Book Section:

Zavoli, I orcid.org/0000-0002-0162-1103 (2020) The use of cryptocurrencies in the UK real estate market: an assessment of money laundering risks. In: Benson, K, King, C and Walker, C, (eds.) Assets, Crimes and the State: Innovation in 21st Century Legal Responses. Transnational Criminal Justice . Routledge . ISBN 9780429398834

https://doi.org/10.4324/9780429398834

The Use of Cryptocurrencies in the UK Real Estate Market: An Assessment of Money Laundering Risks*

Ilaria Zavoli

Abstract

In recent years, cryptocurrencies have gained growing importance in various sectors, including the real estate market. This fact has spawned a debate on the money laundering risks of the use of cryptocurrencies for property transactions in the UK. Some think that cryptocurrencies have revolutionary effects on national economies, and they might bring benefits to the real estate market. However, the use of cryptocurrencies raises concerns for their compatibility with the existing UK anti-money laundering legislation. In particular, cryptocurrencies transactions can create issues for the customer due diligence checks that the 2017 Money Laundering Regulations impose on real estate agents. This chapter addresses the topic, examining critically the money laundering risks of the use of cryptocurrencies in the UK real estate market. Through an analysis of the literature and with reference to the author's empirical research findings, this study sheds light on the subject, providing some innovative perspectives for future legislative and policy action.

* This research was supported by a British Academy 'Tackling the UK's International Challenges' grant (ref: IC160112).

Keywords

money laundering; cryptocurrencies; real estate; property transactions; shared governance

1. Introduction

In December 2017, for the first time in the history of the UK real estate market, residential properties were sold using bitcoins.[1] This event has sparked debate about the money laundering risks of the use of cryptocurrencies for property transactions in the UK. Some think that cryptocurrencies have revolutionary effects on national economies,[2] and they might bring benefits to the real estate market.[3] However, the use of cryptocurrencies raises concerns for their compatibility with the existing UK anti-money laundering (AML) legislation. In particular, cryptocurrencies transactions can create issues for the customer due diligence checks that the 2017 Money Laundering Regulations impose on real estate agents.[4] These actors are key gatekeepers in the UK AML regime, and they play an essential role in property transactions, acting either on behalf of the buyer or the seller. As such, it is important to critically evaluate the risks that real estate agents might face when dealing with transactions involving the use of cryptocurrencies.

This chapter addresses these issues and concerns, examining the money laundering risks of the use of cryptocurrencies in the UK real estate market. In particular, this three-part study seeks: (i) to understand how cryptocurrencies can pose money laundering risks to the property sector; (ii) to examine the UK money laundering obligations imposed on real estate agents and determine the approach of these professionals to the issue; and (iii) to propose some regulatory changes to effectively address concerns, by arguing that there is a need for shared governance, with a better and more informed involvement of real estate agents as gatekeepers of the UK property market. To this end, the chapter includes an analysis of the relevant literature and draws upon the findings of the author's interviews with real estate agents. Given the current policy interest in this topic, including a recent parliamentary report on the role of digital currencies in various sectors,[5] this chapter is particularly timely, by providing some innovative perspectives for future legislative and policy actions.

---

[1] See Harley, N., 'First bitcoin homes sell in the UK' *The Telegraph* 16 December 2017.

[2] See Nica, O., Piotrowska, K. and Schenk-Hoppé, K.R., 'Cryptocurrencies: Economic benefits and risks' (2017) Working paper no. 2 *FinTech* 1; Swan, M., 'Anticipating the economic benefits of Blockchain' (2017) 7(10) *Technology Innovation Management Review* 6.

[3] See Onibalusi, A., 'Benefits of using cryptocurrency to buy real estate' *Huffington Post* 30 November 2017.

[4] The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017, SI 2017/692, regs. 8(2)(f); 13; 27-38.

[5] See Treasury Committee, *Crypto-assets (Twenty-Second Report of Session 2017–19)* (HC 910).

2. Money laundering and the use of cryptocurrencies: concerns for the UK real estate market

Despite its growing popularity, the phenomenon of cryptocurrencies is not new to the world of global finance and technology. Its origins can be traced back to 1983 when the cryptographer David Chaum created the first type of cryptocurrency called ‘ecash’.[6] What is more recent is the association of cryptocurrencies with illicit activities and their alleged involvement in the commission of crimes, particularly money laundering.[7] This section examines some key aspects of cryptocurrencies to identify potential money laundering risks in property transactions.

At present, more than 1,900 cryptocurrencies exist.[8] Not all cryptocurrencies share the same features, and only some of them have become increasingly popular due to their appeal as lucrative forms of investment in the global market.[9] For instance, this fate applies to the Bitcoin system. There is no universally accepted definition of cryptocurrencies, but some guidance is provided by two reports from the European Central Bank.[10] Here, cryptocurrencies are identified as one of three possible virtual currency schemes: closed, unidirectional, or bidirectional. Specifically, bitcoins are a form of ‘bidirectional’ virtual currency scheme because they can be purchased using legal tender and can be converted into legal tender.[11] For example, cryptocurrencies like bitcoins can be purchased using pounds sterling and can be converted into pounds sterling, depending on the needs of the owner.

---

[6] On the development of cryptocurrencies, see Clarke, J., ‘The Long Road to Bitcoin’ in Narayanan, A. et al. (eds.), *Bitcoin and Cryptocurrency Technologies: A Comprehensive Introduction* (Princeton University Press, Princeton and Oxford, 2016).

[7] For instance, see Jones, C., ‘Digital currencies and organised crime update’ *Financial Regulation International* 30 April 2018; van Wegberg, R., Oerlemans, J.J., and van Deventer, O., ‘Bitcoin money laundering: mixed results?: An explorative study on money laundering of cybercrime proceeds using bitcoin’ (2018) 25(2) *Journal of Financial Crime* 419.

[8] An updated list is available at <https://www.coinlore.com/all_coins>.

[9] Some authors talk about a ‘cryptocurrencies’ revolution’. See Pak Nian, L. and Lee Kuo Chuen, D., ‘Introduction to Bitcoin’ in Lee Kuo Chuen, D. (ed.), *Handbook of Digital Currency: Bitcoin, Innovation, Financial Instruments, and Big Data* (Academic Press/Elsevier, London, 2015) at p.25.

[10] See European Central Bank, *Virtual currency schemes – a further analysis* (February 2015) and *Virtual currency schemes* (October 2012).

[11] See *ibid.* (2015, at pp.23-28) and (2012, at pp.13-20).

This definition of cryptocurrencies shows how, by their very nature, these virtual currencies can potentially be used as a tool for money laundering purposes. As an example, because cryptocurrencies can be exchanged for legal tender, they can be easily involved in different phases of money laundering (placement, layering, and integration).[12] Moreover, some cryptocurrencies like bitcoins have significantly increased in value.[13] Although subject to some fluctuations, this high value increases the risk of their use in illicit activities like money laundering because they might represent a viable and profitable medium for criminals that need to launder large sums.[14] Both of these features are relevant in real estate transactions. Indeed, given their high value cryptocurrencies might be used to purchase high-end properties for money laundering purposes. Moreover, due to their versatility as financial tools (that is, the possibility to be exchanged for legal tender), they might be easily used to integrate the proceeds of money laundering activities into sources of legitimate wealth, like real estate properties.

In recent years, there has been an increasing recourse to cryptocurrencies for money laundering.[15] A famous case was that of Charlie Shrem, founder of BitInstant, who was convicted for having facilitated money laundering involving bitcoin through the dark web online market Silk Road.[16] Research by Foley et al. confirms the use of cryptocurrencies for the commission of crimes (including money laundering).[17] This research estimates that 'approximately one-quarter of all users (25%) and close to one-half of bitcoin transactions (44%) are associated with illegal activity'.[18] This finding sheds a further negative light on cryptocurrencies and their potential use for illicit activities.

There are two aspects of the use of cryptocurrencies that pose particular risks for the control of money laundering activities in the UK real estate market. These are: (i) the anonymity linked to cryptocurrencies transactions; and (ii) the lack of traditional

---

[12] See Brenig, C., Accorsi, R., and Müller, G., 'Economic analysis of cryptocurrency backed money laundering' (2015) Paper 20 *ECIS 2015 Completed Research Papers* 1.

[13] On 17 December 2017, bitcoin reached the value of $19,783 per bitcoin.

[14] See Brown, S.D., 'Cryptocurrency and criminality: The Bitcoin opportunity' (2016) 89(4) *The Police Journal: Theory, Practice and Principles* 327.

[15] See Dostov, V., and Shust, P., 'Cryptocurrencies: an unconventional challenge to the AML/CFT regulators?' (2014) 21(3) *Journal of Financial Crime* 249.

[16] See Hern, A., 'Bitcoin entrepreneur sentenced to two years in prison' *The Guardian* 22 December 2014.

[17] See, for instance, Foley, S., Karlsen, J.R., and Putniņš, T.J. 'Sex, drugs, and bitcoin: How much illegal activity is financed through cryptocurrencies?' (2018) <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3102645>.

[18] *Ibid*., at p.2.

intermediaries, like financial institutions and banks. Digital currencies transactions are characterized by a high-level of anonymity.[19] Their configuration ensures the anonymity of the individuals involved, independently from the type of transaction and the amount of money concerned. Generally speaking, cryptocurrency transactions are based on a peer-to-peer system where there is a person who acts as the sender of the currency and another user as the receiver.[20] In the majority of cases (including the Bitcoin system), the transactions are publicly available because they are registered in a public ledger called Blockchain, but the identity of the users involved is hidden. Some talk about 'pseudonymity' rather than anonymity because the real identity of the users is unknown but they are still identified in the cryptocurrency transaction with a public key.[21]

The anonymity of cryptocurrencies is one of the most concerning features with regards to money laundering potential[22] and the challenges that real estate agents might encounter when performing AML checks. Indeed, money launderers could potentially hide their identity behind the technical features of cryptocurrencies transactions and try to avoid attempts of enforcement authorities to identify them.[23] In this regard, four elements of risk need to be considered. First, although the transactions are publicly available, it is very difficult (although not impossible) for AML enforcement agents to discover the identity of the users involved.[24] Therefore, this becomes an issue of traceability of transactions involving cryptocurrencies and the identification of the users of this system. Second, the level of anonymity of a cryptocurrency transaction varies depending on the type of cryptocurrency involved (some

---

[19] See Narayanan, A. et al. (eds.), *Bitcoin and Cryptocurrency Technologies: A Comprehensive Introduction* (Princeton University Press, Princeton and Oxford, 2016) at pp.138ff.

[20] On this mechanism, see Narayanan, A. et al. (eds.), *Bitcoin and Cryptocurrency Technologies: A Comprehensive Introduction* (Princeton University Press, Princeton and Oxford, 2016) at pp.51-75; Pak Nian, L. and Lee Kuo Chuen, D., 'Introduction to Bitcoin' in Lee Kuo Chuen, D. (ed.), *Handbook of Digital Currency: Bitcoin, Innovation, Financial Instruments, and Big Data* (Academic Press/Elsevier, London, 2015) at pp.15ff.

[21] See Brito, J. and Castillo, A., *Bitcoin: A Primer for Policy Makers* (2nd ed., Mercatus Centre George Mason University, Arlington, 2013) at p.7.

[22] See Reynolds, P., 'Tracking digital footprints: anonymity within the bitcoin system' (2017) 20(2) *Journal of Money Laundering Control* 172.

[23] See ibid., at p.177.

[24] See Irwin, A.S.M. and Turner, A.B., 'Illicit Bitcoin transactions: challenges in getting to the who, what, when and where' (2018) 25(1) *Journal of Money Laundering Control* 1.

cryptocurrencies, such as Monero, guarantee higher anonymity than others)[25] and on the use of specific routers (such as Tor) that permit users to hide their IP addresses.[26] This last element is becoming an increasingly problematic barrier for the identification of money launderers involved in a transaction. Third, money launderers can also rely on a variety of services that permit them to achieve an even higher level of anonymity, concealing not only their identity (and IP addresses) but also the transaction in which they are involved.[27] For instance, 'mixing' is a viable method that guarantees to break down the transaction into multiple parts and to mix the cryptocurrencies used among other users.[28] Fourth, the technical features mentioned above necessitate the public and private actors involved in AML to modify their strategies substantially, relying on financial and logistic resources (such as IT services and personnel) that might not be available and up to the task.[29] This means that traditional methods to prevent and fight money laundering are not always effective, and only a minority of AML actors has the capacity to tackle money laundering involving cryptocurrencies. All the above-mentioned issues are apparent in the context of property transactions, especially when real estate agents need to conduct checks on the identity and source of funds of the users.

A second important aspect of cryptocurrencies that creates money laundering risks especially in real estate transactions is the lack of some pivotal traditional intermediaries, like banks or financial institutions.[30] Usually, no other individuals are involved in a cryptocurrencies' transaction except for the sender and the receiver, and the transfer of cryptocurrencies is immediate and direct. This fact raises concerns for AML for three reasons. First, AML customer due diligence (CDD) checks on the transaction can be null or very limited. Indeed, the subjects involved in the transaction are fewer than in ordinary transactions (since banks might be excluded) and the transaction is then evaluated from an

---

[25] See O'Driscoll, A., 'Monero vs zcash vs dash: which is the most anonymous cryptocurrency?' *Comparitech* 4 April 2018.

[26] See Girasa, R., *Regulation of Cryptocurrencies and Blockchain Technologies: National and International Perspectives* (Palgrave MacMillan, London, 2018) at p.152.

[27] On the various services available, see Narayanan, A. et al. (eds.), *Bitcoin and Cryptocurrency Technologies: A Comprehensive Introduction* (Princeton University Press, Princeton and Oxford, 2016) at pp.138ff.

[28] See ibid., at pp.151ff.

[29] See Tziakouris, G., 'Cryptocurrencies: A forensic challenge or opportunity for law enforcement? An INTERPOL Perspective' (2018) 16(4) *IEEE Security & Privacy* 92.

[30] See Harwick, C., 'Cryptocurrency and the Problem of Intermediation' (2016) 20(4) *The Independent Review* 569.

AML perspective only by some actors (such as real estate agents and solicitors). This fact reduces the possibilities to verify the legitimacy of the transaction, the identity of the individuals involved, and the source of funds.

Second, the fewer the subjects involved, the less information can be shared. Although sharing information is already problematic in conventional transactions, with the use of cryptocurrencies this becomes even more complicated. This might be detrimental for setting up effective AML strategies that require intelligence cooperation among different sectors and subjects. Moreover, it might create additional problems to those subjects (including real estate agents) that do not have deep knowledge about cryptocurrencies transactions and how to gather useful information on the individuals involved.

Finally, sometimes in cryptocurrencies transactions traditional intermediaries are substituted by other subjects that perform collateral activities necessary for the completion of the transaction.[31] As an example, in the Bitcoin system all transactions are verified through the work of 'miners'.[32] Or there might be the intervention of subjects that act as exchange providers or online wallet providers to support the users of the transaction providing them with online services that enhance cryptocurrencies' exchanges.[33] As will be discussed in the following section, some of these subjects pose additional challenges to the application of AML legislation in the UK real estate market because not all of them are regulated by the relevant legislation.

3. Cryptocurrencies transactions in the UK real estate market: approaches and issues

Based on the foregoing, this section will discuss the significant and distinct challenges that anonymity and the lack of traditional intermediaries pose to real estate agents when conducting the CDD checks required by the 2017 Money Laundering Regulations. Real estate agents have to deal with very similar issues that other actors encounter when involved in

---

[31] See Motsi-Omoijiade, I.D., 'Financial Intermediation in Cryptocurrency Markets – Regulation, Gaps and Bridges' in Lee Kuo Chuen, L. and Deng, R. (eds.), *Handbook of Blockchain, Digital Finance, and Inclusion* (vol. 1, Academic Press/Elsevier, London, 2017) 207.

[32] When a transaction is verified these miners are rewarded with the issue of 50 'new' bitcoins.

[33] For an analysis, see Motsi-Omoijiade, I.D., 'Financial Intermediation in Cryptocurrency Markets – Regulation, Gaps and Bridges' in Lee Kuo Chuen, L. and Deng, R. (eds.), *Handbook of Blockchain, Digital Finance, and Inclusion* (vol. 1, Academic Press/Elsevier, London, 2017) 207.

cryptocurrencies transactions (including financial institutions) but with the additional burden of performing CDD checks in a sector (the real estate market) that is not fully prepared for this task.

As part of a wider project on AML, 17 interviews have been conducted with UK real estate agents and compliance officials about their AML obligations, with a specific question about the use of cryptocurrencies in real estate transactions. The interviews revealed some interesting findings on the topic, which can be divided into three categories: (i) awareness of the issue and understanding of the phenomenon; (ii) general approach to the use of cryptocurrencies; and (iii) specific approach in light of AML obligations.

Real estate agents are generally aware of the use of cryptocurrencies in various sectors, including their own, and they have knowledge of the existence of a plurality of cryptocurrencies.[34] The interviewees consider the use of cryptocurrencies a huge issue for the UK property sector and they see it as a growing phenomenon that requires careful consideration, both from a legislative and policy point of view.[35] However, this generic awareness is not accompanied by a full understanding of what cryptocurrencies are and how they work. For instance, few interviewees know the specifics of the Blockchain system and how a transaction is conducted using bitcoins.[36] The majority of the real estate agents interviewed has a vague understanding of the phenomenon, and this is often linked to indirect information gathered through the media, rather than a specific technical knowledge or training.[37]

This first finding is significant because it indicates that (although not representing the whole sector) the interviewees have no comprehensive knowledge of this complex phenomenon. Despite the broad range of information that they might have gathered directly or (mostly) indirectly on the topic, their understanding of cryptocurrencies is quite vague and imprecise. This first worrying element needs to be considered carefully when analysing the money laundering risks posed by cryptocurrencies in the UK real estate market. Indeed, with no comprehensive information and proper knowledge, real estate agents are at risk of being

[34] E.g. Interviews 2; 7; 8; 9; 10; 12; 13; 14; 15.

[35] E.g. Interviews 7; 10; 13; 14.

[36] E.g. Interview 7.

[37] E.g. Interview 13.

targeted by money launderers infiltrating the system by relying not just on willing facilitators, but also on less informed actors in the sector.[38]

The above finding is linked to the general approach adopted by real estate agents towards the use of cryptocurrencies in property transactions. In this regard, the interviewees' opinion varies and there is a clear dichotomy between those that have not dealt with cryptocurrencies transactions (the majority of interviewees) and those that have concluded or are in the process of concluding such transactions, for instance with the use of bitcoins. In this sense, many interviewees say that they have not had any experience yet of the use of cryptocurrencies to conclude real estate transactions,[39] and they have not heard of other real estate professionals involved in these.[40] A minority of interviewees recalls cases in which they have been directly involved in real estate transactions where cryptocurrencies have been used, but they all refer to the need to use 'considerable caution'[41] when involved in these transactions and some talk of a case-by-case approach to be adopted.[42]

This is an interesting aspect of the relationship between cryptocurrencies and real estate agents because it indicates that the phenomenon is still in its embryonic phase and it is not widespread as in other sectors, such as the financial or the luxury goods markets.[43] However, despite the few property cryptocurrencies transactions concluded, the growing interest in the cryptocurrencies market and their use for illicit purposes might become a heightened concern in the future in the UK real estate market, as has occurred in the U.S. and Canada.[44] Moreover, the lack of experience of real estate agents with this type of transaction indicates the existence of another gap in the UK AML system: the risk of having untrained, inexperienced professionals deal with property transactions that are more complex due to the different, more challenging medium involved.

---

[38] This is similar to the lack of information and appropriate training that can affect financial investigators. See Chave, D., 'Proceeds of crime training: bringing it up to date' (2017) 24(3) *Journal of Financial Crime* 437.

[39] E.g. Interviews 8; 12.

[40] E.g. Interview 2.

[41] Interview 10.

[42] E.g. Interview 7.

[43] For an analysis on the use of cryptocurrencies in the real estate sector, see Wolfson, R., 'Bitcoin Won't Encourage Cryptocurrency for Real Estate, But Cryptoeconomics Will' *Forbes* 21 May 2018.

[44] See in the U.S., 'Bitcoin fever hits US real estate market' *The Straits Times*, 14 January 2018; in Canada, Dingman, S., 'Ontario regulator probes cryptocurrency use in real estate' *The Globe and Mail* 22 February 2018.

A further relevant point that emerges from the interviews relates to the reasons given by real estate agents who have decided not be involved in cryptocurrencies transactions. A major explanation here is the lack of trust in the system of cryptocurrencies and, in some cases, the fear of being involved in illicit activities. Some say that 'it is better to be safe than sorry';[45] others talk of a 'minefield'[46] and something 'terrifying'.[47] At first sight, all the negative opinions expressed seem to suggest a clear opposition of real estate agents towards the use of cryptocurrencies. In particular, these views indicate a strong negative connotation of cryptocurrencies in property transactions.

However, a closer analysis reveals that the negative comments might be due to the two points previously considered: a lack of full understanding of the phenomenon and a lack of engagement with it. In other words, the opposition and carefulness attached to cryptocurrencies transactions might be caused by a fear of the 'unknown', rather than a proper evaluation of the pros and cons of these transactions.[48] This aspect is pivotal for understanding a second issue of the UK AML system: the rejection *a priori* of a viable tool for transactions (cryptocurrencies) that is not necessarily linked to crime, but that is treated as such because of a lack of knowledge and experience. The significance of this gap becomes even clearer when considering the specific approach that real estate agents adopt when dealing with these transactions.

Real estate agents who have been involved or are willing to be involved in property transactions with cryptocurrencies generally think that the use of these currencies is a red flag for money laundering.[49] In particular, the transaction might become suspicious when large non-fully traceable sums are transferred with cryptocurrencies, like bitcoins.[50] Some interviewees consider these transactions to be 'dodgy',[51] and they think that there might be many money laundering challenges arising from the use of digital currencies in the real estate market. Major concerns are expressed in relation to two aspects: (i) the anonymity of the

---

[45] Interview 12.

[46] Interview 8.

[47] Interview 8.

[48] Similarly, this happens with regulation choices made by governments worldwide. See the Law Library of Congress, 'Regulation of cryptocurrency around the world' (<https://www.loc.gov/law/help/cryptocurrency/cryptocurrency-world-survey.pdf>, June 2018).

[49] E.g. Interviews 10; 13.

[50] E.g. Interview 7.

[51] Interview 7.

transactions;[52] and (ii) the increasing digitalization of the market and the lack of personal interaction with real estate professionals.[53]

Several interviewees are worried about the impossibility of fulfilling their AML obligations, especially the CDD checks that require the identification of the parties involved in real estate transactions and the assessment of the nature and purpose of the transactions.[54] They argue that with certain digital currencies (such as Ripple) it would be impossible to identify the customers involved and to 'evidencing the source of funds'.[55] As for the lack of personal contact in the transaction, some real estate professionals fear that 'this might actually assist money launderers in the future'[56] because it will reduce the need for 'physical' lawyers and valuers.[57]

This fact creates issues for those obliged to carry out CDD checks under the UK 2017 Money Laundering Regulations, as they face many difficulties in knowing the real identity of those behind a transaction. In particular, two main factors negatively affect the checks by real estate agents over digital currencies transactions. First, real estate agents do not necessarily have the technical skills to deal with these transactions. At present, UK legislation does not regulate cryptocurrencies (whether in the property market or other sectors), therefore, there is no obligation to undergo specific training or employ a dedicated money laundering officer for digital currencies transactions.

Second, real estate agents do not necessarily have the resources to perform in-depth CDD checks on the identity of parties that want to buy real estate with digital currencies. The checks over cryptocurrencies transactions require specialised IT software and personnel and these might be available only at a high cost for real estate agencies. Although the identity of customers might be traceable, following the chain of transactions linked to a certain public address, many users disguise their identity using routers (such as Tor) that hide their IP addresses. Thus, real estate agents cannot fully assess and verify the identity of customers that use cryptocurrencies and this increases the risk of money laundering for the entire property sector.

---

[52] E.g. Interviews 7; 9.

[53] E.g. Interview 10.

[54] E.g. Interviews 7; 8; 9; 10.

[55] Interview 9.

[56] Interview 10.

[57] Interview 10.

As discussed in the previous section, cryptocurrencies systems avoid the use of mediators and financial institutions or banks as third parties in the transaction. The underpinning idea is to create ‘peer-to-peer’ systems (like Bitcoin) where there are no costs associated with the involvement of a third party and no intermediate passages between the main parties.

The absence of traditional third parties in cryptocurrencies transactions has a major effect in relation to AML CDD checks and the role of real estate agents. Indeed, real estate agents (alongside solicitors) would be the only subjects who conduct the checks over the customers’ identity for property transactions. In normal property transactions real estate agents act in a multilateral AML system in which the same transaction and customer are subject to checks by a plurality of actors, including banks and real estate professionals. With cryptocurrencies real estate agents are one of the few actors doing CDD checks and the possible information gaps cannot be filled by AML agencies through cross-references among different sectors. In other words, AML national agencies could not use the additional information gathered by the actors of other sectors (like banks) because these would not be involved in any ‘business relationship’ with the parties that want to trade in digital currencies. This is a relevant issue for real estate agents because the burden of the CDD is only partially shared with other actors (for instance solicitors) and in this sense, they become one of the few groups of actors of the AML system. This fact increases the level of responsibility of real estate agents and their importance as key gatekeepers of the UK real estate market, albeit there is not a necessary, consequential increase of support (financial, logistic, informative) by national agencies.

In conclusion, the use of cryptocurrencies in the UK property sector is still a relatively new phenomenon, and few real estate agents have been involved in these transactions. However, the fact that cryptocurrencies are not yet properly regulated[58] and carry a negative reputation is a dissuasive factor for real estate agents to become involved in them. The approach of real estate agents is cautious and it seems to be strictly linked to the need to receive more guidance and information from relevant national agencies and supervisory bodies. This aspect will be discussed in the next section of this chapter.

---

[58] Recently, they have been evaluated at European Union level and by some scholars. See European Parliament *Virtual currencies and terrorist financing: assessing the risks and evaluating responses*, PE604.970, May 2018; Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018, OJ L156/43; Egan, M., ‘A Bit(Coin) of a problem for the EU AML framework’ in King, C., Walker, C., Gurulé, J. (eds.), *The Palgrave Handbook of Criminal and Terrorism Financing Law* (Palgrave MacMillan, London, 2018).

4. Some considerations on future legislation and shared governance

It is clear that there are still many gaps and unanswered questions that need to be considered by the UK legislator. These gaps also involve considerations of appropriate legislative and policy action that should be taken in the near future to tackle the phenomenon effectively and reduce the possibility of cryptocurrencies being used to facilitate money laundering in the UK property market.

As for the legislative response, there is a need for comprehensive regulation of cryptocurrencies that would cover all sectors of the UK economy, including the real estate market. Real estate agents think that at present there is a problematic lack of regulation and that substantial work is required by the Government.[59] Despite the general concerns associated with the use of cryptocurrencies in the sector, the idea is that future legislation should not include a blanket ban on them since they can also provide some benefits.[60] On the contrary, cryptocurrencies transactions need to be regulated with effective provisions, especially in light of the possible future challenges (including Brexit) for the UK AML system.

Any future legislation on the topic should also include training requirements for real estate professionals. Some interviewees suggest that more guidance should be provided on the topic by the Government, HMRC, NCA, and other national agencies that deal with the real estate market.[61] This guidance should clarify some important aspects of the use of digital currencies to buy real estate, such as how real estate agents can perform CDD checks effectively and how they can trace the source of funding. Moreover, national agencies should not simply suggest real estate agents to avoid these types of transactions, but they should be able to provide more help to real estate professionals who want to conclude transactions using cryptocurrencies.[62]

Regarding the future perspectives, not all real estate agents interviewed have a clear idea of the future of cryptocurrencies in the UK economy in general and the property market

[59] E.g. Interview 10.

[60] E.g. Interviews 9; 10.

[61] E.g. Interviews 8; 13; 14.

[62] E.g. Interview 9.

specifically. Some argue that this will be a huge issue for the real estate market.[63] Others think that the Blockchain technology might be an important tool to improve the sector and speed up transactions.[64] Others are waiting to see how things will develop and how the Government will regulate the phenomenon.[65] These opinions indicate that there are two points of interest for real estate agents that will be relevant in the future of cryptocurrencies transactions in the UK property market.

First, real estate agents are keen to understand what will happen with an increased use of cryptocurrencies in property transactions. Some professionals seem to be more positive than others, but there is a certain level of growing expectation linked to the future of these transactions. Moreover, despite the negative comments mentioned previously, there is also a positive interest in these types of transactions, especially for the benefits that they might bring to the sector and the professionals involved in it. This perspective indicates the need for a balanced approach in the future regulation of cryptocurrencies in the real estate market (and in other sectors). This means that there is a need, on the one side, to guarantee adequate checks on the transactions carried out in the sector to avoid illicit activities and prevent money launderers from profiting from it; and, on the other side, to allow the use of innovative methods of payment that might facilitate transactions and create a more streamlined process for the business.

Second, attention is put on the legislative approach that the UK Government should take with regards to cryptocurrencies in general, and their use in the real estate market specifically. As discussed above, real estate agents have expressed many concerns about the legislative gaps existing in the UK AML system on the topic and the lack of clarity on the issue by institutional agencies. While at present estate agents are left in a legislative limbo, there are certain expectations that in the future the phenomenon will be properly regulated and precise guidelines will be provided to all those involved in the sector. This requires not only a legislative response that will address the obligations of real estate agents when dealing with cryptocurrencies, but also adequate policies that will act as points of reference for the professionals to avoid inconsistency and loopholes.

Detailed regulation of cryptocurrencies is needed in specific sectors of the UK economy, including the real estate market. Future regulation should not ban the use of

[63] E.g. Interview 14.

[64] E.g. Interview 10.

[65] E.g. Interview 9.

cryptocurrencies, but it should provide for a balanced legislative and policy framework, where these currencies can be used following precise provisions and under the control of AML supervisory bodies.[66] Future legislation should address the two main problems of the use of cryptocurrencies in the real estate market: (i) the anonymity of the transactions, where the parties' identity is unknown or is difficult to be verified; and (ii) the limited number of traditional intermediaries subjected to AML obligations (such as banks) and the challenges arising for AML checks.

Given the lack of knowledge about the phenomenon, the diffidence that accompanies real estate transactions involving cryptocurrencies, and the complexity of these transactions (particularly to conduct CDD checks), training should be provided for real estate agents (for instance by HMRC). These activities should be designed to improve the technical skills and capacity of real estate professionals (especially real estate agents) to deal with cryptocurrencies transactions and to carry out proper CDD checks in these cases, by identifying the parties, and assessing the nature and source of funds. Moreover, the Government and relevant national agencies should guarantee financial and logistic assistance to real estate agents that do not have the necessary resources by way of personnel and IT services to conduct AML CDD checks over real estate transactions where cryptocurrencies are used (particularly to identify the customer, the source of funds, the beneficial owner in these highly-anonymous and IT complex transactions). This further aid should be tailored considering the size and financial status of the real estate agencies requiring such assistance and the existence of IT services that could be used by the agencies in support of their activities.

The regulation of property transactions involving cryptocurrencies should also become the occasion for developing a model of shared governance.[67] In the UK a good model of governance should include both the action of national agencies involved in AML activities and the direct participation of real estate agents that conduct the CDD checks provided in the 2017 Money Laundering Regulations. Shared governance does not mean that real estate agents will be put at the same level as the legislator in the norm-making process, but it refers to the possibility to be heard and to have their view properly considered. This would be

[66] Interestingly, similar considerations are made by the Treasury Committee in *Crypto-assets (Twenty-Second Report of Session 2017–19)* (HC 910) at pp.16ff.

[67] On governance and cryptocurrencies, see Campbell-Verduyn, M., 'Bitcoin, crypto-coins, and global anti-money laundering governance' (2018) 69(2) *Crime, Law and Social Change* 283.

similar to what happens for instance in the financial sector, where there is a growing relevance of private actors and 'the agents in charge of the 'doing' end up shaping the content of governance too'.[68]

In this regard, it is posited that real estate agents might make two distinct contributions to the UK AML system. On the one side, real estate agents should be consulted by national authorities in different phases of the development of the AML system. In particular, they should be involved in the pre-legislative phase (as already happens with the opening of public consultations) but also in the concrete implementation stage. This means that there should be a process of consultation with relevant stakeholders (the real estate professionals) on a regular basis, in which there is an assessment of the practice of AML in the specific sector of relevance. On the other side, real estate agents should be actively involved in the policy-making process as effective gatekeepers of the property sector. In contrast to what happens with the 2017 Regulations, AML obligations should be conceived not as top-down provisions, but as shared-responsibility norms that identify private actors (including real estate agents) as 'active' and not 'passive' recipients of national legislation. This means that real estate agents should be able to inform the provisions that relate to their sector and activities and they should be able to influence with their practice the decisions taken at national level.

The shared governance model should apply to all property transactions in the UK, but, as explained in this chapter, it would be particularly relevant for real estate transactions involving cryptocurrencies. Indeed, here the complexity of the operation requires a direct control by real estate agents as the first subjects that money launderers encounter in the transaction (alongside solicitors). Therefore, there is a need for more cooperation between national authorities and the professionals that deal with property transactions on a daily basis.

5. Conclusion

This chapter has critically analysed the use of cryptocurrencies in the UK real estate market and has discussed some of the money laundering risks associated with these transactions. In particular, it has examined relevant points that have emerged from the literature on cryptocurrencies, pointing out their most problematic features that might be of concern for the UK AML system. Moreover, attention has been given to the specific issues emerging from the

[68] Tsingou, E., 'New governors on the block: the rise of anti-money laundering professionals' (2018) 69(2) *Crime, Law and Social Change* 191, at p.204.

perspective of real estate agents interviewed for this study, considering important aspects of their AML obligations that might be undermined or complicated by the use of cryptocurrencies.

From the foregoing study, the author advances two ideas. First of all, the use of cryptocurrencies in the UK real estate market is a complex phenomenon that cannot be either disregarded or overestimated, given also the lack of official data on its extent.[69] It requires necessary attention by national authorities with a balanced approach, meaning regulation capable of promoting the positive aspects of cryptocurrencies transactions and limiting possible abuses and illicit activities. To this end, the national legislator should carefully assess the features of cryptocurrencies that make them attractive to money launderers, with a specific focus on the real estate sector. In particular, attention should be given to two aspects discussed in the chapter. The first aspect concerns the structural elements of cryptocurrencies. These include the issue of anonymity and the lack of traditional intermediaries involved in the transaction. These elements should be tackled by the legislator to avoid loopholes and help real estate professionals in dealing with cryptocurrencies. The second aspect relates to the practical approaches of real estate agents to transactions that include cryptocurrencies. In this regard, the legislator should consider various aspects: from the procedure to be followed, to the training; from the financial and logistic sources at the disposal of real estate agents, to the guidance provided by the HMRC and NCA.

Second, the approach to property transactions involving cryptocurrencies should become the occasion for developing a model of shared governance. This would see both the participation of national agencies and real estate agents that have to perform the CDD checks provided in the 2017 AML Regulations. This model of shared governance should not create equal obligations and level of responsibilisation on the institutional actors and the real estate professionals. On the contrary, it should lead to a distribution of functions and duties between the two, but with the possibility for real estate agents to have their practice and opinion properly considered. In so doing, the fight against money laundering would see a better, more informed legislation and policy system put in place, with a combination of theoretical and practical considerations. As a final caveat, it is worth noting that the shared governance model proposed is not intended as a substitute of the existing UK AML framework, but as a part of it. This means that the model should work as a defined part of the AML framework, integrated as an additional section or regulation to the 2017 AML Regulations. In other

[69] A general analysis on the use of cryptocurrencies in other sectors and some data can be found in the Treasury Committee, *Crypto-assets (Twenty-Second Report of Session 2017–19)* at pp.5-7; 12-15.

words, the new model of shared governance would improve the UK AML framework with a suitable transition from *lex lata* (the law as it exists) to *lex ferenda* (the law as it should be).