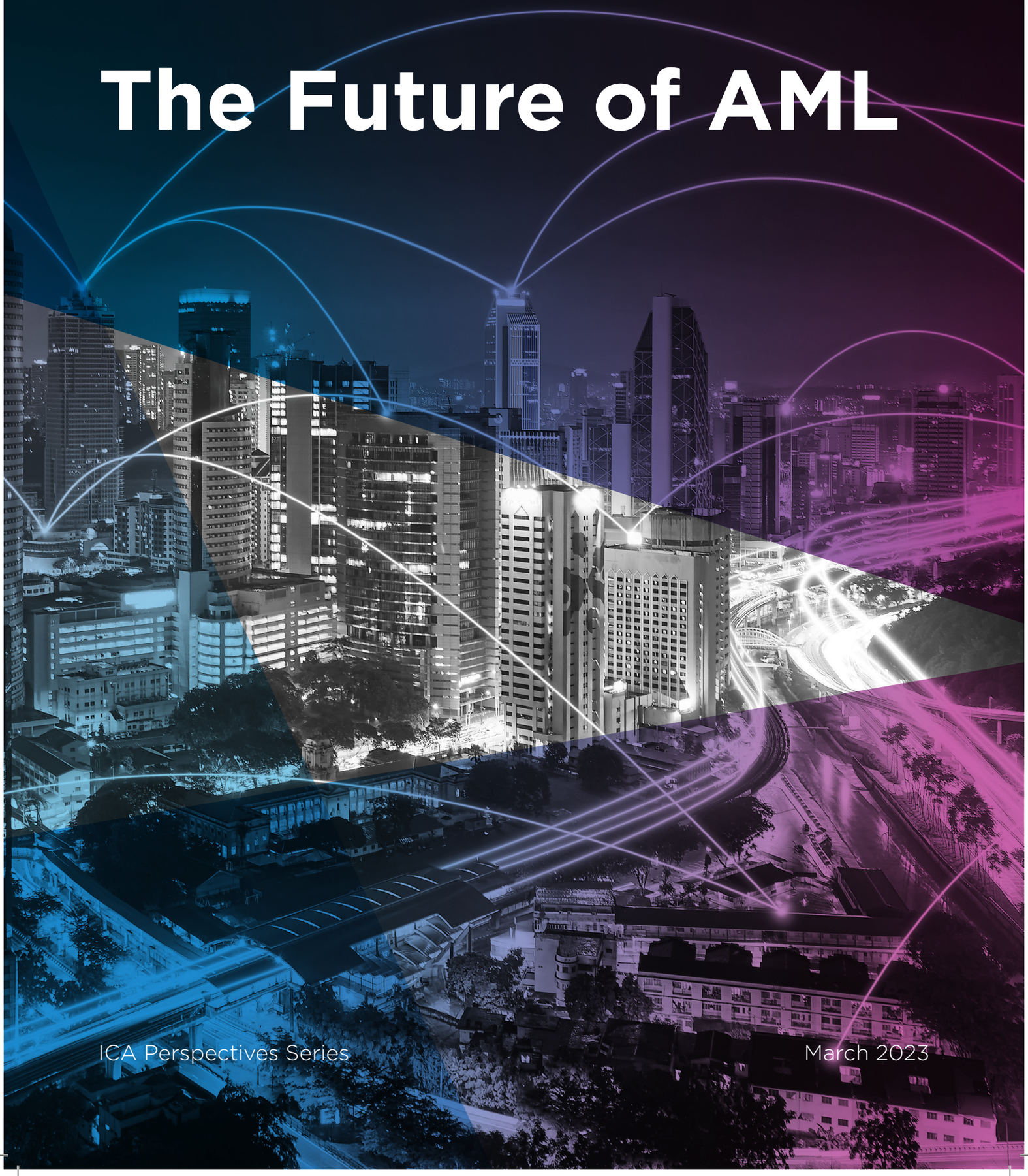
INTERNATIONAL COMPLIANCE ASSOCIATION

The Future of AML



ICA Perspectives Series

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Tim Tyler, ' L U H F W R U 4 X D O L ‰ F D W L R Q V , & $

In 2006 and 2007 I led a law enforcement coalition from seven countries working to undermine and dismantle a prolific organised money laundering network. This was successful, leading to a notorious launderer who had cleaned $2.3 billion in the previous 18 months being put behind bars.

I mention this for two reasons. Firstly, we saw first-hand that this kind of work is time consuming, challenging and expensive. Secondly, as we took the specialist launderer from the streets, we saw other professionals ready to step up. His removal from the market had little meaningful impact on the underlying predicate crime.

Sharing Responsibility

Using criminal justice measures is expensive and has limited impact, so it's hardly surprising that governments around the world are exploring alternative ways to prevent criminals from accessing and cleaning the proceeds of their crime.

Switch focus to the banks and wider regulated sectors. If law enforcement is unable to stop money laundering then perhaps these powerful, wealthy institutions that operate unconstrained by national borders can make a difference. After all, they tend to know more about the finances of their customers than governments do – and in some ways, than the customers themselves. Using legislation enforced by powerful regulatory bodies, they can be co-opted to join the fight.

Following decades of legal, regulatory, and technical developments, the global approach to anti money laundering (AML) has now matured into a multi-billion dollar industry and this vision has been realised. Or at least, it's been realised on paper. Regulated sectors, and particularly the banks, are playing their part as defined by the Financial Action Task Force (FATF). A complex and expensive set of AML requirements is now woven into every area of the bank's activities. Yes, there's the occasional well publicised failure, greeted with horror and criticism, but these cases can be better considered the exception to the rule, rather than fitting the rule itself. ►

And this function of banks is likely to intensify in the coming years as new technologies including artificial intelligence (AI) enable banks to interrogate the oceans of data that they hold and compare this with the zettabytes of information across the web.

The banks and wider regulated sectors aren't perfect, but they are broadly following the requirements set for them. And their effectiveness in doing this is likely to accelerate with the impact of AI. There is, however, a great deal of evidence that underlying levels of money laundering continue to rise despite this investment. And whilst the regulated sectors have kept up their side of the AML bargain, their efforts are undermined through lack of investment by governments.

A One-Sided Arrangement

Investigating and prosecuting money laundering is an expensive but critical part of the global response to money laundering . Every effort should be made to ensure money laundering is hazardous, risky for the criminals involved, and difficult to recover the proceeds of their crimes.

This isn't something the bank and regulated sectors can do. It requires law enforcement resource and commitment.

It's perhaps worth considering one country in this context – the UK. This jurisdiction received a glowing evaluation from FATF in 2018. It has done more, apparently, than any other to implement FATF recommendations. And yet the UK is seen by many as a money laundering hub for the world. Possible reasons for the UK being one of the most prolific money laundering markets ,whilst also among the most compliant with FATF standards, are multi variant and complex. Perhaps part of the reason though is the law enforcement response to the threat.

The UK National Crime Agency (NCA) data shows that during the period 2021–2022 the UK financial intelligence unit (FIU) received 742,317 Suspicious Activity Reports (SARs). So, how many prosecutions did nearly three quarters of a million reports of money laundering give rise to? The NCA no longer publishes this information but the UK National Audit Office shows ►

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that there were 1,310 prosecutions for money laundering in England and Wales during the same period. In fairness, this data does not include prosecutions in Scotland and Northern Ireland, but then only a proportion of this number will be linked to the submission of SARs.

In simple terms then, 740,000 reports of money laundering led to approximately a 1,000 prosecutions. The intelligence gold dust generated by regulated sectors at eye watering cost and passed to law enforcement within tight timescales leads to prosecution at a rate of between 0.1% and 0.2% of cases.

The proportion of assets recovered in the UK follows a similar pattern. During the period 2021–2022 a total of £350 million criminal assets were recovered. This may sound a large number, but it represents only 0.0023% of the estimated criminal economy. [1]

This evidence suggests then, that the UK is failing in the fight against money laundering. And yet this country is the poster child for effective adoption of international AML standards. Perhaps this is because the standards focus on activities (for instance those defined in the FATF 40 Recommendations) rather than outcomes. Maybe it isn’t surprising that regulators across the world are increasingly measuring success in these terms (outcomes). Quite simply, this is long overdue.

But the focus of this article isn’t so much on the effectiveness of the current approach to AML – but on ►

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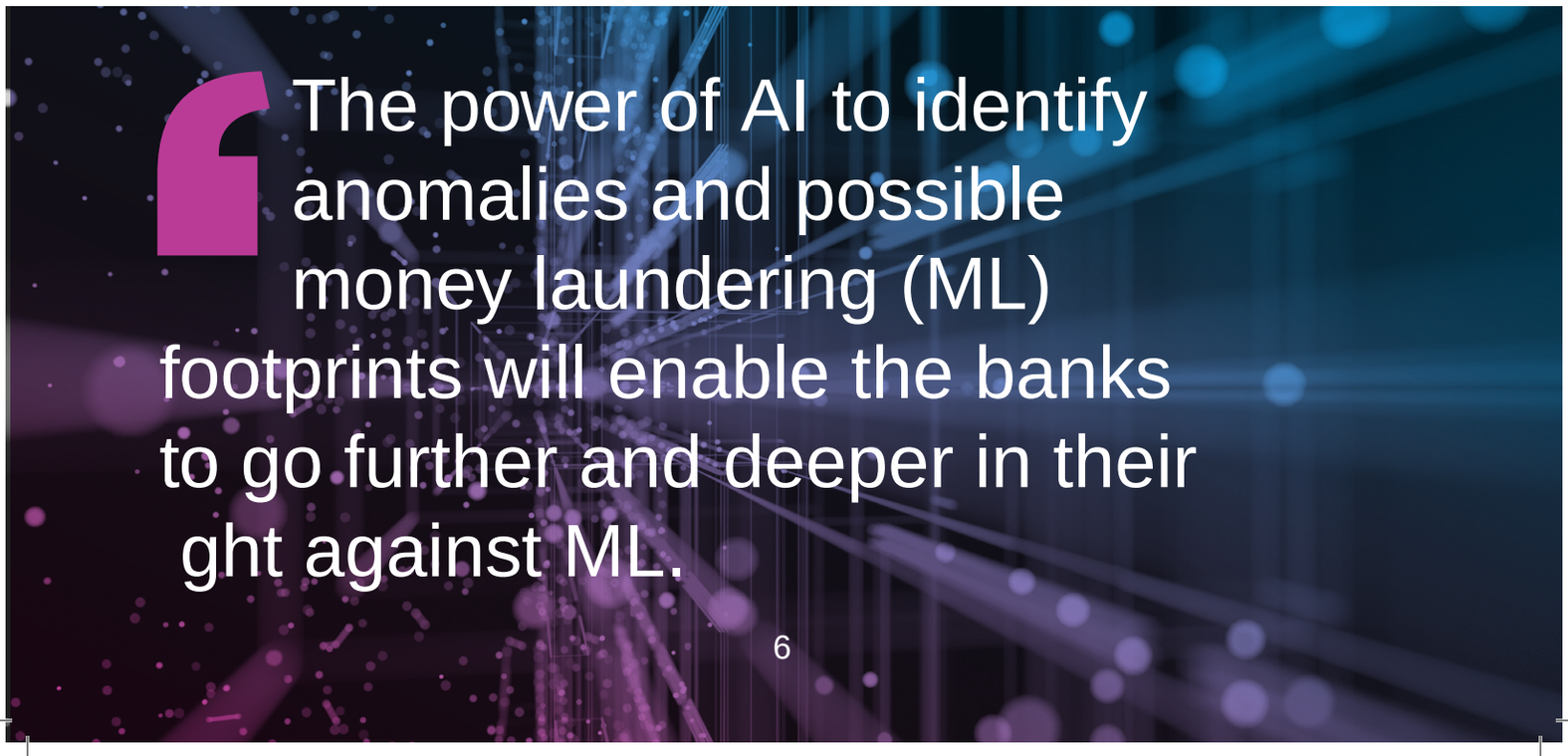


government policy. In the UK, successive governments have effectively contracted out responsibility to counter money laundering to the regulated sectors. This has generated huge costs to the industry while the government has demonstrably failed to act on the rich intelligence provided by the regime. [2]

This approach – requiring the banks and wider regulated businesses to investigate their own customers is likely to multiply in the coming years. The power of AI to identify anomalies and possible money laundering (ML) footprints will enable the banks to go further and deeper in their fight against ML . This will become more intrusive, unrelenting and generate high quality intelligence that will in turn, if the current approach continues, be largely ignored by UK law enforcement.

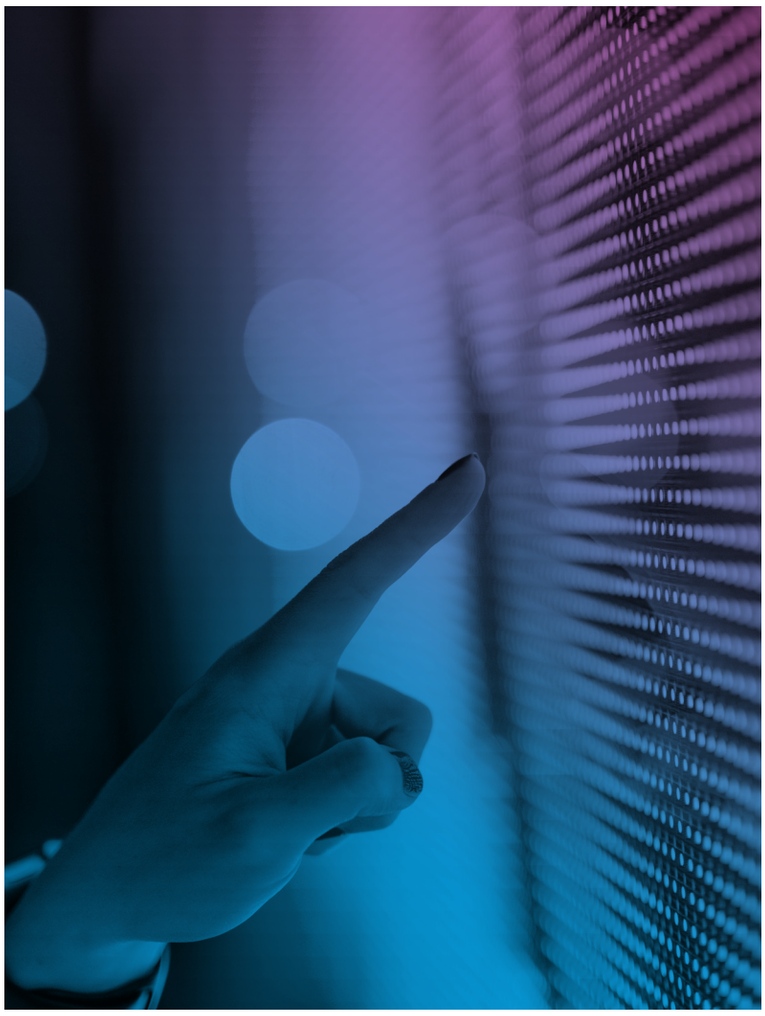
We have, over the last few decades, drifted to this position. Is there a need to rebalance the approach before we go still further down this road? There are, I suggest, three key questions that deserve attention.

Firstly – to what extent can the government reasonably contract-out responsibility for managing ML risk to the banks and wider regulated sectors without corresponding investment in its own criminal justice obligations?

Secondly – to what extent are banks expected to investigate their own customers. New technologies have the potential to enable far reaching, intrusive investigations. At what point can the banks reasonably assert that they have gone far enough. How do we define reasonable enquiries?

And finally, what are the implications of large, unelected, global organisations holding huge reservoirs of information about ordinary citizens and a mandate/ requirement to monitor every detail of their activity? The principles and practicalities of data protection offer some reassurance – but is this enough when the banks, to a large extent, work in isolation to meet increasingly demanding regulatory requirements.

I don't have immediate answers to these questions. They're challenging and politically charged. Perhaps there's scope for consultation and public debate to address these policy questions before we go any further down this road. ●



2. Public funds are limited of course, and local police are required to respond to a plethora of crime, of which money laundering is just a small part. ML does however incentivise and drive crime at all levels while creating negative role models in our communities.

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Phillip Creed,
Director, fsc

When considering what the future of anti money laundering (AML) looks like, it is difficult to look beyond institutions increasingly placing reliance for the robustness of their AML compliance frameworks on the development and implementation of new RegTech products, as well as automated systems and controls which are ever more dependent on artificial intelligence (AI) and machine learning.

As many new and existing FinTech and Cryptoasset companies scale at rates beyond their own expectations, it is apparent that automated first line controls are ever more desirable than the more costly and slow paced ‘boots on the ground’ approach . But can these systems and controls operate effectively with little to no manual oversight or human intervention, and what does the regulator make of this approach to risk management?

Looking back at some of the more recent fines issued by the Financial Conduct Authority (FCA) in 2021 and 2022, we note that on more than one occasion, issues with firms’ automated transaction monitoring systems were cited within the FCA’s final decision notices.

For example, NatWest were fined £264.8 million for AML failures, with the FCA’s Statement of Facts noting that ‘Throughout the Indictment Period, cash deposits made directly through Bank cash centres were erroneously interpreted by the system as cheque deposits.’. It goes on to say that ‘those cash deposits were not subjected to cash-specific monitoring rules. ►

Instead, they were subjected to less stringent rules applicable to cheque deposits (when such rules existed)'.

Further, Commerzbank London were fined £37,805,400 with the FCA stating in the final notice that:

Commerzbank London's automated tool for monitoring money laundering risk on transactions for clients was not fit for purpose and did not have access to key information from certain of Commerzbank's transaction systems.

Further that 'the Primary Transaction Monitoring Tool was not able to interpret data from certain transaction systems effectively.'

While both of the above examples suggest that the FCA took issue with the operational effectiveness and technological capacity of the firms' tools, we note that the FCA went on to state that there were also notable deficiencies as to how the tools were overseen and used by relevant employees . In particular, that the rules implemented were not fit for purpose, or that they had not been updated for extended periods to ensure they remained relevant to the firms' business models and client types.

It can be deduced from the FCA's findings in relation to both the NatWest and the Commerzbank cases that issues arose as a result of numerous factors, including:

- deficiencies in the underlying technology
- the inability of the technology to carry out certain tasks
- the inability of relevant employees to use the technology effectively
- inadequacy of rulesets implemented
- rulesets becoming outdated and therefore incapable of flagging potentially suspicious transactions and
- senior management failing to act upon the reporting of systems failings by the compliance team (highlighted further in the article).

From the failings identified by the FCA, it is apparent that firms must continuously work to create an environment in which RegTech products and AI can act alongside a firm's relevant employees to ensure key AML processes are carried out effectively. From experience, the best method to achieving this lies in the following 2 key areas:

- compliance monitoring, and
- corporate governance.

Compliance monitoring refers to the review and testing by the second line of the AML systems, tool, processes, and controls on which a firm relies to combat money laundering and other financial crimes occurring across the business. A robust compliance monitoring plan should ensure that all of the key components of a ►

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