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Cryptocurrencies Transactions in the UK Real Estate Market: Threat or Opportunity for Anti-Money Laundering?

In recent years, the use of cryptocurrencies in various sectors of national economies has become extremely popular, attracting praise and criticism. These transactions have sparked debate about the potential money laundering risks associated with the use of cryptocurrencies. In particular, these concerns pertain to their high-level anonymity and the danger of criminal infiltration of important economic sectors such as the real estate market. However, the discussion on the topic is quite scattered and unsatisfactory, with many unanswered questions and legislative initiatives that have only partially tackled the issue. This chapter focuses on the use of cryptocurrencies in the UK real estate market, assessing some of the critical points that emerge from their employment in property transactions. The UK real estate market is a particularly relevant case study. Indeed, recently, it has been at the centre of debate for its vulnerability to money laundering practices and the challenges it presents for implementing AML regulation. The author addresses the question of whether the use of cryptocurrencies represents a threat or an opportunity for the AML regime concerning the property sector. This study aims to identify key aspects that future legislative and policy actions should consider to strike a balance between using cryptocurrencies and the need to protect the real estate market from criminal activities.

Keywords: money laundering; real estate; cryptocurrencies; AML; United Kingdom

1. Introduction

Since the creation of Bitcoin in 2008,[1] cryptocurrencies have become a viral phenomenon employed in various sectors of national economies, from banking and financial investments to daily consumers' purchases.[2] Their innovative underpinning idea, i.e. to rely on a decentralised system of payments and financial exchanges using 'blockchain' technology (as exemplified by Bitcoin),[3] has been recognised by many as a revolutionary step and welcome news in a globalised and hyper-connected world.[4] The use of cryptocurrencies has also advanced the idea of finding alternatives to traditional transactions in the financial sector and other markets, such as the real estate.[5] In this sense, some scholars have highlighted the advantages derived from the use of cryptocurrencies and blockchain to promote 'democratisation of wealth',[6] through which subjects usually excluded from credit can be part of a transaction.[7]

Given this context, the (apparently) informal possibility to engage in highly profitable economic exchanges, combined with non-traditional means, has helped create a 'mythical' perception of cryptocurrencies as the expression of a new era in worldwide economies.[8] For instance, when looking at the real estate sector, it is argued that cryptocurrencies and blockchain could 'transform' this market[9] and provide an 'added value' to its transactions.[10] Indeed, they could overcome some of the existing issues with real estate transactions, such as a lengthy process, high costs, and lack of transparency. Therefore, despite the very different approach adopted in cryptocurrencies transactions, the advantages and benefits would provide an interesting opportunity for relevant stakeholders in a specific sector like the real estate market.

Many have praised the use of cryptocurrencies as a good development, but not all have reacted favourably to it. For instance, some national authorities have banned their use or they have not recognised them.[11] Others have started debating the necessity to regulate cryptocurrencies to halt their possible illicit use and address the need to protect individuals

[1] See Nakamoto (2008).
[2] For an analysis of the impact of cryptocurrencies on national economies, see Taskinsoy (2019); Birch (2015).
[3] For a thorough explanation of cryptocurrencies and how they work, see Daskalakis and Georgitseas (2020); Felten et al. (2016); Kuo Chuen Lee (2015).
[4] See Yassine et al. (2017); Kelly (2014).
[5] See Garcia-Teruel (2020); Latifi et al. (2019).
[6] See Chohan (2019); Scott (2016).
[7] However, some scholars have criticized this aspect, talking of a 'populist' drift. For instance, Gikay and Stanescu (2019).
[8] See Bratspies (2018); Corradi and Höfner (2018).
[9] See Shepard (2020); Heil (2018); Kalyuzhnova (2018).
[10] Nijland and Veuger (2019), p. 22.
[11] For instance, China, some states of South America and Africa. For an analysis of the regulation worldwide, see Blemus (2017).

and national interests.[12] Moreover, the lack of a shared definition of cryptocurrencies and a scattered regulation has created issues in tackling financial crimes committed through them, like money laundering. Only in recent years, national authorities (including the UK) have started a proper discussion on the qualification of cryptocurrencies (for instance, for tax purposes)[13] and the need to encompass them in AML regimes to combat illicit transactions in various sectors, including the real estate market.[14] However, the process is still ongoing, with inconsistent results and various legislative and policy initiatives.[15] As this chapter will discuss, this is problematic because it leaves the door open to criminals to infiltrate the legitimate economy and exploit the legislative gaps in lucrative and particularly appealing sectors, like the real estate market.

The growing employment of cryptocurrencies in a wide range of transactions (from buying pizzas to investment opportunities) has undoubtedly changed the dynamics of business relationships in key markets.[16] However, to a certain extent, it has also increased the complexity of transactions and the risk of criminal activities in already problematic sectors. Recently, cryptocurrencies have also involved the real estate market with the acquisition of properties using these unconventional methods. In 2017, the first residential properties in the world were sold using blockchain technology and cryptocurrencies.[17] In December 2017, the UK the real estate developer GoHomes sold a £350,000 house in Essex to a Bitcoin miner and another £595,000 property in Hertfordshire.[18] Since then, cryptocurrencies real estate transactions have expanded geographically and value-wise, not being limited to the UK.[19] These transactions have sparked debate about the money laundering risks associated with the use of cryptocurrencies for their high-level anonymity and the danger of criminal infiltration of a key economic sector such as the real estate market.

Scholars, national legislators, and policymakers have discussed worldwide the connection between money laundering and cryptocurrencies, highlighting the positive and negative effects of cryptocurrencies in national economies, including the property sector.[20] The result has been quite scattered and unsatisfactory, with many unanswered questions and legislative initiatives that have only partially tackled the issue. In particular, there is a lack of attention given to the phenomenon in the real estate sector (including the UK). In this sense, three general aspects need to be considered when researching the topic and analysing it.

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[12] See Girasa (2018).
[13] See Solodan (2019).
[14] See Dostov and Shust (2014).
[15] See Shanaev et al. (2020).
[16] For a discussion, see Hooper and Holtbrügge (2020); Dierksmeier and Seele (2018).
[17] See Heaven (2017).
[18] See Harley (2017).
[19] See New.au.com (2018); The Straits Times (2018).
[20] See Ramsey (2020); Zavoli (2020); Albrecht et al. (2019); Houben and Snyers (2018).

First, there is scarce legal literature on money laundering and cryptocurrencies and the use of cryptocurrencies for real estate transactions. This is problematic because although the topic relates to important legal and criminological concepts, most studies derive from non-legal disciplines which do not necessarily consider pivotal legal issues of the phenomenon. Second, there is almost no literature that evaluates the use of cryptocurrencies in real estate through an AML lens. This means that the research done on the topic does not link the three concepts, and it considers them individually or in pairs. However, as it will be made clear in this chapter, this approach fails to address a phenomenon that can disrupt AML efforts and jeopardise AML legislation. Finally, and linked to the second point, there is a gap in the literature about the pros and cons of cryptocurrencies transactions in the real estate market. This means that AML scholars usually consider cryptocurrencies only from a negative perspective, with no consideration of the opportunities they might bring to fight money laundering in particular sectors, like the real estate market.

This chapter aims to fill the gaps identified above and advance some considerations on a new way of looking at the topic. The author will analyse the use of cryptocurrencies in the UK real estate market, assessing some of the critical points that emerge from the debate on their employment in property transactions. In so doing, the author seeks to answer whether the use of cryptocurrencies represents a threat or an opportunity for AML regimes concerning the property sector. To this end, this study includes a critical evaluation of the UK anti-money laundering (AML) regulation with an assessment of the existing literature and legislation on the topic. The author examines the features of cryptocurrency and real estate sectors and their relationship to understand their problematic aspects for AML. The more traditional consideration of cryptocurrencies in property transactions will be redefined using an AML lens. This means that the chapter will advance some recommendations based on an original theoretical framework that the scholarship has not employed so far. Ultimately, this study aims to identify pivotal aspects of AML that future legislative and policy-oriented initiatives should focus on striking a balance between using cryptocurrencies and protecting the real estate market from unlawful criminal interventions.

This chapter is divided into two parts, alongside an Introduction and a Conclusion. The first part is dedicated to a critical examination of the key features of the and real estate market and its most problematic aspects from an AML perspective (section 2.1.). Moreover, this part discusses the use of cryptocurrencies in property transactions as currencies and models, using blockchain technology, and the potential benefits that this could bring to the real estate sectors and its actors (section 2.2.). The second part of the chapter builds on these findings to analyse the relationship between cryptocurrencies and real estate. Here, the author discusses the possible threats and opportunities for the UK AML regime based on four selected themes (section 3.1.). Moreover, there is an analysis of the solutions proposed in the literature to find a balance between using cryptocurrencies and protecting the property sector from criminal activities (section 3.2.).

2. Cryptocurrencies and real estate: a tale of two sectors

The relationship between real estate and cryptocurrencies is relatively recent; as previously discussed, it began towards the end of 2017 when the first residential properties were sold using Bitcoin. These first transactions have been rapidly followed by many others, including those relating to commercial and high-value properties, with a growing interest shown by dealers worldwide.[21] The capacity to conclude a transaction (in most cases a purchase) with less bureaucratic forms and with the use of a non-conventional currency has pushed many to invest in real estate, especially when the Bitcoin price has recently been rallying to new highs.[22] However, the involvement of cryptocurrencies in purchasing property is about their use as the transaction currency and their involvement in creating the transaction itself. In other words, cryptocurrencies can be used as currency and models (based on their underpinning blockchain technology) for setting up and concluding the transaction. This means that the role played by cryptocurrencies in the real estate market is more complex than one might expect, and it poses additional and challenging questions for their regulation and proper configuration within any relevant AML regime.[23]

Given this context, to understand the link between cryptocurrencies and real estate and its dynamics for the UK AML regime, it is necessary to analyse two fundamental aspects. These aspects are (i) the key features of the two sectors and their regulation in the UK AML regime; and (ii) the potential use of cryptocurrencies in property transactions both as currency and as a transaction model. The examination of these two concepts will help us identify the relevant context of reference for AML initiatives and clarify some central issues that emerge from the cryptocurrency/real estate relationship, which will be evaluated later in the chapter.

2.1. Key features of the real estate market for AML

Real estate transactions can take different forms depending on the type of business relationship involved (e.g. buying and selling or letting), the subjects involved (e.g. whether real estate agents and solicitors or also other actors like the notaries), and the legal framework of reference (i.e. what national legislation is applicable).[24] For this chapter, the real estate transactions considered are those where there is buying and selling real estate properties in the UK with the involvement of real estate agents. This choice is due to the specific focus of the chapter, which is on the UK real estate market and the assessment of threats or opportunities of cryptocurrencies.

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[21] See Taylor et al. (2019).
[22] Bitcoin price was $58,000 in May 2021, with an increase of more than 498% compared to May 2020.
[23] On this, see the excellent analysis done by Campbell-Verduyn (2018).
[24] For an analysis of different real estate transactions in various countries, see Garcia-Teruel (2020), p. 129.

In the UK, the real estate market constitutes about 7% of GDP.[25] In recent years, an increase in the number of real estate transactions[26] has had controversial effects like housing bubbles and housing prices crises that have affected some major cities, including London.[27] High-value estates represent an important market share, with many properties acquired each year by foreign investors.[28] Thus, the property sector is a strategic market for the UK economy, attracting investments by nationals and foreign actors. In this regard, HMRC has highlighted that 'Since 2017, law enforcement agencies have observed increased overseas buyers and overseas cash flows into the UK property market'.[29] However, this also means that real estate can potentially provide an opportunity to enter the UK economy by criminals who want to integrate the proceeds of their criminal activities into the legitimate economy of the state.[30]

In the UK, real estate is sold and bought through transactions facilitated by real estate agents and concluded by solicitors.[31] Real estate agents play an important role as facilitators and intermediaries between the parties, and they conduct the initial checks and gather the necessary documentation for the transaction. They are the first subjects a money launderer encounters when looking for properties to invest their illicit funds, and they have been recognised as gatekeepers of the sector.[32] For these reasons, the AML regime lists them as one of the categories that need to fulfil AML checks and abide by AML regulations.[33] After the deal is achieved between the parties, real estate transactions require the buyer to transfer the money for the purchase of the estate to a solicitor, which is why these are other subjects regulated for AML purposes.[34] Thus, alongside financial institutions, real estate agents and solicitors are the key actors in these transactions, and they are among the main targets of AML agencies intervention for preventative and protective reasons.[35]

In the past decades, the AML interest in real estate agents and solicitors has increased significantly, with many scholars discussing their role and obligations to prevent and fight money laundering.[36] At the same time, there has been an increased regulatory burden

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[25] Data from the British Property Federation available at https://bpf.org.uk/about-real-estate/.
[26] For the most recent statistics, see UK Government, 'Property transactions in the UK' https://www.gov.uk/government/collections/property-transactions-in-the-uk.
[27] For a recent analysis, see Wilson and Barton (2021).
[28] See Scanlon et al. (2017).
[29] HMRC, National risk assessment of money laundering and terrorist financing 2020 (December 2020), p. 107.
[30] See Transparency International (2017a), (2017b), (2015); Boles (2017).
[31] On how the process works, see Department for Business, Energy and Industrial Strategy, Research on Buying and Selling Homes Research paper number BIS/283 (October 2017).
[32] See European Parliament (2019), Briefing Understanding money laundering through real estate transactions, p. 5.
[33] See The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017, 2017 No. 692, Reg. 8.
[34] They are called 'independent legal professionals' under the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017, 2017 No. 692, Reg. 8.
[35] On the role of private actors in AML, see Tsingou (2018); Bergstrom et al. (2011).
[36] See Zavoli and King (2021); Benson (2020); Zavoli (2020); Terrill (2014).

imposed upon these subjects. Still, the result has not always been satisfactory, and some have highlighted the challenges that these subjects face when dealing with AML rules implementation.[37] These difficulties pertain to the additional financial, administrative, and logistical burden these subjects have under the most recent developments of the AML regime. Still, they also relate to the intrinsic money laundering risks associated with their work.[38] This means that there are some aspects of real estate transactions and the work of estate agents and solicitors that can be considered as red flags and problematic elements for AML.[39] For instance, real estate agents do not handle money directly (as the solicitors do this). Still, they must perform ID checks, identify the buyer's source of funds, and gather all the relevant documents for the transaction. On the other hand, solicitors receive money and conclude contracts, allowing the transaction to be finalised. Thus, as HMRC has argued recently, money launderers have various opportunities to infiltrate the system by exploiting the gaps and deficiencies of the AML regime and the real estate sector itself.[40]

The money laundering risks of property transactions relate to various aspects, but three are particularly relevant for our discussion of cryptocurrencies. First of all, the possibility of money launderers to disguise their identity or the nature and origins of the funds involved.[41] Indeed, through the acquisition of property, 'money launderers can obscure the illicit origins of their funds or use real estate to operate legitimate front businesses, particularly if they are cash intensive'.[42] This can be done especially when AML checks are complicated by the nature of the transaction (a critical element for cryptocurrencies' transactions), or the AML regime is not up-to-the task, and those implementing it do not have sufficient knowledge and willingness to do it. As HMRC puts it, 'Property can be bought through complex systems of shell companies registered overseas in secrecy jurisdictions to obscure ownership, rendering the true purpose and origin of money transactions unclear'.[43]

Second, there are challenges for the implementation of AML regulations in the UK real estate market.[44] Real estate agents are at the forefront of the property market, and, as discussed, they are one of the obliged subjects under the AML Regs. 2017.[45] However, they do not always have the proper knowledge and capacity to perform AML checks and detect illicit activities. This is due to various factors, including the lack of resources, training, and

[37] See Zavoli and King (2021); Nougayrede (2019).
[38] See Zavoli and King (2021); Zavoli (2020).
[39] See Chau and van Dijck Nemcsik (2020), p. 72.
[40] See HMRC, December 2020, National risk assessment of money laundering and terrorist financing 2020, pp. 107-113.
[41] This is a problem linked to the debated topics of beneficial ownership and unexplained wealth.
[42] Lauer (2019), p. 1230.
[43] HMRC, National risk assessment of money laundering and terrorist financing 2020 (December 2020), p. 109.
[44] See Zavoli and King (2021).
[45] See The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017, 2017 No. 692, Reg. 8.

feedback on their work by national agencies and supervisory bodies.[46] In this sense, it is argued that 'Common failings are the lack of bespoke policies, controls and procedures aligned with an appropriate risk assessment of each firm's clients'.[47]

Third, the changes occurring in the real estate sector with the operation of new subjects (e.g. online agents) and new modalities to conduct and conclude property transactions (e.g. using new software to conduct ID checks) increase the risk of opening doors to money launderers.[48] As HMRC points out, 'Some EABs, have an overreliance on ID checking software which they do not fully understand'.[49] Therefore, the advancement of technology and its application to property transactions is not always a positive development in the real estate market, and it can cause issues for AML implementation.

Given these challenges, national authorities have introduced several legislative and policy documents to fight money laundering in the UK real estate market. For instance, on the input of the European Union,[50] the AML Regulations of 2017 and 2020 create a series of obligations for the real estate agents and solicitors, and they encompass both buying/selling and letting transactions.[51] Moreover, HMRC and NCA have published various policy papers to enhance the knowledge, understanding, and preparations of the actors involved in property transactions to prevent money laundering and strengthen AML implementation in practice.[52] A parliamentary debate has also taken place to discuss some of the most problematic aspects of AML, including in real estate[53] and, alongside institutional efforts, NGOs and research groups have focused on the subject, publishing reports with worrying findings and proposals for future action and legislative interventions.[54] Despite these initiatives, and given the

[46] See HMRC, National risk assessment of money laundering and terrorist financing 2020 (December 2020), p. 111.
[47] ibid.
[48] ibid.
[49] ibid.
[50] See Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (Text with EEA relevance) OJ L 141, 5.6.2015, pp. 73–117; Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018 amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, and amending Directives 2009/138/EC and 2013/36/EU (Text with EEA relevance) OJ L 156, 19.6.2018, pp. 43–74.
[51] See The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017, SI 2017/692; The Money Laundering and Terrorist Financing (Amendment) Regulations 2019, SI 2019/1511.
[52] See HMRC, Estate agency business guidance for money laundering supervision (16 October 2020) https://www.gov.uk/government/publications/money-laundering-regulations-2007-supervision-of-estate-agency-businesses/estate-agency-guidance-for-money-laundering-supervision; NCA, Guidance for anti-money laundering supervisors on submitting better quality suspicious activity reports (SARs) (March 2021).
[53] See House of Commons, Treasury Committee, Economic Crime - Anti-money laundering supervision and sanctions implementation Twenty-Seventh Report of Session 2017–19, HC 2010 (8 March 2019).
[54] See Transparency International (2017a), (2017b), (2015).

relatively recent attention put on the topic, there has been no discussion of how the real estate market needs to react and protect itself from technological changes and advancements that could jeopardise the AML efforts in the sector. Therefore, no discussion from an AML perspective has been promoted so far on the combination of property transactions and new technologies (e.g. cryptocurrencies and blockchain). However, as it emerges from recent empirical research done on the topic, given that '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',[55] there is an 'unfulfilled need to receive more guidance and information from relevant national agencies and supervisory bodies'.[56]

2.2. Cryptocurrencies as a currency and transaction model for the real estate sector

Cryptocurrencies transactions involve a sender and a receiver of the currencies and the use of a public ledger, which in most cases is the blockchain. The blockchain can be defined as 'a cryptographically secured database distributed on many computers ('nodes') and combines decentralized consensus mechanisms with cryptographic verification'.[57] Therefore, cryptocurrencies are the currency used in a transaction; whereas blockchain is the underpinning cryptographically secured technology that allows that transaction to take place. In this sense, there is an important terminological and functional difference between cryptocurrencies and blockchain. As shown later in the chapter, the money laundering concerns advanced differ significantly between the two.

In sum, the key features of these transactions are the use of cryptocurrencies, the lack of (or very limited involvement of) intermediaries, a high level of anonymity, the public registration of the transaction, and the impossibility to cancel a transaction and void it.[58] The use and function of blockchain are nicely summarised by Morena et al. when saying 'the blockchain is exactly an open register that guarantees itself, without third parties involved'.[59] These features are considered both advantages and disadvantages of this type of transactions, and they are usually the focus of AML regimes. Indeed, with the increased popularity of cryptocurrencies and their employment in different transactions, there has also been an increased need to tackle their potential use for money laundering purposes.

As previously mentioned, the cryptocurrency market is a relatively new sector in the UK (and worldwide), and it still not fully regulated and properly considered for AML purposes.

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[55] Zavoli (2020), p. 149.
[56] ibid.
[57] Hacker et al. (2019), p. 4. However, the definition of blockchain is still not shared by all scholars. On the debate, see Ghiro et al. (2021); Pilkington (2016).
[58] See Felten et al. (2016).
[59] Morena et al. (2020), p. 275.

Recent discussions on the topic have resulted in two significant developments. First, the inclusion of exchange services providers and custodian wallet providers as obliged subjects both under the 5th EU Money Laundering Directive[60] and the 2019 UK AML Regulations.[61] Second, the parliamentary debate on regulating the cryptocurrencies sector, especially for tax purposes, provides a clearer view on how the Government considers their nature and effects in the national economy.[62] These developments have highlighted the need to prevent money laundering through the use of cryptocurrencies in the UK, following the example of other countries facing similar issues.[63] They also demonstrate the appetite of national authorities for further clarity on the subject, especially to adopt effective legislative measures and avoid disruption of national economies.[64]

Cryptocurrencies can be employed in real estate transactions both as a currency and as a model for the transaction itself, based on their blockchain technology.[65] The literature has usually kept these two aspects separate, underlying their importance for different areas of law and regulation (e.g. AML and property law) and how they could be implemented in the real estate market.[66] Therefore, there has been no analysis of the phenomenon as a whole, and there has been no holistic evaluation of cryptocurrencies for property transactions. However, this double function is a relevant point for discussing AML responses and regulation of the use of cryptocurrencies in the property market for various reasons.

First of all, there is an alternative way of concluding property transactions without relying on traditional methods. This means that cryptocurrencies' double function gives them the leverage to enter the realm of real estate contracts and business relationships revolutionizing the system and advancing a new idea of property transactions.[67] In this regard, it is said that 'a new blockchain based internet will open a period of the internet of value, which will reshape existing business models through improved transparency and reliability of information'.[68] This fact changes our perception of the real estate market and how it can work when linked to new technologies, proposing a different way of qualifying these transactions and how they can be used in society. In this sense, some scholars argue that there is a process of 'democratisation' of the real estate market, based on a more open and accessible system

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[60] See Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018 amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, and amending Directives 2009/138/EC and 2013/36/EU (Text with EEA relevance) PE/72/2017/REV/1 OJ L 156, 19.6.2018, pp. 43–74.
[61] See The Money Laundering and Terrorist Financing (Amendment) Regulations 2019, SI 2019/1511.
[62] See House of Commons, Cryptocurrencies: Bitcoin and other exchange tokens, Briefing paper 8780 (19 February 2020).
[63] See Campbell-Verduyn (2018); Inshyn et al. (2018).
[64] See Frick (2019).
[65] See Veuger (2020).
[66] On the use of blockchain in commercial real estate property transactions, see Wouda and Opdenakker (2019); Latifi et al. (2019).
[67] See Kalyuzhnova (2018).
[68] Lee (2019), p. 782.

where transactions are possible even when the subjects involved are usually excluded.[69] For instance, it is said that the use of blockchain technology and cryptocurrencies for purchasing real estate would help the citizens of countries with unreliable systems and a lack of trust in public authorities.[70] Indeed, these subjects usually 'have difficulties in attesting the management of economic activities, the ownership of their possessions and even certifying their existence'.[71] Therefore, a business model based on blockchain 'is revolutionizing existing venture investments in a more transparent and democratic way so that anyone can participate in early investment'.[72]

However, opening the real estate market to a broader group of customers with the removal of some bureaucratic obstacles could create some issues of an increased risk of criminal infiltrations in the sector. Indeed, the more accessible the real estate market becomes (including the use of non-conventional means of transaction), the higher the risk of having money launderers interested in it. As some scholars say, this is already happening when considering the cryptocurrencies market alone, where these new technologies complicate AML investigations and practices.[73] In particular, it is argued that 'in regions where traditional money laundering occurs it is highly likely that these regions will be preferred for crypto laundering'.[74] Linked to this point, there is also the potential problem for developing and developed countries (like the UK) to expose their economies to additional money laundering threats. For the countries where the illicit funds come from, it would mean to weaken even further their centralized institutions favouring a decentralized system attractive for criminals or not letting them create any. For host countries (i.e. which receive the dirty money) like the UK, it could threaten the existing AML regime with new subjects involved as potential criminals and facilitated cross-border transactions.

Second, the use of cryptocurrencies brings into the discussion a complex set of features that requires a proper evaluation by national authorities, including the UK. This could make it more challenging to tackle money laundering and implement effective AML strategies due to the innovative nature of the technology involved and the lack of preparation of the subjects obliged to prevent and oppose money laundering. As already discussed in the previous section, real estate agents and other actors involved in the property sector are among the subjects obliged to implement AML regulation in their practice. However, recent empirical research has shown that various aspects of the UK AML regime need to be further developed and improved because these subjects do not have enough knowledge and awareness of the phenomenon of cryptocurrencies; they do not get appropriate training to tackle money

[69] ibid, pp. 782-783.
[70] See Morena et al. (2020), p. 276.
[71] ibid.
[72] Lee (2019), pp. 782-783.
[73] See Dyson et al. (2018).
[74] ibid., p. 3.

laundering through cryptocurrencies; and there is a general lack of support from national authorities.[75] Other authors have raised similar points when discussing the best approach to conduct real estate purchases using cryptocurrencies.[76] Digitalization and automatic transactions seem inevitable steps in this direction, but ‘conducting real estate transactions using such advanced levels of technology presents its own challenges’.[77] Indeed, ‘All stakeholders involved in the process will need to understand the technology at a level that lets them interact with it, there could even be a restructuring of certain jobs and their specifications - such as real estate agents’.[78]

Third, the double function of cryptocurrencies obliges national legislators to consider avoiding a biased approach with a negative prejudice towards cryptocurrencies. Indeed, as already mentioned, cryptocurrencies cannot be seen only as ways criminals enter the real estate market and pursue their illicit interests. They can also become an opportunity for the property sector to innovate and provide better services to customers and society. Therefore, there is a need to change our perspective towards cryptocurrencies in real estate transactions and start a discussion that considers their pros and cons and assess their capacity to be aligned with the needs and purpose of AML regimes.[79] In this sense, it has been pointed out that ‘CCs [cryptocurrencies] currently provide less of a threat and more of an opportunity to global efforts to combat this illicit practice. Focusing on the novel technological features underlying CCs rather than their conventional uses as traditional forms of money, helps to consider not only the threats but also the concrete possibilities for ‘altcoins’ to support global AML efforts’.[80]

Recent research has shown the potential benefits of cryptocurrencies for AML in the banking sector.[81] Here, some aspects of the sector, like what happens in the real estate market, need to be improved by national authorities to connect cryptocurrencies and AML strategies positively. In this sense, it is argued that ‘most banks do not use the technology systems that virtual currencies use, and so, the level of knowledge and expertise of blockchain technology is limited. Therefore, one of the easiest ways to raise this level of knowledge is to incorporate the blockchain technology use into banking operations for legitimate purposes to be used on an everyday basis’.[82] As we will discuss in the following sections, this approach is also proposed for the real estate market and property transactions.

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[75] See Zavoli (2020).
[76] See Taylor et al. (2019).
[77] Tilbury et al. (2019), p. 5.
[78] ibid.
[79] See Campbell-Verduyn (2018).
[80] ibid., p. 299.
[81] See Naheem (2019).
[82] ibid., p. 522.

3. Cryptocurrency transactions in the real estate market: threat or opportunity?

The lack of attention and research on the relationship between cryptocurrencies and real estate transactions also involves regulating cryptocurrencies in the UK real estate market for AML purposes and implementing the provisions in this sense. In other words, with few exceptions,[83] so far, there has been no proper discussion of the possible threats that cryptocurrencies might pose to the real estate market and its protection from money launderers' infiltration. At the same time, there has been scarce consideration of the use of cryptocurrencies (and their underpinning blockchain technology) to enhance the AML regime and facilitate checks and preventive measures.[84]

These two aspects represent relevant gaps in national AML agendas, including that of the UK, and there is a need for starting a discussion on some of the key aspects that AML agencies should consider in this sense. Indeed, this approach is beneficial for two main reasons. First of all, it advances national authorities' understanding of the complexities and challenges of money laundering in the real estate market, especially when this relies on new technologies. An effective AML regime should consider the issues emerging from a specific sector and how other sectors, recent developments, and the broader socio-economic context of reference could facilitate money laundering in that market.[85] This means to examine what we can call the 'intersectionality' of the real estate market and whether its interaction with cryptocurrencies might be detrimental for the AML regime.

Second, by looking at cryptocurrencies' role in implementing AML regulation in the real estate market, national authorities can begin a constructive analysis of the benefits derived from the use of blockchain in tackling money laundering in property transactions. Indeed, there is a need to adopt an unbiased approach not to miss the opportunity to use this technology as a valuable tool for AML. This would follow the idea that we need to distinguish between cryptocurrencies and blockchain technology to understand how these could enhance AML through their innovative way of concluding and publicizing transactions.[86]

3.1. Assessing threats and opportunities through the lens of four themes

In this section, using four selected themes, the author discusses some of the threats and opportunities of using cryptocurrencies in real estate transactions for AML.[87] The first theme

[83] See Zavoli (2020).
[84] See, among others, Hughes (2019).
[85] This should be done also with the use of new empirical research and analysis. See Levi et al. (2018).
[86] See Lai (2018).
[87] On the use of blockchain in real estate transactions and its limits, see Konashevych (2020).

is the capacity to innovate the real estate market and its business model by introducing new approaches and 'revolutionising' its dynamics.[88] Real estate transactions have been criticized for being quite lengthy and not very effective in reducing the costs for the parties involved.[89] They usually last for months and involve high costs to pay real estate fees, solicitors, and other state and private expenses, depending on the estate's value. This fact can negatively impact customers, impeding many of them from entering the market and participating in transactions. However, it is argued that the introduction of new technologies and alternative business models could mitigate the problem.[90]

In this sense, according to some scholars, the use of cryptocurrencies and their underpinning technology (i.e. blockchain) would be beneficial for the real estate sector to achieve results that would be virtually impossible or very difficult with more traditional methods.[91] For instance, trans-border transactions could be facilitated,[92] and there is better transparency in the whole process of property acquisition.[93] In this sense, 'it [the blockchain] can also ensure that the individual who sells a property has the right to do so by verifying the chain of transactions'.[94] Therefore, cryptocurrencies represent a welcome innovation that could transform the property market and modernize a sector that has not encountered much development in the past decades.[95] Indeed, change and innovation are not central to this market, and 'The real estate sector, although highly regulated, is known for its resistance to change'.[96] In this context, as some authors say, 'The emergence of new crypto-economies is greater than those of currency and cash out. The ability to buy real estate or hire property for rentals shows how far this internet money has come in a relatively short period of time'.[97] Therefore, the capacity of cryptocurrencies to transform and innovate the real estate market would be an opportunity for this sector and AML. Indeed, it would promote a necessary update of the market based on the latest technological developments, which in turn could be used by AML agencies to fight money launderers' attempts at exploiting the most 'obsolete' aspects of the market.

However, as explained in the previous sections of this chapter, not all governments and national authorities have regulated and accepted it as a possible alternative to traditional forms of payments and business models. This could slow down the transformation process of the real estate market and the evolution of the relationship between this sector and new technologies. That is why it is argued that states should pay proper attention to the

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[88] See Krupa and Akhil (2019).
[89] See Saull et al. (2020).
[90] ibid.
[91] See Mashatan and Roberts (2017); Wouda and Opdenakker (2019).
[92] See Garcia-Teruel (2020) p. 135.
[93] ibid.
[94] ibid.
[95] See Pankratov et al. (2020).
[96] Tilbury et al. 2019, p. 1.
[97] Dyson et al. (2018), p. 5780.

phenomenon of cryptocurrencies and blockchain and consider how these can be used to the benefit of customers and professionals.[98] As one author puts it, 'a government using blockchain to revolutionize their land registry system would synchronously revolutionize their economy. Nations who are hesitant to experiment with blockchain technology will sit idly by while other nations achieve technological feats, reaping the benefits while they do so'.[99]

The second theme considered is the control over the legality of the transaction itself and the need to avoid the infiltration of criminals. Some scholars have discussed the topic by looking at blockchain technology in different phases of real estate transactions.[100] For instance, Garcia-Teruel discusses the use of blockchain for 'faster, more secure transactions',[101] bypassing traditional intermediaries such as notaries or solicitors (depending on the legal framework of reference).[102] Moreover, it is pointed out that 'some private companies are studying the possibility of completing the entire process required to sell a property through distributed ledger'.[103] Therefore, it is recognised that there can be a beneficial relationship between the property sector and the use of cryptocurrencies. This also extends to the possibility to conduct better checks on the transactions and identify potential criminal activities. In this sense, blockchain technology 'has a complex transaction process that is built to prevent fraudulent behavior and enable strict ownership protection'[104] and 'blockchain can be enabled to improve the transparency a system enabling regulators to catch and prevent fraudulent behavior'.[105]

However, traditional intermediaries such as real estate agents and solicitors (and notaries in certain countries) play an important role as gatekeepers and subjects who can conduct checks on the legality of the transaction.[106] When using cryptocurrencies and bypassing these intermediaries with blockchain, this enhanced scrutiny might be lacking with negative consequences. Indeed, 'blockchain, as a distributed database, can neither inform in the same way about the consequences of a certain transaction nor carry out a previous check of the legal requirements by itself'.[107] In the same sense, other scholars, although advancing new ideas on how to implement blockchain technology for real estate transactions, admit the pitfalls of the system and say that 'nowadays a completely decentralized solution characterized by the disintermediation and elimination of the third parties is not possible;

[98] See Jain et al. (2020).
[99] Heil (2018), p. 258.
[100] See Garcia-Teruel (2020); Morena et al. (2020).
[101] Garcia-Teruel (2020), p. 134.
[102] ibid., pp. 131ff.
[103] ibid., p. 130.
[104] Mashatan and Roberts (2017), p. 2.
[105] ibid.
[106] See Teichmann (2020); He (2005).
[107] Garcia-Teruel (2020), p. 138.

human off-chain interventions and a series of compromises are still required'.[108] Linked to this issue, there is also the fact that the fast-growing popularity of cryptocurrencies in real estate transactions worldwide might mean more attempts by money launderers to infiltrate the market. In this sense, it is argued that 'Although cumbersome and expensive when used for large-scale laundering, the swap crypto-for-asset is still an open door to wash the proceeds of crime and thus far, to our knowledge, no legislation exists to prevent this activity'.[109]

Another interesting theme to consider is the need to perform AML checks on property transactions and identify potential issues. One aspect that emerges is the need to verify the ID of those involved in the transaction and source of funds. In this regard, the use of cryptocurrencies in the UK has been criticized due to the high level of anonymity that characterizes these currencies and their users. As it has been pointed out in a recent empirical study on the topic, 'The anonymity of cryptocurrencies is one of the most concerning features with regard to money laundering potential and the challenges that real estate agents might encounter when performing AML checks'.[110] The same concerns have been expressed when considering other countries. For instance, 'the Italian National Council of Notaries recently advised notaries to make a suspicious transaction report every time they have to assist parties in the purchase of a real estate by means of cryptocurrencies, since the anonymity of the crypto-payment's source would prevent the identification of the parties of the transaction'.[111] Moreover, not all cryptocurrencies' transactions guarantee the same level of anonymity to their users, and some are more likely to go undetected or become untraceable for national authorities and investigative agencies. Therefore, this issue with cryptocurrencies' anonymity represents a possible threat to the implementation of AML regulation and the capacity to prevent money laundering using cryptocurrencies in the real estate market.

Despite these concerns, the literature on the topic presents many voices favouring the use of blockchain for ID checks, including for AML purposes. It is said that 'Another area that has potential blockchain use in the banking domain would be the recording of identity and following the beneficial ownership information especially of companies and complex organisations'.[112] In this sense, there is an advantage for ID checks because, as Garcia-Teruel puts it 'blockchain is a way to notarise documents, as it ensures the legality of the documents and certifies that they were agreed on a certain date. It is also capable of verifying the identity of the parties when connected to an official identity (ID)'.[113] However, the same author recognises that the need for a proper ID verification in real estate transactions and the issues emerging from the use of cryptocurrencies is one of the most challenging aspects to be

[108] Morena et al. (2020), p. 293.
[109] Dupuis and Gleason (2020), pp. 18-19.
[110] Zavoli (2020), p. 143.
[111] Holman and Stettner (2018), p. 32.
[112] Naheem (2019), p. 522.
[113] Garcia-Teruel (2020), p. 135.

considered, including for AML purposes.[114] Therefore, it is suggested that there should be an official ID system in place alongside the use of blockchain.[115] To this end, 'the ID should be managed by a central authority [...] or by the blockchain itself, provided that the identity of the users is recognised by nation states'.[116]

Finally, the last theme is the capacity of the AML regime and national authorities to react to illicit transactions, not only by prosecuting criminals and issuing fines but also by removing the transactions from the legal economy and preventing further negative consequences. Generally speaking, some argue that blockchain could be a valuable tool at the disposal of AML authorities to prevent criminal activities and tackle money laundering attempts. For instance, it is said that 'As an inherent part of a cryptocurrency, blockchain technology also offers lots of opportunities for anticorruption compliance. Manipulation of the ledger is almost impossible due to high costs and its distributed nature'.[117] Moreover, 'Thanks to the public nature of blockchain it has become a lot easier to trace all moves and therefore define the patterns allowing for more promising corruption prevention'.[118] Therefore, when considering AML implementation in the real estate sector, the blockchain could also facilitate investigations of crimes, at the advantage of the whole AML regime.

An final interesting point is made in the literature about the registration of the transaction in the blockchain and the possible consequences if something goes wrong with it, especially when illegal activities are detected.[119] It is argued that 'while the blockchain is mainly irreversible, the legislation stipulates the reversibility of transactions or changes of the property'[120] and, therefore, this could be potentially problematic for addressing the issues of money launderers' infiltration in the real estate market and the responses of national authorities.

3.2. Finding a balanced perspective on cryptocurrencies in real estate transactions

A last remark in our analysis concerns the possibility of advancing a different perspective on the topic, where AML authorities try to evaluate the pros and cons of cryptocurrencies and blockchain in the real estate market. The discussion on the use of cryptocurrencies for real estate transactions includes polarized opinions on the threats and opportunities that these present, including for AML. However, as already pointed out, there is a need to overcome a biased view towards cryptocurrencies and adopt a different approach that includes a holistic

[114] ibid., p. 136.
[115] ibid., p. 137.
[116] ibid.
[117] Katarzyna (2019), p. 12.
[118] ibid.
[119] See Garcia-Teruel (2020), p. 140.
[120] ibid.

evaluation of the phenomenon. This would guarantee a more lucid and constructive analysis that will be helpful to understand the limitations of the AML strategies implemented so far and the opportunities that criminals might exploit to infiltrate the real estate market alongside other sectors. Indeed, these flaws require us to consider 'a call for moderation between inaction and overreaction'.[121]

As seen in the previous sections, some studies have discussed the role of cryptocurrencies and blockchain in real estate transactions, highlighting key aspects of this interaction. For instance, 'There have been a number of suggestions as to how the technology could be applied in sectors outside of finance, such as for land registry where manipulation of data is a problem'.[122] Other studies have scrutinized the factors surrounding the adoption of blockchain to innovate the real estate market and conclude property transactions.[123] Moreover, other studies have pointed out that some private companies are already working to combine cryptocurrencies and real estate transactions: 'there exist significant start-ups who are making process in the real estate blockchain space. These start-ups are looking to create platforms and systems that facilitate real estate transactions as well as being land registry systems'.[124] What emerges from this research is the growing call for finding a middle-ground position regarding cryptocurrencies and their use in business relationships, including real estate transactions. In this sense, 'Even longstanding critics of technology-based solutions have recognised the enormous potential that the blockchain underlying CCs provide for addressing a range of governance gaps'.[125]

The impact of blockchain technology on real estate transactions has also been explored by some scholars who have pointed out the need to adopt a careful approach and to conduct further research on the topic.[126] In particular, some argue that 'The results have shown that the pre-marketing phase and due diligence phase are most suitable for the implementation of blockchain'[127] and 'The main aspect here can be focused on the added value of blockchain as a data sharing program which could add value creating a more safe and secure way of sharing data'.[128] Therefore, this new technology offers some advantages and opportunities that should be used by national authorities, including for AML purposes. However, a comprehensive evaluation of the phenomenon should also look at the limitations of this solution, especially given its fast-evolving nature and the possible lack of preparation and understanding in the sectors where it can be implemented. The idea 'is that the technology is

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[121] Campbell-Verduyn (2018), p. 299.
[122] Naheem (2019), p. 522.
[123] See Veuger (2020); Hoxha and Sadiku (2019); Tilbury et al. (2019).
[124] Tilbury et al. (2019), p. 3.
[125] Campbell-Verduyn (2018), p. 297.
[126] See, for instance, Wouda and Opdenakker (2019).
[127] Nijland and Veuger (2019), p. 28.
[128] ibid.

in an early stage of development and therefore not (yet) suitable for the implementation in the real estate sector',[129] for instance, in the buying process of commercial real estate.[130]

However, as some authors argue, 'As technology advances, making use of available options such as blockchain based solutions will be necessary across industries'.[131] For instance, in the real estate market the issues emerging with frauds, customer due diligence checks, and implementation of AML regulation, call for action by national authorities.[132] This could be done with cryptocurrencies and blockchain when proper understanding and regulation of the phenomenon is achieved. In this sense, it is said that the use of cryptocurrencies implies 'the need for a coordinated and international approach in defining worldwide harmonized regulations. This could prevent corruptive practices and still stimulate the development of innovative ideas'.[133]

In conclusion, finding a balanced approach to the topic is certainly not an easy task. At present, no concrete solutions have been found, neither in the literature nor in the legislation. However, this should not discourage us from pursuing this plan, especially because there is a need to rethink our strategy towards cryptocurrencies and AML in the real estate market. Indeed, the existing literature on the topic (although mainly non-legal) calls for such a change in the discussion of the subject, and it forces us to review the relationship between cryptocurrencies and the real estate market in light of a fundamental necessity, i.e. the need to tackle criminal activities and strengthen global governance strategies. As Campbell-Verduyn puts it, 'The limits of both industry- and national-level governance have instigated calls for coordinated global efforts to mitigate the potential uses of CCs for money laundering without curtailing their more beneficial features'.[134]

4. Concluding remarks

This chapter has discussed the use of cryptocurrencies in the UK real estate market and the possible benefits and risks for the AML regime. In so doing, it has sought to advance the (scarce) research done so far on the potential money laundering dangers associated with cryptocurrencies in this sector. It has also promoted a holistic examination of the topic, looking at both the pros and cons of using cryptocurrencies in real estate transactions for AML purposes. The findings of this chapter can be divided into three groups: (i) the

[129] ibid.
[130] ibid.
[131] Shepard (2020), p. 123.
[132] ibid.
[133] Katarzyna (2019), p. 12.
[134] Campbell-Verduyn (2018), p. 292.

literature's approach to the topic; (ii) the holistic evaluation of cryptocurrencies in the context of the real estate market; and (ii) the way forward.

First, a general consideration must be made on the legal literature and legislation's (lack of) attention to the topic. From the literature review conducted for this chapter and the analysis of the research done on the topic, it is clear that the legal scholarship is still not focused on the phenomenon as it should be. Despite the increasing research on the topic in other areas (e.g. IT, engineering, economics), the legal sector is behind, with no proper discussion of the relationship between cryptocurrencies, real estate, and AML. This is a worrying aspect as it limits our understanding of the topic. It represents a significant gap in a critical legal analysis of money laundering; an important concept at the centre of legal debate for decades. In this sense, there is a need to conduct further research and boost our understanding of the topic from a legal perspective. To this end, legal scholars should be receptive to the innovations happening in sectors like real estate, where money launderers could take advantage of new technologies to bypass AML checks. Moreover, a proper evaluation of the use of cryptocurrencies in real estate transactions (including empirical research) would provide valuable ideas and data to national AML agencies to strengthen the AML regime.

Second, as discussed in the chapter, there is no consensus over the use of cryptocurrencies in the real estate market. Some scholars have highlighted the numerous advantages of cryptocurrencies for property transactions, whereas others have also pointed out the money laundering risks associated with them. However, as indicated at the beginning of this chapter, there is a need for a holistic evaluation, and an interesting view has emerged in the literature about this. In this sense, a solution advanced is to avoid a sharp distinction between pre-cryptocurrencies and post-cryptocurrencies transactions and find a middle ground where this phenomenon and its underpinning blockchain technology benefit traditional real estate transactions. In other words, cryptocurrencies should not be seen with suspicion, but they should be used to improve the existing system, even for AML purposes. In this sense, there is a need to rely upon 'a hybrid approach that combines some aspects of the technological innovation with those of the traditional system, providing significant benefits in terms of transparency and security'.[135] Indeed, as discussed in Section 2.3., the use of blockchain could be a valuable resource for government and national agencies to fight money laundering and exploit the system's weaknesses by criminals. Moreover, to these considerations, there is a different perception of cryptocurrencies and blockchain, favouring the latter for its role in enhancing AML.

Third, in evaluating cryptocurrencies and their employment in real estate transactions, there is also a need to consider the future steps required to align the two sectors and enhance the AML regime. As recalled in Section 2.1., some cryptocurrencies operators (i.e. exchange

[135] Morena et al. (2020), p. 293.

providers and wallet providers) are now listed as subjects obliged to implement AML regulations and conduct checks on their transactions. Moreover, there is ongoing legislative debate about better and more targeted regulation of cryptocurrencies in national jurisdictions, including the UK.[136] However, additional work is required to strengthen the capacity of real estate actors (e.g. real estate agents and solicitors) to deal with cryptocurrencies transactions fulfilling their AML obligations and, at the same time, to benefit from their employment in their business. In this sense, the key areas for future legislative and policy consideration identified in this chapter are: (i) a legislative framework that addresses the existing gaps and the questions on the relationship between cryptocurrencies and the real estate market; (ii) a better training of the subjects involved in AML in the real estate sector; and (iii) an adequate and prompt response by AML national authorities (e.g. HMRC and NCA) when they receive information requests on the topic or when SARs are filed for suspicious transactions.

To conclude, the findings above are just the tip of the iceberg of the research that should be done on the topic and what national authorities need to do to address its many challenges. However, when discussing cryptocurrencies, real estate, and AML, a further interesting (and perhaps unforeseen) result is to discover how the AML regime is not yet ready to deal with new technologies and rapid developments in the way in which transactions are concluded, and business is pursued in the 21st century. Indeed, cryptocurrencies pose various challenges for AML regimes worldwide, including the UK, and they might increase the problems in tackling money laundering effectively.[137]

[136] Inshyn et al. (2018), p. 170.

[137] Sprenger and Balsiger (2018). For the most recent guidance on virtual assets money laundering risks, see FSI (2021) Supervising cryptoassets for anti-money laundering (April 2021); FATF (2021) Draft updated Guidance for a risk-based approach to virtual assets and VASPs (March 2021).

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