



1. Home (<https://www.gov.uk/>)
 2. Circular 004/2021: money laundering and suspicious activity reports
(<https://www.gov.uk/government/publications/circular-0042021-money-laundering-and-suspicious-activity-reports>)
- Home Office (<https://www.gov.uk/government/organisations/home-office>)

Correspondence

004/2021: money laundering: the confidentiality and sensitivity of suspicious activity reports (SARs) in the context of disclosure in private civil litigation

Published 7 July 2021

Contents

Introduction

Background

Civil disputes and SARs

Procedure to be followed

Data Subject Access Requests

The Reason for Confidentiality for SARs

[Print this page](#)



© Crown copyright 2021

This publication is licensed under the terms of the Open Government Licence v3.0 except where otherwise stated. To view this licence, visit [nationalarchives.gov.uk/doc/open-government-licence/version/3](https://www.nationalarchives.gov.uk/doc/open-government-licence/version/3) (<https://www.nationalarchives.gov.uk/doc/open-government-licence/version/3>) or write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or email: psi@nationalarchives.gov.uk.

Where we have identified any third party copyright information you will need to obtain permission from the copyright holders concerned.

This publication is available at <https://www.gov.uk/government/publications/circular-0042021-money-laundering-and-suspicious-activity-reports/0042021-money-laundering-the-confidentiality-and-sensitivity-of-suspicious-activity-reports-sars-in-the-context-of-disclosure-in-private-civil-li>

Introduction

1. This Circular sets out the position that Her Majesty's Government takes regarding the use of Suspicious Activity Reports (SARs) in private civil litigation matters. It should be read in conjunction with Home Office Circular 022/2015 (<https://www.gov.uk/government/publications/circular-0222015-money-laundering-the-confidentiality-and-sensitivity-of-suspicious-activity-reports-sars-and-the-identity-of-those-who-make-them>). The purpose of this Circular is to provide guidance to help protect reporters of SARs (including but not limited to financial institutions and professional services firms), the subjects of SARs and the integrity of the SARs regime wherever possible. Reporters should consider how they can apply points set out in the circular to contribute towards maintaining the wider effectiveness of the SARs regime. For the avoidance of doubt, this circular does not affect any legal obligations of disclosure including under the Civil Procedure Rules 1998 or under an order of the court.

Background

Disclosures under Part 7 of the Proceeds of Crime Act 2002

2. The Proceeds of Crime Act 2002 (POCA) requires businesses in the anti-money laundering regulated sector (reporters), nominated officers in the regulated sector, and nominated officers in other sectors to report to the National Crime Agency (NCA) where they have knowledge or suspicion of, or reasonable grounds for knowing or suspecting, that another person is engaged in money laundering (a required disclosure under s.330-332). It is an offence not to make a required disclosure without reasonable excuse. Separately, any person can seek a defence against committing a money laundering offence by making an authorised disclosure to the NCA (under s.338). Should the person obtain the appropriate consent (also known as a 'Defence Against Money Laundering' or 'DAML') to conduct the transaction or activity about which they have suspicions they do not commit a money laundering offence by carrying out that transaction or activity.

3. For the purposes of this document, reference to 'SARs' includes both required disclosures and authorised disclosures (DAMLs).

The SARs Regime

4. While the SARs regime itself is in the public domain, individual SARs submitted to the NCA are not, as explained in Home Office Circular 022/2015. That Circular sets out the standard procedure to be followed by the police, other law enforcement agencies, and the NCA in relation to the disclosure of SARs under the Criminal Procedure and Investigations Act 1996.

5. SARs contain potentially sensitive material and, in both civil and criminal proceedings, subject to balancing public interest factors, they should not be disclosed. Reasons for the confidentiality of SARs are set out in detail in paragraphs 16-19 below and include: protecting both the reporters and subjects of SARs; minimising the risk of jeopardising current or future law enforcement investigations; and maintaining the integrity of the SARs regime. These reasons are equally applicable in civil proceedings. As such, in both civil and criminal proceedings the disclosure of SARs and/or related law enforcement investigations could pose a real risk of serious prejudice to an important public interest.

6. The disclosure of either the fact that a SAR has been made or that a money laundering investigation is being contemplated or carried out, or, in certain circumstances any disclosure which may prejudice an investigation, may amount to an offence of tipping off or prejudicing an investigation under sections 333A or 342 of POCA.

Civil disputes and SARs

7. As far as possible, reporters should avoid referring to SARs in the documentation of their internal decision-making processes. Instead, in cases of a decision to exit or terminate a customer relationship, the documents prepared for the purpose of that decision making should focus upon the basis for the decision, which will be specific to each case and may include: commercial factors; risk appetite reasons; non-compliance with agreed terms and conditions; or where the reporter is unable to apply the customer due diligence measures required by regulation 28 of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (which might then have been followed by the making of a SAR). Reference to the basis for the decision may help reporters to explain and justify their decision to a customer, before reaching the point of litigation wherever possible, without reliance upon or reference to a SAR. It may also remove any subsequent need for reliance on the SAR in litigation that arises and reduce the relevance of SARs to such litigation.

8. Civil litigation may arise between a customer or client, or a third party, and a reporter, where the reporter has filed a SAR, but the reporter's defence does not rely on the SAR itself. As set out above, an example of this would be where a dispute arises about the termination of a relationship, in circumstances where the reporter has filed a SAR about a customer or client. The decision to terminate a relationship may be driven by commercial factors or regulatory considerations. However, the submission of a SAR should not be an act that obliges a reporter to terminate a customer or client relationship. Reporters should seek to defend the challenge based on the processes that gave rise to the decision to terminate the relationship, rather than upon the fact of submitting a SAR.

9. In disputes or litigation where the reporter has obligations which arise under the Civil Procedure Rules or under an order of the court, or where it appears that despite the steps above, the SAR will become disclosable (e.g. where a transaction has been delayed because the reporter has been refused a DAML), reporters should follow the procedure set out below.

Procedure to be followed

10. If, upon consideration of this circular, a reporter is compelled in the context of a specific dispute or litigation, whether under the Civil Procedure Rules 1998 (CPR) or by court order, to disclose SARs in civil proceedings they should contact the NCA at the first opportunity, at UKFIUSARs@nca.gov.uk.

11. Reporters should list:

- all of the SARs they anticipate will be disclosable;
- a summary of any claim/defence;
- the reason why it is anticipated that SARs will be required to be disclosed;
- relevant court deadlines; and
- any other relevant material.

12. The NCA will endeavour to respond to the reporter within a reasonable timeframe and will consider any potential risks to the public interest (e.g. to the reporter or ongoing investigations), and the NCA/law enforcement can make representations to the reporter and/or to the court as to how it may be possible to mitigate such risks if it wishes to do so. Where a reporter receives such an NCA view, it will be able to take that view (or the fact of not having a view) into account in making its decision on whether to proceed with the proposed disclosure.

13. The NCA/law enforcement is not able to provide reporters with assurances regarding s333A (tipping off offence) or s342 (prejudicing investigation offences) of POCA. SARs exist on the NCA's database for six years and could become relevant to a current or future investigation at any point during those six years; SARs could also remain relevant to ongoing investigations after this time. The NCA does not, as a matter of course, comment on the existence of any operational matters.

14. The making of SARs under the provisions of the Terrorism Act 2000 is outside the scope of this Circular, but if a reporter considers that such SARs may be disclosable in private civil proceedings, they should contact the NCA in the manner set out above.

Data Subject Access Requests

15. If a reporter receives a Data Subject Access Request ('DSAR') under the Data Protection Act 2018 (DPA 2018) they will need to consider, as the data controller, their disclosure obligations and how they handle material. Reporters should be aware of the available exemptions under the DPA 2018 (for example, the crime and taxation exemption) when considering whether to make the subject of a SAR aware that a SAR has been submitted on them; and the reporters may also wish to consider whether any of the exemptions apply to the SARs related material that they hold. Detailed guidance on relevant exemptions to the DPA 2018 is provided by the Information Commissioner's Office.

The Reason for Confidentiality for SARs

16. There are wide implications to consider if the existence or content of SARs were to be made publicly known. SARs are submitted to the NCA in order to provide information that may assist law enforcement with the detection and prevention of crime. SARs in the public domain have the potential to prejudice current or future investigations, reducing law enforcement's ability to effectively disrupt criminal activity.

17. When submitting SARs, reporters have an assurance of confidentiality as outlined in Home Office Circular 022/2015. Reporters revealing their own involvement, or that of others, especially where their suspicions were accurate and particularly where there is not yet a law enforcement investigation in place could put reporters or their staff at serious risk of harm. It could also make reporters generally more reluctant to report in the future due to a potential risk of harm or reduced confidence in the confidentiality of the regime.

18. SARs are made as a result of the reporter's own knowledge, suspicion or reasonable grounds for knowledge or suspicion. It is feasible that SARs could refer to or identify individuals who are in fact not linked to crime. The SARs regime is designed and managed in such a way as to protect innocent third parties, as there could be very serious consequences for an innocent party who is publicly linked with serious offending such as money laundering.

19. If a reporter has discovered money laundering or terrorist financing, putting that suspicion into the public domain may prompt the offender and/or their associates to dispose of evidence and/or change their behaviour (such as a change in use of bank accounts). If an offender becomes aware that the authorities have been informed of their activities then they may become more security conscious in future – again making detection and disruption of their activity more difficult, or even impossible.

[Print this page](#)

Is this page useful?

- [Yes this page is useful](#)
- [No this page is not useful](#)

Thank you for your feedback

[Report a problem with this page](#)

[Close](#)

Help us improve GOV.UK

Don't include personal or financial information like your National Insurance number or credit card details.

What were you doing?

What went wrong?

Help us improve GOV.UK

To help us improve GOV.UK, we'd like to know more about your visit today. We'll send you a link to a feedback form. It will take only 2 minutes to fill in. Don't worry we won't send you spam or share your email address with anyone.

Email address