
Fresh inquiry into economic crime will push UK further towards expansion of ‘failure to prevent’ legislation

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On 23 October, the Treasury Committee launched a further inquiry to review what progress has been made in combatting economic crime.¹ While the inquiry is focused on the effectiveness of the existing anti-money laundering (AML) regime, it is likely the Committee will use the review to increase the pressure on Government to implement legislation criminalising the failure of organisations to prevent all forms of economic crime.

During the previous Parliament, the Treasury Committee undertook an inquiry into the UK’s anti-money laundering and sanction implementation systems, as well as the impact of economic crime from a consumer perspective. The purpose of the new inquiry is to examine what progress has been made in respect of both areas, alongside an investigation into trends emerging as a result of the coronavirus pandemic.

The Treasury Committee has called for evidence regarding the Office for Professional Body Anti-Money Laundering Supervision (OPBAS), which was established in 2018 and sits within the Financial Conduct Authority (FCA), to oversee AML supervisors and their compliance with the 2017 Anti-Money Laundering Regulations.

The inquiry is also seeking evidence relating to the impact of the FinCEN (US Financial Crimes Enforcement Network) papers. The FinCEN papers comprise over 2,500 leaked documents, mostly Suspicious Activity Reports (SARS), that shine a light on over \$2 trillion of suspected money laundering activity involving more than 10,000 individuals and organisations across 170 territories. The FinCEN papers include 622 SARs in the UK and 400 featuring organisations registered in the British Virgin Islands.

Importantly, the inquiry will also take evidence relating to corporate liability for economic crime. The Sixth EU Anti Money Laundering Directive (6MLD) requires EU governments to implement a corporate criminal offence of failing to prevent money laundering offences. The UK has exercised its right to opt out of 6MLD and so will not be required to enact such an offence. However, this inquiry will add momentum to the general direction of travel towards a broader application of the failure to prevent model of corporate liability in financial crime. The wheels of change are slow and almost four years have now passed since the UK Ministry of Justice called for evidence on the reform of the

law of corporate criminal liability for economic crime in 2017.² However, it appears only a matter of time before the UK introduces legislation in this area and the end of the Brexit transitional period on 31 December will add further impetus to this development.

The new inquiry opens two weeks after a speech made by SFO Director Lisa Osofsky at the Royal United Services Institute in which she spoke about future challenges in economic crime.³ Ms. Osofsky used her platform to reiterate that “Unsurprisingly, a ‘failure to prevent’ offence still tops” her wish list for the SFO, adding that existing powers to prosecute organisations make it “very difficult to hold companies with complex governance structures to account for their fraudulent conduct”.

As the Government continues to be distracted by the coronavirus and Brexit negotiations, developments in economic crime legislation are some way from the top of the priority list. But the eventual introduction of additional crime-specific offences, or an umbrella failure to prevent offence, appears to be an inevitability.

The deadline for submissions to the inquiry is Friday 27 November.

¹ <https://committees.parliament.uk/committee/158/treasury-committee/news/120234/committee-launches-new-economic-crime-inquiry/>

² <https://www.gov.uk/government/consultations/corporate-liability-for-economic-crime-call-for-evidence>

³ <https://www.sfo.gov.uk/2020/10/09/future-challenges-in-economic-crime-a-view-from-the-sfo/>

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