

# *Higher Education institutions and the anti-money laundering and counter-terrorism financing regulations*

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# **Higher Education Institutions and the Anti-Money Laundering and Counter-Terrorism Financing Regulations**

## **Author Names and Affiliations:**

Professor Nicholas Ryder, Cardiff University

Dr Sam Bourton, University of the West of England

Demelza Hall, University of the West of England

Dr Henry Hillman, University of Reading

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## **Abstract**

To tackle money laundering and terrorism financing, the United Kingdom has implemented global mechanisms introduced by the United Nations and the Financial Action Task Force. These mechanisms viewed financial institutions as gatekeepers to the financial system, requiring the introduction of preventative measures. In response, money launderers adapted their techniques and targeted other sectors. While efforts have been made to identify new typologies and adapt relevant legislation, the link between Higher Education Institutions and money laundering remains poorly understood. This paper provides a novel investigation into the money laundering and terrorism financing risks to which universities and their students are exposed. Through an analysis of the responses to freedom of information requests, the paper also identifies significant disparities among universities regarding the implementation of anti-

money laundering and counter-terrorism financing legislation. Consequently, the paper offers an original insight into the application and implementation of this legislation to a high-risk, yet under-researched, sector.

## Introduction

The goal of criminal activities is to generate a profit for organised criminal groups. Money laundering is the illegal process or act by which these groups attempt to disguise, hide, and distance themselves from their illegal activities. This process enables them to enjoy a criminal lifestyle without revealing their source. It is impossible to determine the extent of money laundering; estimates vary, and its calculation is hampered because there is no visible data on the amount of money laundered.<sup>1</sup> However, money laundering is a significant threat to the global financial system, nation states and the United Kingdom (UK), jeopardising the security of its citizens and the integrity of its national economy. To address this threat, the UK has implemented the global anti-money laundering (AML) mechanisms introduced by the United Nations (UN),<sup>2</sup> the Financial Action Task Force (FATF),<sup>3</sup> and the European Union (EU).<sup>4</sup> The global AML regime has focused on a preventative strategy that utilises financial intelligence submitted by Suspicious Activity Reports (SARs) to a Financial Intelligence Unit. Over 90% of the SARs submitted to the National Crime Agency (NCA) in the UK are from financial or

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<sup>1</sup> Financial Action Task Force, “What is Money Laundering?”, <https://www.fatf-gafi.org/en/pages/frequently-asked-questions.html#tabs-36503a8663-item-6ff811783c-tab>.

<sup>2</sup> See, United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (adopted 20 December 1988) 1582 UNTS 95; United Nations Convention against Transnational Organized Crime (adopted 15 November 2000) 2225 UNTS 209; United Nations Convention against Corruption (adopted 31 October 2003) 2349 UNTS 41.

<sup>3</sup> Financial Action Task Force, *International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation* (Paris: Financial Action Task Force, 2022).

<sup>4</sup> See Directive (EU) 2018/1673 of the European Parliament and of the Council of 23 October 2018 on Combating Money Laundering by Criminal Law [2018] OJ L 284/22.

credit institutions.<sup>5</sup> In response, money launderers have adapted their techniques to target lesser-regulated, or unregulated, sectors.<sup>6</sup> Subsequently, the UK has made extensive efforts to identify new criminal methodologies and adapt relevant legislation. Therefore, money laundering has attracted a great deal of academic commentary that has addressed a wide range of related issues.<sup>7</sup> However, the link between Higher Education Institutions (HEIs) and money laundering is not well-understood, despite reports of universities accepting suspicious payments from convicted criminals and corrupt Politically Exposed Persons (PEPs),<sup>8</sup> specifically, individuals holding a prominent role in society, which could be abused for criminal purposes.<sup>9</sup> Additionally, several reported cases have revealed that students have used student loans to finance terrorism,<sup>10</sup> and increasing numbers of students allow their bank

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<sup>5</sup> National Crime Agency, *UK Financial Intelligence Unit Suspicious Activity Reports Annual Report 2020* (London: National Crime Agency, 2021) 9.

<sup>6</sup> See H.M. Treasury and Home Office, *National Risk Assessment of Money Laundering and Terrorist Financing 2020* (London: H.M. Treasury and Home Office, 2021).

<sup>7</sup> See P. Alldridge, *What Went Wrong with Money Laundering Law?* (London: Palgrave Macmillan, 2016) and K. Benson, *Lawyers and the Proceeds of Crime: The Facilitation of Money Laundering and its Control* (London: Routledge, 2021).

<sup>8</sup> M.T. Page, “‘West African Elites’ Spending on UK Schools and Universities: A Closer Look” (Carnegie Endowment for International Peace Working Paper, 2021), [https://carnegieendowment.org/files/Page\\_AfricaUK\\_Corruption\\_1.pdf](https://carnegieendowment.org/files/Page_AfricaUK_Corruption_1.pdf).

<sup>9</sup> Financial Action Task Force, “FATF Guidance: Politically Exposed Persons (Recommendations 12 and 22)” (2015) [https://www.fatf-gafi.org/en/publications/Fatfrecommendations/Peps-r12-r22.html#:~:text=FATF%20Guidance%3A%20Politically%20Exposed%20Persons%20\(Rec%2012%20and%2022\)&text=A%20politically%20exposed%20person%20\(PEP,such%20as%20corruption%20or%20bribery](https://www.fatf-gafi.org/en/publications/Fatfrecommendations/Peps-r12-r22.html#:~:text=FATF%20Guidance%3A%20Politically%20Exposed%20Persons%20(Rec%2012%20and%2022)&text=A%20politically%20exposed%20person%20(PEP,such%20as%20corruption%20or%20bribery).

<sup>10</sup> *R v. Yahya Rashid* [2016] EWCA Crim 568; [2016] 1 WLR 3156.

accounts to be used by organised criminals.<sup>11</sup> Accordingly, this paper provides a novel investigation into the money laundering risks to which HEIs and their students are exposed, as well as an investigation into how universities address identified risks.

The paper reveals that HEIs are not explicitly included within the Money Laundering Regulations 2017 (the Regulations) and are not required to introduce all preventative measures.<sup>12</sup> Nonetheless, employees of HEIs are likely to be bound by the obligation to submit SARs under the Terrorism Act 2000 (TACT) and the Proceeds of Crime Act 2002 (POCA). Moreover, most, if not all, HEIs could require authorisation by the Financial Conduct Authority (FCA) under the Financial Services and Markets Act 2000 (FSMA) for the credit activities they undertake, such as, providing credit to students or introducing them to lenders.<sup>13</sup> Authorised HEIs are bound by the FCA Handbook and must comply with the AML guidelines.

Despite potential regulation, through an analysis of original empirical data, the paper reveals that there is a disparity among HEIs regarding the implementation of AML legislation. For instance, a proportion of HEIs do not provide any internal AML training for staff, nor guidance to their students on the risks posed by financial crime.<sup>14</sup> Additionally, most HEIs have now ceased the acceptance of cash payments, but many are still willing to do so, with several HEIs receiving cash payments totalling more than £1million in 2019/20. Furthermore, most universities do not submit any SARs, with the majority of them being submitted by a small

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<sup>11</sup> National Crime Agency, *National Strategic Assessment of Serious and Organised Crime* (London: National Crime Agency, 2019) p.40.

<sup>12</sup> Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017, S.I. 2017/692.

<sup>13</sup> Financial Services and Markets Act 2000, s.19, Sch.2.

<sup>14</sup> The results presented in this paragraph are discussed in 'How HEIs currently address risks of money laundering' at pp.25-39 below.

number of HEIs. In consequence, whilst HEIs are not explicitly included within the current AML/CTF framework, the current disparity of its application by the sector will continue, leaving universities, their employees, and their students, at high risk of money laundering and criminal liability. Therefore, this paper recommends that HEIs are included within the scope of the Regulations.

This paper starts by identifying money laundering and terrorism financing vulnerabilities in the higher education sector. The second section provides an overview of the methodological approach and a literature review, while the third section assesses the application of AML legislation to HEIs. The fourth section reports the measures currently taken by HEIs in response to AML/CTF threats and analyses the responses to Freedom of Information (FOI) requests received from 110 universities. After drawing the conclusion that HEIs and their students are exposed to significant financial crime risks, while often failing to take appropriate preventative measures, this paper makes a series of novel recommendations to policymakers to reduce the risks to which universities and their students are exposed.

### **Money laundering and terrorism financing vulnerabilities in the higher education sector**

Money laundering is associated with the “champagne lifestyle” of organised criminal groups who are hiding their proceeds of crime.<sup>15</sup> Common methods of money laundering in the UK include using financial institutions,<sup>16</sup> professional enablers,<sup>17</sup> cash-intensive businesses,<sup>18</sup>

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<sup>15</sup> National Audit Office, *The Asset Recovery Agency* (London: National Audit Office, 2007).

<sup>16</sup> H.M. Treasury and Home Office, *National Risk Assessment of Money Laundering and Terrorist Financing 2020*, pp.54-69.

<sup>17</sup> S. Kebbell, *Anti-Money Laundering Compliance and the Legal Profession* (London: Routledge, 2021).

<sup>18</sup> H.M. Treasury and Home Office, *National Risk Assessment of Money Laundering and Terrorist Financing 2020*, pp.5, 25, 109 and 116.



property transactions,<sup>19</sup> the sale of art,<sup>20</sup> and cash couriers.<sup>21</sup> Due to the secretive nature of money laundering, it is impossible to measure its true extent.<sup>22</sup> However, there are suggestions that money laundering is one of the world's largest industries; the International Monetary Fund (IMF) has estimated it to be equal to 2-5% of the global Gross Domestic Product (GDP).<sup>23</sup> Based on the IMF estimation, between £44.40billion and £111.01billion is laundered in the UK.<sup>24</sup> The amount of money involved is therefore of epic proportions and requires an effective monitoring and prevention strategy.

The global AML regime is based on UN Conventions,<sup>25</sup> the FATF Recommendations,<sup>26</sup> measures introduced by the EU<sup>27</sup> and other international best practices.<sup>28</sup> These measures were initially aimed at tackling the threat presented by drug money laundering, serious criminal

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<sup>19</sup> H.M. Treasury and Home Office, *National Risk Assessment of Money Laundering and Terrorist Financing* 2020, p.109.

<sup>20</sup> C. King and S. Hufnagel, "Anti-Money Laundering Regulation and the Art Market" (2020) 40(1) LS 131.

<sup>21</sup> H.M. Treasury and Home Office, *National Risk Assessment of Money Laundering and Terrorist Financing* 2020 pp.49 and 73.

<sup>22</sup> B. Unger, *The Scale and Impacts of Money Laundering* (Cheltenham: Edward Elgar, 2007).

<sup>23</sup> Financial Services Authority, "Frequently Asked Questions" (2011),  
[http://www.fsa.gov.uk/pages/About/What/financial\\_crime/money\\_laundering/faqs/index.shtml](http://www.fsa.gov.uk/pages/About/What/financial_crime/money_laundering/faqs/index.shtml).

<sup>24</sup> Based on a GDP of £2,200.1 billion in 2020: UK Public Spending, "UK Gross Domestic Product" (2023)  
[https://www.ukpublicspending.co.uk/spending\\_chart\\_2010\\_2020UKb\\_17c1li011mcn\\_\\_UK\\_Gross\\_Domestic\\_Product](https://www.ukpublicspending.co.uk/spending_chart_2010_2020UKb_17c1li011mcn__UK_Gross_Domestic_Product).

<sup>25</sup> 1582 UNTS 95; 2225 UNTS 209; 2349 UNTS 41.

<sup>26</sup> Financial Action Task Force, *International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation*.

<sup>27</sup> Directive (EU) 2018/1673.

<sup>28</sup> Including the Wolfsberg Principles.

offences and terrorism financing.<sup>29</sup> An integral part of the global AML regime has been the use of a series of preventative measures that are based on reporting entities submitting SARs to the Financial Intelligence Unit. In response to money laundering, the UK has implemented a robust AML legislative framework and enforcement strategy. The legislative measures include the POCA, TACT, the Criminal Finances Act 2017 and the Sanctions and Anti-Money Laundering Act 2018. These legislative measures are comprehensive and exceed the international standards imposed by the UN, the EU and the FATF.<sup>30</sup>

The UK has required financial institutions and non-financial businesses and professions to implement preventative measures.<sup>31</sup> However, the UK has not included the education sector.<sup>32</sup> Indeed, several sectors in the UK have been neglected, though deemed high risk; as noted by the Home Office, “whilst the sector vulnerabilities for some types of fraud and money laundering are well understood, for others the evidence base is weak”.<sup>33</sup> There is limited understanding of the money laundering and terrorism financing vulnerabilities in the education sector, particularly the risks faced by HEIs. Therefore, this paper presents a more accurate picture of the threat posed by money laundering to universities and their students, as well as the response of HEIs towards money laundering risks.

The threat of money laundering to students was highlighted by the NCA which stated that “evidence from money laundering prosecutions in the UK has shown that ... cash is frequently

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<sup>29</sup> United Nations Security Council (UNSC) Res 1373 (28 September 2001) UN Doc S/RES/1373, Art. 1(a).

<sup>30</sup> H.M. Treasury and Home Office, *National Risk Assessment of Money Laundering and Terrorist Financing* 2020, p.2.

<sup>31</sup> The 2017 Regulations.

<sup>32</sup> The 2017 Regulations, Regulation 8.

<sup>33</sup> Home Office, *Economic Crime Research Strategy: Home Office Research Priorities* (London: Home Office: 2021) s.4.3.

deposited into ‘mule accounts’ held by ... students”.<sup>34</sup> One of the most frequently used methods of money laundering in the UK is the use of money mules.<sup>35</sup> A money mule is an individual who allows their bank account to be used as a conduit for the proceeds of crime;<sup>36</sup> money is transferred into their account, and then transferred out again minus a commission, which helps obscure the origins of the money, distancing it from its criminal source. The complicity of a money mule varies depending upon the arrangement and the financial literacy of the individual. EUROPOL recognise that money mules are often unaware they are taking part in crime, having been duped by a fake job offer or a romance scam.<sup>37</sup> Both EUROPOL and the NCA identify young people as the most likely to become money mules.<sup>38</sup> Cifas suggested that there has been a 26% increase in the number of 21-year-olds (40,139 in 2018) who were acting as money mules.<sup>39</sup> Consequently, there has been an increase in the number of students who have been charged with money laundering offences. Our research found at least 15 individual students who have been charged with laundering the proceeds of crime.<sup>40</sup> For instance, students Abdi

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<sup>34</sup> National Crime Agency, *Chinese Underground Banking and Daigou* (London: National Crime Agency, 2019) p.1.

<sup>35</sup> H.M. Treasury and Home Office, National Risk Assessment of Money Laundering and Terrorist Financing 2020, p.49.

<sup>36</sup> US Department of Justice, “Money Mule Initiative” (2023), <https://www.justice.gov/civil/consumer-protection-branch/money-mule-initiative>.

<sup>37</sup> EUROPOL, “Money Muling” (2016), <https://www.europol.europa.eu/operations-services-and-innovation/public-awareness-and-prevention-guides/money-muling>.

<sup>38</sup> NCA, “Money Muling”, <https://www.nationalcrimeagency.gov.uk/what-we-do/crime-threats/fraud-and-economic-crime/money-muling>.

<sup>39</sup> Cifas, “Young Fraud Victims on the Rise: New Data Reveals 24% Rise in Under-21s Falling Victim to Identity Fraud” (2018), <https://www.cifas.org.uk/newsroom/young-fraud-victims-nine-month>.

<sup>40</sup> See for instance, N. Keeling, “Medical Student’s Chances of Becoming a Doctor in Tatters After ‘Bad Decision’ to Help Launder £60,000 Stolen from Elderly Flood Victim” (2019), *Manchester Evening News*,

Mohamed and Nyanjura Biseko were found guilty of laundering more than £10,000 through their bank accounts in 2018, part of a £37,986 fraud.<sup>41</sup> In 2019, the NCA placed account freezing orders “on 95 UK bank accounts containing an estimated £3.6million” suspected to be the proceeds of crime, which “were held mainly by overseas students”.<sup>42</sup> The Nationwide Building Society found that 61% of students perceive themselves to be vulnerable to money mule scams, 32% would consider accepting a suspicious opportunity to earn money, and 29% would allow their account to be used by someone else.<sup>43</sup> Moreover, NatWest revealed that 76% of students had been targeted by fraudsters.<sup>44</sup>

The entire education sector is vulnerable to dealing with the proceeds of crime. Private schools in the UK received payments from the Russian Laundromat,<sup>45</sup> where \$22billion was transferred

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<https://www.manchestereveningnews.co.uk/news/greater-manchester-news/medical-students-chances-becoming-doctor-16881116>.

<sup>41</sup> BBC, “Student ‘Money Mules’ Sentenced for Money Laundering” (2018), <https://www.bbc.co.uk/news/uk-england-sussex-46196850>.

<sup>42</sup> National Crime Agency, *National Strategic Assessment of Serious and Organised Crime*.

<sup>43</sup> Nationwide Building Society, “Mule Regret It: Cash-Strapped Students an Easy Target for Fraudsters as One in Three Willing to Take a Gamble with Money” (2021), <https://www.nationwidemediacentre.co.uk/news/mule-regret-it-cash-strapped-students-an-easy-target-for-fraudsters-as-one-in-three-willing-to-take-a-gamble-with-money#:~:text=Allowing%20people%20to%20use%20someone's,account%20for%20the%20same%20purpose>.

<sup>44</sup> V. Shaw, “Three in Four Students Have Been Targeted by Scams – Survey”, (2021), *The Independent*, <https://www.independent.co.uk/money/three-in-four-students-have-been-targeted-by-scams-survey-b1895043.html>.

<sup>45</sup> A laundromat is a financial vehicle which helps its clients launder the proceeds of crime, the laundromat allows its clients to outsource their money laundering to what outwardly appears to be a legitimate operation. OCCRP, “Frequently Asked Questions: What is a Laundromat?” (2019), <https://www.occrp.org/en/laundromats/frequently-asked->

from Russia to Europe using shell companies and banks.<sup>46</sup> As part of the Troika Laundromat, “British schools, colleges and education consultants received more than £3million from account holders”.<sup>47</sup> Moreover, Transparency International “identified 492 payments worth more than £4.1million to 177 different [educational] institutions”, including 59 transactions to universities worth £515,198.<sup>48</sup> HEIs are particularly likely to become recipients of laundered funds; Page estimates that the value of unexplained wealth channelled by West African PEPs into the UK education sector exceeds £30million annually, with universities accepting a significant proportion.<sup>49</sup> He also notes six instances where a UK school or university “admitted the child of a West African PEP that had been convicted of corruption-related crimes or had their assets seized.”<sup>50</sup> Financial gifts provided to UK HEIs have also raised concerns with several donors being subject to sanctions.<sup>51</sup> In 2021, The Times reported that 49 universities

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questions#:~:text=What%20is%20a%20Laundromat%3F,restrictions%2C%20and%20move%20money%20offs  
hore.

<sup>46</sup> J. Armitage, “Top Private Schools ‘Unwittingly Take Laundered Money from Criminals’” (2014), *The Independent*, <https://www.independent.co.uk/news/education/top-private-schools-unwittingly-accepting-laundered-money-wealthy-foreign-criminals-moldovan-police-occrp-a7640811.html>.

<sup>47</sup> J. Garside, “Elite UK School Fees Paid Via Tax Haven Firms, Leak Reveals” (2019), *The Guardian*, <https://www.theguardian.com/education/2019/mar/05/elite-uk-school-fees-paid-via-tax-haven-firms-leak-reveals>.

<sup>48</sup> Transparency International UK, *At Your Service: Investigating How UK Businesses and Institutions Help Corrupt Individuals and Regimes Launder Their Money and Reputations* (London: Transparency International, 2019) p.33.

<sup>49</sup> M.T. Page, “‘West African Elites’ Spending on UK Schools and Universities: A Closer Look”, p.1.

<sup>50</sup> M.T. Page, “‘West African Elites’ Spending on UK Schools and Universities: A Closer Look” p.35.

<sup>51</sup> J. Corderoy, and M. Williams, “Close Kremlin Allies among Russian Donors who Gave £7m to British Universities” (Open Democracy, 2022), <https://www.opendemocracy.net/en/dark-money-investigations/universities-7m-russian-funders-oligarchs/>.

accepted cash payments over a five year period totalling £52million.<sup>52</sup> In response, some HEIs have implemented AML policies, despite uncertainty regarding the application of the Regulations to the sector.<sup>53</sup> Universities are also indirectly associated with money laundering by the fact that criminals frequently launder their proceeds of crime through the purchase of property in university towns.<sup>54</sup>

Coupled with the threat presented by money laundering, research has highlighted the threat presented by students and terrorism financing.<sup>55</sup> Terrorists have been able to secure funds from a wide range of sources including defrauding student loan companies.<sup>56</sup> Example of terrorists using student loan fraud in the UK include Yahya Rashid, who used his student loan to fund travel for himself and his associates to Turkey,<sup>57</sup> and Salman Abedi, who used student loans to finance the terrorist attack in the Manchester Arena.<sup>58</sup>

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<sup>52</sup> G. Greenwood, and C. Parker, “Money Laundering Fears as Universities Accept £52m in Cash” (2021), *The Times*, <https://www.thetimes.co.uk/article/money-laundering-fears-as-universities-accept-52m-in-cash-vrc7q6s9b>.

<sup>53</sup> The 2017 Regulations.

<sup>54</sup> B. Chapman, “Criminals Targeting Property in University Towns to Launder Dirty Cash” (2018), <https://www.independent.co.uk/news/business/analysis-and-features/criminals-target-property-university-towns-money-laundering-eatate-agents-a8537931.html>.

<sup>55</sup> Financial Action Task Force, *Emerging Terrorist Financing Risks* (Paris: Financial Action Task Force, 2015) p.18.

<sup>56</sup> Financial Action Task Force, *Emerging Terrorist Financing Risks*.

<sup>57</sup> *R v. Yahya Rashid* [2016] EWCA Crim 568; [2016] 1 WLR 3156.

<sup>58</sup> R. Mendick, “Manchester Suicide Bomber Used Student Loan and Benefits to Fund Terror Plot” (2017), *The Telegraph*, <https://www.telegraph.co.uk/news/2017/05/26/exclusive-manchester-suicide-bomber-used-student-loan-benefits/>.

Relevant stakeholders have begun to identify emerging money laundering and terrorism financing risks, including the threat posed by virtual assets, prompting investigations into the application of the AML/CTF framework to the providers of such services.<sup>59</sup> However, the link between universities and financial crime is only just beginning to be recognised, primarily by non-governmental organisations,<sup>60</sup> and banks.<sup>61</sup> Despite these vulnerabilities, the threat posed to the higher education sector has not been discussed in detail in the National Risk Assessment.<sup>62</sup> Indeed, the limited guidance has tended to concentrate on secondary and further education.<sup>63</sup> Therefore, it is important to investigate the application of the AML framework to the education sector, as well as the measures taken by HEIs to address these financial crimes in practice. The next section explains the methods used to answer these research questions.

## Methods

This research has adopted a socio-legal methodology, which aims to shed light on the operation of law in action. Whilst the provisions of the national and international AML/CTF framework have been examined, existing knowledge on the practical impact of this legal framework is

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<sup>59</sup> Financial Conduct Authority, *Cryptoassets Taskforce: Final Report* (Paris: Financial Conduct Authority 2018) p.11.

<sup>60</sup> M.T. Page, “‘West African Elites’ Spending on UK Schools and Universities: A Closer Look”.

<sup>61</sup> Nationwide Building Society, “Mule Regret It: Cash-Strapped Students an Easy Target for Fraudsters as One in Three Willing to Take a Gamble with Money”; V. Shaw, “Three in Four Students Have Been Targeted by Scams – Survey”.

<sup>62</sup> H.M. Treasury and Home Office, *National Risk Assessment of Money Laundering and Terrorist Financing 2020*, p.125.

<sup>63</sup> National Economic Crime Centre, National Crime Agency, “Amber Alert: Bribery & Corruption Risks to UK Independent Schools: Case Studies and Red Flags” (2020), <https://www.nationalcrimeagency.gov.uk/who-we-are/publications/486-necc-bribery-corruption-risks-to-uk-independent-schools-alert/file>.

limited, particularly on those tasked with implementation, and tends to focus on providing estimates of compliance costs,<sup>64</sup> or measuring the potential impact of compliance efforts.<sup>65</sup> To yield the best results, two research methods have been deployed. First, the doctrinal method is used to analyse of the applicability of AML legislation to HEIs. Second, the empirical method enables a better understanding of the AML measures taken by HEIs in practice.<sup>66</sup> Several studies have empirically investigated the lived experience of bank employees,<sup>67</sup> especially compliance officers,<sup>68</sup> estate agents,<sup>69</sup> and lawyers,<sup>70</sup> in implementing AML/CTF prevention measures. As this research method has previously yielded positive results in understanding how the law works in practice, it shall be used for this research.

Therefore, FOI requests in the style of questionnaires were sent to 120 HEIs in the UK, identified by Universities UK,<sup>71</sup> under the Freedom of Information Act 2000 and the Freedom

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<sup>64</sup> LexisNexis Risk Solutions, “Cutting the Costs of AML Compliance How Technology and Data Can Help Reduce the Costs of Compliance and Improve the Effectiveness of Controls” (2021), <https://www.oxfordeconomics.com/resource/cutting-the-costs-of-aml-compliance/>.

<sup>65</sup> M. Levi, P. Reuter, and T. Halliday, “Can the AML System Be Evaluated Without Better Data?” (2018) 69 CL&SC 307.

<sup>66</sup> I. Zavoli, and C. King, “The Challenges of Implementing Anti-Money Laundering Regulation: An Empirical Analysis” (2021) 84 MLR 740, 746.

<sup>67</sup> M. Gill, and G. Taylor, “Preventing Money Laundering or Obstructing Business? Financial Companies’ Perspectives on ‘Know Your Customer’ Procedures” (2004) 44 Brit J Criminol 582.

<sup>68</sup> A. Verhage, *The Anti Money Laundering Complex and the Compliance Industry* (London: Routledge, 2011).

<sup>69</sup> I. Zavoli, and C. King, “The Challenges of Implementing Anti-Money Laundering Regulation: An Empirical Analysis”.

<sup>70</sup> K. Benson, *Lawyers and the Proceeds of Crime: The Facilitation of Money Laundering and its Control*.

<sup>71</sup> Universities UK, “Higher Education in Numbers” (2022), <https://www.universitiesuk.ac.uk/facts-and-stats/Pages/higher-education-data.aspx>.



of Information (Scotland) Act 2002. This method allowed the researchers to gain access to unpublished data held by HEIs, providing unique insights into the measures taken to prevent and detect money laundering and terrorism financing.<sup>72</sup> A standardised FOI request was used, enabling comparisons to be drawn<sup>73</sup> and thus valuable insights gained into the current application of the AML legislation by HEIs. The overall response rate to the FOI requests was high at 91.67%. Whilst some HEIs provided a full response to every question, others declined to answer some or all questions. As noted by Zavoli and King, it is important to appreciate that “AML-research tends to arouse suspicion,”<sup>74</sup> which may explain why some HEIs declined to respond, or provided a partial response to the request, using statutory exemptions. However, where a HEI declined to take part, it is not implied by this article that it is, or is not, complying with the relevant AML legislation.

### **Anti-money laundering and counter-terrorism financing regulation and its application to HEIs**

The approach to money laundering in the UK has two broad elements: criminalisation and preventive measures. POCA contains three principal money laundering offences of concealing,<sup>75</sup> arrangements,<sup>76</sup> and acquisition.<sup>77</sup> The preventative measures are found within

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<sup>72</sup> A. Savage, and R. Hyde, “Using Freedom of Information Requests to Facilitate Research” (2014) 17(3) *International Journal of Social Research Methodology* 303, 308.

<sup>73</sup> A. Savage, and R. Hyde, “Using Freedom of Information Requests to Facilitate Research”, 309.

<sup>74</sup> I. Zavoli, and C. King, “The Challenges of Implementing Anti-Money Laundering Regulation: An Empirical Analysis”, 747.

<sup>75</sup> Proceeds of Crime Act 2002, s.327.

<sup>76</sup> POCA, s.328.

<sup>77</sup> POCA, s.329.

the Regulations,<sup>78</sup> which were amended to comply with the Fifth Anti-Money Laundering Directive.<sup>79</sup> The POCA also contains an offence of failing to report suspicious activity for those in the regulated sector.<sup>80</sup> The FATF UK Mutual Evaluation Report found that with regard to “technical compliance, the legal framework is particularly strong”<sup>81</sup> but that “major improvements are needed to strengthen supervision and implementation of preventive measures”.<sup>82</sup>

The principal criminal offences relating to terrorist financing include fund raising,<sup>83</sup> using or possessing funds for the purpose of terrorism,<sup>84</sup> becoming involved in an arrangement which makes funds available for terrorism,<sup>85</sup> and facilitating the laundering of terrorist funds.<sup>86</sup> Additional offences include failing to disclose information about the occurrence of terrorist financing,<sup>87</sup> making insurance payments when there is reasonable cause to suspect the money will finance terrorism<sup>88</sup> and, for those working in the regulated financial sector, tipping off.<sup>89</sup>

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<sup>78</sup> The 2017 Regulations.

<sup>79</sup> Directive 2018/843.

<sup>80</sup> POCA, ss.330-332.

<sup>81</sup> Financial Action Task Force, *Anti-Money Laundering and Counter-Terrorist Financing Measures – United Kingdom, Fourth Round Mutual Evaluation Report* (Paris: Financial Action Task Force, 2018), para 5.

<sup>82</sup> Financial Action Task Force, *Anti-Money Laundering and Counter-Terrorist Financing Measures – United Kingdom, Fourth Round Mutual Evaluation Report*, para 4.

<sup>83</sup> TACT, s.15.

<sup>84</sup> TACT, s.16.

<sup>85</sup> TACT, s.17.

<sup>86</sup> TACT, s.18.

<sup>87</sup> TACT, ss.19 and 21A.

<sup>88</sup> TACT, s.17A.

<sup>89</sup> TACT, s.21D.

The preventative measures can be divided into two broad elements: data collection in the form of record keeping and completing Customer Due Diligence (CDD) requirements, and, reporting requirements, which take the form of SARs. The Regulations require CDD measures to be applied when a business relationship is first established,<sup>90</sup> when an occasional transaction exceeding €1,000 takes place,<sup>91</sup> where money laundering is suspected,<sup>92</sup> or where the “veracity or adequacy”<sup>93</sup> of previously obtained information is doubted.<sup>94</sup> The focus of CDD is on identifying the customer, verifying their identity and obtaining information on the “business relationship”.<sup>95</sup> Reporting requirements are the second element, specifically through SARs, which are sent to the NCA when transactions raise suspicions of money laundering or terrorist financing. It is a legal obligation in the UK for those in the regulated sector to report suspicious transactions.<sup>96</sup>

The UK SARs regime has been criticised with regard to resource allocation and clarity of the law. In 2018, the FATF lamented that the NCA “suffer[ed] from a lack of available resources”,<sup>97</sup> in terms of personnel, technology, and “analytical capability”.<sup>98</sup> The FATF was concerned as “similar issues were raised over a decade ago in the UK’s previous...

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<sup>90</sup> The 2017 Regulations, Reg. 27(1)(a).

<sup>91</sup> The 2017 Regulations, Reg. 27(1)(b).

<sup>92</sup> The 2017 Regulations, Reg. 27(1)(c).

<sup>93</sup> The 2017 Regulations, Reg. 27(1)(d).

<sup>94</sup> The 2017 Regulations.

<sup>95</sup> The 2017 Regulations, Reg. 28(2)(c).

<sup>96</sup> POCA, ss.330-332.

<sup>97</sup> Financial Action Task Force, *Anti-Money Laundering and Counter-Terrorist Financing Measures – United Kingdom, Fourth Round Mutual Evaluation Report*, para 6.

<sup>98</sup> Financial Action Task Force, *Anti-Money Laundering and Counter-Terrorist Financing Measures – United Kingdom, Fourth Round Mutual Evaluation Report*.

evaluation”.<sup>99</sup> The Law Commission linked the weaknesses of the SARs regime to three connected causes: a low threshold for reporting based on suspicion,<sup>100</sup> defensive reporting due to criminal liability,<sup>101</sup> and the concept of suspicion remaining poorly defined.<sup>102</sup>

The Regulations are administered by the FCA,<sup>103</sup> which gains its regulatory powers from FSMA 2000.<sup>104</sup> The legislation also bestows rule-making powers on the FCA,<sup>105</sup> including AML/CTF rules, which are contained in the FCA Handbook.<sup>106</sup> The other supervisory authorities are His Majesty’s Revenue & Customs (HMRC), the Gambling Commission, and professional bodies.<sup>107</sup>

The Regulations only apply to the regulated sector, and applicable businesses.<sup>108</sup> HEIs are not listed as part of the regulated sector, and are thus not explicitly required to introduce preventative measures to detect and address money laundering. HEIs could be considered a

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<sup>99</sup> Financial Action Task Force, *Anti-Money Laundering and Counter-Terrorist Financing Measures – United Kingdom, Fourth Round Mutual Evaluation Report*.

<sup>100</sup> Law Commission, *Anti-Money Laundering: The SARs Regime* (HMSO, 2019), Law Com. No.384, HC 2098, para.5.11.

<sup>101</sup> Law Commission, *Anti-Money Laundering: The SARs Regime*, para.5.12.

<sup>102</sup> Law Commission, *Anti-Money Laundering: The SARs Regime*, para.5.13; *R v Da Silva* [2006] EWCA Crim 1654; [2007] 1 WLR 303.

<sup>103</sup> The 2017 Regulations, Reg. 7 and Reg. 46(8).

<sup>104</sup> Financial Services and Markets Act 2000, Part 1A.

<sup>105</sup> FSMA, s.137A-FD.

<sup>106</sup> Specifically, SYSC 6.3, Financial Conduct Authority, “FCA Handbook”, <https://www.handbook.fca.org.uk/handbook>.

<sup>107</sup> The 2017 Regulations, Reg. 7.

<sup>108</sup> The 2017 Regulations, Reg. 8(2).

“high value dealer”.<sup>109</sup> This is defined as “a firm or sole trader who by way of business trades in goods ..., when the trader makes or receives, in respect of any transaction, a payment or payments in cash of at least 10,000 euros in total,” whether in single or multiple linked transactions.<sup>110</sup> As HEIs typically receive payments for services, such as tuition fees, rather than goods, the majority are unlikely to be high value dealers; an interpretation supported by the responses to the FOI requests, where only two HEIs considered themselves to be high value dealers.<sup>111</sup> Additionally, the supervisory authorities do not regulate HEIs. Neither HMRC, the FCA or the Office for Professional Body Anti-Money Laundering Supervision mention HEIs in AML/CTF guidance.<sup>112</sup> For instance, while HMRC guidance emphasises the especially versatile, transferable and value-retaining nature of high-value goods, noting that they are often ‘considered to be status symbols in the criminal world’,<sup>113</sup> the guidance fails to recognise that the provision of services, can also often confer a similar prestige.<sup>114</sup> Accordingly, the Regulations are not applicable to HEIs. Nevertheless, most, if not all, HEIs could require

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<sup>109</sup> The 2017 Regulations, Reg. 8(2)(g).

<sup>110</sup> The 2017 Regulations, Reg. 14.

<sup>111</sup> 5 answered ‘don’t know’, 16 declined to answer or provided an unclear clear answer. 87 HEIs do not consider themselves to be high value dealers.

<sup>112</sup> Financial Conduct Authority, “Money Laundering Registration” (2020), <https://www.fca.org.uk/firms/money-laundering-terrorist-financing/registration>; Financial Conduct Authority, “Office for Professional Body Anti-Money Laundering Supervision (OPBAS)” (2022), <https://www.fca.org.uk/opbas>; H.M. Revenue & Customs, “Guidance: Register or Renew Your Money Laundering Supervision with HMRC” (2019) <https://www.gov.uk/guidance/register-or-renew-your-money-laundering-supervision-with-hmrc>.

<sup>113</sup> H.M. Revenue & Customs, “Guidance: Understanding Risks and Taking Action for High Value Dealers” (2021), <https://www.gov.uk/government/publications/money-laundering-understanding-risks-and-taking-action-for-high-value-dealers/understanding-risks-and-taking-action-for-high-value-dealers>.

<sup>114</sup> M.T. Page, “‘West African Elites’ Spending on UK Schools and Universities: A Closer Look”, p.24.

authorisation by the FCA for the credit activities they carry out.<sup>115</sup> HEIs authorised by the FCA will be bound by the Handbook and must comply with the guidelines provided.

This paper has identified a new risk encountered by HEIs from money laundering and terrorism financing, yet HEIs are not encompassed within the Regulations. Nevertheless, HEIs may be obligated to introduce AML/CTF preventative measures owing to their authorisation by the FCA and consequent obligation to comply with the Handbook. At any rate, the current position is unclear and unsatisfactory. The next section considers the potential impact of the omission of HEIs from this framework.

*The potential impact of the exclusion of HEIs from the anti-money laundering framework*

Failing to include HEIs within the Regulations generates uncertainty as to the nature and extent of universities' preventative obligations. However, HEIs are likely to face significant financial and reputational consequences for failing to comply. This section explores the potential impact of excluding HEIs from the AML framework, including the criminal liability of HEI employees for dealing with illicit payments and the criminal and civil liability of HEIs for failing to introduce preventative measures.

As universities are not part of the Regulated Sector, the offences of failing to report suspicions of money laundering and terrorism financing do not apply to employees of HEIs.<sup>116</sup> However, the money laundering and terrorism financing offences are of universal application.<sup>117</sup> Therefore, university employees may be charged with money laundering offences for dealing

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<sup>115</sup> FSMA, s.19.

<sup>116</sup> POCA, ss.330-331, TACT, s.21A, Sch.3A.

<sup>117</sup> POCA, ss.327-329; TACT, ss.15-18.

with criminal property.<sup>118</sup> A wide interpretation is afforded to the term criminal property; it is comprised of a person's benefit from criminal conduct,<sup>119</sup> itself defined as conduct amounting to an offence in any part of the UK, or conduct that would constitute an offence if it occurred there.<sup>120</sup> Additionally, the offences incorporate a low standard of mens rea, specifically, knowledge or mere suspicion.<sup>121</sup> However, a defence is provided if the person concerned makes an authorised disclosure to a constable,<sup>122</sup> a customs officer or a nominated officer,<sup>123</sup> who must in turn report the matter to the NCA.<sup>124</sup> Therefore, HEIs must appoint a nominated officer and establish procedures for staff handling payments to submit SARs, if only to provide employees with a defence to money laundering and terrorism financing offences. However, only a small number of HEIs submit SARs. This could have detrimental consequences, not only for HEI staff involved in processing payments, but also, HEIs as corporate entities.

HEIs could face criminal sanctions if they deal with criminal property or funds associated with money laundering or terrorism. This is because a wider range of corporate failure to prevent economic crime offences are likely to be introduced.<sup>125</sup> To hold a corporation criminally liable, the common law established that the identification doctrine must be satisfied.<sup>126</sup> Whilst it has been the long-used test for establishing the "directing mind and will" of a corporation, it is not

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<sup>118</sup> POCA, s.328(1).

<sup>119</sup> POCA, s.340(3).

<sup>120</sup> POCA, s.340(2).

<sup>121</sup> POCA, s.430(3)(b).

<sup>122</sup> TACT, s.21A.

<sup>123</sup> POCA, ss.327-329, s.338; TACT, s.21ZA, s.21ZB.

<sup>124</sup> POCA, s.332, s.336, s.339ZA.

<sup>125</sup> Law Commission, *Corporate Criminal Liability: An Options Paper* (London: Law Commission, 2022).

<sup>126</sup> *Tesco v Natrass* [1972] AC 153 (HL).

without its limitations.<sup>127</sup> The present structures of large corporations are complex and opaque allowing for the decentralising of management decisions.<sup>128</sup> Consequently, senior management can distance themselves from any wrongdoing that has occurred for the benefit of a corporation.<sup>129</sup> Therefore, it was unlikely that a HEI, as a corporate entity, would be held responsible for facilitating financial crimes.

However, various measures have recently been taken to strengthen the criminal liability of corporations. A failure to prevent offence was introduced by the Bribery Act 2010, under which it is an offence for “commercial organisations” to fail to prevent bribery from taking place within their business operations.<sup>130</sup> So far there have been four prosecutions and nine Deferred Prosecution Agreements (DPAs), specific to activities involving bribery and corruption.<sup>131</sup> The failure to prevent offence was also extended to the facilitation of tax evasion,<sup>132</sup> although enforcement action has been limited.<sup>133</sup>

HEIs meet the definition of a “commercial organisation” and are thus required to introduce preventative measures. However, given the positive acclaim failure to prevent offences have

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<sup>127</sup> Law Commission, *Corporate Criminal Liability: A Discussion Paper* (London: Law Commission, 2021), pp.17-18.

<sup>128</sup> R. Löff, ‘Corporate Agency and White Collar Crime – An Experience-Led Case for Causation-Based Corporate Liability for Criminal Harms’ (2020) 4 Crim LR 275.

<sup>129</sup> See *Serious Fraud Office v Barclays Plc* [2018] EWHC 3055 (QB); [2020] 1 Cr App R 28.

<sup>130</sup> Bribery Act 2010, s.7(1), s.7(5).

<sup>131</sup> Crime and Courts Act 2013, Sch.17.

<sup>132</sup> Criminal Finances Act 2017, ss.45-46.

<sup>133</sup> H.M. Revenue & Customs, “FOI Release: Number of Live Corporate Criminal Offences Investigations” (2022), <https://www.gov.uk/government/publications/number-of-live-corporate-criminal-offences-investigations/number-of-live-corporate-criminal-offences-investigations>.



enjoyed, it is likely that they will be extended to other financial crimes. The Law Commission recommended that a failure to prevent fraud offence should be introduced,<sup>134</sup> enabling a broader application of liability for failing to prevent this type of financial criminal activity. Amendments were tabled in the Financial Services Bill 2021, although rejected by the Government.<sup>135</sup> Amendments were also proposed to the Economic Crime and Corporate Transparency Bill 2022, which would have introduced corporate failure to prevent money laundering, fraud and false accounting offences.<sup>136</sup> The UK could base new failure to prevent offences on existing UK bribery and tax evasion models, which apply to commercial organisations broadly. Thus, if the failure to prevent model is extended and the term “commercial organisation” is incorporated, this would then indirectly encompass HEIs within the remit of the Regulations. We thus recommend that HEIs introduce the preventative measures contained in the Regulations, regardless of express application.

The FCA describes itself as “the competent authority for supervising compliance of most credit and financial institutions with the Regulations.”<sup>137</sup> The FCA Handbook seeks to provide the regulated sector with a high degree of flexibility, which allows firms to identify risks and determine how best to allocate resources, thus reducing AML compliance costs.<sup>138</sup> The FCA

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<sup>134</sup> Law Commission, *Corporate Criminal Liability: An Options Paper*, p.10.

<sup>135</sup> Financial Services HC Bill (2019-21) 225, Report Stage, 13 January 2021, NC30 (not called); HC Deb vol 687 col 355-359 13 January 2021.

<sup>136</sup> Economic Crime and Corporate Transparency HC Bill (2022-23) 154, Report Stage, 16 January 2023, NC4; Also see, HL 87 (2022), 141.

<sup>137</sup> Financial Conduct Authority, “Anti-Money Laundering” (2021), <https://www.fca.org.uk/firms/financial-crime/money-laundering-terrorist-financing>.

<sup>138</sup> Financial Conduct Authority, “FCA Handbook”, SYSC 6.1.1.

has fined MLROs,<sup>139</sup> and entities that fail to comply with the FCA Handbook.<sup>140</sup> HEIs authorised by the FCA must comply with the Handbook and non-compliant HEIs run the risk of civil enforcement action by the FCA.<sup>141</sup> There have not been any penalties imposed by the FCA regarding HEI non-compliance, but this does not mean that action will continue to be non-existent. Whilst there has been a significant decline in the number of cash payments taken by HEIs, our research indicates there are still a small number of universities that are willing to accept cash payments. This means they are continuing to place themselves at risk of being used for money laundering purposes, and potentially acting contrary to FCA guidance if they do not have effective systems and controls in place.<sup>142</sup> Following the 2021 Times report,<sup>143</sup> the spotlight has been cast upon HEIs in terms of their involvement with money laundering schemes, and if the pressure continues to mount, it is likely the regulator could seek to address noncompliance with the Handbook.

Therefore, HEIs should introduce AML/CTF measures in order to protect the organisation and its employees from both criminal and civil liability. Given the potential consequences that could be imposed on HEIs that fail to comply with the AML/CTF framework, the next section offers an original insight into the measures currently taken by HEIs to address money

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<sup>139</sup> For example, Financial Conduct Authority “FCA Imposes Penalties on Sonali Bank (UK) Limited and its Former Money Laundering Reporting Officer for Serious Anti-Money Laundering Systems Failings” (2016), <https://www.fca.org.uk/news/press-releases/fca-imposes-penalties-sonali-bank-uk-limited-money-laundering>.

<sup>140</sup> For example, Financial Conduct Authority, ‘FCA Fines Santander UK £107.7 Million for Repeated Anti-Money Laundering Failures’ (2022), <https://www.fca.org.uk/news/press-releases/fca-fines-santander-uk-repeated-anti-money-laundering-failures>.

<sup>141</sup> FSMA, s.206(1).

<sup>142</sup> Financial Conduct Authority, “FCA Handbook”.

<sup>143</sup> G. Greenwood, and C. Parker, “Money Laundering Fears as Universities Accept £52m in Cash”.

laundering and terrorism financing risks. This section identifies discrepancies in the measures currently taken by HEIs to prevent these financial crimes and calls for legislative reform to clarify the application of law.

### **How HEIs currently address risks of money laundering**

The following section examines the answers provided by 110 UK HEIs (between November 2021 and March 2022) in response to a FOI request. As noted above, some universities provided a full response to every question, whereas others declined to answer some or all questions based on statutory exemptions. Owing to the contentious nature of this topic and attendant reputational concerns, all of the responses are reported without identifying information.

#### *Awareness, guidance and training*

In light of the uncertainties surrounding the application of AML legislation, this study first reveals the extent of awareness of AML legislation among HEIs. Following this, the paper investigates the extent to which this awareness is disseminated to the employees of HEIs, through internal staff training, which establishes the foundation for other preventative measures.<sup>144</sup> Although not incorporated as an obligation within AML legislation, presumably owing to its exclusion of the education sector, the paper also identifies whether any guidance is provided by HEIs to students on financial crime risks. The provision of guidance to students is essential, given the consequences students face following participation in money laundering and organised crime, as well as the responsibilities held by HEIs in promoting student welfare.

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<sup>144</sup> The 2017 Regulations, Reg. 24.

### *Awareness of anti-money laundering legislation*

Despite the ambiguities concerning the application of AML legislation to the sector, our data surprisingly revealed that all respondents had an awareness of POCA and the Regulations.<sup>145</sup> Awareness of AML legislation is important given the potential civil and criminal liability that could be attributed to HEIs and their employees for dealing with the proceeds of crime, without implementing appropriate preventative measures. Awareness was evidenced by the fact that 74 HEIs, or approximately 70% of respondents,<sup>146</sup> have a specific AML policy in place for staff and students at the institution. Encouragingly, of the 32 HEIs who noted that the institution does not have a specific AML policy, 21 explained that money laundering is addressed as part of wider policies pertaining to finance or crime prevention, such as fraud policies, tuition fee policies and codes of conduct, and six stated that the institution was in the process of designing or implementing a specific AML policy. Only five HEIs, or 4.7% of respondents, do not appear to include AML as part of any policy and do not appear to have plans to implement an AML policy in the near future. Of the HEIs that currently have an AML policy in place, 42 HEIs publish their AML policies on their externally facing websites, 24 HEIs make their AML policy available to students and staff via the university's internal intranet site, and eight suggested that the policy was not yet published either internally or externally. However, despite the overwhelming majority of universities having an awareness of AML legislation and adopting AML policies, the measures taken by HEIs to prevent and detect money laundering vary significantly in practice.

### *Staff training*

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<sup>145</sup> 104 HEIs answered this question.

<sup>146</sup> 106 HEIs answered this question.

The Regulations require the regulated sector to provide employees with an awareness of the law relating to money laundering and terrorist financing, as well as training on how to identify and respond to suspicious transactions.<sup>147</sup> Despite not being part of the regulated sector, HEIs would benefit from providing employees with AML training. As explained above, significant consequences could result from HEIs failing to train staff to recognise money laundering and implement preventative measures; employees could be held liable for primary money laundering offences, and HEIs could incur criminal and civil liability for failing to prevent these crimes. The data revealed that most HEIs provide AML training to at least some categories of employees. 84 HEIs, or 80% of respondents, noted that they provided some form of AML training and guidance to staff.<sup>148</sup> Of these, 66 HEIs indicated that they provide training to staff in specific roles, most commonly those tasked with accepting or processing payments. For instance, one respondent pointed out that “training is required for any staff involved with identifying students, as well as any staff involved with accepting, processing or authorising payments and refunds.” Others extended AML training to a wider range of employees. For instance, one respondent explained that “[a]ll front-line student facing staff are made aware of AML rules and how to take any issues/concerns further if required through their line manager”, while another noted that all academic and professional services staff at certain grades of employment are required to complete such training. Only 13 HEIs made AML training available to all employees of the organisation.<sup>149</sup> Concerningly, 20% of respondents stated that they do not provide any internal AML training. Of these responses, five HEIs suggested that

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<sup>147</sup> The 2017 Regulations, Reg. 24.

<sup>148</sup> 105 HEIs answered this question.

<sup>149</sup> 100 HEIs provided additional detail regarding categories of staff.

they were in the process of developing AML training for their staff, while others advised that training was provided by external organisations.

This study has revealed that despite awareness of CTF/AML legislation, there are significant discrepancies in the provision of internal staff training on money laundering and terrorism financing risks. Whilst HEIs are not explicitly included within the Regulations, it is likely that the current disparity of its application by the sector will continue, leaving universities, their employees, and their students, at high risk of both money laundering, terrorism financing, and criminal liability. Therefore, to reduce the risks to which universities and their students are exposed, HEIs should be included within the scope of the Regulations. This could be most simply achieved by explicitly including HEIs as part of the regulated sector.<sup>150</sup> Alternatively, the definition of High-Value Dealer could be amended so as to encompass both the provision of high-value goods and services. An appropriate supervisor would need to be selected for HEIs, which could be the FCA.<sup>151</sup> Amending the Regulations to encompass HEIs would provide clarity and certainty regarding the nature and extent of preventative obligations, which many HEIs are currently failing to implement. Nevertheless, HEIs should introduce AML/CTF measures, such as staff training, irrespective of legislative reform, as this would help to protect the institution, its employees, and students.

### *Student guidance*

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<sup>150</sup> We propose the following amendments to the 2017 Regulations, Reg. 3(1), General Interpretation, ““higher education provider” has the meaning given by s.83 of the Higher Education and Research Act 2017”; Reg. 8(2)(1), Application, English higher education providers. We also propose consequential amendments to the POCA, Sch.9, Part 1, 1(1) and the TACT, Sch.3A, Part 1, 1(1), specifically, the addition of, ‘(w) the provision of services and activities within the meaning of section 83 of the Higher Education and Research Act 2017’.

<sup>151</sup> The 2017 Regulations, Reg. 7(1)(a), Supervisory Authorities, ‘(x) English higher education providers’.

Additionally, given the increasing exploitation of students by organised criminals, it is also incumbent upon HEIs to provide guidance to students on the risks they face and consequences for participation. The money mule cases demonstrate that, while some students are associated with organised criminal groups prior to their studies, others are exploited by such groups during their time at university. In association with their duty of care, HEIs commonly provide guidance to students on issues affecting their physical and mental well-being. Indeed, the majority of HEIs provide students with some form of guidance on financial crime, organised crime, or both, including the risks and dangers posed to students. 76 HEIs, or over 75% of respondents, provide at least some form of guidance to students, although the extent of the guidance varied significantly.<sup>152</sup> For instance, some HEIs make information available on an “occasional – largely ad hoc” basis, while others routinely provide resources and information to students online, including through student newsletters and social media platforms. Some HEIs reported providing guidance to particularly at risk, or vulnerable, students, while others provided guidance on financial and organised crime risks to all students as part of induction talks, or as part of their course. Many HEIs reported working with their local police teams to educate students on financial crime risks and prevention, while a couple of HEIs reported using the Crooks on Campus Campaign.<sup>153</sup> Additionally, the nature of the guidance provided varied significantly; while some HEIs provide specific guidance on AML risks, including the risk of students being used as money mules, others only provide limited information on risks relating to fraud and the importance of cyber security. Unfortunately, 25 HEIs, or over 24% of respondents, do not provide *any* guidance to students on financial crime or organised crime. This is unfortunate, for all existing studies have revealed students’ willingness to transfer

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<sup>152</sup> 101 HEIs answered this question.

<sup>153</sup> We Fight Fraud, “Crooks on Campus” (2021), <https://crooksoncampus.co.uk/>.

suspicious funds, as well as the frequency with which they are targeted by financial criminals.<sup>154</sup>

Therefore, a significant minority of HEIs do not provide any guidance to students on financial crime. From a student welfare perspective, it is imperative for HEIs to provide guidance to students on the risks and dangers posed to them. Specific guidance should be provided on terrorism financing and money laundering risks, including the risk of being used as a money mule. Ideally, standardised information should be provided to students across the HEI sector. However, in the absence of national coordinated action, it is incumbent upon HEIs to warn students of their increasing vulnerability to organised crime. Moreover, AML/CTF and counter fraud training should be provided to appropriate staff across the HEI sector, including training on the proactive submission of SARs, which are considered in the section below.

#### *Cash payments and Suspicious Activity Reports*

Given the risks inherent in large cash payments coupled with widespread acceptance of cash in higher education,<sup>155</sup> the following section provides a contemporary investigation into the volume and amount of cash payments received by HEIs for tuition fees and accommodation. This section also investigates the number of SARs submitted by HEIs to the NCA, as SARs provide valuable intelligence to law enforcement and could help to mitigate some of the risks inherent in accepting large cash payments. HEIs would be wise to train employees to submit SARs to avoid staff committing money laundering and terrorism financing offences, as well as the institution incurring civil and criminal liability for failing to prevent such misconduct.

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<sup>154</sup> Nationwide Building Society, “Mule Regret It: Cash-Strapped Students an Easy Target for Fraudsters as One in Three Willing to Take a Gamble with Money”; V. Shaw, “Three in Four Students Have Been Targeted by Scams – Survey”.

<sup>155</sup> G. Greenwood, and C. Parker, “Money Laundering Fears as Universities Accept £52m in Cash”.



## *Cash payments*

The Regulations recognise the money laundering risks inherent in large cash payments, categorising cash-intensive businesses as a risk factor for enhanced CDD purposes,<sup>156</sup> and regulating High Value Dealers.<sup>157</sup> Despite the risks posed, a significant proportion of HEIs accept cash payments. Our data revealed that 22 HEIs, or over 21% of respondents, accept cash payments for tuition fees, accommodation, or both, while 79 HEIs, or over 78% of respondents, do not accept cash payments.<sup>158</sup> HEIs appear to be less willing to accept cash payments than they were a few years ago, with the Times reporting that 49 HEIs accepted £52million in cash payments from students for fees over the past five years.<sup>159</sup> Indeed, a large number of HEIs noted that they stopped accepting cash payments for tuition fees and accommodation in 2019 or 2020. Nonetheless, over 21% of respondents are willing to accept cash payments. Some of these HEIs have a limit on cash transactions, the lowest being £500, whereas others do not impose any limit on the amount that can be paid in cash. 39 HEIs provided information relating to the total value of cash payments received in 2019/20. These respondents either still accept cash payments, or ceased to do so from 2020 onwards. In total, the 39 HEIs received over £12million in cash payments in 2019/20, with three HEIs receiving cash payments totalling more than £1million and three HEIs receiving £977,944, £975,891, and £824,000 respectively. As the FATF notes, cash “remains the raw material of most criminal activity.”<sup>160</sup> Thus, the

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<sup>156</sup> The 2017 Regulations, Reg. 33(6)(a)(v).

<sup>157</sup> The 2017 Regulations, Reg. 8(2)(g), Reg. 14.

<sup>158</sup> 101 HEIs answered this question.

<sup>159</sup> G. Greenwood, and C. Parker, “Money Laundering Fears as Universities Accept £52m in Cash”.

<sup>160</sup> Financial Action Task Force, *Money Laundering Through the Physical Transportation of Cash* (Paris: Financial Action Task Force, 2015).

acceptance of cash by a significant minority of HEIs for substantial tuition or accommodation fees, often without limit, presents a money laundering risk.

Accordingly, a significant minority of HEIs are willing to accept cash payments for tuition fees and accommodation, often without any limitation. However, this research has also demonstrated that there is growing recognition of the risks posed by cash payments, both in the literature and among HEIs. The fact that 78% of HEIs already refuse to accept cash payments for tuition fees and accommodation demonstrates that prohibiting cash payments is unlikely to result in adverse consequences for universities and, in particular, is unlikely to affect their national competitiveness. Indeed, cash payments represent a small, yet highly risky, proportion of HEI income, with collective income from tuition fees and education contracts alone exceeding £23billion per year in 2021.<sup>161</sup> It is recommended that cash payments for tuition fees and accommodation should be prohibited, or at least severely restricted, ideally by HEIs or, if necessary, legislation. HEIs could also introduce other practical measures to reduce the money laundering and terrorism financing risks to which they are exposed. For instance, considering the evidence presented above regarding the use of student loans to finance terrorism, it is recommended that HEIs strengthen, or in some cases start, to monitor both student attendance and levels of engagement.

### *Suspicious Activity Reports (SARs)*

The Regulations, which oblige businesses to provide for the internal infrastructure necessary to submit a SAR, do not apply to HEIs.<sup>162</sup> The offences of failing to report suspicions of money

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<sup>161</sup> Higher Education Statistics Agency, “What is the Income of HE Providers?” (2022),

<https://www.hesa.ac.uk/data-and-analysis/finances/income>.

<sup>162</sup> Such as, the appointment of a nominated officer to receive SARs, The 2017 Regulations, Reg. 21(3).

laundering and terrorism financing do not strictly apply to employees of universities, as their application is confined to the regulated sector. However, the primary offences are of universal application.<sup>163</sup> Therefore, it is essential for employees of HEIs to submit SARs when they suspect they are dealing with criminal property to provide a defence to the related criminal offences. Unfortunately, many HEIs declined to provide information regarding how many SARs the institution submitted. Some HEIs were unable to answer this question owing to a lack of accessible information, whereas others declined to answer based on statutory exemptions. One HEI suggested that the question was not applicable to the institution, which must be doubted. Indeed, such responses evidence the misconceptions surrounding the application of AML legislation to HEIs and highlights the need for better awareness. In total, 72 HEIs answered this question.

HEIs were unlikely to submit a large number of SARs to the NCA. This is because, in 2017/18, the entire education sector submitted 25 SARs to the NCA, followed by 24 SARs in 2018/19, and 34 SARs in 2019/20.<sup>164</sup> However, it was surprising to find that the limited number of SARs recorded by the NCA were likely to have been submitted by a small number of HEIs. At the time of responding to the FOI request, 53 HEIs, or over 73% of respondents, had not submitted a single SAR to the NCA. One HEI noted that they had submitted less than five SARs, six HEIs submitted one SAR to the NCA, five HEIs submitted two SARs, two HEIs submitted three SARs and two HEIs submitted four SARs. The vast majority of SARs appear to have been submitted by three HEIs, which submitted 10 SARs, 18 SARs and 77 SARs respectively, with one noting that this number only covered an 18-month time period. Given the vulnerability of

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<sup>163</sup> POCA, ss.327-329; TACT, ss.15-18.

<sup>164</sup> National Crime Agency, *UK Financial Intelligence Unit: Suspicious Activity Reports Annual Report* (London: National Crime Agency, 2018) p.15; National Crime Agency, *UK Financial Intelligence Unit: Suspicious Activity Reports Annual Report* (London: National Crime Agency, 2019) p.15.

HEIs to money laundering, it is disappointing to see that the majority of HEIs are not reporting. This reduces the pool of valuable intelligence available to the NCA and leaves employees of HEIs at risk of laundering money and the legal consequences that follow. Our data revealed that the low number of SARs submitted by HEIs may be due to a lack of awareness and related to the deficiencies in staff training identified above. For instance, one respondent revealed that it did not report any suspicious activity to the NCA, but “3 cases have been reported to Action Fraud.” Aside from reports to Action Fraud not fulfilling the requirements for a money laundering or terrorism financing defence, The Times illustrated that less than 2% of reports submitted to Action Fraud resulted in an arrest and less than 1% of police officers were assigned to fraud investigations.<sup>165</sup> Therefore, HEIs are either not reporting suspicions, or are reporting them incorrectly, inhibiting money laundering investigations and leaving employees of HEIs exposed. This presents a gap in the coverage of UK AML measures.

Ultimately, this study has revealed that the majority of HEIs are failing to submit SARs to the NCA. Amending the Regulations to encompass HEIs would provide clarity and certainty regarding the nature and extent of preventative obligations, which many HEIs are currently failing to implement. Following amendment, it would also be beneficial to include HEIs within the membership of Joint Money Laundering Intelligence Task Force, and allow HEIs to participate in the exchange of information via information gateways created by the Criminal Finances Act 2017. This would allow HEIs to benefit from information exchange with public and private sector organisations, increasing awareness of current threats and enabling HEIs to collaborate in investigations.

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<sup>165</sup> M. Morgan-Bentley, “Action Fraud Scrapped After Times Expose” (2021), *The Times*, <https://www.thetimes.co.uk/article/fraud-line-scrapped-after-times-expose-n2tlkbnrv>.

Irrespective of legislative reform, HEIs should introduce AML/CTF measures in order to protect the institutions, its employees, and students. In particular, AML/CTF and counter fraud training should be provided to appropriate staff across the HEI sector, including training on the proactive submission of SARs. These recommendations would be achieved following the inclusion of HEIs within the Regulations. However, this is included as a separate recommendation, as it is important for HEIs to train their staff and to establish mechanisms for reporting SARs to avoid committing primary money laundering and terrorism financing offences.

#### *Acceptance of third-party payments*

The penultimate section of the paper provides an insight into the levels of acceptance of third-party payments by HEIs. Third-party payments pose a money laundering risk in the education sector, particularly payments from legal entities, owing to the propensity of money launderers and tax evaders to spend their proceeds of crime on tuition fees. While third-party payments are not specifically legislated for under the Regulations, there are CDD requirements for ascertaining the identity of those acting on behalf of others. Regulation 28 stipulates that where a person “purports to act on behalf of the customer,”<sup>166</sup> the regulated entity must verify that said person is indeed authorised to act for the customer, identify the person, and verify that person’s identity.<sup>167</sup>

The responses to the FOI request revealed 82 HEIs, or 82% of respondents, accept third-party payments on behalf of international students, while 17 HEIs, or 17% of respondents, do not.<sup>168</sup>

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<sup>166</sup> The 2017 Regulations, Reg 28(10).

<sup>167</sup> The 2017 Regulations, Reg 10(c).

<sup>168</sup> 101 universities answered this question.

Third-party payments include any persons other than the student, or the student's parent or legal guardian, and companies that are not registered sponsors. Of those accepting third-party payments, 29 HEIs confirmed that third-party payments were subject to further or different checks. Some HEIs noted that they required the provision of a sponsorship letter, or confirmation of the relationship with the student, while others mentioned checking the student and payee's details against sanctions lists. The HEIs that do require checks could be compliant, or partially compliant with Regulation 28, but this would depend upon the type of documentation requested, and, more importantly, the independence of this process. 43 HEIs noted that they do not carry out additional checks on third-party payments. 12 of these respondents noted that they relied on a bank or payment provider to carry out checks. The reasons why institutions did not carry out additional checks on third-party payments varied significantly; some noted that they applied a risk-based approach to all payments received, whereas others noted that it was "considered impractical due to the difficulties of identifying these types of payments and the potential volumes involved". While applying a risk-based approach is advocated by the Regulations, the money laundering risks posed by third-party payments should not be ignored due to impracticalities. Based on the responses, the majority of HEIs that do accept third-party payments would be in breach of the Regulations if applied to the sector, further demonstrating a clear gap in the AML framework.

This investigation has revealed that the majority of HEIs accept third-party payments and most do not carry out additional checks on these types of payment. HEIs should be incorporated into the Regulations in order to standardise the application of CDD requirements across the sector, particularly to payments made by third parties. Irrespective of legislative reform, third-party payments, excluding those made by a student's parent/guardian or a registered sponsor, should be prohibited or subject to enhanced due diligence to minimise money laundering and terrorism financing risks. The implementation of these measures by the higher education sector should

be supported by guidance, which could be issued by the Department for Education or the Office for Students.

## **Conclusion**

This paper provided a unique insight into the money laundering and terrorism financing risks to which HEIs and their students are exposed, as well as the potential consequences that flow from their involvement in criminal activities. Despite these vulnerabilities, the paper also revealed that HEIs are not explicitly incorporated within the scope of the Regulations, leaving a significant gap within the AML/CTF framework. This paper focused on the application and implementation of this legal framework to HEIs. However, given the risks to the entire education sector, it is important to note that the application and implementation of the legal framework to private schools and colleges would also benefit from further research.

Regardless of express inclusion in the Regulations, the paper demonstrated that HEIs and their employees are at risk of criminal and civil liability for committing money laundering and terrorism financing offences, or for failing to establish preventative measures. The research has demonstrated the importance of HEIs maintaining a robust AML/CTF prevention system. However, through a novel empirical investigation, the data analysed in this study also revealed that there is a disparity among universities regarding how effectively it is implemented, leaving HEIs and their students exposed.

A key finding was that a significant minority of HEIs are failing to provide staff and students with guidance on money laundering and terrorism financing risks. It emerged that 20% of respondents do not currently provide any internal AML training for staff, and 24% of respondents do not provide any guidance to their students on the risks posed to them by financial crime and organised crime. This is a significant oversight considering organised criminal groups' use of HEIs and students to launder money. Further, some HEIs are failing to

recognise the money laundering risks inherent in large cash payments. Over 21% of respondents are willing to accept cash payments, with three HEIs receiving more than £1million in cash in 2019/20. This is concerning, particularly given the fact that some HEIs do not impose any limit on the amount that can be paid in cash. Moreover, HEIs are seemingly failing to recognise the value of financial intelligence created by SARs, as well as the related defence SARs provide employees. Indeed, most HEIs do not submit any SARs to the NCA, with the majority of SARs being submitted by a small number of universities.

In consequence, whilst HEIs are not explicitly included within the current AML/CTF framework, it is likely that with the current approach the disparity of its application by the sector will continue, leaving HEIs, their employees and students at high risk of both money laundering and criminal liability. Therefore, to reduce the risks to which HEIs and their students are exposed, the paper proposed that the Regulations should be applied to the sector and made a series of associated recommendations.