l L 315
Beekarry N, 'The International Anti-Money Laundering and Combating the Financing of Terrorism Regulatory Strategy: A Critical Analysis of Compliance Determinants in International Law' (2011) 31(1) Northwestern Journal of International Law & Business 137-194
Bensted G, 'Hi terrorist financing and the Internet: dot com danger' (2012) 21(3) Information & Communications Technology Law, 237-256
Berti B,' Securing a Role for International Human Rights Law in Counter Terrorism: The Role of Judicial Review in the United Kingdom' (2009) 3(2) New England Journal of Political Science
Bianchi A, 'Assessing the Effectiveness of the UN Security Council's Anti- Terrorism Measures: the Quest for Legitimacy and Cohesion' (2006) 17(5) Eur J Int Law 881
Binning P, 'In safe hands? Striking the balance between privacy and security - anti-terrorist finance measures' European Human Rights Law Review 2002, 6, 737-749
Borgers M,'Regulating and Combating Underground Banking' (2009) 20 97–111 Criminal Law Forum, Springer
Bowers CB, 'Hawala , Money lending, and Terrorist Financing: Micro Lending as an End to Illicit Remittance, (2009) 37(3) Den.J. Int'l L & Pol'Y 377- 419
Brown G, Evans T, 'The impact: the breadth and depth of the anti-money laundering provisions requiring reporting of suspicious activities' (2008) 23(5) Journal of International Banking Law and Regulation 274-277
Buku MW, Meredith MW, 'Safaricom and M - Pesa in Kenya: Financial Inclusion and Financial Integrity' (2013) 8 Wash JL Tech & Arts 375
Buros O, 'Private Actors in the Fight Against Terrorist Financing: Efficiency Versus Effectiveness' (2012) 35 (10) Studies in Conflict and Terrorism 712-732
Carvalho H, 'Terrorism Punishment and Recognition' (2012) 15 (3) New Crim L Rev 345 -374
Chiakin D, 'How effective are suspicious transaction reporting systems?' (2009) 12(3) JMLC 238-253
Clarke K, Drinkwater S., 'An Investigation of Household Remittance Behaviour: Evidence from the UK' (2007) 65 (6) Dec The Manchester School 717–741
Dalyan S 'Combating the Financing of Terrorism: Rethinking Strategies for Success' (2008) 1 (1) Defence Against Terrorism Review 137-153
Danziger Y, 'Changes in methods of freezing funds of terrorist organisations since 9/11: a comparative analysis' (2012) 15(2) JMLC 210-236

De Burca G, ‘The European Court of Justice and the International Legal Order After *Kadi’,* (2010) Vol 51(1) Harvard International Law Journal
De Goode M, ‘Hawala discourses and the war on terrorist finance.’ [2003] 21(5) Environment and Planning D: Society and Space 513-532
De Koker L, ‘Identifying and managing low money laundering risk: perspectives on FATF's risk-based guidance’ (2009) 16(4) JMLC 334-352
De Koker L, ‘Money laundering control and suppression of financing of terrorism: some thoughts on the impact of customer due diligence measures on financial exclusion’ (2006)13(1), JFC 26-50
De Wit J, ‘A risk- based approach to AML’ (2007)15(2) JFCRC. 156-165
Donohue, L.K, ‘Anti-Terrorist finance in the United Kingdom and the United States’ (2007) 96(3) JCLC 303-435
Donohue L K ‘The Perilous Dialogue’ [2009] 97 Cal L Rev 357-392
Elegab O, ‘Control of terrorist funds and the banking system’ Journal of International Banking Law and Regulation (2006) 21(1), 38-44
El-Qorchi M, Problems with Definition ‘The Hawala System’ December (2002) 39 (4) Finance and Development
El-Qorchi M, ‘How does this informal funds transfer system work, and should it be regulated?’ December (2002) 39 (4) Finance and Development
El Rahman F, El-Sheikh A.,‘Money laundering through underground systems and non-financial institutions’ (2003) 7 (1) JM.C 9 -14
El Rehim A, El Kashif M, ‘Shari'ah's normative framework as to financial crime and abuse’ (2009) 16(10) Journal of Financial Crime 86-96
Farooqi MN ‘Curbing the use of Hawala for money laundering and terrorist financing: global regulatory responses’ (2010) 5(1/2) Int J Business Governance and Ethics
Feintuck M, ‘Precuationary Maybe, but what’s the principle? The Precautionary Principle, the Regulation of Risk and the Public Domain’ (2005) 32(3) Journal of Law and Society, 371-398
Feldman R, ‘Fund Transfers – African Terrorists Blend Old and New: Hawala and Satellite Telecommunications’ (2006) 17(3) Small Wars & Insurgencies 356-366
Fenwick H, 'Recalibrating ECHR rights and the role of the Human Rights Act post 9/11: reasserting international human rights norms in the 'war on terror' ?' (2010) 63 (1) Current legal problems 153-234
Freeman M, ‘The Sources of Terrorist Finance: Theory and Typology’ (2011) 34(6) Studies in Conflict and Terrorism 461-475

Fincen ‘Informal Value Transfer Networks’ United States Department of the Treasury Financial Crimes Enforcement Network’ (2003) Advisory Issue 33 March 1-11

Gallant M, ‘Promise and perils: the making of global money laundering terrorist finance norms’ (2010) 13(3) JMLC 175 -183

Geltzer JA,’ Taking Hand-Outs or Going It Alone: Nationalization versus Privatization in the Funding of Islamist Terrorist Groups’ (2011) 34(2) Studies in Conflict and Terrorism 144-170

Gross E, ‘Fighting Terrorism with one hand tied behind the back: delineating the normative framework for conducting the struggle against terrorism within a democratic paradigm’ (2011-2012) 29(1) Wisconsin International Law Journal 1-33

Gross O, ‘Chaos and Rules: Should Responses to Violent Crises Always Be Constitutional?’(2013) 112 Yale LJ

Hardioun P, Weichhardt R, ‘Terrorist fund raising through criminal activities’ (2006) 9(3) JLC 303,308

Hafter-Burton E, ‘Emergency and Escape: Explaining Derogations from Human Rights Treaties’ (2011) 65 International Organization 673-707

Happold M, ‘Security Council Resolution 1373 and the Constitution of the United Nations’ (2003)16 Leiden J Int Law 593-610

Holder WE, ‘The International Monetary Fund's involvement in combating money laundering and the financing of terrorism’ (2003) 6(4) JMLC 383-387

Horne A, Walker C , “The Terrorism Prevention and Investigation Measures Act 2011: one thing but not much the other?” (2012) Crim LR 421

Iqbal Z,‘Islamic Financial Systems,’ (2007) 34(2) Finance and Development

Irwrin A, Choo K, Lui L, ‘An analysis of money laundering and terrorism financing typologies’ (2012) JMLC 15(1) 85-111

Jabbar S, ‘Money -Laundering laws and principles of Sharia: dancing to the same beat?’(2011) JMLC 14(3) 198-209

Jamwal NS, ‘The Invisible Financing System of Terrorism’ Strategic Analysis (2002) 26(2)

Jenson N, Cheong A, ‘Implementation of FAFT 40+9 Recommendations: a perspective from developing countries’ (2011) 14(2) JMLC 110-120

Jeremie JS, ‘Known risk in a world of unknown threats: the character and implications of risk in the context of economically motivated crime’ (2012) 38(8) Company Lawyer 231-234

Jost P M, Sandhu HS, ‘The Hawala Remittance System and is Role in Money Laundering’ Interpol Secretariat 1-27 Jan [2000]

Jowell J, ‘Judicial deference: servility, civility or institutional capacity? [2003] PL 592, 597

Keene S, September ‘Hawala and related Informal Value Transfer Systems – An assessment in the context of Organised Crime and Terrorist Finance. Is there cause for concern?’ Dec [2007] Defence Academy Journal December 1-18

King C ‘Using civil processes in pursuit of criminal law objectives: a case study of non-conviction-based asset forfeiture’ International Journal of evidence and proof’ 2012 16(4) 337-363

Kurtulus EN, ‘The “New Terrorism” and its Critics’ (2011) 34 (6) Studies in Conflict and Terrorism 476-500

Lane K, ‘The International Standardisation of National security’ (2010) 4 (2) December Journal of National Security Law and Policy

Leivesley S, ‘Terrorism PLC: funding spectaculars and catastrophic risk in law’ (2006) 9(2) JMLC 141-156

Lemyre L, Turner M, Lee J, Krewski D, ‘Public Perception of Terrorism Threats and Related Information Sources in Canada: Implications for the Management of Terrorism Risks’ (2006) 9(7) Journal of Risk Research, 755-774

Levi M‘ Combating the financing of terrorism: a history and assessment of the control of "threat finance"’ (2010) 50(4) BJC 650-669

Levitt M, ‘Follow the Money Leveraging Financial Intelligence to Combat Transnational Threats’ [2011] Georgetown Journal of International Affairs Winter 34-43

Lillich B, ‘Paris Minimum Standards of Human Rights Norms in a State of Emergency’ (1985) 79 American Journal International Law 1072

Lindley A, ‘Between ‘Dirty Money’ and ‘Development Capital’: Somali Money Transfer infrastructure Under Global Security’ (2008) African Affairs 108/ 433 519-539

Looney R, ‘Hawala: The terrorist’s Informal Financial Mechanism’ Middle East Policy’ (2003) Vol X No 1 Spring

Maimbo SM, Passas N, ‘The Regulation and Supervision of Informal Remittance Systems’ Small Enterprise Development (2004) 15(1) 53-61 Maras MH, ‘The economic costs and consequences of mass communications data retention: is the Data Retention Directive a proportionate measure?’ European (2012) 32(2) European Journal of Law & Economics 447- 472

Marshall N ‘Financial institutions in disadvantaged areas: a comparative analysis of policies encouraging financial inclusion in Britain and the United States’ (2004) Vol 36 Environment and Planning 241 - 261

Martin M, ‘Hund/Hawala: the Problem of Definition’ Modern Asian Studies (2009) 43(5) 909-937
McClusker R, ‘Underground Banking: Legitimate Remittance Network or Money Laundering System?’ Trend and Issues in Crime and Criminal Justice No.300 July (2005) Australian Institute of Criminology
Merlonghi G, ‘Fighting financial crime in the age of electronic money: opportunities and limitations’ (2010) 13(3) JMLC 202-214
Mitsilegas V, Gilmore B, ‘The EU legislative framework against money laundering and terrorist finance: a critical analysis in the light of evolving global standards’ (2007) 56(1) International and Comparative Law Quarterly 119-140
Morris DR, ‘Surprise and Terrorism: A Conceptual Framework’ (2009) 32(1) Journal of Strategic Studies 1-27
Mugarura N, ‘The institutional framework against money laundering and its underlying predicate crimes’ (2011) 19(2) J.F.R.C. 174-194
Murphy C, ‘Lon Fuller and the moral value of the rule of law’ (2005) 24 Law and Philosophy 239–262
Murray K, ‘A suitable case for treatment: money laundering and knowledge’ (2012) 15(2) JMLC 188-197
Neumann R, Smith M.L.R, ‘Strategic terrorism: The Framework and its fallacies’ Journal of Strategic Studies (2005) 28(4) 571-595
Norgen C, ‘The control Risks associated with crime, terror and subveroson’ (2004) 7(3) JMLC 201-206
Nguyen V, ‘Stop the Money, Stop the Attacks**:** A Categorical Approach to Achieving an International Terrorist Financing Sanction Regime’ (2012) Vol1 (1) Penn State Journal of Law and International Affairs 157-181
Pacewicz l, ‘Human rights in the state of nature: indeterminacy in the resolution of the conflict between security and liberty’ (2011) 17 UCL Juris Rev 34-66
Pahota.I, Caunic I, ‘Informal Value Transfer System-Hawala’ [2007] 4 Theoretical and Applied Economics 509
Passas N ‘Formalising the informal while neglecting trade transparency: issues in the regulation of Hawala and financial controls against terrorism’ (2003)Vol 2 (4) 52 From Early Warning to Early Action? 407-413 Brussels, Commission of the European Union
Passas N,‘Law enforcement challenges in hawala-related investigations’ (2004) 12(4) JFC 112-119
Passas N, ‘Hawala and other informal value transfer systems: How to regulate them?’ (2003) 5(2) Risk Management an International Journal 49-58

Passas N, ‘Indicators of Hawala operations and criminal abuse’, (2004) 8(2) JMLC 168 -172
Passas N, ‘Informal Value Transfer Systems Terrorism and Money Laundering’ (2003) November Northeastern University
Passas N, ‘Setting Global CFT standards: a critique and suggestions’ (2006) 9(3) JMLC 281-292
Passas N, ‘Informal Value Transfer Systems and Criminal Organizations; a study into so-called underground banking networks’ (2004) SSRN December 1999
Passas N, ‘Fighting terror with error: the counter-productive regulation of informal value transfers’ (2006) 45 Crime Law Soc Change 315–336
Pathak R, ‘The Obstacles to Regulating the Hawala: A Cultural Norm or a Terrorist Hotbed?’ (2003) 27(6) Fordham International Law Journal 2008-2061
Perkel W, ‘Money Laundering and Terrorism Informal Value Transfer Systems’ (2004) 410 Am Crim L Rev 183
Raghavan SV, Balasubramaniyan V, ‘Financial facilitators: an important component of terror networks’ (2012) 15(3) 294-303
Ridley N, Alexander D,‘Combating terrorist financing in the first decade of the twenty-first century’ JM.C. 2012 15(1) 38-57
Ross S, Hannan M., ‘Money Laundering and risk-based decision-making’ (2007) 10(1) JMLC 106-115
Ryder N The ‘Financial Services Authority and Money Laundering Game of Cat and Mouse’ (2008) 67(3) Cambridge Law Journal 635-653
Ryder N ‘Islamophobia or an important weapon? An analysis of the US financial war on terrorism’ (2009) 10 Journal of Financial Regulation 307-320
Ryder N ‘The fight against illicit finance: A critical review of the Labour government’s policy’ (2011) 12 Journal of Financial Crime 252-275
Ryder N ‘To confiscate or not to confiscate? A comparative analysis of the confiscation of the proceeds of crime legislation in the United States and the United’ (2013) 8 Journal of Business Law 767-798 Ryder N ‘A false sense of security? An analysis of legislative approaches towards the prevention of terrorist finance in the United States and the United Kingdom’ (2007) Nov Journal of Business Law 821-850
Ryder N ‘Terrors Funds’ (2007) 157 (7289) New Law Journal, 1305
SALS, ‘The law: an overview: sub-group 2: impact of the initiatives against terrorist property on banks and financial institutions’ (2003) 6(3) JMLC 217-232
SALS, ‘Forfeiture of terrorist property and tracing: sub-group 4: impact of the initiatives on other areas of the law’ (2003) 6(3) JMLC 261-268

SALS, ‘International legal developments: sub-group 1: critical review of terrorist-related legislation and the monitoring of new legislation’ (2003) 6(3) JMLC 201-216
SALS, ‘Confidentiality and the duty of disclosure: sub-group 4: the impact of the initiatives on other areas of the law’ (2003) 6(3) JMLC 248-254
SALS, ‘Forfeiture of terrorist property and tracing: sub-group 4: impact of the initiatives on other areas of the law’ (2003) 6 (3) JMLC 261-268
SALS,’ Investigation and enforcement: sub-group 3: implications of investigations and enforcement: international cooperation aspects’ (2003) 6(3) JMLC 269-288
Schaeffer EC ‘Remittances and Reputations in Hawala Money – Transfer Systems: Self Enforcing Exchange on an International Scale,’ (2008) 24(1) The Journal of Private Enterprise 1-17
Scheppelle KL, ‘Global security law and the challenge to constitutionalism after 9/11’April [2011] Public Law 353-377
Schramm M, Taube M, ‘Evolutions and institutional foundation of the hawala financial system,’ International Review of Financial Analysis12 (2003) 405-420
Shah N, ‘Self Defence, Anticipatory Self Defence and Pre-emption: International Law’s Response to Terrorism’ JCSL 12(1) (2007) 95
Shanmygam B,‘Hawala and money laundering: a Malaysian perspective’ (2004) 8(1) JMLC 37-47
Shehu AY, ‘The Asian alternative remittance systems and money laundering’ (2003) 7 (2) JMLC 175-185
Shehu AY, ‘Promoting financial sector stability through an effective AML/CFT regime’.(2010) 13(2) JMLC 139-154
Sharma D, ‘Historical Traces of Hundi, Sociocultural Understanding, and Criminal Abuse of Hawala.’ September (2006) 16 (2) IJCJR 99-121
Shepherd KL, ‘Guardians at the Gate: The Gatekeeper Initiative and the Risk Based Approach for Transactional Lawyers’ (2009) 43(3) Real Property, Trust and Estate Law Journal
Siminova A, ‘The risk-based approach to anti-money laundering problems and solutions’ (2011) JMLC 14(4), 346-358
Simser J, ‘Terrorism financing and the threat to financial institutions’ (2011) 14(4) JMLC 334-345
Sinha G, ‘AML-CTF: a forced marriage post 9/11 and its effect on financial institutions’ JMLC 2013, 16(2), 142-158
Smith ATH, ‘Balancing Liberty and Security? A Legal Analysis of United Kingdom Anti-Terrorism Legislation’ (2007) 13 Eur J Crim Policy Res 73-83

YuningS, Poteyeva M, ‘Arab Americans Opinion on Counterterrorism Measures: The Impact of Race, Ethnicity, and Religion’ (2011) 34(7) Studies in Conflict and Terrorism 540-555

Society for Advance Legal Studies ‘The law: an overview: sub-group 2: impact of the initiatives against terrorist property on banks and financial institutions’ (2003) 6(3) JMLC 217-232

Sproat P’ Counter-terrorist finance in the UK: a quantitative and qualitative commentary based on open-source materials’ (2010) 13(4) JMLC 315-335

Sterio M ‘The Somali Piracy Problem: A Global Puzzle Necessitating a Global Solution’ (2010) AULR Vol 59 1450-1496

Terlingen Y, ‘The United States and the UN's Targeted Sanctions of Suspected Terrorists: What Role for Human Rights?’(2010) 24(2) Ethics and International Affairs

Thachuk K, ‘Countering Terrorist Structures’ Defence Against Terrorism Review 1(2008) 13-28

Thompson E, ‘Misplaced Blame: Islam, Terrorism and the Origins of Hawala,’ Yearbook of UN Law 11 (2007) 279-305

Tofangsaz H, ‘A new approach to the criminalization of terrorist financing and its compatibility with Sharia law’ (2012) 15(4) JMLC 396-406

Trautsolt J, Johnson J, International anti-money laundering regulation of alternative remittance systems: why the current approach does not work in developing countries’ (2012) 15(4) JMLC 407-420

Treves Tulio ‘Piracy, law of the sea, and use of force: developments off the coast of Somalia’ (2009) EJIL 20(2) 399-414

Tupman WA, ‘Ten Myths about terrorist financing’ (2009) 12 (2) JMLC 189-205

Van Den Broek M, ‘The EU's preventive AML/CFT policy: asymmetrical harmonisation’ (2011) 1492) JMLC 170-182

Veng Mei Long A, ‘Definitional Analysis: the war on terror and organised crime’ (2004) 8(1) JMLC 19-36

Viles T, ‘Hawala Hysteria and hegemony’ (2008) 11(1) JMLC 25-33

Vleck W, ‘Surveillance to Combat Terrorist Financing in Europe: Whose Liberty, Whose Security?’ (2007) 16(1) European Security, 99-119

Walker C, ‘Report of Committees: The Jellicoe Report on the Prevent of Terrorism (Temporary Provisions) Act 1976’ (1984) 46 (4) MLD 484

Walker C, ‘Neighbor Terrorism and the All Risks Policing of Terrorism’ Journal (2009) Dec 3 National security Law and Policy 121

Walker C 'Keeping control of terrorist without losing control of constitutionalism' (2007) Vol 59 Stanford Law Review 1395-1463
Ward C A, 'Building Capacity to Combat International Terrorism: The Role of the United Nations Security Council,' (2003) 8(2) Journal of Conflict and security Law 289-305
Waszak John DG, 'The Obstacle to Suppression of Radical Islamic Terrorist Financing' W Res Int J LL 36 (2004) 674
Wheatley J, 'Ancient Banking Modern Crimes: How Hawala secretly transfers the finances of criminal land thwarts existing laws' (2002) 9(13) JInt' Econ L 347-378
Wilson J F, 'Hawala and other Informal Payment Systems; An Economic Perspective' IMF paper prepared for the Seminar on Current Development in Monetary and Financial Law 1-18 <http://www.kabul-reconstructions.net/images/wilson.pdf> date accessed 24/10/09
Wolfendale J, 'Terrorism, Security, and the Threat of Counterterrorism' (2006) 27(9) Studies in Conflict & Terrorism 753-770
Woods MJ, 'Counter intelligence and Access to Transactional Records: A Practical History of the USA Patriot Act section 215' 37(1) (2005) J Nat Sec law and Policy
Yankson S, 'Starving terrorists of their financial oxygen: at all costs?' (2010) 13(3), JMLC, 282-306
Zedner l, 'Securing Liberty in the Face of Terror: Reflections from Criminal Justice' (2005) 32(4) Journal of Law and Society, 507-533
Zwitter A, 'Human Security and the prevention of Terrorism' (1edt Routledge Oxon 2011)

Papers

'Abu Dhabi Declaration on Hawala', International Conference on Hawala UAE, 16 May 2002
Ballard R, 'Hawala Transformed: Remittance-driven Transnational Networks in the post-Imperial economic order' Paper presentation World Bank/DFID Conference on Migrant remittances London October (2003)
Ballard R, 'Hawala and Hundi:vehicles for the long-distance transmission of value' Available at <http://www.casas.org.uk/papers/hawala.html|> date accessed 27/02/11
Chamri R, Barajas A, Cosimano T, Fullenkamp C, Gapen M, & Monteil P, IMF (2008) 'Macroeconomic Consequences of Remittances', Occasional Paper 259

Buencamino L, Gorbunov S, DESA Discussion Paper No. 26 'Informal Money Transfer Systems: Opportunities and Challenges for Development Finance' November 2002

Carroll L, 'Alternative remittance systems distinguishing sub-systems of ethnic money laundering in Interpol member countries on the Asian continent' Interpol June 2004 Available at <http://www.interpol.int/Public/FinancialCrime/MoneyLaundering/EthnicMoney/default.asp > date accessed 08/02/10

Donohue LK, 'Anti-Terrorist Finance in the United Kingdom and United States' Georgetown Public Law and Legal Theory Research Paper No. 12-031 (2006)

El-Qorchi M, Maimbo SM, Wilson JF 'Informal Funds Transfer Systems an Analysis of the Informal Hawala System' Joint IMF/ World Bank Paper, Occasional Paper No.222 (IMF August 18 2003)

El- Qorchi M, Maimbo.SM, Wilson J.F, 'Informal Funds Transfer Systems: An Analysis of the Informal Hawala System (IMF 2003)

Gillespsie J, Seminar on International Finance, Harvard law School, 'Follow the Money: Tracing Terrorist Assets', 15th April (2002)

Guiso Land Others, 'Financial Market Integration and Economic Growth in the EU' Working Paper No. 118 CSEF April 2004

Hernadez-Coss Raul, 'The Canada-Vietnam Remittance Corridor: Lessons on Shifting from Informal to Formal Transfer Systems' Working Paper No.48 World Bank March 2005

Keohane D, Centre for European Reform, 'The EU an Counter-Terrorism' (2005)

Leonides B, Sergie G, 'Informal Money Transfer Systems: Opportunities and Challenges for Development Finance.' DESA Woking Paper No 26 United Nations (Nov 2002) ST/ESA/2002/DP/26

Lindley A, 'Migrant remittances in the context of crisis in Somali society A case study of Hargeisa' HPG Background paper ODI London (2006)

Listfield R, Monte-Negret F, 'Modernising Payment Systems in Emerging Economies' World Bank Policy Research Working Paper 1336.Washignton DC (1994)

Maimbo SM, 'The Regulation and Supervision of Informal Remittance systems : Emerging Oversight Strategies' (2004) Seminar on Current Developments in Monetary and Financial Law

Maimbo SM, 'The Money Exchange Dealers of Kabul: A study of the Hawala System in Afghanistan A Study of the Hawala System in Afghanistan' Working Paper No.13 World Bank August 2003

Maimbo SM, ‘Remittances and Economic Development in Somalia An Overview’ Paper No 38 2006, World Bank Social development Department
Maimbo SM, ‘The regulation and Supervision of Informal Remittance Systems: Emerging Oversight Strategies’ Presented at the IMF Seminar on Current Developments in Monetary and Financial Law Washington, DC May 24-June 4, 2004
Mavrakis N, ‘Islamic Finance: A vehicle for Economic Development.’ University of Texas May 2009
Pelegrini LD, Masciandaro D, ‘The risk based- approach in the new European Anti-money Laundering Legislation: A Law and Economics View’ Paolo Baffi Centre on central Banking Paper No. 2008-22
Juthathip Jongwanich UNESCAP Working Paper WP/07/01 ‘Worker Remittances, Economic Growth and Poverty in Developing Asia and the Pacific Countries’
Unger B, TNI Seminar on Money Laundering, Tax Evasion and Financial Regulation Transnational Institute, ‘Money Laundering, Tax Evasion, Capital Flight, Tax Havens, the Rule based and the Risk Based Approach: Keep it Simple’ June (2007)
Vaccini M, ‘Alternative remittance Systems and Terrorist Finance; Issues in Risk management’, Paper No. 180, World Bank, Washington DC (2009)
Wilson JF, Seminar on monetary and Financial Law ‘Hawala and other Informal Payment Systems: and Economic Perspective’ (2002)
Zerzan A, ‘New Technologies, New Risks?’ World Bank Working Paper No.174 (2009)

Talks/ Communications

‘Defending the Realm’ Public lecture by the Director General of the Security Service, Jonathan Evans, Bristol University (15 October 2009)
Jonathan Evans, Director General of MI5, Address at Lord Mayor’s Annual Defence and Security Lecture, Mansion House (25 June 2012)
Lord Phillips of Worth Matravers, Lord Chief Justice, ‘ Impact of Terrorism and the Rule of Law’ American Bar Association Conference, London (3 October 2007)
Sir Jeremy Greenstock, ‘Measures to eliminate international terrorism’ (1 October 2001)

Press releases

Ministry of Justice, ‘Security and Hunan Rights’ 13 November 2006 EJP Southern Cone Hearing
G.W. Bush,White House ,Terrorist Financial Network Fact Sheet- ‘Shutting Down the Terrorist Financial Network’, November 7, 2001
USAGO Attorney General‘s Bulletin Vol 51(4) July 2003

Kofi Annan, Secretary-General of the United Nations, “Statesmanship, confidence-rebuilding
required for UN capable of coping with today’s crises, Secretary-General tells UN Association of United Kingdom” (Central Hall, Westminster, United Kingdom, 31 January 2006

Publications

UK Parliamentary reports

Anderson D QC ‘Terrorism Investigation and Prevention Measures in 2012' (London Stationary Office 2013)
Anderson D, QC ‘The Terrorism Acts in 2012’ (London Stationary Office 2013)
Anderson D QC ‘The Second Report on the Operation of the Terrorist Asset-Freezing Act Etc.2010’ (London Stationary Office, 2012)
Anderson D QC ‘The Terrorism Acts in 2010’ (London Stationary Office 2011)
Anderson D QC ‘The First Report on the Operation of the Terrorist Asset-Freezing Act Etc.2010’ (London The Stationary Office 2011)
Anderson D, QC ‘The Terrorism Acts in 2011’ (London Stationary Office 2012)
Anderson QC ‘The Terrorism Acts in 2011 Report of the Independent Reviewer on the operation of the Terrorism Act 2000 and the operation of Part 1 of the Terrorism Act 2006’(London Stationary Office 2012)
Anderson D, QC ‘Control Orders in 2011’ (London Stationary Office 2012)
Anderson Report ‘The Terrorism Acts in 2011’ David Anderson QC (Home Office London 2012)
Cabinet Office, ‘The National Security Strategy of the United Kingdom: Update 2009, Security for the next Generation’ (Cm 7790, June 2009)
Cabinet Office ‘The national security Strategy of the United Kingdom: update 2009: Security for the Next Generation’ (Cm 7590, 2009)
Cabinet Office ‘A Strong Britain in an Age of Uncertainty: The National Security Strategy’ (Cm 7953 London 2010)

‘Counter -terrorism Local Profiles: An Updated Guide’ (London Stationary Office 2012)
‘Counter terrorism Powers: Reconciling Security and Liberty in an Open Society: A Discussion Paper’ (Cm 6147, 2004)
European Select Committee Nineteenth Report, ‘Money laundering and the financing of Terrorism’ HL (2008-2009)132-I
European Select Committee Sixth Report, ‘Money laundering: data protection for suspicious activity reports’ HL 82 (2010-2011)
Foreign Affairs Committee, ‘Piracy off the coast of Somalia’ HC (2010-12) 1318
Foreign Affairs Committee, ‘Foreign Policy Aspects of the War against Terrorism’ 21st June 2006 HC 573 Incorporating HC (2005-06) 904-i
Government Reply to the Ninth Report from the Home Affairs Committee HC (2008-09) 212
Government Response to the secretary of State for Foreign and Common Wealth Affairs ‘Piracy of the Coast of Somalia’ Tenth Report session 2011-12 (Cm 8234, 2012)
Government Response to the Committee's Sixth Report of Session 2003–04’ HC (2003-04) 163
Government Reply to Report by Lord Carlisle of Berriew Q.C. ‘The Definition of Terrorism’ (Cm 7058, 2007)
Government Reply to Ninth report from HAC session 2008-09 ‘Project Contest the Government’s Counter-Terrorist Strategy’ (Cm 7703, 2009)
House Commons Committee on Public Accounts, ‘The Charity Commission Forty-second Report of Session 2013–14’ HC (2014) 792
House of Commons Treasury Committee, ‘Financial inclusion: the roles of the Government and the FSA, and financial capability’ HC (2006-07) 53
House Commons International Development Committee ‘Migration and Development: How to make migration work for poverty reduction’ HC (2003-04) 79-I
House of Lords European Union Committee ‘Money Laundering and the Finance of Terrorism’ 19th Report session HL (2008-09) 132-I
Home Office ‘CONTEST -The United Kingdom’s Strategy for Countering Terrorism Annual Report’ (Cm 8583, 2013)
Home Office ‘Contest the United Kingdom’s Strategy for Countering Terrorism Annual Report’ (Cm 8583 London 2013)
Home Office ‘What perceptions do the UK public have concerning the impact of counter-terrorism legislation implemented since 2000?’ Occasional Paper 88, March 2010

Review of Counter-Terrorism and Security Powers (Cm 8004, 2011)
Intelligence and Security Committee, 'Report of the Official Account of the Bombings in London on 7th July 2005' HC (2006) 1087
Intelligence and Security Committee Annual Report 2010-11 (Cm 8114, 2011)
Intelligence and Security Committee 'Could 7/7 have been prevented? Review of the Intelligence on the London Terrorist Attacks on 7 July 2005' (Cm 7617, 2009)
Intelligence and Security Committee, 'Report into the London Terrorist Attacks July 2005' (Cm 6785, 2006)
'Joint Committee on the Draft Enhanced Terrorism Prevention and Investigation Measures Bill' HL Paper 70 HC (2012–13) 495 *21 November 2012*
Joint Committee on Human Rights, 'Counter Terrorism Policy and Human Rights: (Seventeenth Report): Bringing Human Rights Back In', HL (2009-10) HL 86 HC 111
Joint Committee on Human Rights 'Review of Counterterrorism Powers' Eighteenth Report (2003-04) HL 158 HC 713
Lord Lloyd of Berwick 'Inquiry into legislation against terrorism,' (Cm 3420,1996) Vol. 1, 13.5
Lord Carlile of Berriew 'Sixth report of the Independent Reviewer pursuant to section 14(3) of the Prevention of Terrorism Act 2005' (London Stationary Office 2011)
Lord Carlile of Berriew QC' 'Report on the Operation in 2008 of the Terrorism Act 2000 and Part 1 of the Terrorism Act 2006' (London Stationary Office 2009)
Lord Carlile of Berriew QC 'The Definition of Terrorism' (Cm 7052, 2007)
Lord Lloyd and Sir John Kerr, 'Inquiry into Legislation Against Terrorism' (Cm 3420,1996)
Northern Ireland Affairs Committee, 'Organised crime in Northern Ireland' HC (2005-06) 886-II
Northern Ireland Affairs - The Financing of Terrorism in Northern Ireland Fourth Report HC (2001-02) 978-I
Privy Counsellor Review Committee 'Anti-terrorism, Crime and Security Act 2001 Review: Report' HC (2003) 100
Report HAC 9th session 2008-09 'Project Contest the Government's Counter-Terrorist Strategy 7 HC (2009-09) 212
'Review of Intelligence on Weapons of Mass Destruction' Lord Butler HC (2004) 898
Review of Counter Terrorism and Security Powers: equality Impact Assessment' (Cm 8006, January 2011)

Secretary of State for Home Department ‘CONTEST-The UK Strategy for Countering Terrorism’ (Cm 8123, 2011)
Secretary of State for Home Department, Annual Report ‘United Kingdom’s Strategy for Countering International Terrorism’ (Cm 7833, 2010)
Secretary of State for Home Department, ‘Extending Our Reach: A Comprehensive Approach to Tackling Serious Organised Crime’ (Cm 7665, 2009)
Secretary of State for Home Department ‘Pursue, Prevent, Protect, Prepare: The United Kingdom’s Strategy for Countering International Terrorism’ (Cm 7457, 2009)
Secretary of State for Home Department ‘One Step Ahead: A 21st Century Strategy to Defeat Organised Crime’ (Cm 6167, 2004)

Regional reports

APEC , ‘Informal Funds Transfer Systems in the APEC Region: Initial Findings and a Framework for Further Analysis’ APEC ARS Working Group Report prepared for APEC Finance Ministers and Deputies Meeting held on September 1-5 (2003) Thailand 1-117
ASEAN ‘Declaration on Joint Action to Counter Terrorism, Bandar Seri Begawan’ (2001)
Asia/Pacific Group on Money Laundering ‘Typologies Report’ 11July 2008
Asia/Pacific Typologies Working Group on Alternative Remittance &Underground Banking Systems, ‘Alternative Remittance regulation Implementation Package’ July 2003
Asia Pacific Group (APG) Annual Typologies Report 2003-2004 (2004)
Council on Foreign Relations, Financing Second Report by Independent Task Force on Terrorist Financing, ‘Update on the Global Campaign Against Terrorist’ (June 14th 2004)

Other reports:

Ainley M and others ‘Islamic Finance in the UK: Regulation and Challenges’ November (FSA 2007)
Allen M, ‘The Fund’s Engagement in Fragile States and Post-Conflict Countries—A Review of Experience—Issues and Options’ IMF (2008)
Alliance for Financial Inclusion, ‘Case study Enabling mobile money transfer The Central Bank of Kenya’s treatment of M-Pesa’ 2010 Bangkok

ATISG Report, ‘Innovative Financial Inclusion Principles and Report on Innovative Financial Inclusion from the Access through Innovation Sub-Group of the G20 Financial Inclusion Experts Group’ 25 May 2010
Atkinson A., ‘Migrants and Financial Services: A Review of the situation in the United Kingdom’ Research Report for Bristol University (2006)
Ballard R. ‘A Background Report on the Operation of Informal Value Transfer Systems (Hawala)’ (April
2003) http://www.arts.manchester.ac.uk/casas/papers/pdfpapers/hawala.pdf>date accessed 24/10/09
Basel Committee on Banking Settlements, ‘Sound management of risks related to money laundering and financing of terrorism’ January 2014
Belmont Report, ‘Ethical Principles and Guidelines for the Protection of Human Subjects of Research’ The National Commission for the Protection of Human Subjects of Biomedical and Behavioural Research US Dept Health and Human Sciences April 18, 1979
Smith B HC Standard Note ‘Interpal’ SNIA/6778 12 December 2013
BERR, ‘The Regulatory Compliance Code: Statutory Code of Practice for Regulators’ 17 December 2007
Bill & Melinda Gates Foundation, Mas I, Radcliffe D, ‘Mobile Payments go Viral: M-PESA in Kenya’ 2010
Boon M, ‘BME Remittance Survey Research Report’ ICM research prepared for the DFID (July 2006)
Bradbury M, ‘Somalia: The Aftermath of September 11th and the War on Terrorism’ Unpublished report for Oxfam
Bret Walker SC, ‘The Independent National Security Legislation Monitor Annual Report’16 December 2011
British Criminological Society, ‘Code of Ethics’ (2006)
British Institute of International and Comparative Law, ‘Comparative Implementation of the EU Directives (II) for Money Laundering’ (December 2006 London)
Browne C, Mineshima A, ‘Remittances in the Pacific Region’ IMF WP/07/35 (February 2007)
Carss-Frisk M, ‘The right to property A guide to the implementation of Article 1 of Protocol No. 1 to the European Convention on Human Rights’ Council of Europe. (Strabsbourg 2003)
CEPR, Allen F, Beck and others ‘Cross-Border Banking in Europe: Implications for Financial Stability and Macroeconomic Policies’ (2011 London)

CGAP De Koker L, Isern I, ‘AML/CFT: Strengthening Financial Inclusion and Integrity’ No. 56 2009
CGAP ‘Window on the Unbanked: Mobile Money in the Philippines’ Consultative Group to Assist the Poor Brief (2009)
Charity Commission, ‘Counter-terrorism Strategy’ Revised (2012)
Chami R, Barajas A, Cosimano T, Fullenkamp C , Gapen M, Montiel P, ‘ Microeconomic Consequences of Remittances’ Occasional Paper 259 IMF (2008)
CJJI ‘Joint Thematic Review of Asset Recovery : restraint and Confiscation Casework’ March 2010
Cockayne J, Shetret L, ‘Capitalizing on Trust Harnessing Somali remittances for Counter Terrorism , Human Rights and State Building’. Centre on Global Counter Terrorism Cooperation (USA 2012)
Commission on a Bill of Rights, ‘A UK Bill of Rights? The Choice Before Us’ Vol 1 Dec 2012
Cortes R, ‘Remittances and Children’s Rights: An Overview of Academic and Policy Literature’ UNICEF (2007)
Cortwright D and others ‘Sanctions and Security Research Program Human Rights andTargeted ‘Human Rights and Targeted Sanctions An Action Agenda for StrengtheningDue Process Procedures’ Policy Brief SSRP 0911-01 (2009)
Cronin A, Frost A, Jone B, ‘CRS Report for Congress Foreign Terrorist Organizations’ 6 February 2004
Commission on a Bill of Rights’ A UK Bill of Rights? - The Choice Before Us’ Vol 1 and 2 (2012)
Commission on Human Security ‘Human Security Now: Final Report’ New York (2003)
Commission (EC),’ Proposal for a Directive of the European Parliament and the Council on the freezing and confiscation of proceeds of crime in the European Union Impact Assessment’ COM (2013) 45 final, 5 February 2013
Commission (EC), ‘Proposal for a directive in the European Parliament and the Council of on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing’ COM/2013/045 final, 5 February 2013
Commission (EC), ‘Proposal for a directive of the European Parliament and the council on the freezing and confiscation of proceeds of crime in the European Union. Impact Assessment’ COM (2012) 85 final, 12 March 2012

Commission (EC), ‘Proposal for a Directive on the European Parliament and the Council on the freezing and confiscation of proceeds of crime in the European Union’ COM (2012) 85 final, 13 March 2012
Commission (EC), ‘Report on the second joint review of the implementation of the Agreement between the European Union and the United States of America on the processing and transfer of Financial Messaging data from the European Union to the United States for the purposes of the Terrorist Finance Tracking Program’ SWD(2012) 454 final,14 December 2012
Commission (EC), ‘Report form the Commission to the European Parliament and the Council on the application of Directive 2005/60/EC on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing’ Brussels, 11.4.2012COM (2012) 168 final
Commission (EC), ‘European Commission Report to European Parliament on the application of Directive 2005/60/EC on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing’ COM (2012)168 final,11 April 2012
Commission (EC), ‘Commission report on the joint review of the implementation of the Agreement between the European Union and the United States of America on the processing and transfer of Financial Messaging data from the European Union to the United States for the purposes of the Terrorist Finance Tracking Program’ Brussels,16 March 2011
Commission (EC), ‘Staff working paper on Anti-money laundering supervision of and reporting by payment institutions in various cross-border situations’ SEC (2011) 1178 4 October 2011
Commission (EC) ‘Agreement between the US and the EU on the processing and transfer of financial messaging data from the EU to the EU for the purposes of the TFTP’ 27 July 2010 OJ L 195/5 – L 195/14
Commission (EC) ‘Overview of information management in the area of freedom, security and justice’ 20 July 2010 COM (2010) 385 final
Commission (EC), ‘Communication from the Commission to the European Parliament, the Council. The European Economic and Social Committee and the Committee of the Regions: Reinforcing sanctioning regimes in the financial services sector’ COM (2010) 716 final, 8 December 2010
Commission (EC), ‘DG Internal Market and Services – Budget Final Study in the Application of the Anti- Money Laundering Direction’ Known as the ‘Deloitte Report’ December 2010

Commission (EC), ‘DG Internal Market and Services – Budget Final Study in the Application of the Anti- Money Laundering Direction’ Known as the ‘Deloitte Report’ December 2010

Commission (EC), ‘The EU CounterTerrorism Policy:main achievements and future challenges’ 20 SEC(2010) 911 final July 2010

Commission (EC), ‘Assessing the effectiveness of EU Member States’ practices in the identification, tracing, freezing and confiscation of criminal assets’ Matrix June (2009)

Commission (EC), ‘The European Charter for researchers, Code of conduct for the Recruitment of Researchers’ Europa 21620 (2005)

Commission (EC),’Report on the feedback on money laundering and terrorist financing typologies’ Financial Intelligence Unit’s Platform. Brussels, 22 April 2008

Commission (EC),’Report on Confidentiality and Data Protection in the activity of FIUs (good practices) Financial Intelligence Unit’s Platform Brussels, 28 April 2008

Commission (EC), ‘Study on “Best practices in vertical relations between the Financial Intelligence Unit and (1) law enforcement services and (2) Money Laundering and Terrorist Financing Reporting entities with a view to indicating effective models for feedback on follow-up to and effectiveness of suspicious transaction reports’ (2008)

Commission (EC), ‘Financial Services Provision and the Prevention of Financial Exclusion’ Brussels March 2008

Commission (EC), ‘Stepping up the Fight Against Terrorism’ 6 November 2007, COM (649)1807 final 2007

Commission (EC), ‘Communication on evaluation of EU policies in the area of Freedom, Security and Justice,’ COM (332) final, 28 June 2006 Commission (EC), ‘Commission Staff Working Paper on Anti-money laundering supervision of

Commission (EC),’ The application of Directive 91/308/EEC on the prevention of the use of the financial system for the purpose of money laundering in relation to the identification of clients in non-face to face transactions and possible implications for electronic commerce’ SEC (2006) 1792 final, 19 December 2006

Commission (EC), ‘Proceeds of organised crime Ensuring that "crime does not pay" COM (2008) 766 final, 20 November 2008

Commission (EC), ‘Final Study on the Application of the Anti-Money Laundering Directive) Deloitte report’ 24th January 2011 Brussels

Commission (EC),'EU Efforts in the fight against terrorist financing in the context of Financial Action task force's nine special recommendations and the EU counter Terrorism finance strategy' Final report John Howell 1 February 2007

Commission (EC), 'The Hague Programme: Ten priorities for the next five years The Partnership for European renewal in the field of Freedom, Security and Justice' Brussels COM (2005) 184 final, 10 May 2005

Council (EC), 'The Stockholm Programme – An Open and Secure Europe serving and Protecting Citizens' (2010/C 115/01) OJ C 115, 04 May 2010

Council (EC), 'EU Counter terrorism Strategy Discussion Paper' 12 May 2012

Council (EC), 'Staff Working Paper on Anti-money laundering supervision of and reporting by payment institutions in various cross-border situations' SEC(2011) 1178 final, 4 October 2012

Council (EC), 'Fact Sheet: the European Union and the Fight against Terrorism' (2007) REV 1 14 May 2007 Available from <http://www.statewatch.org/news/2007/mar/eu-terrorism-summary-march-07.pdf > date accessed 15/04/2011

Council (EC), 'Commission Staff Working Paper on Anti-money laundering supervision of and reporting by payment institutions in various cross-border situations' SEC (2011) 1178 final 7 October 2011

Council(EC), **'**The Stockholm Programme - An Open and Secure Europe serving and Protecting Citizens' (2010/C 115/01) OJ C 115, 04 May 2010

Council (EC), 'EU revised Strategy and Terrorist Financing' (2008) Brussels 17 July 2008

Council (EC), PRES/07/157 **'**Processing and protection of personal data subpoenaed by the Treasury Department from the US based operation centre of the Society for Worldwide Interbank Financial Telecommunication (SWIFT)' 11291/2/07 REV 2 (Presse 157) Luxembourg, 28 June [2007]

Council (EC), 'Fight against the financing of terrorism- implementation of Common Position 2001/931/CFSP' 28 June 2007

Council (EC), 'EU Action plan on Combating terrorism' 13 February 2006 5771/1/06 REV 1

Council (EC), 'Counter-Terrorism Strategy Brussels' 30 November 2005 14469/4/05 REV 4

Council (EC) EU-US agreement on financial messaging data for purposes of the US Terrorist Finance Tracking Programme (28 June 2010) 11575/10 Presse 194

Council (EC) ‘European Union Counter-Terrorism Strategy’ 30 November 2005 14469/4/05
Council (EC), European Security Strategy Brussels ‘Secure Europe in a Better World’ 12 December 2003
Council (EC), ‘Annual report on the implementation of the EU Counter-Terrorism Strategy’ Brussels, 7 December 2012 Council (EC), Parliamentary Assembly Resolution 1271 2002
Coroners Inquests into the London Bombings of 7 July 2005,
Report under Rule 43 of The Coroner’s Rules 1984 (London May 2011)
CRS Report for Congress ‘Terrorist Financing: The 9/11 Commission Recommendation February 25, 2005
DFID ‘The engine of development: the private sector and prosperity for poor’ 2011
DFID, ‘UK Remittances Working Group Report’ (2005) Available at <http://webarchive.nationalarchives.gov.uk/+/http://www.dfid.gov.uk/Media-Room/Press-releases/2005-completed/New-report-launched-into-the-27-billion-UK-remittance-market1/ > date accessed 11/04/2011
DFID, ‘Statistics on International Development 2007/08 – 2011/12’ (2012)
DFID ‘Supply side Constraint for Remittances Service Providers in the UK’ DMA (2010)
DFID ‘Sending Money Home A Survey of Remittance Products and Services in the United Kingdom’ (2005)
DFID Blackwell M, Seddon D, ‘Informal Remittances from the UK: Values Flows and Mechanisms.’ Overseas Development Group (2004)
Developing Market Associates Limited, Issacs L, ‘Research on Migrant Remittances and Linkage to Broader Access to Financial Services’ London 2008)
Developing Market Associates Limited ‘Supply Side Constraint for Remittance Service Providers in the UK’ (2010)
Eckert S, Biersteker T, ‘Due Process and Targeted Sanctions An Update of the “Watson Report” ‘Watson Institute' for 'International' Studies December 2012
Europe Economics,’ Study on the Cost of Compliance with Selected FSAP Measures’(January 2009, London)
Egmont Group, ‘Enterprise-wide STR Sharing: Issues and Approaches’ February (2011)
Europol ‘TE- SAT EU Terrorism Situation and Trend Report’ (2009) Available at
Europol ‘TE- SAT EU Terrorism Situation and Trend Report’ (2011)

ECRI ‘General Policy Recommendation No. 8 on Combatting Racism while Fighting Terrorism’ 17 March 2004) CRI (2004)26

Edmonds T, ‘Money Laundering regulations’ SN/BT/2592 14 November 2012

Egmont Group, ‘FIUs and Terrorist Financing Analysis - A review by the Egmont Group of sanitised cases related to Terrorist Financing’ 58-OpWG

El Qorchi, Maimbo SM, Wilson JF ‘Informal Funds Transfer Systems. An Analysis of the Informal Hawala System’ IMF (2003)

European Foundation for Financial Inclusion ‘Financial inclusion and new means of payment Qualitative review in five European countries’ (2013)

Eurostat, Tavares C, Thomas G, Roudaut M, ‘Money laundering in Europe Report of work carried out by Eurostat and DG Home Affairs’ (2010)

European Commissioner for Human Rights in his Opinion 1/2002 (2002)

Edwards T ‘Financial Inclusion (Exclusion)’ House Commons Library, SN/BT/3197 (2011)

Ozbunden E, Turhan M, ‘Emergency Powers’ Report of the European Commission for Democracy through Law (Strasbourg 1995)

Explanatory Memorandum to the Money Laundering Regulations 2007 No. 2157

Information Commissioner to the House of Lords European Union Select Committee, ‘The Serious Organised Crime Agency’s operation and use of the ELMER database, Appendix 2 European Select Committee Sixth Report, Money laundering: data protection for suspicious activity reports’ (HL 82, 2010-2011, 1-22)

Europol ‘EU serious and Organised Crime Threat Assessment’ 2013

Mena FATF ‘Money Laundering and Terrorist Financing and Indicator of the Middle East North African Region’

Europe Economics ‘Study on the Cost of Compliance with Selected FSAP Measures’ 5 January 2009

FATF ‘FATF Report the Role of Hawala and other similar Service Providers in Money Laundering and Terrorist Laundering Terrorist Financing’ (2013)

FATF ‘FATF Guidance National Money Laundering and Terrorist Financing Risk Assessment’ (2013)

FATF ‘International Standards on Combatting Money Laundering and the Proliferation and the Financing of Terrorism and Proliferation: The FAFT Recommendations.’ (2012)

FATF ‘Money Laundering through Money Remittance and Currency Exchange Providers’ (2010)
FATF ‘FATF Recommendations Media Narrative’ (2012)
FATF ‘Operational Issues Financial Investigations Guidance’ (2012)
FAFT ‘Annual Report 2011-2012’ (2012)
FATF **‘**Anti-money laundering and terrorist financing measures and Financial Inclusion’ (2011)
FATF ‘Money Laundering & Terrorist Financing Threat Assessment’ (2010)
FATF ’Money Laundering through Money Remittance and Currency Exchange Providers’ (2010)
FATF ‘An introduction to FAFT and its work’ (2010)
FAFT ‘Global Money Laundering and Terrorist Financing Threat Assessment’ (2010)
FATF ‘Mutual Evaluation Fourth Follow-up Report; Anti-Money Laundering and Combating the Financing of Terrorism’ United Kingdom’ (2009)
FATF ‘International Best Practices: The Freezing of Terrorist Assets’ (2009)
FATF, ‘Risk Based Approach Guidance for Money Service Businesses’ (2009)
FATF ‘Methodology for Assessing Compliance with the FATF 40 Recommendations and (Special Recommendations’ (2004 updated 2009)
FATF ‘Money Laundering and Terrorist Finance Risk Assessment Strategies’ (2008)
FATF ‘Guidance on Capacity Building for Mutual Evaluations and Implementation of the FATF Standards Within Low Capacity Countries’ (2008)
FATF ‘Revised Mandate 2008-2012’ (2008)
FAFT IX Special Recommendations October 2001 (Incorporating all subsequent amendments until February (2008)
FAFT ‘Terrorist Financing’ Typology Report’ (2008) OECD France
FATF ‘Policy on Observers’ (2008)
FATF ‘Membership Policy’ (2008)
FATF ‘Guidance on the Risk-Based Approach to Combating Money Laundering and Terrorist Financing: High Level Principles and Procedures’ (2007)
FATF Third Mutual Evaluation Report Anti Money Laundering and Combating the Financing of Terrorism the United Kingdom of Great Britain and Northern Ireland’ (2007)
FATF’ Third Mutual Evaluation Report Anti-Money Laundering and Combatting the Financing of Terrorism: United Kingdom of Great Britain and Northern Ireland’ (2007)

FATF, ‘Guidance on the Risk based Approach to Combating Money Laundering and Terrorist Finance: High level Principles and Procedures’ (2007)FATF ‘Money Laundering and Terrorist Financing Typologies 2004-2005’ (2005)
FATF ‘The Forty Recommendations’ June 2003 (incorporating the amendments 22 October 2004)
FATF ‘Special Recommendations on Terrorist Financing’ (2004)
FATF, ‘Combating the Abuse of Alternative Remittance Systems: International Best Practices’ (2003)
FATF ‘Guidance Notes for the Special Recommendations on Terrorist Financing and the Self -Assessment Questionnaire’ (2002)
FinCen Advisory Issue 33 ‘Informal Value Transfer Systems’ United States Department of the Treasury Financial Crimes Enforcement Network (2003)
FinCen ‘The SAR Activity review trends tips and Issues: In focus Money service Businesses’ Issues No. 21 (2012)
Financial Services Consumer Panel, ’Basic Banking Research’ (2002)
Financial Services Consumer Panel, ‘Consultation by the High-level Expert Group on reforming the structure of the EU banking sector’ (2012)
Financial Services Consumer Panel, ‘Further evidence to the Treasury Committee Inquiry into Competition and Choice in the Banking Sector January 2011’ (2011)
Fintrac, ‘Typologies and Trends Reports: Money Laundering and Terrorist Finance Trends in Fintrac Cases Disclosed’ 2007-201 (2013)
Fintrac,’Typologies and Trends Reports: Money Laundering and Terrorist Finance (ML/TF) Typologies and Trends for Canadian Money Service Businesses (MSBs)’ (2010)
Flemming M.H. ‘UK Law Enforcement Agency Use and Management of Suspicious Activity Report Towards Determining the Value of Regime’ UCL (2005)
Friends Provident Foundation, Kempson E, Collard S ‘Developing a vision for financial inclusion’ University of Bristol (2012)
FCA ‘Anti-money laundering annual report 2012/13’ (2013)
FSA ‘The FSA’s role under the Payment Services Regulations 2009: Our approach’ (2012)
FSA ‘Financial Crime Newsletter’ Issue 16 (2012)
FSA ‘Review of firms ’implementation of a risk-based approach to anti-money laundering (AML)’ (2008)
FSA ‘In or out? Financial exclusion: a literature and research review’ (2000)
FCA ‘Memorandum of understanding between HMRC and FCA’

GCAP ‘Global Standard-Setting Bodies and Financial Inclusion for the Poor Toward Proportionate Standards and Guidance’ (2011)
GFBI ‘Global Standard Setting Bodies and Financial Inclusion: Insights and lessons from five countries: Brazil, Kenya, Mexico, the Philippines, and South Africa’ Alliance for Financial Inclusion (2011)
Gupta S, Pottilo C, Wagh S, ‘Impact of Remittances on Poverty and Financial Development in Sub-Saharan Africa’ IMF WP/07/38 (2007)
Hagan S, ‘Anti-Money Laundering and Combating the Financing of Terrorism (AML/CFT)—Report on the Review of the Effectiveness of the Program’ IMF (2011)
Hagan S, Calari C, ‘Anti-Money Laundering and Combating the Financing of Terrorism: Review of the Quality and Consistency of Assessment Reports and the Effectiveness of Coordination’ IMF (2006)
Hagan S, Calari C, ‘Anti-Money Laundering and Combating the Financing of Terrorism: Observations from the Work Program and Implications Going Forward’ IMF (2005)
Hate Free Zone Letter dated May 9th 2006 sent to Fincen ‘MSB Advance Notice of Rule making’ (RIN 1506-AA85)’
HM Treasury ‘Anti Money Laundering and Counter Terrorist Finance Supervision Report 2012-13 (2013)
HM Treasury ‘Written Ministerial Statement Operation of the UK’s Counter-Terrorist Asset Freezing Regime: 1 July 2013 to 30 September 2013’ Eleventh Report (2013)
HM Treasury ‘Anti-Money Laundering and Counter Terrorist Finance Report 2011-12’ (2013)
HM Treasury ‘Written Ministerial Statement Operation of the UK’s Counter-Terrorist Asset Freezing Regime: 1 April 2013 to 30 June 2013’ Tenth report (2013)
HM Treasury ‘Written Ministerial Statement Operation of the UK’s Counter-Terrorist Asset Freezing Regime: 1 January 2013 to 31 March 2013’ Ninth Report (2013)
HM Treasury ‘Written Ministerial Statement Operation of the UK’s Counter-Terrorist Asset Freezing Regime: 1 October 2012 to 31 December 2012’ Eighth Report 2013)
HM Treasury ‘Written Ministerial Statement Operation of the UK’s Counter-Terrorist Asset Freezing Regime: 1 July 2012 to 30 September 2012’ Seventh Report (2012)
HM Treasury ‘Written Ministerial Statement Operation of the UK’s Counter-Terrorist Asset Freezing Regime: 1 April 2012 to 30 June 2012’ Sixth Report (2012)
HM Treasury ‘Written Ministerial Statement Operation of the UK’s Counter-Terrorist Asset Freezing Regime: 1 January 2012 to 31 March 2012’ Fifth Report (2012)

HM Treasury ‘Written Ministerial Statement Operation of the UK’s Counter-Terrorist Asset Freezing Regime: 1 October 2011 to 31 December 2011’ Fourth Report (2012)
HM Treasury ‘Report to the European Parliament and to the Council on the application of the Directive 2005/60/EC on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing – UK Comments’ (2012)
HM Treasury, ‘Consultation on proposed changes to the money laundering regulations 2007: Government response’ (2012)
HM Treasury, ’Consultation on proposed changes to the money laundering regulations 2007: Government Response’ (2012)
HM Treasury, ‘Consultation on proposed changes to the money laundering regulations 2007: Summary of Responses (2011)
HM Treasury, ’Consultation on proposed changes to the money laundering regulations 2007: A summary of responses‘(2011)
HMRC ‘Notice MLR9a Registration Guide for Money Service Businesses’ (2011)
HMRC, ‘Anti-Money Laundering Annual Report to Her Majesty's Treasury’ 2010-2011 (2011)
HMT ‘Anti-Money Laundering and Counter Terrorist Finance Supervision Report 2010’ (2011)
HM Treasury, ‘Review of the Money Laundering Regulations: summary of the call for evidence’ (2010)
HMRC ‘Anti-money laundering guidance for money service businesses’ MLR8 MSB (2010)
HMRC, ‘Money Service Business Action Plan C’ (2009)
HMRC, ‘AML Guidance for Money Service Businesses’ MLR8 (2009)
HM Treasury Notice 6 April 2009
HM Treasury Notice 2 March 2009
HM Treasury Notice 27 January 2009
HM Treasury Notice 13 February 2009
HM Treasury Notice 24 March 2009
HM Treasury Notice 31 March 2009
HM Treasury Notice 16 July 2009
HM Treasury Notice27 May 2009
HM Treasury Notice 8 October 2009
HM Treasury Notice 10 August 2009

HM Treasury Notice 20 July 2009
HM Treasury Notice 22 October 2009
HM Treasury, 'The Financial Challenge to Crime and Terrorism' (2007) HMSO
HM Treasury 'Financial inclusion: an action plan for 2008-11' (2007)
HM Treasury, 'The Regulation of Money Service Business: A Consultation' (2006)
HM Treasury, 'Promoting Financial Inclusion' (2004)
HM Treasury, 'Anti-Money Laundering Strategy' (2004)
HM Treasury, FSA, Bank of England. 'The EU Financial Services Action Plan: A Guide' 31 (2003)
HM Treasury, 'Combating the Financing of Terrorism: A report on UK Action' (2002)
HMSO, Explanatory Memorandum Money Laundering Regulations 2007 No. 2157
Home Office Tables for 'Operation of police powers under the Terrorism Act 2000 and subsequent legislation, quarterly update to 30 June 2013' (2013)
Home Office 'Operation of police powers under the Terrorism Act 2000 and subsequent legislation: arrests, outcomes and searches, quarterly update to 30 June 2013 Great Britain' (2013)
Home Office, 'Counter-Terrorism Local Profiles: An Updated Guide' (2012)
Home Office Statistical Bulletin' Operation of police powers under the Terrorism Act 2000 and subsequent legislation: Arrests, outcomes and stops and searches Great Britain 2011/12' HOSB 11/12 (2012)
Home Office, SARS Annual Report 2011
Home Office, SARS Annual Report 2010
Home Secretary John Reid 'Threat Levels: The System to Assess the Threat from International Terrorism' (London Stationary Office 2006)
Home Office Circular 029/2008 'Proceeds of Crime Act 2002: Obligations to report Money Laundering the Consent Regime
Home Office Circular 53/2005 'Money Laundering: The confidentiality and sensitivity of SARs and the identity of those that make them' (15 December 2005)
Home Office Statistical Bulletin,' Operation of police powers under the Terrorism Act 2000 and subsequent legislation: Arrests, outcomes and stops and searches Great Britain 2011/12' HOSB 11/12 (13 September 2012)
Human Rights Watch 'In the Name of Security. Counterterrorism Laws Worldwide since September (2012 US)
Ingves S (Financial Systems Department) 'Approaches to a Regulatory Framework for Formal and Informal Remittances Systems: Lesson Learnt' IMF (2005)
IMF 'Pilot External Sector Report' (2012)

IMF ‘The IMF’s Financial Surveillance Strategy’ (2012)
IMF ‘Enhancing Financial Sector Surveillance in Low Income Countries (LICS) Case Studies’ (2012)
IMF ‘The IMF and the Fight Against Money Laundering and the Financing of Terrorism’ (2011)
IMF/WB ‘2011 Review of the Standards and Codes Initiative’ (2011)
IMF’ United Kingdom: Anti-Money Laundering/Combating the Financing of TerrorismTechnical Note’ IMF Country Report No. 11/231 (2011)
IMF ‘Country Report’ ‘United Kingdom: Anti-Money Laundering/Combating the Financing of Terrorism Technical Note’ Report No. 11/231 (2011)
IMF ‘Topical trust Fund: Anti-Money Laundering / Combating the Financing of Terrorism (AML/CFT)’ (2009)
IMF/WB ‘Anti-Money Laundering and Combating the Financing of Terrorism: Review of the Quality and Consistency of Assessment Reports and the Effectiveness of Coordination’ (2006)
IMF ‘Monetary and Financial Systems Department ‘Approaches to Regulatory framework for Formal and Informal Remittance Systems: Experiences and Lessons’ (2005)
IMF ‘Regulatory Frameworks for Hawala and other remittance systems’ (2005)
IMF ‘World Economic Outlook: Globalization and External Imbalances’ (2005)
IMF ‘Approaches to a Regulatory Framework for Formal and Informal Remittance Systems: Experiences and Lessons’ (2005)
IMF ‘Twelve-Month Pilot Program of Anti-Money Laundering and Combating the Financing of Terrorism (AML/CFT) Assessments Joint Report on the Review of the Pilot Program’ (2004)
IMF ‘Intensified Work on Anti-Money Laundering and Combating the Financing of Terrorism (AML/CFT): Joint Progress Report on the Work of the IMF and World Bank’ (2002)
International Commission of Jurists ‘Berlin Declaration’ (2004)
International Commission of Jurists ‘Assessing Damage: Urging Action Report of the Eminent Jurists Panel on Terrorism, Counter-terrorism and Human Rights - Executive Summary, Geneva (2009)
International Commission of Jurists ‘Assessing Damage. Urging Action Report of the Eminent Jurists Panel on Terrorism, Counter-terrorism and Human Rights.-Full Report, Geneva (2009)
ILO ‘International labour migration A rights-based approach’ Geneva (2010)

IOM ‘The Millennium Development Goals and Migration’ No.20 (2005)
Interpol AG-2005-RES-12
Interpol Fact Sheet terrorism (2010) COM/FS/2010-02/PST-01
Interpol, Jost P.M. Sandhu H.S. ‘The Hawala Alternative Remittance System and it Role in Money Laundering’ (2000)
Isaccs L ‘A Report to UK Remittances Task Force Research on Migrant Remittances and Linkage to Broader Access to Financial Services’ (2008)
Kent R et al ‘Social Facilitation, Development and the Diaspora: Support for Sustainable Health Services in Somalia. Report funded’ by USAID, London (2004)
KPMG ‘Feasibility Study on the Financial Services in Somalia’ European Commission Somalia Unit (2004)
KPMG ‘UK Banks: Performance Benchmarking: Full Year Results 2010’ (2011)
KPMG ‘Global Anti -Money Laundering Survey 2007- How Banks are Facing up to the Challenge.’ (2007)
JMLSG ‘Prevention of money laundering/ combating terrorist financing, Guidance for the UK Financial Sector Part III’ (2010)
JMLSG ‘Prevention of money laundering/ combating terrorist financing, Guidance for the UK Financial Sector Part 1’ (2009)
Jones SG, Libicki MC, ‘How Terrorist Groups End: Lessons for Countering al-Qa’ida’ RAND (2008)
Johnston B, Nedelescu O,‘The Impact of Terrorism on Financial Markets’ WP/05/60 IMF (2005)
Kok U, Sun Y, ‘Remittances in Pakistan—Why have they gone up, and why aren’t they coming down?’ in Pakistan—Why have they gone up, and why aren’t they coming down? IMF WP/11/200 (2011)
Lander S, ‘Review of the Suspicious Activity Reports Regime -The SARs Review’ (2006)
Lenain P, Bonturi M, Koen V, ‘The Economic Consequences of Terrorism’ Economics Dept. working Paper 334 OECD (2002)
Report ‘Like Minded States’ and Switzerland, Improving fair and clear procedures for a more effective UN sanctions system’ (2011)
Lindley A., ‘Migrant remittances in the context of crisis in Somali society: A case study of Hargesia ‘Humanitarian Policy Group April ODG (2006)
Millar S ‘Multilateral Counterterrorism: Harmonizing Political Direction and Technical Expertise’ Policy Analysis Brief the Stanley Foundation (2010)
15/05/2013

Mitton L ‘Financial inclusion in the UK Review of policy and practice’ Joseph Rowntree Foundation, University of Kent (2008)

‘Money Laundering and Terrorist Financing Trends and Indicators in the Middle East and North Africa Region’ (2010)

Omer A, ‘A Report on Supporting Systems and Procedures for the Effective Regulation and Monitoring of Somali Remittance Companies (Hawala)’ UNDP (2002)

Passas P ‘Informal Value Transfer Systems. Terrorism and Money Laundering’ Report to the U.S. National Institute of Justice, (2003) Document No. 208301

Pearce D, Seymour V, ‘Summary Sending Money Home – Remittances to Developing Countries from the UK’ (2005) National Commission on Terrorist Attacks upon the United States, ‘Reforming Enforcement and the Intelligence Community; April 13-14 (2004) Washington DC

NCA, ‘Engagement with the UKFIU’ (2013)

NCA, ‘Suspicious Activity Reports (SARs) Annual Report 2013’ (2013)

Northern Ireland Office ‘Northern Ireland Terrorism legislation: Annual Statistics’ 2012/13

OECD, ‘The Economic Consequences of Terrorism,’ (2002) Economic Outlook 71 chapter 4

Office of Fair trading, ‘Personal and Current Accounts in the UK: An OFT Market Study’ (2008)

Office for National Statistics, ‘Ethnic group statistics: A guide for the collection and classification of ethnicity data’, (2003) TSO London

Office for National Statistics, ‘2011 Census: Key Statistics for England and Wales, March 2011’ (2012)

Office for National Statistics, ‘Changing religious affiliations in England and Wales 16 May 2012’ (2012)

Office for National Statistics, ‘Focus Ethnicity and Religion’ Edited by Dobbs J., Green H., Zealey L,’ (2006) Palgrave Macmillan

Office for National Statistics ‘Country of birth & national identity’, in Focus on Religion Overview Report’ (2005)

Owuor V, ‘Somalia Banking: Transfers, Challenges And Opportunities’ (2013)

Paris Minimum Standards of Human Rights Norms in a State of Emergency" (1985) 79 AJIL 1072

Pieke F, Van Hear N, Lindley A, ‘Synthesis Study: Report On Informal Remittance Systems in Africa, Caribbean and Pacific (ACP) Countries Ref: RO2CS2008, Centre on Migration Policy and Society (2005) Available at

<http://www.dfid.gov.uk/r4d/PDF/Outputs/EC-PREP/InformalRemittanceFinalRep.pdf> date accessed 13/06/2011

Rees D, 'Money Laundering and terrorism Financing risks posed by alternative remittance in Australia' Australian Government, AIC Research and Policy Series 106 (2010)

Respect Project, Code of Practice for Socio Economic Research 2004

Rupérez J, 'The UN's fight against terrorism: five years after 9/11' UN (2006) ARI 83/200 Real Instituto Elcano, Spain

Schott P, 'Reference Guide to Anti -Money Laundering and Combating the Finance of Terrorism: Second Edition and Supplement to Special Recommendation IX' IMF (2006)

Sheikh H, Healy S, 'Somalia's Missing Million: The Somalia Diaspora and its role in development' UNDP (2009)

Silva CV, 'Briefing: Migrant remittances to and from the UK' The Migrant Observatory Oxford University, (2011)

Smith C, 'Population Trends' Office for National Statistics Winter edn 142 (2010)

SOCA - The Suspicious Activity Reports Regime (2008)

Serious Organised Crime Agency 'The Suspicious Activity Reports Regime Annual Report' (2008)

Serious Organised Crime Agency 'The Suspicious Activity Reports Regime Annual Report' (2009)

SOCA 'UK Threat Assessment Serious and Organised Crime' 2008/2009(2009)

SOCA 'Suspicious Activity Reports Regime: Annual Report 2011' (2011)

Social Research Association (SRA), 'Ethical Guidelines' (2003)

Taveres C Thomas G, Roudaut M, 'Money laundering in Europe Report of work carried out by Eurostat and DG Home Affairs' Eurostat (2010)

Thun Group, "Statement by the Thun Group of Banks on the 'Guiding Principles for the Implementation of the United Nations "Protect, Respect, and Remedy" Framework' on Human Rights," (2011)

Tiwari S, Sahay R, Sayeh A, 'Enhancing Financial Sector Surveillance in Low Income Countries (LICS)- Case Studies' IMF (2012)

UK Government Comments on the Report to the European Parliament and to the Council on the application of the Directive 2005/60/EC on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing' (2012)

UKRTF, 'Remittances Customer Charter' Jan (2008)

UKWG, 'The UK Remittance Market' DFID (2005)

UREC (University of Leeds research Ethics Committee) ‘Draft Amended Guidance upon ethical issues.’ (2008) Agendum 3 (a) UREC/07/12
UN Report of the Monitoring Group on Somalia and Eritrea pursuant to Security Council resolution 2002 (2011) ‘Letter dated 27 June 2012 to the Chairman of the Security Council Committee pursuant to resolutions 751 (1992) and 1907 (2009) concerning Somalia and Eritrea’ (2012)
UN ‘Statement by the Special Rapporteur on the promotion and protection of human rights while countering terrorism at the 66th session of the General Assembly’ (2011) New York
UN Committee on the Elimination of Racial Discrimination, ‘Consideration of reports submitted by States parties under article 9 of the Convention’ Seventy-ninth Session (14 September 2011) C/ GB R/ CO/ 18-20 (2011)
UN ‘Statement Special Rapporteur for Human Rights and Counter terrorism, Martin Scheinin ‘Human rights / Counter terrorism: the new UN listing regimes for the Taliban and Al-Qaida’ (2010) New York
UNCTC Background Paper ‘Thematic discussion of the Counter-Terrorism Committee on the human rights aspects of counter-terrorism in the context of resolution 1373 (2001)’ (2010)
UN Counter Terrorist Implementation Task Force Working Group Report, ‘Tackling the Financing of Terrorism’ (2009) New York
UN ‘Rule of Law Indicators: Implementation Guide and Project Tools’ (2011)
UN Staff Statement No.9 ‘Law Enforcement, Counterterrorism, and Intelligence Collection in the United States Prior to 9/11’ 9 /11 Commission Tenth Public Hearing on "Law Enforcement and the Intelligence Community" (2004) Washington, DC
UNDP ’Cash and Compassion The Role of the Somali Diaspora in Relief, Development and Peace Building’ Vol 1 (2011)
UNDP Roundtable Summary ‘The Potential Role of Remittances in Achieving the Millennium Development Goals – An Exploration’ 16 January 2006
UNDP Omer A, ‘A Report on Supporting Systems and Procedures for the Effective Regulation and Monitoring of Somali Remittance Companies (Hawala)’ (2002)
UNDP Somalia and the World Bank ‘Socio-Economic Survey 2002 Somalia,’ UNDP Somalia and the World Bank, Nairobi (2003)
UNDP (United Nations Development Programme) ‘Human Development Report 2001 Somalia’ Somalia (2001)
UN and World Bank ‘Somali Joint Needs Assessment Macroeconomic Development Framework and Data Development Cluster Report’ (2006)

UN Staff Statement No.12 ‘Reforming Law Enforcement, Counterterrorism and Intelligence Collection in the United States’ 9/11 Commission Tenth Public Hearing Washington DC (2004)
UNODOC ‘Model legislation on money laundering and financing of terrorism’ (2005)
UNODC ‘An Overview of Conventions and other International Standards concerning Money Laundering and the Countering of the Financing of Terrorism,’ (2007) Vienna
UNODC ‘Frequently Asked Questions on International Law Aspects of Countering Terrorism’ (2009) Vienna
UNODC Report of special Rapporteur on Human Rights and Terrorism Un.Doc. A/HRC/4/26 (2007)
UNCTC ‘Conference Report Special Meeting Hosted by OSCE’ 6th (2003) Vienna
UN A/67/557–S/2012/805 ‘Identical letters dated 7 November 2012 from the Permanent Representative of Switzerland to the United Nations addressed to the Secretary-General and the President of the Security Council’
UN CTED ‘Technical Guide to the Implementation of resolution 1373 (2001) (2009)
UN CTC ‘Survey of the Implementation of Security Council Resolution 1373 (2001)by Member States’ (2010)
UNHSU, ‘Human Security Theory and Practice’ Office for the Coordination of Humanitarian Affairs United Nations (2009)
UNICEF, ’Remittances and Children’s Rights: An overview of Academic and Policy Literature’ Division of Policy and Planning (2007)
UN Security Council Committee pursuant to Res 1267(1999) Res 1989 (2011) concerning Al-Qaida, Guidelines of the Committee on the Conduct of its work (2011)
UN Commission on Human Rights ‘Siracusa Principles on the Limitation and derogation Provision in the International Covenant on Civil and Political Rights’ (1984)
US GAO ‘Report to Congressional Requesters Terrorist Financing U.S. Agencies Should Systematically Assess the Use of Alternative Financing Mechanisms’ November (2003) GAO-04-163
US Permanent Sub Committee on Investigations, ‘U.S. Vulnerabilities to Money Laundering, Drugs, and Terrorist Financing: HSBC Case History’ (2012)
US Department of Treasury ‘Audit of the Department of Treasury Forfeiture Fund’s Fiscal years 2009 and 2008 Financial Statements’ OIG-10-012 (2009)
US Department of Treasury, Justice and Homeland Security, ‘The 2007 National Money Laundering Strategy,’ (2007)
Cohen D United States Under Secretary of the Treasury for Terrorism and Financial ‘Intelligence Kidnapping for Ransom: The Growing Terrorist Financing Challenge’

(2012)
US ‘National Strategy for Combating Terrorism’ (2006) White House the Bush Administration Available from http://georgewbush-whitehouse.archives.gov/nsc/nsct/2006/ Accessed 11/04/2011
US ‘National Strategy for Counterterrorism’ White House (2011)
US Department of Homeland Security ‘National Terrorism Advisory Public Guide’ (2011)
US John Roth, Douglas Greenburg, Serena Wille, National Commission on Terrorist Attacks Upon the United States, Staff Report to the Commission ‘Monograph on Terrorist Financing,’ (2004)
9/11Report, Final Report of the National Commission on Terrorist Attacks Upon the United States ‘The 9/11 Commission Report’ July 22nd (2004) Washington DC
US Permanent Subcomittee on Investigations ‘U.S. Vulnerabilities to Money Laundering, Drugs, and Terrorist Financing: HSBC Case History’ (2012)
US Roth J, Greenburg D, Wille S, ‘Staff report to the Commission on terrorist Attacks Upon the United states-monograph on Terrorist Financing.’ (2004) Washington DC
US Eldridge T. and others ‘Staff report to the Commission on terrorist Attacks Upon the United states- Monograph - 9/11 and Terrorist Travel’ Presented at the Seventh hearing on Borders, Transportation, and Managing Risk (2004) Washington DC
US Report to the Committee on Foreign Relations United States Senate ‘Al Qaeda in Yemen and Somalia: A Ticking Time Bomb’ One Hundred and Eleventh Congress Second Session (2010)
US Subcommittee on Investigations, Homeland Security and government Affairs, ‘ U.S. Vulnerabilities to Money Laundering, Drugs, and Terrorist Financing: HSBC Case History’ Washington (2012)
US Committee on Banking and Urban Affairs, ‘First session on hawala and underground terrorist finance mechanisms: Informal international financing networks that can serve as a pipeline of funds for terrorists’ Washington (2002)
Vargas -Silva C ’Briefing Migrant Remittances to and from the UK’ Migrant Observatory University of Oxford First revision 11/07/2011 (2011)
Vargas -Silva C ’Briefing Migrant Remittances to and from the UK’ Migrant Observatory University of Oxford Second revision 23/10/2013 (2013)
Watson Institute, Eickert S and Biersteker T ‘Due Process and Targeted Sanctions: An Update of the “Watson Report”’ (2012)
Wolfsberg Group ‘Wolfsberg Statement, on a Risk Based Approach for Managing Money Laundering Risks’ (2006)

Wolfsberg Group ‘Wolfsberg Statement, on the Suppression of the Financing of Terrorism’ (2002)
Wolfsberg Group ‘Wolfsberg Statement, on Monitoring Screening and Searching’ (2003)
Wolfsberg Group ‘Wolfsberg Statement - Guidance on a Risk Based Approach for Managing Money Laundering Risks’ (2011)
Wolfsberg Group ‘The Suppression of the Financing of Terrorism Wolfsberg Statement’(2002)
World Bank, Moapatra S, Ratha D, Siwal A, ‘Migrant Development Brief No 17 Outlook for Remittance Flows 2012-14’ (2011)
World Bank ‘Migrant and Development Brief No. 20’ (2013)
World Bank ‘Migrant and Development Brief No. 20’ (2012)
World Bank ‘The World Bank in the Global Fight Against Money Laundering and Terrorist Financing’ (2003)
World Bank, Moapatra S, Ratha D, Siwal A, ‘Migration and Remittances Fact book 2011’ (2011)
World Bank and European Commission, ‘Remittances in Africa A Catalogue of Studies and Technical Assistance by the World Bank, Development Agencies and Government in Africa’ (2011)
World Bank ‘Protecting Mobile Money against Financial Crimes’, (2011) Washington DC
World Bank,’ Making Sense of Financial Capability Surveys around the World A Review of Existing Financial Capability and Literacy Measurement Instruments’ (2013)
World Bank, Todoroki E, Celik K, Khomatov M, ‘Alternative Remittance Systems in Kazahstan’ (2011)
World Bank ‘Informal Funds transfer Systems in the APEC Region: Initial Findings and a Framework for Further Analysis’ APEC and ARS Working Group Report (2003)
World Bank ‘Global Development Finance The Development Potential of Surging Capital Flows: Review, Analysis, and Outlook.’ (2006) Washington
World Bank ‘Millennium Development Goals and the Road to 2015: Building on Progress and Responding to Crisis’ (2010)
World Bank Ratha D., Mohapatra S.,Silwal A., ‘Migration and Development Brief 11: Migration and Remittance Trends 2009’ (2009)
World Bank ‘Applying and Risk Based Approach’ (2011)

World Bank, 'An International Remittances Customer Charter; A Toolkit for National Action' Global Remittances Working Group (2010)

World Bank 'The Little Data Book on Financial Inclusion' (Washington 2012)

World Bank 'Conflict in Somalia: Drivers and Dynamics' (Washington 2005)

Websites

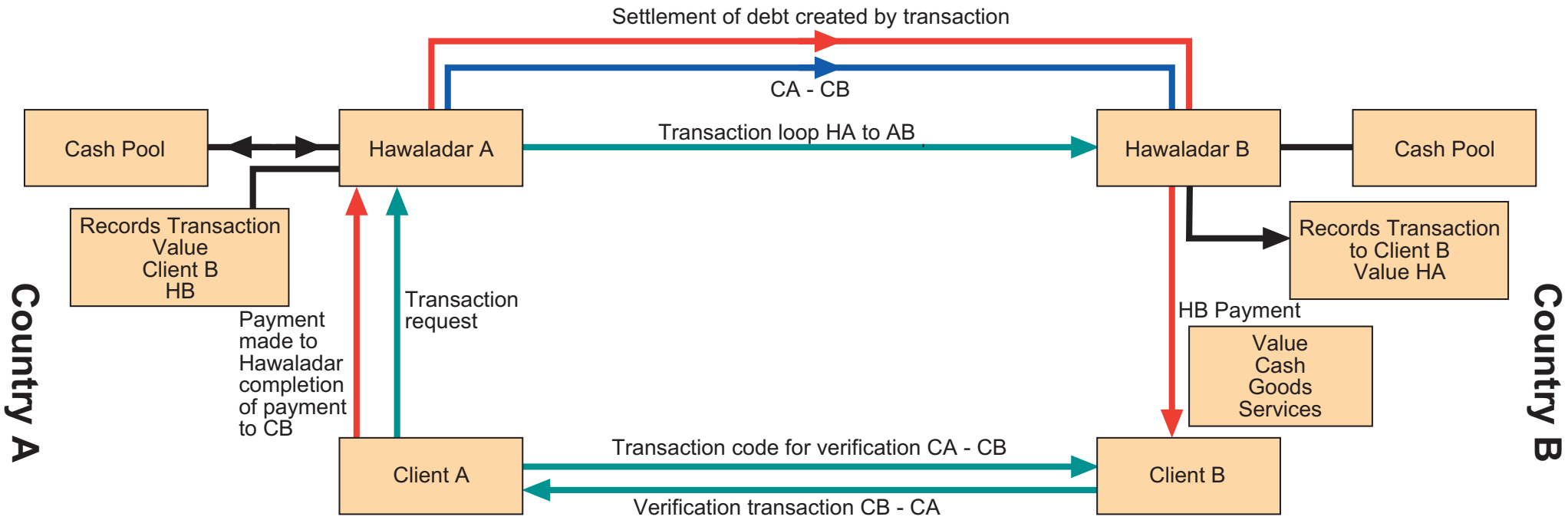
www.fincen.gov
www.icaew.com/index.cfm?route=108767
www.jmlsg.org.uk
www.egmontgroup.org
www.mi5.gov.uk
<https://www.mi5.gov.uk/output/speeches-by-the-director-general.html>
Speech by Dame Eliza Manningham Buller *'The International Terrorist Threat And The Dilemmas In Countering It' (1st September 2005)*
<https://www.mi5.gov.uk/output/speeches-by-the-director-general.html > Accessed 28/04/21012
Speech by Dame Eliza Manningham Buller **'***The International Terrorist Threat To The UK***'**
<https://www.mi5.gov.uk/output/speeches-by-the-director-general.html> Accessed 28/04/21012
<*http://www.remittancesgateway.org/index.php/press-clippings/other-news/1710-dahabshiil-ceo-and-dr-laura-hammond-discuss-preliminary-findings-of-remittance-research>* date accessed 12/01/2013
<http://www.bbc.co.uk/news/world-13257972> date accessed 5/05/2012

<https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=XVIII-11&chapter=18&lang=en> date accessed 23/09/2013
<http://www.imf.org/external/about/howwedo.htm> date accessed 05/05/2011
<http://www.cps.gov.uk/publications/prosecution/ctd.html > date accessed 18/011/2013
<http://features.pewforum.org/muslim-population/> date accessed on 22/04/2011
<http://www.ukmta.org/about.aspx date> date accessed 27/05/2011
<http://webarchive.nationalarchives.gov.uk/+/http://www.dfid.gov.uk/Media-Room/Press-releases/2008/Customer-charter-promises-better-deal-for-families-who-send-money-to-loved-ones- abroad/> date accessed 01/06/2011
<http://www.fatfgafi.org/topics/fatfgeneral/documents/ministersrenewthemandateofthefinancialactiontaskfor until2020.html>date accessed 30/05/2012
<http://www.fatf-gafi.org/topics/high-riskandnon-cooperativejurisdictions/> date accessed 30/05/2012
<http://www.iamtn.org/international-money-transfers-news/276-money-transfer-accounts-services-by-banks> date accessed 7/11/2013
<http://www.dahabshiil.com/send-and-receive-money.html> date accessed 12/01/2013
<http://www.undemocracy.com/United_Kingdom/greenstock> date accessed 19/04/2013
<http://www.remittancesgateway.org/index.php/press-clippings/other-news/1710-dahabshiil-ceo- and-dr-laura-hammond-discuss-preliminary-findings-of-remittance-research > date accessed 12/01/2013

<https://www.gov.uk/government/publications/tables-oeration-of- police-powers-under-the-terrorism-act-2000-and-subsequent-legislation> date accessed 22/07/2013
<http://www.cps.gov.uk/publications/prosecution/ctd.html >date Accessed 14/08/2013
<http://www.independent.co.uk/news/uk/home-news/familys-torture-as-they-face-losing-home-under-antiterror-law-8654524.html> date accessed 23/08/2013
< http://www.fca.org.uk/static/fca/documents/mou/mou-hmrc.pdf>
<http://www.theguardian.com/uk-news/2013/aug/16/seven-charged-crown-currency-collapse > date accessed 20/04/2014
<http://www.egmontgroup.org/library/egmont-documents > date accessed 16/06/2012
<http://www.bbc.co.uk/news/business-24553148> date accessed 12 /11/2103
<http://www.treasury.gov/ofac/downloads/t11sdn.pdf> date accessed 18/12/2013
<http://www.theguardian.com/business/2006/sep/29/israel.internationalnews> date accessed 18/12/2013
<https://www.gov.uk/government/publications/tables-oeration-of- police-powers-under-the-terrorism-act-2000-and-subsequent-legislation> date accessed 22/07/2013

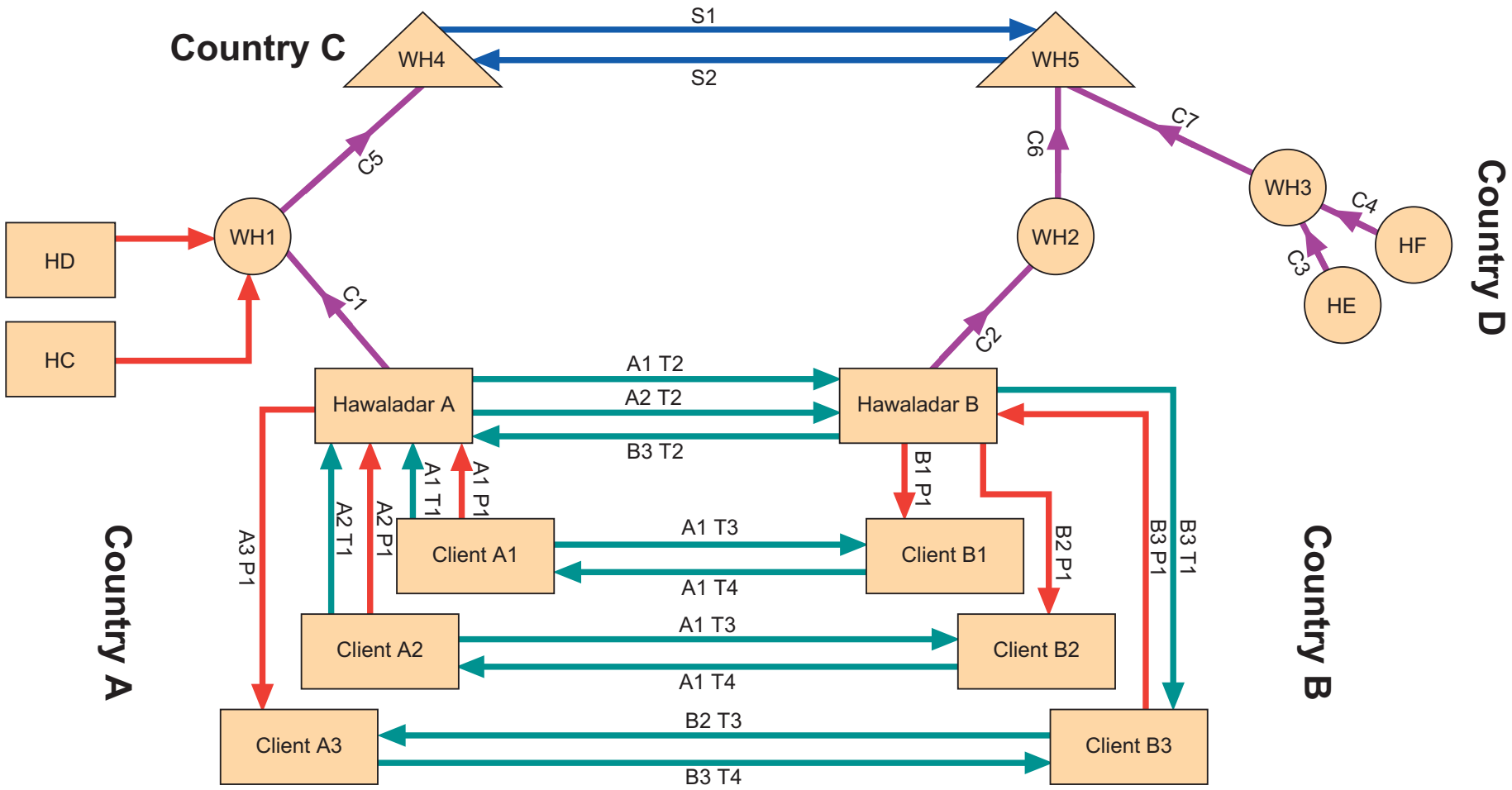
Appendix 1

Basic Traditional Hawala Transaction Process



Appendix 2

Modern and Contemporary Hawala Process



C = Consolidation
H = Hawaladar
P = Payment pathway
S = Settlement
T = Transaction information pathway
WH = Wholesale Hawaladar
Sample transaction = A1 T1+ A1 T2 + A1 T3 + B1 P1 + A1 T4 + A1 P1

Appendix 3 Ethics forms and interview schedules

UNIVERSITY OF LEEDS RESEARCH ETHICS COMMITTEE APPLICATION FORM [1]

Please read each question carefully, taking note of instructions and completing all parts. If a question is not applicable please indicate so. The superscripted numbers refer to sections of the guidance notes, available at www.leeds.ac.uk/ethics. Where a question asks for information which you have previously provided in answer to another question, please just refer to your earlier answer. You DO NOT need to replicate the information.

To help us process your application enter the following reference numbers, if known and if applicable:

Ethics reference number:	
Grant reference:	
COSTA number:	

PART A: Summary

A.1. Which Faculty Research Ethics Committee do you wish to consider this application? [2]

- ● Biological Sciences
- ● Mathematics; Physical Sciences; Engineering (MEEC)
- ● Medicine and Health (Please specify a subcommittee)
  - ● Healthcare Studies
  - ● Psychological Sciences
  - ● Health Sciences/ LIGHT/ LIMM
  - ● Dentistry
  - ● Medical and Dental Educational Research

*__Social Sciences/ Environment/ LUBS (AREA)__

- ● Arts/ Performance, Visual Arts & Communications (PVAR)

A.2. Title of the research [3]

A critical examination of the anti –money laundering legislative framework for the prevention of terrorist finance with particular reference to the regulation of alternative remittance systems in the UK.

A.3. Main investigator [4]

	Title:	Forename/Initials:	Surname:
	Ms	Karen A	Clubb
Department:	Faculty of Law		

Institution: University of Leeds
Work address: University of Derby
Postcode: DE22 1GB Telephone: 07846-250790
E-mail: k.clubb@derby.ac.uk

A.4 Purpose of the research: [5] (Tick as appropriate)

* **Research**

- ☐ Educational qualification
- ☐ Educational Research & Evaluation [6]
- ☐ Medical Audit or Health Service Evaluation [7]
- ☐ Other

A.5. Select from the list below to describe your research: (You may select more than one)

- ☐ Research on or with human participants
- ☐ Research with has potential significant environmental impact.[8] If yes, please give details:

  _____

- ☐ Research working with data of human participants

  * **New data collected by questionnaires/interviews**

  - ☐ New data collected by qualitative methods
  - ☐ New data collected from observing individuals or populations
  - ☐ Research working with aggregated or population data
  - ☐ Research using already published data or data in the public domain
- ☐ Research working with human tissue samples [9]

A.6. Will the research involve any of the following: [10] (You may select more than one)

If your research involves any of the following an application must be made to the National Research Ethics Service (NRES) via IRAS www.myresearchproject.org.uk as NHS ethical approval will be required. There is no need to complete any more of this form. Contact governance-ethics@leeds.ac.uk for advice.

- ☐ Patients and users of the NHS (including NHS patients treated in the private sector) [11]
- ☐ Individuals identified as potential participants because of their status as relatives or carers of patients and users of the NHS
- ☐ Research involving adults in Scotland, Wales or England who lack the capacity to consent for themselves [12]
- ☐ The use of, or potential access to, NHS premises or facilities [13]
- ☐ NHS staff - recruited as potential research participants by virtue of their professional role
- ☐ A prison or a young offender institution in England and Wales (and is health related) [14]
- ☐ Clinical trial of a medicinal product or medical device [15]
- ☐ Access to data, organs or other bodily material of past and present NHS patients [9]
- ☐ Use of human tissue (including non-NHS sources) where the collection is not covered by a Human Tissue Authority licence [9]
- ☐ Foetal material and IVF involving NHS patients
- ☐ The recently deceased under NHS care

* **None of the above**

You must inform the Research Ethics Administrator of your NRES number and approval date once approval has been obtained.

If the University of Leeds is not the Lead Institution, or approval has been granted elsewhere (e.g. NHS) then you should contact the local Research Ethics Committee for guidance. The UoL Ethics Committee need to be assured that any relevant local ethical issues have been addressed.

A.7. Will the participants be from any of the following groups? (Tick as appropriate)

- ☐ Children under 16 [16]
- ☐ Adults with learning disabilities [12]
- ☐ Adults with other forms of mental incapacity or mental illness
- ☐ Adults in emergency situations
- ☐ Prisoners or young offenders [14]
- ☐ Those who could be considered to have a particularly dependent relationship with the investigator, e.g. members of staff, students [17]
- ☐ Other vulnerable groups

*** No participants from any of the above groups**

Please justify the inclusion of the above groups, explaining why the research cannot be conducted on non vulnerable groups.

A Criminal Record Bureau (CRB) check will be needed for researchers working with children or vulnerable adults (see www.crb.gov.uk)

A.8. Give a short summary of the research [18]

*This section must be completed in **language comprehensible to the lay person**. Do not simply reproduce or refer to the protocol, although the protocol can also be submitted to provide any technical information that you think the ethics committee may require. This section should cover the main parts of the proposal.*

This research aims to investigate the law regulating money laundering for terrorist finance relating to alternative remittance services (ARS) offered by Money Service Businesses (MSB) or alternative remittance services in the UK. These services are service offered by individuals or businesses, other than banks or building societies, which allow customers to transfer either cash or equivalent value to another location either in the UK or another part of the world. As these services have been informal and often offered alongside another business activity, they have until 2007, been free of any formalities. The research aims investigate the changes that have resulted from laws imposed and to consider the views of those that provide ARS now MSB and importantly those that are now involved in regulating this type of business activity. The aim is to gain an understanding of how those involved in the area of activity view the current law, whether the new law has led to any change since it was implemented and to gain the views of parties about these changes and how operators have adjusted to these changes in practice. The research also aims to investigate whether parties consider the new laws, given their aims, effective in practice.

A.9. What are the main ethical issues with the research and how will these be addressed? [19]

Indicate any issues on which you would welcome advice from the ethics committee.

The main ethical issues are:

Preserving anonymity/ confidentiality of participants – the research design C2 and C12 indicates how this will be addressed during the research process.

Disclosure by participant of criminality by themselves or a person known to them – section on risk and Research Project Information Leaflet describes how this will be managed along with section C15.

PART B: About the research team

B.1. Supervisor (for student research) [20]

	Title:	Forename/Initials:	Surname:	
	Professor	Clive	Walker	
Department:	Faculty of Law			
Institution:	University of Leeds			
Work address:	Room 2.17, The Liberty Building, University of Leeds Leeds.			
Postcode:	LS2 9JT			Telephone: 0113 343 5022
E-mail:	law6cw@leeds.ac.uk			

B.2. Other key co-supervisors [21] (all grant co-applicants or protocol co-authors should be listed)

	Title:	Forename/Initials:	Surname:	
	Professor	Andrew	Campbell	
Department:	Faculty of Law			
Institution:	University of Leeds			
Work address:	Room 2.29, The Liberty Building, University of Leeds Leeds.			
Postcode:	LS2 9JT			Telephone: 0113 343 7113
E-mail:	a.campbell@leeds.ac.uk			

	Title:	Forename/Initials:	Surname:
Department:			
Institution:			
Work address:			

Postcode:		Telephone:	
E-mail:			

Part C: The Research

C.1. What are the aims of the study? [22] (Must be in language comprehensible to a lay person.)

The aim of the study is to investigate the impact of the Money Laundering Regulations 2007 on alternative remittances in the UK which are now required under these regulations to be registered as Money Service Businesses.

C.2. Describe the design of the research. Qualitative methods as well as quantitative methods should be included. (Must be in language comprehensible to a lay person.)

It is important that the study can provide information about the aims that it intends to address. If a study cannot answer the questions / add to the knowledge base that it intends to, due to the way that it is designed, then wasting participants' time could be an ethical issue.

The fieldwork research is based on qualitative methodology involving 1:1 semi-structured interviews either conducted face to face or by telephone with two distinct participant groups. A set of participant questions derived from thesis research and commentary will be developed and sequenced. The interview preparation will also contain a standard explanation of key terms for consistency and reliability and a series of pre-selected extension questions for each question to be used a prompts. It is noted that separate research interview questions will be constructed to ascertain the values, attitudes and perspectives of both participant groups and to ensure their contribution to this research question is captured. Qualitative methodology by way of semi-structured interviews is the most appropriate means of obtaining this information whereas observation of participant would involve further issues of confidentiality (of clients) and would be overly intrusive. Quantitative approaches are less likely to capture insights into practice and reflection upon it.

The researcher is aware of the limitations in accessing directly the ARS operatives. Should it prove impossible to obtain the required number of interviews for this participant groups then the questions from the interviews will be modified to produce a questionnaire for these groups that can be sent to operators identified by email. Questionnaires will be anonymised in the same way as outlined for interview in section A9 to be returned by post. Where questionnaires are provided by return email, participants will be made aware that once a copy of the questionnaire has been using the participant reference number to identify, participants will reminded that the email will be deleted. Only the questionnaire identified by unique participant reference number will be retained. The same supporting documentation will be provided for any questionnaires used based on the identification and recruitment of the participant groups referred to earlier.

Section C6 describes how participants will be recruited using stratifying sampling to isolate the relevant geographical locations with relevant population distribution required to support the research, from which the participant MSB operators will be further identified using probability sampling from a sample narrowed using a methodologically sound and scientific approach to identifying the relevant variables.

The regulator/stakeholder participants to be potentially selected are those who are directly involved in the regulation of the MSB in the UK or the enforcement of the regulatory framework, or have a significant stakeholder interest in the application of this regime in the UK. The following agencies may be approached for interview as regulator: HMRC, HM Treasury, SOCA, FSA, FIU in UK, CTU, OFT, JMLSG, FATF, Moneyval, OSCT. Additionally the following stakeholder organisations are suggested to be approached to take part as participants in this research including: UKMTA, UK Remittances task force/ Working group (DFID), Migrants Rights Network, along with regional and nationally relevant community groups who represent the specific interests of ethnic groups associated with the use of remittance services including: Somali Diaspora UK, The Pakistan Society, UK Islamic Mission, Muslim Communities UK.

A research schedule for regulator participant interviews will be compiled in addition to a research schedule for

each selected location and the operator participants in this location.

C.3. What will participants be asked to do in the study? [23] *(e.g. number of visits, time, travel required, interviews etc)*

Each participant will be asked to undertake one hour to hour and half long interview with the researcher using standardised questions relating to that participant group in relation to the research topic. Each participant will be asked to consent not only to the interview, but also to the digital recording of this or in the alternative the researcher taking notes of the interview. Interviews will be carried out in person where possible but participants will be given the option of a telephone interview as an alternative.

Participants will be contacted by telephone or email in advance to request interview with a minimum of 24 hours notice given unless they wish to waive this for their convenience. It is anticipated that participants will be interviewed on their business premises so that they do not have to travel. Or an alternative venue will be agreed.

Each participant will be asked to sign the consent form acknowledging consent and receipt of information about the research and including how to withdraw from the project.

C.4. Does the research involve and international collaborator or research conducted overseas: [24]

(Tick as appropriate)

☐ Yes * **No**

If yes, describe any ethical review procedures that you will need to comply with in that country:

Describe the measures you have taken to comply with these:

Include copies of any ethical approval letters/ certificates with your application.

C.5. Proposed study dates and duration

Research start date (DD/MM/YYYY) January 2012_____

Research end date (DD/MM/YYYY): December 2012_____

(note this PhD is by part-time study)

C.6. Where will the research be undertaken? (i.e. in the street, on UoL premises, in schools) [25]
It is anticipated that the following participants will be interviewed in their business or work premises in person or by telephone.
Participant group 1 ARS Operators: 5 in each of the 5 areas identified total: 25
Participant group 2 ARS Representatives of regulators and stakeholders of ARS:10

RECRUITMENT & CONSENT PROCESSES

How participants are recruited is important to ensure that they are not induced or coerced into participation. The way participants are identified may have a bearing on whether the results can be generalised. Explain each point and give details for subgroups separately if appropriate.

C.7. How will potential participants in the study be:
(i) identified,
ARS/ MSB operators ARS will be identified as follows:

- Information publicly available from services advertised yellow pages, or in local newspapers and by internet search.
  On sight identification of business premises in target locations
  Follow up referral from another research participant
- In this instance to ensure that the participants are able to respond they will be contacted by telephone or in person to verify that they operate an ARS/MSB, before being asked to participate in the project and to identify the size, extent of service offered, and location of business.
- From the list compiled 5 ARS/ MSB will be selected at random from the key locations identified.
- A list of ARS currently registered as MSB under the new MLR 2007 is not available from the regulator
  as they are exempt from making this information publicly available under the Freedom of Information Act 2000. However the regulator has been contacted to disclose the number of registered ARS /MSB
  within the selected areas for sample interviewing.

- The geographical areas for interviewing will be selected according to relevant criteria – high density areas of Asian, African and Somali populations.

Regulators/stakeholders:

- Regulators identified by legal framework for regulation outlined in the MLR 2007 example HRC,
  SOCCA.
- Stakeholders identified as nationally recognised bodies relevant to and involved in the interests of
  one of the participant research group, for example UKMTA.

(ii) approached

Operators:
Operators will be approached initially by telephone if identified by way of advert to confirm their status as ARS/ MSB, or in person if from area identified by way of businesses area associated with ethnicity identified on sight.

Regulators/ stakeholders:
Initial contact by letter to ask for interview with person nominated by the regulators for this purpose with
follow-up email/telephone call to make and confirm arrangements.

(iii) recruited? [26]

No inducements will be made in terms of recruitment or participation. Recruitment will be secured

on the basis of verbal explanation of research project and voluntary participation to interview given verbally by all participants. Prior to the interview all participants will be given a Research Project Information Leaflet and the opportunity to ask questions about the project before signing a participant consent form.

C.8. Will you be excluding any groups of people, and if so what is the rationale for that? [27]
Excluding certain groups of people, intentionally or unintentionally may be unethical in some circumstances. It may be wholly appropriate to exclude groups of people in other cases.

Only those who when contacted for interview decline to participate.
Groups of persons are excluded by area as random selection of MSB in specific geographical locations is justified in order to ensure research is purposeful in ascertaining any affect of regulation certain ethnic groups. The geographical areas selected focus on areas of high density in relation to the relevant ethnic groups. This selection exclusionary in targeting those areas relevant to the research aims in concordance with the research design.

C.9. How many participants will be recruited and how was the number decided upon? [28]
It is important to ensure that enough participants are recruited to be able to answer the aims of the research.

The number of participants has been derived from the need to maintain confidentiality and limit sample size in some areas where there may only be a small number of ARS /MSB to interview. Whilst there is some narrowing of the geographical areas for interview in relation to the fieldwork design, to ensure that these are areas of mixed ethnicity and high density ethnicity in terms of the ethnic context of ARS operators and customers, there will be no deliberate de-selection of potential participants on the basis to ethnicity or race. Nor will there be any deliberate targeting of potential participants on this basis. Where advertising source or organisational membership lists are used to locate potential participant operators, a list will be compiled and selection from these will be at random.

If you have a formal power calculation please replicate it here.

Remember to include all advertising material (posters, emails etc) as part of your application

C.10. Will the research involve any element of deception? [29] If yes, please describe why this is necessary and whether participants will be informed at the end of the study.

The research will not involve any element of deception.

C.12. Will informed consent be obtained from the research participants? [30]

*__Yes__ ☐ No
If yes, give details of how it will be done. Give details of any particular steps to provide information (in addit
e.g. videos, interactive material.

All participants will be provided with a verbal explanation of the research project supported by a Research Project Inf to ask question of the researcher about the research project. The nature of the explanation will include an overview o group contribute to the research question. Participants will be given a reference number that will be used as an ident participant classification as operator or stakeholder. This will be used on all documentation to preserve confidentially explain how confidentiality within the research project will be maintained. All participants will additionally be given a about how to withdraw from the project later if they so wish including a form to indicate this. As part of this process th provided in documentation and on request, and the researcher will carry University ID card.

Describe whether participants will be able to withdraw from the study, and up to what point (eg if data is to b is <u>not</u> possible, explain why not.

Participants will be allowed to withdraw from the project but this will only be an option up to 18 months after the interv participants will be given a specific date by which they should inform the researcher of their intention to withdraw. As so small this is necessary to preserve the integrity of the overall reliability of the sample and to allow further time for t rewriting research due to withdrawal of participant and after the subsequent removal of their data.

If participants are to be recruited from any of potentially vulnerable groups, <u>give details of extra steps</u> taken Describe any arrangements to be made for obtaining consent from a legal representative.

No participant will be recruited from potentially vulnerable groups.

Copies of any written consent form, written information and all other explanatory material should accompan*sheet should make explicit that participants can withdrawn from the research at any time, if the research design perm Sample information sheets and consent forms are available from the University ethical review webpage at [http://researchsupport.leeds.ac.uk/index.php/academic_staff/good_practice/ethical_review_pro 1](http://researchsupport.leeds.ac.uk/index.php/academic_staff/good_practice/ethical_review_pro).*

C.13. How long will the participant have to decide whether to take part in the research? [31]
It may be appropriate to recruit participants on the spot for low risk research, however consideration is usually necessary for those projects which involve risks.

In some instances operator participants may be recruited on the spot but it unlikely given the nature of the interview and the length of time required, that they will be interviewed immediately on recruitment. All participants are given a minimum of 24 hours from recruitment to interview unless the participant voluntarily waives this. In this 24 hour period or longer until time of arranged interview, participants will have the opportunity to contact the researcher and remove themselves from the project or rearrange the date/ time/ or place of the proposed interview.

C.14. What arrangements have been made for participants who might not adequately understand verbal explanations or written information given in English, or who have special communication needs? [32]*(e.g. translation, use of interpreters etc. It is important that groups of people are not excluded due to language barriers or disabilities, where assistance can be given.)*

Whilst the research involves a consideration of ethnicity, it is not anticipated that the operator participants will have any language problems given they are operating a business in a commercial environment. If this does

however prove to be the case if an onsite interpreter known to the participant is available they will be used with the consent of the participant and the interpreter.

C.15. Will individual or group interviews/ questionnaires discuss any topics or issues that might be sensitive, embarrassing or upsetting, or is it possible that criminal or other disclosures requiring action could take place during the study (e.g. during interviews/group discussions, or use of screening tests for drugs)? [33]

Yes, give details of procedures in place to deal with these issues

In interview or questionnaire participants may disclose criminal activity related to terrorist offences or money laundering offences.

In the previous section it has been made clear that if it is impossible to interview face to face or by telephone the required number of ARS/ MSB operators that the questions for the semi-structured interview will be reframed in a questionnaire. The planned interview / questionnaires are supported by the Research Project Information Leaflet which warns participants of disclosure of criminal activity by the participant relating to themselves or others and any action to be taken by the researcher in this event. This general statement is will be also read out prior to any interview and the participant will be reminded of this during the interview as should disclosure appears likely.

The Information Sheet should explain under what circumstances action may be taken

C.16. Will individual research participants receive any payments, fees, reimbursement of expenses or any other incentives or benefits for taking part in this research? [34]

☐ Yes * **No**

If Yes, please describe the amount, number and size of incentives and on what basis this was decided.

RISKS OF THE STUDY

C.17. What are the potential benefits and/ or risks for research participants? [35]

There are clear benefits to all participants in being able to express their views and attitudes about the imposition of a legal and regulatory framework that affects their business operation as ARS/MSN operators, or their role in the regulation of these services, to detail the impact of legislation on these service and roles.

There are no personal or security risks to any research participants other than the possible disclosure of criminality referred to in C15.

C.18. Does the research involve any risks to the researchers themselves, or people not directly involved in the research? [36]

*Yes ☐ No

If Yes, please describe: _____

Risk to researcher:

Unescorted female interviewing what is anticipated to be mainly male subjects in unknown environment over which researcher has little control.

Management strategies:

When fieldwork is to be carried out the following strategies will be employed at all times:
Researcher to have mobile phone on and with her at all times and a panic alarm.
Interviews to be pre-planned with schedule of date, time and location (this to include business address and telephone number only not participant name) to be forwarded to supervisors or researchers place of work.
To negotiate access point at researchers place of work where contact can be made post interview to confirm safety.
Any variance in schedule to forwarded to supervisors and work place in advance of implementation.
All interviews to be carried out in day time during usual business hours 9-5. Where interview on site at the research participants place of work to contact access point and request phone call at end of interview. Interview to be conducted in public place or if on private premises these to be business only and only when third parties present on premises.
Copies of interview schedule to be destroyed on completion of interviews except that retained only by researcher to preserve participant anonymity.
At all times the researcher will carry and present her student registration card for Leeds University and the contact telephone number of Leeds Law School office and of supervisors. This will be offered/given to any potential participant in advance of interview to enable them to confirm identity and research status.

DATA ISSUES

C.19. Will the research involve any of the following activities at any stage (including identification of potential research participants)? (Tick as appropriate)

☐ Examination of personal records by those who would not normally have access

☐ Access to research data on individuals by people from outside the research team

* **Electronic transfer of data**

☐ Sharing data with other organisations

☐ Exporting data outside the European Union

* **Use of personal addresses, postcodes, faxes, e-mails or telephone numbers**

* **Publication of direct quotations from respondents**

☐ Publication of data that might allow identification of individuals to be identified

* **Use of audio/visual recording devices**

*** FLASH memory or other portable storage devices**

Storage of personal data on or including any of the following:

* **Manual files**

***Home or other personal computers**

☐ Private company computers

☐ Laptop computers

C.20. How will the research team ensure confidentiality and security of personal data? E.g. anonymisation procedures, secure storage & coding of data. [37]

Confidentiality will be preserved by integrity in subject identification using unique reference numbers in place of

client name. A master list of names matched to the reference number to demonstrate existence of an authenticity of participants will be retained by researcher only and stored on an encrypted USB device. It is possible given that the number of MSB currently registered with the registration regulator, HMRC, in the UK is for 2011 total 3,628 that this may inadvertently identify the participant. This is particularly so as the operators ethnicity is relevant to the research question for the purpose of this research. This impact has been minimised by seeking to investigate 5 particular locations which are known to be areas of high density in relation to the ethnic groups associated with the operation and use of ARS. The names and businesses addresses of MSB in specific locations is not available from HMRC but a Freedom of Information request is to be made in respect of these specific geographical research areas, so that any potential compromise of participants by their identification can be overcome by reference to the participant sample group from within a larger geographical location.

The confidentiality of the regulator or stakeholder will be preserved by making no mention of their name or position, as the latter alone may identify the participant. In the case of the UKMTA the person may be identifiable by their relationship of position within organisation where the organisation is small or the role is unique. Where it is impossible to preserve participant confidentiality the participant will be made aware of this prior to giving consent to participation. To assist confidentiality in these circumstances no mention of name or role will be made.

All interviews will be transcribed by the researcher and only electronic copies retained on an encrypted USB. All data and participant identification data will be secured in the same manner. Any emails sent to participants to recruit will be deleted and no email contact lists retained other than encrypted USB. Any paper copies of any material above will be destroyed on completion of storage to electronic file. Any paper questionnaires will be scanned into PC to create an electronic record to be stored on encrypted USB. Any email copies of questionnaires will be saved electronically and the email subsequently deleted.

Data analysis will be by data coding by reference to accepted practice which ensures reliability, consistency and integrity in application of research methodology, utilising pre-selected themes relevant to the research question. Nvivo software may be used for this purpose but it is likely given the small sample size that this will be done manually by researcher. All data coding will be anonymous and will refer only to the geographical area, type of participant i.e. ARS/MSB, location of participant i.e . Leeds and unique identification number to preserve anonymity.
You may wish to refer to the data protection and research webpage.

C.21. For how long will data from the study be stored? Please explain why this length of time has been chosen.[38]

___10_____ years, _____ months after which the USB will be physically destroyed.

NB: RCUK guidance states that data should normally be preserved and accessible for ten years, but for some projects it may be 20 years or longer.

Students: It would be reasonable to retain data for at least 2 years after publication or three years after the end of data collection, whichever is longer

CONFLICTS OF INTEREST

C.22. Will any of the researchers or their institutions receive any other benefits or incentives for taking part in this research over and above normal salary or the costs of undertaking the research? [39]

☐ Yes * **No**

If yes, indicate how much and on what basis this has been decided

C.23. Is there scope for any other conflict of interest? [40] *For example will the research funder have control of publication of research findings?*

☐ Yes *** No** ***If yes, please explain*** _____

C.24. Does the research involve external funding? (Tick as appropriate)

☐ Yes *** No** ***If yes, what is the source of this funding?***

_____

PART D: Declarations

Eclaration by Chief Investigators

1. The information in this form is accurate to the best of my knowledge and belief and I take full responsibility for it.
2. I undertake to abide by the University's ethical and health & safety guidelines, and the ethical principles underlying good practice guidelines appropriate to my discipline.
3. If the research is approved I undertake to adhere to the study protocol, the terms of this application and any conditions set out by the Research Ethics Committee.
4. I undertake to seek an ethical opinion from the REC before implementing substantial amendments to the protocol.
5. I undertake to submit progress reports if required.
6. I am aware of my responsibility to be up to date and comply with the requirements of the law and relevant guidelines relating to security and confidentiality of patient or other personal data, including the need to register when necessary with the appropriate Data Protection Officer.
7. I understand that research records/ data may be subject to inspection for audit purposes if required in future.
8. I understand that personal data about me as a researcher in this application will be held by the relevant RECs and that this will be managed according to the principles established in the Data Protection Act.
9. I understand that the Ethics Committee may choose to audit this project at any point after approval.

Sharing information for training purposes

Optional – please tick as appropriate:

☐ I would be content for members of other Research Ethics Committees to have access to the information in the application in confidence for training purposes. All personal identifiers and references to researchers, funders and research units would be removed.

Principal Investigator

Signature of Principal Investigator: .....Karen Clubb.....

Print name: Karen Clubb.....

Date: 27/07/2011: .....

Supervisor of student research

I have read, edited and agree with the form above.

Supervisor's signature: .....

Print name: .....

Date: (dd/mm/yyyy) .....

Please submit your form **by email** to J.M.Blaikie@adm.leeds.ac.uk or if you are in the Faculty of Medicine and Health FMHUniEthics@leeds.ac.uk. **Remember to include any supporting material** such as your participant information sheet, consent form, interview questions and recruitment material with your application.

Research Participant Information Sheet

Study title
The investigation of the law regulating Money Service Businesses to prevent money laundering and terrorist finance.

The Researcher
My narne is Karen Clubb. I am a PhD student studying for a Doctorate student at the University of Leeds. I have a keen interest in money laundering and in particular relating to preventing terrorist finance. I have chosen this topic as the research for my PhD. I am very keen to explore the effect of the law in this area on Money Service Businesses that provide remittance services.

What is the purpose of the study?
As a Money Service Business (MSB) provider in the UK you has been identified as providing remittance services and have therefore been invited to take part in this research. The research aims to investigate the effect of the law regulating these businesses, which is largely set out on the Money Laundering regulations 2007. These regulations require that MSB be registered in order to offer remittance services. As you have been identified as offering or being involve in the provision of these services you have been invited to give your views as to the effect, if any, of legislation mentioned above, on your business activity.

Please take time to read this leaflet carefully and if you have any further questions please ask the researcher.

How will the research be carried out?
The research will be undertaken during a twelve month period in 2012-13. It involves interviews with those who own or are involved directly in the operation of a Money Service Businesses which provide remittance services. A small number of participants from these groups in 5 locations throughout the UK will be invited for interview. Additionally a few representatives from the agencies involved in regulatory process will also be interviewed.

Why have I been invited to participate?
As you involved directly in the provision of a Money Service Business providing remittance services you have been asked for your views on the regulation of these types of businesses in which you have an important practical role as well specialist knowledge.

Do I have to take part?
You do not have to take part in this study
Your participation in this research project is entirely voluntary and without financial reward.
If you choose to do so you will be making a significant contribution to research in this area.
If you do agree to take part you will have to sign a consent form which, you will be given a copy of. You will also be interviewed by the researcher.
If you change your mind after you have been interviewed you are able to withdraw from the project provided you contact the researcher within 12 months from the date of your interview, and before publication of the research findings. You do not have to explain your reasons for withdrawal.
If you agree to be interviewed you do not have to answer all of the questions.

What will happen to me if I take part?
If you take part in this project you will be interviewed at a time and place that is convenient for you.
This can be at your business if this is more convenient or you can be interviewed elsewhere, or by telephone. The interview will last approximately an hour.
For convenience and accuracy the interview will be recorded.
Your interview and your views will be anonymised; you will not be referred to by name nor identified by the business you work in.

One of the risks of taking part is that in your interview you may inadvertently, correctly or incorrectly give information that may seem to suggest that you or people you know may

have been engaged in criminal activity. If the researcher feels that this is likely to be disclosed, by mistake or otherwise, they will pause the interview and remind you that they are obliged to disclose any suspected criminal acts. The researcher will allow you then ask you to continue when you are ready to do so.

If such information is divulged by you, the researcher would have to disclose this to the relevant authorities for further investigation pursuant to S38B Terrorism Act 2000.

What are the possible benefits of taking part?
One of the benefits to taking part in this study is that you will have the opportunity to give your views on the law which regulates Money Service Businesses and money laundering. These views will form part of an important study which aims to consider whether the law in this area is needed and to consider the advantages and disadvantages of this law in practice to those most affected. It is your chance to comment on in the law and its effect on your business, if any, and to give your views on how this is managed by you and those who enforce this law.

Will what I say in this study be kept confidential?
All the interviews from all the participants will form the research data for this project which will be analysed and commented upon by the researcher in their written report which forms part of this project. You will NOT be referred to by name. You will NOT to be referred to by reference to your business or business address. The data generated will kept securely, regardless of the form in which it is stored e.g. audio, paper, electronic. The original interview will only be accessed by the researcher and research supervisors (2) in accordance with the University's policy on Academic Integrity.

All the research data will be securely stored for a period of 10 years after completion of the study, after which time which it will be destroyed.

Your identity will be kept confidential and known only to the researcher, your identity will be recorded by reference to a unique number only i.e. participant 1 location Leeds.

What will happen to the results of the research study?
Reference to your anonymous data will be made in the final report which forms part of this study for a Doctorate and any further publication of the research findings.

What should I do if I want to take part?
If you wish to take part simply inform the researcher in person or contact the researcher at the address below.

Who is organising and funding the research?
This research is self funded.

Who has reviewed the study?
This research study has been approved by Leeds University Research Ethics Committee.
The researcher can show you a copy of this.

Contacts for Further Information
My supervisors for my PhD and their contact detail are should you wish to contact them to verify the nature of this study, or should you wish to raise any concerns about the way this study has been conducted.

Clive Walker
Faculty of Law
Room 2.17
The Liberty Building
University of Leeds
Leeds.
LS2 9JT
Telephone: 0113-3435022
Email: law6cw@leeds.ac.uk

Andy Campbell
Faculty of Law
Room 2.29
The Liberty Building
University of Leeds
Leeds.
LS2 9JT
Telephone: 0113-3437113
Email: a.campbell@leeds.ac.uk

Researcher
Karen Clubb University of Derby, 22 Kedleston Road, Derby. DE22 1GB
Tel: 01332. 622222 Email: K.clubb@derby.ac.uk

Thank you for taking the time to read this information leaflet.

Date

Participant Consent Form

Title of Research Project: The investigation of the law regulating Money Service Businesses to prevent money laundering and terrorist finance

Name of Researcher: KAREN CLUBB

Researcher contact details: 01332-591844 K.clubb@derby.ac.uk

Participant reference Number _____

Initial the box if you agree with the statement to the left

1. I confirm that I have read and understand the Participant Research Information Leaflet dated explaining the above research project and I have had the opportunity to ask questions about the project. ☐

2. I understand that my participation is voluntary and that I am free to withdraw at any time without giving any reason and without there being any negative consequences. In addition, should I not wish to answer any particular question or questions, I am free to decline. ☐

3. I understand that my identity will be kept strictly confidential and anonymised. I give permission for members of the research team to have access to my anonymised responses. I understand that my name will not be linked with the research materials, and I will not be identified or identifiable in the report or reports that result from this research. ☐

4. I agree to my interview being digitally audio recorded ☐

5. I agree to handwritten notes being made during my interview by the researcher. ☐

6. I agree for the data collected from me to be used in future research ☐

7. I agree to the use of anonymised quotes in publications ☐

8. I agree to take part in the above research project and will inform the researcher at the address above, should my contact details change.

Name of participant Date Signature

_____ _____

_____

Name of researcher Date Signature

_____ _____

_____

To be signed and dated in presence of the participant

Copies: Signing of this consent form is an acknowledgement of receipt of the Research Participant Information Sheet and Participant Withdrawal form. You will be given a copy of this signed Participant Consent forms for your records. The original copy will be kept securely by the researcher.

Participant Withdrawal Form

Title of Research Project:
The investigation of the law regulating Money Service Businesses to prevent money laundering and terrorist finance

Name of Researcher: Karen Clubb

Participant reference Number _____

I have previously agreed to take part in the research project indentified above.

I have now decided that I wish to withdraw from this project.

I understand that I am able to withdraw from this project any time up until 18 months from the date of my interview.

I understand that I do not have to provide any reasons for my withdrawal from this project and that there will be no adverse consequence to my withdrawal.

_____ _____

_____

Name of participant Date Signature
(*or legal representative*)

Please keep a copy of this form for your records.

Please send this original form to in an envelope marked Private and Confidential to:
Karen Clubb

University of Derby
22 Kedleston Road
Derby.
DE22 1GB

Interview Schedules

A summary of the information that is given to all participants is provided below to indicate the nature of the issues specifically addressed in relation to participant consent and withdrawal and the information provided to participant regarding this. This summary includes verbal discussion of these issues with participant prior to consent to interview ,Copies of all the relevant documentation is contained in the appendices at the end of this work.

Research project summary

Thank you for agreeing to take part in this study. You have been given a participant information sheet which explains the nature of this research project and how the research will be carried out. You have also been asked to sign a consent form to indicate to indicate your consent to taking part in the research, which you have a copy of. By agreeing to take part you are aware that your name/ business name/ or specific role /title will not be referred to and your place work / community organisation or business location will be anonymsied. This also applies to any data referred to in the final report and any further publication of the research findings. The project data (original interviews) will be kept securely and confidentially and only accessed by the researcher and supervisors. The data from these will be used compile the research findings. You have given a participant withdrawal form that tells you what to do should you wish to withdraw from the research project later.

Do you have any or any further questions of queries before we begin the interview?

INTERVIEW SCHEDULE 1 OPERATORS

A ARS/ MSB BIORGRAPHICAL DATA

1. Name
2. Age 20-30 30-40 40-50 50-60 60+
2. How would you describe your ethnicity?
3. Can you describe the community you belong to?
   (*business, locality, culture, religion, ethnicity, family , work*)

4. How long have you been providing remittances services?
5. Do you provide personal remittance services?

Confirm criteria for participation in study

(i) provision of remittance services prior to December 2007
(ii) provision of personal remittances services

6. How long have you been a remittance service provider? (*No. of years*)
7. Do you know of any other remittance service providers operating locally? (*type of, area, source of contact*)

B ARS/ MSB PROCESS AND OPERATION

8. How would you describe the clients that use your services?
(*local, community , same type/group, ethnicity, age, business/ private, frequent/occasional users, sex, familiy)*

9. Why do you think clients prefer to use remittances (MSB) services rather than another alternative such as a bank?
(*choice, recipient needs/ preference* alternative *speed, location, amount frequency, cost, trust, personal, quality accessibility service, value, custom, tradition, familiarity*)
10. What is the average value of remittances sent by your customers per transaction?

under £500 £500-£1000 £1,000-5,000 £5,000-10,000 more than this.

11. How often do your customers typically remit funds? Would you describe this a regular or infrequent?
(*weekly, monthly, periodically, for specific occasion, on demand*)

12. Where are remittances most commonly sent to?
13. Do you also receive remittances? Where are remittances most often from? (*purpose, timing, settlement, client type*)
14. Is your remittance service your main business?
15. Do you use any agents in connection with any aspect of your MSB?
16. Do your cooperate with any other MSB in providing your services?
17. Do you ever travel abroad to meet people in connection with your MSB?
18. What do you think are the risks of MSB being misused i.e. for the laundering of money?
(*location, customer,, ethnicity, verification transaction*)

19. In your view, what are the risks of MSB being misused for terrorist purposes?
(*destination, ethnicity, method operation, record keeping*)

20. What might cause you to be concerned about a transaction being misused in this way?
(*amount, jurisdiction, client anomaly, transaction anomaly, third party)*

21. If you were concerned about a transaction how would you deal with this? (*monitor, warn, decline, question, report, seek advice)*

22. Have you ever had cause to report a transaction?

C MSB REGULATION AND IMPACT

23.What are your views on the regulation of MSB? Do you agree with MSB being regulated ?
(*good/ bad idea, necessary, inevitable, fair, unjust, cost /skill implementation,onerous wieldy, disproportionate, perception as financial institution*)

24. How have you found applying the regulations in practice?
(*ease, onerous, workable/unworkable intrusive business/client, skill, challenge, adaptation, business practice, jurisdiction)*

25. What are your thoughts about MSB being viewed as 'financial institutions'?
(*fairness, resources*, *good/ bad, balanced, formal, competitors, competitive)*

26.Do you think regulation was needed?
(*problems, consistency, standards, lack self regulation, financial services*)

27. Why do you think MSB were suggested for regulation?

28. Do you think MSB are treated the same as other areas of activity?
(*banks, charities, pre-payment cards, online services, HVD)*

29.Do you think that regulation has addressed the risk of misuse of MSB?
(*CDD, risk, record keeping, destination, 3rd parties*)

30 .What effect do you think that regulation has had on preventing the misuse of MSB for terrorist purposes?
(*reduced, suspicion detection, none, significant marginal, deterred, burden, cost ease implementation, benefits,)*

31. Are you aware of any guidance in preventing the misuse of MSB for terrorist purposes?
(*usefulness, source, sector, regulator*, *generic, specific*)

32. What has been the effect regulation on your MSB?

33. What are your thoughts about the 'regulators'?
(*role, enforcement, advisory*, *guidance*, *application soft /hard, skill, detection, parity concerns, attitude, valuable, resource, accessible, experience, problem focused/ solving*)

INTERVIEW SCHEDULE 2 - REGULATORS

A. BIOGRAPHICAL DATA

34. Name
35. Job Title
36. Regulator
37. Period in current post/ summary previous role / experience
38. Can you summarise your role/ experience and how it relates to regulation of remittance services now termed MSB?
39. Does your role involve the investigation or enforcement of money laundering or terrorist finance?

B. MSB PROCESS

40. What do you understand by the term 'MSB or remittance service and how they operate?
(*distinction, service, degree formality*, *context, community, method, allegiance, trust)*

41. What community/ social/ethnic group do you think MSB operators come from?
(*relevance, tight kit, trusting, religion, ethnic, diaspora, language, customs , business)*

42. What kinds of people do you think use remittances services?
(*community, ethnicity, local, diaspora, other, high/low risk, socioeconomic)*

43. Why do you think people choose to use remittance services rather than other options, such as a bank?
(*ease, informal, risk, trust, service, culture, tradition, cost, recipient, access)*

44. What are risks of misuse, if any, associated with the operation of remittance services?
(*evidence misuse, self regulation, records, client grp ,monitor, control, trace, sanctions, accountability, identify*

45. How do you think these risks might arise?
(*characteristics operation*, *records, clients, jurisdiction, trust, identity, anonymity, risk, speed, suspicion, care,*)

46. In your work have you come across any instances of misuse of remittance services?
(*pre-postreg, incidence, nature misuse*, *context, action, effect regulation)*

47. What do you think about the misuse of remittances services for terrorist purposes?
(incidence, likelihood pre- post regulation, *vulnerable, preventable, suspicion, targeted)*

C. MSB REGULATION AND IMPACT

48. What are your views on the regulation of remittance services?
(*necessary, fairness , balanced, need, suspicion, proportionate, control, supervision, risk, distrust, reputation protective, timely, reactionary, EU, international, motivation, visibility)*

49. How would you describe the relationship between the regulators and the remittance service sector?
(*supportive, engaged, dialogue, remote con/strained, informative, trust, confidence, knowledge, skill, proactive/ reactive, bias , resistance)*

39. What impact do you think regulation has had on the provision of remittances services generally?
(*cost, practicality, usage, operatives, cooperative, ST, LT, upheaval, constrained, competitive, inclusive, divisive, disruptive, effect, protect)*

40. What impact do you think regulation has had on the users of remittance services?
(*formalise, modernise, integrate, mainstream*, *decline*, *identify, risk, monitor, intrusive, culture, language ,privacy, suspicion, access, visibility)*

41. What effect do you think the regulation of remittances services has had, in addressing their misuse?
(*reduced, control , visibility, detection, prevention, sanction*, *none*, *limited, ST, LT displacement*, *monitoring)*

42. What effect do think regulation of remittances service has had on their misuse for terrorist purposes?
(*intelligence, monitoring, network, members, trace, track recipient, location, facilitation, risk detection, sanction*, *incidence, volume*)

43. Are you aware of any misuses of MSB that are not captured by the

current regulations?
(incidence, context, issue, action, problem, extent)

44. Are you aware of any guidance is given to the MSB sector to prevent their misuse for terrorist purposes?
(client relationship, risk assessment , suspicions, risk profiling, culture, intrusive)

INTERVIEW SCHEDULE 3 STAKEHOLDER COMMUNITY GROUPS

A. BIOGRAPHICAL DATA

45. Can you please tell me which organisation/ group you represent and the purpose of this organisation or group?

46. How would you describe your membership?
(*common characteristics, class, culture, purpose, tradition, age, religion, business)*

B. MSB PROCESS

47. What kinds of people do you think use remittance services?
(*class ,social, ethnic diaspora, poor, affluent, local, suspicion, anonymity, secrecy)*

48. Why do you think people choose to use remittances services?
(as opposed to bank)
(*purpose, sender, recipient, access, choice, service, speed, cost)*

49. Do you think any members from your group /community use remittances services?

C. MSB REGULATION AND IMPACT

50 .Do you think that there is a risk that remittance services could be used for an illegal purpose? (for example laundering money)
(*awareness, suspicion*, *identified, customer, operator, location)*

51. What are your thoughts on the risk of misuse of remittance services for terrorist purposes?
(*suspicion likely, evidence, community, risk, culture, generalisation)*

52. Do you think that the regulation of remittance services will prevent their misuse for terrorist purposes?
(*vigilance, suspicion, action , sanction, prevention , protection.*

53. Are there any other effects of regulation that you are aware of?
(*fairness, suspicion, control, sanctions , formality, protection, cost, access, balance individual/ community interests*)

Thank you for your time and your contribution to this research project.
I am very grateful for your contribution. Before we conclude the interview are the any further comments you wish to make in relation to the questions asked or in relation to the research topic generally?I will now give you an information sheet and my contact details. If you have any question or concerns later, or in the unlikely event you change your mind about your participation please contact me. Thank you once again for your time and contribution.

Appendix 4

Table A Cases concluded by the CPS Counter Terrorism Division 2007 -2013				
Year	**No. Cases concluded**	**Total No. of defendants convicted**	**No. terrorist property cases**	**No. of defendants terrorist finance cases**
2013	7	25	1	3
2012	9	21	1	2
2011	9	15	1	1
2010	12	25	0	0
2009	15	20	0	0
2008	17	39	2	4
2007	15	42	1	3

Appendix 5 Typology of UK MSB operation

Type of MSB	Operational characteristics
Agent	Single agency with branded principal or multiagency single operator reliance on the supervision and AML processes of principal uses principal's IT system some keep their own paper records MSB business situated within same premises as parallel business Operators ethnicity most likely to match that of the customers served A variety of jurisdictions served reliant on principal's geographical reach Personal remittances only , if linked to branded provide then also offer incoming remittance as
Small independent	Operates form a single location Makes use of agents overseas only in very localised areas Serves a niche area / corridor Strong community presence and long serving May travel abroad to further contacts Offer some bespoke remittances services for businesses Has small staff team business owner generally assumes MLRO role If servicing business then will have incoming and outgoing remittances
Medium Independent	Number of business location confined to regional geographical area Has small staff team Person allocated to MLRO role Makes use of agent overseas only Personal and some business remittance MSB in own right or on a par with other business interests Limited incoming remittances Services niche corridors / areas Most likely to have family link to business here
Wholesale	Not identified by fieldwork but interviewees revealed this type of business Most likely to be engaged in a business alongside MSB that trades internationally or solely as MSB business Has access to large cash pools Engages in consolidation and settlement for other MSBs May resemble a medium independent or a large principles Difficult to identify its wholesale activity May be a large SPI or small API
Principal	Large branded or multinational business Serves a number of corridors or niche service to single jurisdiction High IT capacity May have internet presence Makes use of agents in UK and overseas Has MLRO to oversee AML processes Highly engaged at policy level with regulator An API Ethnicity of owners/ management team irrelevant