



Law Council
OF AUSTRALIA

National Legal Profession Anti-Money Laundering & Counter-Terrorism Financing Guidance

Guidance Note No 4 – What Does Money Laundering Look Like?

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What Does Money Laundering Look Like?

Money laundering has two key features. It requires:

- a flow of funds (this is the 'wash': what was illicit, or dirty, is laundered to appear clean); and
- an underlying criminal offence (this generates the funds in the first place).

Money laundering is not complicated, it is just hard to spot!¹ While many experts adopt a three-step characterisation ('placement', 'layering' and 'integration') to describe it,² the flow or transfer of funds to disguise the source is the key. In fact, money laundering can even be a single transaction (even though it usually involves more, sometimes many more steps). The illicit funds enter a formal or informal financial system and in the process they are 'cleaned.'

The underlying criminal offence may relate to drug trafficking. It could also be a scam. It could be identity theft, human trafficking, child exploitation, fraud or tax evasion. The defining feature is the commission of an offence that creates proceeds of crime.

Overview of this Guidance Note

Part 1 of this Guidance Note looks at the bigger picture. It aims to provide a general introduction to money laundering by professional criminal networks globally, using examples.

Part 2 of this Guidance Note zooms in to Australia to present some of the types of money laundering (or potential indicia of money laundering) that Australian legal practitioners may encounter in the course of legal practice.

The examples and case studies used in this Note are designed to highlight the risk of involvement in money laundering and to illustrate how those risks may present themselves. The main issue is not how each case was resolved. The case outcomes are described (where known) for the sake of interest only.



1. Nicholas Gilmour and Tristram Hicks (2023) *The War on Dirty Money* (Polity Press) p 55

2. 'Placement' is placing proceeds of crime in the financial system (for example, depositing illicit funds into the trust account of a legal practice). 'Layering' is engaging in a series of transactions to disguise the proceeds and distance them from the original crime (for example, making multiple transfers of those funds to other bank accounts, including off-shore accounts, withdrawing them and then redepositing those funds in another person's name). 'Integration' is using the funds in the legitimate economy, for example, withdrawing funds or transferring funds, and using them to purchase a property or a business: Gordon Hook and Nick McTaggart, 'Money Laundering, Professionals, Companies and Trusts,' in Chaikin and Hook (eds) (2018) *Corporate and Trust Structures: Legal and Illegal Dimensions* (Australian Scholarly Publishing) p 123. See also AUSTRAC, Money Laundering in Australia (National Threat Assessment) (2011), 'Money Laundering in Australia' then 'What is the Money Laundering Cycle?' at <https://www.austrac.gov.au/business/how-comply-guidance-and-resources/guidance-resources/money-laundering-australia-2011>.



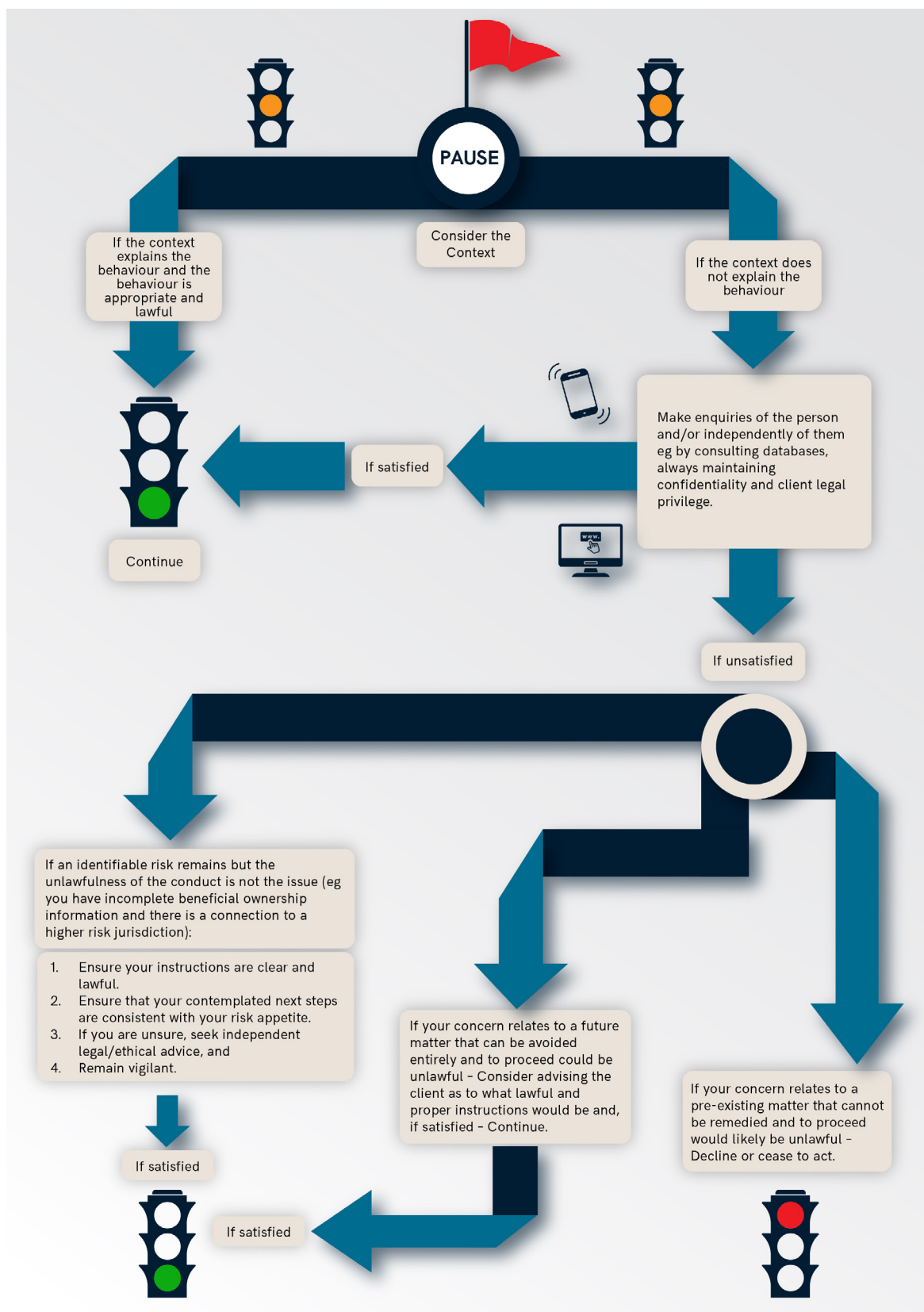
In Part 2, the case studies have been selected from the ‘typologies’ literature and court proceedings in Australia and abroad primarily because of the involvement of a legal practitioner, **whether wittingly or unwittingly**. An outline of the Criminal Code offence of money laundering is set out in *Guidance Note No 2: What Does the Criminal Law Currently Provide, and What Are My Cash Reporting Obligations?* and should be consulted.

Red Flags

Many of the behaviours described in this Note are ‘red flags’ but, depending on the context, the behaviour may not have any association with money laundering at all. Once noticed, a red flag should alert a practitioner to the possibility that deception may be at work to disguise criminality. The flowchart on p 3 sets out the steps to take when you spot a red flag. See also *Guidance Workshop Notes – Case Studies* and *Red Flag List for Legal Practitioners*. Where representation is to be declined, see *Guidance Note No 11 – Ceasing or Declining to Act*.



What To Do When You Spot a Red Flag – An Overview





1. Professional Money Laundering Around the Globe

This section draws on publicly available financial intelligence, court reports and academic and other literature to highlight types of money laundering methods deployed by members of global criminal networks. The examples aim to enhance legal practitioners' familiarity with types of money laundering and with signs of possible money laundering. Not all signs will always be found to have been associated with money laundering. The criminal methods described include:



Professional Cash Networks



Cash-Intensive Businesses



Investment in Real Estate



False Invoicing



Complex Legal Structures



Storing and Moving Funds in
Cryptocurrency



Professional Cash Networks

The global drug trade continues to generate large volumes of physical cash notwithstanding the trend to digitise currency in the formal economy. Specialised international criminal money transport and cash controller networks have evolved. These sometimes hire people to smuggle and deliver these illicit funds ('mules'). Other sophisticated networks hire mules to receive and pass on payments that they may or may not believe to be legitimate.

In this way, proceeds of crime begin to assume an appearance of legitimacy. In a less well-organised manner, a traditional self-laundering typology is for drug proceeds (cash) to be used to buy motor vehicles or other portable, high-value commodities and then for these to be onsold, even if it is at a loss. Losses are factored into the price of doing the profitable business of 'cleaning' the money.

Example: Operation Kandil

In 2016, EUROPOL Operation Kandil disrupted a network based in Germany. Cash couriers physically transported proceeds of heroin sales by car from across Spain, the Netherlands, Italy and the UK into Germany. Millions in cash were used to buy second-hand cars and industrial equipment subsequently shipped to Iraq.

For more information about Operation Kandil and the cash courier network see FATF (2018) *Professional Money Laundering – Report*, p 22.



Investment in Real Estate

The Australian Transaction Reports and Analysis Centre (**AUSTRAC**) reports that real estate purchases can be designed to hide assets from authorities in a home jurisdiction, sometimes with third parties as a shield. Global criminal networks may fund real estate acquisitions using overseas accounts held in the names of companies, trusts or individuals. The Attorney-General's Department has reported that between April 2021 and 2023, commercial and residential real estate accounted for 57.5% of the total value of assets restrained by the AFP's Criminal Assets Confiscation Taskforce.

Example: Overseas enquiry and properties

An American national from Boston called a family law specialist in Dublin to buy a number of high-value properties in Ireland. The American asked the Irish lawyer to act in the purchases. They explained that a long-time client of the lawyer had referred them and that they were interested in a trusted lawyer notwithstanding they knew that property law was not their field. According to the caller, no loans were required and the purchases were sought swiftly. No inspection of the properties was intended. The caller offered to pay a higher fee on account of urgency and emailed a low-resolution Massachusetts drivers' licence to the lawyer.

Adapted from case study 14 in International Bar Association, American Bar Association and the Council of the Bars and Law Societies of Europe (2014) *A Lawyer's Guide to Detecting and Preventing Money Laundering*, p 46.



Complex Legal Structures

Criminals may seek to use sophisticated legal structures which cross several jurisdictions – including jurisdictions unwilling or incapable of supplying information to satisfy international enquiries as to the identity of the owners or controllers of companies or trusts. Likewise, while shell companies can have legitimate purposes, in other circumstances they can also be used to create layers between criminality and the proceeds of crime to obscure those connections and to slow down investigations.

Example: Agent uses financial matrix for organised crime

A British company formation agent in the financial services sector was prosecuted in the UK for funnelling criminal proceeds on behalf of organised crime groups through interaccount bank transfers and a system of trusts, 'front' and shell companies. The formation agent was administrator of each of the trusts used in the scheme and controlled the funds flowing through them. For a time, the companies and trusts successfully disguised the sources of funds.

This is a summary of case study 8 in FATF, OECD and the Caribbean FATF (2010) *Money Laundering Using Trust and Company Service Providers – Report*, p 37.



Cash-Intensive Businesses

Cash-intensive businesses can provide cover for the introduction of illicitly acquired cash because cash that has been earned legitimately may be entering accounts of the business at the same time (co-mingling). Australia's 2011 National Threat Assessment (NTA) lists restaurants, hotels, pubs and clubs and the taxi, building and construction, entertainment, convenience store and motor vehicle retail sectors as examples of cash-intensive businesses. According to the NTA, the underlying criminal activities associated with money laundering through such businesses have included drug and tobacco offences, tax evasion, tax and welfare fraud and illegal gambling.

Example: Intermingling of drugs and car trade cash

A drug dealer who imported and sold heroin for distribution in the north of England was convicted for importing 130kg of the drug and was sentenced to 25 years' imprisonment in 2005. Now restored to the Roll, his local solicitor was struck off in 2011 by the Solicitors Regulation Authority after being convicted in the Leeds Crown Court of one count of money laundering (and two of failing to disclose knowledge or suspicion). By undertaking the conveyancing work for the drug dealer, the solicitor had turned the cash proceeds of the dealer's drug-related offences into property, laundering approximately £224,000. The client (the drug dealer) had operated a cash-intensive car dealership in Leeds that had included importing luxury cars for sale.

Solicitors Disciplinary Tribunal (UK) case no 10727/2011 (solicitor convicted 20/09/09, sentenced 23/10/09 Leeds Crown Court).



False Invoicing

So-called 'underground banking' uses networked criminals who use agents and associations to transfer value without physically moving currency across borders. Value is released in one jurisdiction upon receipt of value by an agent in another jurisdiction in what is known as an 'account settlement mechanism'. The paper trail for the transfers can involve fake invoices for services never rendered, or false invoices for 'phantom shipments'.

Example: Underground banking + account settlement

In the case that Chinese police called a 'massive' underground banking system, drug dealers in Canada uncovered international transfers using false trade invoices from China. Some 600 bank accounts in China were controlled or used by a single entity. The case appeared to connect Mexican cartels and organised crime groups in Asia and the Middle East, and a 5% fee was charged for money laundering and transfer services. Certain very wealthy Chinese gamblers were allegedly assisted to receive the value of their Chinese funds to gamble in Canada.

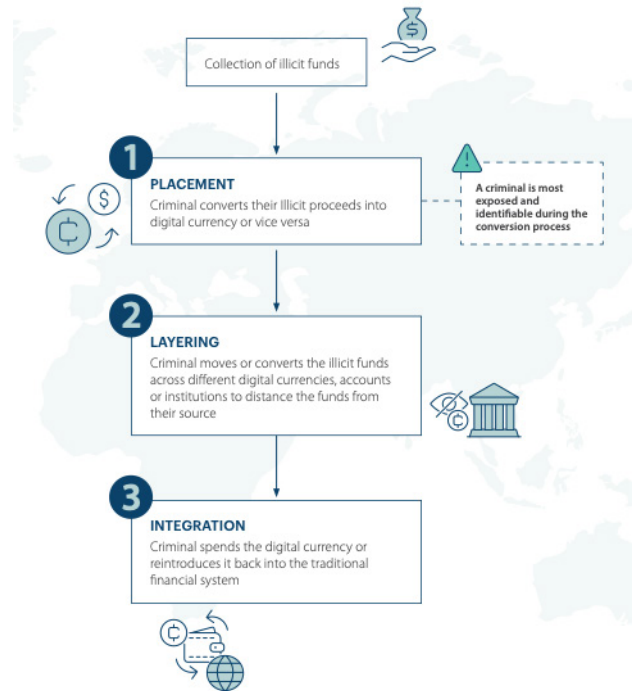
See example in Box 13: FATF (2018) *Professional Money Laundering – Report*, p 34.



Cryptocurrencies

Rapidly evolving technology in finance includes distributed ledger technology (including blockchain) and digital assets based on the blockchain, such as non-fungible tokens and cryptocurrencies. On the one hand, the mechanics of the blockchain ensure that a product's provenance is traceable. In fact, this very guarantee of authenticity explains much of the appeal of the blockchain – and can aid law enforcement in its efforts because the data effecting transfers can be traced. On the other hand, cryptocurrency can facilitate criminal behaviour including money laundering when anonymity is created through 'mixers', 'privacy coins' and other 'conversion services'. Other innovative technologies with unique money laundering risks include smart ATMs and decentralised finance (or DeFi).

EXAMPLE OF THE MONEY LAUNDERING METHOD USING DIGITAL CURRENCY



Fintel Alliance (AUSTRAC) (2022) *Preventing the Criminal Abuse of Digital Currencies – Financial Crime Guide*, p 7.





2. Case Studies for Australian Legal Practitioners

When a 'red flag' behaviour alerts a practitioner to the possibility that deception may be at work to disguise criminality, practitioners should **pause** and **consider the context**. If the context explains the behaviour, and it is for a lawful purpose, and appropriate, they should **continue**; if not, they should **make enquiries** of the person, or independently. Depending on the level of satisfaction gained, they may then **continue** or if appropriate **advise against the action**, and/or **cease to act**. These actions are outlined on pg 3 in graphic form.

The case studies in this section are for the attention of all Australian legal practitioners but particularly those who prepare for, or carry out, transactions for clients concerning these activities:

1. buying and selling real estate;
2. managing client money, securities or other assets (including operating a trust account);
3. managing bank, savings or securities accounts;
4. organising contributions for the creation, operation or management of companies;
5. creating, operating or managing companies, trusts, partnerships or other types of legal persons or arrangements;
6. buying and selling businesses (or business entities);
7. acting as a formation agent of companies or other legal persons;
8. acting as (or arranging for another person to act as) a director or secretary of a company, a partner of a partnership, or a similar position in relation to other legal persons;
9. providing a registered office, business address or accommodation, correspondence or administrative address for a company, a trust, a partnership or any other legal person or arrangement;
10. acting as (or arranging for another person to act as) a trustee of an express trust or performing the equivalent function for another form of legal arrangement; and
11. acting as (or arranging for another person to act as) a nominee shareholder for another person.

This is because global anti-money laundering and counter-terrorism financing watchdog, the Financial Action Task Force (**FATF**), considers these to be high-risk activities.



For the attention of legal practitioners, the case studies illustrate:

- The attractiveness of legal practitioners' trust accounts to criminals
- Sources of funds / source of wealth obscured by criminals who buy property
- Use of small deposits to avoid transaction reporting thresholds, with large cumulative totals - 'Structuring'
- Complex legal structures sought without legitimate justification
- Familiarity with a legal practitioner which is used as a cover
- Attempts to retain different practitioners to perform apparently separate tasks

Note: The examples below are designed to highlight the risk of involvement in money laundering and to illustrate how those risks may present themselves. The main issue is not the outcome in each case. The selection of these case studies has been based on the involvement of one or more legal practitioners, whether wittingly or unwittingly, and not all resulted in a conviction.

An outline of the Criminal Code offence of money laundering is set out in *Guidance Note No 2* for the information of legal practitioners. In summary, to be 'money laundering' the conduct:

- does not need to be end-to-end, but could just be receiving, possessing, concealing or disposing of the proceeds of crime; and
- includes knowledge of the proceeds of crime, or being reckless or negligent to that fact.





Legal Practitioners' Trust Accounts are Attractive

Access to trust accounts is attractive because it indicates respectability. Emerging from a trust account gives funds provenance and the potential protection of legal professional privilege.



Case Study

Case Study 1: Plutus payroll scheme

Between 2014 and 2017, four co-conspirators, including one solicitor, set up a series of phoenix³ companies under the front company Plutus Payroll Australia Pty Ltd to defraud the Australian Taxation Office (ATO) of approximately \$105 million.⁴ A joint ATO-police operation called 'Operation Elbrus' uncovered the fraud. A jury later found a second solicitor guilty of money laundering, having allowed approximately \$24 million to pass through his law firm trust account. The sentencing judge, Johnson J said that the critical question was the state of mind of the solicitor "regarding the source of funds" that passed through his trust account between February and May 2017.⁵ His Honour observed that he "did not ask questions that a solicitor may be expected to ask about the money, the company or the underlying transaction had it been a legitimate transaction."⁶ The judge found that the solicitor had "utilised his trust account, and his professional skill and responsibility, for the advancement of criminal purposes" and sentenced the solicitor to 12 years' imprisonment.⁷

3. FATF defines illegal phoenix activity as 'the creation of a new company to continue the business of a company that has been deliberately liquidated to avoid paying its debts, including taxes, creditors and employee entitlements': FATF - Egmont Group, *Concealment of Beneficial Ownership* (FATF, Paris, France) p 27 <https://www.fatf-gafi.org/content/dam/fatf-gafi/reports/FATF-Egmont-Concealment-beneficial-ownership.pdf>.

4. Statement of Agreed Facts cited in *R v Chalabian* (No 14) [2022] NSWSC 829 at [34].

5. *R v Chalabian* (No 14) at [26].

6. *R v Chalabian* (No 14) at [67].

7. *R v Chalabian* (No 14) at [123].



Case Study

Case Study 2: Debts to be collected but no significant legal services

In advice to the FATF in 2011, AUSTRAC reported Australian legal practitioners noticing unusual requests from prospective clients apparently seeking to simply pass money through their trust accounts. One report included a foreign company seeking debt recovery and other legal services, with the debtors from domestic and overseas jurisdictions making payments into the firm's trust account. "Very little" debt recovery work was reportedly being required of the law firm.

In the Canadian profession's most notorious money laundering case, British Columbia solicitor Donald Gurney was suspended from legal practice in 2017 after allowing CAN \$25 million to flow through his trust account over a six-month period without providing any substantial legal services, and without making reasonable enquiries as to the subject matter and purpose of the retainer.

AUSTRAC cited as source for Case 40 in FATF (2013) *Money Laundering and Terrorist Financing Vulnerabilities of Legal Professionals – Report*, p 70.
Law Society of British Columbia Disciplinary Action Decision re Donald Franklin Gurney [2017] LSBC 32.



Sources of Funds / Source of Wealth and Real Estate



Case Study

Case Study 3: Foreign politically exposed person purchasing expensive property through a corporate vehicle

A foreign client approached a legal practitioner to buy two properties, one in Ashgrove, Brisbane and the other in inner Sydney for \$12 million. The client was a 'cash buyer' in that there was no mortgage. The funds were promised by electronic transfer and were sent, in the event, from a bank in an off-shore jurisdiction. There was a change of instructions just before signing the contract. The purchaser was replaced by a property investment company of which the client's two children (who were minors) were the shareholders. The client held a prominent function in his home country where some government figures known to be involved with corruption, and information was available online connecting him to financial wrongdoing.

Adapted from questionnaire response by France to FATF (2012) cited in FATF (2013) *Money Laundering and Terrorist Financing Vulnerabilities of Legal Professionals - Report*, Case 16, p 49.

Structuring



Case Study

Case Study 4: Funds from different sources and some in small amounts

A client approached a solicitor to purchase land for the client's family. The client deposited \$90,000 with the solicitor saying it came from family members pooling money to buy the land together to live on. Several third parties then deposited different amounts of less than \$10,000 to fund the rest of the purchase. During the course of the matter the solicitor spoke only to the client who had made the initial approach. The client was the only literate member of the family, so was conducting the business on behalf of the entire family.

Adapted from questionnaire response by UK to FATF (2012) cited in FATF (2013) *Money Laundering and Terrorist Financing Vulnerabilities of Legal Professionals - Report*, Case 10, p 45.



Complex Legal Structures Sought Without Legitimate Justification



Case Study

Case Study 5: Criminal channelling money through a trust he controlled

The solicitor's knowledge of the money laundering involved in this case remains uncertain. The solicitor and a collusive independent financial adviser assisted a smuggler to set up a discretionary trust in the United Kingdom that vested power over the trust's management in the financial adviser, the criminal and his wife. One of the beneficiaries was the daughter of the married couple. The criminal bought a car repair shop which he transferred to his daughter. She leased the shop to company X, and eventually sold it to company X. The trust loaned the purchase monies to company X, which then made ostensible repayments to the trust of several thousand British pounds per month. Control of the trust by the criminal allowed the criminal to channel funds back to himself through the 'loan'.

Case 22 in FATF (2013) *Money Laundering and Terrorist Financing Vulnerabilities of Legal Professionals – Report*, pp 55-56.

Familiarity with a Legal Practitioner which is Used as a Cover



Case Study

Case Study 6: Trusted persons complicit in crime

Rebecca and John Collins had purchased a property, a house called Corio, for \$365,000 with a mortgage of \$150,000. The sale to Mr and Mrs Collins was arranged by a real estate agent who was well known to the solicitor, Mr Wright. In fact, Wright had himself acted for the couple 10 years ago in another property purchase. The real estate agent told the solicitor that she was buying out the mortgage to help her friends (the Collins) in a time of need, and the couple instructed the solicitor to sell Corio to the agent for \$150,000. The solicitor had been served with a production order for documents in relation to the sale to the Collins 10 years ago, but proceeded with the sale to the agent for \$150,000. Subsequently, the solicitor learned that at the time of the sale of Corio, the Collins were being investigated for drug trafficking, and were later convicted. In the case on which this scenario is based, the solicitor was himself convicted and imprisoned, and struck off the roll of solicitors. He had not responded to 'red flags' in the manner required by English law, blinded perhaps by the assurance that a trusted person was involved.

Adapted from *R v Griffiths* [2007] 1 Cr App R (S) 95; [2006] EWCA Crim 2155.



Attempts to Retain Different Practitioners to Perform Apparently Separate Tasks



Case Study

Case Study 7: Operation Rock (New Zealand)

Two lawyers were involved in a money laundering operation that saw \$400,000 in cash pass through a lawyer's trust account. When the lawyer deposited the sum in four separate deposits into an account in the name of a company registered in Gibraltar, the bank filed a suspicious transaction report (STR) with New Zealand's financial intelligence unit. The lawyer had not conducted due diligence checks on the client and had not filed an STR on receipt of the \$400,000. A second lawyer from a different law firm had been engaged to prepare a loan agreement and purchase an Auckland property in the name of one of the dealers. The Gibraltar company was a shell company that was the sham lender of the \$400,000.

See Dr Gordon Hook and Nick McTaggart, 'Money Laundering, Professionals, Companies and Trusts' in David Chaikin and Gordon Hook (eds) (2018) *Corporate and Trust Structures: Legal and Illegal Dimensions* (Australian Scholarly Press) pp 122-132, pp 126-127.

Typology Resources:

- AUSTRAC, *Money Laundering in Australia*, National Threat Assessment (2011) <https://www.austrac.gov.au/business/how-comply-guidance-and-resources/guidance-resources/money-laundering-australia-2011>.
- AUSTRAC also produces risk assessments for sectors that it regulates, including banks, and produces thematic, regional risk assessments. It also publishes strategic analysis briefs and typologies and case studies reports. Use these terms (and 'publications') in the search box at [austrac.gov.au](https://www.austrac.gov.au).
- Financial Action Task Force, *Money Laundering and Terrorist Financing Vulnerabilities of Legal Professionals* (June 2013) <https://www.fatf-gafi.org/en/publications/Methodsand Trends/Mltf-vulnerabilities-legal-professionals.html>.
- Canadian Federation of Law Societies, *Risk Assessment Case Studies for the Legal Profession* (2020) <https://flsc.ca/what-we-do/fighting-money-laundering-and-terrorist-financing/>.

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