



RESPONSE TO SUSPICIOUS ACTIVITY REPORTS (SARs) REGIME: CALL FOR INFORMATION

ICAEW welcomes the opportunity to comment on the *Suspicious Activity Reports (SARs) Regime: Call For Information* published by The Home Office on 25 February 2015, a copy of which is available from this [link](#).

Given the timeframe for submitting this information there have been certain limitations in our own process for preparing a response. This may also impact the validity of the wider conclusions drawn from the exercise as a whole.

This consultation reflects the views not only of ICAEW as a regulator, but has taken account of the experience of its members in practice.

ICAEW is a Supervisory Body recognised by HM Treasury for the purposes of the Money Laundering Regulations 2007 dealing with approximately 13,000 member firms.

ICAEW is a world-leading professional accountancy body. We operate under a Royal Charter, working in the public interest. ICAEW's regulation of its members, in particular its responsibilities in respect of auditors, is overseen by the UK Financial Reporting Council. We provide leadership and practical support to over 142,000 member chartered accountants in more than 160 countries, working with governments, regulators and industry in order to ensure that the highest standards are maintained.

ICAEW members operate across a wide range of areas in business, practice and the public sector. They provide financial expertise and guidance based on the highest professional, technical and ethical standards. They are trained to provide clarity and apply rigour, and so help create long-term sustainable economic value.

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MAJOR POINTS

1. The existing SARs report is primarily designed with banks and financial institutions in mind, not for accountants or in fact any section of the regulated sector where suspicions are formed based on patterns of behaviour rather than specific transactions. Currently accountants have to 'shoehorn' their reports into this format. Rather than continuing with the current 'one size fits all' approach, steps should be taken to enable differentiation by section of the sector.
2. There appears to be an overarching issue with education on the SARs regime, particularly around consent requests. This applies not only to reporters (for which some responsibility must naturally fall on the shoulders of the profession) but also to law enforcement who need to develop a greater understanding of what accountants actually do, how they provide their services, how suspicions may arise during the course of their business, and the limited extent to which they may actually be involved in handling client money or the processing of transactions. We would welcome a cross education agenda in this area.
3. The process of submitting a SAR can be complicated and time consuming, and this cost is borne by the reporter. For example, some of the feedback we have received highlights multiple unsuccessful attempts to submit a SAR online. IT improvements should address this as well as the overall user friendliness of online reporting

RESPONSES TO SPECIFIC DISCUSSION POINTS

Q1: CONTEXT

4. ICAEW is a Supervisory Body recognised by HM Treasury for the purposes of the Money Laundering Regulations 2007 dealing with approximately 13,000 member firms.
5. In the year to Sept 2014 our members submitted 64% of all SAR's from the accountancy sector and 68% of equivalent consent requests.
6. We maintain our understanding of the sector through a combination of feedback and guidance from FATF, NCA, the police and other professional groups. We are active in groups such as the AML Supervisors Forum (AMLSF); the AMLSF's Accountants' Affinity Group (AAG), the Consultative Committee of Accountancy Bodies (CCAB) and our own ICAEW AML Sub-committee. We maintain close engagement with the Home Office, HM Treasury and a range of member groups.

Q2: HOW CAN MONEY LAUNDERING AND THE FINANCING OF TERRORISM BE BETTER IDENTIFIED?

7. With some notable exceptions, accountants do not generally have experience of law enforcement or forensic work. Whilst much of their work may well be investigatory, such investigations are rarely criminal. As such they may not always form suspicions in a given scenario where a law enforcement officer might. Greater access to data around typologies and red flags would help here, especially if law enforcement are to continue to rely on the private sector for intelligence. Region/sector specific communications would also facilitate tailored application of risk based approach, and encourage less generalised profiling. Specific typologies might be more prevalent in specific geographic regions.
8. Education should be reciprocal and it is important that any future legislative/regulatory changes are not based on a flawed understanding of the UK profession and how it is structured. Law enforcement should continue to engage with accountants, especially those at the 'coalface' who may be making SARs on a more regular basis than their regulatory body.
9. Greater protection of anonymity for sources of SARs, for example in court proceedings, may have a positive impact on reporting.

Q3: HOW CAN INFORMATION SHARING BETWEEN AND WITHIN SECTORS BE IMPROVED TO PREVENT CRIME AND PROTECT THE REGULATED SECTOR AND THE WIDER FINANCIAL SYSTEM?

10. Information sharing should help identify the risks and trends to be understood and managed by accountants. Such information could be derived from the SARs submitted by the wider profession, or indeed the whole of the regulated sector. This could then be used to drive training, updates, alerts, awareness campaigns, and risk-based monitoring. Additionally, information sharing might help regulators identify high risk professionals within their sector, to help ensure that their services are not used to facilitate money laundering or terrorist financing, by way of a supervisory intervention. Sharing information on potential clients that were 'rejected' following client due diligence might be particularly useful.
11. Such information could include statistical reports identifying, among other things: types of SAR; geographical spread, types of client, services provided and information on quality of SARs to inform opportunities for further education.
12. However, supervisors should not have direct access to the SARs database as this will create risks and vulnerabilities within the regime including issues of 'tipping off', breaches of confidentiality and prejudicing of investigations.

Q4: HOW CAN SARs REPORTING BE MADE MORE EFFICIENT?

13. The existing SARs report is primarily designed with banks and financial institutions in mind, not for accountants or in fact any section of the regulated sector where suspicions are formed based on patterns of behaviour rather than specific transactions. This is evident from sections of the SARs form requiring Credit/Debit information (the accountants understanding of these terms derives from an entirely different angle), account numbers and information as to the date the account was open/closed. The report also assumes a single suspicious transaction is being reported rather than a pattern. An accountant may also have very little information about the intended recipient of a transfer. Currently accountants have to 'shoehorn' their reports into this format. Rather than continuing with the current 'one size fits all' approach, steps should be taken to enable differentiation by section of the sector.
14. We are conscious that, as with many organisations, FIU resource is limited. The legislation currently requires those within the regulated sector to report suspicious activity even when they aware that the matter is already being dealt with by law enforcement, thus resulting in unnecessary time being spent analysing such reports. We propose that there should be an exemption from reporting based on knowledge of police action already being taken (eg possession of a crime reference number or existing SAR reference number) and surety on the part of the professional that they have no further information.
15. The introduction of a threshold for reporting to screen out potentially low value information might reduce the amount of administrative time spent at NCA, but this may also bring with it the potential for abuse or mistakes with more serious and relevant information not getting reported as falling outside the threshold. Once again this is a particular issue where a suspicion is formed based on a pattern of behaviour as there may be no specific transaction(s) against which to apply any threshold that might be introduced. Additionally, a small transaction may be part of a wider scheme.
16. The SARs online reporting system has been criticised as difficult to access and users report that it is outdated and slow. This is a particular issue for time critical activities such as consent requests. Some users report issues with the "send" function which is fundamental. A new SARs IT system would therefore be well received. Such a recommendation is not a new one. Indeed the Lander review suggested that 'robust and high-performing' IT was vital to the successful operation of the SARs regime' and 'had the potential to improve the efficiency of their processes thereby reducing compliance costs'. Such improvements might include for example, greater use of drop down menus and pop-up guidance.

17. There needs to be an increased focus on improving quality (rather than quantity) of reports by providing more feedback on the quality of reports that are submitted.

Q5: HOW CAN THE CONSENT REGIME BE IMPROVED?

18. Members would like the ability to file a single consent SAR where there were several transactions that were all linked, rather than submitting multiple SARs on a single suspicion. This is especially important in the example of an insolvency engagement where a series of payments may need to be made to a number of creditors. Additionally at the time of the request the exact amount of each transaction may not be known, which currently presents a significant barrier to a successful consent request.
19. We are concerned about an apparent assumption on the part of law enforcement that accountants will ask for consent to continue specific transactions, in the same way that bankers or lawyers might. In reality, an accountant may well not be handling client money at all and instead be giving advice about the transaction itself, and suspicion may be aroused as the work progresses. The concern therefore being that they will be involved in an arrangement that facilitates money laundering which, per the legislation, would still require a valid consent defence in order to avoid prosecution. This has led to a view from the FIU that an accountant in such a scenario is simply seeking consent to continue with the relationship. If law enforcement feel that consent is not required in such circumstances then this should be made clear. As noted above there is potential merit in extending the consent regime beyond that for a specific transaction.
20. Where NCA feel that the information in a consent request is insufficient it is not clear whether their new policy represents a refusal of consent or confirmation that the request was invalid. Reporters in the scenario above currently receive a letter saying that NCA are not in a position to exercise its discretion to grant or refuse consent. In response to consent requests it should be made clear whether the request is granted, refused, there is insufficient information, or consent is not in fact required. The distinctions are important as it affects the legal position of the reporter therefore further clarity would be welcome.
21. We remain concerned about the lack of a POCA equivalent consent defence to the 'participation' offence in the new Serious Crime Act. In a case where an accountant has consent under section 335 of the Proceeds of Crime Act (POCA) from the National Crime Agency to continue with a suspicious transaction for a client (in order to gather information for the prevention or detection of crime) he or she is still technically breaking the law by committing a participation offence under the Serious Crime Act. Not only does this represent a legislative inconsistency but it may also deter some individuals from submitting a SAR where they otherwise would have done. This is especially important for professionals who follow a Code of Ethics under which we would expect a reasonable baseline for ethical behaviour to be compliance with law and regulations.

Q6: WHAT CAN WE LEARN FROM INTERNATIONAL BEST PRACTICE?

22. In principle we think that the SAR regime in the UK is far ahead of most countries. The perception is that professionals, regulators and law enforcements are all committed to the regime, evidenced through rigorous adoption and adherence. We hope the results of this call for information will continue to build on these successes.