

## RESPONSE TO THE HM TREASURY CONSULTATION ON AN ECONOMIC CRIME LEVY PUBLISHED ON 21 JULY 2020

The Fraud Advisory Panel welcomes the opportunity to comment on the consultation on funding new government action to tackle money laundering, published by HM Treasury on 21 July 2020, a copy of which is available from this [link](#).

We are happy to discuss any aspect of our comments and to take part in all further consultations on the issues we've highlighted or to provide evidence to the committee.

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## BASIC INFORMATION

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<b>If applicable, what is the name of your organisation?</b>	Fraud Advisory Panel
<b>What size is your organisation for the purpose of the Companies Act 2006?</b> (see: <a href="#">definitions</a> )	<input type="checkbox"/> Large <input type="checkbox"/> Medium <input checked="" type="checkbox"/> Small <input type="checkbox"/> Micro <input type="checkbox"/> N/A
<b>If applicable, what type of AML-regulated business is your organisation?</b> (see: <a href="#">MLR definitions</a> )	N/A
<b>If your organisation is not an AML-regulated business, in what capacity is it responding to this consultation? (for example: as a civil society organisation, other type of business etc).</b>	The Fraud Advisory Panel (the 'Panel') is the UK's leading counter fraud charity. We act as the collective voice of the counter fraud profession.
<b>If applicable, who is your AML-supervisor?</b>	N/A
<b>For the purposes of the call for evidence on the fraud response, to what sector(s) does your organisation most closely belong?</b>	We provide practical support to almost 300 corporate and individual members. Our members come from a wide range of professions and sectors but are united by their determine to counter fraud. However, most of our members currently come from the private sector.
<b>Would you like your response to be confidential and, if so, why?</b>	No

## GENERAL COMMENTS

### Introduction of a new levy

The Fraud Advisory Panel welcomes the opportunity to respond to HM Treasury's consultation on a proposed new levy to fund UK anti-money laundering activity. However, we are concerned that, despite its title ('an economic crime levy') this consultation fails to consider funding for tackling economic crime in its totality and is instead confined to anti-money laundering activity only. This ignores the bigger picture and consequently fails to future proof UK economic crime fighting efforts.

Furthermore, the inclusion of questions relating specifically to additional funding for counter fraud activity at the very end of the consultation document implies the current levy is simply a proxy for a future wider economic crime levy. We believe the UK should do it once and do it right.

Overall, we have four principal objections to the levy as follows.

1. **The proposed levy is unfair.** It presumes that those sectors where there is a risk of money laundering should bear all the costs of tackling it. This ignores three things. Firstly, the costs of money laundering are borne by society as a whole and efforts to combat it should be shared as such: we don't target those most vulnerable to crime with specific taxes because they call the police most often. Secondly, if this logic is in fact correct, there is always a predicate offence which takes place before there are proceeds to launder. Money laundering is a consequence of wider criminal activity: prevent that activity and you prevent money laundering. By application of the logic in the consultation document, the levy should be targeted against sectors most at risk of generating criminal proceeds in the first place and then spent preventing the relevant predicate offences, thus targeting the criminals who commit the predicate offences, not just the intermediaries.

Finally, the regulated sector is currently incomplete and does not include all financial services firms. Specifically, the European Banking Authority's proposed single rulebook to tackle money laundering in the EU includes general insurance and insurance intermediaries as part of the sector. The UK should learn from this and do the same. General insurance, particularly commercial insurance, can readily be used for money laundering.

2. **It is wrong in principle to effectively tax those who are victims of economic crime in order to counter it, merely because they are perceived to be able to afford it.** While those in the regulated sector may not always fulfil their AML obligations as well as they should, there are already remedies in place to deal with those failings. If the remedies are inadequate, action should be taken to address those weaknesses. As pointed out in the Economic Crime Plan, we should not attempt to treat money laundering and (for example) fraud separately. These are different sides to the same economic crime coin.

3. **It seeks to raise £100m for a series of vague and uncosted proposals.** The consultation document does not indicate that a detailed analysis has been undertaken on the exact measures required to tackle money laundering effectively. Nor does it indicate that the proposals that have been suggested are in fact costed. This leads to

the conclusion that there is no firm plan in place to spend any money raised. It cannot be sensible first to raise a tax, and only later to work out the strategy and detail of how it will be spent.

4. **Alternative funding is already available.** Even if a costed plan existed which set out, for example, the exact number of new employees at the UKFIU and the number of new financial investigators who are required across the UK, there are alternative sources of funding available. The most obvious are the monies seized under confiscation powers, forfeiture or Deferred Prosecution Agreements (DPAs). We believe that the proceeds of crime should be used to compensate victims, where appropriate, and counter crime.

Further detail on each of these four points is below, followed by our responses to specific questions in the consultation document. Although we are diametrically opposed to the levy even in principle, if Government insists on imposing it, we have provided select responses in the interests of being constructive.

### Private policing of economic crime – should victims pay?

Those in the regulated sector/gate keepers are often victims as much as wider society when it comes to economic crime. This is especially the case with respect to fraud (a frequent predicate offence), through making good any losses to customers, reputational damage, higher insurance premiums and costs of prevention.

It is wrong in principle to effectively tax those who are victims of economic crime in order to counter it. As pointed out in the Government's Economic Crime Plan (ECP), we should not attempt to treat money laundering and (for example) fraud separately. These are different sides to the same economic crime coin.

In any event, experience shows that there are practical implications for the sort of levy proposed, whereby costs will simply be passed on to the end customer, who, in the vast majority of cases, will be a legitimate individual or company (and who may also be a victim of crime accessing professional services to seek redress). Ultimately, businesses are likely to have three choices available:

1. reduce their profit;
2. pass on the cost to the customer; or
3. absorb the levy as a cost of doing business (which may result in reduced compliance spend or headcount).

If the Government is insistent on the introduction of this levy, then we believe public funding should match any private sector contribution to demonstrate true partnership and commitment by Government.

### A more focussed economic crime strategy

The ECP says that Strategic Priority One is to understand the threat posed by economic crime. It is clear that there is not yet a system in place to measure what works in combatting economic crime (see Paragraphs 2.8-2.9 of the ECP). It cannot be sensible to

put the proposed levy in place when the measures needed to tackle the problem are unknown and certainly unquantified.

Doing so risks imposing a levy which either will raise far more than is required, thereby penalising all those who pay it, or far too little to tackle the problem, in which case alternative revenue-raising options will need to be considered anyway. The current proposals in effect put the horse before the cart and raise the question of whether the proposal is simply intended to prepare the way for much greater revenue raising. Furthermore, there is a risk of setting an unwelcome precedent in raising future levies to specifically tackle fraud, terrorist financing, bribery or corruption. The ECP rightly considers these problems under the umbrella of economic crime. It would therefore be sensible to identify costed proposals to tackle all of these crimes and source funding accordingly.

Underpinning this objection to the levy is that there must be greater accountability and transparency on how money is spent – and the effect that the spending has – on tackling money laundering (or, better, economic crime more generally). Without clear transparency on what the plan is and how much it will cost before the levy is raised, there is a risk that money and time will be wasted, or at best, be seen to be wasted.

For example, it is unclear exactly how current contributions towards financial crime impact on anti-money laundering (AML). Greater transparency would help provide confidence that the new levy would be well spent.

### Alternative funding models

The ECP points out that over £1.8bn has been taken from criminals using POCA powers since 2002, with billions more recovered via deferred prosecution agreements (see Paragraph 1.5). There would appear to be a significant amount of money that has been taken from those on the wrong side of the law, which should be put back exclusively into compensating victims and preventing crime.

The consultation document also sets out the prospect of updating the Asset Recovery Incentivisation Scheme (ARIS) and exploring the possibility of using suspended funds to pay for economic crime measures (see page 3). We welcome this suggestion. As is pointed out below, those in the regulated sector incur huge costs preventing, mitigating and dealing with the damage caused by economic crime. They are as much victims as they are risk-bearers. On the Government's own figures, only £98m of the £208m confiscated/forfeited in 2019/20 was used by ARIS. There is more than can and should be done to ringfence these existing funds for combatting economic crime.

If these alternative funding models were used care would need to be taken to avoid creating perverse incentives. For example, authorities may end up pursuing investigations only where there is a likelihood of confiscating large amounts (as has been seen in other jurisdictions) rather than addressing the highest priority cases.

## CONSULTATION RESPONSES

### Levy Principles

**Question 1:** Do you agree with the design principles as set out above? Should the government consider any further criteria?

The design principles set out in the consultation document seem reasonable, however the principle of accountability should also be reflected within these, particularly in relation to how money is spent, and the outcomes achieved. In our view, in line with the 'Managing Public Money' principles, transparency, fairness and accountability go hand-in-hand.

### Spending the levy funds

**Question 2:** What do you believe the levy should fund? Are there any other activities the levy should fund in its first five years?

We reiterate our earlier point that money laundering is not the only economic crime and a greater emphasis should be placed on the predicate offences which give rise to it. Because the nature of economic crime is changing and evolving (as evidenced by the rise in fraud and cybercrime) we need to think more about tomorrow, not today.

The consultation document states that the proceeds from the levy will 'pay for enhanced government action to tackle money laundering', using the reforms and capabilities set out under the ECP as the starting point. However, if every capability set out on the proposed list (see pages 8 and 9) were to receive a portion of any such levy, then funding would be very thinly spread indeed. Therefore, in our view, the end use of the levy needs to be much more focused and targeted to build trust and confidence in the system and improve outcomes. It is also essential that monies raised by the levy are ringfenced for tackling economic crime and are not diverted to other, more general, purposes.

Whilst we have long advocated the need for a national public awareness campaign on economic crime threats, particularly fraud, we question whether this an appropriate use of the levy until such time as the capacity and capability of law enforcement to deal with any associated increase in reporting volumes has been adequately addressed. It follows that any uplift in the number of financial investigators across law enforcement must be ring-fenced for money laundering and fraud investigations.

Consideration should also be given to other options that may be available (and more appropriate) to fund certain capabilities set out in the consultation document. For example, Companies House reform could be funded through a small increase to the fees charged to incorporate a company in the UK, which currently costs as little as £12 (a decrease of £1 since we first raised concerns about the abuse of company incorporation to commit fraud in our special report in November 2012). A clear timetable for the introduction of these reforms would assist in determining the viability of this.

As we mention earlier in our response, money taken from those who commit economic crime should be put back exclusively into compensating victims and preventing crime. This includes monies taken from criminals using POCA powers, recovered through deferred prosecution agreements, and taken from suspended funds (where proven that

these are linked to criminality), as well as updating the ARIS. It makes far more sense for criminals to pay the cost of combating crime rather than taxing its victims.

In 2019/20 the SFO reported DPAs totalling £855m, while wider law enforcement activities led to £139m in confiscation orders and £69m being forfeited by criminals. Recognising that the DPA total was unusually high, and that some money is already allocated under the ARIS, even on the government's own figures there are significant resources that can be used exclusively to combat economic crime and its consequences.

If these alternative funding models were used care would need to be taken to avoid creating perverse incentives. For example, authorities may end up pursuing investigations only where there is a likelihood of confiscating large amounts (as has been seen in other jurisdictions) rather than addressing the highest priority cases.

**Question 3:** Do you agree with the government's approach to publish a report on an annual basis? What do you think this report should cover other than how the levy has been spent?

Yes. It is essential that government is open, transparent and accountable in its use of the levy and its performance in relation to tackling money laundering and, more generally, economic crime. The annual report should set out how the levy has been spent and what has been achieved, accompanied by an impact assessment.

**Question 4:** What are your views on what the proposed levy review should consider and when it should take place?

In our view, a review of the levy should be undertaken within three years of it coming into effect. Five years is too long in the rapidly changing economic crime landscape.

### Levy calculation

**Question 5:** Do you agree with our proposal that revenue from UK business should form the basis of the levy calculation? Please explain your reasoning.

We agree that revenue from UK business should form the basis of the levy calculation because of its simplicity and transparency and the relative unlikelihood that it will alter incentives in comparison to some of the other options set out in the consultation document.

However careful consideration needs to be given to the potential impact of this method of calculation against the backdrop of the current pandemic and Brexit (and/or any other economic crisis that may arise) which could adversely affect a business's profit margins and therefore their ability to pay. The imposition of an additional tax and its method of calculation may also influence corporate decision-making as to the location of their offices; discouraging some from moving operations to the UK and encouraging others to move away from the UK, which may have implications for the wider UK economy.



**Question 6:** Are there any sectors that would be disproportionately impacted if revenue is used as a metric, or where revenue would be disproportionate to level of risk?

Many regulated firms already spend significant sums of money on mitigating the risks of money laundering and other forms of economic crime, and it may be perceived as unfair to expect them to pay more money towards a levy to deal with firms or organisations that simply can't or won't invest in appropriate economic crime controls.

**Question 7:** Do you believe other levy bases would provide a better basis for the levy calculation? These could be the ones outlined in Table 4.A or those not considered in the consultation document.

No comment.

**Question 8:** Should a fixed percentage or banded approach be taken to utilising revenue as a metric? Please explain your reasoning.

No comment.

**Question 9:** What are your views on the principle of exempting small businesses from paying the levy, and on the level of a potential threshold?

We have some reservations about exempting all small businesses from paying the levy, namely that it may put some very risky small businesses outside of scope and could give rise to the perception that smaller businesses don't need to worry about money laundering or take appropriate steps to mitigate the risk. Related to this latter point we note that the Financial Conduct Authority is currently proposing the expansion its own remit to require more smaller firms to report on financial crime issues in its current consultation on the 'Extension of Annual Financial Crime Reporting Obligation'.

The question for government is ultimately whether the objective of the levy is simply to raise public funds to finance anti-money laundering activity or whether it wishes to derive wider societal benefits that could flow from it, such as improved deterrence, compliance and corporate behaviour. We suggest it should be more of a matter of principle than income generation.

Whilst extending the levy to smaller businesses may not meet the cost effectiveness principle set out in the consultation document (and referred to in Paragraph 4.13), it would arguably meet the principles of solidarity, proportionality and affordability, and avoiding unintended consequences.

**Question 10:** What are your views on having businesses below the threshold subject to a small flat fee?

We believe that payment of a nominal fee would signify the importance of tackling money laundering to all regulated businesses, including small ones.



**Question 11:** Do you believe the small business threshold should be determined by reference to revenue alone or to all three of the Companies Act 2006 criteria? Please explain your reasoning.

No comment.

**Question 12:** For businesses not exempted by a threshold, how should their revenue below the level the threshold is set at be treated – as an allowance, levied at the same level as the main levy rate, or levied through a fixed amount?

No comment.

**Question 13:** How do you think money laundering risk should be accounted for in the levy calculation?

No comment.

**Question 14:** Do you believe using number of SARs reported as a metric through a banded approach would be an appropriate means of achieving this objective? Please explain your reasoning.

As stated earlier in our response, we do not believe the levy should be limited to the regulated sector. That said, even within the sector, we believe that the use of SARs as a metric is inappropriate and incompatible with its intended purpose as a reporting mechanism and would ultimately incentivise poor corporate behaviour (such as under-reporting) rather than good behaviour, when there are already concerns about the failure of some in the regulated sector to report appropriately. Given the current balance of SARs reporting, the proposed levy would fall almost entirely on banks and building societies.

### Applying the levy calculation

**Question 15:** Do you believe there should be a periodic or annual process for setting the levy rate? If periodic, what would an appropriate period be?

No comment.

**Question 16:** Would you prefer to calculate the levy based on total revenue or revenue from AML-regulated activity only? Please explain why.

No comment.

**Question 17:** If applicable, what is your initial estimate of the proportion of your UK business which is AML-regulated (in revenue terms)? How many labour hours would initially be required to enable your business to robustly calculate the proportion of regulated business on an ongoing basis?

No comment.

**Question 18:** Which is your preferred option for defining revenue?

No comment.

**Question 19:** Do you agree the levy should be based on UK revenue only? How easy would it be to split out your UK revenue from your total global revenue?

No comment.

**Question 20:** Do you think it would be more appropriate to use total income or net operating income as a metric for calculating levy liability for deposit-taking institutions, and if so, which metric would be the most appropriate?

No comment.

**Question 21:** Do you agree that the reference period for the levy calculation should be a business's accounting period? Please explain your reasoning.

No comment.

**Question 22:** Do you agree that the levy should apply to activity carried out from the date from which the activity is regulated? Please explain your reasoning.

As previously stated, we do not believe that the levy should be limited to either the regulated sector or money laundering.

**Question 23:** Do you believe levy liability should be calculated and invoiced at entity or group level? Please explain your reasoning.

No comment.

**Question 24:** Do you agree limited partnerships should pay the levy at partnership level? Do you have any other views on how partnerships should be treated for the purposes of the economic crime levy?

No comment.

### Collecting the levy

**Question 25:** Do you think the agency should issue a notice to file or that businesses should be required to submit a return proactively? Please explain your reasoning.

No comment.

**Question 26:** Do you think all businesses should report their levy liability to the agency? If not, do you think small businesses should report a nil declaration or nothing at all?

No comment.

**Question 27:** Do you agree with the proposed approach for calculating the levy rate, invoicing, and payment of the levy? If not, please explain why.

No comment.

**Question 28:** What are your views on the proposed compliance framework in a single agency model?

No comment.

**Question 29:** Do you agree that supervisors should be able to determine the frequency of reporting and payment, provided they transfer levy payments to the government a maximum of a year after the end of a business' accounting period?

No comment.

**Question 30:** What are your views on the supervisor carrying out compliance activity as set out above?

No comment.

**Question 31:** Which model do you prefer? Please explain why. Do you have suggestions for any other models that could be used?

No comment.

**Question 32:** If you are a supervisor, what do you estimate your costs would be in each model?

No comment.

### Funding for fraud

We believe the section on 'funding for fraud' should be the subject of a separate public consultation. There are a significant number of individuals and organisations outside the regulated sector with an interest in countering fraud which may be unaware these questions are being posed as part of the current consultation. Funding for fighting fraud

should be considered as part of wider proposals for funding all future economic crime control activities.

**Question 33:** How much did your organisation spend on countering fraud in 2019? What are these funds spent on, in high level terms?

Many organisations invest a significant amount of money into counter fraud activity each year, which can be very difficult to quantify. Some costs are easier to quantify than others, such as direct tangible costs associated with staffing a dedicated counter fraud team; others less so, such as indirect costs linked to culture, compliance and the wider control framework.

We question the relevance of this question in relation to the context of the consultation document on additional costs to business. A better question might be what return on investment (or cost savings) do businesses achieve through counter fraud activity – the findings of which could then be shared to illustrate the benefits which can be derived from proactive investment in counter fraud activity. Investment in counter fraud activity should be seen as an enabler for business – not as a barrier. It can result in cost savings, a good reputation, positive staff morale, an ethical corporate culture, and act as a powerful deterrent to would-be fraudsters.

**Question 34:** What additional financial contribution should the private sector contribute towards improving fraud outcomes?

We are concerned that the questions contained within the consultation document in relation to fraud are an initial step towards the greater privatisation of policing which we consider to be inequitable and unjust. It is firmly our view that the policing of fraud – like all crime – should be funded from general taxation and not through an additional levy placed on businesses which are either witnesses to, or victims of, crime.

**Question 35:** Which sectors do you think should be involved in countering the system-wide fraud risk? Please explain your rationale – for example whether you believe that those included should be included based on benefit, or risk?

Every business – regardless of size, sector or risk profile – has a role to play in tackling fraud and economic crime. We believe that a greater emphasis needs to be placed on encouraging good, ethical corporate leadership and behaviour and ‘doing the right thing’. Surely the UK economy and society as a whole will benefit from everyone (public, private, third and the general public) doing more to spot, stop and prevent fraud and other forms of economic crime.

**Question 36:** What mechanism would you recommend in order to collect additional funding?

The concerns that we have raised at the outset of our response in respect of the economic crime levy for tackling money laundering equally apply to any future new or additional levy proposed to combat fraud specifically. For the avoidance of doubt, these are:

1. The costs of economic crime are borne by society as a whole and should be shared.
2. It is wrong in principle to effectively tax those who are victims of economic crime to counter it.
3. Any monies raised must be spent on properly identified and costed proposals based on detailed analysis of the exact measures required to effectively tackle economic crime.
4. Alternative funding is already available to tackle economic crime; money taken from those on the wrong side of the law, should be put back exclusively into preventing crime and compensating victims.

It clear that there is not yet a system in place to measure what works in combatting economic crime, therefore it cannot be sensible to put any levies in place when the measures needed to tackle the problem are unknown or at very least, unquantified.

**Other**

**Question 37:** Is there anything you have not already included in your response that you would like us to note?

We have long-called argued for the creation of a National Economic Crime Commission, dedicated to building a holistic, long-term approach (see our special report, '[The Fraud Review: Ten years on](#)', published in 2016). This body would be responsible for economic crime in all its forms to stand back from the fray and take the long view: improving the openness, transparency and accountability of fraud initiatives; bringing people and organisations together, identifying gaps, preventing duplications and monitoring outcomes.

This body would set an overarching strategy and see the bigger picture, achieve greater efficiencies and cost savings across government and the public purse, monitor the flow of illicit money and develop appropriate proposals to stem it; co-ordinate the national response; and be held accountable for outcomes and performance. We believe this need is now greater than ever.