

The Analysis of the Impact of the Proceeds of Crime Act 2002's Anti-Money Laundering Provisions on Bankers

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Abstract

This article examines the impact of the anti-money laundering (AML) regime established by the Proceeds of Crime Act 2002 (POCA) on bankers in the United Kingdom. Through a critical analysis of legal provisions and empirical evidence, this study finds that POCA, while elevating bankers' professional responsibilities and reinforcing their role in safeguarding financial integrity, has also subjected them to considerable operational and legal pressures. The analysis identifies key challenges, including heightened personal liability, onerous compliance burdens, and ethical dilemmas in client relationships. These challenges arise primarily from ambiguous regulatory guidance and the practice of defensive over-reporting. The study concludes that this well-intentioned framework has inadvertently transformed the banker's role, creating a fundamental tension between their traditional advisory functions and their duties as de facto frontline regulatory agents. It concludes that striking a balance between these competing demands is crucial for the effectiveness of the AML regime and the long-term sustainability of banking practice.

Key words: Proceeds of crime act 2002; Anti-money laundering; Bankers; Compliance costs; Suspicious Activity reports; Customer due diligence

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1. INTRODUCTION

Money laundering is widely recognised as a grave offence under domestic and international law, given its role in concealing the proceeds of predicate crimes and perpetuating criminal enterprises.¹ Financial institutions, particularly banks, are often integral to this process, whether through inadvertent vulnerability or culpable complicity.² The United Kingdom's Proceeds of Crime Act 2002 (POCA)³ marked a pivotal legislative response to the threats of organised crime and terrorism, establishing a comprehensive statutory regime for anti-money laundering (AML).⁴ Its core AML provisions impose stringent obligations on financial institutions, serving a dual purpose: they enhance the operational mechanisms for tracing, seizing, and confiscating criminal proceeds, while also enforcing stricter punitive measures for non-compliance.⁵ In an era of sophisticated global financial crime, continuous critical evaluation of POCA is indispensable to ensure its effectiveness within a rapidly evolving financial landscape.⁶

This article critically assesses the dual impact of POCA on bankers, scrutinizing the tension between its enhanced crime-fighting capabilities and the considerable regulatory burdens it imposes. It begins by defining the criminal act of money laundering and explaining relevant legal terminology. The article then outlines the key AML provisions in POCA applicable to bankers, summarising their organisational structure. Building on this foundation,

¹ *SC BTA Bank v Ablyazov* [2009] EWCA Civ 1124, [2010] 1 WLR 976 para 14.

² Michael Levi and Peter Reuter, 'Money Laundering' (2006) 34 *Crime and Justice* 289.

³ Proceeds of Crime Act 2002.

⁴ *K Ltd v National Westminster Bank* [2006] EWCA Civ 1039, 33.

⁵ R Barry Johnston and Lan Carrington, 'Protecting the Financial System From Abuse: Challenges to Banks in Implementing AML/CFT Standards' (2006) 9 *Journal of Money Laundering Control* 48.

⁶ *K Ltd v National Westminster Bank* (n 4).

it analyses the principal effects of these AML provisions on bankers, with particular attention to Customer Due Diligence (CDD), Suspicious Activity Reports (SARs), and the legal consequences of non-compliance. The ultimate aim is to comprehensively evaluate how POCA's relevant provisions affect bankers, assess the resulting opportunities and challenges for the banking industry, and explore how the industry can balance regulatory compliance with operational efficiency.

2. MONEY LAUNDERING

2.1 The Definition of Money Laundering

According to United Nations estimates, approximately \$800 billion to \$2 trillion is laundered globally each year. This volume of illicit funds, equivalent to 2–5% of global GDP, imposes a substantial economic burden on the international financial system.⁷ As this article focuses on AML provisions within POCA, it is necessary first to establish a working definition of money laundering. In essence, the offence can be defined as the process of handling criminal property in such a way as to disguise its illicit origins.⁸ The 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (the Vienna Convention) provides the foundational international definition of money laundering. Article 3.1 defines the offence as the conversion or transfer of property, knowing that the property is derived from any crime, with the intention of concealing or disguising its illicit origin. It also includes assisting any person involved in the commission of such a crime to evade the legal consequences of their actions.⁹ The international legal framework conceptualizes money laundering through three constituent elements: property obtained from criminal activity (the objective element); acts of conversion, transfer, or concealment (the conduct element); and intent to disguise illicit origins (the mental element). This analytical structure provides the foundational model for domestic legislation globally. While national implementations vary in scope and technical application, most countries have developed domestic regulations based on this international standard to address the evolving methods of money laundering. Given money laundering's inherent connection to financial systems, banks and other financial institutions are primarily responsible for detecting and preventing it. This

responsibility underscores the importance of maintaining effective AML procedures, which are not only a core legal requirement but also a critical aspect of institutional risk management. The following chapter undertakes a detailed analysis of how these international principles and risks are translated into a concrete domestic legal framework under POCA.

2.2 Stages of Money Laundering

The traditional conceptual framework of money laundering comprises three sequential phases: placement, layering, and integration.¹⁰

2.2.1 Placement

The placement phase represents the initial entry of illicit funds into the financial system. This stage typically involves introducing criminal proceeds, often commingled with legitimate income, into regulated financial channels. Common methods include depositing substantial cash amounts into bank accounts or investing in lawful enterprises. To mitigate the detection risk, perpetrators often employ 'smurfing' techniques, where large sums of illicit funds are broken into smaller, less conspicuous amounts for transfer.¹¹

2.2.2 Layering

In the layering phase, illicit funds are moved through multiple transactions to obscure their origins. This phase typically involves complex financial operations, such as cross-border transfers, multi-account transactions, and investments in financial products, all designed to sever the traceability of the criminal property.¹²

2.2.3 Integration

The integration phase completes the money laundering process by reintroducing the illicit funds into the legitimate economy with apparent legality. At this final stage, the "purified" funds become virtually indistinguishable from legitimate assets. Common methods include purchasing high-value assets, making investments, or financing business ventures. This successful integration renders the laundered money extremely difficult to distinguish from lawful financial resources, thereby evading detection by law enforcement and regulatory authorities.¹³

Notwithstanding these analytical distinctions, money laundering operates as an integrated process rather than a sequence of discrete events. The stages frequently overlap or occur concurrently, exhibiting fluid transitions between phases. Financial institutions, particularly banks, typically form the primary channel for these

⁷ Money Laundering (United Nations: Office on Drugs and Crime) <<https://www.unodc.org/unodc/en/money-laundering/overview.html>> accessed 20 May 2025.

⁸ Money laundering offences in the UK: overview (Practical Law) <<https://uk.practicallaw.thomsonreuters.com/9-588-7966>> accessed 29 May 2025.

⁹ *United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988* (Vienna Convention), art 3 (1).

¹⁰ Friedrich Georg Schneider and Ursula Niederländer, 'Money Laundering: Some Facts' (2008) 26 *European Journal of Law and Economics* 7.

¹¹ Sotiris Pafitis, 'Money Laundering Through Cryptoassets: a Comparative Analysis of the UK and EU Approach' (2022) 7 *Journal of Business Law* 589.

¹² *Ibid.*

¹³ Neil Boister, *An Introduction to Transnational Criminal Law* (OUP 2018).

activities. Consequently, rigorous implementation of AML procedures remains essential to detect and disrupt these illicit financial flows.¹⁴

3. THE STRUCTURE OF AML PROVISIONS IN POCA

Prior to POCA's implementation, the UK's anti-money laundering framework was bifurcated. The Drug Trafficking Act 1994¹⁵ governed proceeds derived from drug trafficking, while the Criminal Justice Act 1988¹⁶ addressed proceeds generated by other criminal activities. The predicate-offence-based legislative model suffers from inherent limitations, including inconsistent standards and incomplete coverage. POCA was enacted to consolidate this fragmented regime by creating a unified legislative framework. Given that money laundering is, in its essence, a process of dealing with criminal property, the foundational element of this new framework is its precise statutory definition of that core concept. Consequently, a systematic analysis of POCA must commence with an examination of "criminal property," which serves as the indispensable prerequisite for establishing any money laundering offence under the Act.

3.1 The Foundational Concept: Criminal Property

To secure a conviction under sections 327 or 328¹⁷ of POCA, the prosecution must prove that the property in question constitutes 'criminal property' as defined in section 340. This requires demonstrating that the property was derived from criminal conduct.¹⁸ The existence of criminal property constitutes a necessary precondition for establishing a money laundering offence. Consequently, the statutory definition of 'criminal property' serves as the foundational element in identifying and prosecuting this financial crime.¹⁹ Section 340 (10) of POCA defines "criminal property" as property that constitutes, or represents, the benefit derived from criminal conduct. This includes both direct and indirect benefits. The defendant must know, or suspect, that the property constitutes criminal property.²⁰

Several interpretive issues arise from this statutory definition. Primarily, POCA establishes no de minimis threshold for money laundering offences. This legislative approach means that even transactions involving a single pound of criminal proceeds satisfy the criteria for

a prosecutable money laundering offence.²¹ A second interpretive difficulty concerns the temporal dimension of the offence. The critical consideration is whether the property qualified as criminal property at the time the prohibited act was committed. The character of the property at the initial planning stage of the scheme is immaterial to establishing liability.²² A third consideration involves the prosecution's evidential burden. POCA permits two alternative methods of proof: either through direct evidence demonstrating the property originated from a specific criminal act, or through circumstantial evidence from which the court may draw the irresistible inference that the property constitutes criminal proceeds. This statutory framework operates on the fundamental principle that such property, by definition, derives exclusively from criminal activity.²³

3.2 POCA's Core Definition and the "All-Crimes" Principle

The principal innovation of POCA lies in its creation of a broad and uniform statutory definition of money laundering under section 340 (11). This definition remains the operative legal standard in the United Kingdom.²⁴ Under this provision, the concept of money laundering encompasses a range of activities. These include concealing, disguising, converting, or transferring criminal property.²⁵ Furthermore, the statutory definition extends to attempts, conspiracies, or incitement to commit these core offences. It also covers conduct that, if undertaken within the UK, would constitute any of the specified money laundering activities.²⁶ This interpretation has been subsequently reaffirmed by the Sanctions and Anti-Money Laundering Act 2018, section 49.²⁷ These three stages of money laundering frequently involve the banking sector. Consequently, financial institutions are required to implement robust AML procedures to mitigate their exposure to financial crime. POCA establishes an "all-crimes" approach in the UK, applying its AML provisions to proceeds from any criminal activity. This framework predates the EU's Third Money Laundering Directive (2005) and maintains a broader scope than its European counterpart.²⁸ This comprehensive statutory approach enhances the law's efficacy in combating money laundering and related financial crimes. By encompassing all criminal activities, it empowers

¹⁴ Vahid Molla Imeny, 'Perception Versus Reality: Iranian Banks and International Anti-money Laundering Expectations' (2021) 24 *Journal of Money Laundering Control*, 63.

¹⁵ Drug Trafficking Act 1994 c 37.

¹⁶ Criminal Justice Act 1988.

¹⁷ POCA (n 3) ss 327 and 328.

¹⁸ *R v W* [2008] EWCA Crim 2

¹⁹ *R v Pace and another* [2014] EWCA Crim 186.

²⁰ POCA (n 3) ss 340 (10).

²¹ *R v Pace and another* (n 19).

²² *R v GH* [2015] UKSC 24.

²³ *R v Anwoir (Ilham)* [2008] EWCA Crim 1354.

²⁴ POCA (n 3) ss 340 (11).

²⁵ *Ibid.*

²⁶ *Ibid.*

²⁷ Sanctions and Anti-Money Laundering Act 2018, s 49.

²⁸ Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing [2005] OJ L309/15.

authorities to trace and confiscate proceeds derived from any form of unlawful conduct.²⁹

3.3 Three Types of Criminal Conduct

POCA establishes a comprehensive legal framework by categorising money laundering offences into three distinct types: principal offences addressing the direct handling of criminal property, secondary offences penalising the failure to disclose suspected money laundering, and ancillary offences concerning breaches of confidentiality. The following analysis examines the specific statutory provisions and legal interpretations that define each category and their interplay within the overall anti-money laundering architecture.³⁰

3.3.1 Participatory Offence

Principal money laundering offences involve the direct handling or acquisition of criminal property. In such cases, bankers typically do not function as the primary perpetrators but may face liability as secondary parties if proven to have facilitated the offences.³¹ The statutory framework establishes three principal money laundering offences. The first, under section 327 of POCA, criminalises the fundamental offence of concealment, which encompasses concealing, disguising, converting, transferring, or removing criminal property from the jurisdiction of England and Wales. The second, pursuant to section 328, targets involvement in arrangements known or suspected to facilitate the acquisition, retention, use, or control of criminal property by or on behalf of another person. Finally, section 329 prohibits the acquisition, use, or possession of property knowing or believing it to be criminal property.³² This provision extends beyond the traditional scope of money laundering.³³ A crucial distinction arises between this offence and handling stolen goods, predicated fundamentally on their differing purposes.³⁴ The offence of handling stolen goods is concerned with the possession, transfer, or disposal of stolen property per se. Money laundering, by contrast, targets the process of integrating illicit funds into the legitimate financial system to conceal their criminal origin. A critical feature of the principal money laundering offences under the Proceeds of Crime Act 2002 is that they apply without distinction to individuals laundering their own criminal proceeds and those laundering

on behalf of others.³⁵ For instance, the acquisition of stolen goods for adequate consideration is exempt from prosecution under section 329 of POCA, even where the acquirer possesses knowledge of the property's illicit origin. Such a transaction may nonetheless constitute the distinct offence of handling stolen goods.³⁶

3.3.2 Secondary Offence

The secondary offence of failure to disclose arises when a regulated entity or its nominated officer, possessing knowledge or reasonable grounds for suspicion of money laundering, deliberately omits to make the required disclosure to the relevant authorities.³⁷ POCA establishes a multi-tiered AML liability framework, within which the offence of failure to disclose functions as a pivotal component of secondary liability. This regime innovatively criminalises omissions by specific entities, constructing a liability mechanism centred on mandatory statutory reporting duties. As delineated in sections 330 to 332, this obligation system is distinctly hierarchical in structure. Regarding liable parties, the framework differentiates between two categories: frontline personnel within the regulated sector, who bear the primary disclosure duty under section 330, and nominated officers receiving internal disclosures, who assume subsequent reporting obligations under sections 331 and 332. This design forges a comprehensive reporting chain from financial operations to law enforcement agencies. In defining the elements of liability, the legislation establishes a unified subjective and objective standard of imputation. The requisite mental element is satisfied by demonstrating that the person either “knows or suspects” money laundering, or has “reasonable grounds for such knowledge or suspicion.” The actus reus consists of a failure to discharge the corresponding reporting duty as soon as practicable after the information is obtained. Furthermore, the regime incorporates defences, including “reasonable excuse” and legal professional privilege, thereby tempering stringent regulatory demands with proportionality in legal application.³⁸ The offence represents a legislative paradigm shift, extending the reach of the criminal law from predicate acts to the enforcement of reporting obligations. Thus, it establishes a system of institutional gatekeeping, backed by criminal deterrence, which fundamentally augments the preventative capability of the AML framework.

²⁹ Third Money Laundering Directive (MLD3) and its UK implementation (Practical Law, 2017) <[https://uk.practicallaw.thomsonreuters.com/0-203-0953?transitionType=Default&contextID=ata=\(sc.Default\)&firstPage=true#co_anchor_a720705](https://uk.practicallaw.thomsonreuters.com/0-203-0953?transitionType=Default&contextID=ata=(sc.Default)&firstPage=true#co_anchor_a720705)> accessed 29 December 2024.

³⁰ Ilaria Zavoli and Colin King, ‘The Challenges of Implementing Anti-money Laundering Regulation: An Empirical Analysis’ (2021) 84 Modern Law Review 4.

³¹ Money laundering offences in the UK: overview (n 9).

³² POCA (n 3) ss 327-329.

³³ The Theft Act 1968, ss 22.

³⁴ *R v Haque* [2019] EWCA Crime 1028.

³⁵ *Kensington International Ltd v Republic of Congo (formerly People's Republic of Congo) (Vitol Services Ltd, Third Party)* [2007] EWCA Civ 1128.

³⁶ *Hogan v Director of Public Prosecutions* [2007] EWHC 978 (Admin).

³⁷ Miriam A Goldby, ‘Anti-money Laundering Reporting Requirements Imposed by English Law: Measuring Effectiveness and Gauging the Need for Reform’ [2013] J.B.L. 367.

³⁸ POCA (n 3) ss 330-332.

3.3.3 Ancillary Offence

Beyond the ‘failure to disclose’ offences, POCA establishes a crucial ancillary offence: ‘tipping-off’. Primarily defined in section 333, this offence safeguards the integrity of financial investigations by criminalising the inappropriate disclosure of information. It applies to individuals within the regulated sector and criminalises two primary acts: first, disclosing that SARs has been filed, and second, disclosing that a money laundering investigation is being contemplated or undertaken, provided the disclosure is ‘likely to prejudice’ that investigation. The offence’s core is this ‘likely to prejudice’ test, which functions preemptively by protecting investigations at their earliest stages without requiring proof of actual harm. While limited statutory defences exist for intra-sector professional consultations, their application is narrow. Together, the duties to report and not to ‘tip-off’ form the twin pillars of the POCA compliance regime, ensuring that reports are made and their investigative value is preserved.³⁹ The tipping-off offence is thus instrumental in securing the operational integrity of the entire disclosure regime. By legally safeguarding the confidentiality of both reports and ensuing investigations, it ensures that the statutory duty to disclose translates into actionable intelligence rather than a mere procedural formality, thereby preserving the functional value of the anti-money laundering system.

Moreover, a defining characteristic of the statutory scheme under the Proceeds of Crime Act 2002 is that its three principal money laundering offences apply uniformly to any individual engaged in the proscribed conduct. This application draws no distinction between those laundering their own criminal proceeds and those laundering the proceeds of others.

3.4 The Cornerstone of the Regime: Suspicion-Based Disclosure

The UK’s anti-money laundering regime operates on a foundation of suspicion-based disclosure. The concept of suspicion serves as a cornerstone of this framework, fundamentally underpinning SARs mechanism.⁴⁰ This legal structure reflects the fundamental principle that a money laundering offence is committed when a person knows, or suspects, that the property constitutes criminal property.⁴¹ For money laundering offences under POCA, the prosecution is not required to establish that the defendant acted dishonestly, nor that the individual possessed specific knowledge of the predicate offence’s exact nature.⁴²

A critical legal distinction is that suspicion-based disclosure must be grounded in objectively relevant circumstances and reasonable suspicion, rather than

requiring unequivocal evidence.⁴³ Although the judiciary has refrained from formulating a comprehensive definition of “suspicion,” this evaluative approach has been consistently endorsed and applied in subsequent jurisprudence.⁴⁴ On 2 June 2021, the Crown Prosecution Service issued revised legal guidance governing the prosecution of money laundering offences.⁴⁵ The guidance explicitly stipulates that charges may be brought against an individual under Section 330 even where insufficient evidence exists to establish that a money laundering scheme was planned or executed.⁴⁶

3.5 Core Procedures: The Consent and Disclosure Regimes

3.5.1 Consent

POCA establishes a consent regime as a core component of its AML framework. This system obligates regulated entities, including banks and financial institutions, to seek authorization from the National Crime Agency (NCA) for transactions they suspect involve money laundering. Upon receiving such consent, institutions obtain a statutory defence against potential liability for breaches of POCA’s provisions.⁴⁷ Consent includes appropriate consent⁴⁸ and the consent by a nominated officer⁴⁹. This consent regime serves the dual purpose of enabling regulated entities to fulfil their AML obligations while securing statutory protection from legal consequences. Furthermore, these protective mechanisms frequently overlap in their application.

3.5.2 Disclosures

POCA establishes comprehensive reporting obligations through two distinct mechanisms: required disclosures under sections 330 to 332 and authorised disclosures⁵⁰ under sections 327 to 329⁵¹. Under Part 7, financial institutions and other regulated sector businesses must report suspected criminal property or money laundering activities to the UK Financial Intelligence Unit. This reporting duty extends beyond the regulated sector, applying to any person who encounters suspicious activity in the course of their trade, business, or profession.⁵² Section 330 specifically imposes this statutory obligation on professional service providers, including bankers, requiring them to file reports with the National Crime

⁴³ *K Ltd v National Westminster Bank* (n 4).

⁴⁴ *R. v Da Silva* (n 40).

⁴⁵ Crown Prosecution Service (Money Laundering Offences, 2021) <<https://www.cps.gov.uk/legal-guidance/money-laundering-offences>> accessed 2 January 2025.

⁴⁶ The Crown Prosecution Service 2021.

⁴⁷ Anti-money laundering (Law Commission, 2018) <<https://lawcom.gov.uk/project/anti-money-laundering/>> accessed 2 January 2025.

⁴⁸ POCA (n 3) ss 335.

⁴⁹ POCA (n 3) ss 336.

⁵⁰ POCA (n 3) ss 330-332.

⁵¹ POCA (n 3) ss 327-329.

⁵² POCA (n 3) part 7.

³⁹ POCA (n 3) ss 333A.

⁴⁰ *R v Da Silva* [2006] EWCA Crim 1654, 16.

⁴¹ POCA (n 3) ss 340 (3).

⁴² *R v Anwar* [2013] EWCA Crim 1865.

Agency when they suspect client involvement in money laundering.⁵³ Bankers and financial service providers must submit a Suspicious Activity Report upon knowing or suspecting money laundering involvement. This duty arises when bankers possess either actual knowledge or reasonable grounds for suspicion, whether subjective or objective in nature. In such cases, they must report their concerns to the bank's Money Laundering Reporting Officer. Failure to fulfil this reporting obligation constitutes a criminal offence under section 331, subject to criminal sanctions.⁵⁴

4. IMPACT ON BANKERS

POCA has generated several beneficial outcomes for bankers. Compliance with its stringent AML requirements enhances public confidence in financial institutions and mitigates the risk of banks' inadvertent involvement in money laundering schemes.⁵⁵ Additionally, the legislation's emphasis on systematic due diligence and comprehensive reporting cultivates an organizational culture characterised by heightened vigilance and risk awareness. This institutional shift reduces financial crime susceptibility while strengthening the sector's reputation.⁵⁶ Notwithstanding these advantages, POCA's implementation has introduced profound challenges that extend beyond operational inefficiencies to fundamentally reshape banking institutions' strategic positioning. This chapter reorganizes these challenges into two distinct thematic areas: operational burdens and strategic impacts redefining banks' fundamental role in the financial ecosystem.

4.1 Operational Burdens

The implementation of POCA imposes a direct and substantial operational burden on banks, primarily manifesting in three critical and resource-intensive processes: the management of over-reporting, the execution of customer due diligence, and the delivery of mandatory staff training.

4.1.1 Defensive Reporting and Its Systemic Consequences

The UK's anti-money laundering regime under POCA creates a pronounced regulatory asymmetry, imposing strict liability for failures to report suspicious transactions while assessing no penalties for excessive reporting. This calculated imbalance generates powerful economic incentives for defensive reporting, thereby shifting the rational institutional response from precise risk assessment toward comprehensive risk avoidance through

over-reporting.⁵⁷ Such defensive practices are further amplified by POCA's expansive legal definitions and its 'all-crimes' approach, which collectively broaden the scope of activities subject to mandatory reporting obligations.⁵⁸ This structure systematically encourages defensive reporting practices where financial institutions submit SARs even for marginally suspicious transactions to mitigate legal exposure.⁵⁹ Empirically, this defensive approach manifests in the submission of 901,255 SARs during the 2021-2022 reporting year—a volume that signifies institutional adaptation to distorted economic signals rather than representing actual money laundering patterns.⁶⁰ Consequently, processing this deluge consumes disproportionate compliance resources, creating a triple operational burden: it diverts skilled analytical resources to mechanical processing; compels the maintenance of oversized compliance teams focused on defensive reporting; and establishes a self-perpetuating cycle where rising volumes justify expanded budgets, in turn generating more reports. This systemic inefficiency represents a fundamental market distortion embedded within the regulatory architecture itself.⁶¹ By exclusively penalizing under-reporting while disregarding over-reporting, POCA's incentive structure systematically prioritises legal security over both operational efficiency and intelligence quality, consequently subverting the regime's foundational purpose. The necessary reorientation requires moving beyond quantitative compliance metrics through implementing sophisticated monitoring systems and refined internal protocols, thereby ensuring optimal allocation of reporting resources to genuinely substantive money laundering risks.

4.1.2 Customer Due Diligence: Structural Costs of Mandated Vigilance

The customer due diligence obligations under POCA impose substantial and multifaceted compliance costs that fundamentally reshape the operational economics of financial institutions. These costs transcend initial financial investments to include persistent expenditures across three critical domains: specialized personnel for perpetual monitoring, technological infrastructure for continuous transaction surveillance, and administrative systems for comprehensive record-keeping. This configuration produces a permanent structural transformation in banking operations, wherein compliance expenditures

⁵³ POCA (n 3) ss 330.

⁵⁴ POCA (n 3) ss 331.

⁵⁵ Molla Imeny (n 14) 63.

⁵⁶ Johnston (n 14) 49.

⁵⁷ Molla Imeny (n 14) 63.

⁵⁸ *HKSAR v Li Kwok Cheung George* [2014] HKCFA 48.

⁵⁹ Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing [2005] OJ L309/15.

⁶⁰ UK Financial Intelligence Unit, Suspicious Activity Reports Annual Report 2022 (National Crime Agency, 2022) <<https://www.nationalcrimeagency.gov.uk/who-we-are/publications/632-2022-sars-annual-report-1/file>> accessed 3 April 2025.

⁶¹ Johnston (n 14) 49.

progressively determine both resource allocation patterns and strategic decision-making frameworks.⁶² The regulatory framework systematically externalizes public monitoring costs to private institutions through several distinct mechanisms. First, the transition from discrete customer onboarding checks to perpetual monitoring regimes generates sustained operational overhead. Second, comprehensive record-keeping obligations necessitate the maintenance of parallel administrative architectures. Third, mandatory training and audit cycles institutionalize systematic suspicion as an organizational imperative. Collectively, these mechanisms transform compliance from a business function into a structural cost center that consumes resources otherwise allocable to core banking activities.⁶³ Evidence from industry surveys confirms the profound economic consequences of this regulatory cost-shifting. As financial institutions channel growing capital into transaction surveillance and KYC remediation, they confront an emerging resource allocation paradox: the very systems designed to safeguard financial integrity may inadvertently undermine institutional stability by diverting resources from essential banking functions. This reallocation represents not merely an operational cost but a fundamental reordering of banking priorities, wherein compliance expenditures increasingly determine strategic direction rather than supporting it.⁶⁴ The CDD regime established under POCA consequently raises a fundamental constitutional question: when the cumulative burden of regulatory compliance begins to systematically undermine the financial viability of regulated institutions, the long-term sustainability of the entire anti-money laundering framework becomes inherently compromised.

4.1.3 Staff Training: Operationalizing Ambiguity

The statutory training obligations under POCA establish a self-reinforcing compliance cycle that substantially increases operational expenditures. Section 330 introduces a negligence standard through the undefined concept of “reasonable grounds for suspicion,” while section 330 (7) provides a complete defense exclusively available to trained staff.⁶⁵ This legal configuration creates a presumption that untrained personnel cannot reasonably be expected to form suspicion, thereby generating powerful institutional incentives for defensive compliance practices.⁶⁶ The operational burden materializes through three distinct cost channels. First, financial institutions must deliver recurrent training on identifying and handling potentially suspicious transactions, necessitating continuous direct investment despite receiving minimal

guidance regarding what constitutes adequate instruction. Second, the employee working hours devoted to training represent substantial indirect costs through productivity diversion. Third, the imperative to demonstrate regulatory compliance requires maintaining extensive administrative systems dedicated to tracking and documenting training activities, thereby establishing what amounts to a parallel compliance infrastructure. The regulatory framework establishes a self-defeating compliance dynamic wherein the absence of operational standards compels defensive over-compliance. This paradox stems from the legal presumption under section 330 (7)⁶⁷ that equates training completion with the capacity for reasonable suspicion. Consequently, training regimes evolve from risk management tools into liability protection mechanisms, prioritizing documented completion over substantive skill development. Financial institutions thus maintain expanding training programs primarily for their juridical utility rather than operational efficacy, creating permanent structural costs that escalate independently of crime prevention outcomes. This fundamental misalignment between compliance expenditures and security objectives reveals a systemic pathology in regulatory design—one that incentivises defensive documentation while discouraging genuine risk assessment.

4.2 Strategic Impacts

Beyond imposing immediate operational burdens, POCA has catalyzed a fundamental redefinition of the banking institution’s societal role and economic function. The legislation, through a deliberate architecture of legal risk, effectively transforms financial intermediaries into frontline monitors of public security, creating an institutional identity that increasingly prioritises regulatory compliance over traditional banking services. This strategic reorientation produces structural consequences that extend far beyond compliance departments, affecting competitive dynamics, innovation capacity, and the very nature of financial intermediation.

4.2.1 The Architecture of Legal Risk

The legal risks imposed upon bankers by POCA should not be interpreted as an incidental byproduct, but rather as the deliberate outcome of a strategic design. The Act’s expansive definitions and strict liability regimes function as precise instruments to compel specific institutional behaviours. This effectively transfers public enforcement responsibilities onto private entities under the constant threat of legal sanction. This strategic design derives its potency from the use of calculated statutory ambiguity. By leaving critical concepts such as “suspicion” intentionally undefined, the regime creates a state of perpetual legal vulnerability for financial professionals. This vagueness is not a legislative flaw but a deliberate feature. It ensures that legal risk can never be entirely mitigated through

⁶² Ibid.

⁶³ Ibid.

⁶⁴ *Global Anti-Money Laundering Survey - How banks are facing up to the challenge* (KPMG 2004) <https://www.finyear.com/KPMG-s-Global-Anti-Money-Laundering-Survey-2007-how-banks-are-facing-up-to-the-challenge_a2795.html> accessed 3 May 2025.

⁶⁵ POCA (n 3) s 330.

⁶⁶ *SRA v Tidd* [2013] SDT 11178-2013.

⁶⁷ POCA (n 3) ss 330 (7).

compliance alone, thereby coercing banks to internalise the state's enforcement priorities as their primary defence against prosecution.⁶⁸ Consequently, the banker's role is fundamentally recast from a financial advisor to a legally exposed proxy for the state. The severe penalties for non-compliance, as seen in cases like *R v Rogers*,⁶⁹ are not merely punishments for failure; they are the key mechanism of systemic control. This legal threat ensures that banks will prioritise defensive reporting and excessive due diligence, as documented in sections 4.1.1 and 4.1.2, because the cost of over-compliance is financial, while the perceived cost of under-compliance is potentially existential. In essence, the legal risk engineered by POCA is the primary vehicle for executing a profound institutional repositioning. It is a strategic tool that outsources the burden and blame of financial surveillance. The "Sword of Damocles" hanging over bankers is, in reality, a precisely calibrated mechanism to ensure that private institutions bear the cost and responsibility for public policy goals, all while operating under standards that the state itself refuses to clearly define.

4.2.2 Impact on Relationships with Customers

The legal risk paradigm analysed in section 4.2.1 has fundamentally reconfigured the foundational principle of the banker-client relationship. As a direct consequence, the CDD and reporting obligations established under POCA have fundamentally reconfigured the traditional banker-client relationship, transmuting financial institutions from commercial intermediaries into de facto public surveillance agents. This structural transformation represents a seminal unintended consequence of the UK's anti-money laundering framework, generating an inherent constitutional tension between private contractual duties and public regulatory mandates.⁷⁰ That is, the bank must identify and verify the identity of the customer, and must also continuously monitor the purpose and intended nature of the business relationship or part of the transaction.⁷¹ This scrutiny can change the relationship between a company and its customers from trust to suspicion, causing alienation from the customer relationship.⁷² At the same time, reporting obligations may also undermine trust and confidentiality relationships with clients.⁷³ Furthermore, the concept of bankers' confidentiality with

their clients has evolved from a principle spelled out in the *Tournier* case in 1924 to a legal obligation.⁷⁴ Failure to act on a customer's instructions may also breach contractual and regulatory principles and may result in civil claims, further straining the bank's relationship with its customer. The legal transition from the *Tournier*-based confidentiality principle to POCA's mandatory disclosure regime establishes a normative hierarchy wherein regulatory compliance supersedes traditional banking relationships. This structural reconfiguration generates an inherent operational dilemma. Although section 338 (4A)⁷⁵ establishes a safe harbour for disclosures made in good faith, it fails to reconcile the fundamental conflict of interest confronting banking professionals. These individuals must simultaneously fulfill their traditional role as financial advisors while operating as de facto law enforcement agents. The statutory obligation to perpetually monitor transaction purposes institutionalizes a state of continuous suspicion that inevitably degrades client relationship quality, potentially eroding the long-term trust fundamental to sustainable banking practice.

CONCLUSION

In conclusion, while POCA has significantly strengthened the UK's legal framework for combating money laundering, it has simultaneously created substantial challenges for bankers. The legislation stipulates direct and secondary money laundering offences, establishes cornerstone systems of consent and disclosure, and outlines defence grounds. These provisions collectively clarify and expand the definition of money laundering, criminalise the activity, and mandate that banks implement stricter CDD and SARs. This series of regulations has significantly expanded bankers' responsibilities, thereby increasing their compliance costs and legal risks. Simultaneously, POCA's anti-money laundering provisions, such as CDD and SARs duties, can alter the fundamental relationship of trust between bankers and their clients. Furthermore, ambiguity within some regulations and the resulting practice of defensive over-reporting pose additional operational challenges, which can lead to inefficiencies in identifying genuine financial crimes. Despite these challenges, POCA undeniably plays a vital role in promoting a responsible, vigilant, and safe banking environment. Consequently, banks must deftly navigate this landscape, balancing the imperative of stringent regulatory compliance with the need for operational efficiency. This balance is critical not only for maintaining the integrity of the financial system but also for ensuring the long-term sustainability of banking operations within a highly regulated environment. To

⁶⁸ This analysis is based on the author's interpretation of POCA's provisions and their potential strategic implications for shifting enforcement responsibilities to financial institutions.

⁶⁹ *R v Rogers* [2014] EWCA Crim 1680.

⁷⁰ The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017, SI 2017/692.

⁷¹ *Ibid.*

⁷² Martin Gill and Geoff Taylor, 'Preventing Money Laundering or Obstructing Business? Financial Companies' Perspectives on "Know Your Customer" Procedures' (2004) 44 *British Journal of Criminology* 582.

⁷³ Julie Ayling and Peter Grabosky, 'Policing by Command: Enhancing Law Enforcement Capacity through Coercion' (2006) 28 *Law and Policy* 427.

⁷⁴ *Tournier v National Provincial and Union Bank of England* [1924] 1 K.B. 461.

⁷⁵ POCA (n 3) ss 338 (4A).

help mitigate these negative impacts, future research should focus on several areas: exploring how emerging technologies like artificial intelligence, blockchain, and big data analytics can help banks achieve AML compliance more effectively while reducing operating costs and improving efficiency; investigating how to maintain and enhance the trust relationship between banks and customers amidst strict AML enforcement; and examining how to delineate the appropriate degree of discretion and whether the relevant legal provisions require further clarification.

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