



**Jersey Financial
Services Commission**

Thematic examination programme 2023

**Feedback - designated non-financial businesses and
professions' suspicious activity reporting obligations**

Glossary

AML/CFT/CPF	Anti-money laundering, countering the financing of terrorism and countering proliferation financing
AML/CFT/CPF CoP	Anti-money laundering, countering the financing of terrorism and proliferation financing Code of Practice, as detailed in the Handbook
DNFBP	Designated non-financial businesses and professions
FIU	Financial Intelligence Unit
Handbook	Handbook for the prevention and detection of money laundering, the countering of terrorist financing, and the countering of proliferation financing.
ML/TF/PF	Money laundering, terrorist financing and proliferation financing
MLCO	Money laundering compliance officer
MLRO/deputy MLRO	Money laundering reporting officer and deputy money laundering reporting officer
iSAR/eSAR	Internal suspicious activity report/external suspicious activity report
Proceeds of Crime Supervisory Bodies Law	Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008
Supervised person	A person that is subject to supervision by the JFSC in accordance with the Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008
SAR	Suspicious activity report

Contents

- Glossary.....2
- 2 Background.....4
- 3 Findings and good practice.....5
- 4 Action required.....9

1 Executive summary

During 2023, we assessed 20 designated non-financial businesses and professions' (DNFBPs) compliance with their statutory and regulatory obligations for suspicious activity reporting. The assessment group included nine accountants, one online casino, six estate agents and four lawyers.

The purpose of this feedback paper is to:

- › explain our findings
- › give examples of best practice
- › inform DNFBPs of next steps

During the examination we found a number of issues related to:

- › corporate governance
- › suspicious activity reporting procedures
- › employee training

DNFBPs must now consider the findings and best practice highlighted in this feedback against their own arrangements.

2 Background

DNFBPs, along with other financial service businesses, are at the forefront of the prevention and detection of money laundering, terrorist financing and proliferation financing (ML/TF/PF).

The identification and reporting of suspicious activity relating to ML/TF/PF by DNFBPs is essential.

The Jersey Financial Intelligence Unit (FIU) states that “the information contained in suspicious activity reports (SARs) is vitally important as it allows the FIU to better understand suspected criminal activity, ML/TF typologies, emerging threats, risks, and trends.”

The statutory and regulatory obligations for suspicious activity reporting are set out in Sections 8.3.1 and 8.3.2 of the Handbook.

The 2020 [National Risk Assessment](#) of Money Laundering in Jersey, reported that:

- › the quality and quantity of SARs have historically been identified as an area of concern for DNFBPs
- › there is a disparity in the standard of SARs across the different sectors and entities represented in the DNFBP category
- › the tension between legal professional privilege and submitting a SAR is a possible factor in the low levels of SARs submitted by the legal sector
- › the effectiveness of accountants' monitoring and reporting procedures was not recently tested and therefore there wasn't independent evidence of its adequacy
- › the estate agent sector was dominated by sole practitioners and small businesses (five or fewer employees), while most SARs in recent years have been made by firms with more than five employees
- › the estate agent sector would also benefit from further training on suspicious activity reporting

As part of the thematic examination discussed in this paper, we assessed whether the selected DNFBPs could demonstrate:

- › ongoing assessment of the effectiveness of systems and controls related to suspicious activity reporting and the role of the money laundering reporting officer
- › adequate policies and procedures (including systems and controls) concerning SARs

- › adequate and relevant training for employees concerning SARs, tailored to the supervised person

The JFSC’s assessment of compliance with statutory and regulatory requirements included in the examination scope was based on those in force during the review period.

3 Findings and good practice

This section sets out our findings along with examples of good practice. Not all of the examples of good practice were identified during this examination.

Area of finding	Findings	Good practice
Board/senior management responsibilities	<ul style="list-style-type: none"> › board/senior management minutes relating to compliance/MLRO reports contained either limited references or were “taken as read” or “noted” › board/senior management minutes did not include discussion and challenge of the management information provided by the MLRO in their reports › inadequate consideration and assessment in board/senior management minutes of low levels or absence of internal suspicious activity reports (iSARs) › inadequate consideration and assessment in board/senior management minutes of outcomes of testing, such as testing employee awareness › lack of regular assessment of the MLRO function and fulfilment of role obligations › inadequate consideration and assessment of where the MLRO fulfils multiple roles that may impact their effectiveness or give rise to conflicts › inaccurate job descriptions and procedures relating to the role of the MLRO, with confusion 	<ul style="list-style-type: none"> › board/senior management minutes evidence discussions about MLRO reports, including challenge and scrutiny of the information provided › documented consideration of the levels/quality of SARs, including any resulting action points and who is responsible, which are tracked to completion › board/senior management minutes demonstrate routine monitoring of the performance of the MLRO/DMLRO and ensure SARs are being handled in an appropriate and consistent manner › board/senior management periodically consider the MLRO reports, and the time taken between information of a matter coming to an employee’s attention and the date of the iSAR › board/senior management minutes detail routine assessment of whether the other roles the MLRO fulfils impact their effectiveness, independence, or give rise to conflicts › an accurate job description clearly setting out the role and responsibilities of the MLRO, which include receiving and considering iSARs in accordance with internal reporting procedures

Area of finding	Findings	Good practice
	<p>between the specific responsibilities of an MLRO and those of a MLCO - the MLRO and the MLCO may be the same person, but the role responsibilities are separate and specific</p>	<ul style="list-style-type: none"> › the difference between the MLRO and MLCO's responsibilities are clearly delineated, with the MLCO, and not the MLRO, responsible for monitoring compliance with the business risk assessment (BRA), ensuring the BRA is in place, monitoring updates to policies and procedures, reviewing customer due diligence / enhanced due diligence, monitoring customer activities.
<p>iSAR/eSAR procedures</p>	<ul style="list-style-type: none"> › systems and controls did not include measures to ensure iSARs were not filtered by line management, thereby preventing submission to the MLRO › internal reporting procedures did not set out the importance of making an iSAR as soon as practicable › procedures did not include the identities of the MLRO (or deputy MLRO) › procedures did not include arrangements for disciplining an employee who fails to make an iSAR without a reasonable excuse and as soon as practicable › iSAR procedures did not include the requirement for the MLRO to formally acknowledge receipt of the iSAR to the member of staff who had submitted it › procedures did not remind employees making iSARs of the risk of committing a tipping off offence › the MLRO (or deputy MLRO) had not documented all enquiries made in relation to each iSAR 	<ul style="list-style-type: none"> › procedures and employee handbooks emphasise that the decision to report is the personal liability of the employee and not line managers › employment contracts and employment handbooks set out that iSARs should be made to the MLRO as soon as practicable, and include the identity of the MLRO › employee handbooks clearly set out the disciplinary sanctions for failing to report knowledge, suspicion, or reasonable grounds for knowledge and suspicion, without reasonable excuse, or for failing to report as soon as practicable › the MLRO's report includes a detailed timeline of activity from the date the internal SAR is received and acknowledged until its conclusion, and clearly articulates the reasons for any delays › tipping off provisions are covered in detail in procedures and are easy for all employees to understand › procedures include a reminder to employees of the risk of committing a tipping off offence

Area of finding	Findings	Good practice
	<ul style="list-style-type: none"> › the MLRO (or deputy MLRO) had not documented the basis and rationale for externalising or not externalising a SAR to the FIU › the MLRO (or deputy MLRO) had not considered the requirement to update the Jersey FIU where more information is discovered following the initial submission › iSAR reporting procedures did not extend to potential business relationships and declined transactions, so the board/senior management were unaware of the number of potential clients which had been declined › supervised persons had not maintained SAR registers › supervised persons had not maintained a procedure requiring the MLRO (or Deputy MLRO) to record all iSARs and eSARs in a register › iSARs did not contain the date the information or matter came to the employee's attention and the date of submission to the MLRO › iSARs did not contain as full a statement as possible on the information or matter giving rise to the knowledge, suspicion, or reasonable grounds for knowledge or suspicion › iSARs did not contain the identity of the individual who made the iSAR, and in what capacity 	<ul style="list-style-type: none"> › the MLRO provides detailed rationale for externalising or not externalising the iSAR › registers record all declined business, with a written explanation of why the business relationship or one-off transaction was declined › the declined business register, and analysis, form part of the MLRO's board/senior management report › SARs procedures should include that iSARs are to be considered regardless of the amount involved › the iSAR form should include that any property can constitute or represent proceeds of criminal conduct

Area of finding	Findings	Good practice
	<ul style="list-style-type: none"> › iSARs did not include full details of the customer and transaction activity that the supervised person holds on record › SAR procedures suggested that the value of the one-off transaction or business relationship would be a factor in determining whether an iSAR/eSAR should be submitted › procedures and the iSAR form only included the requirement to report suspicion relating to "existing criminal property" 	
Training	<ul style="list-style-type: none"> › board/senior management were unable to provide evidence that the effectiveness of their training had been assessed › board/senior management were unable to provide evidence that employees understood their AML/CFT/CPF requirements › training was not tailored to the supervised person and the specific employee, such as the MLRO › in some instances, sole traders had undertaken insufficient training on key aspects of Jersey legislation to prevent and detect ML/TF/PF › supervised persons were unable to evidence that training had been delivered covering key aspects of AML/CFT/CPF legislation › supervised persons were unable to evidence that training highlighted to employees the importance of their individual contribution to the prevention and detection of ML/TF/PF 	<ul style="list-style-type: none"> › the MLRO can evidence practical training for employees, including step-by-step scenario exercises where a fictional customer proposes a new piece of business, and employees navigate the process of submitting an iSAR › training is relevant to the entity, with specific examples of ML/TF/PF case studies, red flags, examples of unusual activity, and customer profiling to identify unusual transactions › training includes case studies to highlight the obligation of employees to report, the potential consequences of failing to report, and the importance of each employee in preventing and detecting financial crime › training procedures include explanations of risk appetite, business risk assessment, and financial crime strategy, and how these are linked to procedures to mitigate risks › where a third-party training solution is used, it is assessed to ensure it accurately complies with

Area of finding	Findings	Good practice
		<p>the statutory and regulatory regime in Jersey, including a gap analysis to identify and address any deficiencies or inaccuracies</p> <ul style="list-style-type: none"> › financial sanctions are included in the training plan › employees who fail to achieve a minimum pass score in financial sanctions are provided with additional training and then reassessed › test answers are analysed to identify any areas with a lower level of understanding and used to enhance future training › training considers the guidance notes provided in Section 9 of the Handbook and references JFSC examination feedback papers

4 Action required

We have given direct feedback to all the DNFBPs we examined. The DNFBPs with findings were required to confirm remediation of such findings and/or submit a formal remediation plan setting out actions to be taken and timescales for completion.

We expect boards and senior management of all DNFBPs, not just those subject to this examination, to now:

- › consider the findings and best practice highlighted in this feedback against their own arrangements
- › make changes to their systems and controls if they identify any areas for development
- › ensure that their business is complying with all relevant statutory and regulatory requirements in relation to the completeness of their suspicious activity reporting systems and controls including, but not limited to, Article 21 of [the Order](#) and Sections 8.3.1 and 8.3.2 of [the Handbook](#)
- › consider the effectiveness of systems and controls and of the quality of the management information being reported, as set out in Section 2 of [the Handbook](#)
- › demonstrate that employees receive adequate and appropriate training, tailored to the specific business as set out in Section 9 of [the Handbook](#)

Supervised persons should also consider referring to other relevant [examination findings and questionnaires](#) on the JFSC's website and related papers such as [the role of the MLRO](#).

In future planning, we will consider repeating this thematic examination to test whether DNFBPs have taken on-board the guidance set out in this feedback, and whether the compliance rates have improved.

