

MLROs.com Conference One 2019

Hosted by
Squire Patton Boggs

Delegate Handout
Wednesday, 6th March 2019



SQUIRE 
PATTON BOGGS



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Agenda

- 08:30 - 09:00** **Registration & Coffee**
- 09:00 - 09:05** **Welcome & Introduction**
David Pelled, CEO, MLROs.com
- 09:10 - 09:55** **Panel Session: Starting Over or Keeping an Even Keel: The Impact of Brexit on Financial Crime Prevention**
Chair: Paul Anderson, Squire Patton Boggs
Domhnall Cullinan, Central Bank of Ireland
Owen Kennedy, Bank of America Merrill Lynch
Araba Eshun, Coinfloor
- 09:55 - 10:40** **Panel Session: Spring Cleaning: Detecting and Disrupting Illicit Financing Flows into the UK**
Chair: Viri Chauhan
Duncan Hames, Transparency International
Dawn Fisher, Arbuthnot Latham & Co., Ltd
Sameer Ismail, Luno
- 10:40 – 11:00** **Coffee Break**
- 11:00 – 11:45** **Panel Session: Standard setters: Designing/Guiding/ Development of anti-Financial Crime Controls**
Chair: John Clarke, Standard Banking Group
Domhnall Cullinan, Central Bank of Ireland
Lucinda Hallan, Grant Thornton
Karen Bissett, Bank of Ireland
Dr Roger Miles
- 11:45 - 12:30** **Trends in Cryptocurrency Regulation and Disputes for 2019**
Chris Webber & Kate Wakeham, Squire Patton Boggs
- 12:30 - 13:30** **Lunch**
- 13:30 – 14:15** **An AML Mock Trial**
Jon Baldwin & Toni Vitale, Winckworth Sherwood
- 14:15 – 15:00** **Mortgage Fraud – Insights from the Data of Over 6,000 Recoveries Cases**
Anthony Taylor, Squire Patton Boggs
- 15:00 – 15:20** **Coffee Break**
- 15:20 – 16:05** **Panel Session- Technology & Detection**
Chair: Jon Williams, MLROs.com Advisory Board Member
Chris Anderson, Financial Crime Intelligence Ltd
Chris Collins, Altergaia
Ian Howard, Neotas
- 16:05 – 16:50** **The UK's Reputation for Fighting Financial Crime**
Samantha Sheen, formerly ACAMS
- 16:50 - 17:30** **Panel Q&A**

About Squire Patton Boggs

Squire Patton Boggs is a full-service global law firm. We provide insight at the point where law, business, and government meet, giving you a voice, supporting your ambitions and achieving successful outcomes. Our multidisciplinary team of over 1,500 lawyers in 46 offices across 21 countries provides unrivalled access to expertise and invaluable connections on the ground.

Our global financial services practice provides legal, regulatory, and public policy advice to a wide range of participants in the financial services sector including financial institutions and intermediaries, investors, borrowers, and regulatory authorities. The team includes former regulators and public policy specialists, and is currently active in advising clients throughout the regulatory life cycle from formation to transaction approval to investigations and enforcement proceedings to financial restructuring and insolvency. We were recently appointed as one of only a handful of law firms approved by the UK Financial Conduct Authority and Prudential Regulation Authority to accept appointments as a Skilled Person in regulatory investigations under section 166 of the Financial Services and Markets Act 2000 in relation to financial crime, AML, market abuse and manipulation, anti-bribery, third party payments and governance.



About MLROs.com

MLROs.com is your specialist, industry-led community, both online and at our hosted events all over the UK. Our members include representatives from a wide range of financial institutions, regulatory bodies, law enforcement agencies and industry sectors.

MLROs.com is eager to help our members stay abreast of the changing Anti-Money Laundering, Financial Crime Risk & Regulatory landscape – we aim to spark debate, to provide opportunities to learn and to help you navigate these changing times with MLROs.com as your trusted companion.

We exist to support and challenge our members to remain at the fore of our industry. Our offerings strive to keep our members abreast of the evolving regulatory landscape, to aid professional development and to host events with specialist networking opportunities. Our members come from a range of industries but all share a passion and commitment to effectively combat the advancement of financial criminals. Our speakers are leading experts, again from a multitude of backgrounds – each with a unique perspective to share. This special combination provides our members with access to expert insights and collaborative sessions that empower us to boldly lead in the fight against financial crime.

MLROs.com delivers a collaborative online forum that also hosts regular, informative events offering a unique perspective and a safe place to enquire together on the issues we face across industry. MLROs.com offers a website with tailored sections for richer content for our members. For those who register for free, you will have access to the wealth of members-only content and be able to avail of the early notice and/or discounted pricing for all upcoming events.

We expect to journey together with our members to empower you to manage the pressures of the tasks ahead. The holistic requirements expected of professionals in the field continue to grow at an ever-increasing pace, driven by the continued growth of the regulatory burden and the financial criminals ongoing determination to ply their nefarious trade with increasing sophistication and regularity; MLROs.com is stepping up to the task to ensure that each and every financial crime professional is educated, supported and empowered.



MLROs.com Advisory Board

The Advisory Board was formed to provide the MLROs.com forum with great strategic and practical content management.

The board is made up of Subject Matter Experts (SME's) of significant knowledge, standing and gravitas within the Financial Crime professional's ecosystem! We aim to have at least one SME board member to cover each area of industry specialisation.

The Board will oversee the continued development of the content coming from MLROs.com - ensuring it is always relevant, independent, best in industry, and most importantly disseminated in a timely manner to enhance and empower the membership we serve.

We are continuing to look for a representative mix of professionals to ensure that everything we do is unrivalled and makes a lasting positive contribution to our industry.

If you feel you have something to contribute to the community, please make your interest known to our CEO, David Pelled, by speaking to him today, calling him on his mobile +44 7956877806 or by email at david.pelled@mlros.com

We look forward to hearing from you!



Notes

Session 1

09:10-09:55

Starting Over or Keeping an Even Keel: The Impact of Brexit on Financial Crime Prevention



Paul Anderson

Partner, Squire Patton Boggs



Domhnall Cullinan

*Head of the Anti-Money Laundering
Division, Central Bank of Ireland*



Owen Kennedy

*EU MLRO, Bank of America Merrill
Lynch*



Araba Eshun

MLRO, Coinfloor

Starting Over or Keeping an Even Keel: The Impact of Brexit on Financial Crime Prevention

A panel of MLROs from both banks and DNFBPs (law firms) discuss how Brexit has changed the approach towards financial crime prevention for their customers and their organisations. The panel will canvass the challenges the faced at both the tactical and strategic level and whether these have changed the way in which they approach their respective roles and responsibilities.

Paul's Bio

Paul Anderson has specialised in financial services matters for more than 15 years. His particular expertise covers a range of retail and wholesale financial services businesses including clients from the banking, investment management, insurance, building society, broker dealer and IFA sectors, as well as intermediaries in the energy, investment and insurance sectors.

Paul was previously International Counsel at Prudential Bache, the UK investment business of Prudential Financial, Inc., where he supported the investment management, stock broking and commodity trading parts of the business in the UK and European branches in the Netherlands and Belgium.

Domhnall's Bio

Domhnall joined the Central Bank of Ireland in 2003 and was appointed as Head of Insurance Supervision in June 2012. He took up his current role as Head of the Anti-Money Laundering Division in June 2014. Domhnall worked in the Life and Pensions industry for 11 years prior to joining the Central Bank. Domhnall has been involved in the development of policy and legislation nationally and represents Ireland at the Financial Action Task Force. In addition to AML/CFT supervision and policy development, the Anti-Money Laundering Division is responsible for administration of financial sanctions and the investigation of the provision of financial services by unauthorised providers.

Owen's Bio

Owen Kennedy is Bank of America Merrill Lynch's ("BAML") Head of Financial Crimes for the EU and is the MLRO for BAML's new EU banking entity which is headquartered in Ireland. In this role, Owen is accountable for ensuring that the measures BAML has adopted throughout the EU to prevent and detect money laundering, terrorist financing and economic sanctions evasion are effective. Prior to joining Bank of America in late 2018, Owen spent 19 years in Bank of Ireland where, most recently, he held the role of Group Head of Financial Crime Compliance and Group MLRO for the bank.

Araba's Bio

Araba has considerable experience within Financial Services having worked within the Asset Management, Banking, FX & CFDs and Cryptocurrency industries. Araba specialises in Compliance and Anti Money Laundering. In her role as Coinfloor Limited's Chief Compliance Officer Araba built the companies compliance function in line with UK and international standards.



Notes

MLROs.com Conference One 2019 Session 1 Feedback Form

Name _____

please circle the appropriate number with 1 being strongly disagree and 5 being strongly agree

This was an interesting session	1	2	3	4	5
The Speakers presented the information in a clear and effective manner	1	2	3	4	5
The speakers were knowledgeable about the subject matter	1	2	3	4	5
The information presented was relevant and useful to my job	1	2	3	4	5
The session increased my knowledge on the subject matter	1	2	3	4	5
The session was the correct length	1	2	3	4	5

What did you like most about the session

What did you like least about the session

Any additional comments



Notes

Session 2

09:55-10:40

Spring Cleaning: Detecting and Disrupting Illicit Financing Flows into the UK



Viri Chauhan

Partner, Squire Patton Boggs



Duncan Hames

*Head of Policy, Transparency
International*

Dawn Fisher

Arbuthnot Latham & Co., Ltd



Sameer Ismail

Chief Compliance Officer, Lino



Spring Cleaning: Detecting and disrupting illicit financing flows into the UK

This session will look at the developments that have taken place since the global bribery and corruption conference in 2016, the changes to the Criminal Finances Act and the disclosures made about the dirty money used to acquire luxury real estate and other goods in the UK. Success, failure or a work in progress?

Viri's Bio

Viri is an experienced financial crime leader who has worked with many of the major banks including HSBC and Deutsche Bank and with global corporations such as France Telecom to improve standards and capability in financial crime compliance. He is a qualified lawyer and also a visiting lecturer at Bristol Business and Law School where he is currently completing his PhD in Illicit Financial Flow.

Viri recently co-authored a book chapter on managing bribery and corruption risks in banks has also written a number of articles on the subject of money laundering and corruption. He started Financial Crime Compliance Limited in 2016 to enable him to offer his services to a wide range of clients requiring assistance for financial crime related support.

Duncan's Bio

As Director of Policy, Duncan takes a strategic lead on UK focused work, building on TI-UK's efforts to end the UK's status as a "safe haven" for corrupt money, address corruption in the political sphere, as well as navigate new areas of work. He joins TI-UK after working on information security with Templar Executives, following 5 years as a Member of Parliament. He also serves on the board of the South London and Maudsley NHS Foundation Trust, where he chairs their audit committee

Dawn's Bio

Dawn has wide AML and financial crime prevention experience spanning an 18 year career. Dawn's professional experience combines the practical application of FCP and AML as a hands on practitioner in a number of financial services firms, and a focus on thought leadership through her role as a AML/FCP trainer, covering multiple financial crime prevention disciplines at all levels from beginner through to Board level and for a variety of audiences including the wider regulated sector, regulators and law enforcement with engagements from the UK to the Philippines and many countries in between. Dawn currently holds the position of Deputy MLRO at Arbuthnot Latham & Co., Ltd.

Sameer's Bio

Sameer serves as Luno's Chief Compliance Officer and has overall responsibility for regulatory compliance and financial crime. He brings a decade's worth of experience in risk and compliance across banking, merchant acquiring, payments and blockchain-based systems at organisations such as Lloyd's Bank, WorldPay, Google Payments and Coinify and has a depth and breadth of experience in interacting with regulators and policy makers in the US, Europe and the Middle East.



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MLROs.com Conference One 2019 Session 2 Feedback Form

Name _____

please circle the appropriate number with 1 being strongly disagree and 5 being strongly agree

This was an interesting session	1	2	3	4	5
The Speakers presented the information in a clear and effective manner	1	2	3	4	5
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The session was the correct length	1	2	3	4	5

What did you like most about the session

What did you like least about the session

Any additional comments



Notes

Session 3

11:00-11:45

Standard Setters: Designing/Guiding/ Development of Anti- Financial Crime Controls



John Clarke

MLRO, Standard Banking Group



Domhnall Cullinan

*Head of the Anti-Money Laundering
Division, Central Bank of Ireland*



Lucinda Hallan

*Director Financial Crime &
Investigations, Grant Thornton*



Dr Roger Miles

Standard setters: Designing/Guiding/ Development of anti-Financial Crime Controls

We will have a panel with members from a central bank, JMLSG and the SRA. They will discuss how they develop the standards used for their sectors to implement appropriate and effective AML compliance controls.

John's Bio

John is the Money Laundering Reporting Officer and Head of Financial Crime Compliance for the Standard Bank Group's London based Investment Banking division, Standard Advisory London Ltd, where he has worked since March 2015. John is also co-chair of the Association for Financial Markets in Europe Financial Crime Working Group and represents the Association of Foreign Banks on the JMLSG Editorial Panel.

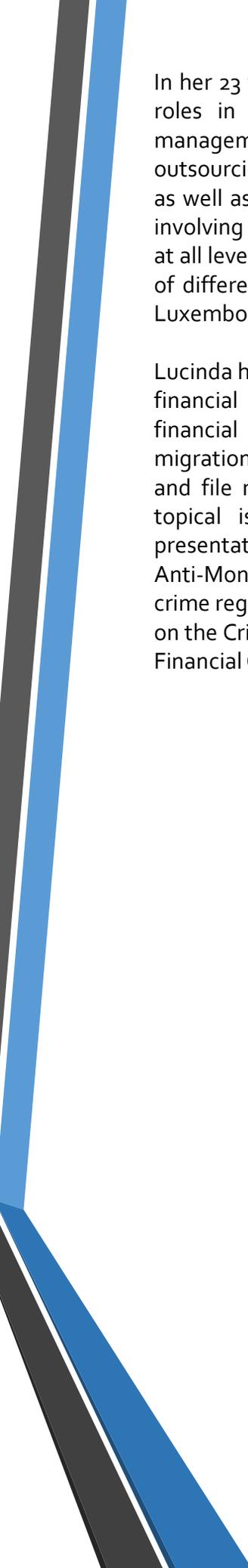
John has over twenty years' compliance experience across investment banking and asset management. He previously held financial crime related compliance roles with both JPMorgan Asset Management and Bank of New York Mellon".

Domhnall's Bio

Domhnall joined the Central Bank of Ireland in 2003 and was appointed as Head of Insurance Supervision in June 2012. He took up his current role as Head of the Anti-Money Laundering Division in June 2014. Domhnall worked in the Life and Pensions industry for 11 years prior to joining the Central Bank. Domhnall has been involved in the development of policy and legislation nationally and represents Ireland at the Financial Action Task Force. In addition to AML/CFT supervision and policy development, the Anti-Money Laundering Division is responsible for administration of financial sanctions and the investigation of the provision of financial services by unauthorised providers.

Lucinda's Bio

As a senior member of Grant Thornton's Financial Crime practice, Lucinda Hallan combines deep operational and regulatory knowledge to deliver practical insights on compliance, whether in the context of root cause analysis as part of an investigation, or as part of a programme of prevention and remediation. Her current focus is on helping clients consider and react to financial crime risks in a real world context and she also oversees the design and delivery of the Financial Crime practice's methodologies.



In her 23 years of experience, Lucinda has worked in both consulting and industry roles in financial services. She has advised banking, insurance, investment management and regulatory clients, on topics as diverse as operational strategy, outsourcing, product design, risks and controls, and complex contract negotiation, as well as financial crime. Lucinda has managed global projects and programmes involving cross-border or multi-firm scope and is at ease dealing with stakeholders at all levels of the organisation. She is multilingual and has a strong understanding of different working cultures, having delivered work in countries such as Ireland, Luxembourg, France, Italy and South Africa, as well as the UK.

Lucinda has built multiple propositions and associated tools for the Grant Thornton financial crime team, including risk assessment approaches, AML and broader financial crime framework reviews, and most recently Brexit-related client migration to other European jurisdictions, including financial crime due diligence and file review approaches. Lucinda presents frequently on both technical and topical issues relating to Financial Crime, as well as carrying out board presentations and training sessions. She is the team's resident expert on the EU 5th Anti-Money Laundering Directive and possible Brexit implications for UK financial crime regulation, and regularly speaks at industry forums on these topics, as well as on the Criminal Finances Act 2017 and the intersection between Cyber Security and Financial Crime.

Roger's Bio

Dr. Roger Miles researches behavioural risks in organisations and designs effective reporting to regulators who assess conduct, culture and reputation. He counsels Boards on how best to address and communicate about risk and uncertainty, using new behavioural tools to overcome flawed assumptions of conventional risk management. A founder and faculty lead at Conduct and Culture Academy (UK), he produces and delivers consistently top-rated work programmes to improve risk culture in private- and public-sector organisations worldwide. Each year his personal research typically includes depth interviews with several hundred regulated senior practitioners (Boards, attested Senior Managers and Conduct programme principals); and hosting workshops for 3000+ business leaders across more than 200 regulated firms. He has previously run risk communication programmes for major international brands, professional bodies, and two HM Government departments.

MLROs.com Conference One 2019 Session 3 Feedback Form

Name _____

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The session was the correct length	1	2	3	4	5

What did you like most about the session

What did you like least about the session

Any additional comments



Notes

Session 4
11:45-12:30

**Trends in
Cryptocurrency
Regulation and Disputes
for 2019**



Chris Webber

Partner, Squire Patton Boggs



Kate Wakeham

Associate, Squire Patton Boggs



Trends in Cryptocurrency Regulation and Disputes for 2019

Even before December 2017 saw Bitcoin prices spike and peak at over \$19,000 there had been increasing interest from customers, institutions and regulators in the crypto-asset space. We consider some of the actions taken by regulators over the past 12 months and look forward at their plans for 2019. We also look at some of the ways in which crypto-assets can give rise to disputes and how their structure and operation can raise particular issues where the virtual world of crypto-assets meets physical court systems.

Chris's Bio

Chris Webber specializes in resolving financial services disputes and regulatory investigations. He represents clients including banks, broker dealers, corporate trustees, bondholders, issuers, mortgage servicers, borrowers, insolvency office-holders, regulatory bodies, investment funds, and individuals. He acts as a "Skilled Person" under section 166 of the Financial Services and Markets Act 2000. He also acts for corporate clients in contractual, investment, and shareholder disputes.

Kate's Bio

Katherine is an associate in the Litigation Practice Group, based in the London office.

Katherine's work involves advising on a range of disputes with domestic and international focus, for clients in a variety of industries. Katherine also works with clients involved in internal and regulatory investigations, often with an international element.



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MLROs.com Conference One 2019 Session 4 Feedback Form

Name _____

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The information presented was relevant and useful to my job	1	2	3	4	5
The session increased my knowledge on the subject matter	1	2	3	4	5
The session was the correct length	1	2	3	4	5

What did you like most about the session

What did you like least about the session

Any additional comments



Notes

Session 5
13:30-14:15

An AML Mock Trial



Jon Baldwin

Partner, Winckworth Sherwood



Toni Vitale

Partner, Winckworth Sherwood



Jon's Bio

Jon specialises in finding pragmatic, commercial and risk-aware solutions for companies operating in a regulated sector, public bodies, charitable organisations and others wishing to do business with them. Jon has particular expertise in public procurement. He advises authorities and bidders both as to the conduct of procurement exercises themselves, but also on building a procurement strategy, making modifications to existing contracts and dealing with challenges.

Jon advises clients on state aid, data protection, freedom of information, financial and consumer credit regulation, and statutory powers.

Toni's Bio

Toni is a partner and head of the Regulation, Data & Information team at Winckworth Sherwood. His considerable in-house experience enables him to offer practical, commercially-focused solutions in what is often a technical and complex area. After starting his career in private practice, Toni has held a number of positions as a senior legal adviser, General Counsel, Head of Legal and Company Secretary in household name businesses over the last 15 years, including IBM (where he was EMEA Data Privacy Counsel), Virgin Media, YouView TV and BGL Group (owners of comparethemarket.com). He was also Global Privacy Counsel at Willis Towers Watson.

Toni has assisted clients in the banking and insurance, retail, media, public (including Health and MOD), and telecoms and technology sectors on a wide range of privacy and cyber security issues, including regulatory and compliance investigations, profiling, data monetisation and data breaches.

He has advised on GDPR, e-privacy, PECR, net neutrality, RIPA, reputation management and cyber security. He has consulted with CEOP, the Home Office and NTAC and given evidence to a Joint Committee of Parliament on the Data Communications Bill.

Case Introduction

You are hereby summoned to serve as a trial juror in the case of **Ms Travers v Fidelity Fiduciary Bank**. During the trial, you shall hear from Counsel for both the Claimant and the Defendant. Ms Travers, the Claimant, runs a construction firm. She also owns a public house and three houses in London. She is a long-term customer of Fidelity Fiduciary Bank, and holds four accounts there: a sole personal current account, a joint account with her sister, for the public house, a joint account with a fellow director of the construction firm, and a sole business account for the rental business for the two London houses.

During April 2018 and November 2018, the Bank froze Ms Travers' accounts and Ms Travers was unable to access any funds. The Bank then gave Ms Travers notice that it was closing her accounts. Ms Travers submitted a data subject access request for information regarding the freezing and closure of her accounts.

The Money Laundering Reporting Officer and Data Protection Officer of Fidelity Fiduciary Bank, Mr Dawes, will take to the stand to represent his quandary in balancing the two competing regimes of 'No Tipping-Off' and Subject Access Rights. He had submitted two Suspicious Activity Reports to the National Crime Agency ('NCA') regarding suspicious activity in Ms Travers' accounts.

He was obliged to freeze the accounts while he waited the obligatory seven days to hear back from the NCA. He then concluded that Fidelity Fiduciary Bank was unable to provide banking facilities for Ms Travers. When Ms Travers submitted her data subject access request, he did not include any of the information relating to the Suspicious Activity Reports.

As a member of the jury, you will be asked to determine:

- Whether the Bank has breached the Data Protection Act 2018 by unjustifiably withholding personal data and should disclose the suspicious activity reports to the Claimant; and
- Whether the Bank has defamed Ms Gardner by repeatedly suggesting that the money in her accounts may have been derived from crime.

SARs Notes

Lonsdale v National Westminster Bank plc: Disclosure of SARs in civil proceedings

The Court ruled that a Suspicious Activity Report filed by the defendant bank was relevant to breach of contract, defamation and Data Protection Act claims brought by a customer against the bank. Disclosure should not be refused on grounds of confidentiality. SARs may therefore be disclosable in litigation both to customers and potentially to third parties.

Background

Mr Lonsdale was a customer of Natwest Bank, holding seven personal and business accounts with the bank, both in his sole name and jointly with business partners. In March 2017, the bank became suspicious about the activity on the account he held jointly. The account was frozen while Natwest obtained consent from the NCA to process transactions on the account. In December 2017, the bank froze all of his accounts following fresh suspicions.

The bank then served notice that it would close the accounts within 60 days. Mr Lonsdale filed a Data

Subject Access Request (DSAR) and sued the bank for:

- ☐ breach of contract, when it froze his accounts and failed to execute his instructions
- ☐ breach of the Data Protection Act 1998 relating to the Bank's failure to provide Mr Lonsdale with his personal data following his DSAR, and
- ☐ defamation, by stating, it was assumed by Mr Lonsdale in the SAR and internal communications that the money in his accounts derived from crime.

The bank defended the allegations. In its defence it referred to the SARs. Since the content of the SARs, and the background communications, were likely to be central to Mr Lonsdale's claims and particularly whether the bank's employees held a genuine suspicion that he was a money launderer, he applied to inspect the SARs under the High Court procedural rules relating to 'discovery'. The bank argued that that the Court should exercise its discretion in its favour to withhold the contents of the SARs because they were disclosed in strictest confidence to the NCA, and disclosure may cause the bank to commit both or either of the tipping off offences.

The bank also applied for Mr Lonsdale's claims to be struck out and/or summary judgment made.

The judgment

The Court held in Lonsdale's favour that all the three causes of action were substantive issues that could not be summarily dismissed. The content of the SARs were relevant to the determination of the issues at trial. In the end the case was settled out of court so the three separate issues were never tested in a full hearing. However the judgment is of interest to MLROs, DPOS and regulated entities.

In terms of the inspection of the SARs, the Court held in Lonsdale's favour there was no evidence before it that should make it depart from the ordinary position to order inspection. The bank had not supported its concerns that it would commit either of the tipping off offences with any evidence. Disclosure of the SARs was proportionate and necessary for the fair disposal of the claim and should not be refused on grounds of confidentiality. The National Crime Agency did not attend the hearing but asked for its interest to be noted and requested time to assess its position should the Court order disclosure. The Court allowed the NCA a period of 14 days to apply to the Court for a variation of the order. The NCA did not challenge the order.

The Bank's application to dismiss the claim was rejected by the court.

The Bank argued that:

- the information surrounding the freezing and re-opening of the Customer's bank accounts was not personal data as defined by the Data Protection Act 1998 ("DPA 1998");
- it was not obliged to provide the Customer with information relating to the Bank's decision making processes (including the reasons for its commercial decisions);
- it was not obliged to disclose the identity of the Bank's decision makers; and
- the data sought by the customer included data relating to other individuals and the bank argued it was not reasonable to disclose the information without the consent of the other parties.

The Bank also argued that, in any event, the further information sought was exempt from disclosure pursuant to the exemption in the DPA relating to the prevention or detection of crime.

The court held the Bank had a "flawed understanding" of the scope of a DSAR and stated that "it was hard to see "how any information sought by the customer could fail the identifiability limb" provided in the DPA 1998.

The court (noting the Information Commissioner's guidance on "Determining what is personal data") said that, in this context, personal data could be:

- information relating to suspicious transactions and the reasons for those suspicions; and
- data used to inform or influence actions or decisions affecting an identifiable individual.

The court also held that the information the customer sought, including dates, meetings and the identities of those that attended the meetings, was personal data if the meeting related specifically to the customer and his accounts. It was wrong for the Bank to say that its business decisions were not the customer's personal data when the decisions related to his account.

The court held that "data which was processed to determine whether to make a report to the NCA regarding transactions on Mr Lonsdale's accounts, or whether to freeze, re-open or close his accounts [was] all personal data". However, the court said that whether that information was exempt from disclosure under one of the DPA exemptions would be a matter for full trial. Several exemptions would have been relevant including that disclosure may prejudice an investigation into a criminal offence or that disclosure may identify third parties. The Bank could have excluded or redacted the material on one or more of these grounds.

Practical implications of the judgment

In the case of *Shah v HSBC Private Bank (UK) [2010] EWCA Civ 31* (§24), the court held that the burden is on the bank to prove, and submit evidence that, it held a genuine suspicion that the customer was money laundering. It is important for bank employees to record clearly that suspicions underlying the SAR and retain these documents. Staff should also be prepared to provide witness statements to support their suspicions.

Data concerning a Bank's suspicions about a customer and decisions to freeze and close accounts are likely to be held to relate to a customer and hence may be disclosable both as personal data and also as part of a defamation claim.

Data protection is now governed by the Data Protection Act 2018 (DPA 2018), but both the right and the exemption (in section 45 and schedule 2, paragraph 2, respectively) are materially unchanged from the DPA 1998. The bank tried to establish a blanket application for the exemption to all disclosures made under POCA 2002 and/or a route to avoid their data protection obligations by reference to the offences in ss 333A and 342. The Court clearly found in favour of the customer that the content of the SARS and details of the Bank's opinions about him is personal data.

The Bank did not put forward any evidence supporting its suspicion. This may have helped the Bank to dismiss the customer's breach of contract claim but also would have been helpful in defending the defamation claim by establishing a 'qualified privilege' defence.

With regard to the defamation claims, the customer claimed that the Bank had defamed the customer by suggesting that it had suspicions that his account contained criminal proceeds. The customer claimed that defamatory statements were published in the SARs and internal bank employee communications concerning the decision to make the SARs and freeze the accounts.

The Bank said that the statements were not defamatory, were not published, did not cause any harm and were protected by qualified privilege. The Court held that the defamation case could not be dismissed in a summary judgment application because the statements were capable of being defamatory and were published. However qualified privilege was likely to apply.

Defamation occurs where there is publication to a third party of words or matters containing an untrue imputation against the reputation of individuals, companies or firms which serve to undermine that reputation in the eyes of right thinking members of society generally by exposing the victim to hatred, contempt or ridicule. A statement about an individual must have caused or would be likely to cause serious harm to the claimant's reputation.

One possible defence that can be relied on is privilege. Privilege acts to balance the human rights of those who are subject to defamatory material and freedom of speech and information. There are two types of privilege. Absolute privilege applies, for example to statements made by members of parliament on the floor of the House of Commons or in the Lords and where it applies no action for defamation can be brought irrespective of dishonesty or motive. Qualified privilege, which was claimed by the Bank in this case, applied where the person who makes the communication has an interest or a legal social or moral duty to the person to whom it was made. Here the Bank claimed the content of the SARs was factual and it had a legal duty to provide the information to the NCA.

The court did not believe much turned on the distinction between a required disclosure (under POCA 2002, ss 330 or 331 of POCA) and an authorised disclosure (under POCA 2002, s 338).

Timing of disclosure may be the key to the question of how to balance an individual's right to access or inspect a disclosure, on the one hand, with the risk that such access or inspection may prejudice an investigation, on the other. Please note the tightened timescale for responding to requests under the DPA 2018, which may mean a deadline before the end of the POCA 2002 moratorium period, make this more of a live issue. You now have one calendar month to reply to DSARs.

Further implications of Lonsdale for MLROs

It is important to bear in mind that Lonsdale's case was not that the bank had submitted the SARs without any suspicion. His case was that the bank failed to act on his instructions and the bank's defence to that was its suspicion of money laundering. The court held that this was a fact to be proved by evidence, hence the requirement to disclose the reports. There will be circumstances in which customers may be legally entitled to view the SARs that have been made about them, and that, depending on the contents of those SARs, the subject would not be precluded from bringing a defamation claim against the maker of that SAR. Data subjects may be entitled to see the contents of SARs by making a DSAR although some exemption may apply. It is important that the SAR sets out the basis for the suspicion held as clearly as possible not only because of the potential for legal action but also because ultimately it may be read by a subject who remains a client of the company.

What do i need to include in a SAR about suspicion?

The starting point is to look at what "suspicion" actually means in the context of reporting under the Proceeds of Crime Act 2002. Suspicion is not defined in the legislation, but it has been considered by the courts on various occasions. The judge in the case of Lonsdale summed up the position as being that "The [person that suspects] must think that there is a possibility, which is more than fanciful, that the relevant facts exist. A vague feeling of unease would not suffice but the statute does not require the suspicion to be "clear" or "firmly grounded and targeted on specific facts", or based upon "reasonable grounds".

It is clear therefore that suspicion is a relatively low-threshold, that it is subjective and, while it must be genuine, there is no requirement for it to be reasonably held or based on specific facts. How should this be set out in the SAR? The NCA has published detailed guidance on the information to be included when making SARs. Although this guidance predates the Lonsdale case it has not been revised in the light of it. Here are ten tips on how to set out the grounds for suspicion and what sort of information to include:

1. Write clearly and concisely, using simple language and avoiding legal jargon.
2. Describe fully the reasons for suspicion of money laundering. The NCA recommends "as a basic guide, wherever you can, try to answer the following six basic questions to make the SAR as useful as possible: Who? What? Where? When? Why? How?"
3. Identify all individuals, businesses and suspected criminal property with as much detail as possible. If you do not possess certain details make this clear.
4. Explain the information giving rise to the suspicion and how this information came to your attention.
5. Ensure you distinguish between what you know and what you suspect.
6. Set out the sequence of events chronologically, being as specific as possible with regard to dates.
7. If the suspicion relates to financial transactions, ensure you justify the basis of your suspicion. Do not simply state that it is a cause for concern. Provide information about the pattern of transfers/withdrawals which makes the circumstances suspicious.
8. If the report does not relate to a financial transaction, explain the activity you consider to be suspicious.
9. If you are suspicious because the activity in question deviates from the normal activity for that customer/business sector, explain how the activity differs.
10. If the report relates to a professional enabler (for example an accountant, insolvency practitioner, conveyancer etc), state whether they appear to be wittingly or unwittingly facilitating the money laundering you suspect (i.e. set out if your suspicion relates to the transactions only or whether it extends to the professional involved).



Notes

MLROs.com Conference One 2019 Session 5 Feedback Form

Name _____

please circle the appropriate number with 1 being strongly disagree and 5 being strongly agree

This was an interesting session	1	2	3	4	5
The Speakers presented the information in a clear and effective manner	1	2	3	4	5
The speakers were knowledgeable about the subject matter	1	2	3	4	5
The information presented was relevant and useful to my job	1	2	3	4	5
The session increased my knowledge on the subject matter	1	2	3	4	5
The session was the correct length	1	2	3	4	5

What did you like most about the session

What did you like least about the session

Any additional comments



Notes

Session 6
14:15-15:00

**Mortgage Fraud – Insights
from the Data of Over
6,000 Recoveries Cases**



Anthony Taylor

*UK Head of Litigation, Squire
Patton Boggs*



Mortgage Fraud – Insights from the Data of Over 6,000 Recoveries Cases

An interactive discussion and presentation of a body of research into 500 mortgage frauds committed in the UK to analyse who is defrauding the banks and where and how they are doing it. To the best of our knowledge this detailed piece of research presented by Squire Patton Boggs is unique within the UK mortgage sphere. Its findings will be of interest to anyone crafting an underwriting policy, setting up a conveyancing panel, undertaking due diligence into a mortgage book, making recoveries on behalf of a lender or who needs an understanding of the nature of mortgage fraud in the UK.

Anthony's Bio

Anthony Taylor is a partner working out of Squire's London and Manchester offices and is head of the UK litigation team. He is a CEDR accredited mediator.

The focus of Anthony's practice is finance litigation, acting primarily for banks and building societies on a broad range of disputes. One particular area of expertise is bringing claims in professional negligence or fraud against negligent solicitors, valuers, auditors and accountants. These claims are often grouped together into mass mediations that have transformed the way banks and insurance companies are dealing with claims against negligent solicitors and valuers.

Anthony also advises in relation to the complex insurance issues that are often encountered when suing professionals. Anthony's work covers all aspects of the relationship between customer and lender, including advising lenders how to deal with high volumes of mis-selling claims. Anthony has acted for several counterparties to problematic swap transactions.

Mortgage Fraud Analysis



Our Work

- Reviewed approximately **6,000** residential mortgage losses.
- Settled approximately **800** claims against solicitors/valuers.
- Recovered circa **£45 million**.
- Engaged directly with insurers, settling majority in group mediations.
- Online extranet systems were used to record data and compare claims, trends, patterns and themes.
- Cases valued using blend of professional judgment and algorithms.
- In structured mediation process, irrecoverable costs were only **2.4%** of recoveries.
- By-product is a vast database of mortgage fraud trends.

Study Data

- Prime lending (mortgage and remortgage).
- **476** frauds were reviewed.
- **7** high street banks and building societies.



Financial Analysis

- The average loss from each fraud was **£107,814.11**. This figure takes into account repayments made by the borrower, the property repossession sale and all additional costs related to the file.
- Average advance amount was **£202,190.62**.
- Average repossession sale amount was **£80,140.60**.
- The total approximate loss from all files reviewed was **£50 million**.



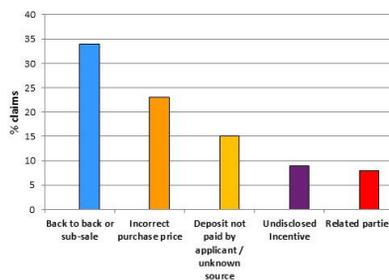
Types of Mortgage Fraud

- Back to back transaction or Sub-sale
- Deposit not paid by applicant/unknown source
- Related Parties
- Incorrect Purchase Price
- Undisclosed buy-to-let
- Undisclosed Incentive
- False Remortgage
- No planning permission
- Identity theft



Basis of Claim

- The most prevalent type of mortgage frauds were back to back transactions and sub-sales which constituted **34%** of all claims.



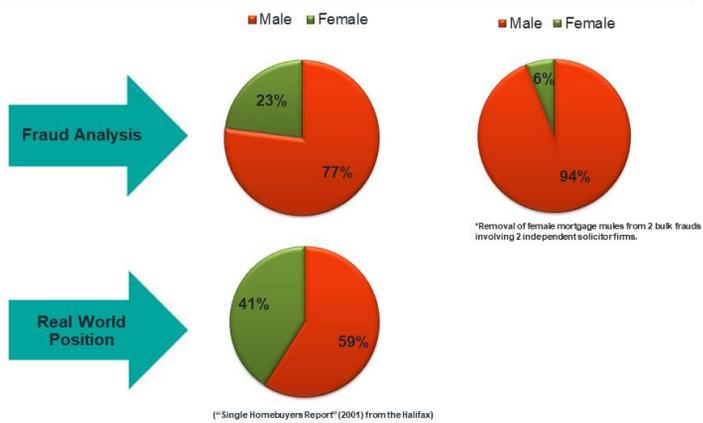
Other types of claim	%
Identity Theft	3.0
No planning permission	2.3
False remortgage	1.8
Undisclosed BTL	0.7

The Buyer



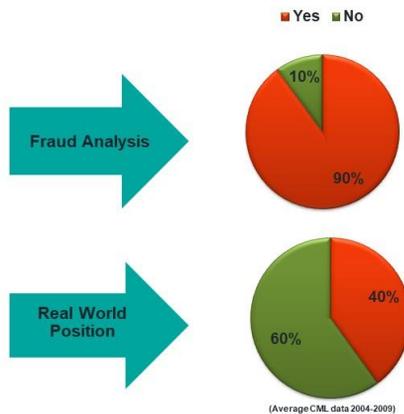
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Gender



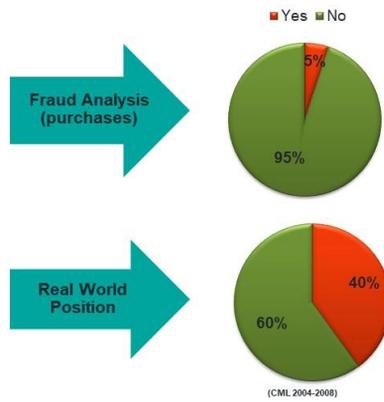
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Sole purchaser?



squirepattonboggs.com 9

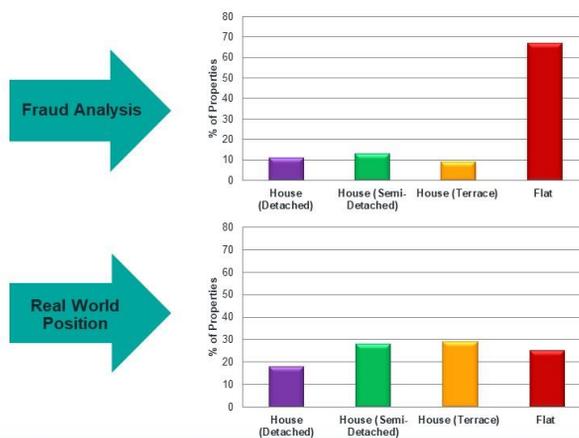
First Time Buyer?



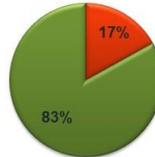
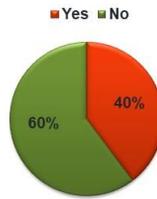
The Property



Property Type



New build?

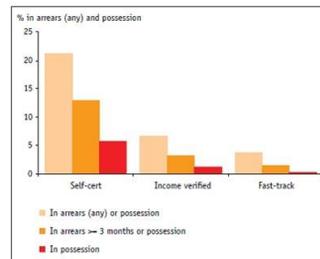
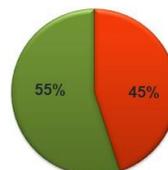
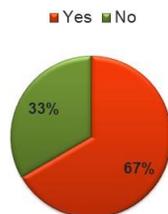


* Based on the assumption that 75% of new build properties are sold in the year they are completed

The Mortgage



Self-certification



(FSA PSD & Arrears dataset 2009)

(FSA PSD & Arrears dataset 2005-2010)

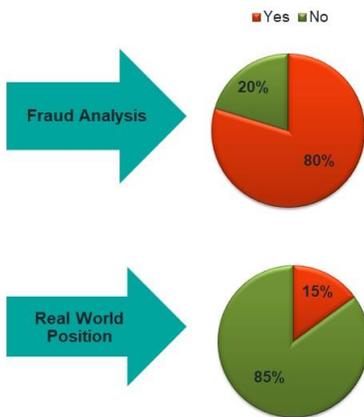
- The average LTV across all reviewed files was **85.4%**.

By comparison:

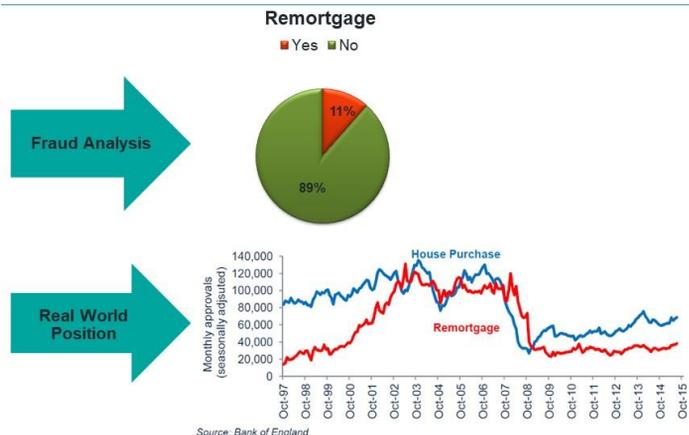
- The average LTV for new business in 2008 was reported at **67%** by RBS and **74%** by Nationwide.



Prominence of buy-to-let mortgages



Purchase v Remortgage

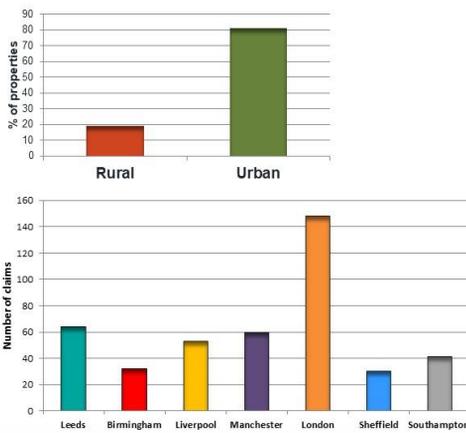


The Frauds



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Location



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20

Mortgage Fraud in London

- 92% of frauds were in East London.
- 94% of properties were Flats (67% in the Regions).
- 83% were Buy to Let (80% in the Regions).
- 97% of transactions were carried out by sole purchasers (90% in the Regions).
- 74% of borrowers were Male (75% in the Regions).
- 54% of properties used were new build (40% in the Regions).

London

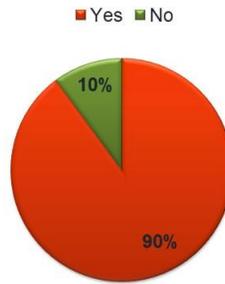


The incidence of mortgage fraud is higher in the South East of London than in any other region of London.

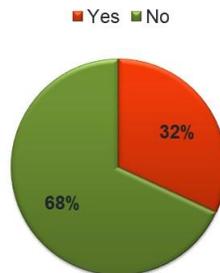
squirepattonboggs.com

21

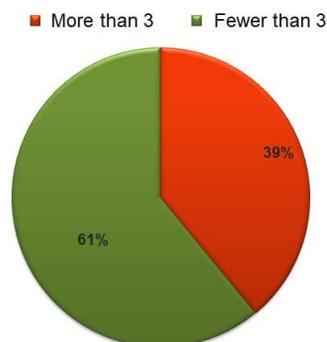
Was the Solicitor “in on it”?



Conveyancer and borrower in different cities?



Number of partners



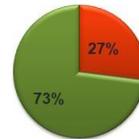
One bad apple....

	Turnover (£ million)	Number of solicitors
Firm A	3	10+
Firm B	30+	200+
Firm C	3.5	10+

Each firm had more than 3 partners but only 1 partner who was implicated in fraudulent practices.



■ More than 3 ■ Fewer than 3



* Removal of bulk claims

Conclusion

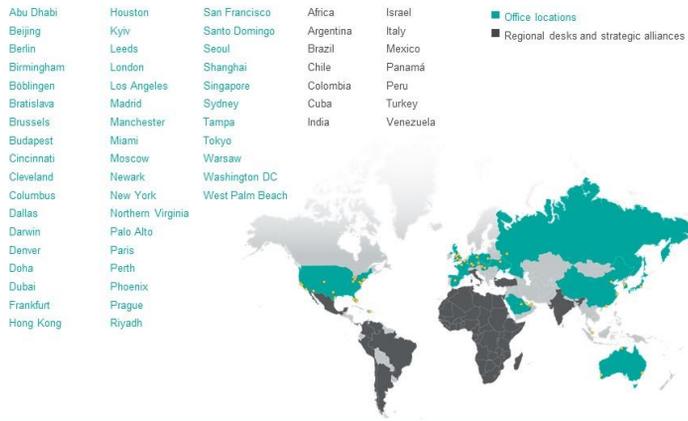
- High risk applications **can** be identified in advance.
- By way of example, male, sole purchasers, buying flats in an urban area with a buy-to-let mortgage account for **26%** of the data.
- Regulating your conveyancing panel is key to preventing mortgage fraud. In **90%** of these cases, we consider the solicitors were to some extent "in on it".
- Lenders should be aware of the heightened risk of smaller law firms but also larger firms with only one conveyancing partner. Consideration should be given to using bulk conveyancing firms and offering incentives to customers or using separate representation.

Get in touch!



Anthony Taylor
Partner
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anthony.taylor@squirepb.com

Global Coverage



MLROs.com Conference One 2019 Session 6 Feedback Form

Name _____

please circle the appropriate number with 1 being strongly disagree and 5 being strongly agree

This was an interesting session	1	2	3	4	5
The Speakers presented the information in a clear and effective manner	1	2	3	4	5
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The session was the correct length	1	2	3	4	5

What did you like most about the session

What did you like least about the session

Any additional comments



Notes

Session 7
15:20-16:05

Technology and Detection



Jon Williams

*MLROs.com Advisory Board
Member*



Chris Anderson

*CEO, Financial Crime Intelligence
Ltd*



Chris Collins

Product Director, Altergaia



Ian Howard

Co-Founder, Neotas

Technology and Detection

We will talk about some of the latest tech being used to identify patterns of possible illicit activity and how this is being leveraged, and also discuss what impact this is having on the types of skillsets that MLRO/ Designated Officers need (and their investigation staff) to effectively take advantage of the opportunities created by these tools.

Jon's Bio

Jonathan Williams is an independent consultant in payments, identity and fraud prevention working for advisory firm Mk2 Consulting. Jonathan also brings experience in cybersecurity, telecommunications and software to his clients. Areas of special interest are PSD2, Identity Assurance, financial crime and ACH fraud.

Jonathan joined Mk2 from a role as head of Strategy and Product for Payments at Experian. Prior to this he was responsible for the product propositions which took two start-ups to IPO and one to acquisition: Content Technologies, Virata Corporation and Eiger Systems. He has also held engineering and IT roles at British Aerospace (now BAE Systems), the University of Cambridge and Advanced Telecommunications Modules Ltd

Jonathan holds an MA in Theoretical Physics and a postgraduate qualification in Computer Science from the University of Cambridge and is a member of the Payment Strategy Forum's Financial Crime, Data and Security working group and the Open Forum on Open Banking.

Chris's Bio

Chris Anderson, CEO is a financial crime expert with over 30 years of banking experience. He has held senior management positions in global risk & control and financial crime compliance. His expertise on country risk assessments was instrumental in forming Merrill Lynch company policy for conducting business in key jurisdictions. He was also a key stakeholder in the UK expansion of Merrill Lynch. This led to a senior role involving the development and rollout of the Merrill Lynch Europe Risk & Control framework where he also chaired the investment governance committee. His innovation in creating a new control structure for measuring compliance with discretionary model portfolios resulted in significantly improved efficiencies and customer satisfaction.

More recently Chris was a member of the Fraud Strategic Advisory Panel, a British Bankers Association committee. His extensive experience in risk & control and financial crime prevention led him to develop innovative concepts to tackle the increasing threat of financial crime. These converged with FCI's objectives and a natural alliance was formed which resulted in Chris' appointment as CEO.

Chris's Bio

Chris' background is in cross industry technology, data, business line management, start ups and regulation. With Big 4 consulting and Regulatory Operations experience, he is considered a practical Subject Matter Expert on Anti Financial Crime, Fraud, Digital Enterprise & Customer Experience, Client Lifecycle Management, Reporting and Regulation.

From his early career at Oracle, Chris expanded his portfolio through start ups and a formative time at Reuters/Factiva in the early days of Sanctions Lists, PEPs and Reputational Risk. As well as Big 4 MiFID lead, Chris was seconded to the FSA for reporting enforcement activities, Acting MLRO (interim) at LBG in the financial crisis during their HBOS take over, and as part of the Resolution team for MF Global. His recent experience was as the CGI client partner for Deutsche Bank in helping them overcome many of their AFC issues globally. Based on his practical experience of Regulation, Operations and Technology, Chris is currently Product Director at Altergaia, a technology start up providing automated AML and KYC check for Salesforce customers globally.

Ian's Bio

With over 30 years' worth of experience across financial services and investment banking, Ian's industry knowledge is extensive, ranging from credit derivatives to capital markets, from trading to hedge funds. His previous roles have included Head of Credit Business at a Canadian bank and following that, he became Head of Business Development at JDX Consulting in London. At JDX Consulting, Ian was instrumental in overseeing their growth strategy, which took the company from 9 to 300 employees when he left in 2016.



Notes

MLROs.com Conference One 2019 Session 7 Feedback Form

Name _____

please circle the appropriate number with 1 being strongly disagree and 5 being strongly agree

This was an interesting session	1	2	3	4	5
The Speakers presented the information in a clear and effective manner	1	2	3	4	5
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The information presented was relevant and useful to my job	1	2	3	4	5
The session increased my knowledge on the subject matter	1	2	3	4	5
The session was the correct length	1	2	3	4	5

What did you like most about the session

What did you like least about the session

Any additional comments



Notes

Session 8
16:05-16:50

**Don't get Mad. Don't
Be in Denial. Do
Better, Much Better -
The UK's Reputation
for Fighting Financial
Crime and Your Role
as a Financial Crime
Prevention
Professional**



Sam Sheen

*Formerly AML Director – Europe,
ACAMS*



Sam's Bio

Sam is a financial crime prevention professional with over 15 years of practical experience in compliance. Sam holds a number of qualifications and is recognised as a subject matter expert in the field of financial crime. Sam's previous work experience includes working as MLRO, Data Protection Officer and CCO and Group Head of AML for various financial institutions, both offshore and in Europe.

Sam also worked offshore for several years as the first legal counsel to the financial regulator in Guernsey and subsequently set up the financial crime division, overseeing the examination of a variety of financial institutions. She continues to maintain ongoing engagement with other regulators on financial crime matters. Sam has extensive training experience in the field of financial crime prevention and corporate governance matters. She has most recently been involved in projects related to FenTech businesses, the use of RegTech to mitigate financial crime and list management relating to the screening of customers and third parties.

Sam is an ACAMS Alumni who most recently worked with ACAMS Europe as its AML Director. Sam is recognised by ACAMS as a subject matter expert in sanctions and has co-authored a number of online certificate courses. Originally from Montreal, Quebec Canada, Sam holds a Bachelors of Public Administration, Law Degree, qualified as a barrister and solicitor and holds her Masters in Business, specialising in risk management.

Notes



Notes

MLROs.com Conference One 2019 Session 8 Feedback Form

Name _____

please circle the appropriate number with 1 being strongly disagree and 5 being strongly agree

This was an interesting session	1	2	3	4	5
The Speakers presented the information in a clear and effective manner	1	2	3	4	5
The speakers were knowledgeable about the subject matter	1	2	3	4	5
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The session increased my knowledge on the subject matter	1	2	3	4	5
The session was the correct length	1	2	3	4	5

What did you like most about the session

What did you like least about the session

Any additional comments



Notes

Session 9

16:50- 17:30

Panel Q&A





Notes

Upcoming 2019 events

MLROs.com Conferences

MLROs.com Conference Two 2019

Wednesday 12th June 2019, London

<https://mlros.com/conference-two-2019/>

MLROs.com Conference Three 2019

Wednesday 25th September 2019, London

Tickets for this event will become available soon

Regulatory Round Up Breakfast Briefing Sessions

Wednesday 19th June 2019 8:30 – 11:30am hosted by WBD, London

<https://mlros.com/regulatory-round-up-june-2019/>

Tuesday 17th September 2019 8:30 – 11:30am hosted by WBD, London

Tickets for this event will become available soon

Tuesday 26th November 2019 8:30 – 11:30am hosted by WBD, London

Tickets for this event will become available soon

**A special thank you to our
hosting partner
Squire Patton Boggs!**

**Our gratitude is extended
to all of our great speakers
and you; our delegates!**

MLROs.com hope you have enjoyed a great day of
fantastic content and networking opportunities!

We have an incredible line up planned for the rest of
2019 and we hope you can join us!

Be sure to catch all of our great content and
discounts first by heading over to <https://mlros.com>

Thanks again!

Conference Team
conference@mlros.com



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