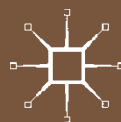


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# THE PALGRAVE HANDBOOK OF CRIMINAL AND TERRORISM FINANCING LAW

Edited by  
Colin King, Clive Walker, Jimmy Gurulé



The Palgrave Handbook of Criminal and  
Terrorism Financing Law

Colin King • Clive Walker • Jimmy Gurulé  
Editors

# The Palgrave Handbook of Criminal and Terrorism Financing Law

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# Part I

## Introductory Section



# 1

## Criminal and Terrorism Financing Law: An Introduction

Clive Walker, Colin King, and Jimmy Gurulé

### Background

Popular depictions abound of criminal financing through racketeering and organised crime, as have been delivered by Hollywood productions such as *The Godfather*, *The Sopranos*, and *The Wire*. Counter-terrorism financing (CTF) is a somewhat less glamorised aspect of the genre, as represented by the likes of *24* and *Homeland*. Nevertheless, much public interest was aroused by the real deal, such as the *Osama bin Laden Document Release* by the US Director of National Intelligence and based on materials seized in the Abbottabad raid of 2011, which revealed some fascinating insights into the business of terrorism.<sup>1</sup>

The generation of public attention through not only popular culture but also governmental promotion might be viewed by some commentators as whipping up a climate of undue fear for ulterior political motives.<sup>2</sup> However, governments seem to have been vehement about their own rhetoric. For instance, the UK government in its policy statement, *National Security Strategy and Strategic Defence and Security Review 2015: A Secure and Prosperous United Kingdom*,<sup>3</sup> depicts terrorism as a Tier 1 national security threat, while serious

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and organised crime is within Tier 2. These ratings entail real consequences in terms of political priorities, the allocation of resources, and the endless generation of legislation.

Consequently, organised crime and transnational terrorism are perceived as posing significant and unrelenting threats to the integrity, security, and stability of contemporary societies. In response, conventional policing responses have struggled to make a sufficient impact, as demonstrated by the churn of organisational and operational models. As a result, there arise the predominantly criminal threats from drug trafficking, fraud, human trafficking, identity theft, intellectual property crime, and counterfeiting, which have been tackled by successive policing and executive agencies which implement specialist legislation. The current approach is to adopt anti-money laundering measures to prevent 'dirty money' from infiltrating the legitimate economy, and asset recovery powers to target the accumulated financial assets of those engaged in criminal activity.

Following the financial trails of terrorists has been less prominent as a driver of change, at least until 9/11, since the sums involved are much lower. There is some melding with criminal activities, especially in the case of hierarchical and geographically focused terrorism such as in Northern Ireland and the Basque region of Spain.<sup>4</sup> However, following 9/11, the international community has now in an increasingly shrill voice demanded action by way of CTF. The demand was first signalled by the UN Convention on the Suppression of Terrorist Finance 1999<sup>5</sup> and by UN Security Council Resolution 1267 of 15 October 1999, followed up by a stream of further resolutions, notably, 1333 of 19 December 2000 (dealing with Al-Qa'ida) and 1373 of 28 September 2001 (against terrorism in all guises) through to numbers 2178 and 2253 in 2014 and 2015 (dealing with 'foreign terrorist fighters and Islamic State'). This range of international edicts must be reflected and applied by national legislation. There remain distinctions between criminal money laundering and counter-terrorism financing, such as an emphasis on intelligence gathering as much as the negation of the value of criminal enterprise. At the same time, there are also parallels and cross-fertilisation of 'lessons learnt', highlighted by the frequent application of criminal proceeds of crime laws in the UK to terrorism assets<sup>6</sup> and by the decision in 2013 of the UK government to apply formal counter-terrorism strategy to tackling serious and organised crime.<sup>7</sup> Those aspects of terrorism which relate to financing may operate as just a subsidiary aspect of the full risk picture, but it is one which has become of enduring interest. Thus, one angle of the investigation into the London Bridge attacks in June 2017 immediately became the use of a credit card to hire a heavy lorry (which was declined and resulted in the hiring of a

light van).<sup>8</sup> This may seem like a minor detail in the circumstances of such an outrage, but one can predict that such data will not only figure in subsequent investigations but also will translate eventually into extra regulatory checks, just as bomb ingredients based on fertiliser or bleach products have resulted in the imposition of extra restrictions over time.<sup>9</sup>

In the US context, the expressed resolve to deal with these threats of criminal and terrorism financing is arguably even more trenchant. ‘Crime incorporated’<sup>10</sup> is a long-standing prime mission of the Federal Bureau of Investigation (FBI), at least when not preoccupied with race and Reds.<sup>11</sup> That agenda is outstripped now by counter-terrorism, which mobilises not only the FBI but also the whole nation under the joint resolution of the House of Representatives and the Senate, the Authorization for the Use of Military Force (AUMF). This instrument affords the President broad powers as Commander in Chief to ‘... use all necessary and appropriate force against those nations, organizations, or persons he determines planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001, or harboured such organizations or persons’.<sup>12</sup> The ensuing ‘war on terror’<sup>13</sup> has persisted without end for more than a decade, despite doubts during the era of President Obama that the AUMF was not tenable in the future and that a major tactic, detention of suspects at Guantánamo, must be ended.<sup>14</sup> Yet, the AUMF outlived the Obama administration, and the emergence of drones during his tenure has affected far more terrorist suspects than were ever held at Guantánamo.<sup>15</sup>

Based on the foregoing survey, the importance of the agendas of anti-money laundering (AML), asset recovery (AR), and counter-terrorism financing (CTF) cannot be doubted. But there is room for doubt about many aspects of these agendas. Our scepticism may be driven by the inadequate collection or release of official data and by an absence of comprehensive evidence-led independent research. The gaps are especially apparent in ‘follow the money’ approaches to tackling financial-based crime. ‘Following the money’ represents an alternative approach to conventional policing stratagems to tackling organised crime and/or terrorism and are blithely presumed: to operate as a deterrent, to disrupt criminal networks/markets, to improve detection rates, and to result in increased intelligence flows to policing agencies. Yet, criminological research to date suggests that these outcomes do not necessarily follow. So, despite extensive law-making in this field (such as, in the UK, the Proceeds of Crime Act 2002, the Terrorism Act 2000, the Anti-Terrorism, Crime and Security Act 2001, and the Terrorist Asset-Freezing etc. Act 2010, and in the USA, the pervasive Racketeer Influenced and Corrupt Organizations Act 1970),<sup>16</sup> organised crime and terrorism activities are, as already indicated, depicted as rising threats despite every effort of the ‘follow the money’ approaches.

## Agendas

It follows that there is an evident need for deeper analysis of the relevant ‘follow the money’ policies, legislation, and institutions. There is a need to evaluate their impacts and to identify future directions in policy, practice, and research. Key issues for discussion include the following themes.

In terms of the substantive agenda, the broad policy of ‘follow the money’ requires reflection upon different aspects of its approaches, namely, AML, AR (which can include post-conviction confiscation of assets, civil recovery absent criminal conviction, and taxation of illegally acquired assets), and the CTF equivalents.

There must also be an effort to assess not just designs but also actual impacts. This goal reflects the fact that while there has been much academic discussion on the meaning of ‘legal provisions’, rather less is known about the impact of follow-the-money approaches to disrupting organised crime groups, deterring future criminal activity, reducing harm to society, and garnering intelligence for police or security agencies. Measuring the success of the responsive regimes will therefore be a key discussion point. This aspect might include a cost-benefit analysis (assuming that all costs and benefits can be identified and weighted)<sup>17</sup> and also whether it is possible to quantify the impact of disrupting organised criminal activity through financial approaches, as compared to more conventional criminal investigation and prosecution.

These first two themes give rise to a third. A prime goal behind our project is to seek to understand legal structures and measures in the context of practice. Through putting the ‘law in practice’, we seek practical insight into how the law operates in reality. Consequently, our project has at every stage included practitioners as well as academics. Their valuable insights are reflected in our book. Some were even persuaded (and allowed) to contribute their own chapters to our book.

Moving on to institutional aspects of our inquiry, we shall seek to assess the appropriate design of relevant institutions. For instance, in the United Kingdom, the Assets Recovery Agency was initially tasked as the specialist body with targeting illicit assets, but this remit was subsequently taken over by the Serious Organised Crime Agency (SOCA).<sup>18</sup> In 2013, SOCA was replaced by the National Crime Agency (NCA).<sup>19</sup> Institutional designs are clearly difficult to get right since they involve complex choices about the need for specialism and independence, the role of multi- and inter-agency cooperation and the deployment of special and sensitive powers and techniques.

Another important aspect of institutional design is accountability. Set against a high level of institutional fluidity (at least in the UK example), we must examine the degree of accountability of specialist agencies. Their limited

transparency and accountability may affect both public confidence and corporate trust which may provoke counter-productive consequences such as the failure to provide information.

More broadly, issues of legitimacy must be tackled. While policy discourse emphasises the positive rationales underpinning the ‘follow the money’ activities, which may be justified by broad claims to public security and protection, there are inevitable detriments to those affected by the broad powers invoked in enforcement action. Individual rights can be severely compromised. Furthermore, because of the concerted links between public and private stakeholders, the latter may be free to impose detriments on individuals without constraint by the doctrines of individual rights and accountability.

Next, the implications arising from the crossing of borders must be considered when dealing with transnational crime and transnational terrorism.<sup>20</sup> Thus, some comparative work is required so that lessons can be learnt while transcending a variety of jurisdictions. Our multi-national focus is therefore noteworthy. Much of the current research on AML, AR, and CTF tends to be focused on individual jurisdictions (typically the USA or UK). Our project deliberately adopts much needed international and comparative perspectives, drawing upon experiences of not just the UK and USA but also European countries such as Italy, the wider common law world such as Australia and Canada, and international organisations including the EU and UN. There is now an unprecedented international regulatory focus on ‘dirty assets’ by way of the EU Money Laundering Directives, UN Conventions, and Financial Action Task Force guides. This book will benefit from its comparative approach.

Finally, changing environments demand novel research and practical and legal adaptability by agencies, lawyers and researchers. Novel techniques may include barely encountered modes of asset exchange such as *hawala*. Equally, electronic or virtual currencies (such as Bitcoin), which operate in barely regulated environments, challenge conventional approaches to asset recovery techniques.

## Our Research Inquiries

To answer the foregoing agendas, our research fieldwork involved the organisation and delivery of four symposia. These events were funded by an AHRC grant (made to King and Walker),<sup>21</sup> under the title, ‘Dirty Assets: Experiences, reflections, and lessons learnt from a decade of legislation on criminal money laundering and terrorism financing.’ This project built on an earlier exploratory symposium held in 2011, when Colin King and Clive Walker organised

an event, ‘The Confiscation of Assets: Policy, Practice and Research’, to bring together policymakers, practitioners, and academics to discuss follow-the-money approaches to combating organised crime and terrorism. This event was funded by the publishers of the *Modern Law Review*. The objectives behind this event were twofold: to raise awareness of expertise concerning the four different limbs of follow-the-money approaches and to open discussions about the need for independent research to feed back into policy and practice. Our initial foray was marked by an edited collection, *Dirty Assets: Emerging Issues in the Regulation of Criminal and Terrorist Assets*.<sup>22</sup>

Based on the earlier experience, and reflecting similar objectives, we held four further events which were designed, once again, to bring policymakers, practitioners, and researchers together to explore current, and future, directions in policy, law, and practice. The workshops were held in Manchester (October 2014), London (May 2015), Tilburg, Netherlands (October 2015), and Notre Dame, USA (April 2016).<sup>23</sup>

## Book Plan

Based on the insights and discussions at these key events, as well as selected invitees who could provide the authority and depth demanded by our project, the *Handbook of Criminal and Terrorism Financing Law* provides innovative commentary in that it examines in a comprehensive way all aspects of tainted (‘dirty’) assets. The chapters together explore three distinct, but interlocking, aspects, namely, anti-money laundering, asset recovery, and counter terrorism financing. In this way, comparisons can be drawn from one aspect to the next. Second, the book is also comprehensive in terms of disciplines. The main theme is legal, but the contributors also reflect other disciplines—politics, criminology, business, and economics. In addition, there is practitioner input as well as legal input. Third, the jurisdictional coverage is suitably broad. The main focus is the UK and USA, but we have been determined to include European and Asian contributions as well as experts on international systems. Fourth, the chapters reflect new or substantially updated materials and not simply reprints of previous publications. This feature has been assured through the process of our symposia. As a result, the book will deliver original, theoretically informed, and well-referenced analysis, which we intend to be accessible to both practitioners and scholars alike in multiple jurisdictions.

This Handbook focuses on three distinct, but related, aspects of ‘following the money’ of organised crime and terrorist related activities: anti-money

laundering, asset recovery, and counter-terrorism financing measures. Within each aspect, it examines the policy, institutional, and legal responses, set within policy and practice contexts, and with a view to critique on grounds such as effective delivery and compliance with legality and individual rights. These three broad themes are reflected in the structure of the book. Part II (Chaps. 2 through to 15) covers ‘anti-money laundering measures’. Part III (Chaps. 16 through to 29) deals with ‘asset recovery’. Part IV (Chaps. 30 through to 47) is devoted to ‘counter-terrorism financing’. An overview of the purpose and chapter contents for each part is given in introductory chapters at the start of each part—Chaps. 2, 16, and 30.

Finally, though our project has been some years in the making, every chapter has been updated, most to 31 March 2017. This deadline, plus the fact that the fourth event was in 2016, has allowed us to encompass contemporary and emergent controversies, including the responses to Islamic State funding. Even so, the churn of events means that sustained digestion of the very latest news, whether the UK Criminal Finances Act 2017 or the terrorism financing sanctions levelled against Qatar,<sup>24</sup> must await our next book.

## Notes

1. Office of the Director of National Intelligence, ‘Bin Laden’s Bookshelf’ <[www.dni.gov/index.php/features/bin-laden-s-bookshelf](http://www.dni.gov/index.php/features/bin-laden-s-bookshelf)> accessed 12 June 2017.
2. See especially Frank Furedi, *Invitation to Terror* (Continuum 2007).
3. HM Government, *National Security Strategy and Strategic Defence and Security Review 2015: A Secure and Prosperous United Kingdom* (Cm 9161, 2015) Annex A, 87.
4. See Thomas Baumert and Mikel Buesa, ‘Dismantling Terrorist Economics: The Spanish Experience’ in Colin King and Clive Walker (eds), *Dirty Assets: Emerging Issues in the Regulation of Criminal and Terrorist Assets* (Ashgate Publishing 2014).
5. UNGA International Convention for the Suppression of the Financing of Terrorism (adopted 9 December 1999, opened for signature 10 January 2000) (2000) 39 ILM 270.
6. Colin King and Clive Walker, ‘Counter Terrorism Financing: A Redundant Fragmentation?’ (2015) 6(3) *New Journal of European Criminal Law* 372. See further Tamara Makarenko, ‘The Crime-Terror Continuum: Tracing the Interplay between Transnational Organised Crime and Terrorism’ (2004) 6(1) *Global Crime* 129.

7. See Home Office, *Serious and Organised Crime Strategy* (Cm 8715, 2013) para 1.5. The strategy derives from Home Office, *Countering International Terrorism: The United Kingdom's Strategy* (Cm 6888, 2006).
8. See Nicola Hurley, 'First Pictures of Fake Suicide Belts Worn by London Bridge Attackers' *Daily Telegraph* (London, 10 June 2017) <[www.telegraph.co.uk/news/2017/06/10/first-pictures-fake-suicide-belts-worn-london-bridge-attackers/](http://www.telegraph.co.uk/news/2017/06/10/first-pictures-fake-suicide-belts-worn-london-bridge-attackers/)> accessed 13 June 2017.
9. Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC (Text with EEA relevance) [2006] OJ L396/1; Regulation (EU) No 98/2013 of the European Parliament and of the Council of 15 January 2013 on the marketing and use of explosives precursors Text with EEA relevance [2013] OJ L39/1.
10. William Balsamo and George Carpozi Jr., *Crime Incorporated or Under the Clock: The Inside Story of the Mafia's First Hundred Years* (New Horizons Press 1999).
11. Ronald Kessler, *The Bureau: The Secret History of the FBI* (St Martin's Press 2003); Rhodri Jeffreys-Jones, *The FBI: A History* (Yale University Press 2008); Tim Weiner, *Enemies: A History of the FBI* (Penguin 2013).
12. Authorization for the Use of Military Force of 18 September 2001 (Public Law 107–40 [SJ RES 23]), s 2a.
13. See Johan Steyn, 'Guantanamo Bay: The Legal Black Hole' (2004) 53(1) *International and Comparative Legal Quarterly* 1; Helen Duffy, *The 'War on Terror' and the Framework of International Law* (CUP 2005); Benjamin Wittes (ed), *Legislating the War on Terror: An Agenda for Reform* (Brookings Institution Press 2009); Geoffrey S Corn, *The War on Terror and the Laws of War: A Military Perspective* (2nd edn, OUP 2015).
14. President Barack Obama, 'The Future of Our Fight Against Terrorism' (National Defense University 2013) <<https://obamawhitehouse.archives.gov/the-press-office/2013/05/23/remarks-president-barack-obama>> accessed 12 June 2017.
15. See Bureau of Investigative Journalism, 'Drone Wars: The Full Data' <[www.thebureauinvestigates.com/stories/2017-01-01/drone-wars-the-full-data](http://www.thebureauinvestigates.com/stories/2017-01-01/drone-wars-the-full-data)> accessed 12 June 2017.
16. 18 USC, ss 1961–1968. See Dylan Bensinger and others, 'Racketeer Influenced and Corrupt Organizations' [2016] *American Criminal Law Review* 1673.

17. An interesting official assessment along those lines is the Department of Business, Energy and Industrial Strategy paper, *Cutting Red Tape: Review of the UK's Anti-Money Laundering and Counter Financing of Terrorism Regime* (2017).
18. See Proceeds of Crime Act 2002, Pt I; Serious Crime Act 2007, s 74.
19. See Crime and Courts Act 2013, Pt I. The Economic Crime Command leads the NCA's activities. In addition, the Joint Money Laundering Intelligence Taskforce (JMLIT) was established in 2015 in partnership with the banking financial sector to tackle high-end money laundering.
20. See Katja F. Aas, *Globalisation and Crime* (Sage 2007); Angela Veng Mei Leong, *The Disruption of International Organised Crime: An Analysis of Legal and Non-Legal Strategies* (Ashgate Publishing 2007); Peter Andreas and Ethan Nadelmann, *Policing the Globe: Criminalization and Crime Control in International Relations* (OUP 2008); Neil Boister, *An Introduction to Transnational Criminal Law* (OUP 2012); Ben Bowling and James Sheptycki, *Global Policing* (Sage 2012); Saskia Hufnagel, *Policing Cooperation Across Borders* (Ashgate Publishing 2013).
21. Grant Ref AH/L014920/1.
22. Colin King and Clive Walker (eds), *Dirty Assets: Emerging Issues in the Regulation of Criminal and Terrorist Assets* (Ashgate Publishing 2014).
23. For details of these events, see 'Dirty Assets: Experiences, Reflections, and Lessons Learnt from a Decade of Legislation on Criminal Money Laundering and Terrorism Financing' <[www.law.leeds.ac.uk/research/projects/dirty-assets](http://www.law.leeds.ac.uk/research/projects/dirty-assets)> accessed 2 June 2017. The events in London and Notre Dame were generously hosted by Professor Jimmy Gurulé and Notre Dame Law School.
24. See Staff writer, 'Arab Countries Release List of Terrorist Financiers Supported by Qatar' *Al Arabiya* (Dubai, 9 June 2017) <<http://english.alarabiya.net/en/News/gulf/2017/06/09/Arab-countries-release-list-of-terrorist-financiers-supported-by-Qatar.html>> accessed 13 June 2017.

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# Part II

## Anti-Money Laundering



# 2

## Anti-Money Laundering: An Overview

Colin King

Over the past three decades or so, there have been extensive developments in the area of anti-money laundering (AML) laws and policies. At the international level, the Financial Action Task Force (FATF) is now regarded as the global standard setter through its Recommendations,<sup>1</sup> the European Union (EU) has issued four money laundering directives (1991, 2001, 2005, and 2015), the United Nations has sponsored Conventions (Vienna Convention; Palermo Convention) as has the Council of Europe (Strasbourg Convention; Warsaw Convention). Other international agencies also play an important role in AML, including the International Monetary Fund,<sup>2</sup> the World Bank,<sup>3</sup> MONEYVAL,<sup>4</sup> and the Egmont Group.<sup>5</sup>

In reflection of the fact that AML law and policy is truly a global issue, in Chap. 3 Bergstrom explores the global development of AML, considering laws, policies, and actors. She notes how the global AML regime 'is constantly being updated and expanded not only geographically, but most importantly both in width and depth'. While the initial focus was on drugs, and the proceeds of drug trafficking, the global AML regime of today has significantly expanded. Another important aspect of AML developments is the expanding involvement of private actors.<sup>6</sup> In the words of Bergstrom, 'one of the most striking features of the EU AML framework is the intensified multilevel cooperation of public and private actors'. She goes on to note how private actors not only work in AML, but also how they play an important role in formulating

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rules and procedures. In that way, 'traditional public tasks are shared by public and private actors'. The role of private actors took on even more prominence after the adoption of the risk-based approach in AML.

Bergstrom not only traces the development of global AML laws, but she also considers how AML is prominent in policy documents such as in the EU Justice and Home Affairs programme and the European Agenda on Security 2015–2020. Key issues here include, *inter alia*, enhancing cooperation between financial intelligence authorities, strengthening the powers of financial intelligence units (FIUs), tackling new opportunities for/threats of ML (such as virtual currency platforms, pre-paid cards), ensuring safeguards for financial flows from high-risk jurisdictions, enhancing transparency in relation to beneficial ownership, and ensuring a more targeted and focused risk-based approach. Bergstrom notes how global (and particularly EU) AML developments can be viewed in terms of both prevention and control. But she notes that proposals to expand the EU regulatory framework represent a shift in focus more towards control of money laundering (ML) and terrorist financing (TF) rather than prevention. This shift is not without difficulties, not least for processing of personal data.

Globalisation, and the global nature of AML, is explored further in Chap. 4, where Talani considers how 'global cities' can be involved—wittingly or unwittingly—in money laundering. She notes how globalisation has enabled money, legal and illicit, to move easily across the world. Of course, it is almost impossible to measure the extent to which global cities are involved in, or affected by, money laundering. But, she argues, where a money laundering operation has been successful, in many cases global cities are the final destinations for clean(ed) money. She goes on to claim that 'the City of London and the British financial sector are among the winners (and there are, unfortunately, many losers!) of the process by which money obtained through drug trafficking, sex exploitation, arms dealing, smuggling of migrants and similar practices is given a new, cleaner face'. Talani goes on to suggest that the suspicious activity reports (SARs) regime has not operated effectively to combat such laundering and even that there is more general 'hostility of the City of London towards AMLR'. Drawing upon research by Yeandle *et al.*,<sup>7</sup> Talani notes how the costs of AML are regarded as too high, that the UK approach is not directed in the most effective way, and that the AML regime does not represent good value for money. Given the sheer array of legislation and statutory instruments pertaining to AML there may be some justification for complaint about delivery.<sup>8</sup> The UK government is currently consulting on transposing the EU Fourth Money Laundering Directive as well as on the draft Money Laundering Regulations 2017.<sup>9</sup> Further, a new 'watchdog'—the Office for Professional Body Anti-Money Laundering Supervision (OPBAS)—is due to be launched in 2018.<sup>10</sup> According to HM Treasury,

The creation of OPBAS will ensure consistent high standards across the regime, whilst imposing the minimum possible burden on legitimate business.<sup>11</sup>

Based on Talani's review of AML and its reception, we can expect further complaint from the City of London.

The next two chapters build upon this discussion by examining the operation of AML requirements in two different sectors, namely banks (Chap. 5 Iafolla) and the legal profession (Chap. 6 Benson). Policymakers and law enforcement agencies have emphasised that financial institutions are vulnerable to ML. For example, in December 2014 the UK National Crime Agency (NCA) published a report on 'high end money laundering', which it defined as: 'the laundering of funds, wittingly or unwittingly, through the UK financial sector and related professional services'.<sup>12</sup> The NCA continued on to say, 'Although there are many ways to launder money, it is often the professional enabler who holds the key to the kind of complex processes that can provide the necessary anonymity for the criminal'.<sup>13</sup>

In Chap. 5, Iafolla considers how banks have risen to the challenge of implementing AML requirements. Her research specifically focuses on the first point of contact between the bank (through cashiers) and customers. While there has been extensive literature on reporting suspicious transactions, much less researched is how front-line staff interpret their AML obligations. Where an employee suspects that a transaction is suspicious, they will file what is known as an Unusual Transaction Report (UTR), which is the focus of Iafolla's research. In her study, Iafolla draws upon the sociology of risk and the sociology of money in an effort to better understand how bank employees can be influenced by, for example, their own personal attitudes, and how they understand and manage ML risks.

One aspect of AML regimes is their emphasis on know your customer (KYC). KYC can play an important function in different ways, including enabling the bank to have a deep understanding of a customer's history, and habits. As Iafolla notes,

This kind of access to information leads to a different kind of intimate knowledge of the client by the bank teller, particularly in the context of assessing risk, and an understanding of clean or dirty money is imperative for understanding how employees come to view what kinds of transactions are unusual, and thus worth reporting.

Her study thus focuses on how cashiers, and their supervisors, make decisions about AML, drawing upon her empirical research in a Canadian bank. Her focus on the 'coalface' of AML—specifically decisions whether to file an UTR or not—offers new insights into AML in practice. Her analysis demonstrates

how the decision to take action can be triggered by the (personal and subjective) experiences, or even prejudices, of the bank cashier. Not only might bank employees be swayed by their perceptions of the customer (including age, appearance, social standing, and lifestyle), but they can also be influenced by the type of instrument involved (cash versus cheque), the sums of money involved, the denominations of cash, or the regularity of transactions. Thus, ‘moral judgements’ on the part of employees can, and do, play a significant role in AML in practice; as Iafolla states ‘This intersection of risk, money, and morality is largely fuelled by discretion’.

Other important actors in the financial sector impacted by AML requirements are considered by the next chapter, in which Benson (Chap. 6) assesses how private, non-state actors have been conscripted into the AML regime, with specific focus on the legal profession.<sup>14</sup> The legal profession has been identified as vulnerable to ML,<sup>15</sup> with the profession now subject to AML requirements in many jurisdictions as a result. The extension of AML requirements to the legal profession has not been without criticism, however, not least given the potential impact upon the solicitor/client relationship. Notwithstanding the official discourse, as Benson points out, ‘there remains little understanding of the empirical scale and nature of professional facilitation of money laundering’. Albeit with some exceptions,<sup>16</sup> she notes how ‘The nature of professionals’ involvement in money laundering has received limited academic attention, and there has been little empirical research in the area’. Her research on ML/AML in the legal profession draws upon empirical research on 20 cases of solicitors convicted of money laundering, alongside interviews with practitioners and professional/regulatory bodies. After outlining the UK legal obligations, she considers the different actions and behaviours of solicitors convicted of ML, the financial benefit obtained, the degree of intent (and indeed the extent of knowledge), and the consequences of conviction. What becomes clear is that facilitation of ML by legal professionals is ‘not a homogenous phenomenon’. Ultimately, she concludes that ‘It is clear ... that there is a need for further research into the involvement of professionals in the facilitation of money laundering, and greater consideration of the obligations of professionals in the prevention of money laundering and the legislative framework which underpins these obligations’.

The next chapter (Chap. 7) by Riccardi and Levi considers this issue of ‘facilitating’ money laundering from a different perspective—through the means of cash. In 2015 Europol published an aptly titled report, ‘Why is cash still king?’,<sup>17</sup> where it was noted: