

The Facilitation of Money Laundering by Legal and Financial Professionals

Roles, Relationships and Response

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List of abbreviations and acronyms

ABA	American Bar Association
ACCA	Association of Chartered Certified Accountants
AML	Anti-Money Laundering
APG	Asia/Pacific Group on Money Laundering
AUSTRAC	Australian Transaction Reports and Analysis Centre
CCTV	Closed-Circuit Television
CDD	Customer Due Diligence
CIMA	Chartered Institute of Management Accountants
CIPFA	Chartered Institute of Public Finance and Accountancy
CJA	Criminal Justice Act 1993
CPD	Continuous Professional Development
CPS	Crown Prosecution Service
DNFBP	Designated Non-Financial Businesses and Professions
DTA	Drug Trafficking Act 1994
EAG	Eurasian Group
EC	European Commission
ESSAMLG	Eastern and Southern Africa AML Group
EU	European Union
FATF	Financial Action Task Force
FINTRAC	Financial Transactions and Reports Analysis Centre of Canada
FIU	Financial Intelligence Unit
HMRC	Her Majesty's Revenue and Customs
IBA	International Bar Association
ICAEW	Institute of Chartered Accountants in England and Wales
ICAI	Institute of Chartered Accountants in Ireland
ICAS	Institute of Chartered Accountants of Scotland
LSNI	Law Society Northern Ireland
LSS	Law Society Scotland
MENAFATF	Middle East/North African Regional Body
ML	Money Laundering
MLR	Money Laundering Regulations

MLRO	Money Laundering Reporting Officer
MTIC	Missing Trader Intra-Community
NASA	National Aeronautics and Space Administration
NCA	National Crime Agency
NCIS	National Criminal Intelligence Service
SOCA	Serious Organised Crime Agency
POCA	Proceeds of Crime Act 2002
RART	Regional Asset Recovery Team
RCMP	Royal Canadian Mounted Police
SCA	Serious Crime Act 2015
SDT	Solicitors Disciplinary Tribunal
SSDT	Scottish Solicitors Disciplinary Tribunal
SOCA	Serious Organised Crime Agency
SRA	Solicitors Regulation Authority
TACT	Terrorism Act 2000
TCSP	Trust and Company Service Providers
TF	Terrorist Financing
UK	United Kingdom
UKFIU	UK Financial Intelligence Unit
UN	United Nations
UNODC	UN Office on Drugs and Crime
UREC	University Research Ethics Committee
US	United States
VAT	Value-Added Tax
WEF	World Economic Forum

Abstract

The Facilitation of Money Laundering by Legal and Financial Professionals: Roles, Relationships and Response

Law enforcement organisations and intergovernmental bodies, such as the Financial Action Task Force (FATF), have become increasingly focused on the role that legal and financial professionals play in the facilitation of money laundering, with claims that stringent anti-money laundering controls and increasingly complex laundering methods have led criminals to become more reliant on the services provided by professionals to manage their illicit funds. As a result, a number of legislative and policy measures aimed at preventing professionals from becoming involved in money laundering have been implemented at national and international levels. However, the role played by professionals in the facilitation of money laundering has received limited academic attention and there has been little empirical research in the area, resulting in a lack of understanding about the nature of this role and allowing an official narrative about professionals' involvement in money laundering to persist without challenge.

This thesis explores the role of legal and financial professionals in the facilitation of money laundering, using the concept of 'situated action' to explain the actions of professionals involved in laundering criminal proceeds, and an analytical framework which directs attention towards the relationship between these actions and the organisational setting and wider contexts in which they occur. The thesis also considers the criminal justice and regulatory response to professionals' involvement in money laundering in the UK. The research utilised a qualitative methodology, combining semi-structured interviews with individuals from law enforcement and criminal justice bodies, regulatory bodies, and the relevant professions, with data on 20 cases of professionals convicted of money laundering in the UK.

The research found that the facilitation of money laundering by professionals is complex and diverse, comprising a variety of actions, purposes, actors and relationships. While some professionals are complicit in the laundering, many cases involve a more ambiguous 'grey area' of intent, which is not about making a deliberate choice to offend or taking opportunities to facilitate money laundering. Instead, decisions to proceed with transactions involving criminal proceeds are shaped by the nature of the occupational role, social relationships and dynamics, and the particular circumstances leading up to and surrounding the point at which the decision is made. A mixed response, involving both criminal justice and regulatory processes, may be the most effective approach to professional involvement in money laundering. However, there are a number of problems with such a model at the current time, including a lack of communication and trust between law enforcement and regulatory bodies, and limitations in the scope of regulation.

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Declaration

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Chapter 1

Introduction

1.1 The Research Problem

Recent decades have seen an increasing focus from intergovernmental bodies and law enforcement organisations on the role that legal and financial professionals, such as lawyers, notaries, accountants and other financial service providers, play in the facilitation of money laundering. The Financial Action Task Force (FATF) and others have suggested that this is a growing problem, with such professionals increasingly being utilised to assist organised criminals in the laundering of their criminal proceeds:

‘As anti-money laundering regulations have increased in many countries, criminals place increasing reliance on professional money laundering facilitators.’ (FATF 1997: para. 30)

‘Increasingly, money launderers seek out the advice or services of specialised professionals to help facilitate their financial operations. This trend toward the involvement of various legal and financial experts ... in money laundering schemes has been documented previously by the FATF and appears to continue today.’ (FATF 2004: para. 86)

‘Professional service providers have been increasingly identified as being involved ... in money laundering schemes. Given their trusted gatekeeper status, professionals can misuse the absence of direct supervision to launder funds or act as intermediaries in helping others to launder.’ (WEF 2012: 4)

It is suggested that stringent anti-money laundering controls imposed on financial institutions as part of the global ‘fight’ against money laundering have made it increasingly difficult for criminals to launder the proceeds of their crimes and heightened the risk of detection. This, alongside the use of increasingly complex methods to launder criminal proceeds, it is argued, has led criminals to become more reliant on the services and skills provided by professionals to manage their illicit funds (see e.g. FATF 1997, 2010, 2013). As a result, legal and financial professionals are seen as playing a critical role in money laundering, acting as ‘the key doors for facilitating

criminal financial transactions and keeping a veil of opacity on criminal assets' (WEF 2012: 4).

The growing focus on the role of legitimate professionals in the facilitation of money laundering seen at the level of international institutions is replicated at the national level, with organised crime threat and strategy documents in the UK highlighting the role of 'professional enablers' in assisting organised criminals, for example through involvement in money laundering:

'Organised crime cannot function without the legitimate economy. Criminals will seek to launder money through the financial sector, or use the services of lawyers or accountants to invest in property or set up front businesses. A small number of complicit or negligent professional enablers, such as bankers, lawyers and accountants can act as gatekeepers between organised criminals and the legitimate economy.' (Home Office 2013: 48)

'The laundering of criminal proceeds is reliant on access to the professional skills of, among others, lawyers, accountants, investment bankers and company formation agents... The use of professional enablers increases the complexity of money laundering activities.' (NCA 2015: 21)

The notion that legal and financial professionals play a critical – and increasing – role in the facilitation of money laundering has resulted in the implementation of a range of legislative and policy measures aimed at preventing this. The Second Money Laundering Directive of the European Union, introduced in 2001, established preventative obligations for a number of professions including legal, accountancy and other financial professions. These obligations were transposed to the UK context through successive Money Laundering Regulations (2003, 2007), which require members of relevant business sectors to apply risk-based customer due diligence measures and take steps to ensure that their services are not being used for money laundering (or terrorist financing) purposes. In addition, they are obligated to report suspicious transactions to the national Financial Intelligence Unit. Under the Proceeds of Crime Act 2002 (POCA), failure to report suspicions of money laundering by members of the regulated sector is a criminal offence.

However, despite the prominence of this issue in official discourse, and the proliferation of measures intended to address it, the involvement of professionals in

money laundering has received limited academic attention and there has been little empirical research in the area. Much of the literature that does exist discusses this in the context of professionals providing assistance to organised criminals more generally (e.g. Chevrier 2004; Di Nicola and Zoffi 2004; Lankhorst and Nelen 2004; Middleton and Levi 2004), or as an example of misconduct, or wrongdoing, in the legal profession (e.g. Middleton 2004, 2008; Middleton and Levi 2015). There have been a small number of empirical studies conducted – in Europe, Canada and the US – focusing on the nature and extent of legal and/or financial professionals' involvement in money laundering (Schneider 2005; Cummings and Stepnowsky 2011; Soudijn 2012). These have been primarily quantitative and descriptive, providing little in-depth understanding or analysis of the cases involved. The lack of academic attention in this area means that there is insufficient understanding of the scale or nature of professionals' involvement in money laundering, including the actions, processes and relationships involved. This, therefore, allows an official narrative about the role of professionals in the facilitation of money laundering to persist without challenge or empirical support. Furthermore, measures intended to address the 'problem' of professional involvement in money laundering are grounded in a limited knowledge base and lack of understanding. Therefore, there is a clear need for empirical study in this area, to improve understanding, address the analytical and theoretical gaps, and challenge the official narrative.

This research represents an attempt to address some of these gaps, by improving understanding of the facilitation of money laundering by legal and financial professionals, and considering the criminal justice and regulatory response to this issue. Its contribution lies, firstly, in its empirical consideration of an under-researched area; it provides the first primary analysis of cases of professionals convicted of money laundering offences in the UK, and in-depth qualitative analysis of data on these cases alongside data from interviews with law enforcement practitioners, financial investigators, a prosecutor, members of relevant professional and regulatory bodies, and practising solicitors and chartered accountants, thus adding to the body of knowledge in this area. Secondly, it uses a theoretical framework that sees the actions and behaviours of professionals involved in money laundering as 'situated action', and aims to understand these actions and behaviours within the situational contexts in which they occur. It therefore provides an explanation of the facilitation of money laundering by professionals grounded in the interconnections between individual actions and their multi-layered social settings. Such an approach has not been used in

prior research in this area, with little previous consideration of the situational contexts in which professional facilitation of money laundering occurs. The research uses an analytical framework based in the literature on organisational misconduct, but takes into account the social organisation of the actors and activities it is examining, and sees these actors and activities as playing a role in the organisation of serious crime. It therefore contributes to theory development in relation to the organisation of serious crime, 'white-collar crime', and the interrelationship between the two, and furthers the elaboration of an analytical approach that can be used for analysis in a number of different areas. At a practical level, the research contributes by highlighting a number of issues with - and making recommendations for - policy, policing and regulation in this area.

1.2 The Research Journey

The seeds of this PhD were sown during my time working in a UK law enforcement agency involved in the prevention and disruption of organised crime. It became apparent during this time that there was a growing discourse within organised crime policing in the UK about the role of 'professional enablers', the name given to legitimate actors in a range of occupational fields who 'enabled' the activities of organised crime groups in various ways. I found it fascinating to see this change in focus, from the usual targets of drug dealers, traffickers, cash-in-transit robbers and other 'traditional' offenders, to those who were not permanent members of organised crime groups, but facilitated their activity in some way from the position of a legitimate occupational role. Not only was this interesting on a strategic policing level, but it also raised intriguing theoretical questions about how we understand 'organised crime' and the nature of 'organised crime groups', the distinctions between legitimate and criminal 'worlds', and what relationships looked like at the intersection between the two.

The initial focus of this PhD, therefore, was on the broad area of the role of 'professional enablers' in the facilitation of organised crime. This was clearly too wide a focus for the scope of a PhD project, and so the remit was narrowed to concentrate on the role that legal and financial professionals play in the facilitation of money laundering on behalf of those involved in organised crime. The decision to focus on this particular area was driven by the increasing attention on the role that such professionals play in assisting others to launder their criminal proceeds, and the emerging narrative that highlighted this as a significant and growing problem (as outlined in section 1.1; see also **Chapter 3**

“The Facilitation of Money Laundering by Professionals”). The term ‘legal and financial professionals’ is used variously in the literature and official discourse to cover a range of professions including lawyers, notaries, accountants, trust and company service providers, and bankers. The current research, based in the UK, focused on solicitors and chartered accountants, although the conceptual and theoretical developments can be applied more broadly. Solicitors and chartered accountants are ‘regulated professionals’ under the terms of the Money Laundering Regulations, which means they have certain obligations and responsibilities with regards to the prevention of money laundering and are regulated by designated supervisory bodies to ensure compliance with the Regulations (see **Chapter 2 “Setting the Scene: Money Laundering and the Anti-Money Laundering Regime”**).

A focus on the facilitation of *money laundering* meant that the early stages of the PhD involved engagement with the money laundering literature. There is a vast body of literature on money laundering and, in particular, the ‘fight’ to prevent money laundering by way of the global anti-money laundering regime, its institutions, mechanisms and effects. It became clear during this exploration of the literature that there were fundamental problems with the concept of ‘money laundering’ and its official definitions, and a lack of understanding of the processes by which the proceeds of crime are managed based in empirical observation. While it was not possible to address these issues fully in the confines of this thesis, **Chapter 2 (“Setting the Scene: Money Laundering and the Anti-Money Laundering Regime”)** provides a brief overview, and the implications of these issues for the subject under study will become apparent throughout the course of the thesis. This led me to question the appropriateness of using the term ‘money laundering’ within the thesis. I argue in Chapter 2 that official definitions have distorted the meaning of the term, moving away from its strict meaning of making the proceeds of crime appear to have legitimate origins to include receiving, handling, concealing, moving or disposing of criminal property. I agree with those who have used terms such as ‘criminal money management’ or ‘crime-money management’ as alternatives, suggesting that such terms more effectively draw attention to the processes by which criminal proceeds are managed rather than the legitimising notion of the strict meaning of the term ‘money laundering’. However, ‘money laundering’ is a commonly used and understood term; it is used in policy, legislation, official discourse and the majority of the academic literature in the area, and by the practitioners I interviewed during the course of this research. For this reason, I maintain the use of the term throughout the thesis, using it

interchangeably with 'criminal money management' and its derivations, while questioning its utility and the way it is understood.

The origins of this research, therefore, lie in the field of organised crime: the facilitation of money laundering by legal and financial professionals being a subset of the facilitation of organised crime by 'professional enablers'. This meant that I initially viewed the issue of professionals' involvement in money laundering solely through the lens of 'organised crime'. However, I began to think more about the professional actors themselves, and the bearing that their occupational role and professional status had on their involvement in laundering activity and their relationships with those whose criminal proceeds they were helping to launder. This led me to consider the concept of 'white-collar crime' and its associated theoretical frameworks, and think about the research subject from this perspective. Professionals who commit money laundering offences within the context of their occupational role undoubtedly fall within the category of 'white-collar' offenders (relevant definitions are discussed in **Chapter 4 "Theoretical Perspectives and the Analytical Framework"**), and using this perspective allows the research to take account of the context of their professional, occupational role. However, regard should also be given to the role played by such professionals in the organisation of serious crimes for profit (by helping to launder this profit) and the social relationships between the actors and activities involved. This ultimately led me to ask where this research should be located: in the field of 'organised crime' or 'white-collar crime'? The first part of Chapter 4 addresses this question, explaining how I came to use theoretical perspectives and an analytical framework based primarily in the *white-collar crime* literature, while also taking account of the relationship between the actions of the professionals and *the organisation of serious crimes*.

The lack of existing literature and previous empirical research in this area means that this research has been of an exploratory nature in many ways. At the beginning of the project, it had two broad aims: to gain a better understanding of (i) the role of legal and financial professionals in the facilitation of money laundering, and (ii) how and why they become involved in such activity. It was not clear what data would be available in relation to cases of professionals who had facilitated money laundering - as no similar research had been conducted in the UK - or what access I would get to those involved in policing and regulating this issue. However, the research could not adopt a wholly exploratory, inductive approach. Literature and theory on money laundering, anti-

money laundering, the organisation of crime, white-collar crime, professional deviance, and the regulation of professions played a role in developing initial theoretical and conceptual scaffolds for the research and shaping the data-gathering process, and continued to play a role throughout the course of the research as the theoretical and analytical frameworks developed, the data collection progressed and the interpretation and analysis of the data began. The initial aims of the research evolved and more focused research questions were developed, shaped and guided by existing literature and theoretical considerations but adapted throughout the process of the research, as initial data was collected and themes began to emerge. For example, interviews with criminal justice and regulatory practitioners highlighted a number of interesting themes about the current response to professionals (suspected of being) involved in money laundering, and so this was incorporated into the analysis, having not being part of the initial aims.

The research therefore utilised an *adaptive theory* approach towards data collection and analysis, and the use and development of theory; an approach that incorporates aspects of both induction and deduction and takes a position that is neither purely positivist nor interpretivist. This approach stresses the importance of an ongoing relationship between theory and data throughout the course of the research process and aims to appreciate complex, multi-layered social worlds, and was therefore considered an appropriate approach for the current research (see **Chapter 5 “Methodology”**). While giving due consideration to existing theoretical frameworks and concepts, it allows research questions to develop and evolve throughout the course of the research. Accordingly, the initial aims of the research evolved and a number of research questions were developed, which the thesis ultimately aimed to address:

Aim 1: To provide a greater understanding of the facilitation of money laundering by legal and accountancy professionals, taking account of the situational contexts in which it occurs.

- By what means do professionals facilitate the laundering of criminal proceeds? What forms of assistance are provided, and what is the nature of the transactions involved?

- What is the nature of the relationship between the professional and the predicate offender, whose criminal proceeds are being laundered? What is the impact of this relationship on the actions, choices and decision-making of the professional?
- What financial benefit does the professional acquire as a result of their involvement in money laundering?
- To what degree is the professional aware that their actions are facilitating money laundering, and what is the level of intent involved?
- How do the situational contexts in which the facilitation of money laundering occurs influence the actions, behaviours and decision-making of the professionals involved?

Aim 2: To consider the criminal justice and regulatory response to the facilitation of money laundering by legal and accountancy professionals in the UK.

- What does the current response to professionals involved (or suspected to be involved) in the facilitation of money laundering in the UK look like? What are the key challenges for this response? How could the response be improved, and what issues need to be addressed to do this?
- What are the relevant regulatory and legislative frameworks? What factors shaped them and what do they mean for those who are impacted by them?

Aim 3: To analyse and theorise the facilitation of money laundering by professionals using an analytical framework which directs attention towards multiple levels of explanation: individual action, organisational characteristics, and the wider environment.

- How can such an analytical framework be used to further understanding and explanations of organisational crime?

1.3 Overview of the Thesis

The first part of the thesis analyses relevant literatures, providing context to the research findings and discussion that follows, outlining the empirical and theoretical gaps in the literature, providing a theoretical framework for the research, and describing the analytical framework used. This is followed by a methodology chapter, which outlines the methodological approach used in the research.

The increasing focus on the role of professionals in the facilitation of money laundering, which provided an impetus for this research, has its origins in the perceived threat from money laundering and the resulting global anti-money laundering regime. The aim of **Chapter 2 (“Setting the Scene: Money Laundering and the Anti-Money Laundering Regime”)**, therefore, is to provide a (necessarily brief) consideration of these matters to ‘set the scene’ for the rest of the thesis. It firstly provides an overview of the origins and rise of the concept of money laundering and its portrayal as a threat to society and global financial systems. It then discusses the emergence over the last few decades of a global anti-money laundering regime, how this has been transposed to the UK, and how this provides a context for the subject of the research. Finally, it considers the lack of clarity around the concept of money laundering, and problems with the way it is defined in official definitions and legislation, and highlights the lack of understanding of the ways that criminals manage the proceeds of their crimes. This is followed by **Chapter 3 (“The Facilitation of Money Laundering by Professionals”)**, which analyses the existing literature on the involvement of professionals in the facilitation of money laundering and how this is conceptualised in official discourse and academic literature. This chapter highlights the emerging narrative within official discourse and policy that suggests that the facilitation of money laundering by legal and financial professionals is a significant and growing problem. It summarises the existing research and analysis in this area, and highlights a number of themes that emerged from examination of the literature. The chapter concludes that the way in which the facilitation of money laundering by professionals is constructed within official and academic literature has weak empirical foundations, with the limited academic attention and lack of research in the area meaning that understanding of this issue is not sufficient to effectively challenge or support the existing narrative. The chapter therefore sets up the research problem and the justification for the research: the need to add to our understanding in this area, challenge the official narrative and address some of the existing analytical gaps.

Chapter 4 (“Theoretical Perspectives and the Analytical Framework”) aims to provide an appropriate theoretical framework for the research and outlines the analytical framework used to organise the data analysis. It firstly considers whether the research should be located within the field of ‘organised crime’ or ‘white-collar crime’, concluding that the phenomenon under study can actually be seen as an interaction of the two and so, while the theoretical and analytical frameworks used originate in the white-collar crime literature, the research must also take account of the relation of professional facilitation of money laundering to the organisation of serious crime. The chapter discusses the use of the concept of ‘situated action’ to provide a theoretical framework for the research, based on Diane Vaughan’s (2007: 7; also 1996, 1998, 1999, 2002) thesis that individual actions, decisions and choices are situated within a ‘layered social context’, influenced by their immediate setting and the wider institutional, structural and cultural environment in which this setting is located. It finishes by outlining the analytical framework adopted by the research, based on one initially developed by Vaughan to explain organisational misconduct, which aims to take account of the situated nature of the facilitation of money laundering by professionals by directing attention towards multiple levels of analysis.

The methodological approach adopted by the research is detailed in **Chapter 5 (“Methodology”)**. The chapter outlines why a qualitative methodology was considered appropriate, and describes how the research incorporated an ‘adaptive theory’ approach to the use of data and theory. It explains how the research was designed to allow for the appreciation of multiple perspectives, using a combination of methods and analysing data from a number of different sources, which contributed to its depth and quality. The research – based wholly in the UK – involved a series of interviews with law enforcement personnel working in financial investigation units or organised crime policing units, members of relevant professional and regulatory bodies, a prosecutor, and a small number of practising solicitors and chartered accountants. In addition, data was collected from various sources on 20 cases of professionals who had been convicted of money laundering. This data included Solicitors Disciplinary Tribunal (SDT) transcripts, Court of Appeal transcripts, media reports, and fieldwork notes and observations from an SDT hearing. The data was analysed thematically, by the identification and development of themes across all data sources. The chapter describes the process of conducting the research, detailing the collection and analysis of data and some of the challenges encountered, before addressing ethical considerations and the reliability, validity and limitations of the research.

The subsequent three chapters present and discuss the findings of the research. These chapters are arranged thematically to reflect the nature of the analysis and create a cohesive and fluent presentation and discussion of the findings, based on a combination of case and interview data and incorporating the extant literature, theory and legislative frameworks. Chapters 6 and 7 focus on the nature of professionals' involvement in the facilitation of money laundering. **Chapter 6 ("Facilitating Money Laundering: Means, Relationships and Benefit to the Professional")** explores three key themes that emerged from the analysis of cases of professionals convicted of money laundering offences: the means by which the laundering is facilitated, the relationship between the professional and the predicate offender, and the benefit received by the professional for their involvement in the laundering. **Chapter 7 ("Beyond Complicity: Judgement, Decision-Making and the 'Grey Area' of Intent")** examines the themes of intent and 'knowingness' by considering the level of intent to facilitate laundering in the cases analysed, and the extent to which the solicitors were aware that they were involved in money laundering. In the final data chapter, **Chapter 8 ("Going After the Suits' or 'Chasing the Powder'? Responding to Professionals Involved in Money Laundering")**, attention moves to current responses to professional involvement (or suspected involvement) in money laundering within the UK. This chapter considers a number of themes that emerged from the analysis of data from interviews with a range of actors involved in this response.

The thesis concludes with **Chapter 9 ("Conclusion")**, which summarises the main conclusions and key arguments that have emerged from the research, discusses the implications of these conclusions and makes recommendations for policy, policing and regulation in this area. Finally, it discusses the limitations of the research and suggests future research directions. Within official discourse and policy in this area, there is a tendency to see the facilitation of money laundering by professionals as a singular phenomenon, make generalisations about this phenomenon and try to describe what 'it' looks like. This fails to appreciate the heterogeneous nature of professionals' involvement in transactions involving criminal proceeds and acts to decontextualise their actions and decision-making. The findings from this research show that the facilitation of money laundering by professionals is complex and multi-faceted, comprising a variety of actions, purposes, actors and relationships. Decisions made by professionals to proceed with transactions which involve non-legitimate funds, or not report a suspicion of money laundering, are shaped by the nature of their occupational

role, relationships with other actors involved, and the particular circumstances leading up to and surrounding the point at which the decision is made. Therefore, the actions of professionals involved in facilitating money laundering should be understood in relation to the specific situational contexts in which they occur, which are created by social relationships and dynamics, occupational characteristics and the wider legislative and regulatory environment.

The research provides new insights into the criminal justice and regulatory response to the facilitation of money laundering by professionals in the UK, raising questions about the effectiveness and appropriateness of the response and the challenges of preventing professional involvement. Money laundering legislation in the UK has a broad scope, allowing for the conviction of regulated professionals for money laundering offences without criminal intent or, in certain circumstances, knowledge or suspicion that laundering was taking place. This represents a notable departure from international frameworks, which focus on those who had deliberately laundered criminal proceeds. On the other hand, professionals who are knowingly and intentionally involved in money laundering may be avoiding prosecution because of the perception that they are too difficult to deal with, failings in communication between actors responsible for their investigation and prosecution, and a lack of prioritisation within policing policy and practice. A mixed response, involving both criminal justice and regulatory processes, may be the most appropriate approach to professional involvement in money laundering. However, there are a number of challenges for the effectiveness of such a shared response at the current time, including a lack of communication and trust between law enforcement and regulatory bodies, a misunderstanding of each other's roles, objectives and modes of working, and limitations in regulatory regimes.

This thesis, therefore, provides significant new insights into an under-researched and under-theorised area, using original empirical inquiry to begin to address the considerable knowledge gaps and challenge the official narrative. Its novel application of a theoretical framework based in the literature on white-collar crime demonstrates the importance of understanding the situated nature of individual actions, the occupational contexts of professional involvement in money laundering and the wider regulatory and enforcement frameworks. It contributes to theoretical development in a number of areas that are usually considered separately - money laundering, white-collar crime and the organisation of crime - and the points at which they intersect.

Chapter 2

Setting the Scene: Money Laundering and the Anti-Money Laundering Regime

Money laundering has come to be considered as one of the most significant crime problems of the 21st century. It is portrayed as a considerable threat to society and the integrity and stability of global financial systems, and, as such, combatting money laundering has become a priority for policy makers, law enforcement organisations and the international community, resulting in wide-ranging legislative and regulatory changes. The late 1980s saw the advent of a global anti-money laundering regime, incorporating both 'hard' and 'soft' law instruments and involving a vast array of national and international actors - both public and private - with a role in the prevention and investigation of money laundering (Mitsilegas 2006; Verhage 2011). Measures introduced at the international level have a direct impact on policies and practices implemented at the level of nation-states. The UK represents a clear example of this, with national anti-money laundering policy being directly influenced by international and regional frameworks, including legislation transposed from EU Directives and policies driven by Financial Action Task Force (FATF) standards. The increasing focus from intergovernmental bodies and law enforcement organisations on the role that legal and financial professionals play in the facilitation of money laundering, which provided an impetus for this research, has its origins in the perceived threat from money laundering and the resultant anti-money laundering regime. Therefore, it is important to provide an overview of these matters prior to the following chapter's analysis of the existing literature on the involvement of professionals in the facilitation of money laundering.

There is a vast body of literature on money laundering and, in particular, the anti-money laundering regime, its institutions, mechanisms and effects. As an illustration, a simple search of the Criminal Justice Abstracts database for the term 'money laundering' in the title or abstract returns 376 articles for a single year (January to December 2014). There have been numerous attempts to estimate the scale of money

laundering globally; efforts characterised by methodological flaws and inherent difficulties in trying to measure a process that is poorly defined and difficult to observe¹. There have also been various attempts to categorise and describe the methods used to launder criminal proceeds, primarily by bodies such as the FATF and related regional and national bodies², along with a small number of academic contributions (e.g. Blum *et al.* 1998; Schneider 2004; van Duyne and Levi 2005; Beare and Schneider 2007). However, developing a better understanding of the processes used may be hindered by an unquestioning acceptance of the 'three-stage model' of money laundering developed by the FATF, which has been widely accepted with little comment and 'dutifully adopted by most of the academic, bureaucratic and popular writing community' (van Duyne and Levi 2005: 152). The concept of money laundering lacks clarity, with official definitions and legislation so broad that almost any financial transaction can be classed as laundering if the money or other property has its origins in criminal activity, and there is a significant lack of understanding of the ways that criminals manage the proceeds of their crimes. There remains relatively little empirical research on the nature and processes of money laundering, and much of the literature focuses on finding ways to better deal with the 'problem' of money laundering, rather than aiming for greater understanding of the phenomenon.

There is a much greater body of literature reviewing responses to money laundering, with specialist journals such as the *Journal of Money Laundering Control* concentrating on this area, often with a practitioner-led focus, and significant critique of the foundations, justifications and implications of global anti-money laundering measures (e.g. Levi 1991a, 1991b, 2007; Gallant 2005; Mitsilegas 2006; Gilmore and Mitsilegas 2007; Sproat 2007; Alldridge 2008; Harvey and Lau 2009; Verhage 2011). Unfortunately, the scope of this thesis does not allow for an in depth exploration of the money laundering literature. This chapter is necessarily brief, providing an overview of the origins and rise of the concept of money laundering and its depiction as a societal and economic threat, and describing the emergence of the global anti-money

¹ Assessments of the global scale of money laundering, and the problems with current estimations, will not be discussed here. For consideration of this, see for example: van Duyne 2003; Gallant 2005; Harvey 2005; van Duyne and Levi 2005; Beare and Schneider 2007; Levi and Reuter 2009.

² For example, the Middle East/North African regional body (MENAFATF), the Asia/Pacific Group on Money Laundering (APG), the Eurasian Group (EAG), the Eastern and Southern Africa AML Group (ESSAMLG), the Australian Transaction Reports and Analysis Centre (AUSTRAC) and the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC).

laundering regime, its manifestation in the UK, and how this provides a context for the subject of this research. Finally, it considers the definitional and conceptual problems with ‘money laundering’ and the lack of understanding of the ways that criminals manage the proceeds of their crimes.

2.1 Money Laundering: Fears and Foundations

Practices or techniques that would now be considered as money laundering have been around for centuries. For example, over 2000 years ago, Chinese merchants would use a variety of means, such as sending money abroad or purchasing assets, to conceal their acquired wealth from the government (Seagrave 1995 cited in Gelemerova 2009: 34). During the Middle Ages, moneylenders would use a range of methods to hide, move and conceal the identity of the interest they collected on loans in contravention of usury laws (Blum *et al.* 1998). The concept of money laundering, referring to the act of ‘providing a legitimate appearance to ill-gotten gains’ (Levi and Reuter 2009: 356), began its rise to prominence in the early part of the 20th century in response to growing concerns in the US about the movement of funds to international banks for the purposes of evading tax, and the use of cash intensive businesses, such as casinos, to conceal the origins of proceeds from the illicit alcohol smuggling trade and other criminal activities (van Duyne 2003; Levi and Reuter 2009). Indeed, it is alleged that the phrase ‘money laundering’ derives from the way the gangster, Al Capone, would channel his ill-gotten gains through numerous laundrettes in order to ‘construct the pretence’ of a legitimate income (van Duyne 2003: 74). The first public use of the phrase ‘money laundering’ came in 1973, when it was used during the Watergate scandal, in relation to the ‘laundering’ of Nixon’s illegal campaign funds (Gelemerova 2011)³.

Money laundering was first criminalised in Italy in 1978, as part of the Italian state’s ongoing activities against the Mafia and the *Brigate Rossi* (van Duyne and Levi 2005). Almost a decade later, money laundering was criminalised in the US, with the introduction of the Money Laundering Control Act in 1986. While this legislation associated money laundering with the proceeds from a range of specified criminal activity including extortion, bribery and fraud, its main focus was proceeds associated

³ For more detail on the history and rise of the concept of money laundering, see for example: Levi 2002; van Duyne 2003; Gallant 2005; van Duyne and Levi 2005; Alldridge 2008; Gelemerova 2009, 2011; Levi and Reuter 2009; Verhage 2009, 2011.

with illegal drug trafficking (Gelemerova 2009). Concern over the significant expansion of the market in illegal drugs, particularly cocaine, became the primary justification for a stronger approach to tackling money laundering, and the foundations of the significant international mobilisation against the laundering of criminal proceeds that followed the enactment of the Money Laundering Control Act can be found in the US-led 'war on drugs' (van Duyne and Levi 2005). Alongside concern over the drug trade and the 'dirty money' associated with it, a number of other factors helped to drive the global dimensions of the anti-money laundering 'fight', including the perception that those involved in 'organised crime' should not profit from their illegal activities (van Duyne 2003: 74). This gave rise to the 'follow the money' approach to those involved in such criminality, with the desire to 'hit them where it hurts most' (Nelen 2004 cited in Verhage 2009: 11). In addition, it was feared that attempts to mask the illicit origins of criminal proceeds were leading to significant amounts of capital being moved from the US to other jurisdictions, particularly offshore banks and financial havens, with resultant tax implications (van Duyne and Levi 2005). Finally, money laundering was seen as posing a considerable threat to the integrity and stability of legitimate financial systems; the presence of criminally acquired funds is said to have a negative impact on the reputational and material strength of banks and financial institutions, disturbing the normal flow of money through the financial system and damaging the integrity of financial institutions (van Duyne 2003; Verhage 2009). Despite there being little empirical evidence to support this claim, and a number of commentators questioning the perceived threat to financial systems (e.g. Harvey 2008; Harvey and Lau 2009; Verhage 2009), far-reaching legislation and stringent measures to counter money laundering have been justified by the argument that they are necessary to protect the reputation and integrity of the financial system (Harvey and Lau 2009).

The convergence of these factors led to the emergence during the 1990s of an international consensus to develop a strong global response and coordinated action against money laundering. This resulted in what Levi (2002: 187) called a global 'security quilt' of legislation, regulations and institutions aimed at dealing with illegal money flows, including provisions for the prevention and prohibition of laundering and the confiscation of criminal proceeds (Gilmore 2004). Since this time, the 'fight' against money laundering has become a priority for policy-makers, governing bodies, and law enforcement organisations, at a national and international level. There has been an 'unprecedented international mobilisation' against the movement of criminal money into the financial system, leading to a global anti-money laundering regime that

incorporates 'hard' law obligations alongside 'soft' law measures, and involves a complex system of public and private, national and international, actors, playing a variety of roles to prevent and control money laundering (Mitsilegas 2006: 195; Verhage 2011). The following sections will discuss the development of the global anti-money laundering regime, and how this has manifested in the UK.

2.2 The Global Anti-Money Laundering Regime

Two years after the introduction of the US Money Laundering Control Act, the international community signed the 'UN Convention Against Illicit Trafficking in Narcotic Drugs and Psychotropic Substances' (or 'Vienna Convention'), in December 1988. The Vienna Convention was the first international legal instrument that established a specific offence of laundering the proceeds of drug trafficking (Mitsilegas 2006). In the same year, the Basel Committee on Banking Supervision⁴ adopted a Statement of Principles⁵ to highlight concerns about the laundering of criminal proceeds through financial institutions, and encourage banks to implement a range of procedures to prevent or reduce money laundering (Mitsilegas 2006). While the Basel Statement was not legally binding, it could be considered as a form of 'soft' law by reinforcing the notion 'that financial institutions are the linchpin to effective money-laundering prevention and detection' and prescribing standards of ethical professional conduct for banks to adhere to in order to achieve this (Alexander 2001: 237).

The Vienna Convention and the Basel Principles led to the creation, the following year, of the Financial Action Task Force (FATF) at the 1989 G7 Summit in Paris. The FATF is an inter-governmental policy-making body whose purpose is

'to set standards and promote effective implementation of legal, regulatory and operational measures for combating money laundering, terrorist financing and other related threats to the integrity of the international financial system.' (FATF 2014)

⁴ The Basel Committee is 'the primary global standard setter for the prudential regulation of banks and provides a forum for cooperation on banking supervisory matters' <http://www.bis.org/bcbs/about.htm> (Accessed 9th March 2015)

⁵ The Basel Statement of Principles on the Prevention of Criminal Use of the Banking System for the Purpose of Money Laundering (December 1988)

Its initial mandate was:

‘to assess the results of co-operation already undertaken in order to prevent the utilisation of the banking system for the purpose of money laundering, and to consider additional preventative efforts in this field, including the adaptation of the legal and regulatory systems so as to enhance multilateral judicial assistance.’ (Gilmore 2004: 89)

In 1990, the FATF issued 40 Recommendations for action, to be implemented by the governments of its member states, which focused on three key objectives: the improvement of national legal systems, particularly in the area of criminal law; the strengthening of international cooperation; and the enhancement of the role of financial institutions in combating money laundering (Mitsilegas 2006). Again, the Recommendations were not legally binding, but ‘rather a ‘soft law’ instrument aiming to provide a blueprint for global standards in the field’ (Mitsilegas 2006: 199). The most notable impact of the Recommendations can be seen in regard to the third objective, expanding the scope and content of the Basel principles to suggest that financial institutions commit to implementing a range of policies and procedures to enhance customer due diligence, identification and record keeping (Mitsilegas 2006). The FATF 40 Recommendations were also hugely influential in the development of subsequent international, regional and, ultimately, national initiatives and legislative changes.

In 1991, the first EU Money Laundering Directive was introduced, bringing the FATF’s standards to the European sphere (Verhage 2009). This was followed by the Second Money Laundering Directive in 2001, and the Third Money Laundering Directive in 2005⁶. The 1991 Directive took a two-pronged approach, focusing on the criminalisation and prevention of money laundering. It prohibited the laundering of the proceeds of drug trafficking only, although it gave member states the discretion to extend criminalisation to other offences. However, when the Directive was updated in 2001, the criminalisation of laundering the proceeds from offences other than drug trafficking was made mandatory (Mitsilegas 2006). This reflected revisions that had been made to the FATF’s 40 Recommendations in 1996, and was inextricably linked to the emergence of organised crime as a serious threat in international policy discourse

⁶ First Money Laundering Directive (1991/308/EEC); Second Money Laundering Directive (2001/97/EC); Third Money Laundering Directive (2005/60/EC). The Fourth Money Laundering Directive, developed following the most recent (2012) revision of the FATF recommendations, was published in June 2015. This Directive will be transposed into UK law via the adoption of new Money Laundering Regulations within 2 years of this date.

and the resultant desire to counter this threat (Mitsilegas 2006). Following the terrorist attacks of September 11th 2001, the scope of the FATF recommendations was extended further to include terrorist financing, with the addition of nine Special Recommendations in 2003 (Harrison and Ryder 2013). Following the usual pattern, the European money laundering framework was adapted to take into account the revised FATF recommendations; these revisions had included more than the addition of the provisions relating to terrorist financing, but it was this extension of the anti-money laundering 'armoury' to activities related to terrorist finance that were the most significant (Gilmore and Mitsilegas 2007: 125).

Alongside criminalisation, the second key strand of the EU's Money Laundering Directives is prevention. The First Directive introduced a series of obligations for financial and credit institutions to implement adequate money laundering procedures, policies and training programmes; carry out appropriate 'customer due diligence' measures, including verifying customers' identities and keeping identification records for five years after the end of the client relationship; refrain from transactions they know or suspect are associated with money laundering; report suspicious transactions to the relevant national authorities; and not 'tip off' customers that they are being investigated for money laundering (Gilmore and Mitsilegas 2007; Verhage 2011; Harrison and Ryder 2013). These obligations constituted 'unprecedented changes' in the commercial relationships of financial institutions and their clients (Mitsilegas 2006: 199). The revised Directive, introduced in 2001, extended the preventative obligations beyond the financial sector, increasing the scope of the reporting obligations to a wider range of professions including art dealers, estate agents, auditors, external accountants and tax advisers, and legal professionals (Gilmore and Mitsilegas 2007). This was in response to a growing concern that institutions and professionals from outside of the financial sector, that were not previously covered by the anti-money laundering framework, were 'increasingly being used by money launderers' (Mitsilegas 2006: 202). There was considerable resistance to the inclusion of legal professionals in reporting obligations, due to fears about the effects on the confidential nature of the lawyer-client relationship and a reluctance to be considered as a 'gatekeeper' in the fight against money laundering (this will be discussed in detail in section 3.2.4 of the following chapter).

2.3 Anti-Money Laundering in the UK

Anti-money laundering policy within the UK has been directly influenced by the international and European legislative frameworks. Provisions introduced by the Money Laundering Directives of the EU were transposed to the UK through successive Money Laundering Regulations (1993, 2003 and 2007) and the Proceeds of Crime Act 2002 (POCA), which established the primary criminal money laundering offences.

2.3.1 Money Laundering Regulations

The Money Laundering Regulations implement the main preventative measures of the EU Money Laundering Directives, by requiring specified business sectors to ‘apply risk-based customer due diligence measures and take other steps to prevent their services being used for money laundering or terrorist financing’ (MLR 2007b: 1). The relevant sectors are:

- Credit institutions
- Financial institutions
- Auditors, insolvency practitioners, external accountants and tax advisers
- Independent legal professionals
- Trust or company service providers
- Estate agents
- High value dealers
- Casinos

(MLR 2007a, Article 3(1))

The Regulations require that members of these sectors undertake customer due diligence measures, which involves verifying the identity of customers or beneficial owners and obtaining information on the nature and purpose of the customer’s business (MLR 2007a, Reg. 5), and monitoring this relationship on an ongoing basis (MLR 2007a, Reg. 8). They must also keep a record of the information obtained on the customer’s identity and business, along with supporting documentation, for a period of five years (MLR 2007a, Reg. 19). Further requirements include the establishment and maintenance of appropriate policies and procedures relating to their money laundering obligations (MLR 2007a, Reg. 20) and ensuring that all relevant employees are aware of the law relating to money laundering and terrorist financing and are appropriately trained (MLR 2007a, Reg. 21). Under Regulation 20, organisations within the regulated

sector must have a 'nominated officer' responsible for receiving disclosures of suspicious activity from members of the organisation and making disclosures to the relevant authorities (as required by Part 7 of POCA and Part 3 of the Terrorism Act 2000) (MLR 2007a, Reg. 20). At the present time, the relevant authority for making disclosures to is the National Crime Agency (NCA). Under section 45 of the Regulations, non-compliance with certain of the sections is considered a criminal offence, punishable by up to two years imprisonment, a fine, or both (MLR 2007a, Reg. 45).

2.3.1.1 Supervision of the Regulated Sector

Part 4 of the Money Laundering Regulations 2007 requires members of the regulated sector to be supervised by a designated supervisory authority to ensure their compliance with the Regulations. The role of the supervisory authority is to effectively monitor the persons it is responsible for; take necessary measures to ensure their compliance with the requirements of the Regulations; and report any suspicions or knowledge that a person it is responsible for is or has engaged in money laundering or terrorist financing (MLR 2007a, Reg. 24). Within the Regulations, the supervisory authorities for those that belong to regulated professions – including legal and accountancy professionals – are their professional bodies. Subsequent to the enactment of the Money Laundering Regulations 2007, the representative and regulatory roles of the Law Society - the professional body for solicitors in England and Wales - were split and the Solicitors Regulation Authority (SRA) was established. While the Law Society retains the representative function, the SRA acts as the regulatory and disciplinary body for solicitors in England and Wales, and so, in effect, plays the role of supervisory authority in relation to the Money Laundering Regulations for solicitors in England and Wales.

2.3.2 Proceeds of Crime Act 2002 (POCA)

The offence of 'money laundering' is contained within Part 7 of the Proceeds of Crime Act 2002 (POCA), which came into force on 24 February 2003. Prior to the enactment of POCA, laundering offences were covered by two different Acts: laundering the proceeds of drug trafficking was an offence under the Drug Trafficking Act 1994, and laundering the proceeds of other crimes was covered by the Criminal Justice Act 1988.

2.3.2.1 Sections 327, 328 and 329

The three principal money laundering offences are laid out in sections 327, 328 and

329 of Part 7 of POCA⁷. Section 327 covers the offence of concealing, disguising, converting, transferring or removing criminal property from England and Wales, Scotland or Northern Ireland (POCA 2002a, s.327). The references to concealing and disguising criminal property also include concealing or disguising its 'nature, source, location, disposition, movement or ownership or any rights with respect to it' (POCA 2002a, s.327(3)). Section 328 states that a person commits a money laundering offence if he:

'enters into or becomes concerned in an arrangement which he knows or suspects facilitates (by whatever means) the acquisition, retention, use or control of criminal property by or on behalf of another person' (POCA 2002a, s.328(1)).

Section 329 of POCA provides the third principal money laundering offence. It states that an offence is committed if a person acquires, uses or has possession of criminal property (POCA 2002a, 329(1)). Money laundering can either be charged on its own, or included on an indictment which contains the underlying predicate offence. In each of these cases, there are two sub-categories: (i) 'own-proceeds' or 'self-laundering', where the person charged with money laundering also committed the predicate crime, and (ii) laundering by a person or persons other than those who committed the predicate crime (CPS 2010). The s.327 offence would be the most relevant offence for cases of 'self-laundering', where the offender of the predicate crime is prosecuted for laundering the proceeds of that crime. The s.328 offence, on the other hand, covers situations where a third party handles money derived from criminal activity, and so would be more appropriate when the individual prosecuted for the laundering offence was not involved in the proceeds-generating predicate offence (Harrison and Ryder 2013). The Crown Prosecution Service (CPS 2010) highlights the utility of the s.328 offence for prosecuting those who 'launder on behalf of others', suggesting that it can be used to 'catch' individuals working within professional roles who 'in the course of their work facilitate money laundering by or on behalf of other persons'. Therefore, this particular component of the Act may be 'of considerable concern to those who handle or advise third parties in connection with money and other types of property' (Fortson 2010: 181).

⁷ Full text of POCA available at: <http://www.legislation.gov.uk/ukpga/2002/29/contents> (Accessed 1st June 2015)

2.3.2.2 'Failure to Disclose: Regulated Sector' (s.330)

In addition to the primary money laundering offences laid out in sections 327, 328 and 329 of POCA, there is a further part of the Act that is of particular relevance to the subject of this research. Section 330 of POCA contains the offence of 'Failure to disclose: regulated sector', which lays out provisions to enforce the disclosure of suspicious transactions by members of the regulated sector, such as legal and accountancy professionals. Further provisions in the Act relate to the disclosure of suspicious transactions in non-regulated sectors, but the requirements for those in the regulated sector are more stringent than those in the non-regulated sector (Rhodes and Palastrand 2004). According to s.330 of POCA, a person commits an offence if:

- they know or suspect, or have reasonable grounds to know or suspect, that another person is engaged in money laundering; and
- the information or other matter on which their knowledge or suspicion is based, or which gives reasonable grounds for such knowledge or suspicion, comes to them in the course of a business in the regulated sector; and
- the person does not make the required disclosure as soon as is practicable after the information or other matter comes to him.

(see POCA 2002a, s. 330 (1-4))

Section 330 of POCA thus creates 'positive obligations' on individuals employed in the regulated sector (Booth *et al.* 2011: 123), compelling them to make money laundering disclosures and making it a criminal offence to fail to do so. The implications of the anti-money laundering legislative framework for those working in the regulated sector, such as legal and accountancy professionals, will be addressed in Chapter 7.

2.4 Conceptual Clarity and Issues of Definition

Despite the growing attention on the issue of money laundering over recent decades, its prevailing image as a serious threat to society and the integrity and stability of financial institutions, and the extensive range of measures that have been implemented in an attempt to control it, the concept of money laundering as a defined activity or process is problematic. Little of the literature actually addresses the conceptual and definitional issues related to money laundering, and in the main the term is accepted without question. However, some commentators have addressed the lack of clarity around the term, highlighting its confused nature and why this is problematic. The strict meaning of the term refers to the act of concealing the origins of the proceeds of criminal activity

and thus providing them with the appearance of legitimacy. In other words, 'essentially and strictly speaking, it is the false representation of crime money as legitimate earnings' (Gelemerova 2011: 3). Within this meaning, simple acts of concealment of criminal proceeds would not be considered money laundering if they were 'not followed by that very step of false legitimisation' (van Duyne and Di Miranda 1999: 262). This highlights the importance of the word 'laundering' within the term, referring to the idea that 'dirty' criminal money is being cleaned until it becomes legitimised or 'white' (van Duyne 2003: 75). On first sight, this appears straightforward and suggests a clear understanding of what money laundering entails. However, official definitions of money laundering demonstrate 'a blurring of the edges of the concept', leading to a widening of the scope of what constitutes 'money laundering' activity (van Duyne 2003: 77). For example, the 1990 Council of Europe Convention on Laundering⁸ describes the crime of money laundering as:

- a) the conversion or transfer of property, knowing that such property is proceeds, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in the commission of the predicate offence to evade the legal consequences of his actions;
- b) the concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of, property, knowing that such property is proceeds;
- c) the acquisition, possession or use of property, knowing, at the time of receipt, that such property was proceeds;
- d) participation in, association or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the offences established in accordance with this article.

In the UK, money laundering legislation effectively states that a person commits a money laundering offence if he:

- a) Conceals, disguises, converts or transfers criminal property, or removes it from the jurisdiction;
 - b) Enters into or becomes concerned in an arrangement which facilitates the acquisition, retention, use or control of criminal property;
 - c) Acquires, uses or has possession of criminal property.
- (see POCA 2002, sections 327-329)

⁸ Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, Strasbourg, 08/11/1990, Article 8.

These definitions are extremely broad and, consequently, cover far more than the act of 'cleaning' the money described above. In fact, it could be argued that such definitions actually cover any activities that would inevitably occur after a crime for profit had been committed, including receiving and handling stolen property (van Duyne 2003). As such, it 'takes little to create a legal basis for the offences of laundering' (Levi and Reuter 2009: 360), simply concealing, moving or disposing of the proceeds of crime. It is this broad interpretation of money laundering, referring to 'the handling of criminal incomes' in general terms, that policy makers claim poses a significant threat to the integrity of the financial system and society as a whole (Gelemerova 2011: 3).

The lack of clarity around the concept of 'money laundering', and the breadth of official definitions which appear to incorporate a wide range of behaviour, create problems for our understanding of the ways in which proceeds of crime are managed. It is, in effect, a legal construct, and one that is so broad it begins to lose any useful analytical meaning. Money laundering's 'weak conceptual foundations' make it difficult to study the phenomenon, or make accurate assessments of its scale (Levi and Reuter 2009: 357). Therefore, it may be more useful to move away from the term 'money laundering', and instead think more generally about the ways that criminals manage the proceeds of their crimes, and try to better understand these processes. The terms 'criminal money management' and 'crime-money management' have been used as alternatives to 'money laundering' by some commentators, to highlight the processes by which criminal proceeds are managed rather than the legitimising notion of the strict meaning of money laundering or the way the concept is constructed in official definitions and legislation (see e.g. van Duyne 1998; Levi 2003; van Duyne and Levi 2005; Dean, Fahsing and Gottschalk 2010; Gelemerova 2011; van Duyne 2013). I would argue that such terms are preferable, as they direct our focus towards analysing the ways in which criminals manage their criminal proceeds in a more meaningful way. However, 'money laundering', 'criminal money management' and its derivations will be used interchangeably in this thesis. The reason for this is that 'money laundering' – and the 'facilitation of money laundering' by professionals – are the terms that are commonly used in policy, legislation and official discourse and by practitioners when discussing this subject (as well as much of the academic literature). Therefore, while there may be problems with the way such terms are constructed in official discourse, and these constructions should always be considered, it is necessary to use commonly understood terms such as 'money laundering' in order to engage with policy and practitioners. This research involved interviews with practitioners from law

enforcement, regulatory and professional bodies, the Crown Prosecution Service, and the legal and accountancy professions, and thus I needed to use the commonly understood 'money laundering' in those discussions, while also trying to appreciate their understanding of such terms. Policy documents, legislation, and official and academic literature in this area all use the term 'money laundering' and so this was the term used when reviewing the literature on professionals involved in 'facilitating money laundering'. Nevertheless, it seems clear that analytical focus in this area should be on attempts to better understand the processes by which criminals manage the proceeds of their crimes and 'dirty' money enters the legitimate financial system; the role that professionals play in these processes being one element of this.

2.5 Summary

Money laundering has become a key priority for international governing bodies, law enforcement organisations and policy makers over recent decades. The perceived threat to society and, perhaps more importantly, the integrity of the global economy and financial institutions, from the flow of criminal money into the financial system, has given rise to the development of a comprehensive global anti-money laundering regime. This regime incorporates a range of legislative, regulatory and policy frameworks, guidelines, standards and institutions. It brings together actors from the public and private spheres, at the national and international level, and imposes a number of obligations on those believed to be in a position to prevent money laundering. The scale and reach of the anti-money laundering regime is considerable and has significant implications for those involved in sectors which fall under relevant provisions. Anti-money laundering policy within the UK has been shaped by international frameworks and standards, with national legislation being derived from EU Money Laundering Directives, which in turn were shaped by FATF standards. This legislation includes the Money Laundering Regulations (1993, 2003 and 2007), which implement the main preventative measures of the Money Laundering Directives, and the Proceeds of Crime Act 2002, which contains the primary money laundering offences. The legislation and measures that make up anti-money laundering policy in the UK and internationally provide an important context for this research and will be referred to throughout this thesis.

Despite the increasing attention that money laundering has received over recent years, and the considerable legislative and regulatory changes that have been introduced to

counter it, the concept of 'money laundering' remains unclear and there is a lack of understanding of the ways that criminals manage the proceeds of their crimes. There seems a clear need to aim towards better understanding of the processes involved in the management of criminal proceeds, including the role that professionals play in these processes: a gap that this research seeks to address. In addition, it is important to question the way that the role of professionals in the facilitation of money laundering is constructed in official discourse and policy, and how that is reflected in academic literature on the subject. The following chapter will attempt to do this, examining prior conceptions of the issue and analysing common themes in the existing research and analysis.

Chapter 3

The Facilitation of Money Laundering by Professionals

In recent years, there has been a growing discourse from intergovernmental bodies, policy makers and law enforcement organisations about the role that legal and financial professionals, such as lawyers and accountants, play in the facilitation of money laundering. The Financial Action Task Force (FATF) has highlighted this as an increasing problem, suggesting that stringent anti-money laundering controls placed on financial institutions and increasingly complex methods of money laundering have led to criminals becoming more reliant on the services and skills provided by professionals to manage their illicit funds (e.g. FATF 1997, 2004, 2010, 2013). Legal and financial professionals are considered to play a critical role in the laundering of criminal proceeds, acting as ‘the key doors for facilitating criminal financial transactions and keeping a veil of opacity on criminal assets’ (WEF 2012: 4). They provide a range of services - such as acting in property purchases, establishing corporate vehicles or other complex legal structures, creation or management of companies and trusts, and executing various financial transactions - which can be exploited by individuals wishing to launder ill-gotten gains. As a result, such professionals are considered as ‘gatekeepers’ to the financial system, a position which provides them with the opportunities to facilitate money laundering on behalf of others and also leads to them being enlisted in the prevention of money laundering (see e.g. FATF 2010; Cummings and Stepnowsky 2011). Within the official narrative, professionals are primarily seen as complicit, knowing participants, who willingly facilitate money laundering for reasons of personal financial benefit or market advantage, or as being unwittingly used by criminals who exploit a lack of compliance with anti-money laundering procedures or other vulnerabilities. In order to prevent such exploitation, the FATF and country-specific regulatory and professional bodies have attempted to identify various ‘red flags’ for professionals to look out for to decrease their vulnerability (e.g. FATF 2013; IBA 2014; SRA 2014a).

Despite the increasing prominence of this issue in official discourse, and the proliferation of measures intended to prevent and control it, the involvement of

professionals in money laundering has received limited academic attention and there has been little empirical research in the area. Much of the literature that does exist discusses this in the context of professionals providing assistance to organised criminals, more widely. It has also been examined as an example of misconduct, or wrongdoing, in the legal profession⁹. A small number of empirical studies have been conducted – in Europe, Canada and the US – focusing on the nature and extent of legal and/or financial professionals' involvement in money laundering cases (e.g. Middleton 2004; Schneider 2005; Cummings and Stepnowsky 2011; Soudijn 2012). While the criminological literature challenges official assertions on the *scale* of professionals' involvement in money laundering, highlighting the limited evidence for this and the difficulties of assessing scale, it provides little further understanding of its *nature*. The lack of academic attention in this area, therefore, allows an official narrative to persist without challenge or empirical support, and means that our understanding of the nature of professionals' involvement in managing criminal proceeds is poor.

This chapter will firstly discuss the increased attention given to the role of legal and financial professionals in the facilitation of money laundering in official discourse in recent years, and its framing as a growing problem. It will then consider the existing research and analysis in the area, highlighting a number of themes that emerged from examination of the literature, including: attempts to categorise the methods by which professionals can facilitate laundering; attempts to explain why professionals become involved in such criminal activity, and why criminals require the assistance of professionals; reference to the levels of 'knowingness' or complicity of professionals involved in money laundering; and their conceptualisation as 'gatekeepers', who can provide access to the financial system to criminals wishing to launder illicit funds and therefore have an obligation to prevent such access.

3.1 The Official Narrative: A Growing Trend?

The last two decades have seen an emerging narrative from intergovernmental bodies and law enforcement organisations about the role that legal and financial professionals, such as lawyers, notaries, accountants and bankers, play in assisting 'organised criminals' to launder the proceeds of their crimes, and the threat that this poses. The

⁹ Chapter 4 discusses the perspectives from which the role of professionals in the facilitation of money laundering has been considered.

FATF has been a prominent voice in this, highlighting what it considers to be a growing trend. Its annual *Typologies* reports have, for a number of years, suggested that criminals are increasingly using professionals to assist them in their money laundering activity¹⁰:

‘As anti-money laundering regulations have increased in many countries the criminals place increasing reliance on professional money laundering facilitators.’ (FATF 1997: para. 30)

‘Accountants, solicitors and company formation agents turn up even more frequently in anti-money laundering investigations. In establishing and administering the foreign legal entities which conceal money laundering schemes, it is these professionals that increasingly provide the apparent sophistication and extra layer of respectability to some laundering operations.’ (FATF 1997: para. 16)

‘Increasingly, money launderers seek out the advice or services of specialised professionals to help facilitate their financial operations. This trend toward the involvement of various legal and financial experts, or gatekeepers, in money laundering schemes has been documented previously by the FATF and appears to continue today.’ (FATF 2004: para. 86)

Their 2010 *Global Money Laundering and Terrorist Financing Threat Assessment* suggests that legal and financial professionals act as ‘gatekeepers’ who ‘protect the gates to the financial system’, through which launderers must pass if they are to achieve their goals (FATF 2010: 44). As such, members of these professions have become an increasingly ‘common element’ in complex money laundering schemes, particularly those involving ‘significant financial fraud and organised crime’ (FATF 2010: 44). The increased use of professionals by criminals wishing to launder crime proceeds is seen as a direct result of the anti-money laundering measures implemented by financial institutions, which have increased the risk of detection. In addition, a number of the methods currently used to launder criminal proceeds make use of (and often require) services provided by legal or financial professionals, such as the purchase of property or the establishment of companies and trusts. This threatens the integrity and reputation of these professions, as well as posing a risk to individual professionals and

¹⁰ For examples of FATF ‘Typologies’ and other reports that have discussed the role of legal and financial professionals in the facilitation of money laundering over the years, see FATF 1997, 1999, 2001, 2004, 2008a, 2008b, 2010, 2013.

businesses; it may result in increased criminal influence in businesses or groups of businesses or lead to their further exploitation, and can distort the market for the services of these professionals (FATF 1997, 2008a, 2010, 2013).

A report by the *Global Agenda Council on Organized Crime*, published by the World Economic Forum (WEF), shares the view of the FATF, suggesting that professionals can play a critical role in helping criminals manage the proceeds of their crimes, acting as ‘the key doors for facilitating criminal financial transactions and keeping a veil of opacity on criminal assets’ (WEF 2012: 4). The report admits that the extent to which this actually happens is not known; nonetheless, they argue, it represents a risk that needs to be managed. The report also highlights that the involvement of professionals in money laundering can take two different forms: firstly, where the professional is aware that the funds they are dealing with are of an illicit origin and they are knowingly engaged in assisting the primary offender to launder them, and secondly, where they are unaware and are being unwittingly exploited by the offender in their laundering activity (WEF 2012). The different levels of awareness, and complicity, of professionals in relation to their involvement in money laundering will be discussed in detail in section 3.2.3 below. The increasing engagement of professionals by criminals to ‘establish more sophisticated methods to sidestep the financial regulatory environment and law enforcement’ has also been noted by the Australian Crime Commission (2013: 2), while Europol (2011, 2013) has described professional expertise as a key ‘crime enabler’, suggesting the skills and services of professionals such as lawyers are sought by organised crime groups for a range of purposes, including the facilitation of money laundering.

Within the UK, while this issue has been discussed by law enforcement and policy makers for a number of years, it is only recently that it has acquired significant prominence. In 2001, NCIS¹¹ reported that they had identified over 200 cases in which a money laundering technique had been used that would have required the involvement or advice of a solicitor or accountant (Bell 2002). This issue was again highlighted by NCIS’s successor, SOCA, in their *Organised Crime Threat Assessment* for 2009/10 (SOCA 2010). In 2014, the National Crime Agency’s (NCA) *National Strategic Assessment of Serious and Organised Crime* (2014: 12) stated unequivocally that ‘[c]omplicit, negligent

¹¹ The National Criminal Intelligence Service (NCIS) became the Serious Organised Crime Agency (SOCA) in 2006. SOCA was replaced by the National Crime Agency (NCA) in 2013.

or unwitting professionals in financial, legal and accountancy professions in the UK facilitate money laundering', by compromising the money laundering controls that are in place across the regulated professions. Its most recent assessment suggests that 'high-end' money laundering (which it distinguishes from 'cash-based money laundering') relies on access to the professional skills of lawyers and accountants, among others (NCA 2015). It states that the use of such 'professional enablers' increases the complexity of money laundering, and argues that 'the professions posing the greatest risk are within the financial and legal sectors' (NCA 2015: 21). This issue also features prominently in the UK's national strategy for serious and organised crime produced by the Home Office (2013: 19), which highlights the critical nature of the role played by financial and legal professionals in the UK who 'facilitate money laundering on behalf of organised criminals'. Illustrating the priority currently being afforded to the issue of 'professional enablers', the recently introduced Serious Crime Act (SCA) 2015¹² contains a new offence of 'participating in activities of organised crime groups'. This provision is intended to target those who enable organised crime groups, including solicitors, accountants and other professionals who help criminals carry out their activities, including money laundering.

A number of commentators in the academic literature have echoed the official narrative that suggests that legal and financial professionals play a critical role in the facilitation of money laundering for others, and are becoming increasingly involved in such activity (e.g. He 2005; Ali 2006; Otusanya 2011; Otusanya, Ajibolade and Omolehinwa 2012). However, there is often little evidence given to support this assertion or any attempt to understand the phenomenon. Official reports on the subject often provide weak analysis, have methodological flaws, or are based on closed source material, which it is not possible to test (see following section). This lack of evidence does not appear to impact on the official rhetoric, however, exemplified by the assertion by the then Executive Director of the UNODC, in a press release on a report into the globalisation of organised crime, that the law enforcement efforts against organised criminals would be ineffective while 'the underlying markets remain unaddressed, including the army of white-collar criminals - lawyers, accountants, realtors and bankers - who cover them up and launder their proceeds' (UNODC 2010 cited in Middleton and Levi 2015: 653). Yet, within the report itself there is no reference to such actors, and no evidence of any data

¹² Full text of SCA available at: <http://www.legislation.gov.uk/ukpga/2015/9/contents/enacted> (Accessed 1st February 2016)

to support this assertion (Middleton and Levi 2015). The lack of evidence or understanding of the role of legal or financial professionals in money laundering has also not prevented the implementation of far-reaching anti-money laundering obligations for members of the professions, and responsibility for preventing themselves from being used in money laundering (IBA 2014; see section 3.2.4 in this chapter for discussion). This issue has started to receive some academic attention over the last decade, but this remains limited and provides little attempt to understand the role that professionals play or how they become involved in such activity. There has been a small amount of empirical research carried out in this area, in Europe, Canada and the US. The existing research and analysis will be discussed in the remainder of this chapter, highlighting some of the themes that have emerged and the analytical gaps.

3.2 Existing Research and Analysis

Over the last decade, a limited body of criminological literature specifically examining the involvement of legal or accountancy professionals in the laundering of criminal proceeds has emerged, along with a small collection of empirical research in the area. The majority of this literature has focused on lawyers (and notaries where relevant) rather than accountants, with the notable exception of work by Sikka and others (Mitchell, Sikka and Wilmott 1998; Sikka 2008) which examines the role of accountancy firms in illegal practices including money laundering, and considers this in relation to the growth of 'enterprise culture' and broader dynamics of capitalism (Sikka 2008). One of the earlier analyses of legal professionals' involvement in money laundering was by Bell (2002), who provided an overview of a number of cases of lawyers who had facilitated money laundering in different jurisdictions (UK, Canada and the US). Bell (2002: 17) believed that the involvement of lawyers in money laundering schemes was highly likely as there was 'no rational basis for believing that lawyers are exempt from the moral failings which afflict other members of society'. However, despite this, and despite the existence of relevant offences within the money laundering legislation, his primary observation was that there had been very few convictions of UK solicitors for money laundering offences. He speculated that, with the arrival of the Proceeds of Crime Act that was due to be passed that year, criminals would be even more keen to launder the proceeds of their crimes to avoid asset confiscation, which, in turn, would increase the likelihood of solicitors becoming involved, either wittingly or unwittingly, in money laundering. Bell (2002) suggested that it was solicitors who were sole practitioners or at small one- or two-partner firms that were most likely to be involved

in money laundering. However, his reasons for asserting this appear to be purely anecdotal, with the small number of cases available to analyse making a proper assessment problematic. He also suggested that the low number of money laundering convictions of solicitors at that point was due to, firstly, inadequate money laundering legislation which was weighed unfavourably towards defendants in prosecutions, and, secondly, a lack of law enforcement focus and resources directed towards money laundering investigations. In the years since the publication of this article, the Proceeds of Crime Act 2002 (POCA) has been enacted in the UK, bringing with it a wide range of offences under which legal or financial professionals who facilitate money laundering can be prosecuted, and money laundering investigation has become a much higher priority for law enforcement. Therefore, if Bell was correct in his assertions we would expect to see an increase in the number of convictions of lawyers for money laundering offences since the publication of his article (this will be discussed further in Chapter 8).

From a UK perspective, the main analysis of the role of legal professionals in the facilitation of money laundering has come from Levi and Middleton (Middleton 2004, 2005, 2008; Middleton and Levi 2004, 2015). Their contributions have primarily been as part of the wider consideration of solicitors involved in wrongdoing more generally, such as fraud or enabling organised crime. Middleton and Levi (2004) examined reported case law and the official and 'grey' literature to look for evidence of assistance provided to criminals by solicitors in England and Wales. They concluded that a number of cases in the UK and other jurisdictions demonstrated that lawyers had been involved in the laundering of criminal proceeds for others, but evidence showing the level of this assistance was scarce, and suggested that this lack of evidence was primarily due to the lack of prosecutions for this type of misconduct. Middleton and Levi (2004) provided extensive discussion of the legal and regulatory framework under which solicitors operate, highlighting its role in controlling their behaviour and relevance to potential misconduct. Since the publication of this paper, there have been significant changes to the regulatory landscape, not least the introduction of the Money Laundering Regulations 2007 and the formation of the Solicitors Regulation Authority (see Chapter 2). Consequently, they re-visited the issue recently (Middleton and Levi 2015) in order to examine crimes that solicitors can be involved in either as primary offenders or on behalf of others - such as money laundering - within the context of a number of changes that have happened to the regulation and provision of legal services. Over 10 years after the publication of their original article, the extent and nature of the facilitation of money laundering by lawyers is still disputed, the area remains under-

analysed, and official statements asserting its wide scale lack a sound evidential basis (Middleton and Levi 2015).

Middleton and Levi's 2004 paper was part of a special issue of *Crime, Law and Social Change*, based on a study carried out in France, Italy, the Netherlands and the UK that focused on the compromising conduct of legal professionals – including lawyers and, where relevant, notaries – in relation to organised crime. The study therefore did not focus exclusively on the role of such professionals in the laundering of criminal proceeds, but this was included as one of the forms of assistance provided to organised criminals. Other contributions to the project included Di Nicola and Zoffi's (2004: 201) examination of the 'misuse of lawyers for criminal purposes' in Italy. They provided examples of compromising conduct by lawyers and examined the factors that may put lawyers at risk of becoming involved in criminal activity. In addition, they provided valuable context to the discussion by examining the organisation of the legal profession and the factors (environmental and regulatory) that increased the 'vulnerability' of lawyers and the likelihood that they would become 'involved in facilitating criminal clients' (Di Nicola and Zoffi 2004: 202). In line with official discourse, Di Nicola and Zoffi (2004: 213) described legal professionals as 'a sort of "gatekeeper"'¹³ who had 'the ability to furnish access (knowingly or unwittingly) to the various functions that might help a criminal with funds that need to be moved or concealed'. They suggest that it is because of the 'increased law enforcement risk and complexity of financial transactions' that individuals who wish to launder criminal proceeds must seek assistance from legal or financial professionals (Di Nicola and Zoffi 2004: 213). However, they provide little evidence to support this assertion and, indeed, earlier in the article they state that the available data from police and prosecution records suggests that lawyers 'do not appear to be involved in money laundering schemes to any great extent [...] though there is a potential risk they could become involved' (Di Nicola and Zoffi 2004: 211). Emmanuelle Chevrier's (2004: 191) contribution from France similarly 'underlined [...] the reality of a culpable involvement of lawyers and notaries in criminal processes'. She tried to assess why some legal professionals 'take the risk' of being prosecuted and prevented from practising for the benefit of criminal actors, while others do not, but suggests that the lack of cases to analyse, and 'questionable validity' of inferences that

¹³ The term 'gatekeeper' is used widely in the academic literature and official reports to describe legal and financial professionals who are in a position to facilitate money laundering. This will be discussed further in section 3.2.4 of this chapter.

can be made from the cases that do exist, make it difficult to come to any conclusions (Chevrier 2004: 192). Lankhorst and Nelen (2004) also identified few cases of culpable involvement in criminal activity by legal professionals in the Netherlands. They argued that this should not be interpreted as 'playing down the problem' however, as, for one thing, it is likely that an unknown number of cases are never investigated due to reluctance from Dutch law enforcement to start investigations into members of these professions (Lankhorst and Nelen 2004: 163). Therefore, all the components of this study – the only large-scale examination of this issue carried out in Europe – demonstrated that, while there are clear examples of professionals who were involved in assisting criminals to launder the proceeds of their crimes, there is little understanding of the nature or extent of this phenomenon.

More recently, Melvin Soudijn (2012: 147; see also Soudijn 2014) conducted empirical research on what he termed 'financial facilitators', who he described as 'experts who put criminals in a position to circumvent the anti-money laundering measures'. He conducted interviews with a number of criminal investigators who had been involved in investigations into 'financial facilitators', and argued that these facilitators play an important role when the integration of criminal proceeds into the legitimate economy to conceal their origins involves complex money laundering constructions. However, Soudijn's work related not just to professionals such as lawyers or accountants, but anyone who assists a criminal in a fundamental way with their money laundering, including exchange office cashiers and real estate brokers (Soudijn 2012). Outside of Europe, empirical research in this area has been carried out in Canada and the US. In Canada, Schneider (2005: 27) used data collected from a sample of Royal Canadian Mounted Police proceeds of crime case files to explore how lawyers may be used to launder criminal proceeds. He found that lawyers 'came into contact with the proceeds of crime' in almost half of the cases examined, and concluded that lawyers primarily become involved in money laundering because of their role as intermediaries in financial and commercial transactions, suggesting this involvement may be witting or unwitting. Cummings and Stepnowsky (2011: 1) analysed a sample of money laundering cases from the US Court of Appeals to examine whether, and to what extent, lawyers are 'involved knowingly or unknowingly in transactions that serve to launder illicit funds'. They found that only a small number of the cases they examined showed evidence of lawyer involvement in the transactions used to launder criminal proceeds, and suggested that even in these cases the involvement was primarily unwitting.

The research undertaken by Schneider and Cummings and Stepnowsky was of a primarily quantitative nature. Schneider's (2005: 28) goal was to 'examine and quantify' how criminal proceeds are disbursed more generally, with a particular emphasis on how criminals use lawyers in their money laundering activity. Cummings and Stepnowsky's (2011: 22) empirical work was a 'quantitative descriptive study to explore the frequency of lawyer involvement in commercial transactions employed to launder illicit funds'. As such, they provide little analysis of the nature of this involvement, consideration of the contexts in which it occurs, or engagement with theory. The existing literature in this area, therefore, shows that there is little understanding of the nature of the involvement of professionals in money laundering, and limited empirical evidence to support or challenge the official narrative. A number of key themes emerged from the examination of the criminological and official literature in the area; these will be discussed in the remainder of this chapter.

3.2.1 Forms of Assistance

There are various attempts within the academic and official literature to identify the ways that legal or accountancy professionals could facilitate money laundering, listing or categorising the forms of assistance those who provide certain services can give to criminals wishing to move or conceal the proceeds of their crimes. In some instances, this is based on an examination of cases (e.g. Bell 2002; Middleton and Levi 2004; Schneider 2005; Cummings and Stepnowsky 2011), but often it appears to entail descriptions of ways that professionals *could potentially* facilitate money laundering because of the nature of the services they provide, with little basis in empirical observation.

Bell (2002: 19) suggests that the use of client accounts for the movement of criminal proceeds is 'one of the most important services that lawyers can provide to those who seek to launder 'dirty' money'. He detailed a number of cases from the US involving lawyers who were prosecuted for accepting criminal money into their firm's client account, before moving it to US-based or offshore bank accounts, transferring it to dummy corporations or returning it to the criminal in the form of cheques. The movement of criminal proceeds through a lawyer's client account gives them a sense of legitimacy, which can help circumvent financial institutions' anti-money laundering procedures (Middleton 2008; Bell 2002). Lawyers and accountants can carry out financial transactions on behalf of clients in order to hide or conceal the origins of illicit funds. These can involve transferring funds to 'secrecy haven' countries or initiating

complex financial constructions, or conducting more straightforward transactions such as cash deposits or withdrawals, issuing or cashing of cheques, and purchase or sale of stocks and shares (Middleton and Levi 2004; Nelen and Lankhorst 2004; FATF 2008b; WEF 2012). A number of the cases highlighted in the literature entailed the involvement of professionals in real estate transactions (e.g. Middleton and Levi 2004; Schneider 2005; FATF 2010; Cummings and Stepnowsky 2011; WEF 2012). Schneider (2005) found that acting in property transactions was one of the most common ways that lawyers came into contact with the proceeds of crime in the cases they examined, suggesting this was because of 'the popularity of real estate as a money laundering vehicle', combined with the obligatory role of lawyers in such transactions (Schneider 2005: 32).

Legal and accountancy professionals may assist criminals to launder the proceeds of their crimes by creating corporate vehicles or other complex legal structures, such as trusts, in order to confuse or disguise the links between the offender and the proceeds of their crimes (Bell 2002; Schneider 2005; FATF 2008b, 2010; Cummings and Stepnowsky 2011). Such structures may either be in mainstream jurisdictions or offshore locations (Middleton and Levi 2004). Working primarily, though not solely, from the cases examined by Bell (2002), Middleton and Levi (2004: 136) list a range of services that lawyers are 'known to have provided in suspicious circumstances', including:

'the receipt of cash, the provision of cash to the client or client's associates, the payment of monies to third parties in "transactions" not connected with the lawyer's underlying retainer (if any), the provision of practical advice from the lawyer's experience of criminal defence work..., failure to report suspicions of laundering, passing money through their own personal or business accounts (as opposed to their client account), and assisting a criminal to run his laundering empire from prison.' (Middleton and Levi 2004: 136)

More recently, the FATF attempted to provide a comprehensive categorisation of 'the ML/TF [money laundering and terrorist financing] methods and techniques that involve the services of a legal professional', using case studies to illustrate each technique (FATF 2013: 34). These categories are:

- Misuse of client account
- Property purchases

- Creation of companies and trusts
- Management of companies and trusts
- Managing client affairs and making introductions
- Litigation
- Other methods (including use of specialised legal skills, payment of legal fees)

A number of cases are provided to demonstrate the techniques within each category, and to identify ‘red flag indicators’ which legal professionals can use to conduct effective due diligence. However, there are several problems with the case studies included, which mean that, while possibly serving a purpose in highlighting potential risks to legal professionals, this is not an adequate way of properly evaluating the role of legal professionals in money laundering. The case studies appear to have been ‘shoehorned’ into the categories listed, often bearing little resemblance to the technique described or providing no proof that laundering had occurred, rather just being highlighted as a ‘suspicious transaction’ or bad business practice. The cases originated from a variety of sources, from multiple jurisdictions. There is little analysis of the cases, or reference to studies that have provided significant analysis of empirical data. While some were taken from Schneider’s (2005) research on legal professionals’ involvement in money laundering in Canada, the majority were based on questionnaires submitted by FATF member countries or regulatory bodies for the purposes of this report or for previous *Typologies* reports. As such, they may ‘simply represent cases that whoever has been consulted chooses to highlight’ (Levi and Reuter 2009: 359). Therefore, any conclusions the report makes can be considered to have a weak methodological basis. In addition, there is no distinction between lawyers who are involved in a primary offence and then, by natural progression, the concealment or transfer of the funds this offence generates, and those who assist others to launder the proceeds of *their* crimes; for example, there are a number of cases which would be classed as lawyer involvement in mortgage fraud.

3.2.2 Explaining Professionals’ Involvement in Money Laundering

‘The services of professionals are critical to criminals as the proceeds of crime cannot be effectively laundered without them’. (Bell 2002: 19)

The point made by Bell that professionals such as lawyers or accountants are *critical* to the successful laundering of criminal proceeds is reflected in much of the literature. It is

suggested that the 'severe restraints and strict controls' that have been imposed on financial institutions through the global anti-money laundering regime have made it increasingly difficult for criminals to launder their criminal proceeds, and so as a 'natural consequence' they require the assistance of professionals (WEF 2012: 15). He (2005: 2) suggests that money laundering is 'a highly complex and professional industry, which is difficult for ordinary criminals to commit', which is why they need the expertise or assistance of professionals. However, there is little evidence for these assertions, and a tendency to overstate the complexity of the ways that criminals manage the proceeds of their crimes. As discussed in the previous section, it is the services that are provided by legal and accountancy professionals that can assist in the movement or concealing of criminal proceeds, such as acting in property purchases or setting up corporate structures. They have particular skills and expertise that may be required by criminals who want to conceal the origins of their criminal proceeds. For example, if it involves the structuring and managing of complex financial transactions, perhaps involving offshore accounts, it may require the financial expertise and knowledge of financial systems of a solicitor or accountant and their ability to structure transactions in a way that disguises the origins of criminal proceeds (Di Nicola and Zoffi 2004; Sikka 2008; Soudijn 2012). In addition, it is argued that principles of lawyer-client confidentiality and legal professional privilege are a factor in why criminals make use of lawyers to launder their criminal proceeds (Bell 2002; Middleton 2008).

The reasons that criminals require the services of legal or accountancy professionals may, therefore, seem clear, but why do professionals become involved in facilitating criminal activity? The primary reason given in the wider literature for professionals to become involved in money laundering is the drive for profits (e.g. Chevrier 2004; Di Nicola and Zoffi 2004; Sikka 2008; FATF 2010). Chevrier (2004: 193) suggests that 'money coming from organised criminality can be attractive for some lawyers in urge for profit'. Professionals who give business to criminals are gaining an income unavailable to those who practice more legitimately, and so are gaining an advantage over their competitors and generating profit that they might not otherwise have been able to (FATF 2010). Other commentators discuss the increased commercialisation and internationalisation of legal practice and competition for clients and business as drivers for the involvement of lawyers in criminal activity (Chevrier 2004; Lankhorst and Nelen 2004). Di Nicola and Zoffi (2004: 12) suggest that changes within the legal professions in Italy – including the growth in number, power and prestige of the professions and globalisation of the markets in which they operate – could 'constitute a serious threat to

the integrity and the ethics of the professionals'. As well as the reasons for professionals *actively choosing* to become involved in money laundering, it is also suggested that they might be 'coerced with threats of violence or by the criminals exerting familial and cultural pressure' (NCA 2014: 7). This might follow initial complicity, where '[o]nce the professional is recruited physical and other threats may be employed to stretch the boundaries within which the complicit professional is willing to act' (FATF 2010: 46). This suggests a gradual process, whereby a professional initially agrees to do something that they may not consider to be too serious, but which leads to further requests that they feel unable to refuse.

Therefore, professionals who knowingly become involved in facilitating money laundering are framed as rational actors making choices to assist offenders (or being forced to do so). However, there is no empirical basis for assertions in the literature about why professionals become involved in such activity. The literature focuses on the individual motivations of professionals, primarily considered in terms of financial or business decisions, yet there has been no empirical analysis of the financial benefits that professionals receive, and empirical research and analysis in this area does not include the perspectives of professionals who have been involved in money laundering, or their accounts. As well as knowing involvement in money laundering, professionals are also considered to be at risk of becoming unwittingly involved, either through negligence or exploitation by the primary (predicate) offender. There is considerable reference to 'risk' and 'vulnerability' in the literature on this subject, and much of the guidance for legal professionals is based around the language of 'risk factors', 'red flags' and 'vulnerabilities' (for example, FATF 2008a, 2008b, 2013; IBA 2014; SRA 2014a, 2014b; Law Society 2013). Therefore, there appears to be a framing of professionals as either being knowingly involved in money laundering or being at risk from money laundering, with the different levels of culpability this implies, with insufficient understanding of the processes involved, the decisions made, or the contexts within which actions are taken. This is considered further in the following section.

3.2.3 Complicit, Negligent or Unwitting?

One of the most interesting things that can be observed when examining the literature is the way that professionals who are involved in facilitating money laundering are categorised in relation to their level of 'knowingness' or complicity. The principal way this is categorised is in a kind of dichotomy, with 'knowing' on one side and 'unwitting' on the other. For example:

‘Legal professionals [...] have the ability to furnish access (knowingly or unwittingly) to the various functions that might help a criminal with funds that need to be moved or concealed.’ (Di Nicola and Zoffi 2004: 213)

‘Although lawyers like to deny it, there is no doubt that they assist criminals and money launderers, sometimes with full knowledge of what they are doing but also unwittingly’. (Middleton 2008: 34)

Slightly differently, Soudijn (2012: 150) attempts to develop a systematic way of organising the ‘financial facilitators’ in his study. One of the ways he suggests is to differentiate between ‘willing and unwilling facilitation’, describing unwilling facilitation as ‘unknowingly providing assistance (through misuse, for example), or involuntarily providing services (through force, for example)’. So he groups together unknowing assistance with that which is knowing but not voluntary, for example, that which involves some kind of coercion. This, therefore, incorporates the issue of culpability and implies a judgment about intent. Lankhorst and Nelen (2004: 184) also use the idea of culpability to categorise the actions of professionals, discussing the notion of ‘culpable involvement’. They suggest that a small number of cases could be described as involving culpable involvement in its strictest sense, that is, where the professional acts as an accessory or co-perpetrator in the criminal activity. They would consider this as an ‘active’ form of involvement, in contradistinction to what they term ‘reactive’ forms, which concern negligence on the behalf of the profession or allowing the abuse of their office or position (Lankhorst and Nelen 2004: 184). Negligence would still be classed as culpable involvement because the professional ‘has taken insufficient care to avoid the abuse of his practice for criminal purposes’ (Lankhorst and Nelen 2004: 184).

The UK’s national strategic assessment on organised crime talks about ‘complicit, negligent or unwitting professionals’ (NCA 2014: 12); notions of complicity and negligence which appear to fit with Lankhorst and Nelen’s ideas of ‘active’ and ‘reactive’ culpable involvement. The Home Office *Serious and Organised Crime Strategy* from the previous year used similar categories, but introduced the term *corrupt* as well, discussing the problem of ‘corrupt, complicit or negligent professionals’ (Home Office 2013: 14). These categorisations can be summarised as follows:

KNOWING		UNKNOWNING	
WILLING	UNWILLING		
CHOICE	COERCION	NEGLIGENCE	EXPLOITATION
Culpable: Active (Lankhorst and Nelen 2004)	Not culpable (Lankhorst and Nelen 2004)	Culpable: Reactive (Lankhorst and Nelen 2004)	Not culpable (Lankhorst and Nelen 2004)
Willing (Soudijn 2012)	Unwilling (Soudijn 2012)	Unwilling (Soudijn 2012)	Unwilling (Soudijn 2012)
“Complicit” (NCA 2014)		“Negligent” (NCA 2014)	“Unwitting” (NCA 2014)
“Corrupt” “Complicit” (Home Office 2013)		“Negligent” (Home Office 2013)	

Table 1: Categorisations of knowingness and complicity in the literature

Schneider’s (2005: 32) research suggested that in the majority of cases the professional involved appeared to have been ‘used unwittingly’ to facilitate the money laundering, although he suggested that in a number of these cases the circumstances surrounding the transaction should probably have raised suspicions. In the six money laundering cases (out of a total of 40) identified by Cummings and Stepnowsky as having had lawyer involvement, without the lawyer having committed the underlying fraud and consequently ‘self-laundering’ its proceeds, they considered all the involvement by lawyers to be ‘unwitting’ (Cummings and Stepnowsky 2011). They relate this to the fact that the majority of these cases involved the purchase or sale of real estate; because funds involved in such transactions often pass through the lawyer’s client account as a matter of routine, this type of transaction would be particularly susceptible to being used to launder illegal funds without the lawyer’s knowledge (Cummings and Stepnowsky 2011). However, they go on to suggest that the lawyer may not have carried out the correct due diligence processes such as identification checks or

checking the source of the purchaser's income, so while they consider this involvement to be unwitting, it could perhaps still be considered as negligent behaviour on the lawyer's part. Schneider (2005) relates the level of complicity in his identified cases to the complexity or type of money laundering scheme involved:

'In rudimentary schemes, such as those involving the simple purchase of a home, a lawyer is not sought out by the money launderer, but instead is involved due to the necessity to involve legal professionals in real property transactions. In these cases, only a limited range of (legal) services are used by the offender, and the lawyer is not necessarily in a position to detect a suspicious transaction or client. In larger, more complex laundering schemes, there appears to be a concerted effort by criminal offenders to seek out and involve lawyers. In these cases, lawyers are more actively involved in providing a wide range of services specifically tailored to money laundering and often appear to be in a position where there is a greater chance that they are cognizant of the criminal source of their funds.' (Schneider 2005: 40).

The recent FATF (2013: 34) report on the vulnerabilities of the legal profession to money laundering and terrorist financing recognises the problems with a simple dichotomous distinction. It initially tried to distinguish between 'complicit' and 'unknowing' involvement in its case analysis, but felt that 'such a stark distinction' was not appropriate, and suggested that the nature of the involvement of professionals in money laundering could be more accurately described as a continuum:

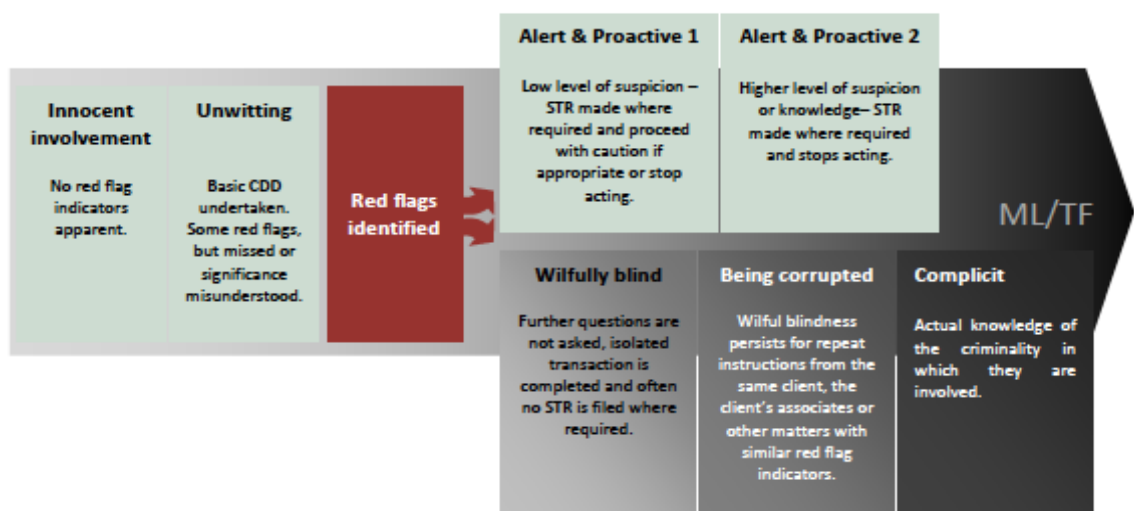


Figure 1: Involvement of legal professionals in money laundering and terrorist financing (FATF 2013: 35)

This is more useful in demonstrating the complexity of legal professionals' involvement in money laundering. It highlights the numerous points of decision-making for the professional, and therefore the responsibilities placed upon them. Yet there remains a lack of nuance, or exploration of the contexts in which the decisions are made. In addition, as it is depicted as a continuum with a direction, it seems to suggest that 'willful blindness' leads to corruption, which results in complicity, with no solid empirical basis for its assertions.

3.2.3.1 'Facilitation'

This is an appropriate point to consider the term 'facilitating' or 'facilitation'. Throughout the literature, and throughout this thesis, the term 'facilitation' is used to describe the involvement of legal and accountancy professionals in money laundering. Within the context of this section, it is suggested that such facilitation can occur with different levels of awareness, intent and complicity. The first thing to note is that the use of the term in this thesis signifies that the research is interested in the ways that professionals assist *others* – in particular, their clients – to launder criminal proceeds. It is not about professionals who commit predicate crimes and then, as a natural consequence, have to launder the proceeds; it is about the role they play when others have committed crimes for profit and need to manage the proceeds.

The term 'facilitation' emphasises the *assisting* nature of the professional's role. The Oxford English Dictionary (2012: 254) definition of 'facilitate' is to 'make something easy or easier'. In Soudijn's (2012: 148) study of 'financial facilitators', he derives the term from the legal use, whereby criminal facilitation is

'defined as aiding and abetting a person who intends to commit a crime, conduct that assists a person in obtaining the means or opportunity to commit the crime, or conduct that aids a person to actually commit a crime'. (Soudijn 2012: 148)

However, he decides to 'tighten' the concept to view a facilitator 'as someone who is *essential* to the carrying out of a criminal act' (Soudijn 2012: 148; emphasis in original). This seems problematic; I would argue that this makes a judgment on the *critical* nature of the role played by professionals that cannot be justified. Despite the official rhetoric about the importance of their role, there has not been sufficient study of this issue to assess whether the role played by professionals in money laundering is essential.

So, this thesis refers to the ‘facilitation’ of money laundering by legal and accountancy professionals to signify that the professional is assisting others to launder the proceeds of their crimes. As has been discussed in this section, the role played by professionals in money laundering has been categorised in various ways in relation to their level of complicity or ‘knowingness’. The current research could have chosen to focus on, for example, those professionals who are *complicit* in the laundering activity. However, it was felt that such an approach would miss something important; differentiating in this way would fail to appreciate the range of actions and behaviours that are considered as ‘the facilitation of money laundering’, and the processes involved.

3.2.4 Gatekeepers: Risk and Responsibility

‘Gatekeepers are, essentially, individuals that “protect the gates to the financial system” through which potential users of the system, including launderers, must pass in order to be successful. As a result of their status they have the ability to furnish access to the various functions that might help criminals to move or conceal their funds’ (FATF 2010: 44)

‘In recent years, intergovernmental standard-setting organizations have sought to draft lawyers as ‘gatekeepers’ of the financial system by imposing various mandatory responsibilities on them. (Cummings and Stepnowsky 2011: 3)

One of the key themes running through both the academic literature and official discourse on professionals involved in the facilitation of money laundering is their conceptualisation as ‘gatekeepers’. As the first quote above shows, the term ‘gatekeeper’, in this context, can refer to the fact that professionals are in a position to facilitate money laundering because of their status and role. The term is used widely in official and academic sources. For example, the UK’s 2013 *Serious and Organised Crime Strategy* refers to ‘professional enablers, such as bankers, lawyers and accountants [who] can act as gatekeepers between organised criminals and the legitimate economy’ (Home Office 2013: 48). Di Nicola and Zoffi (2004: 225) suggest that it is their ‘specialised expertise’ which those wanting to launder criminal proceeds and avoid detection require that gives professionals their status as ‘gatekeepers’, while the FATF (2001: 32) suggest that the services professionals can provide to criminals are ‘the gateway through which the launderer may pass to achieve his goals’. This conception,

therefore, sees legal and financial professionals as a locus of risk and vulnerability; by virtue of their professional status they are considered a potential threat because their role gives them the opportunity to facilitate money laundering, or makes them vulnerable to being exploited by criminals for this purpose.

As the second quote, from Cummings and Stepnowsky (2011), shows, the term 'gatekeeper' is also used in relation to professionals' obligations and responsibilities in the prevention of money laundering. The term was first used in this context in what is known as the Moscow Communiqué, which was adopted by the G-8 interior and justice ministers during a meeting in Moscow in 1999, a decade after the creation of the FATF. The Moscow Communiqué gave rise to the 'Gatekeeper Initiative',

'... an effort by governmental authorities to enlist the support of gatekeepers to combat money laundering and terrorist financing. Gatekeepers include lawyers, notaries, trust and company service providers (TCSPs), real estate agents, accountants, auditors and other designated nonfinancial businesses and professions (DNFBPs) who assist with transactions involving the movement of money in domestic and international financial systems.' (Shepherd 2009: 610-611)

So, the concept of 'gatekeepers' is rooted in the development of the global anti-money laundering regime, discussed in the previous chapter. Following the 1999 Moscow Communiqué, the FATF created a working group to identify professions that are 'gatekeepers with respect to money laundering'¹⁴ (Shepherd 2009: 620). In 2002, the FATF published a Consultation Paper reviewing its '40 Recommendations' and suggesting improvements to be made to the anti-money laundering framework. This document referred to the 'increasing concern' that money laundering schemes involved professionals and suggested that anti-money laundering obligations that had previously been focused on financial institutions be widened in their application, to include these 'gatekeeper professionals', such as lawyers, notaries and accountants (Shepherd 2009: 620). The following year, the FATF revised its Recommendations for a second time; expanding the sphere of responsibility for performing customer due diligence, record-keeping, and reporting suspicious activity to the designated nonfinancial businesses and professions (DNFBPs) that had been categorised as

¹⁴ The professional sectors identified were: lawyers; notaries; accountants and auditors; investment advisors; company and trust service providers; real estate agents; dealers in high value items; casinos and other gambling businesses.

'gatekeepers' (Cummings and Stepnowsky 2011). The extension of anti-money laundering measures to sectors involving legal and financial professionals was incorporated into the UK legal framework by way of the Money Laundering Regulations, via EU Money Laundering Directives, as described in Chapter 2.

As well as referring to their ability to facilitate money laundering, therefore, the notion of 'gatekeeper' positions legal and financial professionals as being 'able to prevent wrongdoing by withholding necessary cooperation or consent'; in this sense the gatekeeper can be seen as 'a private policeman' (Coffee 2006: 2). They are described as 'protectors of the gates' (WEF 2012: 17) and, as such, have been 'involuntarily co-opted into becoming unpaid agents of the state' (Levi 2007: 162). This conscription of non-state actors into the fight against money laundering can be seen as an example of what Garland described as a 'responsibilization strategy' (Garland 1996: 452). This involves the state making use of non-state actors to indirectly act upon crime, as opposed to direct action through state agencies, such as the police, court and prisons, and was described by Garland as 'the essence of the ... crime prevention approach' that evolved since the late 1980s (Garland 1996: 452). One of the key messages of this approach to crime control is that 'the state is not, and cannot effectively be, responsible for preventing and controlling crime' and thus individual citizens of the state

'must be made to recognize that they too have a responsibility in this regard, and must be persuaded to change their practices in order to reduce criminal opportunities and increase informal controls' (Garland 1996: 453)

The rise of individual responsibility is discussed also by Ericson and Haggerty (1997: 52), who suggest that 'the decline of innocence' in the private sphere is accompanied by the increased responsibility of individuals to 'be reflexive with respect to his or her actions to ensure that he or she does not increase the risk of loss'. The obligations of 'gatekeepers' such as legal and financial professionals in the name of controlling money laundering, echoing those previously imposed on banks and other financial institutions, can be seen as a clear example of such 'responsibilisation'. This does not indicate a relaxation of state control, however; non-state actions in this area 'occur in parallel and in addition to state controls, thus reinforcing them' (Mitsilegas 2006: 200).

The extension of the prevention measures of the anti-money laundering regime to lawyers received notable opposition from the profession and has been the subject of considerable debate, particularly in relation to the duty to report suspicious

transactions and the impact of this on lawyer-client relationships. As the 'Gatekeeper Initiative' became a focus of anti-money laundering policy, legal professional associations from the European Union, US, Canada, Japan and Switzerland signed a 'Joint Statement by the International Legal Profession to the FATF' in 2003. This drew attention to the profession's concerns 'about the effect of the FATF recommendations on access to justice and the rule of law' (Terry 2010: 41). Within Europe, there have been legal challenges in Belgium and France in relation to measures extending reporting obligations to lawyers, and, in the UK, the Law Society of England and Wales have actively lobbied for changes to anti-money laundering legislation that has been introduced (Tyre 2010). The American Bar Association (ABA) expressed considerable alarm over what they saw as an assault on attorney-client privileges manifested in the 'Gatekeeper Initiative' and subsequent legislative changes (Schneider 2005). They have continued to fight international and federal government initiatives that impose requirements of mandatory due diligence, record keeping and suspicious activity reporting (Cummings and Stepnowsky 2011). There has been notable resistance to the obligations in Canada. The legal community in Canada 'voiced bitter opposition' to their obligations for mandatory reporting of suspicious transactions, arguing that it placed legal professionals 'in an untenable – if not unconstitutional – position' (Schneider 2005: 11). As a result, law societies in Canada brought a series of legal challenges against the 'intrusion upon solicitor-client privilege' in provinces across the country (Gallant 2013: 9).

A number of commentators have expressed concern over the extension of reporting duties and other anti-money laundering prevention measures to legal professionals, because of the implications for privacy, the right of lawyer confidentiality and the defendant's right to a legal defence and due process, and the potential risk to professionals who come into contact with 'dirty' money (e.g. Gentzik 2000; Xanthaki 2001; Mitsilegas 2006; Gallant 2013). It is suggested that the case of lawyers is unique; because of their integral role in the legal system and duties to their clients, the public and 'the mechanism of law that organizes society', the co-opting of lawyers into money laundering prevention 'presents strains that are more pronounced than in the regulation of other professions, industries or sectors' (Gallant 2013: 1). However, others have argued that lawyers 'are gatekeepers and always have been', suggesting that it is important to 'avoid the misconception that lawyers should have no role to play in preventing client misconduct' (Zacharias 2004: 2). Middleton (2004, 2008) agrees, suggesting that there should be no debate about whether lawyers have a role to play in

preventing money laundering, only how they should actually do this, and stating that the profession should acknowledge this role. He suggests that solicitors should 'form a line of defence' against wrongdoing, and that the profession's regulators have a responsibility to uphold this, ensuring that the profession has 'due notice that failure properly to fulfill this function might have serious civil, disciplinary or criminal consequences' (Middleton 2004: 361).

3.3 Summary

A narrative has emerged within official discourse and policy that suggests that legal and financial professionals are increasingly playing a role in the facilitation of money laundering, due to far-reaching anti-money laundering measures which have increased the risk of detection, and the increasingly complex nature of financial transactions used to manage criminal proceeds. This has resulted in the implementation of a range of legislative and policy measures aimed at preventing professionals becoming involved in money laundering, including their own conscription into anti-laundering efforts through a variety of rules, responsibilities and obligations. Within the official and academic literature, there appears a certain construction of 'the facilitation of money laundering by professionals', which dominates with little challenge or empirical support. Professionals are seen as playing a crucial role in money laundering; they are described as 'professional enablers' and as providers of services that are critical to the successful laundering of criminal proceeds. This positions them as 'gatekeepers', who hold the keys to the door to the financial system. Their conceptualisation as gatekeepers has two sides: professionals are seen as having the opportunity to facilitate money laundering because of their position, and are also expected to be responsible for preventing money laundering, enlisted as non-state actors in the anti-money laundering regime. The notion of professionals as gatekeepers is inextricably linked to – and emerges out of – the development of a global anti-money laundering regime which involves an extensive complex of public and private actors assigned a role in the prevention and investigation of money laundering. Professionals' ability to facilitate money laundering can be viewed in terms of the opportunities provided by their position and status, or in terms of the risk to them of being exploited or used by criminals. They are considered to act with varying levels of awareness; this is primarily constructed dichotomously, with involvement being considered as 'knowing' or 'unwitting'. More recently, there has been recognition that it is more complex than that, and a continuum of involvement has been suggested. This still relies on attempts to

neatly categorise professionals' involvement in laundering, and makes inferences about levels of culpability and intent. Professionals are seen as rational actors, making decisions to become involved in money laundering for reasons of profit or competitive advantage, or acting negligently by not fulfilling their responsibilities as 'gatekeepers'. This echoes the ways that professionals involved in criminal activity or serious wrongdoing are framed in the literature on 'white-collar crime', which will be discussed in the following chapter.

However, the construction of professional facilitation of money laundering in official discourse and much of the academic literature has weak empirical foundations. The nature of professionals' involvement in managing criminal proceeds has received limited academic attention and there has been little research in the area. As a result, understanding of this issue is not sufficient to effectively challenge or support the existing narrative. Previous empirical research has been primarily quantitative and descriptive, providing little in-depth understanding or analysis of the cases involved. There has been no analysis of the relationship between the professional and the predicate offender, or of the benefit (financial or otherwise) that the professional receives from involvement in laundering activity. There has been little consideration of the processes by which facilitation of money laundering occurs, the decisions involved, or the situational contexts in which these decisions are made. In addition, we do not have the perspective of professionals who have been involved in laundering activity, or their accounts of the processes involved.

Examination of the existing literature on money laundering and its facilitation by professionals has shown that there are considerable analytical and theoretical gaps in our understanding of the role played by professionals in facilitating money laundering, the nature of their involvement, and the actions involved. The following chapter will aim to locate the current research in an appropriate theoretical framework, considering the contexts within which the facilitation of money laundering by legal and accountancy professionals can occur, and outlining the analytical framework used during the research.

Chapter 4

Theoretical Perspectives and the Analytical Framework

The aim of this chapter is to provide a theoretical framework for the interpretation and discussion of the research findings, and describe the analytical framework that was used to organise the data analysis. The first part of the chapter addresses the question of whether the research should be considered through the lens of ‘organised crime’ or ‘white-collar crime’. Within official discourse, and most of the academic literature, professionals who facilitate money laundering are primarily seen in terms of their relationship with organised crime, and the assistance they provide to organised criminals. The laundering of the proceeds of ‘crimes for profit’ can be seen as an intrinsic part of the organisation of these crimes, and so the role played by professionals in the facilitation of this laundering can be considered in relation to this organisation. On the other hand, viewing the facilitation of money laundering by professionals through the perspective of white-collar crime allows the specific occupational context of the professionals to be taken into consideration. This section concludes that the focus of this research can be considered to represent an intersection of ‘organised’ and ‘white-collar’ crime and, as a consequence, the theoretical and analytical frameworks used in the research have their origins in the literature on white-collar crime, but take account of the role of the professionals in the organisation of serious crime.

The chapter continues by examining existing theories of white-collar crime, which often focus on individual-level explanations of offending and see such criminal activity as a rational choice, motivated by self-interest and based on an assessment of risk and reward. Such explanations, the chapter argues, fail to sufficiently appreciate the role played by the wider organisational, social and cultural contexts in which the offending behaviour takes place, and the impact of these contexts on the decision-making processes involved. Therefore, the concept of ‘situated action’ is used to provide a theoretical framework for the research, based on Diane Vaughan’s (2007: 7) thesis that

individual actions, decisions and choices are situated within a 'layered social context', influenced by their immediate setting and the wider institutional, structural and cultural environment in which this setting is located. This framework indicates the examination of the facilitation of money laundering by professionals, and the processes and actions involved, within the organisational context and wider environment in which these actions occur. In order to take account of these situational contexts, the research adopted an analytical framework based on one initially developed by Vaughan in 1983 to explain organisational misconduct. The analytical framework takes into account the situated nature of social action, by directing attention towards micro-, meso- and macro-levels of analysis and thus considering the facilitation of money laundering by professionals in relation to the situational contexts in which it takes place. The analytical framework is outlined in the final part of this chapter.

4.1 Locating the Research: 'Organised Crime' or 'White-Collar Crime'?

The facilitation of money laundering by professionals has been examined from a range of perspectives. In their most recent appraisal of the subject, Middleton and Levi (2015) considered the involvement of solicitors in laundering activity as a form of lawyer misconduct, linking this to wider issues of legal professional ethics and financial crime, and locating the behaviour within the context of recent changes to the provision of legal services in the UK and the regulation of the legal profession. They highlighted some of the shortcomings in the literature on wrongdoing within the legal profession, suggesting that professional legal ethics scholarship 'has shown little interest in lawyers who facilitate serious wrongdoing', and has had a greater focus on 'lawyerly propriety' than on 'the interaction of lawyers and crime' (Middleton and Levi 2015: 648). In contrast, Middleton and Levi's (2015) contribution focuses on solicitors' involvement in criminal activity, either as the primary offender or on behalf of others. Primary offending by solicitors is mainly considered in relation to fraud, for example, high-yield investment fraud and mortgage fraud¹⁵. The role of solicitors in criminal activity on behalf of, or in order to assist, others can take the form of 'direct facilitation of crime'; examples of this provided by Middleton and Levi (2015) include cases of

¹⁵ Solicitors' involvement in 'high yield investment fraud' has been comprehensively examined by Middleton (2004, 2005, 2008).

solicitors convicted of conspiracy to pervert the course of justice, tipping off drug dealers with information about police investigations, and a variety of immigration offences. It can also involve assisting criminals to launder the proceeds of their crimes, and it is from this perspective that Middleton and Levi (2015) address the role of lawyers in the facilitation of money laundering.

Professionals who facilitate money laundering on behalf of others can also be viewed as an example of 'legitimate actors in criminal settings' (Morselli and Giguere 2006: 188), representing an interface between the criminal 'underworld' and legitimate 'upperworld'. The juncture between the legitimate and illegitimate worlds, or 'the points at which criminals and conventional society meet' (Passas 2002: 31), has been widely discussed in the literature on organised crime and criminal markets. It is suggested that the popular notion of a criminal 'underworld' that is distinct and clearly separated from the rest of society presents a false perception of reality, failing to show the interplay between different sections of society (Kostakos and Antonopoulos 2010). Interactions between the criminal and legitimate worlds have been primarily understood in terms of the infiltration by criminals into legitimate industries or economic sectors, with 'organised crime' being seen as a 'predatory force within legitimate enterprise and conventional society' (Morselli and Giguere 2006: 186). The notion of such criminal actors as the dominating or instigating force in the relationship fits with the 'threat image' of organised crime described by van Duyne (2004: 25), but, it is argued, presents a 'false conceptual dichotomy between unproblematic licit economies and the exceptional threats of illicit actors' (Edwards and Levi 2008: 374). Therefore, an alternative perspective has emerged, which focuses on a more complex, symbiotic relationship between legitimate and criminal actors, where legitimate actors can be active, critical participants in criminal networks (Morselli and Giguere 2006; see also, Passas 2002; Kupatadze 2008; Morselli 2009; Kostakos and Antonopoulos 2010).

Within this perspective, the involvement of legitimate occupational actors in criminal settings – whereby the legitimate workforce function or role facilitates serious criminal activity – has been examined. The role played by legitimate actors from a variety of occupational settings in the organisation of serious crimes has been documented in a number of studies examining illegal markets or groups¹⁶. Morselli and Giguere (2006:

¹⁶ For example, Gruppo (2003) identified a number of examples of employees of legitimate companies who assisted in the distribution of ecstasy in three European cities, including air

187) suggest that such actors may play critical, enabling roles in serious criminal activity and, indeed, that the organisation of serious crime ‘emerges from the abundant opportunities offered by consensual legitimate actors’. As these examples show, a wide variety of occupational roles can be involved in facilitating serious crime. Narrowing this down to focus on *professional* actors, the literature highlights examples of lawyers assisting human smugglers by supplying false identity papers (Nelen and Lankhorst 2008); professionals in the financial and real estate sectors aiding criminals in the commission of mortgage frauds (Tusikov 2008; Van Gestel 2010); lawyers assisting criminals in a variety of ways in the cocaine business in Greece (Kostakos and Antonopoulos 2010); and legal and financial professionals facilitating serious crimes for gain in a range of European countries (Chevrier 2004; Di Nicola and Zoffi 2004; Lankhorst and Nelen 2004; Levi, Nelen and Lankhorst 2004; Middleton and Levi 2004). A focus on professional occupations highlights the importance of professional status and skills in addition to the occupational role, and brings into consideration the regulatory frameworks and professional standards under which such actors operate. The assistance provided by professionals to criminals involved in illicit markets or other serious crime – for example, by facilitating the laundering of their criminal proceeds – can therefore be viewed as an example of the role of legitimate actors in criminal settings, representing an interface between the criminal ‘underworld’ and legitimate ‘upperworld’.

Professionals who facilitate money laundering are primarily regarded in terms of their relationship with organised crime, and official discourse frames this as a problem of ‘professional enablers’ providing assistance to organised criminals (see previous chapter). As such, this research could be located within the same framework, considering professionals’ involvement in laundering through the lens of ‘organised

stewards, airport luggage handlers, airport cleaners, chemists and truck drivers. Lyman and Potter (2000: 223) identified a diverse range of legitimate actors working ‘behind the scenes’ in drug trafficking operations. Zaitch (2003) and Kostakos and Antonopoulos (2010) studied cocaine markets in the Netherlands and Greece respectively, and found them to be reliant – directly or indirectly – on a variety of legitimate actors, including pilots, truck drivers, aircraft crew, baggage handlers, shipping agents, port employees, warehouse owners, estate agents, restaurant owners, phone shop owners, lawyers and accountants. Bouchard and Dion (2009) discussed the crucial nature of hydroponics equipment suppliers to those involved in large-scale cannabis production, and Tremblay, Talon and Hurley (2001) highlighted the critical role of auto industry professionals and scrap yard dealers in criminal networks involved in ‘car chopping’ and the resale of stolen parts in Canada in the late 1980s and early 1990s. Klima (2011) studied the vulnerabilities of individuals in the hotel and catering industry in Belgium to becoming facilitators of crime.

crime'. However, the concept of 'organised crime' is very much a contested one, and presents a number of conceptual and analytical difficulties. Despite the considerable attention it has received over recent decades from policy makers, law enforcement, academia and the media, there remains no common theoretical understanding of the concept of 'organised crime' and no universally accepted definition. The definitions of organised crime adopted by official bodies are often loose and ambiguous, and can vary wildly, reflecting the challenge of trying to provide a 'conceptual clarity that is difficult to find and even trickier to define' (von Lampe *et al.* 2006: 19). For their part, criminologists have endeavoured to provide an effective definition of organised crime for a number of years (see e.g. Maltz 1976; Hagan 1983, 2006; Albanese 2000; Finckenauer 2005; Varese 2010), but there remains little consensus on the concept within the academic literature in this area (von Lampe *et al.* 2006). The difficulties with trying to provide a definition or conceptual clarity for 'organised crime' arise from the problem of trying to identify as a clear and coherent phenomenon something that encompasses a diverse range of people and activities, and a complex set of relationships. Organised crime has been conceptualised in various ways: as a type of criminality, characterised by continuity and sophistication in contrast to the compulsive and sporadic nature of other types of crime; in relation to the 'organised' nature of the relationships between offenders, operating in groups or networks rather than alone; and as a 'systemic condition', focusing on the 'concentration of power' and the interrelationships between criminals and political and economic elites (von Lampe 2007: 8). Therefore, agreement cannot even be reached on whether the term refers to certain criminal activities or the people engaged in them. Organised crime is conceived variously as the provision of illegal goods and services, or as large-scale, well-defined collective organisations engaged in illegal activity. However, Paoli (2002: 88) argues that the supply of illegal goods and services actually tends to occur in a *disorganised* fashion, carried out by 'small ephemeral enterprises', and the large-scale, long-lasting criminal organisations that do exist (e.g. the Italian Cosa Nostra and Japanese Yakuza) are not exclusively involved in illegal market activities. These 'paradoxes of organised crime' (Paoli 2002: 52) are emblematic of the lack of clarity and consistency that surrounds the discourse in this area.

Difficulties with trying to explain 'organised crime' have been accompanied by a growing awareness that the term itself is problematic and 'rarely helpful' (Spencer 2007: 118), being unable to reflect the complexities and ambiguities of the interrelationships between actors and activities involved. Consequently, there has been

a move away from the term 'organised crime' in recent years, and from trying to define and explain 'its' nature. Instead, it has been argued that it is more meaningful to consider 'the organisation of serious crimes', by examining how crimes for profit occur, how criminals organise themselves, how criminal markets work, and the interactions of these with methods of crime control (Edwards and Levi 2008; Levi 2012). There has been a shift in analytical focus – particularly in European research – towards trying to understand how serious crimes are organised, allowing for recognition of the heterogeneity of the actors and activities involved, and consideration of the social relations that play a role (Edwards and Levi 2008)¹⁷. This perspective allows for investigation of the wider 'social organization' of serious crimes and those that commit them, including the interrelationships between actors in legitimate and illegitimate spheres (Passas 2002: 31). Therefore, 'analysis of 'organized-ness' is becoming decentred', with greater consideration being given to the settings in which offending can take place, the services criminal activity requires from both the licit and illicit worlds, and the social relationships involved (Levi 2008: 411). This, therefore, provides a more useful way of thinking about the involvement of legitimate professionals in the management of criminal proceeds, rather than a preoccupation with seeing them as enabling 'organised crime'. The laundering of the proceeds of serious crimes can be seen as an intrinsic part of the way that they are organised, and so the role played by professionals in facilitating this can be considered as part of the organisation of such crimes, leading to questions about the social organisation of professionals' involvement in money laundering and relationships between the actors and actions involved.

However, it is important to retain a focus on the professional role of the subjects of this research and take into consideration their specific occupational context and professional status, skills and expertise. This role has led to legal and financial professionals being positioned as 'gatekeepers' in the fight against money laundering, and is said to provide the means and opportunity for them to help criminals launder the proceeds of their crimes (see Chapter 3). Therefore, the facilitation of criminal money management by legal and accountancy professionals could also be considered in the context of 'white-collar crime'. The concept of 'white-collar crime' was introduced by Edwin Sutherland in 1949, who defined it as 'a crime committed by a person of respectability and high social status in the course of his occupation' (Sutherland 1949: 9). Sutherland's aim was to draw attention to crimes not usually included within the

¹⁷ This framework has been applied to, for example, the organisation of human trafficking (Goodey 2008) and various frauds (Levi 2008).

scope of criminology at that time, and challenge traditional explanations of criminal behaviour that focused on poverty or social disadvantage. In this way, the concept acted to 'sensitize the field' of criminology and challenge existing perceptions (Piquero, Tibbetts and Blankenship 2005: 161). Central to Sutherland's (1949) conception of white-collar crime is the high social status and respectability of its perpetrators; however, it also draws attention to the occupational basis of the criminal activity, leading to criticisms of the definition's ambiguity and a lack of clarity about whether focus should be on the characteristics of the offender or nature of the offence (Croall 2001). Sutherland also failed to differentiate between crime committed by an employee against their organisation for their own personal benefit (such as theft or embezzlement), and that committed for the benefit of the organisation (Huisman and Vande Walle 2010).

Problems with Sutherland's (1949) definition led others studying the field to offer alternative conceptions of this type of offending, aiming to provide greater clarity and more distinct categorisations. For example, the terms 'organisational crime' and 'occupational crime' have been used as alternative modes of categorising white-collar crime. Occupational crime is described as offences committed by individuals, for their own benefit, in the course of activity in a legitimate occupation, or offences committed by employees against their employers (Clinard and Quinney 1973; Clinard and Yeager 1980). In contrast to Sutherland's focus on individuals of high social status, occupational crime also includes offences committed by 'blue-collar workers' in connection with their occupations (Clinard and Yeager 1980). Therefore, the key feature of this concept is the location of the offence, with the legitimate occupation providing the context in which the offence occurs. The occupational context provides opportunities for criminal activity, which can be exploited regardless of the specific motivation of the offender (Clinard and Meier 2011). It can also provide a degree of 'invisibility' to the offence because the offender is 'legitimately present at the scene' (Croall 2001: 8). The occupational role can play a part in the commission of the offence, with the offender often making use of 'some form of technical or 'insider' knowledge', or professional expertise (Croall 2001: 8). The concept of occupational crime therefore removes what many would consider to be the primary feature of white-collar crime: the high social status and class of offenders. However, this means that the focus can be on the opportunities provided by the occupational setting, and the interactions of offenders with this setting, regardless of the class or status of the offender (Croall 2001). Therefore, offences involving an offender who does not fit the category of high

social status or class need not be excluded from analysis of this type of criminality, and class and status can be considered within such analysis, rather than being a defining feature of it.

The concept of 'organisational crime' as a subcategory of white-collar crime has been defined as 'crime committed by a legal organisation or a member of that organisation in the course of his occupation in favour of the organisation' (Huisman and Vande Walle 2010: 119). Its defining features are that it occurs within an organisational context and its purpose, at least in part, is to serve the goals of the organisation (Agnew, Piquero and Cullen 2009). The key points to note, therefore, are the organisational context of the behaviour and the notion that it is committed for the benefit of the organisation. Organisational crime that takes place within the context of a corporation falls under the category of corporate crime, defined by Clinard and Quinney (1973: 189) as 'offenses committed by corporate officials for their corporation and the offenses of the corporation itself'. However, organisational crime is wider than just corporate crime; it also includes violations of laws or regulations in public and voluntary organisations, and those committed for the benefit of the state or its agencies (state crime) (Croall 2001). The concept of organisational crime can be taken to include activities that violate non-criminal forms of law and regulations as well as those that constitute a criminal offence, and that result in some form of penalty or sanction other than criminal prosecution.

The concept of white-collar crime – as with organised crime – remains contested, with continued disagreement over the most appropriate terminology, sphere of focus and the range of actors and activities that it should encompass. However, while problematic, Croall (2001: 17) considers 'white-collar crime' to be a useful umbrella term, which she defines as 'an abuse of a legitimate occupational role which is regulated by law'. This broad and inclusive definition encompasses both organisational and occupational crime, while focusing on the legitimate occupational context, and takes account of activities that are not only controlled by criminal law. This umbrella term, therefore, clearly allows for the inclusion of the facilitation of money laundering by legal and financial professionals in the concept of white-collar crime, and underlines their occupational role as an important context. However, the concept of white-collar crime less effectively takes into account such factors as the relationship between the professional and the client(s) whose funds they are helping to legitimise, and their role in the social organisation of the wider criminal activity. These may be better considered

in relation to the organisation of serious crime for gain, in order to take into account the social organisation of professionals' involvement in money laundering and relationships between the actors and actions involved. Therefore, it is argued that the activity under study in this research could be located somewhere between the concepts of 'white-collar crime' and 'organised crime', or, rather, provides an example of an intersection between the two. This demonstrates the problem of trying to fit complex, multi-layered phenomena into neat categories or definitions, and highlights the importance of appreciating the limitations of such categories and the need to consider the areas where they come together. It has been argued that greater consideration should be given to overlaps between crimes categorised as 'white-collar crime' and those deemed as 'organised crime', due to the challenge of knowing where to draw a line between the two (Nelken 2012), and that research should 'transcend the artificial distinction' between what is considered organised crime 'proper' and corporate or white-collar crime (Ruggiero 1996; 1998; 2000 cited in Edwards and Gill 2002: 208). Therefore, the focus of this research can be considered to represent an intersection of 'organised' and 'white-collar' crime: professionals who facilitate the management of criminal proceeds are committing offences within the context of their occupational role, but are also playing a role in the organisation of crime for profit. Accordingly, the theoretical and analytical frameworks used in this research are based primarily in the white-collar crime literature, but take into account the role of these professionals in the organisation of serious crime.

4.2 Explaining White-Collar Crime: Rational Choice and Individual-Level Explanations

Early attempts to explain white-collar crime were often focused at the level of the individual, seeking to identify individual motivations for offending or understand individual decision-making processes. Some explanations have located this form of offending in individual pathologies, attributing it to personality characteristics or psychological traits, and thus portraying those involved as inherently different to non-offenders. This may serve an ideological function, identifying white-collar offenders as 'rotten apples in the barrel' and suggesting that such behaviour is unavoidable and unrelated to any wider organisational culture, policies or practices (Croall 2001). Personality traits that have been associated with white-collar crime offenders include ambitiousness, drive, risk-taking, recklessness, narcissism, guile, egocentricity and the

desire for power (Friedrichs 1996; Croall 2001). However, many of these characteristics can be seen in those who are not involved in criminal activity, and, indeed, are often associated with legitimate business success. This led to the conclusion that white-collar crime was not linked to individual pathologies (Friedrichs 1996). More recently, a growing body of research has suggested that individual characteristics, personality traits and cognitive processes may play a role in the causes of white-collar offending (Benson and Manchak 2014).

General theories of crime have been used to try and explain white-collar crime, with varying degrees of success. As well as introducing the concept, Sutherland (1947) attempted to explain white-collar crime using a form of learning theory that he referred to as 'differential association'. Sutherland argued that criminal behaviour is learned through a process of differential association, whereby greater exposure to individuals who approve of criminal behaviour, or attitudes in favour of criminal activity, than to those against law breaking, leads individuals to commit crimes. Criminals learn the rationalisations, motivations and attitudes necessary to engage in criminal activity – as well as the techniques required to carry it out – from their peers (Sutherland 1947). Within the occupational context, differential association theories view white-collar crime 'as a result of the learned definition and experiences that occur within the workplace' (Piquero, Tibbetts and Blankenship 2005: 160). A number of subsequent studies adopted Sutherland's theoretical approach to explaining white-collar crime, including, notably, Geis's (1967) application of the theory to his examination of price-fixing in the electrical equipment industry. However, differential association theory has been widely criticised for its over-generalisation and inability to explain the origin of the criminal values and source of the learning, ignoring the question of where the 'first' offender learnt the techniques, attitudes and motivations (Payne 2013: 271).

Control theories see crime as a result of 'a rational choice that will be made in the absence of sufficient controls' (Croall 2001: 83). An example of such theories, Hirschi's (1969) 'social bond theory' suggested that individuals will engage in criminal activity if they do not have the bonds to, and investment in, society that prevents them from doing so. Gottfredson and Hirschi (1990) extended these ideas to incorporate the notion of self-control, suggesting that individuals with low self-control would be more likely to engage in criminal activity, including white-collar crime. A number of researchers have applied self-control theory to account for various forms of white-collar crime (e.g. Benson and Moore 1992; Hirschi and Gottfredson 1989; Geis 2000;

Simpson and Piquero 2002; Friedrichs and Schwartz 2008; Piquero, Schoepfer and Langton 2008), but, as with differential association, it has been subject to widespread criticism. The primary criticisms of self-control theory as an explanation for white-collar crime are that its focus on individual desires and self-gratification ignores the organisational and cultural context of offending behaviour, and fails to account for crimes that benefit the organisation rather than the individual (Friedrichs 1996; Slapper and Tombs 1999).

Another theoretical perspective that has been applied to white-collar crime is Sykes and Matza's (1957) techniques of neutralisation, which were originally developed to try and explain juvenile delinquency. They suggested that individuals become delinquent by learning techniques of neutralisation, which allow them to rationalise and justify criminal actions (Piquero, Tibbetts and Blankenship 2005). A number of studies of white-collar offenders have identified techniques of neutralisation used by the offender as a means of justifying their behaviour. For example, Benson (1985) found that the denial of criminal intent – rather than a denial of criminal *activity* - was a common theme in the interviews he conducted with convicted white-collar offenders. Offenders were not rejecting responsibility for their actions, but rather denying 'the pejorative quality associated with it' (Scott and Lyman 1968 cited in Payne 2013: 274). Benson (1985) also found that offenders from different occupational backgrounds used denials that appeared to be linked to the nature of their occupations and the specific occupational location in which the criminal offence had occurred. More recent studies of individuals involved in organisational misconduct have applied Sykes and Matza's theoretical framework, identifying a variety of techniques of neutralisation used to assuage guilt and rationalise behaviour (e.g. Ashford and Anand 2003; Piquero, Tibbetts and Blankenship 2005). Such rationalisations and techniques of neutralisation may serve a number of purposes for white-collar offenders. They enable individuals to engage in 'behavioural drifting', moving 'in and out of acceptable and unacceptable behaviour patterns', and allow the maintenance of a 'positive self image' (Payne 2013: 275). They also provide a means for offenders to avoid punishment, delay the implementation of sanctions, or reduce the level of sanction imposed (Payne 2013).

A common theme that underpins many of the individual-level explanations of white-collar crime is the view that crime is a rational choice, motivated by self-interest and based on a consideration of risk and reward. In line with this view, a number of scholars have explicitly utilised a rational choice framework in their attempts to explain

white-collar crime, considering it a 'natural fit' for understanding the decision-making processes of this type of offender (Piquero 2012: 364). With foundations in the utilitarian tradition of criminology and economic models of human behaviour, the rational choice perspective conceives criminal activity as the outcome of rational choices and decisions based on an analysis of risk and reward (Cornish and Clarke 1986). Cornish and Clarke (1986, 2002, 2014), who developed the framework, posited the notion of a 'reasoning criminal', who

'considers the risks, effort, and rewards associated with alternative courses of action and selects the one which maximises, or at least gives a reasonable return on, his or her investment of time and energy.' (Cornish and Clarke 2002: 43).

Individuals offend, therefore, when crime provides the most effective means of achieving the desired benefits (Cornish and Clarke 2002). At its core, rational choice theory, or 'crime-as-choice' theory, assumes that criminal acts are the product of a process of cognition and calculation where 'reasoned actors weigh the costs associated with the potential act against the potential benefits or gains that will be derived from the act' (Piquero 2012: 364). It has been widely suggested that a rational actor model which sees crime in terms of cost-benefit calculations is a useful framework for analysing white-collar and corporate crime, as such crimes are rarely spontaneous or driven by emotion, usually require a degree of foresight and planning, are calculated and deliberative, and are directed towards economic gain (e.g. Braithwaite and Geis 1982; Paternoster and Simpson 1993, 1996; Simpson, Piquero and Paternoster 2002; Piquero, Exum and Simpson 2005; Shover and Hochstetler 2006; Shover, Hochstetler and Alalehto 2013). Shover and Hochstetler (2006: 126) suggest that white-collar crime is committed when individuals 'estimate the payoff as greater than the risks or consequences of being caught', and thus fits the framework of rational decision-making and calculation. The rational choice perspective, it is argued, can therefore be used to explain white-collar crime and develop measures for controlling it (Shover and Hochstetler 2006).

However, viewing white-collar crime as a rational choice, based on the calculation of risk and reward and motivated by the pursuit of desired (usually financial) goals for the individual or the organisation, can act to decontextualise the decision-making processes of those involved and takes insufficient account of the ways that criminal activity is socially patterned (Croall 2001). While Shover and Hochstetler (2006) tie the

rational choice perspective to wider organisational cultures and pressures, suggesting that structural conditions within organisations can shape the evaluation of potential costs and benefits, and Sutherland's (1947) theory of differential association posed questions about the nature of organisations and the occupational context of offenders, the theoretical perspectives outlined in this section maintain a primary focus on individual motivations for offending. This is problematic, because explanations of white-collar crime preoccupied with the individual fail to appreciate the role played by the wider organisational, social and cultural contexts in which the offending behaviour takes place, and the impact of these contexts on the decision-making processes involved. Therefore, it was felt that such theoretical perspectives would not be sufficient for understanding the role of legal and accountancy professionals in the facilitation of money laundering, and an alternative theoretical framework was sought.

4.3 Situated Action and the Case for Multi-Level Analysis

Diane Vaughan (1996, 1998, 1999, 2002, 2007) suggests that explanations of white-collar crime that focus on individual motivations and models of rational choice are insufficient as they ignore the 'situational contexts' within which decisions and choices are made, and which influence, to varying degrees, these decisions. She argues that all social action is 'situated action', that is, that individual actions, meaning and choice are situated within a 'layered social context', influenced not only by their immediate social setting, but also the wider institutional, structural and cultural environment in which this setting is located (Vaughan 2007: 7). Situated action sees individual, organisation and environment coming together to produce events, behaviours and activities (Vaughan 2002). The concept of 'situated action' has its origins in the writing of C. Wright Mills (1940), who argued that people's actions and motivations originate from the situation they are in rather than originating internally from the individual themselves (Suchman 2007). It was later brought to prominence by the anthropologist, Lucy Suchman, in relation to human-machine interaction and communication. Suchman argued for a better understanding of the situated nature of most human behaviour (Suchman 1987; see also Suchman 2007), using the term to underscore her position that 'every course of action depends in essential ways on its material and social circumstances' (Suchman 2007: 70). She argued that 'actions are always situated in particular social and material circumstances', so 'the situation is crucial to action's interpretation' (Suchman 2007: 176). Vaughan has applied the 'situated action' model of human behaviour to her research on organisational misconduct (most notably, in her

extensive study into the organisational decision-making that led to the Challenger space shuttle disaster in 1986) in order to add context to the decision-making processes of offenders in organisational settings and move away from more individualistic models (Vaughan 1996, 1998, 2002). She argues that the study of misconduct - which can include the violation of rules, norms, and administrative, civil and criminal laws - within and by organisations must take into account the situated nature of individual action, by examining the contexts within which decisions to violate laws or rules are taken and, crucially, the relationship and interactions between individual behaviour and the settings in which it occurred (Vaughan 1996, 1998, 2002). A full theoretical explanation of any particular behaviour, Vaughan suggests, can only be possible by considering, to the greatest extent possible, the situated character of that behaviour, and by understanding the link between rational choice and the social context in which such choices are made, and recognising the importance of the role of social contingencies in decision-making (Vaughan 2007).

In line with Vaughan's argument for considering the contexts in which offending occurs, a number of white-collar crime scholars have focused on the role of the organisation, or wider social, cultural and economic contexts, in the behaviour of individuals engaged in misconduct. Schrager and Short (1978: 410) suggested that preoccupation with individual levels of explanation 'can lead us to underestimate the pressures within society and organisational structures which impel those individuals to commit illegal acts'. They highlighted the importance of 'recognising that structural forces influence the commission of these offences' and called for an emphasis on 'organisational as opposed to individual etiological factors' and 'a macro sociological rather than an individual level of explanation' (Schrager and Short 1978: 410). Similarly, Slapper and Tombs (1999) have argued for a focus on the structural pressures that occur within organisational contexts, and which may be more significant in influencing behaviour than the personalities or moral codes of individuals, and may have criminogenic effects. Maurice Punch's work on corporate crime has led him to argue that 'the *organizational component* is crucial' (Punch 2011: 103) in white-collar offending, suggesting that an organisation's 'institutional context and culture shape an environment that encourages, colludes or is culpably blind to law-breaking', leading to criminal behaviour within that organisation (Punch 2011: 101; see also Punch 1996). To Punch, the organisation provides 'the means, the setting, the rationale and the opportunity' for corporate misconduct (Croall 2001: 85).

Criminal activity within or for organisations has been attributed to specific organisational cultures, which includes the 'norms, values, and beliefs about the kinds of attitudes and behaviours that are appropriate and good' and which can be conveyed throughout an organisation by various means, such as language, systems of punishment and reward, and the behaviour of leaders in the organisation (Greve, Palmer and Pozner 2010: 66). The attitudes and values of senior managers within an organisation can set the 'moral tone' of the organisation, which can transfer to the employees and create a culture that is more or less conducive to offending behaviour (Clinard and Yeager 1980). Organisational cultures can endorse misconduct by failing to provide guidance on the means by which the goals of the organisation should be achieved. More explicitly, the culture of an organisation may convey a lack of concern about the means by which such goals are achieved (Greve, Palmer and Pozner 2010). For example, it was suggested that the culture within the Enron Corporation was one that placed 'paramount importance on personal and corporate economic gain and little importance on adherence to rules of any kind' (Greve, Palmer and Pozner 2010: 66). Vaughan (1997, 1998) highlighted a culture of 'normalised deviance' within NASA, whereby small, incremental deviations from norms were individually tolerated and normalised. These incremental errors of judgement and mistakes were made, and gradually increasing risks were accepted, over a long period of time, supported by a culture of high-risk technology. This led to the ultimately disastrous safety failings that resulted in the Challenger Space Shuttle exploding on launch (Vaughan 1997, 1998).

The culture within organisations, however, can be influenced by wider social, cultural and economic factors, which may also play a role in producing organisational misconduct. A capitalist economic system, for example, is seen by many as a key driver of white-collar offending (see e.g. Pearce and Tombs 1998; Slapper and Tombs 1999). Such a system can drive people towards certain behaviours by 'constantly pushing people with targets to hit, promotions to seek and emotions to avoid, recessions to try and survive, and so on' and so is 'likely to engender corporate crime' (Slapper and Tombs 1999: 162). Indeed, it has been argued that corporate and business crimes could be seen as an 'inevitable consequence of capitalism' (Nelken 2012: 637). Cultures of competition and enterprise that are endemic to capitalist systems and ideology are seen as criminogenic. The 'enterprise culture' stresses the values of individualism and financial success, and can lead to business practices that 'bend the rules' in the pursuit of profit or personal gain (Sikka 2007: 270). A culture of competition not only sees organisations and individuals seeking a competitive advantage over others, sometimes

by illegitimate means, but also instils a 'fear of falling' (Coleman 1995) that leads some to indulge in law-breaking behaviour if success is threatened (Huisman and Vande Walle 2010: 16). However, there are clearly problems with a perspective that sees white-collar crime as endemic to capitalism, or capitalism as inherently criminogenic. Such a perspective would 'predict too much crime', suggesting illegitimate activity was occurring across the board in capitalist societies, and so failing to explain the relative stability of economic trade (Nelken 2012: 637). In addition, it fails to account for criminal activity in non-profit organisations, or industries in societies that do not follow the capitalist model (Croall 2001), and does not allow for law abidingness working *for* the competitive interests of companies (Lord and Doig 2014). Attempting to explain white-collar crime with a macro-level approach that focuses on the criminogenic properties of certain cultural or economic environments, therefore, cannot fully explain why some organisations become involved in misconduct and others do not. Other factors including organisational cultures and characteristics would also need to be considered.

Many theories of white-collar crime, therefore, do consider levels of explanation beyond the individual, taking into account organisational characteristics or cultures or wider social-structural contexts. However, what remains lacking is consideration of all levels together, and the interconnections between them, and the use of this for the elaboration of theory on offending behaviour. Vaughan (2002, 2007) suggests that in order to understand misconduct that is committed in an organisational context, it is crucial to explore the micro-, meso- and macro-levels to consider the relationships and interconnections between the wider environment, the organisational setting and the behaviour of individuals within. This takes into account the socially organised and situated nature of individual action and thus provides the means of developing a full causal explanation of organisational misconduct (Vaughan 2007). It allows for the exploration of

'1) the possible causal contribution of structures and processes internal to the organizational setting to individual action, meaning and choice, and 2) the possible causal connections between the environment, organization and individual action.' (Vaughan 2002: 124)

Others have supported this call to consider multi-level explanations of corporate and white-collar crime (see e.g. Holtfreter 2005, 2008; Wang and Holtfreter 2012) and a small number of scholars besides Vaughan have considered white-collar crime by

exploring the interconnections between environment, organisation and individual action (Kramer 1982; Finney and Lesieur 1982; Coleman 1987 cited in Vaughan 1998). Vaughan (2007) considers the meso-level – the organisational level – to be of fundamental importance to explanations of white-collar offending. It is important to note that this does not just refer to corporations or structured organisations. She states that the term ‘organisational’ ‘casts a broad net’ (Vaughan 2002: 124), which captures a variety of socially organised settings, including professions, families and public agencies, as well as corporations (Vaughan 2002, 2007). Others have suggested that schools, churches, social movements and political parties can be considered when examining the organisational level of misconduct (Punch 2011). In the context of the current research, legal and accountancy professions provide the organisational context for analysis.

The concept of situated action provides a framework within which the facilitation of money laundering by legal and accountancy professionals can be analysed and theorised. Using this framework allows for the examination of the role that professionals play in the management of criminal proceeds, and the processes and actions involved, within the organisational context and wider environment in which these actions occur. It moves beyond individualistic rational choice models that would see professionals becoming involved in money laundering solely for reasons of self-interest, and as a result of a calculation of risk and reward. Such models would decontextualise the actions of the professionals and the role they play in the facilitation of money laundering, taking insufficient account of the situated nature of their actions and the influences of their immediate settings and wider environments on the decisions they make. The facilitation of money laundering by solicitors and accountants takes place within the organisational context of their professional, occupational role. This role requires them to provide certain services and act in various forms of transaction on behalf of their clients, and designates them as ‘regulated professionals’, which imposes a range of responsibilities and obligations and requires certain standards of behaviour. Its wider setting includes the control environment, which involves an array of legislation, regulations, law enforcement agencies and regulatory bodies aimed towards preventing regulated professionals from becoming involved in money laundering and punishing those that do. In addition, the actions of such professionals take place within the context of the global anti-money laundering regime discussed in Chapter 2, and the perceived threat from money laundering and its links to organised crime that drives the measures implemented nationally and internationally in the name

of preventing money laundering.

In order to take account of these contexts, and provide an understanding of the facilitation of money laundering by legal and accountancy professionals grounded in the interconnections between individual actions and their multi-layered social settings, the research heeded Vaughan's call for analysis to be conducted at the micro-, meso- and macro-levels. It adopted an analytical framework based (with modifications) on one initially developed by Vaughan in 1983 to explain organisational misconduct and applied to a variety of forms of crime or misconduct since (see Vaughan 1983, 2002). The analytical framework used in this research will be outlined in the following section.

4.4 The Analytical Framework

The analytical framework adopted by this study was designed to allow the research to consider the facilitation of money laundering by legal and accountancy professionals in relation to the situational contexts in which it occurs. It aims to provide an understanding of the interconnections between the individual actions of such professionals, their organisational setting and the wider environments in which these are located. The framework is based on Vaughan's theory of organisational misconduct (see Vaughan 1983: 54-104), which was developed to explain violations of laws and regulations by individuals in organisational roles, primarily to further the interests of the organisation itself, or a subunit of it (Vaughan 1992). The theory incorporates three main elements:

1. The **competitive environment**, which includes competition from other organisations and the scarcity of resources, which generate pressures upon organisations to violate the law or regulatory norms in order to achieve certain goals.
2. **Organisational characteristics**, which provide opportunities to violate. Such characteristics include structures, processes and transactions.
3. The **regulatory environment**, which relates to the relationship between regulators and those they regulate. The structure of this relationship may mitigate the effectiveness of the regulators in controlling and deterring violations, contributing to individual decisions to violate.

(Adapted from Vaughan 1983, 2002)

This framework emphasises organisational factors and features of the wider environment to explain individual action. Rather than receiving a separate heading in

this model, the individual level of analysis is taken to be implicit, with the connection between environment, organisation and individual action forming the basis of the theory (Vaughan 2002). It suggests that the three elements outlined are important influencers of 'violative behavior' in organisations, but also that all elements are interrelated:

'the competitive environment provides the structural impetus for misconduct; organizational characteristics provide opportunities; and the regulatory environment, systematically failing because of structurally engendered constraints, encourages individuals to respond to competitive pressures by taking advantage of the socially organised opportunities for deviance that are available in organizations.' (Vaughan 1992: 127)

The framework aims to

'draw systematic attention to 1) structures and processes in the organizational setting, as they are implicated in individual action, 2) the role of the environment as it impinges upon and is reproduced in the organizational settings, and 3) the relationship between the environment, the organizational setting and the behaviour of individuals within.' (Vaughan 2002: 122)

The causal explanation is revealed, therefore, by the interconnections between the constituent parts, which, when combined, play an influencing role on individual choice, meaning and action (Vaughan 2002).

Vaughan's model provides a broad framework for analysing a range of forms of organisational misconduct. The analytical framework used in this research, therefore, was adapted from this model to create a more suitable framework for the analysis of the specific area of the facilitation of money laundering by legal and accountancy professionals. The framework is set out below. It is structured to show the three (micro-, meso- and macro-) levels of analysis and so, unlike Vaughan's model, it includes the level of individual action. The macro- (environment) level is divided into two parts: control environment and AML (anti-money laundering) environment. This level could include any number of environmental settings, as there are a number of contexts that could have an impact on professional facilitation of money laundering or its organisational setting. For example, it could have included 'competitive environment' as Vaughan's framework did. While the concept of 'competition' may

seem to be more relevant to other forms of white-collar or corporate crime that involve a business context, it is clear that competition and marketisation are significant - and increasing - features of the provision of legal and accountancy services. However, it was felt that it would not be possible to consider all contexts that could have a bearing on the facilitation of money laundering by professionals within the scope of this project, and so the decision was made to focus on the two key macro-level features set out in the analytical framework:

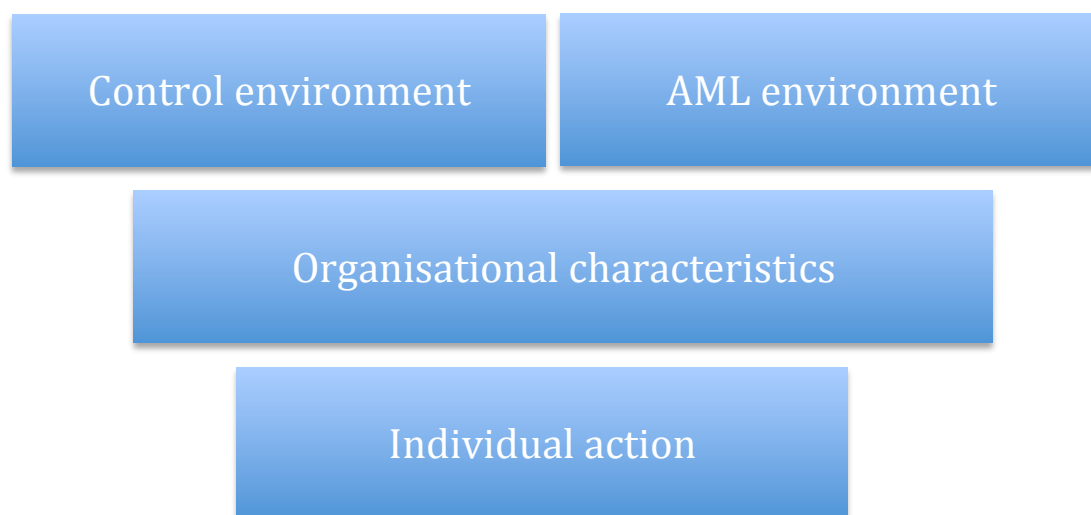


Figure 2: Analytical framework

The framework was used as a means of organising the data analysis; it guided me to search at the different levels of explanation, examining the actions of professionals involved in the facilitation of money laundering; the structures, processes, and transactions of these professions and their relationship to the professionals' actions; and the interconnections between the control environment, policies and rhetoric of money laundering prevention, the organisational setting, and the actions of professionals.

The **control environment** consists of the complex network of professional and (self-) regulatory bodies, whose role it is to ensure that their members comply with the relevant regulations and professional standards, disciplinary tribunals, and police and prosecuting authorities, who will investigate and prosecute activities by professionals that constitute criminal offences. It also includes the legal framework, which comprises elements of the Proceeds of Crime Act 2002 and the Money Laundering Regulations.

The research therefore examined the relevant legal and regulatory frameworks; the range of social control agencies involved in preventing professionals becoming involved in money laundering, investigating and prosecuting those suspected of such involvement, and punishing those found guilty of wrongdoing; and the role of these actors and their relationships with those they control, and with each other.

Chapter 2 of this thesis described the evolution of the global anti-money laundering (AML) regime, founded in the construction of money laundering as a significant crime problem, due to its perceived threat to the integrity of financial systems and markets, and its associations with 'organised crime'. Combatting money laundering has become a priority for policy makers, governing bodies and law enforcement organisations, resulting in a vast array of legislation, policies and procedures aimed at its prevention, and the conscription of non-state actors – including legal and accountancy professionals – into the 'fight' against money laundering. The **AML environment**, therefore, provides another feature of the setting in which the facilitation of money laundering by legal and financial professionals should be understood. The effects of the priority given to preventing money laundering, and the policies and practices that result from that, on the actions of professionals, their occupational role and the way they are regulated and policed, was considered throughout the research.

Within Vaughan's framework, '**organisational characteristics**' refers primarily to the structures, processes and transactions of the organisation within which those being studied are based. Within the context of this research, it was decided that this would refer to the relevant professions - the solicitors' profession and the accountancy profession – in order to consider the relationship between the characteristics of these professions and the actions of professionals who are involved in money laundering, and how these characteristics may provide opportunities and means for professionals to facilitate money laundering, and their role in the processes and choices involved. Of course, such professionals often work in organisations of various sizes and forms, and the role of the nature and culture of these organisations on professionals' involvement in money laundering could also be considered, extending this part of the analytical framework (see Chapter 9.2 "Limitations and Future Research Directions" for further discussion).

The **individual action** of professionals who become involved in money laundering was primarily examined by analysing data on cases of professionals convicted for money

laundering offences. The research examined the means by which professionals facilitated the laundering, and the processes by which they became involved, in order to analyse the relationship between these actions and the situational contexts in which they are located.

4.5 Summary

This research uses the concept of situated action to provide a framework for analysing and theorising the facilitation of money laundering by legal and accountancy professionals. This framework directs consideration of the actions of professionals involved in money laundering towards the context of the organisational setting and wider environment in which these actions occur, and an understanding of the facilitation of money laundering by professionals grounded in the interconnections between individual actions and their multi-layered social settings. In line with this theoretical perspective, the research utilises an analytical framework that directs attention towards:

- 1) the individual actions of professionals involved in the facilitation of money laundering;
- 2) the characteristics of the professional, occupational role as they are implicated in individual actions;
- 3) the role of the control environment and the relationships between actors in the control environment, and with those they control;
- 4) the impact of anti-money laundering policies and practices on professionals' actions, their occupational role and the way they are regulated; and
- 5) the relationship between the environment, organisational setting and the behaviour of individuals within.

The framework takes into account the situated nature of social action, and therefore moves beyond individualistic rational choice perspectives on crime based on calculations of risk and reward and pursuit of personal or organisational benefit. Such models act to decontextualise action, by not giving sufficient attention to the situational contexts in which decisions and choices are made. The theoretical framework used takes account of these contexts and their influences, and thus provides a means of more fully understanding a complex and multi-layered phenomenon, and allows a more

detailed and textured analysis of it.

The theoretical perspectives and analytical framework used in this research originate in the literature on white-collar crime. Professionals who facilitate the laundering of criminal proceeds are committing offences within the context of their occupational role, and using theories and concepts related to white-collar crime emphasises the importance of this context in understanding their actions. However, the framework also enables the research to contribute to our understanding of the organisation of serious crimes, as it allows for the consideration of the social organisation of the activities and those that commit them: the relationships between the actors and actions involved, and the interconnections between legitimate and illegitimate worlds. The facilitation of money laundering by legitimate professionals can be seen as a function of the organisation of crime for profit, and so the theoretical framework outlined in this chapter reflects the location of this activity on the intersection of 'organised' and 'white-collar' crime.

The following chapter will detail the methodological approach taken in carrying out this research. It discusses the research strategy and design that was adopted to address the aims of the research; facilitate the collection of rich, textured data to allow better understanding of a complex, multi-layered phenomenon; and enable the application of the analytical framework outlined in this chapter.

Chapter 5

Methodology

Previous empirical research focusing on the facilitation of money laundering by legal or financial professionals has been primarily quantitative and descriptive, providing little in-depth analysis of the nature of such facilitation or the processes and relations involved (e.g. Schneider 2005, Cummings and Stepnowsky 2011; see Chapter 3). Its primary focus has been to explore the frequency of professional involvement in transactions used to launder criminal proceeds, and the types of transactions they are involved in. The current research took a methodological approach that aimed to build on and go beyond what has been done before. It utilised a qualitative methodology, combining semi-structured interviews conducted with a range of different actors with the in-depth qualitative analysis of a number of cases of professionals convicted of money laundering. Qualitative research aims for a greater understanding of the subject matter being studied, rather than attempting to experimentally examine or measure quantities, intensities or frequencies (Denzin and Lincoln 2011). It involves an interpretive approach, examining the qualities of entities and processes, and trying to make sense of phenomena by considering the meanings people bring to them (Denzin and Lincoln 2011). It was therefore the appropriate methodological approach to use for this study, allowing an understanding of the facilitation of money laundering by professionals in relation to its situational contexts, the meanings attributed to it by the actors concerned, and the interrelationships between these actors and the actions and processes involved.

The research was designed to enable the appreciation of multiple perspectives. Interviews were carried out with individuals from law enforcement and criminal justice bodies, regulatory bodies, and the relevant professions, and data on cases was collected from multiple sources, including Solicitors Disciplinary Tribunal transcripts, Court of Appeal transcripts, media and other reports, and attendance at a disciplinary hearing. This approach provided a considerable amount of rich, textured data and contributed to the quality and depth of the research. The data was analysed thematically, by the identification and development of themes across all data sources.

This chapter outlines the methodological approach taken by the research. It firstly touches on epistemological and ontological considerations, describing the ‘adaptive theory’ approach adopted by the research. It briefly explains the justification for not examining the *scale* of professional involvement in money laundering, before describing how the research was designed to allow for the appreciation of multiple perspectives and highlighting the perspective that is ‘missing’ from the research. This is followed by a discussion of the process of conducting the research, detailing the collection and analysis of data and the challenges encountered. Finally, the chapter addresses relevant ethical issues, and considers the reliability, validity and limitations of the research. The chapter concludes with a summary of the main points, and an introduction to the data chapters, which follow this chapter.

5.1 Between Theory and Data: An ‘Adaptive Theory’ Approach

The research strategy incorporated an ‘adaptive theory’ approach to the use of data and theory, which focuses on the interconnections between individual activity and the social structures and systems in which it takes place, and stresses the importance of an ongoing relationship between theory and data throughout the research process. The adaptive theory approach, developed by Derek Layder in his 1998 text, *Sociological Practice* (Layder 1998), is based on principles of critical realism, which suggest that there exists ‘both an external world independent of human consciousness, and at the same time a dimension which includes our socially determined knowledge about reality’ (Danermark *et al.* 2002: 6). It, therefore, embraces ontological positions of both objectivism and subjectivism. Layder (1998: 140) argued that when conducting social research we should simultaneously appreciate both the ‘internal’ subjective point of view of the actors involved and the wider social settings in which social interactions take place. Adaptive theory takes a position that is neither positivist nor interpretivist, suggesting that social analysis must ‘attempt to understand the social world from the point of view of the people who are the subjects of research at any one point in time’, but must also take into account the ‘many features of social life, such as social structures and systems [...] which cannot be understood solely in this fashion’ (Layder 1998: 139).

Adaptive theory views the social world as complex, textured and multi-layered. It aims to appreciate this complexity, focusing on the ‘multifarious interconnections’ between

human activity and its social contexts (Layder 1998: 100). It offers a way of explaining the interaction between structure and agency (Hewage and Perera 2013), rather than focusing exclusively on one or the other - an approach that would miss their interconnectedness and the ways they are 'intertwined in social life' (Blaikie 2009: 145). The primary focus of the adaptive theory approach is 'a set of activities (or events) and the social relations and organisation which constitute its immediate environment' (Layder 1998: 148), considering the 'ties between agency and structure in social life and the connections between micro and macro levels of analysis' (Layder 1998: 27). Therefore, this approach fits with the aims of the research to consider the actions of professionals involved in money laundering in the context of their organisational setting and the wider environment in which they occur, and provide an understanding of the facilitation of money laundering by professionals grounded in the interconnections between individual actions and their multi-layered social settings, as discussed in the previous chapter.

The adaptive theory approach to social research stresses the importance of an ongoing relationship between theory and data throughout the course of the research process. That is, prior theoretical ideas are used to guide and feed into the research, while also aiming for the generation of new theory from the ongoing analysis of collected data. It therefore uses a process of 'adaptation', rather than purely induction or deduction. It draws on the strengths of both the hypothetico-deductive model of research and grounded theory, aiming to synthesise the positive features of these methods and thus fall somewhere between the two (Layder 1998). It is therefore considered by some to be 'a definite advance' on purely inductive or deductive approaches (Bottoms 2008: 99), allowing for 'a continuing dialogue between theory and empirical observation' throughout the whole process of a research project (Bottoms 2008: 75). It was clear that this research could not sit comfortably within a wholly deductive or inductive paradigm. It does not fit the hypothetico-deductive model of theory-testing, and it was intent on theorising the involvement of professionals in the management of criminal proceeds, so certainly involved inductive processes. However, in agreement with Honderich's (2005: 914 cited in Bottoms 2008) description of the 'theory-ladenness' of observations, which argues that there are 'no theory-neutral facts', and theory is 'inextricably involved in the process of data-gathering and data-interpretation' (Bottoms 2008: 78), it cannot be said to be purely inductive. The process of this research involved continual adaptation: prior theoretical models and ideas developed 'orienting' concepts and an initial 'theoretical scaffold', which adapted as data was

collected and initial themes and ideas emerged (Layder 1998). For example, examination of a range of literature led to the identification of a number of relevant concepts, which were combined and their connections and relationships considered. These included 'money laundering', 'criminal money management', 'the organisation of crime', 'the legitimate – non-legitimate interface', 'organisational crime', 'occupational crime', 'rationality and decision-making', 'professions', 'regulated professions' and 'facilitation'. In turn, the flexibility of the 'scaffold' meant that the research was not constrained unhelpfully, allowing theory to emerge from the data. A process of reflection allowed theoretical insights to develop alongside the fieldwork, which shaped the remainder of the data collection process; in this way, the research was adapting to the themes that were emerging from the data alongside a continuous engagement with literature and theory. This enabled a 'continuing dialogue' between theory and data, rather than engagement with literature and theory, data collection, and theory development happening as discrete, successive stages. In line with this approach, the research started with two broad aims, which evolved throughout the course of the project. Initially, it aimed to gain a better understanding of the role of professionals in the facilitation of money laundering, and how and why they become involved in such activity. These aims evolved to become the more focused aims and research questions that the research ultimately aimed to address, which were detailed in Chapter 1.

5.2 Scale of the Problem?

It is clear from the literature and previous research in this area that there is little understanding of the *scale* of legal and financial professionals' involvement in money laundering. While official and academic literature describes it as a growing trend and something that should be of significant concern (see Chapter 3), there is little evidence to demonstrate the extent to which professionals are involved in facilitating money laundering. Much of the literature in this area acknowledges this, highlighting the need for a better understanding of the scale of the problem while recognising the difficulties inherent in trying to provide such an estimate. During the early stages of the PhD process, I decided that estimating the scale of the problem was not going to be one of the aims of the research. This may be considered problematic by some – is there any point investigating this issue if we do not know to what extent it is even occurring, and whether it is therefore even a 'problem'? However, it was clear that it would be extremely difficult to accurately quantify the extent of professional involvement in

money laundering. Data is not routinely collected on legal or accountancy professionals involved in money laundering in any meaningful or analysable way by either law enforcement, the criminal justice system more broadly, or the relevant professional or regulatory bodies. There are specific money laundering offences within the Proceeds of Crime Act 2002 (POCA), but no separate legal category for lawyers or accountants who are convicted under this legislation. Neither police forces nor the Regional Asset Recovery Teams (RARTs) routinely collect data on the involvement of legal or financial professionals in their money laundering investigations. Organised Crime Group Mapping, a police-led process that aims to map the make-up of organised crime groups operating in the UK using intelligence resources, includes a section on the involvement of professionals in these groups. However, the information inputted into this is inconsistent and cannot in any way be considered comprehensive. Indeed, the failure to collect intelligence or develop a clearer picture of professional involvement in money laundering by law enforcement is considered to be a significant problem, contributing to the lack of understanding of this issue¹⁸. Likewise, while regulatory bodies may collect data on the members of their professions who are investigated and/or sanctioned for professional misconduct, including the commission of criminal offences, they do not keep a record of those that have been involved in money laundering specifically¹⁹. I came to the conclusion, therefore, that if I could not accurately or with any confidence estimate the scale of professional involvement in money laundering I should not make any attempt to do so. What benefit would such an estimate be with all the caveats it would inevitably carry? Instead, the focus of this research is on *understanding* the facilitation of money laundering by professionals, the processes and actions involved, and the situational contexts in which these actions occur, rather than making quantitative assessments of scale or frequency.

5.3 The Research Design: Appreciating Multiple Perspectives

The research was designed to allow for the appreciation of a range of perspectives. It was based on examination of data from a number of different sources, including a series of interviews with law enforcement personnel working in financial investigation units or organised crime policing units, members of relevant professional and regulatory bodies, a prosecutor, and a small number of practising solicitors and chartered

¹⁸ From conversation with senior law enforcement practitioner.

¹⁹ From conversations with members of professional/regulatory bodies.

accountants. In addition, data was collected from various sources on 20 cases of professionals who had been convicted of money laundering. This data included Solicitors Disciplinary Tribunal (SDT) transcripts, Court of Appeal transcripts, media reports, and fieldwork notes and observations from an SDT hearing that I attended. It was felt that gathering data from a range of sources would enable a more comprehensive analysis of a phenomenon that is complex and multi-layered, and enable the research to examine the interconnections between the actions of professionals involved in facilitating money laundering and the social contexts in which they took place. It also allowed for consideration of the range of actors involved in these actions or attempts to control them, and the interactions between them. The combination of methods used in this research, incorporating both qualitative, semi-structured interviews and the study of a number of cases of convicted professionals, meant that the research employed a process of triangulation.

5.3.1 Triangulation

Triangulation, broadly speaking, is the use of multiple approaches to look at the same topic (Noaks and Wincup 2004). This can involve combining qualitative and quantitative methodologies, or using different methods from within the same research tradition. In quantitative research, triangulation often refers to using more than one method to check or confirm results, in order to increase the validity of research and give greater confidence in the findings. Within the qualitative research tradition, the concept of triangulation was reformulated during the 1980s, moving away from the premise that its benefit came from the confirmation of results from one method by another (Denzin 1989 cited in Flick *et al* 2012). Instead, it was seen as a way of extending knowledge potential; by ‘producing knowledge on different levels’, the process of triangulation allows researchers to ‘go beyond the knowledge made possible by one approach’, thereby improving the quality of the research (Flick *et al.* 2012: 100). In qualitative research therefore, triangulation is ‘not a tool or strategy of validation, but an alternative to validation’ (Denzin and Lincoln 2011: 5). The triangulation of multiple approaches is also seen as a way of overcoming research bias and preconceptions (Arsovska 2008).

The combination of approaches used in the current study, and collection of data from multiple sources, enabled a more comprehensive understanding of a complex issue than would have been possible with a single approach or source of data. It allowed me to appreciate the perspectives of all actors involved, both of the control agencies

(criminal justice bodies and regulators) and those they controlled (the professionals). It also allowed me to identify areas of convergence and divergence in the different perspectives. Arsovska (2008: 43) suggests that the purpose of triangulation in research is often to see where perspectives converge; this point may then be 'seen to represent "reality"'. But, in fact, it may be just as important to see where different perspectives diverge, if not more so. The research design enabled comparison of the views of those in the police and regulatory bodies with the professionals who may be subject to their enforcement and regulation, and also allowed the perspectives of those in law enforcement to be compared with those in the regulatory and professional bodies, to assess their views of the issue under study and their relative roles in dealing with it. In addition, the wide range of data collected allowed the conclusions of professional disciplinary tribunals to be analysed alongside perspectives from criminal trials, and views from the prosecution service to be contrasted with those from police bodies involved in investigation and enforcement. Using a combination of interviews and analysis of case data, alongside analysis of the official and academic literature in this area, allowed the research to compare what was said in the course of the interviews with what was found from the cases of convicted professionals, and balance this with the official narrative and the constructions of the facilitation of money laundering by legal and financial professionals found in official discourse. Therefore, it was felt that designing the research in this way was of significant benefit to the depth and quality of the research.

5.3.2 The Missing Perspective

While the research design enabled me to take into account a number of different perspectives, there is clearly one perspective that is largely missing from the research. I had hoped to include a final group of interviewees in the study: legal or accountancy professionals who had been convicted of money laundering offences. I felt that it was important to try and access professionals who had been involved in money laundering for interview, in order to 'hear the voice' of those who were the subjects of the research and understand their interpretations of the actions and processes involved. This would have provided valuable insights and first-hand accounts of their involvement in money laundering, and given an alternative perspective to those acquired from the other interviewees. Unfortunately, it turned out that this was not possible, despite attempting to access such individuals in a number of ways (see 5.4.2.2 'Issues of access'). This means that the research risks ignoring the views and interpretations of those who had actually been involved in the activity under study, and also that much of the data

collected has consequently come through an official 'filter' and may have a tendency to perpetuate official narratives.

Being aware of these risks and reflecting on them when conducting the research and interpreting the data, is one important way of moderating them. In addition, I endeavoured to 'hear the voice' of convicted professionals as much as possible from the data I did have (for example, when they spoke in their own mitigation during disciplinary hearings), and chose to interview practising professionals to provide a perspective from that (non-official) 'side'. Designing the research to appreciate multiple perspectives, and collecting data from a wide range of sources, helps to avoid perpetuating official views.

5.4 Conducting the Research

This section will detail the process of collecting and analysing the data involved in the research, and highlight some of the challenges that were encountered along the way. Its aim is to provide a reflective account of the 'research journey', informed in part by a research diary that was kept to document and reflect on the research process. These reflections – on experiences in the field, problems faced, observations made, and data collected – form an important part of the interpretation of data in social research (Flick 2009). In line with the 'adaptive theory' approach taken, the fieldwork did not take place *after* consideration of the literature and theoretical perspectives, in a separate phase. Rather, collection of data, reflection on that data, and engagement with literature, theory, legal frameworks and policy documents, were interwoven, and fed into and shaped the direction of the data collection in a continuous process.

As outlined above, the empirical part of the research involved the collection of data on a number of cases of professionals who had been convicted of money laundering offences in the UK, alongside a series of qualitative interviews.

5.4.1 Cases

In total, 20 cases of professionals who had been convicted of money laundering offences between 2002 and 2013 were identified. Following the identification of these cases, data was collected on each from a range of sources.

5.4.1.1 Identification of cases

The aim of this part of the research was to identify as many cases as possible of legal and accountancy professionals who had been involved in facilitating money laundering, in order to collect data on those cases to analyse alongside the interview transcripts. The initial problem the research faced, therefore, was how to identify such cases. Data is not routinely collected on professionals involved in money laundering in any structured way by either law enforcement, the criminal justice system or the professional or regulatory bodies involved (see 5.2 ‘Scale of the Problem?’ above). The regulatory bodies do not keep any categorised records that would be searchable for, say, those members of their professions that have been convicted of a money laundering offence. The Solicitors Regulation Authority, for example, could provide a list of those of their members who had been struck off the roll of solicitors, or who had been convicted of a criminal offence, but not specifically for this type of misconduct. So, I could have identified professionals who had been sanctioned for wrongdoing by their professional or regulatory bodies, but not have isolated those whose misconduct had related to involvement in money laundering. Likewise, I could have identified everybody who had been convicted of a criminal offence under the relevant money laundering legislation, but this would not have identified which of those people were legal or financial professionals.

I therefore had to use a number of different sources – none of which were comprehensive – to identify as many relevant cases as possible within the timeframe of interest. Consequently, the 20 cases identified, which became the cases I collected data on and analysed, cannot be considered to be an exhaustive sample. It is clear from the challenges I faced in identifying cases, and the limitations of the sample of cases I have used in this study, that research on this issue is hampered by the lack of routine or systematic collection of data in this area. The identification of cases for analysis was a very laborious and time-consuming process, but one which ultimately led to the collection of a considerable amount of rich and textured data.

The sources I used for the identification of cases were:

- (i) Financial Action Task Force report
- (ii) Media
- (iii) Westlaw UK legal database
- (iv) Professional Tribunals: Solicitors Disciplinary Tribunal (SDT); Scottish Solicitors Disciplinary Tribunal (SSDT); Disciplinary tribunal of the Institute

for Chartered Accountants in England and Wales (ICAEW); Disciplinary tribunal of the Institute for Chartered Accountants of Scotland (ICAS).

In 2013, the Financial Action Task Force (FATF) produced a report entitled *Money Laundering and Terrorist Financing Vulnerabilities of Legal Professionals*. This report identified examples of legal professionals involved in money laundering in FATF member states, using a literature review, workshops and questionnaires with member states as well as regulatory and professional bodies. It listed all the case studies it had identified across the member states. I identified all the cases from the UK, and read through the summary of each to decide which might be suitable for inclusion. Those that were considered to be a possible fit were collected in an initial spreadsheet.

I then carried out a simple search for media reports on relevant cases, using 'Google news' searches for the terms: 'solicitor money laundering', 'lawyer money laundering', 'legal professional money laundering', 'accountant money laundering', 'financial professional money laundering'. This search identified 7 relevant cases, some of which had already been identified by the search of the FATF document. In addition, similar searches were carried out in the 'ukpressonline' database and the 'Guardian/Observer Archive', but no additional cases were identified.

Following this, I carried out a search on the Westlaw legal database. The database was searched for Subject/Keyword = 'money laundering' AND Date = after 01/01/2002. This search produced 213 results, due to the broad nature of the search terms, which identified any cases in which money laundering featured. Each of these results was read through to check for relevance to the present study, and those considered relevant were added to the initial spreadsheet.

Legal and accountancy professionals who have been accused of misconduct are brought before the disciplinary tribunals of their professional or regulatory bodies. The main tribunals of relevance in the UK are the Solicitors Disciplinary Tribunal (SDT; the tribunal of the Solicitors Regulation Authority, who regulate solicitors in England and Wales); the Scottish Solicitors Disciplinary Tribunal (SSDT; tribunal of the Law Society for Scotland, who provide the regulatory function as well as the professional body function for solicitors in Scotland); the Institute for Chartered Accountants in England and Wales (ICAEW; one of the professional and regulatory bodies for chartered accountants in England and Wales) tribunal; and the Institute for Chartered

Accountants in Scotland (ICAS; professional and regulatory body for chartered accountants in Scotland) tribunal.

The SDT provides a full transcript for all tribunal hearings from 2002 on their website. These judgments cannot be searched for cases specifically relating to money laundering (the 'allegation type' search drop-down menu does not specify this as an option). Therefore, as the transcripts were in PDF format, all 1426 judgments available were searched using the PDF word search function for 'proceeds of crime' (in order to catch references to the Proceeds of Crime Act 2002) and for 'money laundering'. This search left me with 159 cases. I read through the judgments of all of these cases to identify those that might be appropriate to include in the research. I carried out the same process with the SSDT website, searching only for cases between 2002 and 2013 as this database actually goes back to 1995. The ICAEW website provides all disciplinary and regulatory decisions published in the previous 12 months; the ICAS website since July 2012. Therefore, for these two I was only able to search for relevant cases from these particular time frames. As with the SDT and SSDT, I searched the PDF of each hearing transcript for the terms 'proceeds of crime' and 'money laundering'.

The cases that were considered to be relevant from all sources were collated into an initial spreadsheet, and I then had to select which of the cases to include in the analysis. I decided that the criteria for inclusion in the research were: *solicitors or chartered accountants who have been convicted of money laundering offences (under Proceeds of Crime Act 2002 (POCA), Drug Trafficking Act 1994 (DTA) or Criminal Justice Act 1993 (CJA)) between 2002 and 2013, where the offences committed were related to their professional positions or roles, and involved facilitating the laundering of the proceeds of crimes committed by others.*

As this suggests, it was decided that *conviction* for a money laundering offence would be a necessary inclusion criterion; a decision made on the balance of the pros and cons to this approach. One of the disadvantages of this approach is that cases were eliminated in which it appeared that a solicitor or accountant had been involved in money laundering, but no prosecution had occurred. For example, in the case of Herbert Austin, Raymond Jewitt and Anthony Heald, who were convicted of conspiracy to conceal or convert the proceeds from the theft of over \$15million from Commerzbank in Frankfurt. The electronic 'journey' of the stolen money included a firm of solicitors in London. Over the course of 9 months, 8 payments totalling

£1.6million passed through the solicitors firm, some of which was used to purchase properties for the offenders. However, no prosecutions were made against any of the solicitors in this case. The problem with limiting the cases in this way is that it could be considered to only be including 'low hanging fruit' - that is, those that had been caught - meaning the research misses those cases that are more difficult to prosecute, or cases where there were no prosecutions but which would have been interesting to include. However, without using conviction as a criterion, the research risks being too subjective, as it would have relied on my judgement about whether a professional had been involved in the money laundering.

In line with the inclusion criteria, the cases involved those convicted for offences under either POCA, the DTA, or the CJA. Money laundering offences were covered by the DTA or the CJA prior to the enactment of POCA in 2002; although the cases examined only go back as far as 2002, if the offence had been committed prior to this date, they were prosecuted under either the DTA (for laundering the proceeds of drug trafficking) or the CJA (for laundering the proceeds of other crimes). As well as being the year that POCA was enacted, 2002 was chosen as the start date for the cases as this is the year from which the SDT has published its Tribunal judgments, which became my primary source of data on the cases. The final part of the inclusion criteria refers to the offences being related to the professional role of the offender, and involving the laundering of proceeds of crimes committed by other people (their clients). This was because the research was interested in the role that professionals played in the facilitation of laundering by their clients, rather than the self-laundering of proceeds from criminal activity they had carried out themselves.

This process resulted in the identification of 20 cases that fit the inclusion criteria. As it turned out, all of the cases involved solicitors, as no cases of chartered accountants convicted for money laundering offences in the relevant time period were found.

5.4.1.2 Data collection

Following the identification process, I proceeded to collect data on each of the cases from multiple sources. I had hoped that the primary source of data would be Crown Prosecution Service (CPS) case files. Early on in the research process, I approached the research team at CPS to discuss access to relevant case files, once the cases had been identified. I had an ongoing dialogue with someone in the team, who told me that I would be able to have access to specified material from the case files, for a certain

number of cases. However, when it came to putting in the official request, the person I had dealt with had left the department and my request for access to case data was declined on the basis that such support was not provided for doctoral research. This was disappointing, as having access to data from case files would have added something valuable to the research. In particular, I had hoped to gain access to any investigative reports, witness statements and transcripts of interviews with offenders that were in the files, which would have provided a rich, in-depth source of data on the cases. It was not altogether surprising that I was unable to access such cases file, however; it is widely accepted that access to such data is problematic in the UK, where

‘relatively little data even on completed court cases are available to researchers, and the authorities have seldom had the motivation or the interest to work through the anonymisation of such data sets for research use. There is no easy equivalent in the United Kingdom, for example, of the Continental European ‘completed case file’ for researchers to examine.’ (Levi 2010: 350).

The data that I collected on the 20 identified cases, therefore, is all open-source. This provided significant benefits, in that it involves fewer ethical considerations in relation to confidentiality and data protection and the data could all be analysed together within NVivo. Furthermore, while the volume of data available differed for each case, there was a considerable amount of rich, valuable data available from open sources. For each case, one or more of the following data sources was available:

- (i) Transcript from Solicitors Disciplinary (SDT) hearing;
- (ii) Transcript from Court of Appeal hearing;
- (iii) Media reports;
- (iv) Other reports (for example, press releases, legal journals);
- (v) Fieldwork notes and observations from attendance at Solicitors Disciplinary Tribunal hearing related to one of the cases.

In relation to (v), as I was identifying cases I noticed that one of the solicitors involved had been convicted and referred to the SDT, but there was no record of him having appeared in front of the Tribunal by that point. Therefore, I monitored the upcoming hearings - which were published on the SDT website - and was able to attend his hearing when it came up. The SDT hearings are open to the public, so I was able to

attend the whole of the hearing and observe what was said. The hearing consisted of three Tribunal panel members; a representative of the SRA putting their case against the solicitor; and the solicitor being prosecuted, who was representing himself. I observed the full hearing, taking comprehensive notes on what was being said and any other observations, and also took note of my reflections on the Tribunal as I returned home by train later that day. This provided an extra set of data for this particular case; data that I believe is particularly valuable as it involved hearing the professional's perspective as he argued against the proposed sanctions.

5.4.2 Interviews

The other data source used in this research was a series of qualitative, semi-structured interviews with individuals from three groups:

- (i) Members of law enforcement and criminal justice bodies (financial investigators; law enforcement personnel involved in organised crime policing; CPS prosecutor)
- (ii) Members of supervisory authorities (relevant professional and/or regulatory bodies)
- (iii) Practising professionals (solicitors and chartered accountants)

Qualitative interviews are considered to be one of the most powerful ways of understanding people, yielding rich insights into their experiences and opinions, and allowing exploration of the ways in which they understand and interpret their world (Fontana and Frey 2008; May 2011). Talking to actors involved in the research enables a much greater sense of nuance than can be achieved with studies based solely on documentation, quantitative methods or analysis of official data (Levi 2010). Qualitative interviews provide access to research participants' perceptions, meanings and understanding, and allow these to be expressed in their own words and at a richer, more in-depth level than other means (Kvale 2007). Semi-structured interviews were chosen because they enable the researcher to control the direction of the interview and ensure all required areas have been covered, while also allowing the interviewee's narrative to be represented (Semmens 2011). The interview guides developed for the research contained a small number of broad categories that I wanted the interview to cover, to give a degree of structure to the interviews but enable flexibility, and allow the interviews to be taken in the direction the interviewee wanted to take them. Within each of the broad categories, more specific questions or points were noted, which

allowed me to prompt for further responses if necessary, and check if any areas had not been covered at the end of the interview. I used separate interview guides for each of the three groups, as some areas were not covered - or approached slightly differently - with different groups [see Appendix 2].

The interviews began with an introductory question, in order to put the interviewee at ease and gain background information on them and their organisation, to give context to their responses. Then an initial open, quite general question was asked to start the discussion. From here, I tried to let the interview go where the interviewee took it, asking specific questions to direct the interviewee to areas that had not been covered at the end of the interview. This strategy was adopted to allow an emphasis on how the interviewee framed and understood the issues being discussed, and what they viewed as important in their explanations and understandings of events, actions and behaviours (Bryman 2012). The flexibility of the semi-structured interview method also allowed me to probe further beyond the answers given, to explore the areas that the interviewee raised in more depth. This involved listening to the answers provided by the interviewee and using these answers to shape subsequent questions - to enter into a dialogue with the interviewee, rather than just asking pre-determined questions (Babbie 2013). This was something that I found difficult as a novice researcher, particularly in the earlier interviews. As the research progressed, I became more comfortable in the interviewer role, and also became more familiar with the subject and the terms being used and more knowledgeable about the research topic. As my understanding grew, the interviews became increasingly like a conversation, or dialogue, with the interviewee and I was able to respond to their answers more effectively.

Kvale (2007) suggests that being knowledgeable is one of the criteria of being a good interviewer, arguing that interviewers 'who demonstrate a good knowledge of the interview subject, and master any relevant technical language, should more easily gain the interviewee's respect' and 'be able to achieve an extent of symmetry in the interview relationship' (Kvale 2007: 70). Having such knowledge and understanding of the subject area also helps the interviewer to 'get beyond' the tendency of 'experts' in their fields to simply deliver official lines or promote certain viewpoints (Kvale 2007: 70). A degree of 'symmetry' in my relationship with interviewees was most evident in interviews with members of law enforcement. My previous professional experience working within law enforcement was known to some of the interviewees, which

probably meant I was viewed less as an 'outsider' by interviewees from law enforcement than if I had not had this background. This helped to build a rapport with interviewees, and may have allowed them to feel more relaxed and able to relate to me, and talk to me as an 'equal'. This was reflected in the regular use of acronyms and colloquial terms, and reference to structures and processes of the police force by some of the law enforcement personnel I interviewed. The benefits of this relationship, I believe, were a degree of openness from the interviewees that I would not have otherwise experienced, and the sense that they did not have to promote an official viewpoint.

The interviews were all audio-recorded, with the interviewees' permission. In addition, I took brief notes if anything was said during the interview that I wished to return to. The recordings were subsequently transcribed, and these transcriptions were used for the analysis. I completed the majority of the transcriptions in full; however, due to time constraints during the fieldwork phase, four of the interviews were transcribed (in full) by a transcription service, and one of the interviews was not transcribed in full. In the case of this latter interview, I listened repeatedly to the recording and transcribed parts that I felt were relevant to the research, based on themes that had already been identified.

5.4.2.1 Sampling

Interviewees were selected by processes of non-probability, or purposive, sampling. Purposive sampling is a non-probability form of sampling that samples cases in a strategic way, selecting those that are relevant to the research questions being asked (Bryman 2012: 418). For this research, sampling was not used as a means of constructing a representative sample of the population; rather, potential interviewees were selected on their relevance to the research, on the basis of pre-defined characteristics.

For **Group 1 (members of law enforcement and criminal justice bodies)**, potential interviewees were identified by their role in organisations or units that were involved in the investigation of money laundering, at national, regional and police force level, in England and Wales and Scotland, and so primarily came from Financial Investigation Units. The individuals or teams I hoped to involve in the research were contacted directly or via 'gatekeepers'. My previous employment within law enforcement organisations meant that I had a number of contacts that could act as gatekeepers,

either within the units or organisations of interest, or connected to them. In addition, further potential interviewees were identified during the course of the research, as individuals that I had interviewed or approached recommended - and often provided introductions to - others who they believed would be willing and able to assist with the research.

For **Group 2 (members of supervisory authorities)**, I identified the relevant professional and/or regulatory bodies and approached them directly by email to identify who would be able to provide relevant information, and be amenable to being involved in the research.

For the final group of interviews (**Group 3: practising professionals**), I wanted a sample of practising solicitors and chartered accountants. My initial plan was to identify one solicitor and one accountant and use the method of 'snowball sampling' to identify others. This did not prove effective; I managed to identify one individual from each profession, through personal acquaintances, but they felt unable to supply further contacts. Having considered other methods, I ultimately used the 'Find a solicitor' and 'Find a chartered accountant' functions on the Law Society and Institute for Chartered Accountants websites, to identify all solicitors and chartered accountancy firms in a certain geographical area. I sent an email to all these firms, excluding firms which were not SRA regulated, did not state English as one of the languages spoken, or which did not provide an email address. Only a very small number of individuals replied to my email, and some of those who had agreed to be interviewed later became unavailable. This resulted in interviews being conducted with five practising professionals. While this is a small number, it is considered sufficient for this research. None of the interview groups involved were intended to form a representative sample, and this is not necessarily the goal of sampling in qualitative research, where 'the uniqueness of respondents' experiences and the depth of the data provided' (Davidson 2006: 271) are more important than aiming for representativeness.

In total, I conducted interviews with 19 participants, over the course of 16 interviews. These involved: eight financial investigators or heads of financial investigation units; one forensic accountant; one CPS prosecutor; one HMRC investigator; two members of professional/regulatory bodies for solicitors; one member of professional/regulatory body for chartered accountants; two chartered accountants; and three solicitors. Interview participants were not all identified at the beginning of the research, the

selection of potential interviewees was a continuous process, shaped by the ongoing data collection and themes that were starting to emerge. This reflects the nature of qualitative interviewing, which 'is flexible, iterative, and continuous, rather than prepared in advance and locked in stone' (Rubin and Rubin 1995: 43 cited in Babbie 2013: 346).

5.4.2.2 Issues of access

Access is an important consideration when carrying out criminological research; it can be especially challenging when seeking access to those from law enforcement organisations or those who have been convicted of criminal offences. However, I encountered relatively few problems with accessing interviewees from law enforcement, criminal justice or regulatory bodies. I was able to conduct interviews with a range of individuals within law enforcement organisations across the UK, the CPS, and professional and regulatory bodies. Most people that I approached were very willing to talk to me, although their busy schedules sometimes meant that interviews had to be rearranged or were ultimately not possible. I believe there are a number of reasons for this. Firstly, the facilitation of money laundering by professionals is a growing concern and high profile issue for law enforcement and regulatory bodies in the UK at the current time. It is 'on the agenda' for individuals within these areas, and there is a clear appetite for it to be addressed, discussed and better understood. In addition, my access to law enforcement personnel was helped greatly by my previous professional experience within police bodies in the UK. This provided me with a number of useful contacts, but it also enabled me to build a rapport with potential interviewees more easily, for example by understanding the structures and processes they worked within and being able to 'speak their language', or by having associates or experiences in common.

The main disappointment of the research was that I was unable to interview any professionals who had been convicted of money laundering offences, as outlined in section 5.3.2. Of the 20 cases of convicted professionals I identified, two were in prison at the time of the fieldwork: one in Scotland, and one in England. I approached both prison services with a request to contact the individuals. The Prison Service in England and Wales forwarded my request to the prisoner, but received no reply so would not pursue it further. The Scottish Prison Service, while keen to help in principle, ultimately decided that they could not approach the prisoner to make a request without it breaching data protection requirements. A number of options were considered as a

means of approaching the other 18 professionals, who had either completed their custodial sentence or had not received a custodial sentence. However, there were a number of ethical or practical implications in these options, in relation to, for example, contacting professionals directly or through their own legal representatives. Therefore, following discussion with my PhD supervisor, it was decided that this part of the research could not be pursued.

5.4.3 Analysis of the Data

Data analysis did not take place as a discrete phase; it occurred alongside data collection as an ongoing process. It was shaped in part by the analytical framework, which directed me towards the different levels of analysis outlined in the previous chapter, but was influenced by the ongoing collection of data and initial analysis. Analysis of the interview data began during transcription of the interviews, as notes were taken to highlight key words or phrases, or points that appeared significant or relevant to the research. This was done in an open, unstructured way, by simply allowing points of interest to emerge out of the process of listening and transcribing. In addition, during and following the transcription of each interview I reflected on the interview and made brief notes of things that occurred to me, reflections on what had been said, and any relationships with previously considered literature or theoretical perspectives.

Data on identified cases of professionals convicted of money laundering went through a similar process during collection and collation into a spreadsheet. The spreadsheet aimed to provide order to the cases as I identified them and selected those to be included in the analysis, and summarise key information on each case. It was completed by reviewing the data from multiple sources for each case and extracting relevant pieces of information. This process enabled an initial familiarisation with the cases and the information held on each of them.

Once all the data had been collected, a more systematic process of analysis was initiated, incorporating four phases and following the principles of thematic analysis. Thematic analysis is 'a method for identifying, analysing and reporting patterns (themes) within data' (Braun and Clarke 2006: 79); a theme 'captures something important about the data in relation to the research questions, and represents some level of *patterned* response or meaning within the dataset' (Braun and Clarke 2006:

82). In line with adaptive theory, themes and patterns in the data emerged both inductively and based in prior theoretical thinking, with 'the search for new codes and concepts [going] on in tandem with the use of extant theoretical assumptions and relevance' (Layder 1998: 54). The phases of the thematic analysis were based on those suggested by Braun and Clarke (2006), and are outlined below. Data analysis is not a linear process, however, and so there was movement back and forth between phases as necessary.

Phase 1: "Familiarisation with the data" involved immersion in the data, by repeatedly reading through the transcriptions and case data to become familiar with the content. I firstly read through the data without thinking about codes, in order to get a 'sense of the whole', so that points of interest could be seen 'in the context of the whole' (Bazeley and Jackson 2013: 34). As the first interview was conducted almost a year prior to this stage, this (re-)familiarisation process was particularly important. On following readings, I began to think about codes. As I read through the data, I marked or highlighted text that I thought was significant, made marginal annotations, and made an initial list of points of interest from the data to complement the notes made during transcription. This phase was done on paper, as I felt that this was more effective for this type of reading. Following this phase, all the data was imported into NVivo, a Computer Assisted Qualitative Data Analysis (CAQDAS) programme, which allows various forms of data to be 'coded' to facilitate analysis.

Phase 2: "Generation of initial codes" was carried out within NVivo. 'Case nodes' were allocated to the data to organise it into groups based on separate cases or interviewees. All the documents imported were then coded into 'nodes' (and sub-nodes, or 'child nodes', if required), one by one. As the analysis was both data-driven and theory-driven, some nodes were set in advance, based on the initial transcription and familiarisation phases, the analytical framework, and the research questions. Alongside these already formulated nodes, I allowed new themes to emerge – I did not want to 'force' the data into pre-existing categories. Full and equal attention was given to all parts of the data, paying attention to patterns emerging and being sensitive to inconsistencies (Bryman and Burgess 1994; Braun and Clarke 2006). As part of the coding process, I also generated 'memos', which were notes written to myself as I went through the data, related either to a particular piece of data or a particular node or theme. Notes made in my fieldwork diary were incorporated into these memos, which consisted of thoughts, ideas, insights on the data, questions or problems, and possible

connections. Memos play an important role in the analytical process, encouraging 'contextualisation of data and analytic reflections that link the coding process to the research questions', facilitating the consolidation of ideas and forming an early stage in the development of theory (Ezzy 2002: 126). They ensure that this phase did not just involve a focus on coding without thinking about the 'bigger picture', instead aiming to find a balance between coding, reflecting and linking as I worked with the data (Bazeley and Jackson 2013).

Phase 3: "Review of codes and identification of themes" involved codes that had been generated being reviewed, and nodes being organised and sorted into potential themes, collating the nodes and the extracts of data they held into these themes. In effect, this part of the process involved reassembling the data after having disassembled it in previous phases.

Phase 4: "Review and finalisation of themes" was a phase that continued throughout the rest of the research process, as the themes that had emerged from the coding process were examined and developed. The entire dataset was re-read to consider the wider context, check the validity of the identified themes in relation to the data as a whole, and identify any additional relevant data that had been missed. The themes were considered alongside existing literature and theory, legal and regulatory frameworks and the memos written previously. Analysis of the data continued throughout the writing up of the thesis, with the putting of thoughts, ideas and developing theories to paper playing an important role in the analytical process.

5.5 Ethical Considerations

Ethics approval was granted by the University of Manchester Research Ethics Committee (UREC) prior to the commencement of the fieldwork. Interviewees were provided with Participant Information Sheets [see Appendix 3] several days prior to their interview, giving them time to consider their involvement and ask any questions. These documents outlined the research aims and the nature of the interviewee's involvement, and informed the interviewee of their ability to withdraw at any point, that the interview would be audio-recorded, and the means by which confidentiality would be maintained. They completed consent forms before the interview commenced [see Appendix 4]. Following each interview I checked that there was nothing the interviewee felt they did not want to be included in the research, and offered them the

opportunity to see a copy of the transcript. The interview data has been anonymised, with all references to names, organisations and locations removed. Care has also been taken to remove any information that might suggest the identity of interviewees or the organisations or units in which they work. The case data was all open-source, and so this data was not anonymised within the thesis.

All field notes, interview transcriptions and digital audio-recordings of the interviews were stored securely, in a password-protected folder on a password-protected computer, or in a locked filing cabinet. I was the only person that had access to this data.

5.6 Reliability, Validity and Limitations of the Research

This chapter has highlighted some of the limitations of the research. Difficulties with identifying cases of convicted professionals means that the cases analysed cannot be seen as an exhaustive or representative sample. In addition, the cases provide examples of solicitors convicted of money laundering offences only; there were no cases of chartered accountants to include in the analysis. Being unable to access CPS files on these cases means that the analysis missed what is likely to have been a valuable source of data. Likewise, being unable to interview professionals convicted of money laundering offences meant that I was missing the perspective of those who had actually been involved in the activity under study, and their interpretations of the actions and processes involved.

However, the data collected was rich and detailed, and the methods used for collection and analysis can be considered robust and credible. When assessing the quality of qualitative research, it is less appropriate to use the criteria of validity and reliability as they are applied to quantitative research. For example, this research cannot be said to have 'external validity' in terms of its generalisability to a wider population, but the depth of the data collected and the thoroughness of the process of collection and analysis supports its validity in terms of its ability to deepen understanding and allow for theoretical development. Within qualitative research, generalisation is seen in the development of theory that 'makes sense of' the situations, persons or activities being studied, and can therefore make sense of similar situations, persons or activities (Maxwell 2002: 53). This could be considered as the *transferability* of theories and understandings to other contexts (Lincoln and Guba 1985 cited in Flick 2009).

The incorporation of the process of triangulation into the research, using a combination of methods and collecting data from multiple sources, enabled a deeper understanding of a complex issue than would have been possible with a single approach or source of data, and allowed the appreciation of multiple perspectives and identification of areas of convergence and divergence in the data. It also helped to counter inherent researcher bias and preconceptions and avoid the perpetuation of an official narrative. The case identification and data collection processes – while not exhaustive – were robust and thorough, using multiple means of identifying cases and leading to the collection of a rich body of data, some of which was very detailed. Therefore, although I only had access to open source case data, the available data proved more extensive than I had expected. It also allowed me to ‘hear the voice’ of individuals convicted of money laundering offences to a certain extent, particularly during my attendance at a disciplinary hearing. The process of data analysis used can also be considered to add to the quality of the research and the themes and theories that emerged. It involved a number of phases, both open and structured, and themes and patterns were allowed to emerge inductively and from a basis in prior theoretical conceptions. More systematic coding and sorting practices were complemented with an ongoing process of reflection, theorising and searching for connections, assisted by the generation of memos. The research process involved continuous reflection and reflexivity on the part of the researcher, reflecting on the data collected, methods used, issues encountered and responses to those issues, and critically appraising my own biases, preconceptions, assumptions and interpretations.

5.7 Summary

This research took a qualitative approach, combining semi-structured interviews with a range of different actors with the qualitative analysis of a number of cases of professionals convicted of money laundering. It did not aim to make quantitative assessments of the scale of professional involvement in money laundering; instead, its focus was on *understanding* the facilitation of money laundering by legal and accountancy professionals, including the processes and actions involved, and the situational contexts in which these actions occur. The research was designed to allow for the appreciation of multiple perspectives, by analysing data from a number of different sources. The data included transcripts of interviews with law enforcement personnel, a prosecutor, members of relevant professional and regulatory bodies, and

practising solicitors and chartered accountants, as well as Solicitors Disciplinary Tribunal (SDT) transcripts, Court of Appeal transcripts, media reports, and observations from an SDT hearing related to 20 cases of professionals convicted of money laundering.

The research adopted an 'adaptive theory' approach to the use of data and theory, which focuses on the interconnections between individual activity and the social structures and systems in which it takes place, and stresses the importance of an ongoing relationship between theory and data throughout the research process. In line with this approach, data collection and analysis did not take place as discrete phases, subsequent to consideration of the literature and theoretical perspectives. Instead, processes of data collection, reflection on that data, and engagement with literature, theory, legal frameworks and policy documents, were interwoven and shaped further data collection in a continuous process, and data analysis overlapped with data collection in an ongoing process. Themes and patterns in the data were allowed to emerge inductively, whilst also being shaped by existing theoretical and analytical frameworks. While the research had a number of limitations, due to difficulties with identifying cases and accessing data and participants, the data collected had texture, richness and depth and enabled the development of theories and understandings of the facilitation of money laundering that would not have been possible with other methodological approaches, and has not been seen in previous empirical research in the area. The methods used for collection and analysis were thorough and robust, supporting the validity and transferability of the research.

5.7.1 A Note on the Following Chapters

The following three chapters present, analyse and discuss the findings from the research. They are arranged thematically to reflect the nature of the analysis, and each chapter incorporates a presentation of findings based on a combination of case and interview data along with discussion of these findings with reference to existing literature, theoretical perspectives and legislative frameworks. This method of presentation was chosen to provide a more fluent and engaging piece of work, and because it better reflects the analytical process, which interwove data from multiple sources with extant literature and theory. Chapters 6 and 7 consider a number of themes that emerged from analysis of the case and interview data. They focus on the nature of the facilitation of money laundering by professionals, examining the means of facilitation, relationship between professional and predicate offender, benefit gained by

the professional, and levels of intent and knowingness involved. In Chapter 8, attention moves to the response to professionals' involvement in money laundering. The chapter discusses themes that emerged from analysis of data from interviews with a number of actors involved in this response, including financial investigators, other law enforcement personnel involved in the policing of organised crime, a Crown Prosecution Service (CPS) prosecutor, and members of professional and regulatory bodies.

There is some data related to the cases that is not included in the thematic data chapters. This includes background and demographic data on the professionals involved, and data on the convictions, sentences and disciplinary sanctions received by the professionals, which are not considered fully in the thesis due to limitations of space. Appendix 1 provides a summary of the case data, including: background information on the professionals, their experience, and practice; date, location and details of the criminal conviction; sentence received; disciplinary action taken; and sanction received. It also includes a summary of each of the cases. This can be used as reference to complement the thematic chapters.

Within these chapters, quotes from interviewees are referenced as follows:

Reference code	Interviewee group
LE1-9	Law Enforcement
CPS1	CPS
SA1-4	Supervisory Authorities
S1-3	Solicitors
CA1-2	Chartered Accountants

Chapter 6

Facilitating Money Laundering: Means, Relationships and Benefit to the Professional

This chapter examines three key themes that emerged from analysis of the twenty cases of professionals convicted of money laundering offences that were identified during this research: the means by which the laundering is facilitated, the relationship between the professional and the predicate offender, and the benefit received by the professional for their involvement in the laundering. In the first part of the chapter, the forms of assistance provided by solicitors in the cases examined are categorised, and the cases that fall into these categories are summarised. Themes that emerged from consideration of the means of facilitation are discussed, including the most common methods seen in the cases; the multiplicity of actions that can be considered to facilitate money laundering and the purpose of these actions; the complexity or otherwise of the transactions involved; and the relationship of these transactions to 'normal' transactions carried out by legal professionals as part of their occupational role. Next, the relationship between the professional convicted for involvement in money laundering and the individual whose criminal proceeds are being laundered is discussed, highlighting certain features of relationships seen in some of the cases which may have had an impact on the professional's involvement. Thirdly, the chapter considers the financial benefit received by the professional as a result of their involvement in the facilitation of money laundering, demonstrating the variation in benefit received and highlighting the lack of significant financial gain seen. The chapter concludes by drawing together the key findings and relating them to the theoretical framework. It argues that the facilitation of money laundering by legal and accountancy professionals is not a homogenous phenomenon, with variation in the actions and behaviours that are considered to facilitate laundering (and for which professionals can be convicted of money laundering offences), the purpose of the transactions involved, the level of financial benefit gained by the professional, and the social relationships involved. The role of professionals in the facilitation of money laundering may be influenced by the nature of the relationship between the professional and the predicate offender, and the findings suggest that explanations of professional involvement in

money laundering focused solely on financial motivations are insufficient. The chapter suggests that the structures, processes and transactions of legal and accountancy professions can create both *opportunities* for the facilitation of money laundering, and *risks* to individuals within these professions.

6.1 Means of Facilitation

This section discusses the means by which professionals facilitate the laundering of criminal proceeds. It firstly outlines the forms of assistance provided by the solicitors in the cases examined, categorising the cases on the basis of the actions that resulted in their convictions for money laundering offences. It then discusses the key themes that emerged from consideration of these actions.

6.1.1 Categorising the Cases

Analysis of the data available on these cases (which in some cases was very limited, while others contained considerable detail) suggested that the activity could be divided into the following 5 categories:

	Cases	No. of cases
Conveyancing	5, 6, 12, 13, 16, 18	6
Money through client account	1, 2, 3, 7, 8, 15, 19	7
Use of position	9, 20	2
Transferring ownership	14	1
Other	4, 10, 11, 17	4

Table 2: Means of facilitation in the cases

6.1.1.1 Conveyancing

In six of the cases identified, the solicitor had been convicted for acting in the purchase or sale of residential property, by individuals using the proceeds of crime to purchase a property or multiple properties, or selling property that was considered to be the proceeds of crime:

BRIAN DOUGAN (Case 5) acted for Thomas McCague in a number of property transactions. McCague was convicted for organised fuel fraud that was estimated to have generated £300,000. Dougan acted for McCague in the purchase of 11 properties; it was estimated that £66,500 of the proceeds of McCague's criminal activity were used as deposits for the purchase of these properties.

PHILLIP GRIFFITHS (Case 6) acted as conveyancer in the sale of a property owned by Peter and Donna Davis, who had been convicted for involvement in a drug trafficking conspiracy. The sale of this property – their primary asset – was considered to be an attempt to thwart confiscation proceedings. The property was sold to Leslie Pattison, a close associate of Griffiths. The property sale was carried out following the Davis' conviction and while they were awaiting sentencing.

AMINAT AFOLABI (Case 12) was involved in the conveyancing of a property bought, and subsequently sold, by a company controlled by her husband. Mr Afolabi was subsequently convicted for fraud offences, and the property in question had been purchased using funds derived from his criminal activity. Afolabi was also convicted for an offence related to a series of money transfers made to her from her husband in a personal capacity.

SHADAB KHAN's (Case 13) convictions related to conveyancing work he had carried out for Khalid Malik, who was sentenced to 25 years for importing 130kg of heroin prior to Khan's convictions. Khan conducted conveyancing for a number of properties for Malik, worth £593,000.

JAMES THORBURN-MUIRHEAD (Case 16), who was a commercial property solicitor, acted in various property transactions for a convicted drug dealer, Stephen Smith, many of which involved the lodgement of cash deposits by Smith. Thorburn-Muirhead was also convicted for theft of client funds and false accounting, in addition to the conviction for his involvement in the laundering of Smith's criminal proceeds.

ANDREW TIDD (Case 18) was a conveyancing solicitor at a firm in Liverpool. He acted as the solicitor in the purchase of two houses by Nevzat Kocabey, who had been convicted for drug offences. In August 2007, Kocabey instructed Tidd in the purchase of a £105,000 house and in October 2007 he further instructed Tidd in the purchase of a

£72,500 house. The deposits paid on these properties amounted to over £26,000, which was considered to have come from the proceeds of Kocabey's drug dealing.

6.1.1.2 Money through client account

In seven of the twenty cases analysed, passing criminal proceeds through the firm's client account was identified as the primary means of facilitation of money laundering. In other categories funds may also have been held in, or transferred through, a client account (for example, the deposits used in property purchases), but in this category it is the use of the client account for passing money from one location to another that is the primary means by which criminal proceeds are managed, and the solicitors' actions in facilitating this that resulted in their conviction:

JONATHAN DUFF (Case 1) was involved in a number of transactions on behalf of businessman, Gene Gibson, over a 3-year period; Gibson was later convicted of drug trafficking offences and the money involved in these transactions was considered to be the proceeds of this drug trafficking activity. The transactions included: £10,000 paid by Gibson to Duff for costs of ongoing litigation; £10,000 paid by Gibson into a company set up to solicit personal injury compensation business for Duff's practice; and £50,000 paid by Gibson as an investment in a proposed branch office of Duff's firm. The £50,000 was later returned to Gibson by cheque.

PAUL WINTER MORRIS (Case 2) facilitated the laundering of £8million, which constituted the proceeds of a large scale VAT fraud committed by Raymond Woolley. The funds were transferred by Morris from two bank accounts controlled by Woolley into the client account of the firm where Morris was a partner. Individual disbursements were then made from the client account, either directly to Woolley himself, to various company bank accounts, or to cover the purchase of items such as yachts and cars.

ANDREW YOUNG (Case 3) received money into his firm's client account from another solicitor's firm, TI Clough, which was run by solicitor, John Fitzpatrick. Along with others, Fitzpatrick was involved in a number of mortgage frauds. The proceeds of these frauds were transferred to, and held in, the client account of Young's firm, and subsequently disbursed by Young as required by Fitzpatrick and his co-offenders.

GERARD HYDE (Case 7) allowed his firm's client account and a bank account he controlled in the Isle of Man to hold and move an estimated £2million from the proceeds of a VAT fraud, over an eight month period.

JONATHAN KRESTIN (Case 8) was convicted in relation to a transaction involving the proceeds of a large scale VAT fraud carried out by Michael Namer. On Namer's instruction, Krestin received €14,000 from a company called Kilmeston Ltd into his firm's client account and subsequently transferred it to the bank account of an associate of Namer's.

BHADRESH GOHIL's (Case 15) involvement in the management of the approximately \$37million stolen from the state of Delta in Nigeria by James Ibori, then governor of the state, was multi-faceted. As well as assisting in the purchase of a Challenger jet for \$20million, and creating a number of complex financial transactions to move the funds around, he allowed the use of his firm's client account for the money to pass through.

RICHARD HOUSLEY (Case 19) was convicted of laundering money totalling £1.8million, the proceeds of VAT fraud carried out by Michael Voudouri and others. As well as being the director of a clothing firm owned by Voudouri, which was considered to have been used as a 'front' for money laundering, Housley allowed proceeds of the frauds to be moved through his firm's client account. Funds were transferred into the client account of Housley's firm from a number of bank accounts outside the UK, and subsequently disbursed on the instruction of Voudouri and others.

6.1.1.3 Use of position

The two cases in this category involve the solicitor using their professional position to assist, or attempt to assist, in the laundering of criminal proceeds:

MOHAMMED JAHANGIR FARID (Case 9) used his position as a solicitor to assist his brother to manage the proceeds of a series of mortgage fraud offences. Farid's brother, along with other family members and associates, had defrauded mortgage companies of approximately £800,000; the money was then transferred into various bank accounts and eventually sent to Pakistan. Farid had given legal advice to his brother, witnessed an email about the transfer of title, and used his firm's headed notepaper to produce a forged document. He assisted his brother to transfer £25,000 to the account of a third party in Pakistan.

ANDREW WORMSTONE (Case 20) used his position as a solicitor to attempt to have the proceeds of a fraud released to those who committed it. £2million was defrauded from Sussex University by Gurdip Singh and others and the money paid into a bank account controlled by Singh, under the name Balecourt Ltd. Following discovery of the theft, the Balecourt account was frozen. Wormstone sent documents to the bank purporting to show that Singh and others were clients of his and that he was acting on their behalf in high-value land deals, which, it was argued, had the intention of convincing the bank that the funds were obtained legitimately and persuading them to release the funds.

6.1.1.4 Transferring ownership

This category refers to involvement of the professional in the transfer of ownership of assets considered to represent the proceeds of criminal activity. One of the cases examined fits into this category:

MARTIN WILCOCK (Case 14) represented Michael Nevin, who was convicted for housing illegal immigrants in three hotels in Southport. Wilcock failed to disclose that the money earned through the hotels was criminal profit, and transferred ownership of the hotels to an offshore company owned by Nevin, while Nevin was under criminal investigation.

6.1.1.5 Other

The following cases fit into none of the previous categories; they demonstrate the multitude of actions or behaviours for which a professional can be considered to have facilitated money laundering, and convicted of money laundering offences:

PETER OBIDI (Case 4) paid a cheque of £18,000 into his bank account from someone he had met socially and agreed to help with some financial matters. He later withdrew the same amount and repaid the individual, who was subsequently convicted of conspiracy to defraud; the £18,000 was the sum that had been defrauded.

RACHEL TAYLOR (Case 10) was convicted for assistance she had provided to her former partner, Pardeep Bains, who was involved in drug dealing. While under investigation by the police, Bains asked Taylor for help completing tax returns for a motor trading business that did not actually exist, which he used to account for the income from his drug dealing. Taylor wrote out a series of figures on the back of the

envelope, purporting to be the income, expenses and profit from Bains' motor trading, which Bains took to his accountant for the purposes of filing a tax return. Bains' accountant did not accept these figures or act on them.

ANTHONY BLOK (Case 11) was convicted for money laundering offences related to £75,000 he paid in cash to court for the bail of one of his clients, who had been arrested for money laundering. When questioned about the source of the funds, Blok stated that he had been given the money outside the court by a man he did not know. However, CCTV footage indicated that the funds had been given to Blok outside the court by the client's daughter and an associate.

NICHOLAS HEYWOOD (Case 17) represented a lottery winner, Keith Gough. Gough was targeted by a fraudster, James Prince, who took out a fraudulent loan in Gough's name. Heywood transferred £13,750 of this loan to himself.

6.1.2 Conveyancing and the Use of Client Accounts

Acting as conveyancer in the purchase or sale of property or passing money through the firm's client account were the most common means of facilitation of laundering for which the solicitors in the cases were convicted. This echoes the conclusions from some of the previous literature in this area. Bell (2002) and Middleton (2008) both highlighted the use of lawyers' client accounts for the movement of criminal proceeds, with Bell (2002: 19) suggesting that this was 'one of the most important services that lawyers can provide to those who seek to launder 'dirty' money', and providing examples of a number of cases from the US involving lawyers who were prosecuted for such actions. A number of cases highlighted in the literature entailed the involvement of professionals in real estate transactions (e.g. Middleton and Levi 2004; Schneider 2005; FATF 2010; Cummings and Stepnowsky 2011; WEF 2012). For example, in Schneider's (2005) research examining proceeds of crime case files in Canada, he found that acting in property transactions was one of the most common ways by which lawyers came into contact with the proceeds of crime. It also reflects comments from the solicitors interviewed during this research, who all highlighted conveyancing as the area of business that was of most concern to them in relation to money laundering risk [S1; S2; S3], for example:

“...it probably is the biggest area, I would have thought, that there’s most risk. Because it’s an easy way to get money into the firm isn’t it, and then out again.” [S1]

It is not surprising to see these two categories occurring most frequently in the cases. Purchasing property is a straightforward way of investing money – whether of legitimate or illegitimate origin – and buying a home is something that people do on a regular basis, so it seems understandable that those involved in criminal activity that creates a profit would use some of that profit to buy property. Property transactions generally require the involvement of legal professionals – as well as others, including mortgage brokers and estate agents – and so it seems inevitable that there will be property transactions involving criminal proceeds, in which a legal professional has played a role. The role of conveyancing in money laundering is not necessarily about criminals *choosing* to use solicitors for money laundering purposes; it may simply be that the process of buying property involves legal professionals.

A solicitor’s client account can play an important role for those wanting to legitimise criminal proceeds. It provides a “façade of legitimacy” [SA2] to funds that pass through it, and transactions that originate from it; for example, funds being transferred to other bank accounts or being used to make large-scale purchases. The client account should, therefore, be seen as a point of vulnerability. This has been recognised by those charged with regulating the solicitor’s profession, and steps have been taken to try and prevent client accounts being used inappropriately, for example by the introduction of a “rule that you shouldn’t pass money through accounts without there being an underlying transaction” [SA3], which has been in the SRA Account Rules since 2010. Being able to identify the presence of funds in client accounts where there is no legitimate underlying transaction is another thing, however, and it is difficult to see how the regulators would be able to do this without constant monitoring of all firms’ accounts.

6.1.3 Autonomy and Oversight

One factor that may be important in such cases is the level of oversight within a firm, and the degree of transparency in relation to transactions using the client account. If the regulatory bodies are unable to monitor all transactions that involve the client account, there may be a greater role for the firm itself to take responsibility for this. Of course, the level of oversight within solicitors’ firms will vary considerably, with many solicitors working as sole practitioners or in very small practices. Interviewees suggested that such practices were the most likely to be involved in money laundering:

"I'd say in the main that they're sole practitioners, where there's no other solicitor, you know, they're not having meetings and all that, why are you dealing with him? Again, the accountants tend to be, one accountant in the firm with maybe a couple of bookkeepers or something like that. You know, it tends not to be a large company or whatever." [LE2]

"Plus the larger firms charge more as well. And although criminals have got a lot of money, they still don't want to pay too much, because it's hard earned money for them." [LE3]

"But we're not talking about people, the likes of KPMG or PriceWaterhouse are we? ... They're not going to pay the fees that the likes of KPMG are going to charge, which will be astronomical. So they're going to go to the little back street..." [LE5]

"It's the same with solicitors, isn't it, they don't use the big practice, it's going to be a 1- or 2- person practice on the high street, local to where they are, and that's where they'll go." [LE4]

The case data shows variation in the types of practice involved, and the convicted solicitor's role in that practice. However, the precise structure of the firm or the solicitor's role in it cannot be ascertained from the data available for many of the cases, so it is not possible to come to definitive conclusions about whether a certain type of firm or solicitor is more likely to be involved. What can be noted, though, is a certain level of autonomy and possible lack of oversight in a number of those cases where passing money through the firm's client account was the means of facilitation. ANDREW YOUNG (Case 3) was a sole practitioner, and so will have been able to accept the proceeds of mortgage fraud into his client account from John Fitzpatrick, and redistribute it to Fitzpatrick and others, with impunity. PAUL WINTER MORRIS (Case 2), on the other hand, was a partner in a 4-partner firm. However, it is noted that Morris "had in fact sole operational control over the account" [CoA – Morris] through which he transferred £8million of criminal proceeds. JONATHAN DUFF (Case 1) was the sole principal partner in his firm, though it is unclear what size and structure the firm had. JONATHAN KRESTIN (Case 8) and RICHARD HOUSLEY (Case 19) held the positions of managing and senior partner respectively, but were also the designated Money Laundering Reporting Officer (MLRO) for their firms. Again, with the limited data available, it would be impossible to come to conclusions about the precise levels of autonomy, oversight and control over client accounts involved in these cases. However, this does suggest that if solicitors' client accounts are considered to be a point of

vulnerability for money laundering, questions should be asked about the oversight of these accounts and how they are managed. No single practitioner within a firm should have sole control of the client account, and there may be an argument for the MLRO within a firm to be someone other than a solicitor, who will not use the client account (or be involved in conveyancing for property purchases, for that matter) but can monitor the transactions involved. Of course, this is more difficult for sole practitioner practices, and the vulnerability of client accounts to being used for transactions involving criminal proceeds could not be completely eliminated, but this does perhaps provide an avenue for consideration of where risks may lie and what might be done to mitigate them.

6.1.4 Multiplicity of Action and Purpose of the Transactions

While conveyancing and the use of client accounts were the most common forms of assistance provided in the cases examined, the data demonstrates the considerable variety in the actions of professionals that can be considered as ‘facilitating money laundering’, and for which such professionals can be convicted under the money laundering legislation. Within the sample analysed for this research were a solicitor who had paid bail for a client using what was considered to be the proceeds of illegal activity (Blok); a solicitor who had written to a bank to try and have an account unfrozen (Wormstone); a solicitor who had transferred ownership of hotels belonging to a client, which were used for criminal purposes and considered to represent the proceeds of crime (Wilcock); a solicitor who had written a series of figures on the back of a letter (Taylor); and a trainee solicitor who had witnessed an email, allowed the use of his headed stationery and provided legal advice for his brother, who was involved in mortgage fraud (Farid). It is clear, therefore, that this is not a homogenous phenomenon, and should not be considered as one. This theme will recur throughout this chapter and the one that follows, and will be discussed in more depth later on. What is important to draw attention to at this point – and what will become increasingly evident throughout the rest of the thesis – is the complex and multi-faceted nature of what is classed as the facilitation of money laundering by professionals, a complexity that is missed in official discourse and rhetoric in this area. The variation in the actions and behaviours of professionals that can be considered as the facilitation of money laundering, and lead to their conviction for money laundering offences, has implications both for how this activity should be understood and analysed from an academic perspective, and how it should be ‘dealt with’ at a practical level. In relation to the latter, for example, it leads to questions about the measures that should be taken to

prevent professionals' involvement in money laundering: how can measures put in place to deter the use of client accounts for illegitimate purposes also prevent a solicitor from, say, attempting to have a bank account unfrozen? And can measures aimed at protecting the integrity of the conveyancing process have any impact on the actions of a solicitor asked to use his position to help the laundering of criminal proceeds for his brother? (The familial relationship in such an example provides an added layer of complexity to the actions of professionals involved in laundering, and this will be discussed later on in this chapter.)

Questions about preventing professionals from becoming involved in money laundering, and responding to those who do, will be considered in the following chapters. So what, then, are the implications of the findings from the categorisation of means of facilitation for how we understand the facilitation of money laundering by legal and accountancy professionals? Firstly, it should be noted that the act of categorising the cases in this way is problematic. The boundaries between the categories are blurred; for example, the movement of money through client account can also occur during the purchase of property, and a legal professional's 'position' plays a role in many of the cases, to varying degrees. The presence of an 'other' category demonstrates the weaknesses of such attempts at categorisation. The cases in this category are individual, one-off actions that originate out of particular circumstances and situations at a point in time, which cannot be grouped with others. Their existence, therefore, highlights the multiplicity of actions that can be considered as the facilitation of money laundering. Also, the cases provide examples only; they do not show the full range of ways by which professionals could be involved in laundering, and so should not be seen as providing an exhaustive account of such. For one thing, the cases only involve solicitors as there were no examples found of chartered accountants who had been convicted for facilitating money laundering, and so many of the behaviours are predominantly related to solicitors, such as the use of client accounts (accountants can have client accounts but it is less common). Interviews with members of law enforcement and regulatory bodies [Interviewees LE1; LE2; LE3; SA1; SA4] suggested that accountants can facilitate money laundering through involvement in the setting up of companies through which criminals launder the proceeds of their crimes; assisting in the management of such businesses; preparing accounts which hide or falsify transactions, for example, by hiding income or "misdescribing" [SA1] money coming out of a business; providing a public, legitimate face to a business; or providing criminals with the "kudos of being associated with a legitimate firm of accountants" [SA4].

Categorising the cases in this way does not take into account the underlying purpose of the transactions – that is, what the predicate offender is trying to achieve through the transaction. For example, for all the cases that involve the buying or selling of property, we have no knowledge of whether the predicate offender is investing in a number of properties to make money (like anyone investing in property), is simply buying somewhere for them or family members to live, or is using the transaction as a means of ‘laundering’ their criminal proceeds in the strict sense: putting ‘dirty’ money into property in order to be able to take it out again ‘clean’. In other words, is the purchasing of property the end-point itself or a means to an end? An interesting case to consider in relation to this question is that of ANTHONY BLOK (Case 11). Blok used criminal proceeds, given to him by a client’s family, to pay bail on behalf of the client. For this, he was considered to have been involved in money laundering, and convicted of money laundering offences. This case illustrates the way in which the concept of ‘money laundering’ and its official definitions have become broadened, so that almost any financial transaction can be classed as laundering if the money or other property has its origins in criminal activity (as discussed in Chapter 2). In this case, the transaction that Blok was involved in was not being carried out *as a means of legitimising* criminal proceeds – that was not its primary purpose; it was criminal money being *used for a purpose*, in this case to pay a bail. This distinction, and the question of the purpose of the transaction in which the professional is involved, is important; in trying to understand the facilitation of money laundering by professionals, we need to consider that the professionals’ role is not necessarily about providing the appearance of legitimacy to criminal proceeds. They may simply be involved in whatever is being done with the criminal money, that is, with how the criminal proceeds are being used.

Therefore, when considering ‘the facilitation of money laundering’ by professionals, we need to return to the concept of ‘money laundering’ itself. Chapter 2 discussed the problems with the concept and definitions of money laundering, and suggested that it would be more useful to move away from the term ‘money laundering’ and instead aim towards a better understanding of the processes by which criminals manage the proceeds of their crimes and by which ‘dirty’ money enters the legitimate financial system. The findings presented in this section support that argument and move it forward. In order to understand the role played by any of the actors involved in managing funds derived from criminal activity, we must begin by understanding what happens to those funds after they have been acquired. We must understand how

criminals manage the proceeds of their crimes in order to achieve their desired outcome – what their purpose is, and what processes are used to achieve this purpose. It is only by fully understanding these processes that we can understand the role that legitimate actors such as professionals play in them, as this represents an interaction between the processes of criminal money management and the structures and processes of the professionals.

6.1.5 Complex Transactions?

As highlighted in Chapter 3, official discourse suggests that legal and financial professionals are playing a greater role in money laundering activity because of the increasingly complex nature of financial transactions used to manage criminal proceeds, which require the specialist skills and services that such professionals can provide. Likewise, there is a tendency within the money laundering literature and related policy to stress the complexity and sophistication of money laundering arrangements and processes. However, what is seen in the data is more mundane, with transactions that appear to be unsophisticated and lacking in complexity. While some of the cases examined involved what could be considered as complex financial arrangements – such as BHADRESH GOHIL (Case 15), who created a number of complex financial transactions to move significant criminal funds around, or RICHARD HOUSLEY (Case 19), who allowed funds from a number of bank accounts outside the UK to be moved via his firm's client account to a number of other bank accounts and individuals – many others involved single transactions or relatively minor actions by the solicitors. For example, JONATHAN KRESTIN (Case 8) was convicted for his involvement in a single transfer of money from one account to another, via his firm's client account. ANDREW YOUNG (Case 3) received the proceeds of mortgage frauds from one source, and made smaller disbursements back out of the client account. PETER OBIDI (Case 4) paid a cheque into his bank account and subsequently regained the funds by way of cash and a banker's draft. These are not complex financial transactions. Many of the conveyancing cases involved the purchase or sale of one or a small number of residential properties, and the figures involved in these transactions were not particularly high. Again, these are not complex financial transactions. RACHEL TAYLOR (Case 10) wrote out a series of figures on the back of a letter; while the figures were not accepted by the accountant they were supposed to convince, and so were not able ultimately to provide cover for laundering, this case demonstrates the lack of sophistication in the means by which the facilitation of money laundering can occur.

Of course, as these were cases of professionals *convicted* of money laundering offences, it raises the possibility that there are more complicated financial transactions being conducted with criminal money, involving the assistance of professionals, for which the professionals are not convicted (or the offence is not detected). If this is the case, then questions arise about why this is so: are professionals in complex cases less likely to be prosecuted? Or are successful convictions not being achieved? Is professional involvement in complex money laundering more difficult to investigate or prove? The lack of availability of – or access to – relevant data makes this more difficult to analyse; examining complex money laundering cases for evidence of the involvement of professionals would be one approach, and would certainly be an area for further research. What is clear from the data in the current research is the relative simplicity of many of the transactions involving criminal proceeds that appear in the cases examined. What is also apparent is that many of these transactions could be considered as ‘normal’ transactions: transactions that solicitors also carry out with *legitimate* funds as part of their regular, day-to-day work.

6.1.6 ‘Normal’ Transactions

Most of the transactions in the cases examined are the same transactions that legal professionals will carry out on behalf of clients, for legitimate reasons, on a regular basis, as part of their occupational role. For example, acting as conveyancer in the purchase or sale of property; receiving funds into the client account and transferring it elsewhere for legitimate reasons, or involvement in legitimate business transactions that utilise the client account; and transferring ownership of assets. With ‘clean’ money these transactions would be considered as normal business transactions, but with ‘dirty’ money that has originated from criminal activity, these transactions constitute money laundering. So, this means that non-legitimate transactions (or transactions with non-legitimate funds) will be ‘hidden’ amongst legitimate transactions. Professionals involved in facilitating money laundering will not *only* be carrying out non-legitimate transactions; the majority of their professional activity will involve legitimate transactions, and the non-legitimate transactions will be hidden amongst these. They will be hidden because in many cases they will essentially be the same transaction: they will look the same, and the actions and behaviours of the professional carrying them out will be the same as with legitimate transactions. This has implications, therefore, for the identification and prevention of transactions involving

criminal funds. It is hard to identify non-legitimate transactions if they are 'hidden' amongst legitimate transactions in this way, and if the behaviours of those carrying them out are essentially the same. In addition, it would be difficult to prevent all transactions involving illicit funds without having to prevent all the ways in which legal and financial professionals deal with money, which is a significant part of their job.

Therefore, the structures, processes and transactions of certain professions can provide opportunities for individuals working within those professions to assist in the management of criminal proceeds. As Clinard and Meier (2011) suggested, the occupational context provides opportunities for criminal activity, which can be exploited regardless of the specific motivation of the offender. The nature of much of the work these professionals do, and the transactions they carry out (for example, conveyancing processes and the movement of monies through client accounts), involves the flow of money. Criminal money can be used in the same way as non-criminal money – they are not inherently different – and so the proximity of professionals' occupational structures and processes to money of *legitimate* origin means a similar proximity to that of *criminal* origin. The relationship of transactions which involve criminal proceeds to the 'normal' transactions that they carry out for legitimate clients, and the lack of complexity of many of these transactions, allows the transactions to be 'hidden', and makes them difficult to identify. Likewise, the occupational context can provide a degree of 'invisibility' to the offence because the offender is 'legitimately present at the scene' (Croall 2001: 8). Identification of the professional's involvement, therefore, would always need to begin with the predicate offender and their funds or assets. The levels of autonomy enjoyed by such professionals, and a lack of oversight in certain circumstances, may enable professionals to take advantage of opportunities if they choose to do so. For those who seek to become involved in the facilitation of money laundering, therefore, the organisational characteristics of the legal and accountancy professions can be seen to provide the opportunities to do this. This echoes Vaughan's (1983) theory of organisational misconduct, which suggested that organisational characteristics provide opportunities for individuals within organisations to violate laws and regulations, with the structures, processes and transactions of the organisational setting being 'implicated in individual action' (Vaughan 1992, 2002: 122).

However, as will be shown in the following chapter, the involvement of professionals in the facilitation of money laundering is not always the result of an active, knowing

choice to assist the predicate offender. Therefore, as well as legal and accountancy professionals' potential proximity to criminal proceeds providing an *opportunity* for laundering, it can also be seen as constituting a significant *risk* to such professionals. This will be discussed further in Chapter 7.

6.2 Relationship with Predicate Offender

This section considers the relationship between the professional convicted for their involvement in facilitating money laundering and the predicate offender (the individual whose criminal proceeds are being laundered).

6.2.1 Solicitor-Client Relationship

For most of the cases examined, the primary relationship was one of solicitor and client, and this relationship is central to the activity in these cases in many ways. For example, the solicitor's involvement in money laundering may be based on them conducting transactions for their client – such as conveyancing – as a function of their professional role. The solicitor-client relationship can provide a cover for the solicitor to carry out transactions on behalf of the predicate offender, such as making purchases or transferring ownership of assets, and can provide a “façade of legitimacy” [SA2] to the actions of the professional. An example of this is the case of ANDREW WORMSTONE (Case 20), where he (ultimately unsuccessfully) tried to get a bank account unfrozen by making a point of his professional relationship with the predicate offenders, to try and persuade the bank that he was aware of their business dealings and knew them to be legitimate.

The significance of the lawyer-client relationship to the role of such professionals in the facilitation of money laundering has been addressed in the literature in this area, primarily in relation to issues of lawyer-client confidentiality and legal professional privilege, and the requirement of criminals to use the services provided by such professionals to launder their criminal proceeds (see e.g. Bell 2002; Di Nicola and Zoffi 2004; Middleton 2008; Soudijn 2012). However, little is known about the relationships between legal or financial professionals and those whose criminal proceeds they help to launder beyond their status as professional and client. For example, the nature of the relationship and its duration, how they knew each other, and how they came into contact, have not been examined in the literature in this area. This is something that would be very interesting to look at, offering a valuable insight into the nature of the

facilitation of money laundering by professionals, and so would be a worthwhile area for future research. The challenge would be finding data that would allow the consideration of such themes; the data collected on the cases in the current research provides little information in this area, making it difficult to know the nature of the relationship in most of the cases identified. However, for some of the cases a degree of detail about the relationship beyond that of solicitor and client could be established.

6.2.2 Personal Relationship

In a small number of the cases there was a personal relationship of some form between the professional and the predicate offender. For example:

MOHAMMED JAHANGIR FARID (Case 9) was convicted of money laundering offences for the role he played in a number of mortgage fraud offences orchestrated by his older brother, Rashid Farid. A number of other family members and associates were involved in the frauds or subsequent matters involving the proceeds of the frauds, and it was judged that Rashid Farid was the “mastermind” behind the scams, whose “influence on others played a critical role in leading them astray” [Farid – CoA]. The offences of Mohammed Jahangir Farid were said to have been “committed under the malign influence of his older brother”, and the judge in the case concluded that Rashid Farid “was responsible not only for the destruction of his own brother and some of his friends, but also for having brought down his father who was ‘a man of high standing’.” [Farid – CoA].

AMINAT AFOLABI (Case 12) was convicted for her involvement in the conveyancing of a property bought, and subsequently sold, by a company controlled by her husband, Ali Afolabi. This property was bought using money that had been obtained by fraud, carried out by Ali Afolabi, who had a number of fraud convictions over a period of 5 years. There had also been movement of sums of money between bank accounts belonging to the Afolabis. It was concluded at her trial that Aminat Afolabi must have been aware of her husband’s fraudulent activities – even though she argued that she now believed him to be “going straight” – and therefore that properties he was buying and selling constituted criminal proceeds [CoA – Afolabi].

RACHEL TAYLOR’s (Case 10) conviction related to assistance she provided to her former partner, Pardeep Bains. While Taylor and Bains were no longer in a relationship at this point, they had remained friends. The judge in Taylor’s case referred to her as “a ‘misguided fool’, misguided by her feelings for Bains” [SDT – Taylor].

In these cases, therefore, it is not just about a professional, solicitor-client relationship. There is a further dimension to the relationship, and this would provide a different dynamic to the interactions between those involved. The existence of a personal relationship could create a pressure to act in a certain way, or affect the judgement of the professional, and may be the driving force for them to become involved in the laundering. For example, in the case of Mohammed Jahangir Farid, it was suggested that his brother influenced his actions, and so he may not have become involved in criminal activity without this influence. Similarly, the actions of Afolabi and Taylor may have been influenced by the relationships they had with their husband and ex-partner respectively. In Afolabi's case, this relationship led her to be seen as more culpable because it was assumed that she must have known about her husband's fraudulent activity because of their relationship. However, in Taylor's case the judge appeared to show sympathy for the solicitor, as he accepted that their relationship and her feelings for Bains had clouded her judgement, commenting that "he hoped that she would not lose forever the benefits of her qualifications and hard work" [SDT –Taylor]. Therefore, a personal relationship between professional and predicate offender may not only affect the actions of the professional, but also the way that they are subsequently judged in a criminal court.

6.2.3 Presence of a 'Broker'

A number of the cases indicate the presence of what could be described as a 'broker' to the relationship. For example:

PHILLIP GRIFFITHS' (Case 6) involvement in the sale of a property from convicted drug traffickers to an estate agent, Leslie Pattison, appears to have been driven by Griffiths' relationship with Pattison, who was a close associate:

"In May 2004, Peter Davis approached Mr Pattison and offered to sell him Bryn Arden for the value of the outstanding mortgage, the £43,000. The case for the Crown was that this was an attempt to frustrate the confiscation proceedings. Mr Pattison approached Mr Griffiths with a view to effect conveyance... Mr Griffiths said that Mr Pattison had told him that some friends of his were in financial trouble and that he, Mr Pattison, was buying out the mortgage to help them." [CoA – Griffiths].

In sentencing, the judge in the trial stated that Griffiths had become involved in the sale, and had not considered carefully enough the risk that the sale was being conducted as a means of preventing asset recovery proceedings, because of his relationship with Pattison:

“... as far as I could see, you were unable to say no to Mr Pattison, with whom you had had a close relationship on and off for a number of years... I take the view that because of your connection with Pattison, you closed your eyes to what would otherwise have been the clearest of evidence staring you in the face.” [SDT Griffiths]

JONATHAN KRESTIN (Case 8) was convicted of a money laundering offence in relation to a transaction he carried out on behalf of Michael Namer, involving the proceeds of a large scale VAT fraud perpetrated by Namer. Namer had been introduced to Krestin by a tax partner at Baker Tilly (an accountancy firm), as “a client of theirs needing a solicitor to undertake some commercial work”. Therefore, Krestin argued, he “had relied on the due diligence checks of Baker Tilly” [SDT – Krestin], as well as his awareness that Namer held accounts at major banks, to satisfy himself about Namer’s legitimacy.

ANDREW TIDD (Case 18) acted as conveyancer in the purchase of residential properties for Nevzat Kocabey. Kocabey had been introduced to Tidd as a client by Kocabey’s brother, for whom Tidd had acted for a number of years and who he believed to be “a proper and upstanding businessman” [SDT – Tidd]. In addition, Tidd had

“received a reference for [Kocabey] from a high street bank, in connection with a proposed transaction, which stated that he had been a customer of the bank for 2-5 years; this appeared to provide evidence that the client was a bona fide businessman.” [SDT –Tidd]

In all these cases, there is someone acting as a ‘broker’ to the relationship between the professional and the predicate offender. This is a person that the professional trusts, either knowing them in a personal capacity or professionally, and so their presence is likely to affect the decision-making of the solicitor and the choices they take. These cases, and the ones involving a personal relationship between the professionals and the predicate offender, highlight the relevance of the social relations between actors involved in the facilitation of money laundering, and the bearing they have on the

actions of the professionals. They draw attention to the interaction between actors from legitimate and criminal settings (Passas 2002; Morselli and Giguere 2006) and the ‘social circumstances’ of individual action (Suchman 2007: 70).

6.3 Benefit to the Professional

This section seeks to examine the financial benefit received by the professional as a result of their involvement in the facilitation of money laundering. From the data available, it is difficult to determine with any certainty or level of precision the benefit received by the solicitors in the cases examined, although some indication can be obtained for a number of the cases. What is apparent is that the way in which professionals benefit from their involvement in money laundering varies, and there is little evidence of significant financial gain in the cases examined. The data also highlights the challenges for understanding the level of personal financial benefit received.

PAUL WINTER MORRIS (Case 2) was involved in the laundering of approximately £8million, a proportion of the proceeds from VAT fraud committed by fraudster Raymond Woolley. The total loss to the Revenue due to the fraud was estimated at over £38million. During confiscation proceedings that followed Morris’ conviction, it was argued on behalf of Morris that he had not obtained any financial benefit from his involvement in the money laundering:

“he was merely a trustee of funds for Woolley, and he received no personal benefit, direct or indirect, from the funds in his firm’s client account” [CoA – Morris].

However, the trial judge rejected this argument, saying that Morris’ connection with the relevant monies was “far more than that” of a trustee. This conclusion was primarily due to a series of transfers totalling £4.5million made by Morris from his firm’s client account to a company called Thornbush Entertainment Inc. (USA), an organisation with which Morris “had a considerable pre-existing connection but with which Mr Woolley had none”. The particular transfers did not appear to be based on instructions from Woolley, as other transactions involving the funds were. The judge in the confiscation hearing concluded that “the true nature of the receipt of the relevant funds by Morris was such as to amount to an obtaining of them” within the meaning of the relevant legislation, and he

“assessed the amount obtained by Morris as £7,928,682.47”. Following a further hearing to consider the amount of Morris’ realisable assets, a confiscation order was made in the sum of £410, 077.20 [CoA – Morris].

This case raises interesting questions about asset confiscation in relation to professionals who facilitate money laundering. If monies are held in accounts which the professional controls – such as the client account – they may technically be considered to have ‘obtained’ these monies under the asset recovery legislation. Morris was considered to have ‘obtained’ the amount of £7,928,628.47 because this was the amount that had passed through a bank account under his control, and so this was considered to be his ‘benefit’ for confiscation purposes, even though he had not actually acquired these funds for his personal use²⁰. Morris argued that he had received no personal benefit from his involvement in the money laundering and continued to appeal the confiscation order. Indeed, he did not pay the confiscation order and consequently received a further custodial sentence of just over 2 years.

Similarly, BRIAN DOUGAN (Case 5), who acted in a number of property transactions for someone involved in organised fuel fraud, was ordered to pay a sum of £86,500 at a confiscation hearing following his conviction. This was based on the £66,500 that constituted the deposits paid for the properties, plus £20,000 court costs [Dogan – HMRC]. JONATHAN KRESTIN (Case 8) received a confiscation order for £9,517, representing the €14,000 he received into his firm’s client account and subsequently disbursed on behalf of fraudster Michael Namer, even though

“[i]t was clear that [Krestin] had not been aware of, actively involved in, or *had made any profit from* the money laundering” (emphasis added) [Krestin – SDT]

Therefore, because these funds had passed through accounts controlled by the solicitors – either as deposits or money transfers – they were considered to have ‘obtained’ these amounts for the purposes of confiscation, even if they had not actually

²⁰ This thesis does not have sufficient scope to consider this issue, or the intricacies of asset confiscation legislation. For further detail, and the explanation for Morris being considered to have benefit of the full amount that had passed through his firm’s client account, see the Court of Appeal case *R v Allpress & Others* [2009] EWCA Crim 8, which addresses the issue of benefit in relation to money laundering by considering appeals against confiscation orders in relation to 5 cases.

received direct personal gain from them. In the case of Morris, the role of Thornbush Entertainment Inc. described during the confiscation hearing suggests that he may have received some degree of financial benefit from his involvement in the laundering scheme, but there is no indication that Dougan or Krestin received any direct financial gain from the role they played.

Other cases indicated that the professional received some direct financial benefit from the laundering, though it is difficult to say how much. AMINAT AFOLABI (Case 12) received a payment of £15,000 from the proceeds of sale of the property she was involved in the conveyancing of – a property bought and sold by her husband using funds derived from his criminal activity. It was argued by the SRA’s representative at Afolabi’s SDT hearing that as she

“had benefitted considerably [from her involvement in laundering] this made the offences proportionately more serious” (SDT – Afolabi]

She may also have had indirect benefit from the money laundered by her husband; the nature of the relationship between professional and predicate offender in this case affecting what could be conceived as the benefit of her involvement.

ANDREW YOUNG (Case 3) was considered to have “extracted some financial benefit” for himself during the process of receiving the proceeds of mortgage frauds into his firm’s client account and redistributing it “for the benefit of others” [CoA – Young]. GERARD HYDE (Case 7) was adjudged to have received a “relatively small” [SDT – Hyde] profit from allowing his firm’s client account and a bank account he controlled in the Isle of Man to hold and move approximately £2million generated through a VAT fraud. The data available gives no indication, however, of the actual level of financial benefit received.

On the other hand, the data from several of the cases indicate that the professional received no direct financial benefit from the actions for which they were convicted. RACHEL TAYLOR (Case 10) did not benefit financially from writing down a series of figures on the back of a letter; there is no indication that ANTHONY BLOK (Case 11) received personal gain from the proceeds of crime used to pay his client’s bail; and PETER OBIDI (Case 4) appears to have received no financial benefit from the funds he paid into a bank account and later withdrew and returned to the same individual. At the SDT hearing for ANDREW WORMSTONE (Case 20), who unsuccessfully tried to have a

bank account unfrozen in order to release the proceeds of a fraud to those who committed it, it was stated that:

“It did not appear that [Wormstone] had had any financial gain from his actions” [SDT – Wormstone]

For those whose involvement centred around their role in the purchase or sale of property, there appears to be no direct financial benefit received from the funds being laundered (apart from Aminat Afolabi, as discussed above). What they – or their firm – will have received, of course, is the conveyancing fee for carrying out the transactions:

“[Tidd] had not received any gain; his firm had received a normal level of fees for the transaction in which [Tidd] had acted for [Kocabey].” [SDT – Tidd]

“[Griffiths] had received no more than his normal conveyancing fee of £399” [CoA – Griffiths]

So, while there may be no *direct* financial benefit in such cases, there is a degree of *indirect* benefit in terms of the business provided and the fees paid. The quotes above highlight that what the solicitors received was the *normal* conveyancing fee; this means that they were acquiring no greater benefit from a transaction involving criminal funds than they would have for the same transaction involving non-criminal funds. This reflects the conclusion from earlier in this chapter that many of the transactions involved in the cases were ‘normal’ transactions that solicitors carry out as part of their occupational role.

A number of the interviewees talked about the benefit, or advantage, gained by professionals who helped others to launder criminal proceeds, as a means of explaining why they might become involved. In relation to an accountant who he suggested worked with a number of organised crime groups, Interviewee LE1 remarked that:

“the competitive advantage that he has is access to a client base which is going to provide him with a steady stream of fees, and the behaviour of that income is more predictable than it would be if it was entirely legitimate.” [LE1]

It was suggested that for some professionals, becoming involved with criminals needing to launder money was about “greed” and “making a bit of money”, reflecting the pursuit of profit or personal gain described by Sikka (2007):

“Sometimes it’s just greed, because of the amount of work that they can get off them, and that can give them a particular lifestyle that they wouldn’t otherwise have if they just did legitimate business.... And it’s, there’s vast amounts of money to be made out of it.” [LE2]

“I think there comes a point where they think ‘Hm, you know, I could actually make a bit of money out of this’.” [LE9]

Whereas, for others, it was felt that it was more about ‘need’:

“I would say that from our experience of it, it tends to be motivated by them falling on hard times... It tends to be, they were performing this well 10 years ago, [and now] they’re not performing anywhere near there...” [SA2]

“...they’re in it because they’ve come up with some financial adversity or some personal problem which has basically drawn them into that side of life in order to survive.” [LE1]

“And I don’t think there’s much doubt that in the majority of cases where people do something quite serious it’s because they’ve got into a desperate financial position, and that’s what’s really going on...” [SA3]

The notion of a professional having financial problems and feeling unable to turn away business because of this, even if the gain was only the fee from conveyancing, for example, certainly fits with some of the cases examined. However, the suggestion that there are “vast amounts of money to be made out of it” does not accurately reflect what was seen in the data, which showed no significant personal financial gain for the professional in most of the cases. As discussed in Chapter 3, the literature in this area suggests that the primary reason for professionals to become involved in money laundering is the drive for profits (e.g. Chevrier 2004; Di Nicola and Zoffi 2004; Sikka 2008; FATF 2010). Professionals who choose to facilitate money laundering on behalf of others are often framed as rational actors making the decision to become involved in money laundering for economic reasons of personal or business profit or competitive

advantage. However, the cases examined in this research do not support the notion that financial benefit is the primary driving force behind professional involvement in money laundering, and suggest that focusing on a purely economic imperative would be too simplistic. In many of the cases there did not appear to be any direct financial benefit to the solicitor because of their actions, and so this is not a sufficient explanation for their involvement. These cases, therefore, cannot be seen as representing a rational economic choice to offend, a finding that will be returned to in the following chapter. Viewing the actions of these professionals in this way would act to decontextualise their decision-making processes and take insufficient account of the ways that criminal activity is socially patterned (Croall 2001).

6.4 Conclusions

This chapter begins to make evident the complex and diverse nature of professionals' involvement in money laundering, a theme that will be continued in the following chapter. There is notable variation in the actions and behaviours that can be considered as the facilitation of money laundering, and for which professionals can be convicted of money laundering offences. While conveyancing and the movement of money through client accounts were the most common ways that solicitors were involved in laundering in the cases examined, there were a number of other means of facilitation seen. These often involved individual, one-off actions that emerged out of particular circumstances or situations. For example, the cases included solicitors who had tried to have a bank account containing the proceeds of a fraud unfrozen; paid bail for a client using what was considered to be the proceeds of crime; transferred ownership of hotels involved in criminal activity; and witnessed an email, allowed the use of headed stationery, and provided legal advice for a mortgage fraudster. Diversity is also seen in the purpose of the transactions carried out by professionals on behalf of predicate offenders. Transactions may be carried out as *a means of legitimising* criminal proceeds (or 'laundering' in the strict sense of the word), or they may simply be a function of how someone is *using* the proceeds of their crimes. For example, an individual buying property with funds of illicit origin may be buying somewhere for them or family members to live, investing in a number of properties to make money, or using the property as a means to an end – putting 'dirty' money into the property in order to take it out again as 'clean' money. The movement of criminal proceeds around a number of accounts, including the client account of a solicitor's firm, may be a way to disguise its illicit origins and provide it with the appearance of legitimacy, but the payment of an

offender's bail with the proceeds of their crimes is using this money for a purpose. Therefore, professionals' involvement in the facilitation of money laundering may be about providing the appearance of legitimacy to criminal proceeds, but it may also be that the nature of their work gives them a role in how criminal proceeds are being used. It is not necessarily about criminals choosing to use professionals for money laundering; it may be that what they are using the proceeds of their crimes for involves legal or accountancy professionals. It is clear that a better understanding of the processes by which criminals manage the proceeds of their crimes in order to achieve their desired outcome is needed. It is only by understanding these processes that the role that legitimate actors such as legal and accountancy professionals play in them can be appreciated.

The research findings also demonstrate variation in the way that professionals benefit from their involvement in money laundering, and in the relationship between the professional and those whose criminal proceeds are being laundered. While some may acquire a degree of direct financial benefit, many professionals involved in facilitating money laundering receive no direct financial gain. They may receive the fees for their part in the transaction, but this will be no more than the normal fee they would have received for the same transaction involving non-criminal funds. There was little evidence of significant financial benefit in the majority of the cases examined. Therefore, the framing of legal and accountancy professionals' involvement in money laundering in the existing literature as being primarily driven by financial motivations seems incomplete, and a purely economic explanation for professionals' actions insufficient (this will be discussed further in the following chapter). The nature of the relationship between the professional and predicate offender may play a role in their involvement in the laundering of criminal proceeds. The 'solicitor and client' aspect of such relationships is a key feature; it can provide a cover for transactions conducted by the solicitor, which form a part of their occupational role. Personal relationships with those involved in the predicate offence, or the presence of a 'broker' in the relationship, can directly influence their involvement or affect decisions and choices made, highlighting the influence of social relations on professionals' actions. The data that was available for analysis during this research was not sufficient to fully understand the relationships involved and benefit received by professionals, and these would both be valuable areas for further research.

Chapter 4 of this thesis argued that the actions of professionals involved in the

facilitation of money laundering should be considered through the framework of 'situated action', which suggests that these actions and the choices made by professionals are influenced and shaped by the situational contexts in which they occur. The findings presented in this chapter have demonstrated the role of the organisational setting in creating opportunities – and risks – for professionals in relation to money laundering. They have shown that the structures, processes and transactions of legal and accountancy professions can provide opportunities for individuals within those professions to assist others in the laundering of their criminal proceeds. Because of the nature of the work that legal and financial professionals do, and the transactions they carry out as part of their occupational role, transactions involving criminal proceeds can be essentially the same as those carried out with legitimate funds as part of their regular day-to-day work. With 'clean' money these transactions would be considered as 'normal' business transactions, but with money of illicit origin they would constitute money laundering. These transactions may look the same as legitimate transactions, and the actions and behaviours of the professional carrying them out may be the same, which allows the illegitimate transactions to be 'hidden' amongst the legitimate ones. A degree of autonomy and lack of oversight may allow professionals to take advantage of the illicit opportunities created by the organisational setting. However, as well as providing opportunities to launder, the proximity of professionals' occupational structures and processes to money of criminal origin – as well as to that of legitimate origin – can constitute a significant risk, making such professionals vulnerable to being unwittingly caught up in the facilitation of money laundering. The following chapter will further this discussion, considering the levels of knowledge and intent seen in professionals' involvement in money laundering and examining the legislative context, which can lead to the conviction of professionals who were not complicit participants in the laundering.

Chapter 7

Beyond Complicity: Judgement, Decision-Making and the 'Grey Area' of Intent

This chapter examines themes of intent and 'knowingness', considering professionals' levels of intent to facilitate money laundering in the cases analysed and the extent to which they were aware that they were involved in laundering activity. This analysis is placed within the context of the relevant legislative framework, as well as interviewees' perspectives on knowledge, intent, complicity and the implications of the legislation. Within the official and academic literature, legal and financial professionals' involvement in money laundering is primarily constructed as a dichotomy of 'knowing' or 'unwitting' involvement; the professional is either aware that the funds they are dealing with are of an illicit origin and is knowingly engaged in assisting the predicate offender to launder them, or is unaware of the funds' illicit origins and is being unwittingly used by the predicate offender (with those who are coerced or forced into involvement falling in between the two, seen as 'knowing' but 'unwilling'). While some attempts have been made to move beyond simple dichotomies, they still depict professionals' involvement in money laundering in neat categories, with judgements of culpability attached to the categories (as discussed in Chapter 3). However, the data analysed during this research shows that such categorisations are not sufficient to explain knowledge and intent in professionals' involvement in money laundering, which is far more complex and ambiguous than they would suggest.

The first part of the chapter shows that active, complicit involvement in money laundering by professionals appeared in only a small number of the cases examined. A majority of the cases indicated a less clear 'grey area' of intent, with many convictions resulting from errors of judgement or 'bad' decision-making, influenced by a range of factors relating to the professionals' occupational role or relationships with other actors involved. There is considerable overlap and ambiguity within and between the categories described, and the subsequent section of the chapter discusses these ambiguities and the challenges - and utility - of trying to categorise the extent of professionals' knowledge or intent in relation to money laundering. The third part of

the chapter examines the legislative context, demonstrating the broad scope of money laundering legislation in the UK, which allows for the conviction of professionals who did not have criminal intent to facilitate laundering or actual knowledge, or, in certain circumstances, suspicion, that laundering was occurring. This section discusses the justifications for the wide scope of the legislation and the risks it holds for professionals, considering the views of both criminal justice practitioners and practising professionals in relation to this. The chapter concludes by summarising the findings and considering their implications for our understanding of the nature of legal and accountancy professionals' facilitation of money laundering. It argues that the decisions made by professionals to proceed with transactions involving criminal proceeds are shaped by the specific contexts in which they occur, and which are created by a combination of social relationships, organisational characteristics and the wider legal and regulatory environment. Finally, it raises a number of questions about the proportionality of the legislative framework, and the implications of the research findings for attempts to prevent professional involvement in money laundering.

7.1 Knowledge and Intent in the Facilitation of Money Laundering

The data from cases of solicitors convicted of money laundering offences analysed in this research indicate notable variation in the degree of intent involved, and the extent to which the solicitors were aware that they were involved in facilitating laundering. In this section, three categories are described: professionals who are complicit in the money laundering activity, who know that they are facilitating transactions involving criminal proceeds; professionals who 'turn a blind eye' to knowledge or suspicion of laundering, or fail to ask appropriate questions to check the legitimacy of certain transactions; and professionals whose involvement is based more on errors of judgement or individual decisions made in the context of their professional practice. The first category involves intent, with professionals being actively, knowingly involved in the laundering. However, in the other categories we see a much less clear, 'grey area' of intent where there is not a clear decision to offend and not necessarily intent or active involvement. It is important to note that these are not clearly delineated categories; both within and between the categories described are areas of overlap and ambiguity. This ambiguity, and the problems with trying to categorise the nature of professionals' involvement in money laundering, will be discussed in the following section.

7.1.1 Complicit Professionals

In some of the cases examined, the data suggests that the solicitor was knowingly and intentionally involved in the facilitation of money laundering. Such professionals can therefore be considered as complicit, active participants in the laundering.

PAUL WINTER MORRIS (Case 2) was involved in the laundering of £8million, the proceeds of a large-scale VAT fraud carried out by fraudster, Raymond Woolley. The criminal funds were diverted to a number of bank accounts controlled by Woolley, and then transferred to Morris' firm's client account. Morris subsequently made individual disbursements from the client account, including to a US-based entertainment company, to Woolley himself, and to make purchases of yachts and cars. As was highlighted in the previous chapter, Morris was judged to have made a degree of financial gain from his involvement in these transactions and was considered to be "far more than" simply a trustee of the funds derived from Woolley's criminal activity [CoA – Morris]. This suggests that Morris was complicit in the laundering activity, and the judge in his trial concluded from the evidence of the case that Morris had been fully aware of his involvement in the laundering of criminal proceeds, stating that he:

"... allowed yourself to play an important role in the laundering of a very large sum of money and did so, in my judgement, and I have sat through this case and heard all the evidence and heard your explanation, you did so in my judgement knowing that it represented the proceeds of criminal conduct." [SDT - Morris]

GERARD HYDE (Case 7) was a commercial property solicitor who allowed his firm's client account and a bank account he controlled in the Isle of Man to be used in the movement of the proceeds of a VAT fraud that operated for over a year and was estimated to have defrauded the public revenue by approximately £30 million. Hyde was believed to have laundered £2million of these proceeds, over an eight-month period. In his sentencing remarks, the judge in Hyde's trial stated that he "for eight months or thereabouts continued to deal in what you knew was very very large money laundering" [SDT – Hyde]. He acknowledged that the personal profit Hyde received from his involvement "was relatively small", but suggested that this was outweighed by Hyde's complicity in the laundering:

“You used your firm’s account thereby giving credibility and reputation to the money, that was a very important part of the laundering and you must have known it. You allowed an offshore company of your own to be used. That again had the same consequences, and perhaps most important of all you used the reputation of your firm and the reputation of your profession to persuade others that they were dealing in honest commercial transactions. As you must have known, without that money laundering of the size which we are dealing with here becomes virtually impossible. That is the gravamen of it.” [SDT – Hyde]

BHADRESH GOHIL (Case 15) was convicted in 2010 on a number of counts related to the laundering of \$37million that was stolen from the state of Delta in Nigeria by James Ibori, then governor of the state. Ibori is thought to have defrauded \$250million from the Nigerian people over a period of eight years. Gohil was convicted of a range of offences relating to his involvement with James Ibori and the stolen funds. As well as the money laundering offences under the Proceeds of Crime Act 2002 (POCA), he was convicted of conspiracy to defraud and conspiracy to make false instruments. These convictions were representative of Gohil’s long-standing professional relationship with Ibori, and were “for offences of dishonesty” [SDT- Gohil].

RICHARD HOUSLEY (Case 19) was convicted of laundering funds totalling £1.8million, also the proceeds of VAT fraud. Housley was the director of a clothing firm owned by Michael Voudouri, who carried out the VAT fraud with others, and also allowed money from the frauds to be moved through his firm’s client accounts. The sentencing statement from Housley’s trial concluded that he had been “knowingly concerned in the facilitation of money laundering”, and stated that it was “clear [...] that the jury did regard you as having actual knowledge or suspicion” [Sentencing Statement – Housley]. The sentencing statement makes it clear, therefore, that Housley was judged to be actively involved in the laundering; he knew that Michael Voudouri was involved in criminal activity, and so knew that the funds that he was moving through his firm’s client account on instruction from Voudouri represented the proceeds of crime.

These solicitors appear to have been actively, knowingly involved in the laundering of criminal proceeds. The sentencing statements in the cases refer to the solicitor knowing that the funds that they were passing through their firm’s client account, or using to make purchases or other transactions, were of illicit origin. It is notable that all the

cases discussed in this category involve the use of the solicitor's client account as a means of laundering, and that the funds involved are relatively significant and represent the proceeds of large-scale frauds, such as VAT fraud. This may indicate that a complicit professional is required in such situations, when large amounts of criminal proceeds are involved and the client account can be used as a means of providing legitimacy and a conduit for transferring large amounts of money (not cash-based – for example, the tax not paid in VAT fraud) from one or multiple accounts to others. In addition, the laundering in which the solicitor is involved in these cases appears to occur over a period of time. For example, Gerard Hyde was believed to have been moving criminal funds over an 8-month period. The actions of these professionals, therefore, were not isolated, one-off incidences.

There is no suggestion in any of the cases that coercion was involved, or that the professional was forced in some way to agree to provide assistance to the predicate offender. It has been suggested that professionals who are *knowingly* involved in money laundering may not *willingly* be so; that is, they may be 'coerced with threats of violence or by the criminals exerting familial and cultural pressure' (NCA 2014: 7). This might follow initial complicity, where '[o]nce the professional is recruited, physical and other threats may be employed to stretch the boundaries within which the complicit professional is willing to act' (FATF 2010: 46). One of the interviews conducted with law enforcement personnel working in a financial investigation unit highlighted the issue of coercion as a reason for professionals to become involved in the facilitation of money laundering:

"...organised crime is no different from anybody else and they look for weaknesses in people. You know, if they've got a solicitor who they maybe sell drugs to, find in a compromising position or whatever, then they'll exploit that if they can." [LE3]

"Yeah, undoubtedly a lot of the reasons why they become involved is because they have been compromised, through their private lifestyles. Which does involve recreational drugs, use of prostitutes and things like that. Organised crime are obviously behind all that, identify: hold on here, I've got a solicitor, an accountant, a financial advisor, and then there's no doubt that they go in and, you know, if you don't start working for us we've got pictures or we'll be telling the missus..." [LE2]

The second quote suggests that coercion is a common reason for professionals to

become involved in money laundering, but the interviewee provided little evidence to support such an assertion, mentioning a single case of a solicitor who had been pressured to provide assistance to a criminal group in this way. It seems likely that if the use of force or other means of coercion were involved in any of the cases, this would have been used in mitigation during criminal trials or disciplinary proceedings, but the data show no evidence of this argument being made in any of the cases examined in this research. In fact, it is notable that no mitigation was offered to the Solicitors Disciplinary Tribunal (SDT) during the hearings for the solicitors in the cases in this category (and no mitigation can be seen in the data in relation to their criminal trials, though the data in this regard is much more limited); this is markedly different to some of the other cases which will be discussed later in this section.

The cases in this category can therefore be seen as demonstrating a deliberate choice by the professional to become involved in the facilitation of money laundering, over a period of time, knowing that the funds they were handling were the proceeds of criminal activity, and being fully cognisant of the role they were playing in the laundering activity. As such, they fit the notion of a 'rational actor', making the choice to become involved in criminal activity (Cornish and Clarke 1986, 2002, 2014). This suggests a degree of self-interest and a calculation of risk and reward by the professional, and suggests a mutual benefit from the arrangement between the professional and the predicate offender (Shover and Hochstetler 2006; Piquero 2012). As discussed in the previous chapter, it is difficult to determine with any certainty from the data available to what degree these solicitors benefited financially from their involvement in the laundering. However, Morris may have received some degree of financial benefit through his connection to a company that received some of the proceeds during the laundering process, and Housley was acting as director of a clothing firm owned by Michael Voudouri that was being used as a front for laundering, as well as allowing proceeds of Voudouri's frauds to pass through his client account. He may therefore have been benefitting through his involvement in this firm. So, the professionals in these cases can be seen as making rational choices to be actively involved in facilitating money laundering on behalf of others, intentionally facilitating money laundering, knowing that this constituted a criminal offence. In this regard, they fit the construction of such actors in official discourse – on one side of the dichotomy – as complicit, knowing participants who willingly facilitate money laundering for reasons of personal financial benefit. However, this category only comprised a small number of the cases identified in this research. In the majority of cases, there was not a

clear decision to offend and there was not necessarily intent or active involvement in the laundering. Instead, we find a 'grey area' where intent and the level of knowingness of the professionals are much less clear and much more complex.

7.1.2 'Turning a Blind Eye'

The notion of professionals 'turning a blind eye' to money laundering arose in some of the cases, and in a number of the interviews. This concept can itself incorporate varying degrees of intent and knowingness. Professionals who intentionally ignore their knowledge or suspicion that money laundering is occurring are described as 'exercising wilful blindness' [LE1]. This indicates a conscious, purposeful action, where an individual has deliberately chosen to ignore suspicions or actual knowledge of laundering activity. There may not be the active involvement in the laundering seen in the previous category, but instead knowledge or suspicion that clients are involved in illegal activity or that transactions they are concerned in involve criminally-derived funds may be ignored. Professionals may also fail to ask certain questions or make appropriate enquiries to check the legitimacy of clients or transactions, preferring not to know the answer that such enquiries could provide. As one interviewee put it, demonstrating his view that such actions were "as bad" as those of professionals who were complicit in laundering activity:

"... they turn a blind eye, they don't know, but they don't ask the questions that would have quite clearly let them know, which is as bad as being complicit in a round about way". [SA2]

ANDREW WORMSTONE (Case 20) was considered to have deliberately turned a 'blind eye' to his suspicions that he was acting in relation to illicit funds. His conviction was based on the finding that he had "suspected that the funds were criminal property, rather than actual knowledge that this was the case" [SDT – Wormstone]. Wormstone's conviction was related to £2million that had been defrauded from Sussex University, by a group of fraudsters who used a forged invoice for construction work that had been carried out at the University. When the University realised it had made payment into an account that did not belong to the real construction firm, the account was immediately frozen. Wormstone sent documents to the bank in an attempt to provide authenticity to the group who had stolen the funds and persuade the bank to unfreeze the account. The sentencing judge in his trial remarked that:

“the jury’s verdict means that you suspected that you were being involved with criminal property and being used to cast a cloak of respectability over attempts to free up those funds. At the very least the verdict means that you chose deliberately to turn a blind eye to what you suspected.” [SDT- Wormstone]

The judge’s remarks indicate that Wormstone had suspicions that the funds within the account were of criminal origin, and made a deliberate choice to “turn a blind eye” to these suspicions.

PHILIP GRIFFITHS (Case 6) acted as conveyancer in the sale of a property for a couple who had been convicted of involvement in a drug trafficking conspiracy. The property was sold for significantly less than its market value to an estate agent, Leslie Pattison, whom Griffiths had known for a number of years. In his sentencing remarks, the judge in the trial suggested that Griffiths would have seen clearly that money laundering was occurring had he not “closed [his] eyes”, and suggested that he did this due to his relationship with Leslie Pattison:

“I take the view that because of your connection with Pattison, you closed your eyes to what would otherwise have been the clearest of evidence staring you in the face.”
[SDT – Griffiths]

So, in this case, it was suggested that Griffiths did not consider carefully enough the circumstances of the transaction and its legitimacy, and therefore was unable to see that illegal activity was occurring. This suggests behaviour less deliberate or intentional than that of Wormstone; Griffiths failing to ask appropriate questions or consider the possibility of laundering, because of his relationship with Pattison (who acted as a trusted ‘broker’ in the transaction, as discussed in the previous chapter).

It was suggested by a number of the interviewees that professionals ignoring their suspicions about a client or the transactions they were involved in, or not asking the right questions or paying sufficient attention to their anti-money laundering obligations to confirm the legitimacy of the client or their funds, may be due to ‘commercial considerations’, or needing the business that they provided. For example:

“They sort of turn a blind eye to it, influenced no doubt by commercial considerations”
[LE1]

“[F]irms at the lower end of the market who didn’t have much work would sort of turn
a blind eye or not really think it through” [SA3]

These quotes suggest that the requirements for professionals such as solicitors and accountants to take business opportunities and make a profit may lead to their agreeing to act on behalf of clients or in transactions that were not legitimate, without acknowledging suspicions about the client or their funds or asking the questions required to confirm or allay these suspicions. This may happen more often during periods of economic downturn, if firms are struggling to get sufficient work, or other economic pressures are being experienced by the professional. So, an individual may ‘turn a blind eye’ during a period of stress or economic difficulty, having acted properly at all other times (Sikka 2007; Huisman and Vande Walle 2010). This highlights a conflict, therefore, between professionals’ role as ‘gatekeepers’ to the financial system, with the requirements to be ‘on the lookout’ for money laundering and carry out the appropriate preventative checks that this entails, and the business needs involved in operating a successful professional practice in a competitive market. Any pressures on those involved in the market – for example, a difficult economic climate or increased competition within the market – could therefore increase the possibility of professionals ‘turning a blind eye’ to possible laundering. In this context, the actions of professionals who ‘turn a blind eye’ could be seen as a means of solving a business problem, rather than intentionally supporting the laundering of criminal proceeds or condoning criminal activity. This reflects theoretical perspectives from the white-collar crime literature, highlighted in Chapter 4, which suggest that competitive environments can lead to individuals seeking a competitive advantage over others – sometimes by illegitimate means – and may instil what Coleman (1995 cited in Huisman and Vande Walle 2010: 128) described as a ‘fear of falling’, which can drive some to indulge in illegal activity if success is threatened.

7.1.3 Error of Judgement

A number of the cases analysed in this research fall into the final category. The actions by the professionals in these cases can be said to have resulted from an ‘error of judgement’ or individual ‘bad’ decision within the context of their professional practice. In these cases there appears to be no criminal intent on the part of the professional, or

active involvement in the money laundering. This does not necessarily mean that we should see these professionals as being completely unknowing or ‘innocent’; while some were judged to have been ‘unwittingly used’ in the money laundering, there may have been factors that would have let them know that laundering was occurring, or actions they could have taken to identify this. What links the cases in this category are errors of judgement and decision-making that result in conviction for money laundering and, often, the end of their professional career. A few of the cases, which exemplify this category, will be discussed in detail.

JONATHAN DUFF (Case 1) was convicted in 2002 for failing to disclose knowledge or suspicion of money laundering. In 1998, a client of Duff’s, Gene Gibson, was arrested along with a business associate at Birmingham Airport in possession of cocaine valued at approximately £5million. They denied all knowledge of the drugs and Duff acted for Gibson in the subsequent criminal proceedings. 6 months after the initial arrest, the two men were further charged with conspiracy to import drugs between the years of 1996 and 1998. During this two-year period, Duff had been involved in a number of transactions on behalf of Gibson, involving upwards of £70,000. These transactions included: £10,000 paid from Gibson to Duff on account of costs of ongoing litigation; £50,000 given to Duff by Gibson as an investment in a proposed branch office of the solicitor’s practice (this money was returned to Gibson by cheque a short time later, apparently because Gibson had changed his mind); £10,000 paid by Gibson into a company called Talking Compensation Ltd, which was set up to solicit personal injury compensation business for Duff’s practice. Following Gibson’s arrest on conspiracy charges, Duff claimed, he became aware that he might have been used for the purposes of money laundering. He consulted Law Society literature on the matter and concluded that, as the transactions were in the past and because of his duties to Gibson as a client, he was under no duty of disclosure. At that stage, he took no further advice on the matter. Following Gibson and associate’s convictions in 1999, Duff took advice from a solicitor who advised him that his conclusion that he had been under no duty to report was correct.

The judgment from Duff’s (failed) appeal against his sentence states that he “had been drawn, albeit unwittingly” [CoA – Duff] into the money laundering offence, and in the transcript from the Solicitors Disciplinary Tribunal (SDT) hearing, Duff is described as having “been unwittingly used for the purpose of drug money laundering” [SDT – Duff]. This suggests that Duff’s involvement in the facilitation of money laundering was

unintentional; he did not purposefully provide assistance to his client in the laundering of criminal proceeds. The transactions that Duff carried out on behalf of Gibson had occurred prior to Gibson's initial arrest at Birmingham Airport. It is not possible to ascertain from the information available what Duff knew or suspected about Gibson's business activities, illicit and otherwise, prior to his arrest, but it is clear that the judge in his case and subsequent appeal, and the members of the SDT present at his hearing, were satisfied that he had been 'unwittingly used' to facilitate money laundering. The term 'unwitting' indicates a lack of intent on Duff's behalf – although does not necessarily make comment on any suspicions Duff may have had about Gibson's criminal activity – and implies that Duff was not actively engaged in the money laundering. Duff was sentenced to 6 months imprisonment following his conviction for failing to disclose knowledge or suspicion of money laundering. Therefore, this case demonstrates that it is possible to be convicted and receive a custodial sentence even if it is concluded that there was no criminal intent involved, and that the professional had been 'unwittingly used' in the money laundering activity. This is due to the broad scope of money laundering legislation in the UK, which allows for conviction without criminal intent. This will be discussed further in section 7.3 of this chapter.

JONATHAN KRESTIN (Case 8) was convicted under s.328 of POCA, in relation to the movement of the proceeds of a large-scale VAT fraud conducted by Michael Namer. Between 2003 and 2005, Krestin undertook small amounts of commercial work for Namer, who had been introduced to Krestin by a tax advisor at a large accountancy firm, as a client of the tax advisor who required a solicitor to undertake this work. The transaction for which Krestin was convicted was the receipt and subsequent disbursement of €14,000 to a bank account controlled by an acquaintance of Namer's, on the instructions of Namer.

In sentencing Krestin, the judge remarked that:

"I do not think for one moment that Mr Krestin given his excellent character, his long experience as a lawyer working his way up to become the senior and managing partner of his firm, was in any sense guilty of knowing assistance." [SDT – Krestin]

and that Krestin:

"...was certainly not knowingly trying to break the law" [SDT – Krestin]

The SDT agreed with this conclusion, stating in its final decision that:

“It was clear that [Krestin] had not been aware of, actively involved in or had made any profit from the money laundering activities of his client” [SDT – Krestin]

Therefore, as with Jonathan Duff, there was the clear conclusion from those involved in hearing Krestin’s case in the criminal courts and disciplinary tribunal that he had not been actively involved in the money laundering, had not knowingly assisted Namer to manage his criminal proceeds, and had received no profit from the laundering. However, reports on the case and the transcript from his SDT hearing highlight that prior to Krestin transferring the €14,000, he had received a court order cataloguing the criminal offences that Namer was suspected of:

“The payment had been made following a draft production order to [Krestin], dated 21st September 2005, that had set out the criminal case against Mr Namer, had named the companies and entities in whom the customs had been interested and had warned [Krestin] about the offence of tipping-off Mr Namer.

Leading Counsel explained that in the circumstances [Krestin] had believed that he had no choice but to make the payment as instructed by Mr Namer, but the jury had found the offence proved. [Krestin] now fully accepted that he should have taken legal advice at the time about whether or not to make the payment requested after the date of the production order because that order had put him on notice.” [SDT – Krestin]

This indicates that Krestin would have suspected that any money belonging to Namer could have been the proceeds of criminal activity, but would not have known for certain that this was the case. It therefore highlights the *decision* taken by Krestin in choosing to go ahead with the transfer of funds; a decision he made without first taking legal advice. Krestin argued that he “had believed that he had no choice but to make the payment as instructed by Mr Namer” [SDT – Krestin], and the tribunal accepted that this “had been [...] a very difficult decision” [SDT – Krestin].

This highlights the importance of considering the decision-making of professionals involved in the facilitation of money laundering, and draws attention to the occupational and wider contexts in which their decisions are made (Vaughan 2002, 2007). As discussed in the previous chapter, transactions that professionals are

involved in which can involve criminal proceeds are the same transactions they will conduct as a regular part of their work with 'clean' money. So, the transaction that Krestin conducted on Namer's behalf involves the same processes and behaviours as a legitimate transaction; the difference is not in the *action* but in the *origins of the funds* involved. Therefore, Krestin's decision on whether to proceed in this context was not based upon a question of the nature of the *transaction* but the licit or illicit nature of the *funds* involved. When we look back at a case such as this, and consider that the transaction had been conducted following Krestin's receipt of a production order setting out a criminal case against Namer, it may seem obvious that Krestin should have had suspicions about the illicit nature of the funds. This isolates Krestin's decision-making, however, removing its contexts. It does not take into account the nature of the transaction in relation to other transactions he was carrying out, the other decisions he had to make at the same time, or the other business that he was involved in at that particular point in time. These factors provide the situational contexts to Krestin's decision-making and draw attention to the way that these contexts influenced his actions (Vaughan 1998, 2002).

Krestin's decision will also have been affected by the warning he had received alongside the production order about 'tipping off' Namer. 'Tipping off' is an offence under s.333 of POCA; it refers to the act of making a disclosure likely to prejudice a money laundering investigation. If Krestin had told Namer that he was subject to a criminal investigation relating to money laundering, he would have been committing an offence under this part of the legislation. Therefore, had Krestin decided not to proceed with the transaction, he would have had to do this without letting Namer know that he was under suspicion. It is here that we see the conflicts inherent in regulated professionals' positioning as 'gatekeepers' in the anti-money laundering regime, and the obligations and responsibilities that this entails. Such professionals are considered to be in a position to prevent money laundering through transactions such as the one conducted by Krestin, because of their professional position and expertise, and because they often play a role in transactions and processes that can involve criminal proceeds. Yet, the nature of these transactions can be the same whether they involve 'dirty' or 'clean' money. The decision about whether to progress a transaction will therefore be a regular feature of the day-to-day work of professionals such as solicitors and accountants, and the decisions and judgements professionals make in these circumstances can have significant consequences, because of their anti-money laundering obligations. Therefore, their position as regulated professionals within an

anti-money laundering framework that views them as ‘gatekeepers’ confers both the responsibility for making correct and appropriate decisions and significant consequences for a failure to do so.

ANDREW TIDD (Case 18) acted as conveyancing solicitor for a client, Nevzat Kocabey, in the purchase of two properties. The transactions occurred while, or shortly after, Kocabey was in custody for drug offences. Tidd maintained that he had been aware that Kocabey was in custody, but believed it to be related to a dispute with a former business partner. He said that he was not aware until much later, when he was questioned by the police, that it was related to drug offences, and said that he had never had any suspicions that Kocabey was involved in drugs or that the transactions were in any way tainted. It is clear from the data on the Tidd case that the court and disciplinary tribunal accepted that he had not known or suspected that Kocabey was engaged in money laundering, but that he had reasonable grounds to suspect he was:

“It was clear that the Respondent had not known or, indeed suspected that [Kocabey] was involved in money laundering. Rather, the Respondent had had information which he received in the course of his legal practice which gave reasonable grounds for knowing or suspecting that [Kocabey] was involved in money laundering but he had not made the required disclosure.” [SDT – Tidd]

“... this showed a degree of culpability considerably below that of a person who had actually suspected money laundering. The offences were ones of failing to report, not of involvement in money laundering.” [SDT – Tidd]

These quotes highlight the fact that Tidd was convicted under s.330 of POCA, the offence of ‘Failure to Report: Regulated Sector’, for failing to disclose to the authorities knowledge or suspicion that his client was involved in money laundering. Under this part of the legislation, a regulated professional can be convicted even if they did not have actual knowledge or suspicion that someone was engaged in money laundering, but they had reasonable grounds to suspect this. The offence of ‘Failure to Report’, and its implications for regulated professionals, will be discussed later in this chapter. As shown in the second quote, different money laundering offences are associated with different levels, or degrees, of culpability. Solicitors such as Tidd, convicted under s.330 of POCA, are considered to have a lower ‘degree of culpability’ than those who had ‘actual knowledge or suspicion’. During Tidd’s tribunal hearing, it was stressed a

number of times by the representative of the SRA, who was prosecuting the case at the tribunal, that Tidd's actions were at the "lower end" [SDT Hearing – Tidd] of the available money laundering offences. Likewise, in his criminal trial, the judge had underlined that this was "the lowest level of criminal responsibility under the Scheme of the 2002 Act" [SDT – Tidd]. The assessment that Tidd's actions entailed a lower personal culpability and level of criminal responsibility was related to a lack of intention to cause harm, the absence of dishonesty, and Tidd being guilty of misjudgement rather than deliberate, knowing involvement in the laundering:

"... the degree of personal culpability on the part of the Respondent in this particular case was minimal; he had misjudged his client and the situation and had not intended any harm." [SDT – Tidd]

During his SDT hearing, Tidd had the opportunity to speak in his own mitigation. He argued that the offences he had pleaded guilty to were "more akin to an error of judgement" [SDT Hearing – Tidd]. He admitted that "the fact that someone had been in custody and wanted to buy property should have been grounds for suspicion" [SDT Hearing – Tidd]. However, he believed that he had not acted "recklessly", there was "never any dishonesty on his part" and there had not been a "departure from probity, integrity and trustworthiness" [SDT Hearing – Tidd]. Tidd knew that Kocabey had been in custody, but believed it was related to a business dispute. He said this was based on information that had been given to him by Kocabey's wife, who visited him to tell him of her husband's arrest. Kocabey's wife did not mention a drugs charge, and Tidd was not involved in representing Kocabey in his criminal case. He stated that he therefore had no knowledge that Kocabey was involved in drugs and so no suspicions that the funds subsequently used to purchase the properties had their origins in criminal activity. However, he admitted that there were "reasonable grounds for suspicion" [SDT Hearing – Tidd] in relation to the origins of the funds being used in the property transactions and Kocabey's reasons for purchasing the properties, because of the fact that Kocabey had been in custody. Tidd believed that the error he made was not to find out what Kocabey was in custody for. Had he done this, "none of the events leading to his conviction would have happened" [SDT – Tidd]. Therefore, all 5 counts on which he had been convicted "all flowed from one error of judgement, which he made in the first instance" [SDT – Tidd]²¹.

²¹ It is notable that the language used by Tidd during his mitigation has echoes of Sykes and Matza's (1957) techniques of neutralisation, which have since been shown in a number of studies of white-collar offenders to be used as a means of justifying their behaviour (see Chapter

So, as with the previous case involving Jonathan Krestin, we see in Tidd's case a decision being made to proceed with a transaction – or series of transactions – that, in themselves, are no different to transactions they would regularly conduct. Tidd was a conveyancing solicitor, and so the focus of his work was acting as conveyancer in the purchase and sale of property; he will therefore have acted for many clients in the same way that he acted for Kocabey. The decision he made to proceed with this conveyancing was, again, not about the nature of the *transaction* but about the nature of the *funds* involved, which, in this case, were of illicit rather than licit origin. Therefore, Tidd's 'error of judgement' was grounded in the context of his regular work and in certain circumstances that played a role in his decision-making. The Tribunal recognised this; having heard the facts of the case, they concluded that while Tidd

“should have been on notice that there were circumstances which required further enquiry [...] all of the circumstances had given him comfort. The transactions on which he had been instructed by [Kocabey] were entirely normal for a businessman engaged, as [Kocabey] was, in the fast food business. [...] Whilst [Tidd] should have been alert to the reasons for [Kocabey's] detention the Tribunal accepted that he had accepted the explanation given by [Kocabey's] wife, which in turn tied in with other information held by [Tidd]. [Tidd] may have been naïve, but he had not acted with any malice.”
[SDT –Tidd]

This statement recognises the circumstances in which Tidd made the decisions to proceed with property purchases on behalf of Kocabey, including the fact that, as Kocabey was involved in legitimate businesses, the transactions in which he instructed Tidd were “entirely normal”. Kocabey's position as a businessman granted him a level of legitimacy that impacted on Tidd's decision. In addition, as was discussed in the previous chapter, there was a 'broker' involved in the relationship between Tidd and Kocabey, as they had been introduced by Kocabey's brother who was a long-standing client of Tidd's and himself a respected businessman. These factors would contribute to

4). He did not deny the actions he took, but rejected the suggestion that these actions were based on dishonesty or a lack of integrity. It is suggested that such techniques allow offenders to rationalise and justify criminal actions prior to carrying them out (Piquero, Tibbetts and Blankenship 2005). In order to consider whether Tidd was using a process of neutralisation to justify actions he was taking *prior to or at the time he was taking them*, it would be necessary to know whether he was rationalising these actions or the decisions and choices he was taking at that time.

the perception of Kocabey as trustworthy and legitimate, and therefore would undoubtedly have affected Tidd's decision to proceed with the transactions.

The presence of a 'broker' was also identified in the case of PHILLIP GRIFFITHS (Case 6), who acted as conveyancer in the sale of a property from convicted drug traffickers to an estate agent, Leslie Pattison, who was a close associate. Griffiths' relationship with Pattison provided a degree of legitimacy to the transaction, and the decision he made to be involved in the transaction can be seen in the context of this relationship. Griffiths was considered to have made an error of "professional judgement" in deciding to proceed with the transaction, not consistent with the "high standards expected" of someone in his professional position:

"He was well acquainted with his client and the legitimacy of the source of the funds used to finance the transaction. The jury found that he had been wrong in his professional judgement as to the reason for and legitimacy of the transaction." [SDT – Griffiths]

"... this offence is the product of a lapse in the high standards expected of a solicitor" [CoA – Griffiths]

The reference to the standards expected of a solicitor demonstrate again their particular role in relation to preventing money laundering, and the responsibilities to be more aware of the possibility of money laundering because of their professional position. It also reflects their vulnerability as practitioners to the possibility of being 'caught up' in money laundering because of an error of judgement or failure in their professional standards. This vulnerability was highlighted by Griffiths who, following his conviction, argued that the six-month sentence he received had been an "injustice", and warned others in his position that "it only takes one error" to result in a criminal conviction:

"I made a simple mistake, amounting even in its worst interpretation to no more than an error of professional judgement, from which I made no benefit... all sole practitioners and MLROs in solicitors' practices should take heed." [Other – Griffiths]

The relationship between the professional and the individual whose criminal proceeds

they are involved in laundering, and the impact of this relationship on their decisions, was also evident in the case of RACHEL TAYLOR (Case 10). As highlighted in the previous chapter, Taylor's conviction related to assistance she had provided to her former partner, Pardeep Bains, with whom she remained on close terms. Bains asked Taylor for help completing tax returns for a fake motor trading business that he used to account for the income from his criminal activity. Taylor's actions in this case, which led to her conviction, and which amounted to little more than writing out a series of figures purporting to be income, expenses and profit from the motor trading business, but which nonetheless were enough to result in a conviction for money laundering, were surely a direct result of her relationship with Bains, and the decision she took to help Bains based on this relationship.

The cases discussed in this final category show that, rather than involving active, knowing facilitation of money laundering, many convictions of solicitors for money laundering offences are the result of errors of judgement or decisions taken, influenced by their specific situational contexts. There may be no intent to launder or actual dishonesty on the part of the professional; yet, even if it is accepted that the professional was an unwitting participant in the laundering, they can still be convicted of money laundering offences that have a maximum sentence of 14 years imprisonment. Decisions made by professionals to proceed with certain transactions, or not report a suspicion of money laundering, were shaped by the nature of their occupational role, relationships with other actors involved, and the particular circumstances leading up to and surrounding the point at which the decision was made. Their occupational role involves carrying out transactions on a regular basis that do not differ essentially from the transactions for which they are convicted, apart from the licit or illicit nature of the funds involved, as discussed initially in the previous chapter. Due to the nature of their work environment, the professional may be making a number of other decisions at the same time, be carrying out other transactions, or be conducting other business: the decisions made which result in the facilitation of money laundering should not be considered as isolated when looked at in hindsight, removed from the circumstances surrounding them. Other factors that may affect the choices legal and financial professionals make include the risk from 'tipping off' legislation and the perceived legitimacy of the predicate offender, which may be influenced by the presence of a trusted 'broker' in the relationship. In addition, these choices are made within the context of a profit-making business in a competitive market, with the commercial considerations that this entails. The cases in this category, and the previous

one, involved no significant personal profit to the professional. Therefore, for these professionals, unlike those who are knowingly and actively involved in facilitating money laundering, it is not about making a deliberate choice to offend for reasons of financial gain. It is not about taking opportunities to commit criminal activity, and it would misunderstand the nature of the professional's actions if they were considered in this light. They are not making rational choices to offend; however, the decisions and choices they take are rational within the situational contexts in which they occur. That is, the professionals' actions are 'made rational' by their situated nature (Vaughan 1998: 25).

7.2 On the 'Borders of Knowingness': The Challenge of Categorisation

Chapter 3 of this thesis highlighted the way that official and academic literature categorises professionals' involvement in money laundering in relation to their level of 'knowingness' or complicity. In much of the literature this is presented as a dichotomy, with professionals considered to be either 'knowingly engaged' in the laundering or 'unwittingly used' by the predicate offender, with related judgements about the level of culpability associated with each of these positions. A report by the FATF (2013) on the vulnerability of the legal profession to money laundering and terrorist financing acknowledged the difficulty of such a straightforward distinction, finding that attempts to clearly distinguish between knowing, complicit involvement and that which was unwitting proved problematic. They suggested that the nature of the involvement of professionals in money laundering could be more accurately described as a continuum, which included a number of different categories: innocent involvement, unwitting involvement, wilful blindness, being corrupted, and complicity (see Chapter 3, section 3.2.3). The findings presented in the current chapter show that constructing professionals' involvement in the facilitation of money laundering as either 'knowing/complicit' or 'unwitting/unknowing' is insufficient and simplistic. The categorisation presented by the FATF – while attempting to move away from a dichotomous distinction – remains restrictive, and fails to take into account the ambiguity of the 'grey area' beyond complicit, active involvement. Issues of decision-making and judgement, as described in the previous section, make it difficult to neatly categorise the nature of involvement, or the level of the professional's knowingness, as, for example, 'innocent' or 'unwitting' or 'unknowing'. As one of the interviewees put it, the nature of legal and financial professionals' involvement in money laundering often exists "on the sort of borders of knowingness" [LE1]. This 'border region' could include

professionals that suspect a transaction is not completely legitimate, or involves funds that may come from criminal activity, but do not know for sure. They may choose not to act on these suspicions, perhaps due to commercial reasons or a lack of understanding of their obligations, or not ask the questions that would confirm or refute their suspicions, or look too closely at the transactions. It could also include those that had no suspicions of money laundering, but did not carry out sufficient checks or failed to undertake correct procedures. It was suggested by one of the financial investigators interviewed that such errors or misjudgements could be due to stress, overwork, or the sheer number of clients that solicitors and accountants may deal with on a day-to-day basis; that it was not about them being “good” or “bad”:

“I don’t think some of the solicitors are, they’re not either good or bad. You get people in between who are overworked, I think. And will just: ‘yeah, whatever’, and just want to push something through. Not ... actually being that aware... just that busy and stressed out with however many clients on the go... And there’s not intention there, they’re just overworked and they’ve got that much to do they just let it slip...” [LE8]

This was echoed by another interviewee from a financial intelligence unit, who showed a degree of sympathy for the nature of a busy office and the related pressures:

“The problem is that, they’re so busy, they’re so so busy. Because we can take it from this ivory tower and say you should do this, you should do that. Money laundering regulations say all about this Know Your Client stuff. But at the end of the day, we’re not sat in an office where the phone’s going every 20 seconds, someone walks in off the street, saying ‘I need this, I’ve got a conveyancing file, blah de blah blah, here’s my passport, is that the same?’ And it’s a hit for them to go, yeah, and whatever the fee is, a quick 100 pounds, just to say ‘yeah that’s your passport’. Quick signature or whatever it might be. So there is that pressure on.” [LE6]

Interviews conducted during the research showed an appreciation of these ambiguities, with the CPS prosecutor interviewed highlighting the range of behaviours that would be considered as ‘facilitating’ money laundering, and the difficulties of differentiating between these:

“I mean, facilitating is a strange thing, because, you know, suspicion is really enough to have to put in a suspicious activity report. You’ve got people who are either not clued

up or, or not wilfully assisting. I think you've got those who wilfully assist, and you've got those who, who don't: who do it just because they don't understand the ... legislation. Someone's coming in and paying in cash, and they're not putting in a suspicious activity report. Not necessarily because they are in collusion with the criminals, but because they just don't really understand that ... the goal posts have moved... The requirement to report has not really got through their front door yet, they haven't quite got it." [CPS1]

"... it's not always easy to make the differentiation, I think, between wilful assistance and just ignorance of what they're supposed to do or what's going on in the background." [CPS1]

Those whose job it is to regulate solicitors and investigate any wrongdoing, or potential wrongdoing, admitted that while it often seems evident to them that it should have been obvious that money laundering was occurring, this is with the benefit of hindsight and "to be fair that's often because it's been properly investigated" [SA3].

"Sometimes it's quite hard to believe that they weren't aware, you know, the situation was so obvious. But at the same time you have to remember that ... we're dealing with that isolated case when we're assessing it ... as an inspector. They probably had any number of different transactions and spent maybe an hour on it in that particular week. The information was drip-fed to them by often very credible, very plausible, very charismatic individuals. And the stories, when we hear them, well if it wasn't for the fact that we have the background and know who these individuals are, you could see how a solicitor could believe them. Whether they accepted that, whether they were duped and were as much a victim as anybody else, or whether they've got involved in it, it's very difficult to ascertain." [SA2]

These quotes highlight the difficulties with trying to determine the extent of professionals' knowledge or intent in relation to money laundering, suggesting that lacking a clear understanding of the relevant legislation and their responsibilities under the Money Laundering Regulations may cause professionals to act in a way that facilitates money laundering, and drawing attention to the context in which professionals' actions exist. The quote from Interviewee SA2 notes the number of transactions that such professionals deal with and the lack of time that may be afforded to a single transaction, and suggests that, as the professional is not seeing the

transaction with the benefit of hindsight, and perhaps being unaware of all the background circumstances, it is often very difficult to determine their level of complicity.

So, can we categorise the nature of professionals' involvement in the facilitation of money laundering? The previous chapter demonstrated variation in the means of facilitation, the benefit received by the professional from their involvement in laundering, and the nature of their relationship with the predicate offender. This chapter has shown notable variation in the levels of intent and awareness of professionals involved in money laundering. There is a temptation to try and develop a typology of professional facilitation of money laundering, incorporating such factors, in order to provide clarity to this issue and allow us to focus on certain characteristics of each group. However, I believe this would be a mistake. The nature of professionals' involvement in money laundering cannot be neatly categorised; the 'facilitation of money laundering' can involve various actions and behaviours, and complex, multi-layered relationships, and the boundaries between levels of awareness and intent of professionals are blurred. Any attempts to provide clear categories would lose sight of the complexities and ambiguities of this phenomenon, and therefore provide a misleading picture and artificial distinctions. It is more important, I think, to understand the complexity of the behaviours and actions that fall under what is classed as 'the facilitation of money laundering' and that can lead to prosecution for money laundering offences; a complexity that is lacking in official discourse.

7.3 The Legislative Context

The cases discussed in the first section of this chapter included solicitors who had been convicted of money laundering even though they were adjudged to have had no intention to launder criminal proceeds, were not actively engaged in the laundering, and, indeed, were considered to "have been unwittingly used" [SDT – Duff] by the predicate offender for the purposes of laundering. Furthermore, Andrew Tidd's case demonstrated that it is possible for regulated professionals to be convicted under the money laundering legislation even if they had not suspected that money laundering was occurring, if there were 'reasonable grounds' for them to have done so. This is possible because of the wide scope of the legislation used to prosecute such activity in the UK, which allows for conviction without criminal intent or even, in certain circumstances, actual knowledge or suspicion that money laundering was taking place.

7.3.1 POCA: Sections 327, 328 and 329

Within the three principal money laundering offences contained in POCA (sections 327, 328 and 329; see Chapter 2 for an overview of money laundering legislation in the UK), the proceeds of crime to which the offences relate are referred to as ‘criminal property’, defined as property that:

‘constitutes a person’s benefit from criminal conduct or it represents such a benefit (in whole or part or whether directly or indirectly), and the alleged offender *knows or suspects* that it constitutes or represents such benefit.’
(POCA 2002 s.340, emphasis added)

These offences therefore have a *mens rea* at the level of ‘suspicion’; actual knowledge is not required for a conviction under this part of the legislation. The concept of suspicion in this context is ambiguous, and there is no objective definition. Guidance is provided for the legal profession by the Law Society’s (2013: 73) Practice Note on money laundering, which advises its members that:

‘[t]here is no requirement for the suspicion to be clearly or firmly grounded on specific facts, but there must be a degree of satisfaction, not necessarily amounting to belief, but at least extending beyond speculation.

The test for whether you hold a suspicion is a subjective one.

If you think a transaction is suspicious, you are not expected to know the exact nature of the criminal offence or that particular funds were definitely those arising from the crime. You may have noticed something unusual or unexpected and after making enquiries, the facts do not seem normal or make commercial sense. You do not have to have evidence that money laundering is taking place to have suspicion.’

Therefore, although suspicion requires a level of satisfaction greater than mere speculation, it does not require a clear factual basis. Solicitors could be considered to have suspicion of money laundering without specific facts or evidence, and without knowing the nature of the criminal offence or that the funds they were dealing with were definitely the proceeds of crime.

The *mens rea* of these offences varies markedly from the international frameworks from which POCA derived. The FATF 40 Recommendations, related UN conventions and successive Money Laundering Directives had a much greater focus on intent and

knowledge, and were directed more towards those deliberately laundering criminal proceeds. For example, Article 1 of the Third Money Laundering Directive states:

1. Member States shall ensure that money laundering and terrorist financing are prohibited.
2. For the purpose of this Directive, the following conduct, *when committed intentionally*, shall be regarded as money laundering:
 - (a) the conversion or transfer of property, *knowing* that such property is derived from criminal activity or from an act of participation in such activity, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in the commission of such activity to evade the legal consequences of his action;
 - (b) the concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of property, *knowing* that such property is derived from criminal activity or from an act of participation in such activity;
 - (c) the acquisition, possession or use of property, *knowing*, at the time of receipt, that such property was derived from criminal activity or from an act of participation in such activity;

...

5. *Knowledge, intent or purpose required as an element of the activities mentioned in paragraphs 2 and 4 may be inferred from objective factual circumstances.*

(Third Money Laundering Directive, 2005/60/EC, emphases added)

It is clear, therefore, that the primary money laundering offences in UK law go well beyond what is required by international standards, with no requirement for criminal intent and the mental element being satisfied by suspicion. Accordingly, the legislation is not aimed solely at those deliberately laundering criminal proceeds; its scope is much broader, allowing for the inclusion of a wider range of acts (and omissions) and for those who are less directly - and unintentionally - involved in money laundering.

7.3.2 'Failure to Disclose: Regulated Sector' (s.330)

The s.330 offence of 'Failure to Disclose: Regulated Sector' goes even further. In this offence, the mental element of knowledge and suspicion is extended to include the objective test of '*having reasonable grounds*' for such knowledge or suspicion. As outlined in Chapter 2, s.330 of POCA states that a person commits an offence if:

- they know or suspect, *or have reasonable grounds to know or suspect*, that another person is engaged in money laundering; and
 - the information or other matter on which their knowledge or suspicion is based, *or which gives reasonable grounds for such knowledge or suspicion*, comes to them in the course of a business in the regulated sector; and
 - the person does not make the required disclosure as soon as is practicable after the information or other matter comes to him.
- (POCA 2002a, s. 330 (1-4), emphases added)

The objective test – also known as the ‘negligence test’ - therefore asks whether there were

‘... factual circumstances from which an honest and reasonable person, engaged in a business in the regulated sector, should have inferred knowledge or formed the suspicion that another was engaged in money laundering?’ (Law Society 2013: 73).

This means that those working in the regulated sector can be found guilty of a ‘failure to disclose’ offence under s.330 if they *should have* known or suspected another person was engaged in money laundering, even if they did not *actually* know or suspect this. As such, a failure to disclose knowledge or suspicion of money laundering is treated as a criminal offence in the same way as deliberate money laundering, albeit with a lesser sentence attached for conviction²². This was reflected in the cases examined in this research, with criminal convictions for solicitors such as Phillip Griffiths and Andrew Tidd, who the court accepted “had not known or, indeed, suspected that [the client] was involved in money laundering”, but had received information “which gave reasonable grounds for knowing or suspecting that [the client] was involved in money laundering” [SDT – Tidd].

Within the cases, those who were convicted only of ‘failure to disclose’ offences under s.330 of POCA or (in the case of Jonathan Duff) s.52 of the Drug Trafficking Act 1994²³, which preceded POCA, received sentences at the lower end of the spectrum. There was considerable variation in the sentences received by the solicitors in the cases examined,

²² Under sections 327, 328 and 329, maximum sentence is six months imprisonment or a fine on summary conviction, and 14 years imprisonment and/or a fine on indictment. Under section 330, maximum sentence is six months imprisonment or a fine on summary conviction, and 5 years imprisonment and/or a fine on indictment.

²³ Drug Trafficking Act 1994, s.52(1): Failing to disclose knowledge or suspicion of money laundering.

ranging from a fine of £2,515 to custodial sentences of up to 5 years for money laundering offences alone (Bhadresh Gohil received a sentence of 7yrs imprisonment, but he was convicted of multiple offences including conspiracy to defraud and conspiracy to make false instruments)²⁴. Four solicitors were convicted only of ‘failure to disclose’ offences: Jonathan Duff (Case 1), Phillip Griffiths (Case 6), Andrew Tidd (Case 18) and Martin Wilcock (Case 14). They received sentences ranging from a fine of £2,515 (Wilcock), to a suspended sentence of 4 months imprisonment (Tidd), to 6-month custodial sentences (Duff and Griffiths). Therefore, while these sentences are at the lower end of the range seen within the cases, they show that it is still possible to receive custodial sentences for ‘failing to disclose’ suspicions of money laundering. This has significant implications for individuals and organisations in the regulated sector, such as legal and financial professionals, and places considerable responsibility on them to be alert to possible money laundering. The rationale for the inclusion of the ‘reasonable grounds’ test is that:

‘persons who are carrying out activities in the regulated sector should be expected to exercise a higher level of diligence in handling transactions than those employed in other businesses’ (POCA 2002b, s. 330).

This reflects such professionals’ designation as ‘gatekeepers’, and their associated obligations to prevent money laundering in line with their role in the global ‘fight’ against money laundering.

7.3.3 Scope of the Legislation: Justifications and Risks

Money laundering legislation in the UK, therefore, has an extremely broad scope, allowing for conviction without criminal intent; incorporating a *mens rea* of suspicion, which does not require a clear factual basis, knowledge of the nature of the predicate offence, or certain knowledge of the criminal origins of the funds involved; and, for regulated professionals specifically, allowing for conviction if there were ‘reasonable grounds’ to suspect that someone was engaged in money laundering and not reporting this, even if they did not actually have such suspicions. This represents a notable departure from the international frameworks from which UK money laundering legislation derived, which focused on those who had deliberately laundered criminal proceeds. The breadth of the legislation means that what is considered as the ‘facilitation of money laundering’ by legal or accountancy professionals in legal terms is

²⁴ See Appendix 1 for details of sentences received in all the cases.

wide ranging, incorporating different degrees of intent and knowingness. This was demonstrated in the cases discussed in the first section of this chapter, which included those who were actively, knowingly engaged in money laundering, but also those who had made isolated errors of judgement and were considered to have been unwittingly involved in the laundering or had no actual suspicion that laundering was taking place. The low level of *mens rea* required for conviction under POCA – especially for those who work in regulated professions – means that we see cases such as that of Rachel Taylor, who was convicted for writing out a series of figures on the back of a letter, and Andrew Tidd, who conducted conveyancing for a client he apparently believed was legitimate. This raises questions about the proportionality and fairness of a legal framework that considers such actions as criminal offences that can result in a custodial sentence, as well as the end of a professional career.

It was suggested by representatives of law enforcement and CPS interviewed during this research, that the ‘Failure to Disclose’ offence was a necessary and beneficial element of the legislation, due to the difficulties of proving actual knowledge or suspicion. Indeed, the reporting requirements in this part of the legislation were expanded to include the ‘reasonable grounds’ component because of a concern that some individuals in the regulated sector had chosen not to report suspicions of money laundering because they were aware of the difficulties of proving ‘suspicion’, and so felt that they would be safe from prosecution (Hopton 2009). Interviewees from a financial investigation unit stated that the s.330 offence offered them a better route for prosecution of professionals involved in money laundering, by avoiding the difficulties they had previously experienced with proving active involvement:

“We’ve discussed recently ... that, in the cases we currently have going, that do have a number of solicitors involved, is that we’d look at the ‘Failing to Disclose’ element of it. Lower burden of proof for us, there’s a reasonable person test in there, isn’t there. And we perhaps pursue that instead of trying to prove these guys were involved in money laundering. So that’s our, certainly a live discussion we’re having. And that’s how we’re going to pursue currently to see if we have a different outcome.” [LE4]

“So, you know, they can’t hide behind the fact that they’re a professional, you know, they made their enquiries about knowing who the customer was. You know, how would they know that [name]’s a drug dealer? But when you ask them, well [name]’s buying a house but £20,000 is coming from third party – who is that third party and why would they be giving you £20,000 when you’ve asked them, on your file, where

did the money come from? Or, the other side of the sale's asked where did the money come from for the deposit? And they don't ask, there's nothing captured anywhere. Well, surely a reasonable person would have said 'where's your money coming from?' ... We're going to rely on that..." [LE4]

It is notable that some of the cases analysed that resulted in convictions under s.330 had originated as prosecutions for other offences, or had included other offences alongside the s.330 offence. In these cases, the solicitor had either been acquitted of the other charges but found guilty of a 'failure to disclose' (e.g. Phillip Griffiths, who was also charged with s.328 and s.329 offences but found not guilty of these), or had agreed to plead guilty to the s.330 offence on the agreement that the other charges would be dropped (e.g. Andrew Tidd). This supports Interviewee LE4's suggestion that the s.330 offence offers a better chance of achieving a successful conviction.

The CPS prosecutor interviewed considered the lower burden of proof required by the s.330 offence to be

"... a concession to the need, or to a recognition, that [legal and financial professionals] are the weak point in terms of ... facilitating, or the strong point for criminals. So we need to make it, not easier to prosecute, but we need to put a more onerous burden on them to ensure they are not complicit ... in money laundering." [CPS1]

He did not consider the 'reasonable grounds' test to be problematic, and argued that there were safeguards in place:

"I recognise that it's a low *mens rea* suspicion, but in the context of the regulated sector, with all the support, input they have from their own professional bodies, I don't think it's, it's outrageously low.

...

And I think, when we looked at it, making the charging decision, we would look at the level of suspicion. You know, if it's someone who's ... had a failing because of their lack of training or whatever, then ... you can look at the people higher in the firm, et cetera. But I don't think we just go around prosecuting people who ... we think suspected, on the lowest level of suspicion, and didn't do something. I think we'd ... look at it a bit more in depth." [CPS1]

These quotes raise a number of interesting points. The prosecutor highlights the support that legal and accountancy professionals receive from their professional bodies in relation to money laundering, suggesting that this should allow them to avoid becoming unwittingly caught up in money laundering. In return, he argues for “a more onerous burden” to be put on them to ensure that this does not happen. His assertion that they do not “just go around prosecuting people” who had “the lowest level of suspicion” seems to be contradicted by some of the cases identified during this research. The financial investigator’s statement that they were “going to rely on” the s.330 offence more often seems likely to improve their chances of achieving successful prosecutions because of the lower burden of proof, but also leads to the possibility of professionals increasingly being convicted of money laundering offences as a result of the errors of judgement and individual decisions discussed throughout this chapter.

So, from the perspective of those involved in investigating and prosecuting professionals suspected of involvement in money laundering, there is an argument that the broad scope of the money laundering legislation in the UK is justified for a number of reasons, including the difficulties of proving *actual* knowledge or suspicion of laundering; the importance of dealing robustly with the ‘weak point’ in the anti-money laundering regime created by professionals who are in a position to facilitate laundering because of their status and role; and the fact that they are qualified, skilled professionals who are provided with sufficient support and training to bear this extra responsibility, and should be prepared to do so in exchange for the privilege of their position. However, the other side of this is that the legislation appears to ‘catch’ professionals that are not complicit in money laundering, but have made an error of judgement or have a low level of culpability. This has significant implications for those working in the regulated professions, whose occupational role means they are likely to come into contact with illicit funds and individuals wishing to launder them, and for whom the legislation means they are vulnerable to criminal prosecution for what can amount to nothing more than a professional misjudgement.

7.3.4 Views of the Professionals

Finally, it is important to consider what professionals themselves think about their money laundering obligations and the risks that this involves. There were mixed views on this from the practising professionals interviewed during the research, with one solicitor conveying a feeling of vulnerability because of these obligations, and suggesting that it imposed an unfair and inappropriate burden:

“...it is scary, as a professional, that, you know, you could misinterpret something or just, or not intentionally facilitate, but just miss something. The amount of transactions that we deal with, it is a scary thought, to be honest that you could have your whole life ruined, if there were proceedings, just for making the mistake. It’s different if you’re intentionally doing it, and you know what’s happening, and you still go ahead with it. But it’s scary that you can get caught by just simple, not omission, but just failing to pick up on something.

I think it is too, it’s too much. You know, we’re not forensic accountants, and so we’re having to do part of that job, that’s got nothing to do with the legal aspects of the transaction, but it’s extra things that we’ve got to be aware of.”

[S3]

However, another solicitor interviewed stated that the responsibility that solicitors had to prevent money laundering “doesn’t really” concern her, as

“[i]t comes with the territory. It’s one of the most responsible positions you can have in society, isn’t it. ... So no, I don’t think it bothers me at all. It’s a privilege isn’t it, to have a practising certificate.” [S2]

“I mean we all know don’t we? Everybody knows what the rules are; everybody knows that you have to check these things nowadays. I don’t know whether being particularly dozy is a really good excuse for it, to be honest! Morally, perhaps not, but whether you should be legally any less culpable, I’m not entirely sure about.

...

Yes, you should really [be able to see when money laundering might be occurring]. And if you’re not sure, if you’re ever in doubt,... If you’ve been deliberately hoodwinked and there’s no way that you could have found out that was what was happening, then that’s fair enough. You know, I think that’s one thing. If you’ve not been alert to something that you should have been alert to, you know, you can always ring the SRA, you can always ask people within your firm.”

[S2]

One of the chartered accountants interviewed suggested that the risk was something that “played on [his] mind”, but felt that it was fair because “it’s part of your responsibility” as

a chartered professional. He also clearly felt reassured that there would be no risk if you could show that you were “oblivious” to the money laundering:

“I guess it is fair. The punishment would be in line with, because what you’re doing when you take on, when you get your qualification you’re representing the body, you’re meant to be a part of it, you’re meant to be an upstanding citizen in society. So, and if you suspect something fraudulent you should be reporting it. So it is pressure, but if you were completely oblivious to it and you could prove you were oblivious to it, you wouldn’t really be at risk. It’s only when it’s so obvious that you are. It was always something that played on my mind because it is a risk, so I mean I think it’s fair - it’s part of your responsibility when you become chartered, and when you offer a service.”

[CA1]

These views reflect the points made earlier. Reference to the “responsibility” that goes along with having the position of solicitor or chartered accountant shows an acceptance of the duty they have to be aware of the risks of money laundering, and the comments from Interviewee S2 show an awareness of the support and advice available to help avoid these risks. However, the interviews also made clear the “pressure” felt by the professionals, suggesting it was something that “played on [the] mind” and highlighting the fear of being “caught by ... just failing to pick up on something”. Interviewee S3 also draws attention to the “amount of transactions” that they deal with, and the “scary thought” that “you could have your whole life ruined ... for making a mistake”, something that has been discussed throughout the last two chapters and was seen in the cases.

7.4 Conclusions

As this chapter has shown, the facilitation of money laundering by legal and accountancy professionals can involve different levels of intent and knowingness. Some professionals are active, complicit participants in the laundering, aware that they are facilitating transactions involving criminal proceeds. These professionals can be seen as making rational choices to be involved in criminal activity, for reasons of financial or business benefit. They therefore fit the construction of professional facilitation of money laundering seen in official discourse and much of the extant literature in this area, which explains professionals’ involvement in money laundering primarily in terms of personal financial motivations, profit and competitive advantage. However, only a small number of the cases identified in this research represented such active,

knowing involvement. In a majority of the cases, the nature of professionals' involvement suggested that there was no deliberate decision to offend, and no intent or active involvement. Instead, the professional's role in the money laundering resulted from errors of judgement or decisions made in relation to certain transactions, influenced by the nature of their occupational role, relationships with other actors involved, and the particular circumstances leading up to and surrounding the point at which the decision was made. As Suchman (2007: 70) stated, 'every course of action depends in essential ways on its material and social circumstances'. Vaughan (2002, 2007) echoed that point in her argument for greater consideration of the situated nature of individual action, and recognition of the role of social contingencies in decision-making. Decisions made by professionals to proceed with certain transactions, or not report a suspicion of money laundering, are shaped by the specific contexts in which they occur, which are created by social relationships and dynamics, organisational characteristics and the wider legislative and regulatory environment. As such, they reflect the analytical framework outlined in Chapter 4, which suggests that explanations of 'violative behaviour' in organisational settings are found in the interconnections between individual action, organisation and environment, which, when combined, play an influencing role on individual choices and actions (Vaughan 1992: 127).

Professionals can be convicted of money laundering offences even if they were not intentionally or knowingly involved, because of the wide scope of the money laundering legislation in the UK. The legislative framework allows for conviction without criminal intent, or even, in certain circumstances, actual knowledge or suspicion that laundering was taking place. Therefore, what can be considered as the facilitation of money laundering by professionals from a criminal law perspective incorporates the different levels of intent and knowingness discussed in this chapter. The characterisation of legal and financial professionals as "gatekeepers" of the financial system', rooted in the global anti-money laundering regime, and imposing on them considerable responsibilities and obligations for the prevention of money laundering (Cummings and Stepnowsky 2011: 3), means that such professionals can be considered to have facilitated money laundering by *failing* to do something (i.e. not fulfilling these obligations), not just for *doing* something. This reflects the regulatory approach to white-collar crime more broadly, where failure to take certain actions can constitute an offence, described as crimes of omission as opposed to crimes of commission (see e.g. Huisman and van Erp 2013). It is clear therefore that Middleton's (2004: 361) statement that regulated

professionals' 'failure properly to fulfil this function might have serious civil, disciplinary or criminal consequences' is correct. These issues raise a number of questions that are beyond the scope of this thesis, but certainly require further consideration. This includes questions about the proportionality and fairness of a legal framework that is so wide-ranging and goes far beyond the international standards from which it developed. It would be necessary to consider such questions in the context of the global anti-money laundering regime from which the legal and regulatory frameworks stem, and the perceived 'threat' from 'dirty' money that shaped the anti-money laundering regime.

While those professionals who were categorised as being 'complicit' in money laundering made up only a small proportion of the cases examined in this research, it is not possible to conclude that such involvement is less common than those who represent the 'grey area' of intent described. The data used was based on *convicted* professionals and so, as discussed in the Methodology chapter, it is possible that cases of complicit professional involvement were missed, if they were not prosecuted or a conviction was not secured (reasons for failure to prosecute or secure a conviction in such cases will be considered in the following chapter). However, what is clear is that the facilitation of money laundering by legal and financial professionals cannot be understood in terms of a dichotomy of 'knowing' and 'unwitting', or in clearly defined categories that suggest 'complicit' or 'innocent' involvement. Much professional facilitation of money laundering exists on the 'borders of knowingness', where the boundaries of knowledge, awareness and intent are blurred, and it is important that both academic and policy- and practitioner-based consideration of this area takes account of these complexities and ambiguities.

For those professionals who are not complicit in the money laundering activity, their actions do not represent a deliberate choice to offend. They are not taking opportunities to commit criminal activity, for reasons of financial gain or otherwise. This represents a notable distinction from Vaughan's theory of organisational misconduct, which emphasised the *opportunities provided* by the organisational setting and framed individuals' involvement in misconduct as 'taking advantage of the socially organised opportunities for deviance' available (1983, 1992: 127). The findings from this research suggest that these actors should not only be seen in terms of the purposeful taking of opportunities. Instead, consideration should be given to the way their actions and behaviours are shaped by and emerge from their situational contexts.

The analytical framework utilised in this research has, therefore, been useful for developing understanding of the nature of legal and accountancy professionals' involvement in money laundering. It has drawn attention to the influencing role of social relations, organisational settings and wider environmental contexts on professionals' actions and the choices they make, and how such factors can create what is considered as the facilitation of money laundering. This also suggests the utility of Vaughan's framework for examining other forms of organisational or 'white-collar' crime; this will be returned to in the final chapter.

The finding that many professionals involved in facilitating money laundering did not make a deliberate choice to do so has implications for preventing professionals from becoming involved in money laundering. The notion of deterrence as a means of prevention becomes problematic: if there is no active choice to facilitate laundering for the predicate offender how can it be deterred? Becoming involved in money laundering is a line that can be crossed without criminal intent. Continued education of professionals on the potential risks and a focus on areas of vulnerability may provide the best approach, but it is unlikely that this could completely prevent a reoccurrence of some of the cases discussed in this thesis. For those who choose to be involved in money laundering, it would be of benefit to know more about the opportunity structures that exist which allow them to make this choice (see Benson, Madensen and Eck 2009; Benson and Simpson 2015; Middleton and Levi 2015). This may lead to a clearer idea of prevention and intervention strategies, and would be a useful area for further examination. The following chapter considers issues of control in more detail, examining a number of themes that emerged from the data about current responses to professionals suspected of involvement in money laundering. As Chapters 6 and 7 have highlighted the complex and diverse nature of the facilitation of money laundering by legal and accountancy professionals, it is important to consider whether current responses take account of this complexity.

Chapter 8

‘Going After the Suits’ or ‘Chasing the Powder’?

Responding to Professionals Involved in Money Laundering

In this chapter, attention moves to the response to professionals’ involvement in money laundering, which involves both criminal justice and regulatory systems and processes. The chapter considers a number of themes that emerged from the analysis of data from interviews with a range of actors involved in this response, including financial investigators, other law enforcement personnel involved in the policing of organised crime, a Crown Prosecution Service (CPS) prosecutor, and members of professional and regulatory bodies. It looks firstly at the challenges associated with the investigation and prosecution of legal or accountancy professionals suspected of being involved in the facilitation of money laundering, discussing a number of such challenges that were highlighted by interviewees as reasons for a lack of prosecutions. It then considers a contrasting view, raised by a CPS prosecutor, which suggests that prosecutions are not being pursued by investigators because of a lack of prioritisation or strategic objective. Despite official rhetoric stressing the importance of focusing on professional facilitators, there remains a greater focus on those members of criminal groups involved in the primary criminality. Instead, professionals are more likely to be used as witnesses than pursued for prosecution, and it appears that little is done about professionals known to be connected to criminal groups. Finally, the chapter considers the role of regulators in the response to regulated professionals suspected of facilitating money laundering. There was a view from both law enforcement practitioners and members of professional and regulatory bodies that regulators could – and should – play a role in this response, thus alleviating some of the challenges of the criminal justice response and allowing law enforcement to focus on the primary offenders. However, the research identified a number of issues with an approach that combines criminal justice and regulatory responses, including problems with the working relationship between regulatory and criminal justice bodies, and groups that fall outside of the scope of current regulation. The chapter concludes by summarising

the findings and discussing their implications for the provision of an appropriate and effective response to the facilitation of money laundering by professionals, arguing that such a response must take into account the complexities and ambiguities involved and consider the way that criminal justice and regulatory bodies work together, their roles, limitations and priorities.

8.1 Challenges of Investigation and Prosecution

One of the themes that emerged from interviews with law enforcement personnel working in financial investigation units (FIUs) or involved in the investigation of organised crime and money laundering, was the view that there are particular and significant challenges associated with the investigation and prosecution of legal or accountancy professionals suspected of facilitating money laundering. These challenges, including difficulties with proving the guilty knowledge of the professional and their connection to the criminal proceeds, and the complexity and specialist nature of money laundering investigations, may be seen as the reason for a lack of successful prosecutions of professionals for facilitating money laundering.

8.1.1 Proving the Guilty Knowledge

A number of the interviewees suggested that the primary problem with bringing prosecutions against professionals believed to be involved in facilitating money laundering is proving the “guilty knowledge” of the professional [LE1; LE2; LE5]. They talked about the “high standard” required to demonstrate that the professional “knew or suspected” that the money they handled had come from criminal activity [LE5], and considered that deciding what offence to charge professionals with was problematic as they “tend to be offences where you’ve got to prove the knowledge” [LE1]. This is somewhat at odds with the actuality of money laundering law in the UK, as was highlighted in the previous chapter. Securing a conviction for money laundering offences does not require actual knowledge or criminal intent, and under s.330 of POCA it does not even require actual suspicion for regulated professionals who have failed to disclose money laundering. This suggests a lack of understanding within law enforcement of the legislation available. For example, only one of the investigators interviewed brought up the possibility of using the s.330 ‘Failure to Disclose’ offence as a means of prosecution with a lower burden of proof [LE4]. The CPS prosecutor interviewed noted the lack of s.330 prosecutions that he had seen, suggesting that this

“... could either be a good sign, that people are complying, or it’s a bad sign, that, you know, all these anecdotal stories that there’s lots of bent people out there, we’re not doing enough to find them.” [CPS1]

Reference made in the interviews to having to prove the guilty knowledge of professionals – and absence of references to the lower burden of proof required for prosecution under s.330 – may indicate a lack of awareness within police forces of the details of the money laundering offences available to prosecute regulated professionals.

8.1.2 Establishing the Connection Between Professional and Proceeds

Difficulties with acquiring the evidence required for successful prosecutions, gaining a clear picture of the criminality involved and being able to demonstrate the links between the professional and the criminal proceeds, were also highlighted [LE1; LE3; LE9]. Legal and accountancy professionals are specialists in “creating distance between criminality and their client”, it was suggested, and aim to “provide plausible deniability” as “part and parcel of their protection against ... criminal justice threats” [LE1]. This ‘distance’ makes them more difficult to convict than those directly involved in criminality:

“Their whole service is made to make it difficult, so clearly it is difficult. More difficult to convict a professional than a drugs courier... Because the drugs courier is directly attached physically to the criminal evidence, and in order to actually even identify the evidence as criminal you’ve got to do quite a bit of work to be able to place the accountant’s activities, or the lawyer’s activities, in the context which makes it criminal.” [LE1]

However, the notion of the professional being “a step away” [LE3] from the ‘dirty’ money because of their professional role does not quite fit with what were the primary means of facilitation in the cases examined in this research. The very nature of the professional’s role was based on their proximity to the money in many cases; having direct involvement in transactions that involved criminal proceeds passing through their firm’s client account or being used as property deposits. There would be no need to link the professional to the predicate criminality, if it was accepted that the funds were criminal proceeds. Any financial transaction that a professional was involved in on behalf of someone who was shown to have made profit from criminal activity could be considered as the facilitation of money laundering.

In relation to legal professionals specifically, the issues of legal professional privilege and client confidentiality were also highlighted as making evidence gathering problematic [LE1], as access to material held by a lawyer that is subject to legal professional privilege will be limited for law enforcement. In addition, there are no ‘victims’ to make statements or provide evidence against the professional. Unlike in cases of misconduct by professionals *against* their client – such as fraud or misappropriation or mishandling of funds – these cases involve professionals acting *for* their client, as Interviewee SA2 highlighted:

“Part of the issue is, what you would often do for other offences is, other offences can sometimes be against the client, for example if you take a client’s money that you’re not supposed to, so a client’s statement actually goes towards proving the offence. If a solicitor has actively assisted a client in money laundering, then you have a real big difficulty in that you can’t approach that client...” [SA2]

Therefore, the client – the predicate offender – is not available to use as a prosecution witness or to provide evidence against the professional, adding to the difficulties of evidence gathering in these cases.

8.1.3 Complexity of the Cases

The other key issue raised by interviewees from law enforcement in relation to the difficulties associated with investigation and prosecution of professionals suspected of facilitating money laundering, was the complexity of money laundering cases, and the specialist knowledge required to fully understand the role played by professionals in such cases. While those based in FIUs and the Regional Asset Recovery Teams (RARTs) have a degree of specialist knowledge and financial expertise, and will have received training in this area, there was a clear feeling that they lacked the specialist knowledge to fully understand the processes and transactions involved when a solicitor or accountant facilitates money laundering, for example, the details of conveyancing processes or complex financial transactions carried out by accountants. The complexity of such cases means that they are very time-consuming, expensive and resource intensive [LE5]. Investigators related having to resort to seeking expert advice while pursuing such cases in the past – for example to understand a series of conveyancing transactions – a situation that they found frustrating and “expensive, very expensive” [LE4].

8.1.4 Lack of Prosecutions

The issues raised by interviewees in relation to the investigation and prosecution of professionals suspected of facilitating money laundering may contribute to the small number of prosecutions of such individuals. This research identified only 20 cases of solicitors convicted of money laundering offences from 2002 to 2013, and no convictions of chartered accountants in the same time period. With the caveat of the challenges of identifying such cases (see Methodology chapter), this is not a particularly high number. This may be because there are few professionals who could be prosecuted for such offences. However, as was shown in the previous two chapters, professionals' likely proximity to 'dirty' money because of the structures, processes and transactions involved in their occupational role makes it highly possible for them to be involved in activity that would be considered as the facilitation of money laundering, and the legislation is broad enough to allow for prosecutions even if there is no criminal intent or actual knowledge of laundering. Therefore, there appears to be considerable scope for prosecuting professionals believed to have been involved in laundering. The lack of prosecutions therefore may be due to the challenges described above. The low number of prosecutions of professionals for facilitating money laundering has been highlighted in some of the literature in the area. Bell (2002: 18) suggested that this was partly due to the inadequacies of the money laundering legislation, creating obstacles that 'unfavourably weighed matters in favour of defendants in money laundering prosecutions'. Money laundering legislation has evolved significantly since the publication of Bell's article, with the enactment of POCA in 2002 and the Money Laundering Regulations in 2003, subsequently updated in 2007. Bell (2002) anticipated that the introduction of POCA would lead to a greater number of successful prosecutions of lawyers for involvement in money laundering, due to its greater simplicity, and it is clear that POCA provides ample provision for prosecution in money laundering cases. As the CPS prosecutor put it:

"The money laundering [aspect of POCA], I think, is fine... You know, it can always be slightly improved, but I think the legislation, as it is, is very good indeed. I think it's, it's one of the most draconian regimes that we know in the world. So I don't have a huge problem with it as it is." [CPS1]

However, concern over the lack of convictions continues (Middleton and Levi 2004, 2015; Nelen and Lankhorst 2008). Lankhorst and Nelen (2004: 172) suggested that this is partly due to a reluctance on the part of law enforcement and prosecuting authorities

to commence investigations into legal professionals, due to their status and ‘special position’ in society, meaning that a number of cases are never even investigated. Even when they are, the complexity of money laundering transactions and a concomitant lack of financial expertise and the skills to unravel these transactions within investigating bodies make investigations difficult, time-consuming and resource intensive. Middleton (2008) highlighted the difficulties imposed by the principles of lawyer-client confidentiality and legal professional privilege on the investigation of this type of activity, suggesting that these made a low prosecution rate almost inevitable. The issues raised by interviewees from within law enforcement echoed a number of these points. However, a further theme emerged from the interviews, which provides another explanation for the lack of prosecutions, relating to the priority afforded to this issue and the processes involved in its investigation.

8.2 Priority and Process

Interviewee LE9, an investigator in one of the Regional Asset Recovery Teams (RARTs), suggested that there was a reluctance from CPS to prosecute professionals suspected of being involved in money laundering, claiming that their professional status led to a degree of wariness by prosecutors:

“... CPS want to be certain. You know, if you're going to actually be accusing professional people of wrongdoing, we need to make sure it's absolutely nailed on. So that's another element to it that I think there's a little bit of wariness there.” [LE9]

However, the CPS prosecutor interviewed had a different view, suggesting that rather than there being a lack of desire to prosecute at CPS level, the blockages occurred earlier on in the process. He suggested that “there’s lots of options and opportunities out there to pursue prosecutions”, but felt that “there’s not a huge amount going on” by the police in regards to this. He suggested that this was partly because of the lack of an “overall strategy” or the appropriate prioritisation to address the issue, and suggested reasons why the police might be reluctant:

“... I don't think there's been a strategic objective to go after these people. And as I say, obviously there's going to be some exceptions.... But in terms of local police, I mean, it's just not that many things are being investigated, or at least referred to us for consideration and charges, etc. ... Probably because, it could be because it's in the too-

difficult-to-do drawer. It could be because they think it's just too, you know, too difficult to investigate, and also too difficult to prove, the offending."

"[A]gain, it's a police thing... I think it's possibly the comfort zone thing. It's ... more financial and regulatory. And, you know, people are gonna get slightly nervous about investigating solicitors and accountants, because, you know, it requires all kinds of forensic input and legal privilege issues.

...

Kind of get a sense that there isn't really the appetite to do it because it seems complex. And also, let's be honest, resources. I mean, they are not easy jobs to do. They're not your run-of-the-mill investigations, looking at compromised professionals. And in an era of decreasing budgets, it's hard enough to get people to look at long-term money laundering investigations, which are very time-intensive and require a lot of resources – resources, you know, depleting on a daily basis.... And I think maybe they get put on the back burner. That's the sense I get..."

[CPS1]

These quotes suggest that it is the *perception* that these cases are "too difficult to investigate" and "prove" that makes the police reluctant to make professionals the focus of investigations, suggesting a nervousness to go outside of their "comfort zone" and take on complex cases that require knowledge and experience that they might not have. He also notes the time- and resource-intensive nature of such investigations (and money laundering investigations in general). This certainly reflects many of the comments made by investigators highlighted in the previous section. It is clear that investigating cases of professionals involved in money laundering, and collecting the evidence to bring successful prosecutions against such individuals, presents very real complexities and challenges. However, as Interviewee CPS1 stated, there are "lots of options and opportunities out there to pursue prosecutions", and the suggestion that the potential for these complexities creates a barrier for the police to even attempt to investigate such cases should be considered.

The other notable point from the quote by Interviewee CPS1 is the view that there has not been "a strategic objective" – or "the appetite" – to pursue professionals who facilitate money laundering. This clearly conflicts with the official rhetoric about the 'growing trend' of professionals becoming involved in money laundering, and the apparent prioritisation of the issue from policy makers, governmental organisations and law

enforcement at national and international level, as was discussed in Chapter 3. This rhetoric, and the idea that professionals who facilitate organised crime should be a strategic priority, was reflected in other comments by the prosecutor, who suggested that it was “the big theme” that

“going after the suits...is the key to it. It’s like I said, if we can cut them off at the knees there, then there’s nothing they can do with the proceeds of crime.” [CPS1]

“We all seem to accept, and we always hear the mantra, that we need to go after the suits and ... facilitators.” [CPS1]

However, he suggested, the notion of focusing on “the suits” does not seem to translate to the ground-level of policing, even though “it should be a priority”:

“These are rogue professionals. They are enablers. They are the people who organised crime groups are utilising. And we need to deal with them and convict them, and get confiscation orders even, and take them out of the business.”

“But I can say ... that there just aren't very many cases that people are talking about [within the RARTs]. So from that I gather that it's not happening that often. So I don't know where the breakage is... At what stage is a decision made by the police to investigate, and on what information, what's the minimum amount of information they require to go in and investigate? Doesn't, doesn't seem to happen that often.

...

We're not, you know, we're not getting in the reports. And when we get them in, we're not pursuing those people who have breached the regulations... We all accept there's a huge problem. And they obviously can't walk around with bags of money, so they're putting it somewhere, and they're purchasing things. But we're not really managing to get to that stage, that we're effectively, they're looking over their shoulders at us.”

[CPS1]

The prosecutor’s comments raise a number of interesting issues. They highlight a breakdown in communication and processes between the different actors responsible for investigating and prosecuting professionals involved in money laundering, suggesting that within RARTs there is a lack of awareness of the decision-making processes involved when forces decide whether to investigate a professional. In addition, when reports of suspected professionals are received at a regional level, these

are not being pursued, suggesting the lack of priority afforded to these cases that he was concerned about. A sense of frustration was evident at this point of the interview; it was very clear that the prosecutor felt strongly that this was a problem that was not being dealt with as it should be. While he had sympathy for the difficulties inherent in cases of this kind, he was clearly frustrated that such cases were not being investigated or referred to the regional level and felt that this was primarily down to failures in strategic planning and lack of prioritisation by investigators. His comment that “[w]e all accept there’s a huge problem” perhaps provides the explanation for this frustration. This view reflects the rhetoric surrounding this issue, evoking the language of official pronouncements on the scale of the ‘problem’, which, as has been discussed previously, has little evidential basis yet is widely accepted.

Interviews with law enforcement personnel also highlighted the disconnect between this being talked about as a priority at the higher level and the lack of priority at local level. Investigators from one of the financial investigation units (FIUs) discussed the lack of appetite for investigating money laundering within the force, due to competing demands and other types of crime having a higher priority:

“You know, there’s not a great deal of appetite for [investigating money laundering], across the force. I don’t think that would be a disparaging comment, there’s a lot of competing demands in investigations. And I guess here, where we are [in the FIU], is probably the only area where you probably would have that.” [LE4]

“... there isn’t the appetite out there because of, you know, if they’re getting the requests to investigate burglaries, other matters, frauds or drug dealing on the street or kids probably causing a nuisance on the street corner. Mortgage fraud, or money laundering with a solicitor, it’s not anywhere near the top of the priority list.” [LE5]

They also suggested that there was a lack of awareness and understanding in relation to money laundering in general, and the role that professionals play in it more specifically, in the wider force:

“I think there’s also an element of education on the police part.... I think out there the reality’s not... I think there’s a lack of awareness and knowledge.” [LE5]

If a solicitor or accountant came up in an investigation into an organised crime group being run by the force, it was felt that this would not be proactively investigated or

referred to the FIU for investigation. The priority would be seizing the criminal product and confiscating proceeds and any assets held by the offenders; the opportunity for further investigation into the financial aspects of the group, and any professionals that were involved in the management of the group's finances, would rarely be taken:

"... the focus has been to move on to the next inquiry. If it's drugs, the drugs they've got, you know, they've got the confiscation, so the houses will be, the assets will be stripped away." [LE4]

"We very rarely – in fact very rarely is probably right – get any referral of an organised crime group involving money laundering. Or of complicit professionals, which has never happened." [LE4]

The result of this is, firstly, that very few investigations into professionals possibly assisting organised crime groups are initiated. More broadly, however, it also means a lack of intelligence being collected in this area and so "the intelligence picture is, well it's completely devoid of any picture" [LE4]. If this was a greater priority at force level, then more intelligence would be routinely gathered and this would allow someone to have an overview, and be able to see, for example: "hang on that solicitor's appeared here too, and over there" [LE4]. But this is not done, data is not routinely gathered, and this was a clear source of frustration to investigators in this unit.

8.2.1 Focus on the 'Real' Criminals: Professionals as Witnesses

The reference made by the CPS prosecutor to "the mantra, that we need to go after the suits and ... facilitators" [CPS1] reflects the official language surrounding the issue of professionals facilitating laundering, which stresses the need to focus on the enablers of organised crime. It was echoed by interviewees involved in organised crime policing, who asserted that there was a focus at senior level on these individuals. For example, a senior member of one of the police forces said:

"I think it's been quite explicit ... that 'gatekeepers' ... were a priority. That theme remains the same ... professionals, gatekeepers are very much individuals they want to take down, because they service a broad range of criminals. Strategically there's every case in the main for targeting these sorts of people."

“I’m a firm believer that the way to really tackle organised crime needs to be more orientated around money rather than commodity. Because it is always going to be the case that the type of individual you’re likely to be able to prosecute, when your efforts are orientated around the actual process of trafficking, are units that can be easily replaced. You’ve got to, I think, try and tackle the networks that support them. And that’s ... something that we’re committed to doing within [the force].”

[LE1]

Investigators within the FIU of the force agreed with this:

“What I would say is from a policing perspective, in the last 3 or 4 years there has been a real awareness in senior management of the Proceeds of Crime Act and the importance of tackling money laundering to disrupt future activity, or with a view to asset confiscation. And sort of coming away from this it’s all about chasing the powder.” [LE2]

These quotes suggest a considerable shift in focus for organised crime policing, suggesting a move away from the traditional focus on those involved directly with the criminal commodity (“chasing the powder”) to targeting the criminal finances and associated laundering activity, and the “gatekeepers” who enable it. However, what was evident from the interviews conducted with investigators was that such a shift was not actually happening at the ground-level, with the highest priority still being the ‘real’ criminals involved in the primary criminality. For example, the same investigator suggested that charging suspected professionals with offences related to the assistance they provided to an organised crime group would jeopardise the prosecution of the group itself, which is “principally who we’re wanting to charge” [LE2]. The reason for this is that the professional could be used as a witness in the prosecution of the other offenders, and so there is a reluctance “to put them to court for their involvement in the money laundering because they are required as witnesses” [LE2]. Illustrating this, he discussed a specific operation where a “circle of professionals” were reported as being involved with an organised crime group, but prosecution of these professionals “fell on the sword”, because they needed to use them as witnesses to “get the principal members of the organised crime group” [LE2].

This view was echoed by investigators in another police force, who described the benefits that solicitors and accountants could bring to a criminal case as witnesses:

“A lot of solicitors we’ll use as witnesses as well, won’t we? If we feel that there’s not going to be enough evidence for, to get them charged, because we can never prove their knowledge of the origins of the money. Then we use them as witnesses as well because we’re still looking at them. The main offender is obviously going to be the drug dealer, the armed robber or whatever they’re actually into. So they will be used as witnesses and they will give statements.” [LE4]

“So, we’ll use them as a witness, simply because it helps us with the confiscation process, at the end of the day to make sure the lad doesn’t keep his house, and he loses the property.” [LE4]

“To be honest in the money laundering investigations I’ve done, because obviously I know my – target is the wrong word – but who I’m looking at, the subject. I’ve used the accountant as my best friend, in some ways. So I’ve not found them as offenders ... most of them I’ve used as my friend to say, right, I want a witness statement, because they’ll do the books for the company or the business that the criminal’s using.

...

So it’s a means to an end, isn’t it, because from our point of view we’re looking at making sure that crime doesn’t pay. So if we can take the house off them and we’ll use the accountant to say well that’s what you put forward in your books matey, to the HMRC. So we’ll use it to our ends.” [LE5]

These quotes highlight that not only are legal and accountancy professionals of use in securing the convictions of criminals they are involved with in a professional capacity, but they can also be used in the asset confiscation process. The confiscation of criminals’ assets – or “making sure that crime doesn’t pay” – has become a significant priority for law enforcement over recent years. So, being able to make use of professionals to assist in asset confiscation would provide a significant incentive for not pursuing prosecutions against these professionals. The idea of an investigator using a professional as their “best friend” in the investigation, having “not found them as offenders”, very much conflicts with the declared focus on ‘going after the suits’ and emphasis on the enablers of organised crime.

8.2.2 Ignoring Known Enablers?

A number of the interviews with practitioners connected to bodies responsible for investigating organised crime groups suggested that there was a small number of solicitors and accountants that were known to police because of their connection to

criminal groups, or were suspected of being involved in assisting criminals. Interviewee LE1 suggested that they “probably know most” of the legal and financial professionals involved in criminality:

“And the percentage of people who are involved in this side of life is very very small. I don’t know, it’s 3%, 4%, can’t really put a figure on it but it’s very low. It always has been very low. And that means we probably know most of them.”[LE1]

Likewise, there was considered to be a “small core group” of legal professionals involved with the organised crime groups in one force’s area:

“LE2: I would say, if we set up 10 money laundering investigations tomorrow, I could name you 9 of the 10 lawyers that would be involved in the investigations. Pretty much.

Researcher: So it’s a small group that are doing it?

LE2: It’s a very small core group, maybe 3 or 4 firms of solicitors, and maybe even only 1 solicitor within that firm who deals with that side of it.”

This investigator went on to highlight the problem of “proving the guilty knowledge” discussed above, suggesting that, while they knew who this core group of professionals involved with organised crime was, they would not be able to prove this:

“... while we can sit as police officers and say well we know, because they’re involved in every organised crime group, proving that individual guilty knowledge on each occasion that they carry out conveyancing, because the solicitor will simply argue that well my job’s to carry out the conveyancing” [LE2]

Again, the suggestion that it would not be possible to gain a conviction for a solicitor because they would argue that “my job’s to carry out the conveyancing” contrasts with what was seen in the cases, which showed a number of examples of solicitors who had been convicted for carrying out conveyancing for someone buying property with the proceeds of crime. In some of these cases, it was accepted that the solicitor “had not known, or indeed suspected” (SDT – Tidd) that their client was involved in money laundering (e.g. ANDREW TIDD, Case 18).

In relation to accountants, an interviewee from one of the RARTs suggested that it was possible to identify the “dodgy accountants”, as their name would reappear in multiple investigations:

“I know the dodgy accountants, I know the accountants who work for the criminals”

“Very largely it's, you see the name cropping up time and time again.”

[SA1]

When asked if anything was being done about individuals like this, in terms of investigation or prosecution, SA1 responded:

“Probably not. I think if, if anybody could prove out and out dishonesty, or... then they could be indicted along with the criminal. But if... they can always get away with it by suggesting that they're only doing what they've been instructed to do. And I think that would be the defence... And he or she could then just simply say “I only did what my client told me”... But proving that to the standard required is of course difficult. Because it would have to be beyond reasonable doubt if you're going to prosecute.”

[SA1]

Again, this highlights a possible lack of understanding of the money laundering legislation and the perception within law enforcement that it is too difficult to investigate professionals - and too difficult to prove offending - even if they are ‘known’ to “work for the criminals”.

Chapter 7 demonstrated that the facilitation of money laundering by professionals could involve varying degrees of intent and awareness on behalf of the professional. It showed that the professionals could be convicted of money laundering offences for active, complicit involvement in laundering and also for individual errors made with no actual knowledge or suspicion that criminal proceeds were involved. The individuals discussed in this section who are “involved in every organised crime group” [LE2] or whose name crops up “time and time again” [LE1] would seem likely to fall into the group who are knowingly involved in laundering. If this is the case, it seems problematic that more is not being done in terms of investigation or prosecution of these professionals. While the interviewees suggested that this was due to the difficulties in proving their involvement, the data presented previously in this chapter indicates that other factors

may impact on decisions to investigate and prosecute.

There are clearly challenges and complexities with investigating and prosecuting professionals suspected of involvement in the facilitation of money laundering, including issues of legal professional privilege and client confidentiality; lack of direct victims to provide evidence or act as witnesses; the complexity and time- and resource-intensive nature of money laundering investigations; and the specialist knowledge required to understand the transactions involved and the role that professionals play in such transactions. However, the lack of prosecutions may actually be due to a lack of strategic focus on these actors and their role in assisting criminal groups, and their prosecution not being prioritised in investigations. Despite the official rhetoric stressing the importance of focusing on 'professional enablers', and this being reflected in some of the language used by practitioners, this section has shown that there remains a greater focus on the other members of criminal groups, who were involved in the primary criminality. Instead, professionals were more likely to be used as witnesses than pursued for prosecution and it appeared that little was done about those professionals that were known to be connected to criminal groups. Another factor that appears to impact on law enforcement practitioners' willingness to investigate professionals is that there is another route for dealing with such individuals: the professional and regulatory bodies.

8.3 Role of the Regulators

As regulated professionals, solicitors and chartered accountants in the UK are monitored, supervised and represented by a range of regulatory bodies, professional bodies and bodies which combine representative and regulatory functions. The Solicitors Regulation Authority (SRA), established in 2007, acts as the regulatory and disciplinary body for solicitors in England and Wales. Solicitors are represented by the Law Society, their professional association. Prior to the creation of the SRA in 2007, the Law Society acted as both regulator and representative for solicitors. However, a review of the legal profession (The Clementi Review) raised a number of concerns about the complexity of the self-regulatory regime and its lack of transparency and accountability, and recommended that the representative and regulatory roles held by the professional bodies (Law Society for solicitors and Bar Council for barristers) should be separated (Clementi 2004). This resulted in the enactment of the Legal Services Act 2007, which established the Legal Services Board, an independent

oversight body, and two new frontline regulatory bodies: the SRA and the Bar Standards Board. Scotland and Northern Ireland, as separate legal jurisdictions, have their own regulatory regimes and the separation between representation and regulation did not take place in these countries as it did in England and Wales. As such, the regulatory and disciplinary role remains as the remit of the professional bodies - the Law Society of Scotland and Law Society of Northern Ireland - alongside their representative functions.

The accountancy profession is not represented by a single professional body; there are six main professional bodies for chartered accountants in the UK and Ireland: Institute of Chartered Accountants in England and Wales (ICAEW); Institute of Chartered Accountants of Scotland (ICAS); Institute of Chartered Accountants in Ireland (ICAI); Association of Chartered Certified Accountants (ACCA); Chartered Institute of Management Accountants (CIMA); Chartered Institute of Public Finance and Accountancy (CIPFA). These bodies have primary responsibility for frontline regulation and supervision of their members, alongside their role representing and promoting the interests of their members. They will investigate complaints against their members and can, if necessary, pursue disciplinary proceedings against them. All of the bodies discussed here act as supervisory authorities under the Money Laundering Regulations (see Chapter 2), and are thus responsible for monitoring their members and ensuring their compliance with the requirements of the Regulations. When discussing the role of the ‘regulators’ in preventing professionals from becoming involved in the facilitation of money laundering and responding to those who do, therefore, this term can refer to regulatory bodies, such as the SRA, and bodies that have both a regulatory and representative function, such as the Law Societies of Scotland and Northern Ireland and the professional chartered accountancy bodies.

8.3.1 An Alternative Response

One of the financial investigators interviewed highlighted that the presence of these regulatory bodies provided “another recourse” for dealing with professionals suspected of involvement in money laundering.

“I mean the solicitor, if they’re committing offences or doing anything, then you know there’s a professional body that can look at the solicitor, so there’s another recourse to go with that. The financial professional – again there’s another professional body that

should be able to look at that and be able to take regulatory action against them.”
[LE3]

This was said in the context of a discussion about the use of a solicitor as a witness against the “target” of an investigation, who the prosecuting authority was “saying ‘right, he’s the person that we want to get’” [LE3]. In cases such as this, the investigator stated that consideration has to be given to “what the objectives of the case [are] and who’s got to go for it” [LE3]. His statement indicates the view that the primary objectives of the criminal justice response should be acting against those involved in the primary criminality, as the professionals involved can be dealt with by the relevant professional or regulatory bodies.

An interviewee from one of the regulatory bodies suggested that the tendency of law enforcement to focus on the “criminals”, or the “bigger players” [SA2], and choose not to prosecute professionals in exchange for witness testimony, often resulted in the professional being referred to them for action:

“They will quite frequently bring things to our attention because although they won’t necessarily take action against the solicitor, they, because they ... tend to focus on the criminals, that’s clear. More often, we’ve seen quite a few solicitors who the police would say... ‘well yes, they are definitely involved’, but in exchange for witness testimony and things of that nature they’re not going to be prosecuted. Because they really want to catch the money launderer rather than those enablers... I think that’s quite a common theme to be honest.” [SA2]

Investigators in other FIUs agreed that there was a role for the regulators in dealing with professionals, if there were difficulties with putting together a criminal case. It was suggested that they would “expect the SRA to do something on that” if they were unable to bring criminal charges against a solicitor they suspected had facilitated money laundering [LE7]. They pointed out some of the advantages regulators had in such investigations, drawing attention to the specialist knowledge and experience of the professions and their working practices held by the regulators, and their greater access to information providing them with “the whole picture”:

“...they’ve got the whole picture. They’ve got the client ledger sheets and everything on the computer, they should be able to access it... And they’ve got the experience to

see where money's being shifted." [LE5]

The advantages held by regulators in investigating professional misconduct were also highlighted by a member of one of the regulatory bodies, who emphasised their ability to view privileged material unavailable to the police, and thereby circumvent the problem of legal professional privilege that criminal investigators face:

"... one of the advantages also of what we can do is we can do something the police can't, which is we can inspect material which is subject to the client's legal professional privilege. Now obviously we can't use that, we can't disclose it to anyone to the detriment of the client. But that's a very powerful tool which people often overlook. So, you know, if the lawyer's been doing lots of transactions for the client and the police turn up, and they say you can't have that, it's privileged, sorry, then we can go in and have a look at it. And that's why we've managed to break open a few of these cases over the years." [SA3]

It was argued that the regulators should actually be "doing more" and be given "more power to disrupt" professionals involved in money laundering and other means of assisting criminal groups:

"... for me there has to be more done by the professional bodies, by the Law Society, by the Institute for Chartered Accountants ... they're all licenced to practice these bodies have to be given more power to disrupt them." [LE2]

Therefore, there seemed to be the view from both law enforcement practitioners and regulators that professional and regulatory bodies had a role to play in responding to professionals involved in money laundering, providing an alternative response to criminal investigation and prosecution. This would involve an approach that brought together the powers of the criminal justice and regulatory systems, utilising the ability of regulatory bodies to take action against the professionals and thus allowing law enforcement to focus on the 'real' criminals.

The response to the involvement of professionals in money laundering has been considered to a limited extent in the literature. In a series of publications examining misconduct by legal professionals, Middleton and Levi have argued that a regulatory response is more likely to be effective than criminal prosecution in cases of lawyer wrongdoing, because it can avoid the considerable challenges faced by criminal justice

agencies in the investigation and prosecution of such cases and allows for a broader range of responses (Middleton 2005; Middleton and Levi 2004, 2015). They suggest that a regulatory response can avoid some of the barriers to criminal investigation and prosecution that were highlighted in the previous section, such as the difficulties of obtaining sufficient evidence and the complex, time- and resource-intensive, and specialist nature of investigations (Middleton 2005; Middleton and Levi 2004, 2015). Investigators in regulatory bodies would have the specialist skills, knowledge and understanding that law enforcement personnel interviewed felt they lacked, which added to the difficulty and complexity of criminal investigations. In addition, regulators would be able to circumvent the problem of legal professional privilege that criminal investigators face, as they are able to view material that is considered privileged that the police would not be able to inspect.

The other primary difference between a criminal justice response and a regulatory response is that there is a broad range of sanctions that can be imposed by regulators, including fines, imposing conditions of practice such as supervision or conditional licences, suspension or striking off. As such, they may be able to more accurately target the problem identified and provide a more tailored and appropriate response. These sanctions can be imposed for professional misconduct, and therefore a regulatory response does not require proof of criminal activity. Furthermore, they can be imposed more quickly than criminal justice proceedings would take, and at a lower cost (Middleton and Levi 2015). Therefore, Middleton (2005: 811) argues, 'regulatory enforcement action that seeks to prove facilitative wrongdoing by the professional... may be more effective than criminal prosecution in protecting the public.' Relying solely on a criminal justice response can 'leave a gap through which dishonest practitioners who avoid criminal conviction might escape' (Middleton 2005: 812). The previous section highlighted the 'gaps' through which professionals who knowingly provide assistance to organised criminals might fall: the lack of focus on such actors by law enforcement due to the priority being on the 'real' criminals and the need to use such actors as witnesses.

Therefore, a mixed response might offer the best approach; it would circumvent some of the challenges of criminal investigation and prosecution outlined above, and would allow the regulators to take advantage of the specialist skills and knowledge they have and access to information. It would also enable law enforcement to focus on their primary targets. However, the current research identified some problems with such an

approach. Firstly, it became apparent through the course of the interviews that there are problems with the relationship between regulators and criminal justice bodies, including a lack of trust and misunderstandings in the way they work together. In addition, there are individuals who may actually pose the most risk in relation to money laundering that fall outside of the scope of current regulation.

8.3.2 Relationship Between Regulators and Law Enforcement

The following is an extract from the interview with two investigators in a financial intelligence unit, in response to being asked about their dealings with the Solicitors Regulation Authority, relating to solicitors they have concerns about:

LE4: On occasion we do, we get them involved. If we're worried about a practice. In fact, if we have any interaction with a practice, we'd engage with them, they tend to, they're the regulation side aren't they, they're not really...

LE5: Well, I certainly know from colleagues in [a different team], they're dealing with them as we speak, but I don't think... they're not too – I'm trying to think of the right word – impressed...

Researcher: With what they do?

LE5: With what the SRA have not done. You know, they've promised what they're going to do and then they're asking us to provide the evidence against the lawyer. You know, they're supposed to be parallel investigations and they're supposed to help us, because they're supposed to be the experts and be able to underline and see what's been going on within the practice, because we can't see the whole picture. I know certainly from one colleague in there, she's been asked to provide the evidence for them. What's that all about?

LE4: Yeah, they tend to...

LE5: Sit back...

LE4: Yeah, we'll go with them, but they tend to want to be at arm's length from us, don't want to be seen to be, they'll want to make their own judgment. So if we go in to execute warrants, they'll come with us but then they'll do their own enquiry afterwards. Or they may do it without us, but there's very little interaction beyond that

as to what their objectives are and what the outcome is. They seem to go their own way.

This extract reflects a negative view of the actions of the regulatory bodies that was echoed by other interviewees from law enforcement. It only gives one side of the story, and so it is impossible to make a judgement about the actual circumstances being discussed, but it clearly demonstrates a tension between the two agencies. It indicates a lack of trust in the SRA and a lack of respect for their role in investigations, and suggests that this might be reciprocated. The final comment in the extract suggests that the police feel that the SRA have a similar lack of trust and so “want to be at arm’s length from us” and “go their own way” in investigations. This part of the interview gave the impression that the two bodies were working separately rather than working together – and, in fact, almost working against each other – with a lack of communication and no common objectives. There also appears to be a lack of understanding of each others’ responsibilities, with Interviewee LE5 remarking on his colleagues being asked to provide evidence to the SRA when it was felt that this should have been the other way round, as “they’re supposed to be the experts”. Another interviewee echoed these views, suggesting that there were problems with communication from the regulators following a referral:

“And I suppose, if it goes nowhere, or you think you can't prove it... We would then refer it to the SRA. I'm not sure that we necessarily find out what goes on, or that they're particularly quick in how they do it. I could be doing them a disservice. But my sense is, you know, anecdotally, that people tell me that once it goes to the SRA, they don't really hear what's happened. So I don't know.” [CPS1]

The lack of feedback – this time *from* law enforcement – and problems of communication were also mentioned during the interviews with members of regulatory bodies, although their comments on their working relationship with the police were more positive overall:

“The police are, and law enforcement are, getting increasingly better at feeding back to us what’s happening in relation to things that we’re reporting or what other people are reporting, but obviously they don’t want to prejudice any ongoing investigation so sometimes we can find out absolutely nothing about it until we see it in the newspapers.” [SA2]

“We do get information; police will contact us and say they’re concerned about something. And will alert us if they’re going to arrest a solicitor.” [SA3]

These quotes therefore appear to highlight a significant lack of communication between law enforcement and regulators, which must have a detrimental impact on their ability to work together effectively and has implications for the provision of an appropriate shared response to the facilitation of money laundering by legal and accountancy professionals.

There also appeared to be the feeling from some on the criminal justice side that the disciplinary powers that regulators had, or the sanctions they imposed, were not sufficient. On two occasions the regulators were referred to as “toothless”:

“The SRA have massive amounts of intelligence around different solicitors and people doing things they shouldn't be doing. But their sanctions are quite difficult, you know, they can say to somebody ‘You can't practise. You can't do this. You've got to, you know, do things like that’. But they seem to all get round them. I don't understand it. A bit of a toothless tiger I feel...” [LE9]

In reference to the sanctions that the SRA can impose on “rogue solicitors”, Interviewee CPS1 said:

“...well, that’s really a toothless sanction. There’s nothing there. You know, people are very, not really convinced that there’s a sanction there.” [CPS1]

It was suggested that regulators were “cautious in their approach” to imposing sanctions of professionals involved in wrongdoing:

“...they can shut them down can't they, or take over a practice. And it does happen. We do hear these things, but in our experience we haven't really seen that sort of disruption to a practice. They seem very cautious in their approach.” [LE4]

These interviewees did not provide examples of why such sanctions were “toothless” or solicitors who had been able to “get round them”. It seemed to be more the idea that the sanctions were not effective, than specific experience demonstrating this. This again demonstrated a lack of faith in the role of the regulators, or a misunderstanding of their capabilities and what they are able to do in respect of imposing sanctions. Regulators

have a range of sanctions available to use, from fines and supervisory arrangements to removal from the roll of solicitors or register of chartered accountants. These quotes suggest that those within the criminal justice system felt that these sanctions are not used effectively, and so emphasise the need for better communication between regulators and criminal justice bodies.

The interview data therefore shows a conflict between criminal justice practitioners' views that regulators should play more of a role in the response to professionals suspected of involvement in money laundering, and the lack of trust they have in them to play that role effectively. There also appears to be a notable lack of communication between regulators and law enforcement bodies, and a misunderstanding of each other's role, objectives and modes of working. This is problematic; if regulators were to play a greater role in dealing with professionals involved in money laundering and other misconduct as suggested, there would need to be a greater level of trust and more effective communication between all actors involved.

8.3.3 Limitations of Regulation

Interviews conducted during this research drew attention to two groups that currently fall outside of the scope of the regulatory bodies: unqualified, non-chartered accountants, and non-solicitors involved in conveyancing.

8.3.3.1 Non-chartered accountants

A number of interviewees brought up the issue of unqualified accountants, who are not chartered and therefore do not belong to a professional body [Interviewees LE1; LE3; LE4; LE5; SA1; SA4]:

"Which is something that I think needs to be looked into because the term 'accountant' as you know is not protected. The term 'chartered accountant' is but you can call yourself an accountant, anyone can call themselves an accountant." [LE1]

This means that they are not subject to the regulations of any of the professional bodies that supervise and monitor the activities of chartered accountants. In relation to money laundering, such individuals are by default supervised by HMRC. Under the Money Laundering Regulations, HMRC act as the designated supervisory authority for a number of sectors, including high value dealers, money service businesses, trust or

company service providers, and accountancy service providers (see MLR 2007, Part 4). Members of these sectors are required to register with HMRC, but HMRC carry out little proactive monitoring or supervisory action against such actors. The following is an extract from an interview with a member of one of the professional bodies for chartered accountants, who raises a number of issues in relation to the lack of supervision of non-chartered, or unqualified, accountancy service providers:

“There are many unqualified out there, and if you really want to have a discussion about the use of professionals, then you need to consider the 13,000 so-called accountants, or providers of accountancy services, who have no professional body and who are regulated by default by HMRC. And if you want to look at how regulation doesn’t work, look at how HMRC regulates the accountancy service profession.

...

You could set up tomorrow and call yourself an accountant... anyone can set themselves up on the high street tomorrow, call themselves an accountant or a tax advisor. And if they are not a member of a professional body then they are required to register with HMRC for money laundering purposes. And HMRC supervises that population in the same way as it supervises high-value dealers and casinos and others, they’re the default regulator in a number of cases. Now in the accountancy sector they’ve got 13,000 or so. They are incredibly weak. And this is not criticising the guys in that division at HMRC... But statute doesn’t give them all the necessary powers they need; they don’t have the resources they need. We proactively, as I said, monitor our members on a cyclical basis, and that means going out into the practices looking at what they are doing. Most of what HMRC does is desktop monitoring... HMRC carry out a registration process and never again do they visit the risk assessment in any firm. They have no annual return process; they don’t know if the nature of the firm has changed or anything. Now, the Revenue’s argument for how they do it is they have limited resources and therefore they concentrate those resources on the areas of supervision that are higher risk. And those predominantly are money service businesses.... So they concentrate all the high-level resources on that, and by implication therefore, HMRC itself regards the accountancy profession as low-risk. They don’t put any resources into it.” [SA4]

He went on to suggest, therefore, that perhaps the focus from law enforcement in terms of the risk of money laundering should be on the “13,000 so-called accountants” who have no professional body, rather than the qualified professionals. He suggested that current attention on smaller firms of non-chartered accountancy service providers “is probably

non-existent”, whereas there is much greater scrutiny of chartered professionals, who, in fact, are already subject to active monitoring and supervision from the professional bodies:

“You know, so I think there is something there that maybe needs explained. That if the professional bodies are putting all this effort in and thoroughly regulate and actively monitor their members, if therefore law enforcement authorities are so concerned that professionals, and I’ll use that term loosely for the moment, are actively involved with their clients, and there are 13,000 with HMRC, then the question is so blindingly obvious I would say... it always feels that the qualified profession takes the blunt edge and our unqualified brethren are, you know, the attention to detail on money laundering in these smaller firms is probably non-existent.

...

Because you know, apart from everything else we have, you know, we have the regulatory side of it, we have mandatory CPD, we are always out talking to people about money laundering, we’re running courses, we are obliged to maintain their CPD etc. So we are fairly active. And that’s not just us, that’s all the professional bodies in the UK, we are all doing pretty much the same job. And yet there’s 13,000 out there passing through the system with barely any scrutiny at all. They fill in an application form and are risk assessed at that time, it’s never looked at again.

...

And to be honest, I think that’s where the greatest risk is. Because it’s much easier for the criminals to persuade the smaller – and largely these are bookkeeping firms – to, you know, to process criminal activity through those entities.” [SA4]

The final part of this quote makes the point that it is these smaller firms of unqualified accountants or bookkeepers that pose the “greatest risk” in terms of money laundering. This was echoed by others, who suggested that criminals were more likely to use such unqualified accountants because they were cheaper and because that would be all that was required if they were using small businesses to launder money:

“Chartered accountants go through, you know, a great deal of training and ongoing learning, and as such are very, very expensive. So it makes sense really to have somebody in at the lower level who can knock up, if you like, a perfectly acceptable set of accounts for the small trader, at a reasonable price. And so that person would probably have some sort of qualifications but not to the level of chartered, to enable them to act in that manner.” [SA1]

“Then if they’ve only got a little business, that’s all they need to do isn’t it, for the Revenue, so they’re not going to pay the big fees from the big six.” [LE5]

The other point that was raised was that if a *chartered* accountant had their accreditation removed by the regulators, because they were involved in some form of misconduct, they can carry on working as a *non-chartered* accountant.

“... so they can remove accreditation or whatever. But it doesn't stop them from trading. They still carry on, they've still got the offices there, they've still got the clients there – they're just not chartered any more. And they may need, in certain cases, to have somebody who is accredited to sign off accounts for instance. But I'm sure they've all got friends out there who will happily sign off the accounts for them. For payment of an appropriate fee. But it doesn't, you know, necessarily stop them in their tracks. I don't think it's perhaps as powerful as maybe being a solicitor. If you're struck off by the Law Society then... you may not be able to practise. If you're, you know, a chartered accountant, you know, there's nothing to stop you from carrying on trading.... You're just not chartered any more.” [SA1]

Therefore, unlike solicitors, who would not be able to practise again if they had been struck off, chartered accountants who had had their chartered status removed would be able to continue providing accountancy services.

8.3.3.2 ‘Conveyancing factories’

One of the solicitors interviewed, who specialises in conveyancing work, raised the issue of what she called “conveyancing farms” or “conveyancing factories”, which she considered to be the “main problem” in relation to the risk of money laundering through the purchase of property:

S1: Because I think that’s the main problem, is that there’s, because we’ve gone to ‘conveyancing farms’ now, so there’s big companies that just do really cheap conveyancing. And there’s solicitors and partners who deal with teams of 20-30 people... these huge ‘conveyancing factories’, as I call them. How one partner or solicitor could possibly know what everybody is doing, all these 20 members of staff.
...

So if you're not particularly well educated – as a paralegal you can walk in having no legal experience and without the training. So I think that's where the main problems lie, is in these sort of low cost operations really.

Researcher: So they would not be solicitors then?

S1: No, it'd be paralegals or, it's the sort of low-level staff who are doing it, dealing with these huge amounts of files. But then you've got a stressed solicitor trying to deal with 20 different people or whatever.

...

You know, paralegals are obviously cheap, so it's cost effective to do that. But whether you're getting a good service or not is a different matter, isn't it? Conveyancing by numbers!

[S1]

A second solicitor also voiced concern about firms that processed large numbers of conveyancing transactions, by using teams of paralegals rather than qualified solicitors:

"... they're factory firms, and they just churn things out. And they, they are okay because they have, like, a pyramid system. So, say, twenty paralegals are then supervised by one lawyer, one qualified person. And every case gets signed off by the qualified person before it goes through. But that's much more risk. Because if someone is literally just checking that certain things are in before it gets signed off, then they're much more at risk." [S3]

She highlighted the potential problems for carrying out effective due diligence with the kinds of quantities of work these firms were processing:

"I've got, I think about fifty, sixty cases at the moment, off the top of my head. These firms expect each person to have at least eighty or a hundred. And then they've got to complete, say, eight a week. And if you're dealing with that volume, then it's very difficult to even make sure you've seen all the proper bank statements, never mind had a chance to read them properly and check them

...

I think those types of firm are at much, much higher risk of money laundering..."

[S3]

The significance of conveyancing for the involvement of legal professionals in money laundering was demonstrated in Chapter 6, with acting as conveyancer in the purchase or sale of property being one of the most common means of facilitation for which solicitors in the cases were convicted. This reflected findings from previous empirical research in this area and the view of solicitors interviewed, who highlighted conveyancing as the area of greatest concern in relation to money laundering risk. This can therefore be seen as a point of vulnerability, providing a means for individuals to legitimise criminal proceeds or use them to secure assets. It is also an area of risk for professionals, who may be vulnerable to unintentional involvement in the use of criminal proceeds to purchase property. The rise of such “conveyancing factories” should be seen as an area of concern, therefore, and raises questions about the supervisory scope of regulators in relation to money laundering.

8.4 Conclusions

In contrast to official rhetoric about the ‘growing trend’ of professionals becoming involved in money laundering and increasing focus on this issue from policy makers and international bodies, which suggests that such professionals should be a strategic priority for law enforcement, this research found an apparent lack of focus on these actors and their role in assisting criminal groups and limited priority given to their prosecution. A focus on ‘going after the suits’ may be evident at senior levels of organised crime policing in the UK, but this does not seem to translate to the ground level. Instead, the priority remains those involved in organised crime groups’ primary criminality. As a result, professionals suspected of involvement in assisting groups or individuals to launder the proceeds of their crimes are more likely to be used as witnesses in the prosecution of other offenders. This may explain the relatively low number of convictions of legal or accountancy professionals for facilitating money laundering, when professionals’ likelihood of coming into contact with ‘dirty’ money and the money laundering legislation being broad enough to allow for prosecutions without criminal intent or actual knowledge of laundering suggest that there is considerable scope for prosecution. The research identified a number of challenges associated with the investigation and prosecution of professionals suspected to be involved in money laundering, which were highlighted by law enforcement practitioners as explanations for a lack of convictions. These include difficulties with proving the guilty knowledge of the professional and their connection to the criminal

proceeds, and the complexity and specialist nature of money laundering investigations. While these will play a role, the lack of strategic focus and insufficient prioritisation seems to be a key obstacle. In addition, there are clearly failings in communication and processes between the different actors responsible for investigating and prosecuting professionals involved in money laundering, and a lack of awareness and understanding of this issue within police forces.

Therefore, professionals that are active, complicit participants in money laundering may not be investigated or pursued for prosecution, due to a perception that this would prove too difficult or a desire to use the professionals as witnesses against other offenders. On the other hand, data on convicted professionals examined in this research showed that prosecutions have been pursued against professionals who were not actively, knowingly involved in laundering. This raises questions about priorities in relation to criminal investigation and prosecution. If resources are stretched and prosecutions are difficult and complex, should the focus of law enforcement be on those who are complicit participants rather than those whose involvement in money laundering is not intentional? Of course, those who are knowingly and actively involved in assisting criminal groups may be the most useful for providing evidence and acting as witnesses against those responsible for the predicate criminality. Therefore, this raises wider questions about prioritisation in relation to the policing of 'organised crime', and requires professionals who facilitate money laundering to be considered in relation to their role in the organisation of crime. Decisions may need to be made about which actors – 'legitimate' or otherwise – involved in the organisation of crime are of higher priority, and whether not pursuing complicit professionals in order to use them as witnesses is an appropriate approach.

The challenges and conflicts of the criminal justice approach to professionals' involvement in money laundering, and the complex and diverse nature of this involvement, suggest a mixed response, with a greater role for regulators working alongside law enforcement. Having regulators provide an alternative response would take advantage of their specialist skills and knowledge and greater access to information, and could allow law enforcement to focus on other actors considered a higher priority. However, it is clear that there are a number of problems with how such a model would work at the current time. There is a lack of communication, respect and trust between law enforcement and regulatory bodies, and a misunderstanding of each other's roles, objectives and modes of working, which has a detrimental impact on their

ability to work effectively together. The provision of an effective shared response to professional facilitation of money laundering would require much better communication between regulators and law enforcement bodies, and a greater understanding and appreciation of each other's roles, processes, capabilities and limitations. In addition, consideration would need to be given to groups that currently fall outwith the scope of regulation, such as non-chartered, unqualified accountancy service providers and individuals that are not qualified legal professionals carrying out conveyancing transactions within 'conveyancing factories'. The complex nature of professionals' involvement in the facilitation of money laundering means that a response is required which takes account of these complexities and the ambiguities involved. Consideration needs to be given by those involved in forming this response to the way that regulatory and criminal justice processes work together, their roles, limitations and priorities, if an appropriate and effective response is to be provided.

The analytical framework discussed in Chapter 4 highlighted the importance of considering the relationship between regulators and those they regulate, suggesting that the structure of this relationship may mitigate their effectiveness in controlling or preventing individuals from committing violations of laws or regulations in organisational settings. This chapter has begun to consider this relationship in regard to legal and accountancy professionals and their regulators, and has demonstrated some of its challenges and weaknesses, and the implications of these for controlling involvement in money laundering. The control environment for these actors consists of a complex network of professional and regulatory bodies, the police, prosecuting authorities, and the criminal courts and professional disciplinary tribunals who are responsible for conviction, sentencing and imposing disciplinary sanctions. It also includes the legal framework, which comprises elements of the Proceeds of Crime Act 2002 and the Money Laundering Regulations. There is scope – and need – for much greater exploration of this network, its interconnections and complexities, and consideration of how this fits with broader theoretical perspectives on the regulation and control of criminal activity in organisational settings.

Chapter 9

Conclusion

The introduction to this thesis set out the justification for the research on which it is based, described the contribution it would make, and outlined its aims and the key questions it intended to address. As the chapter explained, recent years have seen an increasing focus from intergovernmental bodies and law enforcement organisations on the role that legal and financial professionals play in the facilitation of money laundering, with claims that stringent anti-money laundering controls imposed on financial institutions and increasingly complex methods of money laundering have led criminals to become more reliant on the services and skills provided by professionals to manage their illicit funds. As a result, a range of legislative and policy measures aimed at preventing professionals from becoming involved in money laundering have been implemented. However, the role of professionals in the facilitation of money laundering has received limited academic attention and there has been little empirical research in the area, resulting in a lack of understanding about the nature of this role and allowing an official narrative about the involvement of professionals in money laundering to persist without challenge or empirical support. Furthermore, this means that measures intended to address the ‘problem’ of professional involvement in money laundering have been developed with little understanding of its scale or nature. Therefore, the need to improve knowledge and understanding in this area, and address its considerable analytical and theoretical gaps, was demonstrated. This research has contributed to the filling of these gaps, by addressing the following aims:

- To provide a greater understanding of the facilitation of money laundering by legal and accountancy professionals, taking account of the situational contexts in which it occurs.
- To consider the criminal justice and regulatory response to the facilitation of money laundering by legal and accountancy professionals in the UK.
- To analyse and theorise the facilitation of money laundering by professionals using an analytical framework which directs attention towards multiple levels of explanation: individual action, organisational characteristics, and the wider environment.

This chapter provides a conclusion to the thesis by showing how the aims of the research have been achieved. The first section summarises the key conclusions and arguments of the thesis, highlighting the theoretical and practical implications of these conclusions, and making recommendations for policy, policing and regulation in this area. This section is broadly structured to address the research aims, with 9.1.1 demonstrating the contribution of the research to understanding of the facilitation of money laundering by legal and accountancy professionals, 9.1.2 considering the appropriateness of the criminal justice and regulatory response, and 9.1.3 discussing the utility of the analytical framework for this study and its wider applications. The final section of this part of the chapter (9.1.4) discusses the wider implications of the research for analysing and theorising money laundering, white-collar crime and the organisation of crime, and the points at which they intersect. The specific research questions detailed in Chapter 1 are not answered directly in this chapter; they have all been addressed throughout the course of the thesis. Finally, the chapter discusses the limitations of the research and suggests ways in which research in this area could be taken forward.

9.1 Conclusions, Implications and Recommendations

9.1.1 Multiplicity, Intent and the Situational Contexts of Decision-Making

The facilitation of money laundering by legal and financial professionals is not a homogenous phenomenon; it is complex and multi-faceted, comprising a variety of actions, purposes, actors and relationships. For example, there is a multiplicity of actions and behaviours that can be considered as the facilitation of money laundering, and for which professionals can be convicted under the money laundering legislation. Transactions conducted by professionals involving the proceeds of criminal activity may be carried out as a *means of legitimising* the funds, or represent criminal proceeds being *used for a purpose*. Therefore, professionals' involvement in the facilitation of money laundering may be about providing the appearance of legitimacy to criminal proceeds, but it may also be that the nature of their work gives them a role in how criminal proceeds are being used. It is not necessarily about criminals choosing to use professionals for money laundering; it may simply be that what they are using the proceeds of their crimes for involves legal or accountancy professionals. The nature of the relationship between the professional and the predicate offender and the extent to

which the professional benefits financially from their involvement can also vary. Beyond a professional-client relationship, there may be other dynamics involved, including personal or family relationships or the presence of a 'broker' in the relationship. While some professionals receive direct financial gain, others acquire little or no apparent benefit, or simply the normal fee for the transaction they conducted. Therefore, the framing of professionals' involvement in money laundering in the existing literature as being primarily driven by financial motivations is inaccurate, and a purely economic explanation for professionals' actions is clearly insufficient.

While some professionals are complicit, active participants in the facilitation of money laundering, many cases involve a much less clear 'grey area' of intent, which is not about *making a deliberate choice to offend or taking opportunities to facilitate money laundering*. Complicit professionals can be seen as making a rational choice to become involved in money laundering, motivated by self-interest or the goal of financial or business benefit. They therefore fit the rational choice perspective of crime, and the construction of professional involvement in money laundering seen in official discourse and much of the extant literature in this area, which explains this involvement primarily in terms of personal financial motivations, profit and competitive advantage. However, much of what is considered as the facilitation of money laundering by professionals does not involve complicit, intentional participation. Instead, the role played by professionals in the laundering results from errors of judgement or decisions made in relation to specific transactions, shaped by the contexts in which they were made. In these cases, there is no intent to launder or actual dishonesty on the part of the professional; their actions do not represent a deliberate choice to offend and they are not taking opportunities to facilitate money laundering, for reasons of financial gain or otherwise. Their actions, therefore, should not be seen as the intentional taking of criminal opportunities; instead consideration should be given to the way their actions and behaviours are shaped by and emerge from their situational contexts.

Decisions made by professionals to proceed with transactions which involve criminal funds, or not report a suspicion of money laundering, are shaped by the nature of their occupational role, relationships with other actors involved, and the particular circumstances leading up to and surrounding the point at which the decision is made. Therefore, the actions and choices of the professionals are influenced by the multi-layered social context in which they are 'situated' (Vaughan

2007: 7). The structures, processes and transactions of regulated professions can provide opportunities for individuals working within them to assist others to launder their criminal proceeds, but can also make them vulnerable to becoming unintentionally involved in money laundering. Because of the nature of the work that legal and accountancy professionals do, they are likely to come into contact with funds of criminal origin, as well as to those of legitimate origin, and transactions involving criminal proceeds are essentially the same as those that they carry out with legitimate funds on a regular basis. With 'clean' money, these transactions would be considered as normal business transactions, but with 'dirty' money, originating from criminal activity, they constitute money laundering. This means that non-legitimate transactions (or transactions with non-legitimate funds) can be 'hidden' amongst legitimate transactions, because in many cases the transaction will look the same as a legitimate transaction, and the actions and behaviours of the professional carrying it out will be the same.

Other factors that may have a bearing on the choices that professionals make, leading to their involvement in money laundering, include a personal or family relationship between the professional and the predicate offender, which could create a pressure to act in a certain way or affect the judgement of the professional, and may be the driving force for their role in the laundering. The presence of a 'broker' in the relationship may affect the choices taken by the professional by creating a perception of legitimacy about the predicate offender or transactions being conducted. Economic pressures on the professional's business, and the competitive nature of the market for the services they provide, may lead to choices or errors of judgement that would not otherwise have occurred. In addition, every transaction conducted that involves criminal proceeds is one of many transactions that are being carried out, and the professional may be dealing with a large number of clients at the same time. The choices they make about proceeding with illegitimate transactions must therefore be seen in the context of the many legitimate transactions that surround them. Regulated professionals are subject to specific parts of the anti-money laundering legislative framework, such as the offence of 'tipping off', under s.333 of POCA. This offence refers to the act of making a disclosure likely to prejudice a money laundering investigation and, in certain circumstances, can affect the professional's decision to proceed with a transaction. **Therefore, the actions of professionals involved in the facilitation of money laundering should be understood in relation to the specific contexts in which they occur, which are created by social relationships and dynamics,**

organisational characteristics and the wider legislative and regulatory environment. They should not be seen as being homogenous or generalisable; each case should be considered in relation to its individual nature, particular relationships and specific situational contexts, a complexity that is not currently appreciated in official discourse and existing academic literature in this area.

9.1.2 An Appropriate Response?

The secondary aim of this research was to consider the criminal justice and regulatory response to the facilitation of money laundering by legal and accountancy professionals in the UK. The research has provided new insights into this response, and considered the relevant regulatory and legislative frameworks, and the global anti-money laundering regime from which these stem. It has also raised a number of questions about the effectiveness of the response, the challenges of preventing professionals from becoming involved in money laundering, and the fairness of the legislative framework. There is clearly, therefore, considerable scope for further analysis and debate in this area.

Money laundering legislation in the UK has a broad scope; it allows for the conviction of regulated professionals for money laundering offences without criminal intent or even, in certain circumstances, knowledge or suspicion that laundering was taking place. This represents a notable departure from the international frameworks from which it was derived, which focused on those who had deliberately laundered criminal proceeds. The wide scope of the legislation is justified with arguments that proving actual knowledge or suspicion of laundering is extremely difficult, and that those in the regulated sector may choose not to report suspicious transactions because they felt safe from prosecution if actual knowledge was required. In addition, professionals are seen as representing a ‘weak point’ in the anti-money laundering regime and, as qualified, skilled professionals in a privileged position, as being able to bear the responsibility for money laundering prevention that this requires. However, the scope of the legislation means it can ‘catch’ professionals who are not complicit in money laundering, but have made an error of judgement or one-off decision that has led to their involvement in a transaction involving criminal funds. This can lead to a custodial sentence, as well as the likely end of their professional career, and therefore has significant implications for those working in regulated sectors.

On the other hand, complicit professionals, who are knowingly involved in money

laundering, may be avoiding prosecution because of the perception that they are too difficult to deal with, failings in communication between different actors responsible for their investigation and prosecution, and a lack of prioritisation of these individuals within policing policy and practice. Official rhetoric about the 'growing trend' of professionals becoming involved in money laundering, and increasing focus on this issue from policy makers and international bodies, suggests that legitimate professionals who assist criminals in laundering the proceeds of their crimes should be a strategic priority. While this may be echoed at senior levels of policing in the UK, it does not seem to translate to the ground level. Instead, the priority remains those involved in organised crime groups' primary criminality, with professionals often used as witnesses in the prosecution of others. This raises questions about prioritisation in relation to the policing of 'organised crime', and requires professionals who facilitate money laundering to be considered in relation to their role in the organisation of crime. Decisions must be made about which actors – 'legitimate' or otherwise – involved in the organisation of crime are of higher priority, and whether not pursuing complicit professionals in order to use them as witnesses is the appropriate approach.

A mixed response, involving both criminal justice and regulatory processes, may be the most effective approach to professional involvement in money laundering. However, it is clear that there are a number of problems with the effectiveness of such a model at the current time. A mixed response would take account of the complex and diverse nature of such involvement, allow regulators to take advantage of their specialist skills and greater access to information, and allow law enforcement to focus on other actors considered a higher priority. But there is a lack of communication, respect and trust between law enforcement and regulatory bodies, and a misunderstanding of each other's roles, objectives and modes of working, which has a detrimental impact on their ability to work effectively together and has implications for the provision of an appropriate shared response. Consideration must be given by those involved in forming this response, therefore, to the way that regulatory and criminal justice bodies work together, their roles, limitations and priorities. Improvements need to be made in how they communicate, and their shared understanding of each other's methods and objectives. The recently published 'UK National Risk Assessment of Money Laundering and Terrorist Financing' (HM Treasury 2015) suggests an emphasis on joint working and improved relations between different actors, with multi-agency working groups and forums being developed. It remains to be seen what effect this will

have on communication, trust and understanding between different bodies, especially at a local level. The Risk Assessment also suggests a more proactive approach to ‘complicit professionals’ who are ‘associated with serious and organised criminals’, stating their aim to ‘disrupt those that present the highest risk, either through criminal, civil, or, in collaboration with the SRA, regulatory means’ (HM Treasury 2015: 43). It will be interesting to see how this policy develops, and how it fits with the prioritisation of the primary offenders, and the use of professionals as witnesses against those offenders, at the local level, that was seen in the current research. The question about whom or what is the greater priority in organised crime policing remains.

Consideration must also be given to the current scope and limitations of regulatory bodies. Solicitors firms’ client accounts should be seen as a point of vulnerability for the movement of criminal proceeds. It would be difficult for regulatory bodies to monitor all transactions that involve client accounts, in order to identify the presence of funds without a legitimate underlying transaction, for example. There may, therefore, be a greater role for firms themselves to take responsibility for such monitoring. No single practitioner should have sole control of a client account, and there may be an argument for (where possible) the Money Laundering Reporting Officer (MLRO) within a firm to be someone other than a solicitor, who will not use the client account, but can monitor the transactions involved. Acting as a conveyancer in the purchase or sale of property was one of the most common means of facilitation of laundering in the cases examined. The role of conveyancing in money laundering is not necessarily about criminals choosing to use solicitors for money laundering purposes; it may simply be that the process of buying property involves legal professionals. Therefore, the issue of ‘conveyancing factories’, where paralegal or administrative level staff are carrying out the conveyancing, with the role of qualified solicitors being only to supervise large groups of such staff, is an area of concern. Finally, attention should be directed towards non-chartered accountancy service providers, who are not monitored in the same way as chartered accountants, but may constitute the same, if not more, risk.

9.1.3 Analysing the Facilitation of Money Laundering by Professionals: A Multi-Level Approach

The analytical framework used by this research was adapted from Diane Vaughan’s theory of organisational misconduct (1983: 54-104), which was developed to explain violations of laws or regulations by individuals in organisational roles. It was designed

to direct the analysis towards multiple levels of explanation, in order to consider the relationships and interconnections between the individual actions of professionals involved in the facilitation of money laundering, their organisational setting and wider environment. The framework was adopted because it takes account of the situated nature of individual action, and therefore moves beyond individualistic models of behaviour that decontextualise individuals' actions by taking insufficient account of the influences of the immediate setting and wider contexts of these actions. The analytical framework was structured to show the three (micro-, meso- and macro-) levels of analysis; its origins were discussed in Chapter 4, and it is depicted once again below:

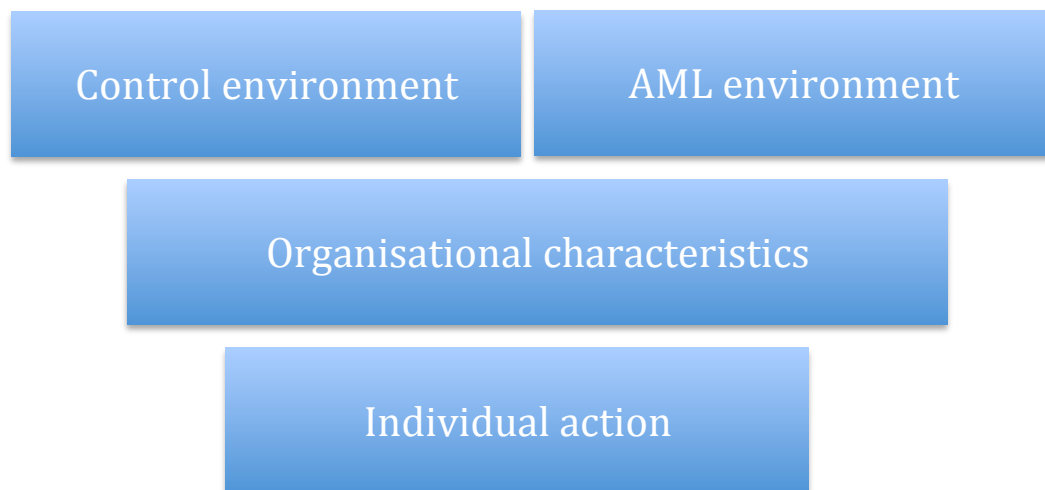


Figure 3: Revisiting the analytical framework

The use of this framework allowed the nature of professionals' involvement in the facilitation of money laundering to be understood in relation to the situational contexts in which it occurs. For example, it demonstrated the role of the organisational setting in creating opportunities and risks for professionals in relation to money laundering: the research showed that the structures, processes and transactions of legal and accountancy professions can provide opportunities for individuals within those professions to assist others in the laundering of their criminal proceeds, but can also constitute a significant risk, making such professionals vulnerable to being unwittingly caught up in the facilitation of money laundering. The framework directed attention towards the complex network of professional and regulatory bodies, law

enforcement organisations and prosecuting authorities that are involved in the control of legal and accountancy professionals in relation to money laundering. It revealed the relationships between these actors, and with those they control, and also highlighted the relationship between the control environment and the global anti-money laundering regime, and the perceived 'threat' from 'dirty' money that shapes anti-money laundering policy. The analytical framework drew attention to the role of social relationships in decision-making, and of the particular circumstances leading up to and surrounding the point at which the decision was made.

This analytical framework can therefore provide a useful model for examining other forms of organisational misconduct. It could be applied to other types of crime in an organisational setting. As with the current research, 'organisational' does not need to refer to corporations or structured organisations; for example, Vaughan (2002) has also applied similar models, based on the concept of situated action, to examine violence within families, with the family unit acting as an organisational form. The framework can be adapted to make it suitable for the analysis of the specific area being researched, for example, by incorporating relevant macro-level environmental contexts. This research therefore supports Vaughan's (2002, 2007) call to consider multi-level explanations of white-collar or organisational crime, rather than focusing on individual, organisational or wider social-structural levels in isolation.

9.1.4 Wider Implications: Money Laundering, White-Collar Crime and the Organisation of Crime

This research has focused on the role of legal and financial professionals in the facilitation of money laundering. As such, it sits at the intersection of a number of areas that are often considered separately: money laundering, white-collar crime, and the organisation of serious crime. It, therefore, has implications for all of these areas, contributing to theoretical development in these areas and points at which they intersect.

Exploring the facilitation of money laundering by professionals through the course of this research has drawn attention to the limitations in the way that 'money laundering' is conceptualised and considered. The last few decades have witnessed the rise of a global anti-money laundering regime, comprising far-reaching

changes to legislative frameworks, policies and practices and giving an array of public and private actors a role in preventing and investigating money laundering. This has been accompanied by a vast body of literature examining and critiquing the anti-money laundering regime, its institutions, mechanisms and (in)effectiveness. Yet there remains a notable lack of clarity on what constitutes 'money laundering', with official definitions and legislation widening the scope to include far more than the strict meaning of the term, and limited understanding of the actual processes by which criminals 'manage' the proceeds of their crimes. A much greater focus on trying to understand what happens to the proceeds of crime after they have been acquired is needed; that is, what the objectives are for the illicitly obtained funds and what is done to achieve these objectives. The variation in the roles played by professionals in the facilitation of money laundering is due to the varying processes and objectives of the management of criminal proceeds. For example, within the relatively small sample of cases examined in this research, transactions involving funds or property of criminal origin included the buying or selling of one or more properties; the passing of monies from bank account(s) to bank account(s) via a legal firm's client account; the purchase of assets with funds that had been moved into a firm's client account; the transfer of ownership of commercial property to an offshore company; the transfer of title of property; and the payment of bail using the proceeds of criminal activity. The purpose of each of these transactions may have been to legitimise the criminal proceeds ('laundering' the money in the strict sense of the term), or the transactions may simply have represented criminal money being used for a particular purpose. Therefore, working towards a better understanding of the management of criminal proceeds should be the primary goal within 'money laundering' research, with examination of the role of (legitimate and non-legitimate) actors in these processes emerging from this.

As discussed in the previous section, the research demonstrated the influence of the organisational characteristics and wider situational contexts on individual actions and decision-making processes in an organisational setting, indicating that these factors should be taken into account when analysing and theorising white-collar crime. The research can also be used to assist theory development in relation to the role of legitimate actors in the organisation of serious crimes. **The facilitation of money laundering by legal and accountancy professionals can be seen as an example of legitimate actors' involvement in the organisation of serious crime, representing an intersection of legitimate and criminal worlds; the findings from this research, therefore, can tell us something about the role of legitimate actors in the**

organisation of crime, and how we should think about and respond to this.

Interactions between the criminal and legitimate spheres have been understood both in terms of organised crime as a 'predatory force' within legitimate society, and with legitimate actors as active, critical participants in criminal networks (e.g. Morselli and Giguere 2006). The current research has shown that the role of legitimate actors in the organisation of crime can be shaped by, and emerge from, the specific situational contexts in which they occur. It can be influenced by social relations and dynamics, for example, between the legitimate actors, primary offenders, brokers, and control agents. It can also be influenced by the nature and processes of the occupational or professional role of the legitimate actors, thus highlighting the utility of using theoretical perspectives associated with 'white-collar crime' to understand the role of the occupational setting. The research also suggests that the heterogeneous nature of legitimate actors' involvement in the organisation of crime should be appreciated, taking account of the variation of roles and relationships involved, and that such involvement cannot be easily categorised as either complicit, active participation or innocent exploitation.

9.2 Limitations and Future Research Directions

The methodology chapter (Chapter 5) highlighted some of the limitations of this research, which must be taken into account when considering its findings and conclusions. Only cases of *convicted* professionals were analysed, to allow for a level of objectivity in the inclusion criteria, which may have resulted in the exclusion of cases that are more complex or difficult to successfully prosecute. In addition, challenges of identifying cases of professionals convicted for involvement in money laundering, due to relevant data not being systematically collected, means that the cases analysed cannot be seen as an exhaustive or representative sample. The lack of available data on many of these cases (and being unable to access further closed data sources such as CPS files) meant that, for some cases, information available to analyse was limited. However, the total body of data collected was rich and textured, and allowed considerable insight into a complex and multi-layered area. The use of multiple data sources and a combination of methods enabled a deeper understanding, and appreciation of different perspectives, than would have been possible with a single approach or source of data. Nevertheless, this research should be considered as an initial exploration of an under-researched and under-theorised area. It represents a modest attempt to address the significant gaps in understanding about the role played

by professionals in the facilitation of money laundering, the relationships involved, and the responses to it. There is, therefore, considerable scope for further research in this area, and a number of directions this could take.

One of the primary goals of future empirical research in this area should be to speak directly to professionals who have been convicted for facilitating money laundering. This would allow their 'voice' to be heard and provide valuable insight and accounts of their actions, experiences and interpretations. This would allow a more effective understanding of choices taken by professionals and the decision-making processes involved, something that was limited in the current research by not being able to access such individuals. It would also allow a better understanding of the relationships between professionals and predicate offenders, which should be considered an important focus for future research. In addition, a focus on evaluating the level of financial gain acquired by the professionals would be of considerable benefit; the data available in the current study made this difficult.

Basic data were collected on the sentences received by the professionals in the cases following their convictions, and the sanction imposed at subsequent disciplinary hearings. However, these data could not be fully analysed due to the limited scope of a PhD thesis. The punishment of professionals involved in the facilitation of money laundering would be an interesting area for future research, allowing for the exploration of patterns, discrepancies and influencing factors in sentencing and sanctioning decisions, and a consideration of the benefits and challenges of a process of punishment that incorporates both criminal justice and professional disciplinary elements.

As discussed earlier, the analytical framework used in this research provided a valuable model for examining the individual actions of professionals involved in money laundering within their organisational context and wider environment. However, the confines of a single PhD project meant that each level could not be explored as fully as would be ideal, and decisions had to be made to define the levels in certain ways that could be considered as limiting. To build on this research, therefore, it would be useful to look at each level in more depth. For example, the 'control environment' could be explored in much greater detail, and ideas from regulation theory could be applied to elaborate on the role of regulators and a dual response involving both criminal justice and regulatory processes. Current responses to professional facilitation of money

laundering could be considered in light of the recent increasing focus and changes of policy in this area within the UK. Other macro-level contexts could be examined, including giving consideration to the 'competitive environment' in which legal and accountancy professionals operate, as the market for the provision of services becomes increasingly open and competitive. In relation to the organisational context, this research focused on the relevant professions and the structures, processes and transactions of the occupational role of these professionals. It would be of interest to consider the nature of the different forms of organisation within which professionals work, and examine the effects of the culture and structures of these organisations on professionals' actions in relation to money laundering.

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Appendices

Appendix 1: The Cases

This appendix provides further detail on the twenty cases analysed in this research, which involved solicitors who had been convicted of money laundering offences between 2002 and 2013, where the offences committed were related to their occupational role and involved facilitating the laundering of the proceeds of crimes committed by others. The data presented here is collated from a range of sources.

The following information is included:

- Background information
- Case summaries
- Criminal conviction and sentencing
- Disciplinary proceedings

Background Information

Case No.	Name	Gender	Age at Conviction	Occupation	Time in Profession	Location of Practice
1	Jonathan Duff	Male	43	Solicitor	18 years	Chester, Cheshire
2	Paul Winter Morris	Male	54	Solicitor	28 years	Leek, Staffordshire
3	Andrew Young	Male	39	Solicitor	14 years	Manchester
4	Peter Obidi	Male	44	Solicitor	4 years	London
5	Brian Dougan	Male	48	Solicitor	Unknown	Armagh, N. Ireland
6	Philip Griffiths	Male	45	Solicitor	21 years	Shrewsbury, Shropshire
7	Gerard Hyde	Male	55	Solicitor	29 years	London
8	Jonathan Krestin	Male	60	Solicitor	31 years	London
9	Mohammed Jahangir Farid	Male	25	Trainee Solicitor	Unknown	Bradford, W. Yorkshire
10	Rachel Taylor	Female	29	Assistant Solicitor	5 years	Luton, Bedfordshire
11	Anthony Blok	Male	72	Solicitor	49 years	London
12	Aminat Afolabi	Female	41	Solicitor	2 years	London
13	Shadab Khan	Male	38	Solicitor	12 years	Bradford, W. Yorkshire
14	Martin Wilcock	Male	50	Solicitor	11 years	Accrington, Lancashire
15	Bhadresh Gohil	Male	46	Solicitor	18 years	London
16	James Thorburn-Muirhead	Male	63	Solicitor	37 years	Henley-on-Thames, Oxfordshire
17	Nicholas Heywood	Male	45	Solicitor	21 years	Manchester
18	Andrew Tidd	Male	52	Solicitor	27 years	Liverpool
19	Richard Housley	Male	57	Solicitor	Unknown	Bathgate, West Lothian
20	Andrew Wormstone	Male	43	Solicitor	20 years	Leeds

Table 3: Solicitors convicted of money laundering offences between 2002 and 2013: background information

As the table shows, the solicitors in the cases were from various parts of the UK (one from Scotland, one from Northern Ireland, the rest from England). All but two of the solicitors were male. There was a significant age range, from 25 years to 72 years, at date of conviction. Some of the cases involved very experienced solicitors, with one being convicted 49 years after qualification. Others, however, were much less experienced: one case involved a trainee solicitor and others involved solicitors who had only been qualified for a few years.

Case Summaries

Case 1 JONATHAN DUFF

Jonathan Duff was convicted at Manchester Crown Court on 1st July 2002 of failure to disclose knowledge or suspicion of money laundering, under the Drug Trafficking Act (DTA) 1994 s.52(1).

Duff had started acting for businessman Gene Gibson in 1993/4, having met him via a mutual interest in motor racing and becoming friends. In 1998, Gibson was arrested with a business associate, Mr Halford, at Birmingham Airport in possession of cocaine valued at about £5million. They denied all knowledge of the drugs and Duff acted for Gibson in the criminal proceedings. 6 months after the initial arrest Gibson and Halford were further charged with conspiracy to import drugs between October 1996 and March 1998, during which time it was alleged that they had undertaken more than 30 illicit trips between Dusseldorf and the UK for drug trafficking purposes.

At this stage, having been previously convinced of Gibson's innocence, Duff suggested, he considered a number of transactions he had been involved in on behalf of Gibson during the 1996-98 period. These transactions included a sum of £60,000 given to Duff by Gibson in April 1997, £10,000 of which was paid on account of costs of ongoing litigation and the remainder paid by Gibson as an investment in a proposed branch office to be run by Duff. The £50,000 was returned to Gibson by cheque a short time later, apparently because Gibson had changed his mind. Another transaction involved £10,000 paid by Gibson in May 1997 into a company called Talking Compensation Ltd, a company set up to solicit personal injury compensation business for Duff's practice. The venture was unsuccessful and the money was consumed in advertising and other costs.

Duff said that he became aware that, by way of these transactions, he might have been used for the purpose of money laundering. Having consulted some literature he had received from the Law Society, however, he came to the conclusion that as the transactions were in the past and because of his duties to Gibson and Halford as clients, he was under no duty of disclosure within the meaning of section 52 of the DTA. At that stage he took no advice on the matter. However, after Gibson and Halford were convicted in 1999, Duff took advice from a solicitor who advised him that his construction of s.52 was correct and there had been no duty to report.

Duff was arrested in October 1999, charged in December 2000, and convicted in 2002. He was sentenced to 6 months and 3 months for the 2 charges, to run concurrently. He was struck off by the SDT in May 2003 (he had been disciplined by the SDT for other accounting and professional conduct charges and was already on suspension at the time of this hearing).

Case 2 PAUL WINTER MORRIS

Paul Winter Morris was convicted under s.93A(1) of the Criminal Justice Act 1988 of three counts of assisting another to retain or control the benefit of criminal conduct.

The convictions related to the laundering of £8million from VAT fraud committed by Raymond Woolley. The VAT owed, but not paid, was diverted by Woolley to a bank account in the name of Viltern, a Dublin based company, and a bank account in the name of Hocus SL, a Spanish company. By an arrangement between Woolley and Morris, Viltern transferred £5,288,694 and Hocus transferred £2,639,988 into the client account of Brooks, the firm where Morris was partner. This money was transferred by Morris to the firm's client account in the names of six different clients. Individual disbursements were then made in respect of what purported to be ordinary solicitor and client transactions, but were in fact a cover for transfers related to, for example, the purchase of a yacht or cars. Over £4.5million was transferred from Brooks to a company called Thornbush Entertainment Inc. (USA).

Morris was sentenced to five years imprisonment for each of the three counts, to run concurrently. He was struck off by the SDT at his hearing on 24th February 2007. He was recalled to prison in February 2011 for failing to pay all of a £410,000 confiscation order, for which he was sentenced to a further 3 years.

Case 3 ANDREW YOUNG

Andrew Young was a solicitor in the firm he set up and ran alone in Manchester. He was convicted of 2 counts of assisting another to retain the benefit of criminal conduct, contrary to section 93A(1) of the Criminal Justice Act (CJA) 1988, in September 2004.

One of the counts was in relation to entering into or being otherwise concerned in an arrangement whereby the retention or control by John Fitzpatrick of his proceeds of criminal conduct was facilitated; the other was in relation to entering into or being otherwise concerned in an arrangement whereby the retention or control by Noel Ward of his proceeds of criminal conduct was facilitated.

Fitzpatrick was a solicitor at a firm in Bradford and Ward was a mortgage broker. With others, they committed a number of mortgage frauds, making an estimated £1,221,100. The frauds

involved applications for mortgage advances being made, with property prices quoted in the applications being higher than the actual price. False documents, forged documents and other misleading information supported the applications. Young provided the laundering facilities for the proceeds of the frauds by receiving the funds from TI Clough (Fitzpatrick's firm), holding the monies in his firm's client account and disbursing them as required by Fitzpatrick and Ward.

Young was sentenced to 27 months imprisonment for each count, to run concurrently but consecutive to a sentence he was already serving for theft.

Case 4 PETER OBIDI

Peter Obidi was a solicitor trained in Nigeria, and associated with a number of firms in London, as well as running his own unregistered practice from his home address between 2001 and 2005. He was convicted in October 2004 of assisting another to retain or control benefit of criminal conduct.

Obidi met Mr I at church, who told Obidi he raised money for charity projects around the world. He asked Obidi to represent him, but Obidi could not agree to that as his principal was out of the country at the time. Obidi helped Mr I with some financial matters, on an unofficial basis. Mr I introduced Obidi to Mr M; Obidi said he was not aware of the details of the business between the two. Mr I was later convicted of conspiracy to defraud £18,000 from Mr M.

Mr M had paid the £18,000 to Obidi, under instruction from Mr I. Though he had doubts about Mr I, Obidi stated, he banked the cheque. When the cheque had cleared, Mr I and Obidi went to the bank and withdrew it by way of a banker's draft and cash. Following Mr I's conviction for conspiracy to defraud, Obidi was convicted of the money laundering offence in relation to the £18,000.

Obidi was sentenced to 6 months imprisonment. He was struck off by the SDT on 8th November 2005, as a result of this conviction and a number of other actions including failing to register his own practice, practising without insurance, and practising without a certificate.

Case 5 BRIAN DOUGAN

Brian Dougan, a solicitor from County Armagh, was convicted in July 2006 at Liverpool Crown Court of converting or transferring the proceeds of criminal conduct. His conviction related to funds he handled on behalf of Thomas McCague who was convicted of fuel fraud.

McCague was one of the leaders of a group involved in a major £300,000 oils fraud, involving diesel and kerosene being shipped to Britain and sold. Dougan acted for McCague in the purchase of 11 properties with the proceeds of these crimes; it was estimated that his firm's business account was used to handle £66,500 in total.

Dougan was sentenced to 3 months imprisonment following his conviction, and was issued with a confiscation order for the £66,500. It is not clear what disciplinary proceedings he faced.

Case 6 PHILIP GRIFFITHS

Philip Griffiths acted as conveyancer in the sale of a property owned by Peter and Donna Davis, who were convicted for involvement in a drug trafficking conspiracy. Following this conviction in 2004, the Davis' sold the property in what was considered to be an attempt to thwart confiscation proceedings. They had purchased the property for £83,000, partly by mortgage of £43,000 arranged by Leslie Pattison, an estate agent. When they sold the property, it was valued at £150,000, but they sold it to Pattison for £43,000. Griffiths acted in this sale, having been asked to do so by Pattison, who he had known for a number of years. He had previously acted for the Davis' in another property sale in 2001 and in 2002 had been served with a production order in relation to that transaction; therefore, it was suggested that he had known that they were being investigated for drug trafficking at the time of the transaction for which he was convicted. Pattison said that he told Griffiths that a very good commercial opportunity had come his way, but Griffiths said that Pattison had told him that some friends of his were in financial difficulties and so he was buying out the mortgage to help them.

Griffiths was charged with entering into a money laundering agreement, but was acquitted of this and was instead convicted of failing to make a required disclosure to the authorities, under POCA s.330. It was accepted by the Court that he had reasonable grounds for knowledge or suspicion that another person was engaged in money laundering, not that he had actual knowledge. Had he actually had knowledge or suspicion he would have been found guilty of the initial offence.

Griffiths was sentenced to 15 months imprisonment; this was later reduced to 6 months on appeal. He was struck off by the SDT on 24th July 2007.

Case 7 GERARD HYDE

Gerard Hyde was convicted of concealing or disguising the proceeds of criminal conduct contrary to Section 93C(2) of the Criminal Justice Act 1988 in March 2007.

Hyde was a commercial property solicitor who allowed his firm's client account, and a bank account he controlled in the Isle of Man, to launder the proceeds of a VAT fraud involving the importation of mobile phones. It was estimated that this fraud operated for 16 months and defrauded the public revenue of around £30m. Hyde was believed to have laundered £2m of the proceeds, over an eight month period.

Following his conviction, Hyde was sentenced to 42 months imprisonment. He was struck off by the SDT on 9th December 2008.

Case 8 JONATHAN KRESTIN

Jonathan Krestin was convicted in November 2008 of one charge of facilitating the acquisition, retention, use or control of criminal property by or on behalf of another person, contrary to s.328(1) of POCA. He was cleared on 3 other counts. His conviction related to the movement of money that constituted the proceeds of a large scale MTIC fraud conducted by Michael Namer.

Namer was introduced to Krestin by Neil Macpherson, a tax advisor at Baker Tilly, as a client of his needing a solicitor to undertake some commercial work. Between 2003 and 2005, Krestin undertook small amounts of commercial work for Namer. The transaction for which Krestin was convicted was the receipt and disbursement by Krestin's firm of €14,000 in September 2005, on the instructions of Namer, from Kilmeston Ltd to Dzindzer Jeles' (Namer's mistress) bank account. This payment had been made just a few days after Krestin had received a production order setting out a criminal case against Namer and warning Krestin about the offence of 'tipping-off' Namer.

The jury found Krestin not guilty of three other counts in relation to transactions that had taken place before receipt of the production order.

Krestin was sentenced to a fine of £5,000. He was not given a custodial sentence as the judge in his trial accepted that the conviction was based on suspicion, rather than knowledge. He was also ordered to pay £9,517 (the sterling equivalent of €14,000) under a POCA confiscation order. Krestin was 'severely reprimanded' by the SDT on 27th October 2010, but was not struck off the roll of solicitors.

Case 9 **MOHAMMED JAHANGIR FARID**

Mohammed Jahangir Farid's brother, Rashid Farid - a qualified accountant and financial advisor - was jailed for 11 years in 2009 for masterminding a large scale mortgage fraud that defrauded mortgage companies of approximately £800,000. The money was transferred into various bank accounts and eventually sent to Pakistan. A number of others were convicted of involvement in the fraud and/or money laundering.

Jahangir Farid was convicted of entering into or becoming concerned in an arrangement facilitating the acquisition, retention, use or control of criminal property in April 2009, in relation to the proceeds of the mortgage frauds. While it was accepted that his role fell short of a conspirator, he had given advice to his brother, witnessed an email about transfer of title and used his firm's headed notepaper to produce a forged document which was used in relation to the satisfaction of the money transferor. It was for these actions that he was convicted of a money laundering offence.

Jahangir Farid was sentenced to 4 years imprisonment. As he was a trainee solicitor, the SDT ordered that he should not be employed or remunerated as a solicitor or by another solicitor.

Case 10 **RACHEL TAYLOR**

Rachel Taylor was convicted in May 2009 on one count of disguising criminal property, contrary to s.327 of POCA. Her conviction related to the creation of false motor trading business accounts for Pardeep Bains, an ex-partner with whom she remained friendly.

Bains was involved in drug dealing and was laundering the proceeds of his criminal activity through family members' bank accounts and properties. When the police began to look into these accounts, he contacted HMRC to say that he wanted to declare income from his motor trading business. This business did not actually exist. Bains went to Taylor with blank tax returns and asked for her help. On the back of a letter from HMRC, Taylor wrote out a series of figures purporting to be the income, expenses and profit from Bains' motor trading for the year 2005/2006. Bains took these figures to his accountant, but the accountant did not accept them or act on them. Taylor's conviction and sentence were on the basis that she suspected that the money was the product of criminal activity on Bains' part when writing out these figures.

Taylor was sentenced to 39 weeks imprisonment, suspended for 18 months, with requirements to carry out 200 hours community work and pay a fine of £5,015. She was suspended from practice by the SDT for 12 months on 22nd September 2010.

Case 11 ANTHONY BLOK

In July 2009, Anthony Blok was convicted on indictment of 6 counts, including 3 money laundering offences relating to the transfer of criminal property and failure to disclose knowledge or suspicion of money laundering.

The offences were primarily related to Blok helping a client to sell a stolen painting. The money laundering offences related to him paying £75,000 in cash to court for the bail of a client who had been arrested for money laundering. Blok had applied for bail for his client and then called his client's daughter as a witness to provide evidence about the limited funds available to the family to meet the bail requirements. A few days later, Blok deposited £75,000 with the court cashier. When questioned about its origins, Blok said he was given the funds outside the court by a man he did not know, and understood the funds to have been raised by family and friends over the weekend. However, CCTV footage showed Blok meeting the client's daughter and another woman who handed him two bags of money. The court accepted that, in the circumstances, it was not reasonable for that amount of money to be raised legitimately in such a short space of time, and that the false story provided by Blok demonstrated that he knew or suspected that the funds were from a criminal source.

Blok was sentenced to a total of 4 years for all the offences. By the time of his SDT hearing in December 2010, he had already removed his name from the roll of solicitors. Therefore, the SDT ordered that he be prohibited from having his name restored to the roll.

Case 12 AMINAT AFOLABI

Aminat Afolabi was convicted in June 2009 of three counts of entering into or being concerned in a money laundering arrangement contrary to s.328 of POCA, and one offence of acquiring criminal property contrary to s.329 of POCA. In December the same year, the Court of Appeal quashed the convictions on two of the counts under s.328.

Afolabi set up a firm of solicitors prior to becoming qualified. Until she became qualified she was practice manager of the firm; after she was admitted as a solicitor in April 2007, she became a partner at the firm.

The conviction under POCA s.328 arose from the sale of a property by a company controlled by her husband. Subsequent to the sale, Mr Afolabi had been convicted for fraudulent activities and

received a substantial prison sentence; the property in question had been purchased using funds derived from his criminal activity. It was agreed that Afolabi had been involved in the conveyancing of this property (the conveyancing had been done by Peter Herbert, a partner in the firm). The conviction under POCA s329 arose from a series of money transfers made to Afolabi from her husband.

Afolabi was sentenced to 18 months imprisonment, and was struck off by the SDT on 12th January 2012.

Case 13 SHADAB KHAN

Shadab Khan was convicted in September 2009 on one count of money laundering and two counts of failing to disclose knowledge or suspicion of money laundering.

The offences for which Khan was convicted were related to conveyancing work he had carried out for Khalid Malik, who was sentenced to 25 years in December 2005 for importing 130kg of heroin. Khan conducted conveyancing for properties worth £593,000 for Malik.

Khan was sentenced to 4 years imprisonment, with a further 12 months to run concurrently. He was struck off by the SDT on 15th December 2011.

Case 14 MARTIN WILCOCK

Martin Wilcock was convicted in September 2010 of one offence under s.330 of POCA, for failing to disclose knowledge or suspicion of money laundering.

Wilcock represented Michael Nevin, who was housing illegal immigrants in three hotels in Southport. He failed to disclose that the money Nevin earned through the hotels was criminal profit. In addition, he transferred ownership of the hotels to an offshore company owned by Nevin while Nevin was under a criminal investigation.

Following his conviction, Wilcock was fined £2,500. He was suspended from practice for 3 months by the SDT on 30th May 2012.

Case 15 BHADRESH GOHIL

Bhadresh Gohil was convicted at the end of 2010 on a number of counts relating to the laundering of \$37million, which had been stolen from the state of Delta in Nigeria by James Ibori, then governor of the state.

Ibori is believed to have defrauded \$250m from the Nigerian people over a period of eight years. The \$37m related to Gohil's conviction was the proceeds from the sale of Delta state's share in a mobile phone company to a neighbouring state.

Gohil's involvement in the laundering included allowing the use of his firm's client account for the money to pass through, opening other bank accounts to be used in the same way, and creating a series of complex financial transactions. In addition, he assisted in the purchase of a Challenger jet from Bombardier at a cost of \$20million, and kept Ibori's ownership of this jet a secret, by developing a scheme to ensure that the ownership of the jet was made as complicated and obscure as possible, using bank accounts and companies registered in various countries.

Gohil was sentenced to 10 years imprisonment for the various offences following trials in November and December 2011. He was struck off by the SDT on 8th October 2012.

Case 16 JAMES THORBURN-MUIRHEAD

James Thorburn-Muirhead was convicted in February 2011 of a number of offences related to the theft of clients' money and false accounting, and one offence of failure to make a required disclosure, contrary to POCA s.330.

The money laundering offence was related to Thorburn-Muirhead's involvement in various property transactions for a convicted drug dealer, Steven Smith. Many of these transactions involved the lodgement of cash deposits by Smith. Thorburn-Muirhead had additionally been charged with a further money laundering offence, but this charge was dropped under a plea bargain.

Thorburn-Muirhead was sentenced to 16 months imprisonment, and was struck off by the SDT at his hearing on 9th December 2011.

Case 17 NICHOLAS HEYWOOD

Nicholas Heywood was convicted in December 2011 on two counts of prejudicing a money laundering investigation, one count of perverting the course of justice, and one count of concealing, disguising, transferring or removing criminal property, contrary to s.327 of POCA.

Heywood represented a lottery winner, Keith Gough. Gough was targeted by a fraudster, James Prince, who took out a fraudulent loan in Gough's name. Heywood transferred £13,750 of this loan to himself.

Heywood was sentenced to 6 months imprisonment following his conviction, and was struck off by the SDT on 16th October 2012.

Case 18 ANDREW TIDD

Andrew Tidd was convicted in February 2012 on five counts of failing to report knowledge or suspicion of money laundering, under s.330 of POCA.

Tidd acted in a number of transactions on behalf of Nevzat Kocabey over a 4-year period, including acting as conveyancing solicitor in the purchase of two properties. The deposits paid for the two properties amounted to over £26,000, believed to represent the proceeds of drug offences. Kocabey had been introduced to Tidd by his brother, who had been a client of Tidd's for a number of years. Kocabey told Tidd that he had a number of fast food businesses, which were the source of his income.

Two of the five transactions for which Tidd was convicted occurred when Kocabey was in custody in 2005 for drug offences; the other three related to events after his release. Tidd was aware that Kocabey was in custody, but believed it was in relation to a dispute with a former business partner. He stated that he was not aware until 2010, when he was questioned by the police, that it was related to drug offences, and had no suspicions that Kocabey was involved with drugs or that the transactions he was involved with were in any way tainted. He accepted that he should have asked why Kocabey was in custody and said therefore that all five counts flowed from this one error of judgement. The basis for pleading guilty to these charges was that he had information that gave reasonable grounds for suspecting that his client had been engaged in money laundering

Tidd was sentenced to 4 months imprisonment, suspended for 12 months, concurrent for each of the five counts. On 17th December 2013, he appeared before the SDT and fined £2,500 (lowered from £5,000 due to his financial circumstances) but was not struck off.

Case 19 RICHARD HOUSLEY

Richard Housley was convicted in January 2013 on one charge of entering into or becoming concerned in an arrangement facilitating the acquisition, retention, use or control of criminal property, under POCA s.328 and one charge of failure to report suspicious transactions, under POCA s.330. He was also convicted of income tax fraud.

The money laundering offences related to Housley's involvement in the laundering of £1.8million, the proceeds of VAT fraud carried out by Michael Voudouri and accomplices. Housley was employed as Director of a clothing firm owned by Voudouri, which was used as a front for laundering criminal proceeds. In addition, Housley allowed money from the frauds to be moved through his firm's client account.

Housley was sentenced to 4 years imprisonment. At the time of writing his sentence remains ongoing, and has not been subject to disciplinary proceedings.

Case 20 ANDREW WORMSTONE

Andrew Wormstone was convicted of entering into or becoming involved in a money laundering arrangement in April 2013, on the basis of actions he had taken to assist fraudster, Gurdip Singh.

Singh and others had defrauded £2million from Sussex University. The money was obtained when officials at Sussex University thought that they were dealing with a legitimate Manchester construction firm chosen to carry out redevelopment of student accommodation, on the basis of a forged invoice. The forged invoice instructed the University to pay the money into an account controlled by Singh, under the name Balecourt Ltd.

The theft was discovered a few days after payment had been made, and the Balecourt account was immediately frozen. Singh and others tried unsuccessfully to persuade the bank to release the funds. Having failed to convince the bank that the funds were obtained legitimately, Wormstone sent documents to the bank purporting to show that Singh and others were clients of his and that he was acting on their behalf in high-value land deals. None of the deals existed. Wormstone maintained that he did not commit the offence, saying that he had written to the bank as he had concerns about the source of the money as part of the money laundering checks. He had been cleared in September 2012 of charges relating to the concealment and transfer of funds in relation to a similar theft from Oldham Sixth Form College.

Wormstone was sentenced to two and a half years imprisonment, and was struck off by the SDT on 24th October 2013.

Criminal Conviction and Sentencing

This table provides detail about the solicitors' convictions and the sentences received. The solicitors received a variety of sentences following conviction, from fines to custodial sentences of several years.

Case No.	Name	Date of Conviction	Location of Conviction	Offence convicted for (incl. relevant legislation)	Sentence
1	Jonathan Duff	01/07/2002	Manchester Crown Court	Drug Trafficking Act 1994 s.52(1): Failure to disclose knowledge or suspicion of money laundering (2 counts)	6 months imprisonment
2	Paul Winter Morris	12/03/2003	Birmingham Crown Court	Criminal Justice Act 1988 s.93(a): Assisting another to retain or control benefit of criminal conduct (3 counts)	5 years imprisonment
3	Andrew Young	09/09/2004	Sheffield Crown Court	Criminal Justice Act 1988 s.93(a): Assisting another to retain or control benefit of criminal conduct (2 counts)	2 years 3 months imprisonment
4	Peter Obidi	08/10/2004	Southwark Crown Court	Criminal Justice Act 1988 s.93(a): Assisting another to retain or control benefit of criminal conduct	6 months imprisonment

5	Brian Dougan	22/05/2006	Liverpool Crown Court	Criminal Justice Act 1988 s.93(c): Concealing or disguising the proceeds of criminal conduct	3 months imprisonment
6	Philip Griffiths	19/06/2006	Warwick Crown Court	POCA 2002 s.330: Failure to disclose: regulated sector	6 months imprisonment
7	Gerard Hyde	02/03/2007	Southwark Crown Court	Criminal Justice Act 1988 s.93(c): Concealing or disguising the proceeds of criminal conduct	42 months imprisonment
8	Jonathan Krestin	19/11/2008	Isleworth Crown Court	POCA 2002 s.328: Entering into or becoming concerned in an arrangement facilitating the acquisition, retention, use or control of criminal property (1 count)	Fine of £5,000
9	Mohammed Jahangir Farid	02/04/2009	Bradford Crown Court	POCA 2002 s.328: Entering into or becoming concerned in an arrangement facilitating the acquisition, retention, use or control of criminal property	4 years imprisonment

10	Rachel Taylor	22/05/2009	Luton Crown Court	POCA 2002 s.327: Concealing, disguising, converting, transferring or removing criminal property from England and Wales, Scotland or Northern Ireland (1 count)	39 weeks imprisonment, suspended for 18 months 200 hours community work Fine of £5,015
11	Anthony Blok	30/06/2009	Croydon Crown Court	POCA 2002 s. 327 (1 count), s.328 (1 count), s.330 (1 count) Perverting the course of justice (1 count) Perjury (1 count)	4 years imprisonment
12	Aminat Afolabi	14/07/2009	Inner London Crown Court	POCA 2002 s.328: Entering into or becoming concerned in an arrangement facilitating the acquisition, retention, use or control of criminal property (1 count) POCA 2002 s.329: Acquiring, using or having possession of criminal property (1 count)	18 months imprisonment

13	Shadab Khan	30/09/2009	Leeds Crown Court	<p>POCA 2002 s.328: Entering into or becoming concerned in an arrangement facilitating the acquisition, retention, use or control of criminal property (1 count)</p> <p>POCA 2002 s.330: Failure to disclose: regulated sector (2 counts)</p>	4 years imprisonment
14	Martin Wilcock	22/09/2010	Preston Crown Court	<p>POCA 2002 s.330: Failure to disclose: regulated sector (1 count)</p>	Fine of £2,515
15	Bhadresh Gohil	22/11/2010 and 06/12/2010	Croydon Crown Court	<p>Number of offences under POCA 2002 s.327 and s.328</p> <p>Conspiracy to defraud</p> <p>Conspiracy to make false instruments</p>	10 years imprisonment
16	James Thorburn-Muirhead	19/02/2011	Kingston Crown Court	<p>POCA 2002 s.330: Failure to disclose: regulated sector (1 count)</p> <p>Theft and false accounting (4 counts)</p>	16 months imprisonment

17	Nicholas Heywood	12/12/2011	Warrington Crown Court	<p>POCA 2002 s.327: Concealing, disguising, converting, transferring or removing criminal property from England and Wales, Scotland or Northern Ireland (1 count)</p> <p>POCA 2002 s.342: Prejudicing a money laundering investigation (2 counts)</p>	12 months imprisonment
18	Andrew Tidd	06/02/2012	Burnley Crown Court	<p>POCA 2002 s.330: Failure to disclose: regulated sector (5 counts)</p>	4 months imprisonment, suspended for 12 months
19	Richard Housley	29/01/2013	Edinburgh High Court	<p>POCA 2002 s.328: Entering into or becoming concerned in an arrangement facilitating the acquisition, retention, use or control of criminal property (1 count)</p> <p>POCA 2002 s.330: Failure to disclose: regulated sector (1 count)</p> <p>Income tax fraud</p>	4 years imprisonment

20	Andrew Wormstone	07/02/2013	Leicester Crown Court	POCA 2002 s.328: Entering into or becoming concerned in an arrangement facilitating the acquisition, retention, use or control of criminal property (1 count)	30 months imprisonment
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Table 4: Convictions and sentences received

Disciplinary Proceedings

Most of the solicitors in the cases subsequently appeared in front of the Solicitors Disciplinary Tribunal, where they received disciplinary sanctions ranging from a reprimand to being struck off the roll of solicitors.

Case No.	Name	Disciplinary Action Taken?	Disciplinary Sanction ^a
1	Jonathan Duff	Solicitors Disciplinary Tribunal: 20/05/2003	Struck Off
2	Paul Winter Morris	Solicitors Disciplinary Tribunal: 24/02/2004	Struck Off
3	Andrew Young	No record	
4	Peter Obidi	Solicitors Disciplinary Tribunal: 08/11/2005	Struck Off (charge included other offences of conduct unbecoming a solicitor)
5	Brian Dougan	No record	
6	Philip Griffiths	Solicitors Disciplinary Tribunal: 24/07/2007	Struck Off
7	Gerard Hyde	Solicitors Disciplinary Tribunal: 09/12/2008	Struck Off
8	Jonathan Krestin	Solicitors Disciplinary Tribunal: 27/10/2010	Severe reprimand
9	Mohammed Jahangir Farid	Solicitors Disciplinary Tribunal: 17/02/2011	Prohibited from being employed or remunerated in connection with his practice as a solicitor, by a solicitor/ recognised body
10	Rachel Taylor	Solicitors Disciplinary Tribunal: 22/09/2010	Suspended for 12 months

11	Anthony Blok	Solicitors Disciplinary Tribunal: 01/12/2010	Prohibited from having name restored to roll of solicitors (removed name himself in 2009)
12	Aminat Afolabi	Solicitors Disciplinary Tribunal: 12/01/2012	Struck Off
13	Shadab Khan	Solicitors Disciplinary Tribunal: 15/12/2011	Struck Off
14	Martin Wilcock	Solicitors Disciplinary Tribunal: 30/05/2012	Suspended for 3 months
15	Bhadresh Gohil	Solicitors Disciplinary Tribunal: 08/10/2012	Struck Off
16	James Thorburn-Muirhead	Solicitors Disciplinary Tribunal: 09/12/2011	Struck Off
17	Nicholas Heywood	Solicitors Disciplinary Tribunal: 16/10/2012	Struck Off
18	Andrew Tidd	Solicitors Disciplinary Tribunal: 17/12/2013	Fine £2,500 (reduced from £5,000 due to financial circumstances)
19	Richard Housley	Not at time of writing	
20	Andrew Wormstone	Solicitors Disciplinary Tribunal: 24/10/2013	Struck Off

a: In addition to these sanctions, all were made to pay costs.

Table 5: Disciplinary action and sanction imposed

Appendix 2: Interview Guides

Interview Guide

Group 1: Members of Law Enforcement/Criminal Justice Bodies

Introductory Questions (to provide context and background information):

- Please tell me about your role, and the role of the organisation/unit

Money Laundering

- Can you tell me about the ways that criminals manage, or 'launder', the proceeds of their crimes?
 - Methods
 - Changes in methods
 - Dependent on predicate crime/form of the proceeds/amount of money

Involvement of Legal and Financial Professionals

- Based on your experience / specific cases, can you tell me about the role legal and financial professionals play in this?
 - What the professional did and how
 - Predicate crime
 - Form/amount of the proceeds involved
 - Processes that led to their involvement
 - Relationship with the criminal/group
 - Previous involvement in such/similar activity
- Do you think the involvement of such professionals is critical for the management of criminal proceeds?
 - All ML activity?
 - Certain methods/amounts/forms of money?
 - Changed over time?
- How do you think the professionals become involved in such activity?
 - Willingly/knowingly?
 - Relationship between professional and criminal/group
 - Benefits to the professional

- Do you think their involvement is affected by things related to their position, such as:
 - Professional ethics/codes of conduct
 - Confidentiality/legal privilege
 - Autonomy
 - Trust, integrity
 - Prestige, social status, income level

Response

- How is the organisation/unit addressing this issue?
 - Priority?
 - Work with the relevant regulatory bodies?

Specific Cases

- Any other cases you haven't mentioned?
 - What the professional did and how
 - Predicate crime
 - Form/amount of the proceeds involved
 - Processes that led to their involvement
 - Relationship with the criminal/group
 - Previous involvement in such/similar activity

Is there anything you'd like to add? Anything that we haven't covered that you feel is important?

Interview Guide

Group 2: Members of Professional/Regulatory Bodies

Introductory Questions (to provide context and background information):

- Please tell me about your role, and the role of the organisation/unit organisation and department you work in.

Facilitation of Money Laundering by Legal/Financial Professionals

I'd like to talk about legal/financial professionals who become involved in helping criminals manage, or 'launder', the proceeds of their crimes.

- Is this something that you have experience of?
- Can you tell me about any specific cases of this?
 - What the professional did and how
 - Predicate crime
 - Form/amount of the proceeds involved
 - Processes that led to their involvement
 - Relationship with the criminal/group
 - Previous involvement in such/similar activity
- How do you think the professionals become involved in such activity?
 - Willingly/knowingly?
 - Relationship between professional and criminal/group
 - Benefits to the professional
- What is it about these professionals that means they become involved in this kind of activity?

Role of the regulatory body

- Can you tell me what the organisation does about this, how it is addressing this issue?
 - Prevention, investigation etc.
 - Proactive/reactive
 - Work with law enforcement?
 - Processes involved
 - Regulatory procedure/criminal prosecution

Professional ethics and codes of conduct

I'd now like to talk to you about the professional ethics and codes of conduct relevant to the professions you regulate.

- Can you tell me about any codes of conduct these professionals have to sign up to, and any other (perhaps less formal) ethical frameworks/standards of relevance?
- What do these codes/frameworks mean to the professionals? Do you think they consider them an important part of the profession?
- If the interviewee has mentioned anything specific (e.g. confidentiality/legal privilege, trust, integrity, autonomy, prestige, income level) ask to discuss further and ask about their relationship to this issue, e.g.:
 - How does this relate to professionals' involvement in helping criminal manage their money?
 - Would this facilitate/encourage or prevent/deter their involvement?

Is there anything you'd like to add? Anything that we haven't covered that you feel is important?

Interview Guide

Group 3: Practising Professionals

Introductory Questions (to provide context and background information):

- How long have you been an accountant/solicitor? How long have you been at this firm?
- What size is your firm? Does it / do you specialise in any area?

Facilitation of Money Laundering by Legal/Financial Professionals

I'm looking at how legal and financial professionals, such as solicitors/accountants, might become involved in facilitating money laundering.

- Is this something that you consider a risk in your line of work?
- How do you think an accountant/solicitor might become involved in such activity?
- In what ways could an accountant/solicitor facilitate money laundering?
- Are you aware of any specific cases of accountants/solicitors who have been involved in facilitating money laundering?

Regulation

- What role does (the relevant regulatory body) play in preventing/investigating the facilitation of money laundering by accountants/solicitors in your experience?
- Do you think the regulatory body or the police has a more important role in preventing/investigating the facilitation of money laundering by accountants/solicitors; whose responsibility is it?

Professionals

- As a solicitor, you are considered a professional: what does that mean to you?
 - Do you consider professional ethics and codes of conduct an important part of the profession?
 - How important are principles of trust and integrity to your profession?
 - How important is the principle of confidentiality to your profession?
 - Is autonomy an important part of your profession?

Is there anything you'd like to add? Anything that we haven't covered that you feel is important?

Appendix 3: Participant Information Sheets

University of Manchester School of Law

PARTICIPANT INFORMATION SHEET: GROUP 1

You have been invited to take part in research for a PhD project entitled:

‘Criminal Money Management and the Role of Legal and Financial Professionals’

This research is being conducted by Katie Benson, a PhD student in the School of Law, University of Manchester.

Please read the following information, which explains why this research is being conducted and what your participation in it involves.

What is the aim of the research?

There have been a number of cases where money laundering has been facilitated by legal or financial professionals. The aim of this research is to examine the role played by these professionals in the facilitation of money laundering, and how they become involved in such activity.

Why have I been chosen?

You have been invited to take part in this research due to your relevant professional experience and knowledge; this will be of considerable value to this research.

What would I be asked to do if I took part?

You would be interviewed by the researcher, Katie Benson, for a period of no more than 2 hours. If you agree, the interview will be audio-recorded in order to make sure all answers are captured accurately.

You will be asked a series of questions that focus on:

- Your knowledge of money laundering processes and methods;
- Your experience of the facilitation of money laundering by legal or financial professionals;
- Specific cases of legal or financial professionals who have facilitated money laundering.

What happens to the data collected?

The interview will be recorded using an audio-recording device, if you agree to this. The recording will be transcribed and stored securely in electronic format, which can only be accessed by the researcher.

All information collected will be treated in the strictest confidence, in accordance with the Data Protection Act, and the answers given in the interview will only be used for research purposes.

If you request a transcript of the interview, this will be provided to you. However, such a transcript will not be provided to anyone else.

How is confidentiality maintained?

All information disclosed during this interview will be considered private and confidential.

Anonymity will be preserved. No participant will be individually identified, data will be anonymised, and any features that may identify the individuals or organisations involved will be removed/changed.

The research may use direct quotations from the answers given, but these will be anonymised.

Please note, however, that confidentiality may be breached if you discuss anything that suggests risk of harm to yourself or anybody else or implies future criminal activity. This is in line with the British Society of Criminology Code of Ethics.

What happens if I do not want to take part or if I change my mind?

There is no obligation to take part in the research, and you can withdraw from the research at any time, for whatever reason, without incurring any penalty.

Will the outcomes of the research be published?

The outcomes of this research will be published in a PhD thesis, and may also be published in academic journals/books. However, any direct quotations used will be anonymised.

What if something goes wrong?

In the event of you having any concerns about this research please contact myself or my supervisor, Mr Jon Spencer (jon.spencer@manchester.ac.uk)

If there are any issues regarding this research that you would prefer not to discuss with members of the research team, please contact the Research Practice and Governance Co-ordinator by either writing to 'The Research Practice and Governance Co-ordinator, Research Office, Christie Building, The University of Manchester, Oxford Road, Manchester M13 9PL', by emailing: Research.complaints@manchester.ac.uk, or by telephoning 0161 275 7583 or 275 8093.

Katie Benson
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email: katie.benson@postgrad.manchester.ac.uk

**University of Manchester
School of Law**

PARTICIPANT INFORMATION SHEET: GROUP 2

You have been invited to take part in research for a PhD project entitled:

‘Criminal Money Management and the Role of Legal and Financial Professionals’

This research is being conducted by Katie Benson, a PhD student in the School of Law, University of Manchester.

Please read the following information, which explains why this research is being conducted and what your participation in it involves.

What is the aim of the research?

There have been a number of cases where money laundering has been facilitated by legal or financial professionals. The aim of this research is to examine the role played by these professionals in the facilitation of money laundering, and how they become involved in such activity.

Why have I been chosen?

You have been invited to take part in this research due to your relevant professional experience and knowledge; this will be of considerable value to this research.

What would I be asked to do if I took part?

You will be interviewed by the researcher, Katie Benson, for a period of no more than 2 hours. If you agree, the interview will be audio-recorded in order to make sure all answers are captured accurately.

You will be asked a series of questions that focus on:

- Your knowledge and experience of the facilitation of money laundering by legal or financial professionals;
- Your organisation’s role in dealing with professionals who have been involved in such activity;
- Your views on the relationship between this behaviour and professional codes of conduct and ethical frameworks;
- Specific cases of legal or financial professionals who have facilitated money laundering.

What happens to the data collected?

The interview will be recorded using an audio-recording device, if you agree to this. The recording will be transcribed and stored securely in electronic format, which can only be accessed by the researcher.

All information collected will be treated in the strictest confidence, in accordance with the Data Protection Act, and the answers given in the interview will only be used for research purposes.

If you request a transcript of the interview, this will be provided to you. However, such a transcript will not be provided to anyone else.

How is confidentiality maintained?

All information disclosed during this interview will be considered private and confidential.

Anonymity will be preserved. No participant will be individually identified, data will be anonymised, and any features that may identify the individuals or organisations involved will be removed/changed.

The research may use direct quotations from the answers given, but these will be anonymised.

Please note, however, that confidentiality may be breached if you discuss anything that suggests risk of harm to yourself or anybody else or implies future criminal activity. This is in line with the British Society of Criminology Code of Ethics.

What happens if I do not want to take part or if I change my mind?

There is no obligation to take part in the research, and you can withdraw from the research at any time, for whatever reason, without incurring any penalty.

Will the outcomes of the research be published?

The outcomes of this research will be published in a PhD thesis, and may also be published in academic journals/books. However, any direct quotations used will be anonymised.

What if something goes wrong?

In the event of you having any concerns about this research please contact myself or my supervisor, Mr Jon Spencer (jon.spencer@manchester.ac.uk).

If there are any issues regarding this research that you would prefer not to discuss with members of the research team, please contact the Research Practice and Governance Co-ordinator by either writing to 'The Research Practice and Governance Co-ordinator, Research Office, Christie Building, The University of Manchester, Oxford Road, Manchester M13 9PL', by emailing: Research.complaints@manchester.ac.uk, or by telephoning 0161 275 7583 or 275 8093.

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**University of Manchester
School of Law**

PARTICIPANT INFORMATION SHEET: GROUP 3

You have been invited to take part in research for a PhD project entitled:

‘Criminal Money Management and the Role of Legal and Financial Professionals’

This research is being conducted by Katie Benson, a PhD student in the School of Law, University of Manchester.

Please read the following information, which explains why this research is being conducted and what your participation in it involves.

What is the aim of the research?

There have been a number of cases where money laundering has been facilitated by legal or financial professionals. The aim of this research is to examine the role played by these professionals in the facilitation of money laundering, and how they become involved in such activity.

Why have I been chosen?

You have been invited to take part in this research due to your role as a legal/financial professional; your professional experience and knowledge will be of considerable value to this research.

What would I be asked to do if I took part?

You will be interviewed by the researcher, Katie Benson, for a period of no more than 2 hours. If you agree, the interview will be audio-recorded in order to make sure all answers are captured accurately.

You will be asked a series of questions that focus on:

- Your views on the risks faced by legal/financial professionals of becoming involved in money laundering.
- Specific cases of legal or financial professionals who have facilitated money laundering.
- The role of relevant regulatory bodies in preventing/dealing with the facilitation of money laundering by legal/financial professionals.
- What it means to be a ‘professional’.

What happens to the data collected?

The interview will be recorded using an audio-recording device, if you agree to this. The recording will be transcribed and stored securely in electronic format, which can only be accessed by the researcher.

All information collected will be treated in the strictest confidence, in accordance with the Data Protection Act, and the answers given in the interview will only be used for research purposes.

If you request a transcript of the interview, this will be provided to you. However, such a transcript will not be provided to anyone else.

How is confidentiality maintained?

All information disclosed during this interview will be considered private and confidential.

Anonymity will be preserved. No participant will be individually identified, data will be anonymised, and any features that may identify the individuals or organisations involved will be removed/changed.

The research may use direct quotations from the answers given, but these will be anonymised.

Please note, however, that confidentiality may be breached if you discuss anything that suggests risk of harm to yourself or anybody else or implies future criminal activity. This is in line with the British Society of Criminology Code of Ethics.

What happens if I do not want to take part or if I change my mind?

There is no obligation to take part in the research, and you can withdraw from the research at any time, for whatever reason, without incurring any penalty.

Will the outcomes of the research be published?

The outcomes of this research will be published in a PhD thesis, and may also be published in academic journals/books. However, any direct quotations used will be anonymised.

What if something goes wrong?

In the event of you having any concerns about this research please contact myself or my supervisor, Mr Jon Spencer (jon.spencer@manchester.ac.uk).

If there are any issues regarding this research that you would prefer not to discuss with members of the research team, please contact the Research Practice and Governance Co-ordinator by either writing to 'The Research Practice and Governance Co-ordinator, Research Office, Christie Building, The University of Manchester, Oxford Road, Manchester M13 9PL', by emailing: Research.complaints@manchester.ac.uk, or by telephoning 0161 275 7583 or 275 8093.

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Appendix 4: Consent Form

University of Manchester

School of Law

‘Criminal Money Management and the Role of Legal and Financial Professionals’

Researcher: Katie Benson

CONSENT FORM

If you are happy to participate in this research, please read and sign the consent form and initial each box.

- | | |
|--|--------------------------|
| 1. I confirm that I have read the information sheet on the above project, dated 26/09/2013.
I have had the opportunity to consider the information and ask questions, and have had these answered satisfactorily. | <input type="checkbox"/> |
| 2. I understand that my participation in the research is voluntary and that I am free to withdraw at any time without giving a reason, and without detriment to any treatment/service. | <input type="checkbox"/> |
| 3. I understand that the interviews will be audio-recorded and transcribed. | <input type="checkbox"/> |
| 4. I agree to the use of quotations that are anonymous. | <input type="checkbox"/> |

I agree to take part in the above project.

Name of participant

Date

Signature

Name of researcher

Date

Signature

Appendix 5: Data reference codes

Within this thesis, quotes from interviewees are referenced as follows:

Reference code	Interviewee group
LE1-9	Law Enforcement
CPS1	CPS
SA1-4	Supervisory Authorities
S1-3	Solicitors
CA1-2	Chartered Accountants

Quotes from data collected on cases of convicted professionals are referenced using the following codes:

Code	Data source
SDT	Solicitors Disciplinary Tribunal transcript
SDT Hearing	Notes from attendance at Solicitors Disciplinary Tribunal hearing
CoA	Court of Appeal transcript
Media	Media reports
Sentencing Statement	Sentencing statement
Other	Other reports, e.g. press reports, legal journals