

Money Laundering Regulations 2003 – Reporting to SOCA

David Winch, May 2006

You are your firm's Money Laundering Reporting Officer. You have received a report from a member of staff and have decided to report the matter to SOCA. How do you do it?

The law in force at present does not require your report to SOCA to be in any particular format or to be delivered in any particular way. However SOCA has issued preferred forms on which disclosures may be made and in practice most disclosures by professional firms are expected to be made on these forms and delivered by fax (to 020 7238 8286) or by post. It is possible to submit forms securely online via <http://www.soca.gov.uk/financialIntel/index.html>, but SOCA discourage submission by unencrypted email because of the lack of security of email traffic. SOCA refers to reports as Suspicious Activity Reports or SARs.

Under an amendment to section 339 Proceeds of Crime Act 2002 (PoCA) made by section 105 Serious Organised Crime and Police Act 2005, failure to use the prescribed forms or to submit a report in a prescribed manner, without reasonable excuse, is an offence punishable by a fine. However, at the time of writing (May 2006), no order had been made prescribing either the forms or the manner of their submission.

If one is intending to submit a suspicious activity report by fax or post using the prescribed forms these may be completed on computer or by hand. The computer forms are available for download from the SOCA website. I would advise you to download all 6 modules of the standard disclosure form (modules 1 – 6), the continuation sheet (module 8), the limited intelligence value report form, and the guidance notes.

The forms for manual completion can be obtained by telephoning SOCA on 020 7238 8282. (The downloadable forms are not intended for completion by hand.)

The downloadable forms are in PDF format. You will require Acrobat Reader to open them. If you do not already have Acrobat Reader installed on your computer, it is available for free download from <http://www.adobe.com/products/acrobat/readstep.html>. (You will need to know which version of Windows, or other operating system, you are using in order to download the correct version of the Reader.)

Using Acrobat Reader it is possible to open, complete and print the SOCA forms. However it is not possible to **SAVE** a completed form. In order to do this you will need Adobe Acrobat Standard or Professional. Standard is the cheaper option and costs approximately £300 plus VAT from software resellers. The current version is Adobe Acrobat 7.0 Standard.

The forms are intended to be read by SOCA using image character recognition technology.

Having obtained all the forms and guidance notes, your next step is to determine whether you will need to complete the full standard disclosure report form (the Standard Report). The limited intelligence value report (the LIV Report) is easier and quicker to complete than the standard report, so use it where you can.

The guidance notes indicate that the LIV Report can be used in the following circumstances:-

Government agency already aware

Where the report to SOCA provides no additional information beyond that of which the appropriate government agency is already aware. Examples will include most cases of suspected tax evasion which are already subject to investigation by the local tax office where the information now reported is already known to the H M Revenue and Customs. (However a Standard Report form should be used if the report includes information not yet known to the H M Revenue and Customs, and in all more serious cases, including those being handled by the Special Civil Investigations Department.)

Other examples quoted by SOCA under this head are health and safety offences, environmental offences, and failure to file annual returns with the Companies Registrar, of which the relevant government agency is already aware.

Similarly, where you have been served with a Court Order, in connection with an investigation by the authorities into the affairs of a client or third party, and as a result you become suspicious but have no information beyond that already supplied by you under the Court Order, a limited intelligence value report may be submitted to SOCA. (If you do have further information or other suspicions a Standard Report should be completed.)

In connection with Section 167 (3) CEMA 1979

Section 167 (3) Customs and Excise Management Act 1979 makes the submission of an incorrect VAT or Customs return, however innocent, a criminal offence. SOCA takes the view that an innocent error, which is corrected promptly on discovery, is not required to be reported. Where the error is not corrected on discovery there is a duty to report and the LIV Report may be used.

Minor irregularities not involving dishonesty

Where an accountant finds minor discrepancies, or small credit balances not returned because of the administrative costs involved, or other matters arising from innocent mistake rather than dishonesty, a decision has to be made.

The MLRO may conclude that there is no 'criminal property' within the meaning of PoCA and so no report is required. Should the MLRO conclude that he does wish to report in these circumstances, the LIV Report may be used.

Unidentified perpetrator and proceeds

Where the perpetrator of a crime is unknown **and** the proceeds have disappeared without trace the LIV Report **may** be used, but no report at all is obligatory in these circumstances. Examples could include shoplifting, cheque or credit card fraud, stock 'shrinkage', driving away from a petrol station without paying, even a bank raid.

Cost savings

Where the benefit from criminal conduct takes the form of cost 'savings', such as breaches of employment law or the illegal installation or copying of software within a business, the LIV Report may be used. (The resale of 'pirate' software or other material should be dealt with on a standard report.)

Duplicate reports

Where the reporter knows (not merely assumes) that a report has already been made to SOCA or another prosecuting authority (including regulators with powers of prosecution) and no additional information will be provided by this report. An example would be where the auditor of a business in the regulated sector becomes aware of a matter which has already been reported by his client.

Multiple instances of suspicion

Where in the course of a single engagement, such as an audit, multiple instances of suspicion arise, all those which fall under one or other of the other heads of items suitable for report on the LIV Report, these may be aggregated onto a single report. In this event the reason for the aggregated report should be summarised in the report.

Completing the Report

Hopefully you are now clear in your mind as to whether you are going to use the Standard or the LIV Report.

Your firm's first Report

If this is the first report to SOCA by your firm then, whether it is a Standard or a LIV Report, you will need to complete a Source Registration Document. This is a single sheet form which is Module 1.

This asks for basic details of your firm and for details of two contacts. Sensibly the contacts should be the MLRO and his deputy.

Your 'Institution Type' means simply accountant, solicitor or whatever. Your regulator will be your professional body, ICAEW, etc and your regulator ID is the firm number allocated to you by the regulator.

This form only needs to be completed when you first make a report to SOCA, or when any of the details on the form change. If you made a disclosure prior to 1 March 2004 under the old regime you do not need to complete this form unless your details have changed.

There should be no difficulty completing this form.

Completing the LIV Report form

The LIV Report form is also a single sheet form. The first section identifies your firm and office and gives the disclosure date. The date will normally be the date on which the form is faxed or posted to SOCA.

Dates on SOCA forms should be in DD/MMM/YYYY format, such as 09 MAR 2006. This is to avoid any possible confusion between, say, 9 March and 3 September.

The first section also includes a space for your reference. **THIS IS IMPORTANT!** The reference you use should apply uniquely to this report. In future SOCA may quote this reference, but no details of the subject, when referring to your report. If the reference is missing, or not unique, you may be unable to tell to which of your reports correspondence from SOCA relates!

The second section details the subject of the report and indicates whether he is a suspect or a victim.

Where an individual is involved it asks for his date of birth – hopefully you have this on file. For legal entities the entity number (such as company registration number or charity number) and VAT number are requested. Curiously there is no space for the subject's address here. SOCA request that you complete either the individual section or the legal entity section, but not both.

If you have any doubts of the accuracy or validity of identification information, or you have been unable to confirm it, this should be disclosed in the 'white space' referred to below.

White space

The remainder of the form is 'white space' allowing you to enter relevant information in your own words. If you have insufficient room on the white space you can use the continuation sheet (Module 8). You can add as many of these sheets as you wish.

You should provide here details of the information or other matter which gave rise to your knowledge or suspicion of money laundering and your reason for using the LIV Report, rather than the Standard Report.

The CCAB advises that the MLRO should disclose all information relevant to the suspicion, but not those details that are not relevant. It will not normally be relevant for the MLRO to disclose, for example, the name of the staff member who submitted a report to him.

The Law Society advises that reports should include as much information as possible about the suspected person or organisation including full address, telephone numbers (including mobile phones), and, in the case of an individual, passport number (if known), and date of birth.

In tax cases it would be appropriate to include tax reference and National Insurance number, as well as VAT number.

The reason for suspicion should be explained. This may involve some explanation of the background to the matter.

It may be appropriate to indicate the dates or period over which the suspicious activity occurred; any information you have about the origin and destination of any criminal property or other relevant assets; any deadlines (such as contractual completion dates); and any other interesting, important or urgent aspects.

If there are suspicions about a certain type of criminal activity, such as theft, this should be made clear in the report. However it may be the case that the underlying criminal activity is unknown and not reasonably capable of being ascertained.

If the suspicion relates to a particular transaction or bank account, details should be provided, including an indication of the values involved, if this is known or can be estimated.

Where consent is required to carry out a transaction which would otherwise be regarded as contrary to Sections 327 – 329 Proceeds of Crime Act 2002, then this should be clearly shown on the report. (It would normally be expected that the Standard Report form would be used in these circumstances.)

If confidentiality is particularly important, for example because the reporter considers himself at risk of reprisals, this should be recorded in the report.

Where the information is already known to the authorities, or where it is known or anticipated that the subject intends to make voluntary disclosure to the authorities, the report should indicate this.

Bear in mind that SOCA will forward information it receives to the law enforcement agencies, but the identity of the reporter should remain confidential. It will assist this process if any information which identifies the reporter is kept separate from information concerning the suspicion. Where possible, it would be beneficial not to include within the free text on the 'white space' any details identifying the reporter.

Completing the Standard Report form

As mentioned earlier, the Source Registration Document (Module 1) has to be completed the first time your firm makes a report to SOCA, but subsequently only when there are changes to the details on it.

Module 2, the Disclosure Report Details page is effectively a cover sheet identifying the report and indicating the pages attached to it, which form the substance of the report. As with all SOCA forms, dates are requested to be in DD/MMM/YYYY format such as 09 MAR 2006.

The Standard Report is designed to be a collection of relevant sheets, similar in some respects to the supplementary pages on an individual's self assessment tax return. You select how many sheets of each type you require and then attach them to the covering Disclosure Report Details page. On occasion several copies of a particular sheet may be required as part of a report. It is NOT a requirement that a sheet of every type must be included in each report; depending on the circumstances some sheets may be unnecessary or irrelevant. Use the cover sheet to indicate how many copies of each sheet are attached.

Additionally on the Disclosure Report Details page there are 'tick boxes' to indicate whether the report is made under PoCA 2002 or the Terrorism Act 2000, and to show whether the report is new or an update to a previous report. New transactions which you regard as suspicious should be reported as a new disclosure, even where you have previously disclosed other suspicions relating to the same individual or organisation (referred to as the 'subject'). In this event the SOCA references of earlier reports on this subject should be listed (these will be on any acknowledgements received from SOCA for the earlier reports).

Do not forget to enter your own unique reference on the report, which will be quoted by SOCA in correspondence with you concerning this report.

Where you require consent from SOCA to undertake a 'prohibited act', that is an act which might otherwise be in breach of Sections 327 – 329 PoCA 2002, the appropriate tick box on this form should be clearly marked. This will assist SOCA to identify cases in which an urgent response is required. It would also be appropriate in such cases to telephone SOCA on 020 7238 8282 to advise them that an urgent response is required.

Modules 3 and 4 are for the recording details of the subject, such as name, address, occupation and date of birth. On Module 3 (Subject Details page) complete the individual's details OR the legal entity's details, but not both.

Module 4 (Additional Details page) asks for addresses and other information types. Examples of other information types are set out in the guidance notes. Such information types include: National Insurance number, passport number, company registration number, telephone number (home, work and mobile), fax number, tax reference number, VAT registration number, driving licence number, NHS number, car registration number, email address, website address. Abbreviations for use here are set out in the Field Codes List. The idea is to ensure that the subject is identified correctly.

When completing a report you may have more than one subject. You should select a single main subject and treat the remaining subjects as 'Associated Subjects'. An associated subject can be anyone, or any company, linked to the main subject through the reported activity, such as a business partner. Modules 3 and 4 should be completed for the main subject and for each associated subject.

When collating the sheets for the report ensure that each copy of Module 3 is immediately followed by the related Module 4 sheet, other wise there is a danger of the information on a Module 4 sheet becoming incorrectly treated as relating to the wrong subject.

Where there is more than one associated subject you should enter at the top of the Module 3 sheet "Associated Subject number 1 of 2", or whatever, and correspondingly enter at the top of his Module 4 sheet "Associate number 1", or whatever as the case may be.

Each Module 4 sheet has room for up to 3 addresses and 2 further information types. If you have insufficient space use more Module 4 sheets,

Module 5 (Transaction Details page) at first looks the most daunting. However in practice it is not difficult to complete the relevant parts and the irrelevant parts can be ignored.

This page deals with suspicious transactions and is directed primarily at banks and other financial institutions. It asks for details of sort codes, account numbers, credit and debit turnover on the account and the time period for which this information is provided, as well as a recent balance of the account and the date of that balance. It goes on to ask for the activity type, amount, currency and date of the suspicious transaction and the name, sort code and account number of the other party. Abbreviations for various currencies can be found in the list of Field Codes. For professional firms in most cases all of this will be 'not applicable' and can be left blank.

One item on this page which may be relevant is the date of commencement of the business relationship and the date it finished.

If there are no entries to be made on this page it may be omitted entirely from the report.

Module 6 (Reason for Disclosure page) is mostly 'white space' for you to enter relevant information in your own words. The earlier notes concerning completion of the white space on the LIV Report apply equally here.

There are also tick boxes for you to indicate the nature of the suspected offence such as, drugs, personal tax fraud, etc. You may specify another offence. If the suspected offence is unknown these tick boxes should be left blank (do not guess!).

If you need further white space use Module 8, which is just a continuation sheet. Additional copies of this page can be used as required.

Once you have completed the modules all that remains is to return to the cover sheet, Module 2, and enter the number of pages of each type incorporated in the report, and the total number of pages, and then to number each page at the foot.

No signature is required on the form.

You should keep a copy of the form and note the date and time of despatch to SOCA.

If you have requested consent to go ahead with a particular transaction you should receive an acknowledgement of receipt from SOCA. If you have not received acknowledgement after a few days, telephone the SOCA Duty Desk on 020 7238 8282.

If you do not require consent SOCA are unlikely to acknowledge receipt of your report.

David Winch is a forensic accountant specialising in white collar crime including theft, fraud, false accounting, evasion of taxes and duties, drug trafficking, Companies Act offences, money laundering, and associated confiscation, forfeiture and disqualification proceedings, a director of Accounting Evidence Ltd and MLRO Support Ltd, and a co-author of *Money laundering for lawyers: the new requirements and their practical implications* (Butterworths, 2004).

Accounting Evidence Ltd
Well House
Broughton in Furness
Cumbria LA20 6HS

Tel: 01229 716651

Web: www.accountingevidence.com

Email: info@accountingevidence.com

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