

# UKFIU SARs Best Practice Guidance

## Chapter 3: Understanding DAMLs and DATFs

Guidance to help reporters seeking a defence under  
POCA or TACT

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# General Guidance and Information

The information within this guidance should not be taken as legal advice. Some references to legislation and regulations have been paraphrased, and all reporters are expected to seek their own legal advice on the application of the law to their business and their obligations to report.

The UK Financial Intelligence Unit (UKFIU) is an independent and autonomous unit located within the National Crime Agency (NCA). UKFIU officers are designated by the Director General (DG) of the NCA to receive SARs. While legislation and other guidance documents may refer to the NCA as the body authorised to receive SARs, this guidance will refer to the UKFIU, as the UKFIU is the only unit within the NCA authorised to receive these disclosures.

This guidance is designed to support reporters when seeking a defence (also known as 'consent'<sup>1</sup>) from the **UKFIU** under section 335 and 336 of the Proceeds of Crime Act 2002 (POCA) or under section 21ZA of the Terrorism Act 2000 (TACT). The principal money laundering offences are set out in section 327 to 329 of POCA, and the terrorist financing offences are set out in sections 15 to 18 of TACT.

Please ensure you are familiar with Part 7 of POCA and Part 3 of TACT, as well as any sector-specific guidance issued by your AML supervisor, regulator, professional body or trade association. You may also wish to seek independent legal advice in respect of your obligations.

**NOTE: The term 'defence request' is used throughout this guidance to refer to both defence against money laundering requests under POCA (DAML) and defence against terrorist financing requests under TACT (DATF). Where the guidance differs between the two, this is made clear by referring to them by the relevant term of either DAML or DATF.**

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<sup>1</sup> See How does a 'defence' differ from 'consent'?

## What is a defence request?

One of the core functions of the UKFIU is to consider requests for a defence against money laundering (DAML) or a defence against terrorist financing (DATF), also known as 'consent', 'appropriate consent' or 'prior consent'. In the 2023/2024 financial year, the UKFIU received over 57,000 DAML requests and over 400 DATF requests.<sup>2</sup>

Both POCA and TACT recognise that there may be circumstances where individuals and organisations need to carry out an activity, in the course of their business, that may result in them committing a money laundering or terrorist financing offence because they know, believe or suspect that the property involved is, or may be, criminal or terrorist property. In these circumstances, reporters can request a defence from the UKFIU in relation to the intended activity.

A **DAML** can be requested from the UKFIU where a reporter has a suspicion that a future activity they are intending to carry out involves **criminal property**, and that, by proceeding with that activity, they are at risk of committing a **money laundering offence under POCA**.

A **DATF** can be requested from the UKFIU where a reporter has a suspicion that a future activity they are intending to carry out involves **terrorist property**, and that, by proceeding with that activity, they are at risk of committing a **terrorist financing offence under TACT**.

It is really important that you select the correct legislation (POCA or TACT) when submitting your defence request via the SAR Portal. Submitting your request under the wrong legislation may result in you not receiving the correct defence for the activity you are intending to undertake. See ['Requesting a defence under the correct legislation'](#) for more information.

The money laundering and terrorist financing offences can have extra-territorial effect. This means that a person may be prosecuted in the UK for conduct that took place outside of the UK, which would have been unlawful had it taken place in the UK in some circumstances.

## How does a 'defence' differ from 'consent'?

A defence against money laundering (for DAMLs) is the same as 'appropriate consent' under s335 POCA.

A defence against terrorist financing (for DATFs) is the same as 'prior consent' under section 21ZA of TACT.

However, whether you think of it as a defence or consent, neither gives the reporter 'approval', 'permission' or 'clearance' to undertake the intended activity set out in the request. It is solely a defence to a money laundering offence under POCA or a terrorist financing offence under TACT (depending on the type of request made).

Reporters sometimes seek 'consent' to continue business relationships or undertake activity because they have been unable to satisfactorily complete customer due diligence. The DAML and DATF processes are not a substitute for taking a risk-based approach or for fulfilling your regulatory and legal obligations, including those under the Money Laundering Regulations. Such misinterpretation and conduct risks undermining efforts to prevent money laundering and terrorist financing.

<sup>2</sup> SARs Annual Report 2023/24

A defence request being granted does not oblige or mandate the reporter to proceed with the proposed activity, and it should not be taken as a statement that the property in question does or does not represent criminal or terrorist property. Other factors, such as wider legal, regulatory and ethical obligations should be considered when deciding whether to continue with the activity.

Granted letters from the UKFIU no longer use the term 'consent' and instead use the terms 'defence to a money laundering offence' or 'defence to a terrorist financing offence'. For absolute clarity we retain the use of the term 'consent' in refusal letters.

## How do I request a defence from the UKFIU?

Only NCA officers within the UKFIU are designated by the NCA Director General to receive and respond to defence requests. The UKFIU DAML team deals with all requests for a defence against money laundering, and the UKFIU Terrorist Finance team deals with all requests for a defence against terrorist financing.

Reporters can request a defence by submitting a SAR using either the secure SAR Portal or the bulk reporting API. See **Chapter 1: Using the SAR Portal** for guidance on how to register for and access the SAR Portal.

### Important:

DAMLs and DATFs are still SARs, they just contain additional information relevant to your defence request to allow the UKFIU to make an informed decision on your request. All guidance in **Chapter 2: Submitting a SAR** applies to DAML and DATF requests.

## Requesting a defence under the correct legislation

When you start a new SAR on the SAR Portal (see **Chapter 1: Using the SAR Portal**), you will be asked to select the legislation under which your SAR is being made – POCA or TACT. Ensure you correctly select the legislation under which the SAR and defence request is being made. DAMLs and DATFs are dealt with by different teams within the UKFIU.

Later in the SAR Portal (section 7), you will be asked if you wish to request a defence against money laundering or terrorist financing, depending on which legislation you selected at the beginning.

**Please ensure you answer 'yes' to this question if you would like the UKFIU to consider your request for a defence under either POCA or TACT.** If you do not select 'Yes' to this question, but instead attempt to seek a defence by writing the request in the reason for suspicion field, your request will not be considered and you will not be afforded a defence to any money laundering or terrorist financing offences you commit as a result.

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## Defence against terrorist financing (DATF)

▶ [What is a defence against terrorist financing \(DATF\)?](#)

**!** The NCA is unable to explicitly grant appropriate consent if the specified activity has already occurred.

Do you wish to request a defence against terrorist financing (DATF)?

You can continue to submit a SAR even if you do not request a defence.

Yes  No

Save and continue

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## Defence against money laundering (DAML)

▶ [What is a defence against money laundering \(DAML\)?](#)

**!** The NCA is unable to explicitly grant appropriate consent if the specified activity has already occurred.

Do you wish to request a defence against money laundering (DAML)?

You can continue to submit a SAR even if you do not request a defence.

Yes  No

Save and continue

It is particularly important to select the correct legislation when seeking a defence, as the defence afforded to you is based on the legislation you submitted the request under. Defence requests submitted under POCA will only be considered for a defence against the principal money laundering offences in POCA. If you mistakenly seek a defence for a terrorist financing offence under POCA (or vice versa), you may not receive the appropriate defence for the prohibited act you are seeking to undertake or the UKFIU's response may be delayed while we seek clarification from you.

## What information is required by the UKFIU in order to make an informed decision on a defence request?

In order to make an informed decision on a defence request, the UKFIU relies on certain information being included in a SAR. This is often referred to as the essential criteria of a SAR.

The three essential criteria for a defence request are:

1. the information or other matter which gives the grounds for your knowledge, suspicion or belief of money laundering or terrorist financing (see '**Chapter 2: Submitting a SAR**' for further information);
2. a description of the property that you know, suspect or believe is criminal or terrorist property; and
3. a description of the prohibited act for which you are seeking a defence.

The UKFIU is unable to interpret, assume, or infer anything from SAR submissions. In order for the UKFIU to make an informed decision on your defence request you must provide clear, explicit and detailed information covering all three essential criteria.

Sections 1 to 6 of the SAR Portal are relevant to all SARs, including defence requests. Guidance on how to complete these sections is included in '**Chapter 2: Submitting a SAR**'.

## Requesting a DAML or a DATF on the SAR Portal (Section 7 of the SAR Portal)

**Reminder:** You must ensure you have selected the correct legislation in section 1 of the SAR Portal, otherwise you will not be asked the correct questions in section 7.

As noted above, all defence requests should include a description of the prohibited act for which you are seeking a defence. This is the proposed activity that you, the reporter, are seeking a defence to undertake.

For defence requests submitted under POCA, the prohibited act is the activity that, if you proceed without a defence, risks the commission of one or more of the money laundering offences in sections 327 to 329 of POCA. The UKFIU can only consider DAML requests where the prohibited act(s) falls under one or more of the money laundering offences in sections 327 to 329 of POCA. This does not provide you with a defence against other criminal offences relating to the proposed act, such as those under the Money laundering Regulations 2017. When completing section 7 of the SAR Portal, you will be asked to select the section or sections of POCA that your prohibited act falls into.

For defence requests submitted under TACT, the prohibited act is the activity that, if you proceed without a defence, risks the commission of one or more of the terrorist financing offences in sections 15 to 18 of TACT. The UKFIU can only consider DATF requests where the prohibited act(s) falls under one or more of the terrorist financing offences in sections 15 to 18 of TACT. When completing section 7 of the SAR Portal, you will be asked to select the section or sections of TACT that your prohibited act falls into.

## Details about the criminal or terrorist property

On the next screen, you will be asked to provide a description of the property that you know, suspect or believe is criminal or terrorist property. You can add different amounts/types of criminal/terrorist property separately (up to 20). For each amount/type of criminal/terrorist property, you will be asked for:

- **The value of the property, including currency.** This can be an estimate if the exact value is not known. If you have estimated the value, make this clear in your description of the property. If the property is cryptocurrency, enter the converted value of the cryptocurrency in GBP, but ensure you include the value in the relevant cryptocurrency in the description of the criminal property.
- **Where the property is currently held.** This is the current location of the property, if known. Depending on the option you select, you will be asked for further information about the location of the property (e.g. bank account details, address details etc.). If the location is not known, include an explanation of why you are unable to identify its location.

## What is meant by 'criminal property'?

Under POCA, property is 'criminal property' if it constitutes (or represents) a person's benefit from criminal conduct and the alleged offender knows or suspects that it constitutes or represents such a benefit.<sup>3</sup> Criminal conduct is conduct which constitutes an offence in any part of the UK, or would constitute an offence in the UK if it occurred there.<sup>4</sup> Criminal property may also be referred to as the 'proceeds of crime'.

There are two key requirements for criminal property with respect to DAMLs:

1. Case law in the UK has confirmed that criminal property must exist at the time the DAML request is submitted in order for the defence request to be considered. See [Q2 of FAQs](#). Reporters should seek independent legal advice if there is any uncertainty on this point of law.
2. The reporter must have control over whether or not the activity they are seeking a defence for goes ahead. This ensures the reporter can prevent the prohibited act being undertaken during the notice period or following a refusal. If the prohibited act is not within the reporter's control, or this is not clear in the DAML, the UKFIU may close your request or send a request for information to clarify this point.

## Fungibility and ring-fencing of criminal property

It is important to understand the legal concept of fungibility, which may result in a small amount of criminal property tainting the whole of an asset.

The Economic Crime and Corporate Transparency Act 2023 introduced exemptions relating to mixed-property transactions. Reporters should consider seeking legal or regulatory advice on such matters. See [Exemption for mixed property transactions](#) for more information.

<sup>3</sup> POCA, section 340(3)

<sup>4</sup> POCA, section 340(2)

## What is meant by 'terrorist property'?

Under TACT, 'terrorist property' means money or other property which is likely to be used for the purposes of terrorism (including any resources of a proscribed organisation), proceeds of the commission of acts of terrorism, and proceeds of acts carried out for the purposes of terrorism.<sup>5</sup>

## Details about the future specified activity / prohibited act

The future specified activity is the prohibited act or acts for which you are seeking a defence. The SAR Portal and UKFIU guidance use the terms 'future specified activity' and 'prohibited act' interchangeably. This is because the UKFIU can only consider defence requests where the prohibited act is in the **FUTURE** and **SPECIFIC** details of the act or acts have been provided.

For DAMLs, a 'prohibited act' is any activity that would constitute a money laundering offence under POCA. For DATFs, a 'prohibited act' is any activity that would constitute a terrorist financing offence under TACT.

**The prohibited act is the most poorly understood essential criterion for defence requests, often requiring a request for further information before the UKFIU can make an informed decision on the request.**

You will be asked to provide a description of the future specified activity (prohibited act) you are seeking a defence to. This should be set out in a logical format, and clearly describe how the activity may be construed as a money laundering or terrorist financing offence. If you are seeking a defence for multiple prohibited acts or a series of acts, ensure you clearly set them all out.

**The UKFIU will not consider 'either/or' defence requests, where the reporter is seeking consent for two or more alternate prohibited acts. The decision about what activity to undertake is a business decision for a reporter, and any defence request must clearly set out the exact prohibited act or acts the reporter is planning to undertake and seeking a defence to. See [FAQs Q10 to Q12](#) for more information.**

You will also be asked to provide:

- **The total value of the future specified activity.** This should be entered in GBP and can be an estimate if the exact value is not known. If you have converted the value from another currency or estimated the value, make this clear in your description of the future specified activity.
- **The date of the activity.** This date must be in the future. Defence requests cannot be open ended. The UKFIU may only be able to consider requests for a defence for multiple/ongoing events if a timeframe is specified, best practice is this should not exceed 12 months.
- **The intended destination of the funds or property (including confirmation of whether the funds are leaving the UK or moving overseas).** Depending on the option you select, you will be asked for further information about the destination of the property (e.g. bank account details, address details etc.). If the location is not known, you can proceed without selecting an option. However, the UKFIU may not be able to provide a defence if the destination of funds is not known.

<sup>5</sup> TACT, section 14

- **Does the suspicious activity have a nexus in the UK?** While the money laundering and terrorist financing offences can have extra-territorial effect, defence requests must have a UK link or 'nexus' in order to be considered by the UKFIU. This UK link may be through the main subject or associated party, the involvement of a UK-based entity, or because the criminal or terrorist property is located in the UK. This is not an exhaustive list and reporters must satisfy themselves that there is a UK nexus to their request and ensure this is clearly described in the SAR. The UKFIU will be unable to consider any defence request where there is no UK nexus or the UK nexus is not clear from the SAR.
- **Do you intend to transfer the funds to a fraud ledger, a suspense account or similar?** The purpose of this question is to establish if you intend to take full control of the criminal/terrorist property subject to your defence request. For example, the funds will be held in a fraud ledger, suspense account, segregated account or something similar where the party (parties) to the suspicious activity does not control or have access to the funds. If you do not intend to take full control, then select '**No**'; if you do, then select '**Yes**'.

**Note:** The criminal/terrorist property value and the future specified activity value may be the same if the future specified activity for which you are seeking a defence involves all of the suspected criminal/terrorist property. However, there are some cases where they may be different. It is for you, the reporter, to determine what the suspected criminal/terrorist property is in relation to your money laundering or terrorist financing suspicion, and whether this differs from the future specified activity value or not. If you are unsure, seek legal advice.

**If you have not provided a clear description of the activity you are intending to carry out (free from jargon and abbreviations), or if the UKFIU considers the request ambiguous in any way, the UKFIU may not be able to reach a decision on your request without seeking further information from you.**

If the UKFIU requests further information about the future specified activity / prohibited act, the UKFIU is **NOT** asking the reporter to provide:

- details of the suspected criminality being undertaken by the subject (sometimes referred to as the 'predicate offence'), which if known should already be included in the **reason for suspicion** field of the SAR; or
- the particular section under POCA or TACT for which the reporter is seeking a defence (e.g. s.327 POCA), unless the UKFIU has specifically requested clarification on this point.

## Some good examples of common prohibited acts in DAMLs include:

"I seek a defence to transfer the closing balance of £5,000 from the client's account to their nominated account at High Street Bank Sort Code 11-11-11 Account 111111111."

"I seek a defence to exchange contracts, complete the property sale, transfer GBP167,000 to Main Street Building Society to redeem the mortgage, and transfer the equity of GBP334,500 to my client's account at High Street Bank Sort Code 11-11-22 Account 222222222. I also seek a defence to receive payment of my fees of GBP30,000 and to use them in the ordinary course of business."

"I seek a defence to allow the client to withdraw £10,500 from their trading account, generated as a result of market abuse, to their account at High Street Bank Sort Code 11-11-33 Account 333333333."

"I am seeking a defence to accept, on behalf of my client, rental payments of £4,500 per month for 12 months and a service charge of £5,000 per year. I am also seeking a defence to retain £450 per month in agency fees, and to send the remaining amounts to my client's account at High Street Bank Sort Code 11-11-44 Account 444444444 for a 12-month period (ending on XX/XX/XXXX)."

## Some poor examples of a request for a prohibited act in DAMLs include:

"To use the funds in the account at the direction of the customer."

This is too broad and not specified for either time, value or activity.

"The prohibited act for which we seek a defence is money laundering".

This does not set out a future and specific prohibited act.

"I want to act for the client."

Acting for a client is a business decision, and is not a specified activity, as there is not enough information for the UKFIU to know exactly what activity you are undertaking and therefore the extent of the defence required.

"I am asking the NCA what I should do with the funds".

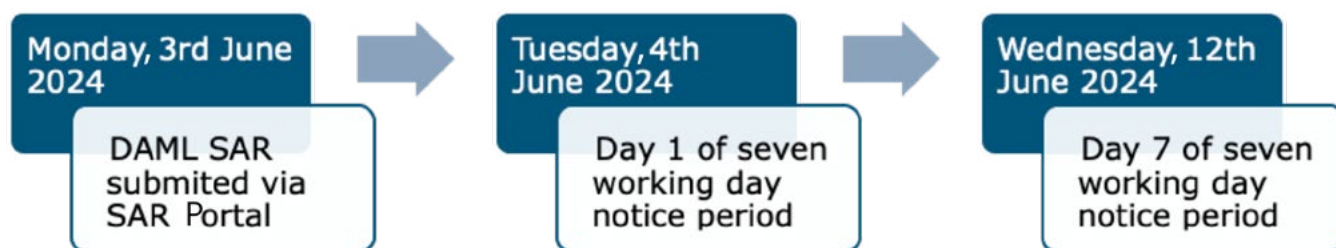
This is a question and not a future specified activity. The UKFIU is unable to provide any advice on what a reporter should or should not do.

"I want to make sure the funds are legitimate before I accept them".

This is not a specified activity and the act of seeking and being granted a defence does not mean the funds are, or will ever be, legitimate.

## What is the process once a defence request is submitted?

Once a defence request is submitted it enters what is known as the 'notice period'. This period starts from the first working day after the day the SAR is submitted, and continues for seven full working days, as defined in the relevant legislation. During this period the future specified activity/prohibited act should not be carried out, otherwise you risk committing an offence. However, this will not prevent you taking other actions on the file, such as writing letters, conducting searches etc.



During the notice period, the UKFIU will assess the information provided in your defence request and consult with partners as necessary. The UKFIU will triage each case for priority, risk, existing law enforcement interest, and asset recovery opportunities, in order to determine how to progress each case. The UKFIU will consider proportionality and necessity when determining the appropriate response.

The UKFIU may contact you for further information or clarification of your request within the notice period; or we may close your request if it does not meet the requirements of POCA or TACT. The UKFIU's approach to missing information will depend on the level of deficiency. If we seek further information or clarification, and have not received a written response from you within the specified timeframe, or the response provided does not provide sufficient details for us to make an informed decision, we may close your case.

Please be aware that the UKFIU may also refer poor quality SARs to the relevant anti-money laundering supervisor for their attention and appropriate action.

## Closure of a defence request

The UKFIU may close a defence request if:

- one or more of the required elements of a defence request are missing;
- the reporter has failed to respond to a request for further information (RFI) within the specified timeframe; or
- the reporter has not satisfactorily answered the queries set out in the original RFI.

Where your case is closed and you still require a defence, you will need to resubmit your request, ensuring you include the information that was missing from the initial request, for it to be considered again. The statutory timeframe for a decision will restart when the new request is submitted.

# The UKFIU's response to your defence request

You will receive a response to your request from the UKFIU during the notice period if:

- we decide to **refuse** your request for a defence; **or**
- we decide to **expressly grant** your request.

In other cases, you may not get any response from the UKFIU before the end of the notice period.

The UKFIU will attempt to communicate all **refusals** by phone first, followed by a written notification of the refusal by email. It is important that all reporters ensure their SAR Portal contact details are kept up to date at all times. See **Chapter 1: Using the SAR Portal**.

**Only designated UKFIU officers within the NCA can provide a decision on a defence request. No other law enforcement officers, including NCA officers outside the UKFIU, can grant or refuse a defence request.**

If your DAML or DATF request is **refused**, then you **do not have a defence** to the money laundering or terrorist financing offence you are proposing to undertake and risk committing an offence if you proceed with the activity.

You **have a defence** to the money laundering or terrorist financing offence you are proposing to undertake if:

- you receive a **granted letter** from the UKFIU in response to your request; or
- the **notice period expires without any response** from the UKFIU.

## Refused DAMLs

### The 31-calendar day moratorium period for refused DAMLs

If your DAML request is refused, the day you receive the refusal marks the start of a 31-calendar day moratorium period (the **moratorium period**). During this moratorium period, law enforcement will work to take positive action against the criminal property. Throughout the notice period, and any subsequent moratorium period, the UKFIU will routinely engage with law enforcement to ensure any refusal continues to be proportionate and necessary.

As with the initial 7-working day notice period, until you receive a granted letter or until the expiry of the moratorium period, whichever is earlier, **you do not have a defence** to the money laundering offence you are proposing to undertake and risk committing an offence if you proceed with the activity.

The moratorium period can be extended beyond the initial 31-days by the court.<sup>6</sup> You will be formally notified by law enforcement in advance of the end of the current moratorium period if they are seeking an extension, and you are permitted to make representation at the court hearing if you want to. The subject will also be informed of the extension application by law enforcement, not less than two business days before the hearing date, to enable them to also make representation to the court if they want to.

<sup>6</sup> POCA, section 336A

If you receive notice that an application has been made to the court to extend the moratorium period, the moratorium period will continue beyond the expiry of the original moratorium period even if the application to extend is not heard by the court until after the expiry date.<sup>7</sup>

If an extension is granted, law enforcement will serve a copy of the Extension Order on you, and the UKFIU will inform you separately that the refusal is maintained until the date the Extension Order ends. If the application is unsuccessful, the UKFIU will grant a defence immediately.

**There is no moratorium period for refused DATFs, and you do not have a defence unless and until the request is granted by the UKFIU. DATF decisions are kept under review following refusal.**

## **DAMLs and DATFs - Why compliance with the notice and moratorium periods, and refusal decisions, is so important**

Any failure to comply with the requirements of the notice or moratorium periods risks you or your organisation committing a money laundering or terrorist financing offence. Non-compliance also limits the ability of law enforcement to pursue asset denial opportunities and ultimately disrupt the criminality underpinning your suspicions. Ensuring your organisation complies with the requirements of the notice and moratorium periods every time means you are playing a key role in protecting the public against serious and organised crime and terrorism.

## **Avoiding the common mistakes that can lead to committing an offence**

Reporters must have robust systems and controls in place to ensure the prohibited act is not undertaken either during the notice period or following a refusal. Nominated Officers and MLROs are reminded of their obligations under POCA and TACT to ensure a prohibited act is not undertaken without appropriate or prior consent.

Common failures and mistakes to avoid are:

### **Not keeping your SAR Portal main contact details up to date**

The UKFIU will use the main contact details registered on the SAR Portal to notify reporters of DAML and DATF decisions. It is **imperative** that all reporters review these details frequently to ensure they are up to date, and this includes both the email address and the contact telephone number. Refer to '**Chapter 1: Using the SAR Portal**'.

We recommend reporters use a shared mailbox for the main contact email address, so requests for information and refusals are not missed if an individual member of staff is on leave. If the main contact details used are those of an individual member of staff, reporters must ensure appropriate processes are in place for their emails and voicemail messages to be accessed by other appropriate staff members during any period of absence or leave (including outside of normal business hours).

**Please note**, while the SAR Portal allows organisations to include two alternative contacts, these should not be relied upon for receiving refusal decisions and other requests from the UKFIU.

<sup>7</sup> POCA, section 336C

## Human error or systems failure

Reporters must also ensure they have robust processes and training in place for all relevant staff to ensure account restrictions, or other mechanisms designed to prevent breaches, cannot be overridden or circumvented without proper oversight. Similarly, where automated systems are used to restrict accounts, these should be frequently tested and reviewed to ensure continued compliance.

## What to do if you identify a breach

All identified breaches of notice and moratorium periods, whether on a DAML or DATF, should be notified to the UKFIU as soon as possible. We also expect reporters to proactively notify their regulator and/or AML supervisor, and will ask you to confirm to us that you have done so. The UKFIU will also make our own referral of notified breaches to the relevant regulator or AML supervisor, and law enforcement may pursue prosecution of those responsible for any resulting money laundering or terrorist financing offences.

## Exemptions to the requirement to submit a DAML request

There are some circumstances where reporters in the regulated sector can carry out activity that would otherwise constitute a money laundering offence under POCA without committing such an offence. These are often referred to as the DAML exemptions or the DAML thresholds. Some of the exemptions only apply to specified entities within the regulated sector, so reporters are advised to seek legal advice on the application of these exemptions to their business. These exemptions do not remove the obligation to submit a SAR when there is knowledge or suspicion of money laundering; they only exempt reporters from the requirement to seek a DAML before proceeding with the activity.

### IMPORTANT:

None of the DAML exemptions or thresholds apply to offences under the Terrorism Act.

## Exemption for operating an account

POCA states that deposit-taking bodies, electronic money institutions and payment institutions do not commit a money laundering offence if they carry out specified acts in operating an account and the value of the criminal property concerned is less than the threshold amount.<sup>8</sup> The threshold amount is determined under section 339A of POCA and, as at the date of publication of this guidance, is set at £3,000. See [Q22](#) for more guidance on this exemption.

<sup>8</sup> POCA, sections 327(2C), 328(5) and 329(2C)

## Exemption for exiting and paying away

POCA states that a person carrying on business in the regulated sector does not commit a money laundering offence if, in the course of that business, they carry out specified acts for the purposes of terminating their business relationship with a customer or client, and the total value of the criminal property transferred is less than the threshold amount. This exemption requires that the person relying on it has also complied with their customer due diligence duties.<sup>9</sup> The threshold amount is determined under section 339A of POCA and, as at the date of publication of this guidance, is set at £3,000.

Please note, if the total value of the funds across several customer accounts is £3,000 or more, the reporter cannot take advantage of this exemption.

Should a member of the regulated sector seek a defence for activity covered by this exemption, the UKFIU is unable to process the request as there is no POCA offence triggered, and we will close the case with a specific letter.

If a reporter holds accounts where there is a mixture of funds from regulated and unregulated business, e.g. in the gambling sector, then they may not be able to take advantage of the exemption. Reporters should include why they don't think they are exempt when submitting a defence request for exiting and paying away funds under £3,000.

If the reporter is not within the regulated sector and seeks a defence to exit and pay away under £3,000, the UKFIU will deal with the case under standard triage criteria.

## Exemption for mixed property transactions

Under POCA, any 'clean' funds to which criminal property has been added (whatever the value), becomes 'tainted' and the whole amount is then considered criminal property (this is the concept of 'fungibility').

However, under sections 327(2F), 328(8) and 329(2F) of POCA, where the total value of the criminal property has been 'ring-fenced' in an account, and the value of the activity with the remaining funds does not cause the balance of the account to fall below the value of the criminal property; the reporter (provided they are within the regulated sector) is free to manage the subject's payments, withdrawals, or buy and sell securities, using the remaining funds without seeking a DAML to do so.

Under their existing obligations reporters should still submit a SAR with details of the 'ring fenced' amount. Should further suspicion arise, or the 'ring fenced' funds need to be accessed for whatever reason, then the reporter should consider if they need a defence under POCA.

<sup>9</sup> POCA, sections 327(2D), 328(6) and 329(2D)

# Frequently Asked Questions

## Prior to submission

### **Q1. If I submit a request, will I get a decision in time to carry out the activity?**

The only decision the UKFIU needs to actively provide a reporter before the end of the notice period is a **refusal** of a defence. In some cases, the UKFIU will actively provide a reporter with a granted decision before the end of the notice period. However, reporters should not assume that this will happen. You must build in some resilience or have a strategy to cope with having to wait the full seven working days before receiving a refusal decision or being able to assume a defence.

### **Q2. Can I seek a DAML where I do not suspect that the funds/asset/property represents the proceeds of crime?**

No. A money laundering offence would not be committed by carrying out the activity and a defence under POCA cannot be considered.

The submission of a DAML request requires knowledge that the property in question is criminal or at least suspicion of the same.

### **Q3. Can I seek a DAML where I believe that the property will become criminal once the activity that I am requesting a defence for has taken place?**

No. If the funds or asset is not criminal property at the time of disclosure, then the UKFIU are unable to provide a defence for a reporter to carry out criminal conduct, and there is no provision to provide a defence for this under POCA (see Q2).

This scenario most often occurs when a reporter believes their customer is being defrauded (romance scams, advance fee fraud etc.), and they seek a defence to transfer the legitimate funds to the fraudster. The funds only become criminal once they are in the fraudster's account and the fraud is complete, therefore the criteria for a DAML request has not been met at the point you are transferring the funds.

### **Q4. Can I seek a defence for an act I have already undertaken? Can I seek a defence retrospectively?**

No. The UKFIU is only able to consider defence requests where the prohibited act(s) is yet to occur. Retrospective defences cannot be granted by the UKFIU. However, a retrospective defence may be available in certain circumstances under section 21ZB of TACT.<sup>10</sup> Please consult your AML supervisor for more information.

<sup>10</sup> TACT, section 21ZB

### **Q5. I am concerned that I will be committing an offence other than a money laundering / terrorist financing offence under POCA or TACT. Can I obtain a defence to do it by seeking a DAML or DATF?**

No. A granted request under POCA only provides a defence to the 'principal' money laundering offences under sections 327 to 329 of POCA and a granted request under TACT only provides a defence to the terrorist financing offences under sections 15 to 18 of TACT. The UKFIU cannot provide a defence under any other parts of POCA or TACT, other legislation or other instruments such as the Money Laundering Regulations 2017.

### **Q6. I am concerned that I will be committing a 'tipping off' offence by seeking an explanation of the account use, or the source of funds from my client. Can I obtain a defence to tipping off by requesting a DAML or a DATF?**

No. The UKFIU has no ability to provide you with a defence to tipping off or prejudicing an investigation under POCA or TACT.

### **Q7. Can I seek a defence to commence a business relationship?**

No. This is a business decision for reporters to make based upon your own risk appetite, and the UKFIU is unable to provide a defence under POCA or TACT for you to do so. It is also your decision whether you wish to continue to act for a client once a suspicion is formed, subject to any professional or statutory obligations.

### **Q8. Can I seek a defence to maintain a business relationship and carry out the directions of my client?**

A request to 'maintain a business relationship' will not be considered by the UKFIU, as the request is too broad and amounts to a 'blanket' defence for all activity going forward, with no visibility or understanding of what activity will be undertaken.

The UKFIU may consider requests relating to a more specified or time-limited activity, such as:

- advising in a corporate takeover or providing legal advice in a civil dispute;
- acting for executors in obtaining a grant, collecting assets and distributing an estate; or
- making payments in relation to insolvency where such activity is time limited and the payments are not made to creditors involved in the criminality.

Where there is any doubt about the extent of the defence requested, the UKFIU will send a request for information (RFI) to ask you to clarify the prohibited act.

### **Q9. Can I seek a DAML or DATF to cover me for an activity which is already prohibited by a criminal or civil freezing order, or other court order?**

Reporters must satisfy themselves that the future specified activity in their request will not breach a criminal or civil court order. Where a reporter or the UKFIU has identified that a court order may exist, the UKFIU will request a response in writing from you to confirm that there will be no breach, if this information is not already included in the submission.

A DAML or DATF from the UKFIU does not override any current court order, and the UKFIU cannot consider a request to undertake an act that would breach or contravene any existing court order in the UK or abroad. It is for the reporter to confirm that the proposed activity is permitted under the existing order and contact the relevant prosecuting authorities, court authorities, or legal representatives to confirm the parameters.

If you have been informed that a court order has been varied to permit the activity, or the activity for which you seek a defence is permitted in the existing court order, then the UKFIU can consider granting a defence. Please ensure your request includes a full explanation of how the proposed activity is not captured by the court order.

### **Q10. I have not yet decided what action to take. Can I seek a defence to help guide my decision?**

No. In order for the UKFIU to make an informed decision, a defence request can only be considered for activity that is future and specified by the reporter. It is not for the UKFIU to tell the reporter what to do.

The DAML and DATF regimes must not be used to seek the UKFIU's or NCA's opinion on what action a reporter should take, or as a step in a reporter's customer due diligence process. Such requests will be closed by the UKFIU.

### **Q11. I know I will be asked to carry out a series of activities, but the activity is dependent on several other factors happening first. Can I seek a defence to the activities now?**

No. The UKFIU consider the request 'hypothetical' at this stage, because the other dependent factors have not yet occurred and may not happen in the manner you expect them to. The UKFIU is unable to make an informed decision until you are able to fully specify the future activity.

## **Q12. I will be either carrying out activity (a), or activity (b), following the conclusion of my enquiries and CDD. Can I seek a defence to these activities now?**

No. The UKFIU cannot consider an 'either/or' request as they may be very different, and the UKFIU is unable to make an informed decision based on the lack of specificity of your final activity.

For example, the UKFIU may be content to grant a defence to use the funds to purchase a house, but may not be content to allow the funds to go back to the subject should the purchase fall through. There is no immediate dissipation of funds in the first scenario, but there is in the second and law enforcement may wish to take action against the funds. This option would be denied to them if a defence was provided on this either/or scenario.

## **Q13. Can I seek a defence for an indefinite period?**

A defence for the specified activity (and value) once granted, is in perpetuity and has no end date, unless the defence is time limited by the UKFIU. Any time limit will be made clear in the UKFIU's response to your request.

The UKFIU generally will not provide a defence for an activity or series of activities lasting longer than 12 months. This is because the circumstances may change and/or there may be law enforcement interest in the subject in the future. If an open-ended request is granted, any future opportunity to recover the proceeds of crime would be lost.

For example, a request to market a house considered to be criminal property for sale would need to be time-limited to 12 months; but the sale of a house to buyers specified in the request would be a one-off activity that does not need to be time limited.

You may be asked to clarify your prohibited act and limit a defence to a 12-month period, on a case by case basis.

## **Q14. Can I request a defence to accept or make monthly payments on an ongoing basis?**

Yes, this may be a suitable way to deal with regular payments.

The request should be specified for value, destination or origin, and for what purpose the payments are being generated, and time-limited for a period of no longer than 12 months (see Q13).

In some circumstances, [a threshold variation](#) may be more appropriate.

## Q15. Can I have a defence to retain funds (for DAMLs)?

Requests to 'retain' funds are considered on a case by case basis. However, a DAML requesting a defence to withhold funds from the subject indefinitely is unlikely to be considered.

Time-limited requests of 12 months or shorter, where there are reasonable grounds for the retention of funds, will be considered on their own merits.

However, if you are seeking a defence for you and/or your client to 'retain' funds or an asset, but you actually mean acquire, use and possess the funds or assets permanently under s329, please be specific in your request as to your activity and intention.

The UKFIU is likely to ask you to clarify any request to 'retain' funds by way of a request for further information.

## Q16. Should I include the name of the investigating officer in a defence request, if I know it?

No. Only the name of the investigating law enforcement agency and any unit name should be included. Refer to '**Chapter 2: Submitting a SAR**' for more information.

## Q17. Should I submit a SAR or a defence request if law enforcement tell me to?

Suspicion should not be inherited. The suspicion of money laundering remains with the reporter. If you have received information from law enforcement about your client/customer, this may lead you to review your relationship with that individual/company. If, following this review, you reach the conclusion that you have your own, independent suspicion of money laundering or terrorist financing, then you should consider your obligations to submit a SAR and whether you wish to avail yourself of a DAML or DATF. Reporters need to be able to articulate their own suspicion within the SAR. This is also the case if you have received notice of a court order or a production order in respect of a particular individual or entity. See '**Chapter 2: Submitting a SAR**' for more guidance on this point.

## Q18. The client is a sanctioned entity, or associated to a sanctioned entity, can I seek a defence to carry out an activity for them?

If you believe the assets under your control are the proceeds of crime, then you will need to consider if you require a DAML; but not all sanctioned entities' assets will be the proceeds of crime and each entity will need to be considered on a case by case basis. However, a DAML does not absolve you of your responsibilities to contact the Office of Financial Sanctions Implementation (OFSI) at His Majesty's Treasury for a licence to move assets for a sanctioned entity.

If an entity is not sanctioned in the UK, but is under sanctions imposed overseas, the UKFIU is unlikely to be able to provide a defence in the UK, as it could undermine the intention of those overseas restrictions.

## **Q19. I hold both terrorist financing suspicions and money laundering suspicions on my client, can I submit this in one SAR?**

No. If you hold a suspicion of terrorist financing, you should submit this under TACT by selecting the relevant legislation on the SAR Portal. If you also hold money laundering suspicions, you will need to submit a separate SAR under POCA, again ensuring the relevant legislation is selected.

This is the case if you are submitting a required SAR (not seeking a defence) and if you are seeking a defence against money laundering (for DAMLs) or a defence against terrorist financing (for DATFs).

Please note, each SAR should contain a full description of your suspicion and not just refer the UKFIU to the other SAR. See '**Chapter 2: Submitting a SAR**' for more guidance on this point.

## **Q20. What is Bona Vacantia, and should I consider this before seeking a DAML?**

Bona Vacantia essentially means ownerless property and is an instrument under the Companies Act 2006 that explicitly relates to the assets of dissolved UK companies.

Specifically, once a company is dissolved (whether by way of voluntary dissolution/winding up petition or otherwise), all assets that remain in the company after dissolution, including funds that are paid into the company account after dissolution, are known as Bona Vacantia and must be sent to the Crown.

The funds of a dissolved company must not be sent to the Directors or Ultimate Beneficial Owner of the company.

Reporters should consider their obligations under Bona Vacantia if they are exiting their relationship with a company customer. Should a reporter have a suspicion of money laundering as well, they may wish to consider submitting a DAML request in order to send the funds to the Crown.

## **Q21. Are there any exemptions to the requirement to submit a DAML request?**

Yes. See '[Exemptions to the requirement to submit a DAML request](#)' for further information.

## Q22. If I have regular transactions to process over £3,000 from a suspicious account, can I request a Threshold Variation in order to manage the regular payments?

Yes – but only if you are a deposit-taking body, electronic money institution or payment institution. These reporters can apply and obtain permission from the UKFIU to make payments of a higher amount than £3,000.

This is called a 'threshold variation' request. See section 5 of '**Chapter 2: Submitting a SAR**' for further information. Unlike "appropriate consent" under s335, there is no statutory time period attached to a threshold variation request and the NCA UKFIU is not obliged to respond within any set timeframe.

There are two types of variation request:

1. A request to pay a specified amount for a specified purpose on a specified timeline. On submission, a reporter will need to include the specific value amount they are seeking a threshold variation for and when, the reason they are suspicious, and details of the beneficiary account and for what purpose the transaction is required.
2. A request to pay a specified amount per transaction from one or more accounts for more than one purpose. To ensure the UKFIU decision to grant or refuse a variation remains proportionate and justified, the reporter will need to explain why such a threshold limit is necessary, the type of payments to be made, name the recipient/s or the type of recipient, why the payments are required, if the recipient is a UK or overseas entity and the frequency of the activity.

The UKFIU may consult with partners to make an informed decision, and if granted, the reporter will be emailed a letter providing a decision with the specific details of the variation included.

**Note:** A threshold variation request can be rescinded by the UKFIU if the circumstances change or further information comes to light that changes the basis upon which the original decision to grant a variation was made.

## Q23. Can I submit a DAML to refund a victim?

The UKFIU view is that a DAML is unnecessary if the reporter's position is that they are returning money to a victim of crime and will not be carrying out activity which falls within sections 327 or 328 of POCA. The submission of a DAML in these circumstances is entirely the decision of the reporter. If you are submitting a SAR and consider the purpose of the activity in question is to return money to a victim of crime, select the relevant glossary code (XXVICTXX).

## During the Notice Period

### **Q24. How does a chargeback claim affect a DAML request in circumstances where the claim will be paid out of funds subject to either a DAML that is still within the seven working day notice period (a 'live DAML') or a refused DAML that is now in the moratorium period?**

Chargebacks allow consumers to claim a refund if something has gone wrong with a purchase paid for with a debit or credit card. Section 75 of the Consumer Credit Act 1974 also provides additional protection for some purchases made using a credit card.

The UKFIU considers that, under POCA, all funds in an account or accounts must be 'frozen' during the notice period following submission of a DAML request relating to those funds, and during any subsequent moratorium period following the refusal of such a request.

This means that a reporter may be unable to satisfy an external request to pay away those funds, even to a victim through a chargeback claim, until the case is resolved through a court order to recover the funds or a defence is granted.

If a request is received from a victim or through a chargeback scheme for funds subject to a live or refused DAML request, a reporter is likely to be committing a money laundering offence by paying away those funds, unless the reporter has sought to amend their prohibited act with the UKFIU (and received confirmation from the UKFIU that this has been accepted).

If you wish to amend your prohibited act during the DAML notice or moratorium period, please email [DAML@nca.gov.uk](mailto:DAML@nca.gov.uk) and explain why you are seeking an amendment. You should also email the DAML team if you become aware that the criminal property disclosed in your request has diminished (for any reason) during these times.

### **Q25. I'm under pressure from the subject? What should I tell them to avoid 'tipping off'?**

The UKFIU is unable to give advice or guidance on specific methods to answer client queries/awkward questions, as these will vary by reporting sector. For this reason, this discussion is best had with your AML supervisor or legal advisors.

If a subject is behaving in a threatening/intimidating manner or is suggesting they will harm themselves, see [Q28](#) of this guidance.

All reporters should remain mindful of 'tipping off' once a SAR is submitted.

## Q26. Can I request an update on my case?

The DAML and Terrorist Finance teams typically operate with a very high workload and must deal with cases in date order. The UKFIU has a statutory seven working day period to consider all defence requests.

Requests for progress updates cause unnecessary and additional workloads adversely impacting on UKFIU efficiency. Reporters are therefore asked not to request updates during the notice period, as you are unlikely to receive a response.

## Q27. Can my case be expedited?

The UKFIU will consider defence request cases to be prioritised in certain circumstances. Home Office Circular 29/2008 sets out the criteria on which the UKFIU must make DAML decisions: this includes considering the impact on the reporter in terms of risk of significant financial loss; that a legitimate business might cease trading; or there are severe financial or personal consequences to an individual. The UKFIU applies the same process to DATF decisions.

Examples of when to seek an expedited decision could include where a threat of harm could be prevented (see [Q28](#)), or where a high value business deal will fall through if a decision is not provided by a certain date (see [Q29-30](#)). Please note, that whilst the UKFIU may be able to expedite a request, a decision to grant the request is not guaranteed.

If you are an Insolvency Practitioner and have submitted a DAML requesting a defence to take control of the criminal property immediately on appointment to prevent dissipation and/or the collapse of a company, please email [DAML@nca.gov.uk](mailto:DAML@nca.gov.uk) marking it for the attention of management and ask for an expedited decision, stating your reasons. There are no other circumstances whereby the UKFIU would expedite an Insolvency Practitioner's request.

Always include the URN in any email communication with the UKFIU.

## **Q28. What should I do if the customer is threatening to harm themselves, or threatening to harm me, the staff or the business if they can't access the funds or complete the activity, which is subject to a live defence request?**

If the customer/client is threatening to harm themselves you should first call an ambulance and/or report the matter to the Police, to get help for the individual.

If the customer/client is threatening to harm you, other people, or your business, you should first report the matter to the Police to get immediate help at your premises if the customer is on site, or to visit them if the threats are not made in person.

You will then also need to inform the UKFIU of the threat, email [DAML@nca.gov.uk](mailto:DAML@nca.gov.uk) (for DAMLs) or [UKFIUTFT@nca.gov.uk](mailto:UKFIUTFT@nca.gov.uk) (for DATFs) with the following information:

- how long ago the threat was made and to whom;
- the nature of the threat and the exact words used;
- whether this the first time it has happened since submission;
- whether the subject appears physically or mentally distressed, angry or aggressive;
- whether you informed local police or the ambulance service and, if so, when (including any CAD reference number);
- if you did not call the emergency services, an explanation as to why not;
- how long the account was frozen for before the DAML or DATF was submitted.

The UKFIU will expedite the request and provide the reporter with a decision as soon as possible (if the request is still within the notice period). If the request has been refused and is within the moratorium period (for DAMLs), the UKFIU will need to contact the law enforcement agency to review the refusal in light of the new information, which may take longer; and you should note that the request may remain refused.

If this threat is made prior to your defence request, include the above detail within the DAML or DATF, and following submission, email [DAML@nca.gov.uk](mailto:DAML@nca.gov.uk) (for DAMLs) or [UKFIUTFT@nca.gov.uk](mailto:UKFIUTFT@nca.gov.uk) (for DATFs) directly with the relevant URN.

## **Q29. What should I do if the customer claims they are facing financial hardship if they can't access the funds or complete the activity, which is subject to a live defence request?**

If the account holder has claimed financial hardship without access to their funds, reporters should email [DAML@nca.gov.uk](mailto:DAML@nca.gov.uk) (for DAMLs) or [UKFIUTFT@nca.gov.uk](mailto:UKFIUTFT@nca.gov.uk) (for DATFs) to ask for the UKFIU to review. The email should be specific about what hardship the account holder has suggested.

The UKFIU will expedite a review of the defence and, if allocated to an LEA, alert them to the current situation and request an urgent review.

### **Q30. What should I do if the customer claims their company will go under if they can't access the funds or complete specific activities, when the account is subject to a live defence request?**

Reporters should email [DAML@nca.gov.uk](mailto:DAML@nca.gov.uk) (for DAMLs) or [UKFIUTFT@nca.gov.uk](mailto:UKFIUTFT@nca.gov.uk) (for DATFs) if the account holder or its representatives claim they need to pay particular invoices which, if not processed, may lead to the collapse of the company, or they need to make company salary payments to their workforce.

The reporter should include the following in their email:

- what specific payments the account holder is requesting to be paid and the value of the payments;
- the reason for the payments;
- an analysis of account usage (if not already included in the request), which provides information as to previous use of the account for the activities specified by the account holder. This information will be crucial for the UKFIU in making an informed decision.

### **Q31. What should I do if I am informed that litigation has (or will be) commenced against the firm if access to their funds is not restored, or the activity is not processed; when the account is subject to a live defence request?**

The reporter should email [DAML@nca.gov.uk](mailto:DAML@nca.gov.uk) (for DAMLs) or [UKFIUTFT@nca.gov.uk](mailto:UKFIUTFT@nca.gov.uk) (for DATFs) and include the following information:

- what documents have been served on you (attach the documents if appropriate);
- how you are going to respond to the litigation threats / solicitors' letters / served court papers. Please include the exact wording you will use, as this is what the UKFIU will need to agree with partners;
- if there is an imminent court date or other deadline for a response;
- whether you anticipate the account holder will issue a Winding Up order against your firm;
- how long access to the accounts has been blocked, or how long you have not carried out the specified activity on behalf of the customer;
- whether you intend to conjoin the NCA in any litigation hearing.

If the case has been allocated to an LEA, the UKFIU will make them aware of the development.

The email will be escalated internally to the relevant departments within the UKFIU and/or the wider NCA, and you will be contacted by the UKFIU Information Management Team in order to assist with your response.

### Q32. The circumstances of my disclosure have changed during the notice period; should I submit a new defence request?

This will depend on the significance of the change and the circumstances of the case. As a general rule, new information relevant to the suspicion, or any change in the destination or origin of the funds, the value, or the prohibited act, must be reported to the UKFIU.

An email update sent to [DAML@nca.gov.uk](mailto:DAML@nca.gov.uk) (for DAMLs) or [UKFIUTFT@nca.gov.uk](mailto:UKFIUTFT@nca.gov.uk) (for DATFs) is required to allow the UKFIU to make an informed decision on the updated circumstances, including allocating to law enforcement. Please note, you may be required to re-submit a new defence request.

If you submit a new defence with all the relevant information included, send a covering email to [DAML@nca.gov.uk](mailto:DAML@nca.gov.uk) (for DAMLs) or [UKFIUTFT@nca.gov.uk](mailto:UKFIUTFT@nca.gov.uk) (for DATFs) asking for the first request under URN [number] to be withdrawn, and replaced with URN [number].

The timeframes will start again from the date of the new submission.

### Q33. Can I withdraw a defence request?

Yes, if you no longer require a defence, the activity is no longer going ahead, or you have decided not to undertake the activity, but only when the following conditions are satisfied:

- the request is still within the notice period;
- the criminal/terrorist property subject to the disclosure remains within the control of the reporter (except where suspicion has been allayed); and
- the UKFIU has not provided you with a decision already.

If a reporter has decided to withdraw from the activity, the reporter should inform the UKFIU and consider if their prohibited act has changed.

If a reporter no longer wishes the UKFIU to consider its request for a DAML or DATF, then a request can be withdrawn in writing by emailing [DAML@nca.gov.uk](mailto:DAML@nca.gov.uk) (for DAMLs) or [UKFIUTFT@nca.gov.uk](mailto:UKFIUTFT@nca.gov.uk) (for DATFs). The UKFIU may consider retaining the information disclosed for intelligence purposes.

**Note:** A reporter is unable to withdraw a defence request if the funds have been paid away in the notice, moratorium or moratorium extension periods (see [Q41](#)).

### Q34. Can I discuss the submission of my SAR with anyone?

You should not discuss the fact of submitting a SAR with anyone if this risks prejudicing an investigation.

There are few exceptions to this rule and further advice on these exceptions should be sought from trade bodies, regulators or via legal advice.

### **Q35. Why have I been asked for additional information that is not mandated by POCA/TACT?**

The DAML or Terrorist Finance teams may, on occasion, require additional information in order to make a proportionate and informed decision on the defence request.

The information may be required to enable the UKFIU to understand the extent of the defence requested, when the relationship between the entities is not clear, or the circumstances are complex.

Reporters are given a set timeframe to respond to a request, and a case may be closed if the response is not received within the specified timeframe. This is to ensure that the UKFIU and Law Enforcement have enough time to consider the additional information within the statutory notice period.

Whilst the UKFIU cannot compel reporters to provide such information, failure to respond to a request for information may affect the UKFIU's ability to make an informed decision on a case.

## Following a decision or final UKFIU communication

### Q36. I have received a granted decision from the UKFIU; can I proceed?

You should not take the UKFIU's granted letter as 'permission to proceed'.

It is a matter for each reporter to determine whether they should proceed with the activity, taking into account their ethical, legal and regulatory obligations, as well as commercial considerations.

If your request has been granted, you have a defence to specific offences in POCA/TACT but not to other criminal offences (e.g. those in the Money Laundering Regulations 2017, Bribery Act 2010, Fraud Act 2006).

**Note:** a granted defence does not mean the funds subject to the request, or the funds remaining in the account, are legitimate. It only means that the UKFIU has assessed all the information available and are content to provide you with a defence for this particular activity.

### Q37. My defence request has been refused; what do I do now?

Under POCA, the moratorium period starts from the date you receive the refusal decision, and during this period (as with the notice period) you must not carry out the prohibited act that is the subject of your DAML request.

There is no moratorium period for refused DATFs, and you do not have a defence unless and until the request is granted by the UKFIU. DATF decisions are kept under review following refusal. However, under both TACT and POCA, the account must remain frozen until you receive a court order, the moratorium period lapses (POCA), or the [UKFIU grants consent](#).

Reporters should have sufficient measures and controls in place to secure the funds or other property whilst under refusal. Continuing to transact following receipt of a refusal risks committing a money laundering or terrorist financing offence.

The UKFIU will attempt to communicate all refusals by phone first, followed by a written notification of the refusal by email. It is important that all reporters ensure their SAR Portal contact details are kept up to date at all times. Refer to '**Chapter 1: Using the SAR Portal**' for further guidance.

You may be contacted by a law enforcement investigation team who may wish to obtain further information to inform any action they may take, i.e. current balances, representation by the subject or their representatives etc.

Please keep the UKFIU informed if refusal to provide a defence causes issues for you or the subject, such as threat of litigation or significant financial loss (see [Q28-31](#)).

### **Q38. I have received a 'partial' decision from the UKFIU, what does it mean?**

The UKFIU will issue part granted and part refused decisions on a case by case basis, where concern over the proportionality of the request (or the decision), has been a contributing factor.

Proportionality considerations may include where there are legitimate and criminal funds in a mixed account or series of accounts, a duty of care to the subject or their wider family to prevent hardship, a risk to the NCA, law enforcement or a reporter, the viability of a current (or future) commercial venture, to allow for the payment of legitimate transactions, or to reduce the threat of litigation.

You must read the response you receive from the UKFIU very carefully to ensure you completely understand which activity or activities you have a defence to undertake, and which activities you do not have a defence to undertake.

### **Q39. I have not received a decision from the UKFIU within the seven working day notice period, what should I do?**

If you have not received a refusal decision from the UKFIU by the end of the seven working day notice period, the law says you must be treated as having 'appropriate consent' for the activity specified in your disclosure.

Before you undertake the activity, you should ensure the relevant notice or moratorium period has definitely expired (remember to consider bank holidays), that the email address provided to the UKFIU for your organisation is working and is a generic address (or an inbox accessible to the whole team), and that no message from the UKFIU has been left on a voicemail of the contact telephone number provided.

Please also see '[The UKFIU's response to your defence request](#)' section for further information

### **Q40. Why does the UKFIU exercise its discretion not to provide an expressed decision to grant a defence and what should I do now?**

Section 2A POCA states that 'A relevant authority [including the NCA] must exercise its functions under this Act in the way which it considers is best calculated to contribute to the reduction of crime'. The power to act positively, however, is limited to those cases where it has been identified that there is a criminal or civil investigation that could lead to restraint or other court order.

The terminology of 'appropriate consent' and 'defence against money laundering' risks being seen by some reporters as the UKFIU's tacit approval of the activity and there is a real risk in many cases that, where refusal is not appropriate, a granted letter from the UKFIU will undermine POCA's efforts to reduce crime, and may have the unintended effect of enabling it.

It is always a matter for the reporter to decide how and whether you proceed with the activity set out in your submission. If you have received an explanation from the UKFIU explaining why we have exercised our discretion not to provide an express decision, you may want to take advice from your AML supervisor or a legal advisor as to your position.

## Q41. I have realised that funds subject to the defence have been paid away, what should I do?

Reporters should email [DAML@nca.gov.uk](mailto:DAML@nca.gov.uk) (for DAMLs) or [UKFIUTFT@nca.gov.uk](mailto:UKFIUTFT@nca.gov.uk) (for DATFs), copying in [UKFIUEngagement@nca.gov.uk](mailto:UKFIUEngagement@nca.gov.uk), with an explanation of the circumstances, where the criminal/terrorist property has been sent to, and any attempts made to recover the property (successful or not). If the property is under refusal and you know the relevant law enforcement agency's details, you should also inform them, however the UKFIU will also do so. This applies regardless of whether the breach happened during the notice period or following a refusal, and regardless of the reasons for the breach.

The UKFIU takes these situations very seriously, and if there is an active investigation we will inform the relevant law enforcement agency. It will be up to law enforcement to decide if they will prosecute a reporter for money laundering or terrorist financing, depending on the circumstances.

**Note:** If the property has been paid away following the service of a court order, you will also need to inform the court.

A referral for a failure of systems and controls will be made by the UKFIU to the reporter's Regulator or AML Supervisor.

## Q42. Can I talk to police or other law enforcement regarding my disclosure?

The UKFIU may refer your SAR to police or other law enforcement agencies as part of the process. Law enforcement may contact you for further information or to discuss the circumstances of your disclosure in more detail.

If you are contacted by law enforcement, we recommend that you verify that they are who they say they are, for instance by ringing them back via their force/agency switchboard. SARs can only be shared with law enforcement officers who are either SAR researchers or accredited financial investigators or financial intelligence officers. The individuals contacting you should hold one of these accreditations. You should not assume that all law enforcement officers have access to SARs or should be privy to the information contained in them.

# Versions

Version	Date published
1.0	November 2025
1.1 (Grammar amendment to Q21. on page 22)	December 2025

# Key Resources and Contacts



To access other UKFIU guidance documents and SAR related products, see the NCA website [here](#)



If you have any feedback in relation to this guidance document, please contact [UKFIUEngagement@nca.gov.uk](mailto:UKFIUEngagement@nca.gov.uk)



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