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Criminal Law News

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The Accounting Practice Board issued a new money laundering guidance in October 2010 to assist auditors in applying Auditing Standards of general application to particular circumstances and industries. These are not prescriptive rules but persuasive notes. Having neither new statute nor regulations attached to them. It mainly addresses the legal requirements of the POCA 2002, the Terrorism Act 2000 and the Money Laundering Regulations 2007. It addresses topics on reporting to SOCA, 'tipping off', reporting to regulators and successor auditors.

ASB's Practice Note 12 (Revised) is approved by HM Treasury in accordance with ss. 330 and 331 of the POCA 2002 and s.21A of the Terrorism Act 2000 and Regulations 42 and 45 of the Money Laundering Regulations 2007 (ML Regs), focusing on the impact of the UK anti-money laundering legislation on auditors' responsibilities for financial statements. Surprisingly, even today, three years after the introduction of the money laundering regulations, there is still uncertainty about interpretation of the regulations. All audits relating to accounting periods ending before 15 December 2010 must comply with the revised practice note 12.

The Regulated sector

'**The regulated sector'** is defined in the Proceeds of Crime Act 2002 Schedule 9 Part 1 (as amended by Statutory Instrument 2003/3074, 'The Proceeds of Crime Act 2002 (Business in the Regulated Sector and Supervisory Authorities) Order 2003' and Statutory Instrument 2007/3287 'The Proceeds of Crime Act 2002 (Business in the Regulated Sector and Supervisory Authorities) Order 2007)'. The regulated sector includes (but is not restricted to) the following persons acting in the course of business in the United Kingdom:- credit institutions; financial institutions (including money service operators); auditors, insolvency practitioners, external accountants and tax advisers; independent legal professionals; trust or company service providers; estate agents; high value dealers when dealing in goods of any description which involves accepting a total cash payment of 15,000 euro or more; and casinos.

Auditor

'Auditor' here means *'anyone who is part of the engagement team (not necessarily only those employed by an audit firm) which is made up of all persons who are directly involved in the acceptance and performance of a particular audit; the audit team; professional personnel from other disciplines involved in the audit engagement and those who provide quality control or direct oversight of the audit engagement'*. Experts contracted by the firm are not 'auditors'.

Criminal property

'Criminal property' here means property which *'constitutes a person's benefit from criminal conduct or it represents such a benefit (in whole or in part and whether directly or indirectly); and if the alleged offender knows or suspects that it constitutes or represents such a benefit* '.

The auditor must be alert to the possibility that audit procedures applied for the purpose of forming an opinion on the financial statements may bring instances of possible non-compliance with other laws and regulations to the auditor's attention.

This includes of non-compliance that might incur obligations for partners and staff in audit firms to report to a regulatory or other enforcement authority. He must consider what contingent liabilities might arise in this area. If an audit client has obtained legal advice that certain actions or circumstances do not give rise to criminal conduct and therefore cannot give rise to criminal property, provided that such legal advice was obtained from a suitably qualified and independent lawyer and that the lawyer was made aware of all relevant circumstances known to the auditor, the auditor may rely on such advice.

Serious offence

'Serious offence' here means an offence punishable by imprisonment for a maximum term
in excess of 12 months if it occurred in any part of the UK, with the exception of an offence under the Gaming Act 1968; an offence under the Lotteries and Amusements Act 1976; or an offence under section 23 or 25 of the Financial Services and Markets Act 2000.

ML offences as per POCA 2002

A section **327** POCA offence is the *'concealing'* of criminal property (including concealing or disguising its nature, source, location, disposition, movement, ownership or rights attaching; converting, transferring or removing from any part of the UK).

A section **328** offence concerns 'arranging' (entering into or becoming concerned in an arrangement which the business or an individual knows or suspects facilitates the acquisition, retention, use or control of criminal property by or on behalf of another person).

A section **329** offence concerns '*acquiring, using or possessing criminal property'*.

A section **330** offence concerns the nominated officer of an audit firm (the Money Laundering Reporting Officer (MLRO) who has knowledge or suspicion of, or reasonable grounds to know or suspect money laundering. He must report the suspicion to the Serious Organised Crime Agency (SOCA). After he has made his report to SOCA, he must alert staff and partners to the dangers of disseminating information that is likely to 'tip off' a money launderer or prejudice an investigation. 'Tipping off' is a criminal offence under the anti-money laundering regulation.

A section **340 (11)** offence is the commission of an act '*which (a) constitutes an offence under section 327, 328 or 329, (b) constitutes an attempt, conspiracy or incitement to commit an offence specified in paragraph (a), (c) constitutes aiding, abetting, counselling or procuring the commission of an offence specified in*

paragraph (a), or (d) would constitute an offence specified in paragraph (a), (b) or (c) if done in the UK.'

ML offences as per the Terrorism Act 2000

The Terrorism Act 2000 contains offences for the laundering of terrorist funds, such funds including any funds that are likely to be used for the financing of terrorism. There is no need for funds to have been obtained from a previous criminal offence for them to be terrorist funds.
Auditors are part of the regulated sector as per the ML Regs, and so are required to report knowledge or suspicion of any person they suspect is engaged in money laundering, by identifying the person or the whereabouts *of any of the laundered property*, if such information has come to the auditors in the course of their 'regulated' business.
It is a criminal offence for an auditor to fail to report knowledge or suspicion of money laundering in relation to the proceeds of any crime is a criminal offence. Auditors (partners and staff) will face criminal penalties if they breach

ML Regs 2007
Businesses in the regulated sector must establish risk-sensitive policies and procedures relating to customer identification and on-going monitoring of business relationships; reporting internally and to SOCA; record keeping;
internal control, risk assessment and management; training for all relevant employees; and monitoring and management of compliance with and the internal communication of such policies and procedures. In addition, audit firms need to ensure sufficient senior management oversight of the systems used for monitoring compliance with these procedures. This can be coordinated with the responsibility for the firm's quality control systems under ISQC (UK and Ireland) and for anti-bribery as per the Bribery Act 2010. (Detailed guidance on developing and applying a risk based approach is given in section 4 of the CCAB Guidance).

ML Regs

ML Regs 2007 replaced ML Regs 2003. The ML Regulations apply to persons, acting in the course of business as a statutory auditor within the meaning of Part 42 of the Companies Act 2006, when carrying out statutory audit work within the meaning of section 1210 of the Companies Act 2006. The ML Regs impose requirements on businesses in the regulated sector relating to systems and training to prevent money laundering, identification procedures for clients, record keeping procedures and internal reporting procedures.
Auditors must report knowledge or suspicion, or reasonable grounds for knowledge or suspicion, of crimes that potentially have no material financial statement impact. POCA does not contain *de minimis* concessions. An auditor who knows or suspects that he himself is involved in money laundering, is required to report this in order that appropriate consent can be obtained. If an auditor considers that the action he

plans to take, or may be asked to take, will result in his committing a principal money laundering offence, he must obtain prior consent to that action from his firm's MLRO and the MLRO is required to seek appropriate prior consent from SOCA. Note that all ML offences are subject to the provisions of section 330(6) which exempts such reporting if it breaches professional privilege including legal privilege and section 330 (7) offences committed abroad.

Anti-ML policies and training

Partners and staff in audit firms follow their firm's internal documentation procedures when considering whether to include documentation relating to money laundering reporting in the audit working papers. However, in order to prevent 'tipping off' where another auditor or professional advisor has access to the audit file, the auditor may wish to have all details of internal reports held by the MLRO and exclude these from client files Firms must include in their anti-ML policies the fact that partners and staff are aware of the provisions of POCA, the ML Regulations and the TA 2000. Partners and staff must be trained to recognise and deal with actual or suspected money laundering activities.

Penalties- imprisonment and/or unlimited fine

Sections 334 and 336(6) POCA 2002, state that the maximum penalty for the three principal money laundering offences (on conviction on indictment) is 14 years imprisonment and/or an unlimited fine.
The maximum penalty (on conviction on indictment) is 5 years imprisonment and/or an unlimited fine for the following offences:
• person in the regulated sector other than a nominated officer failing to make a disclosure (s. 330 POCA).
• nominated officer failing to disclose (s.330 and s.332).
• nominated officer gives his consent inappropriately (336(5)).
• 'tipping off' (s. 333 (A)-(E).
On summary conviction, the maximum penalty for all the above offences is 6 months' imprisonment and/or a fine not exceeding the statutory maximum.

Fine for incorrect disclosure

A person guilty of an offence under section 339(1A) of making a disclosure under section 330, 331, 332 or 338 otherwise than in the form prescribed by the Secretary of State or otherwise than in the manner so prescribed is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Client identification and on-going monitoring of business relationships
Identification procedures, as required by the ML Regulations, are mandatory when accepting appointment as auditor. The extent of information collected about the

client and verification of identity undertaken will depend on the client risk assessment. Guidance on identification procedures, including references to financial restrictions regimes (i.e. sanctions), is given in section 5 of the CCAB Guidance.A risk based approach is appropriate when devising policies and procedures, but an auditor will not adopt a risk based approach to make reports either internally or to SOCA.

Client integrity
Auditing standards on quality control require the audit firm to consider the integrity of the client. This involves the auditor making appropriate enquiries and may involve discussions with third parties, the obtaining of written references and searches of relevant databases. These procedures may provide some of the relevant client identification information but may need to be extended to comply with the ML Regulations.

Example of note to Client regarding Client identification

'As with other professional services firms, we are required to identify our clients for the purposes of the UK anti-money laundering legislation. We are likely to request from you, and retain, some information and documentation for these purposes and/or to make searches of appropriate databases. If we are not able to obtain satisfactory evidence of your identity within a reasonable time, there may be circumstances in which we are not able to proceed with the audit appointment.
The provision of audit services is a business in the regulated sector under the Proceeds of Crime Act 2002 and, as such, partners and staff in audit firms have to comply with this legislation which includes provisions that may require us to make a money laundering disclosure in relation to information we obtain as part of our normal audit work. It is not our practice to inform you when such a disclosure is made or the reasons for it because of the restrictions imposed by the 'tipping off' provisions of the legislation.

Identification of knowledge or suspicions
ISA (UK and Ireland) 250 Section A establishes standards and provides guidance on the auditor's responsibility to consider law and regulations in an audit of financial statements. This means that an auditor must have a general understanding of the legal and regulatory framework applicable to the entity and the industry or sector in which the entity operates and how the entity is complying with that framework and he must see audit evidence regarding compliance with the provisions of those laws and regulations generally recognised to have a direct effect on the determination of

material amounts and disclosures in the financial statements. He must perform procedures to help identify instances of non-compliance with other laws and regulations which may have a material effect on the financial statements, by enquiring of those charged with governance as to whether the entity is in compliance with such laws and regulations; and inspecting correspondence with the relevant licensing or regulatory authorities.

Overseas money laundering offences in groups

UK auditors must report the laundering of the proceeds of conduct which takes place overseas if that conduct would constitute an offence in any part of the UK, subject to certain exceptions. The ML Regs does not impose any requirement for the UK parent company auditor to change or add to the normal instructions to auditors of overseas subsidiaries. However, when considering non-UK parts of the group audit the UK parent company auditor will need to consider whether information obtained as part of the group audit procedures (for example reports made by non-UK subsidiary auditors, discussions with non-UK subsidiary auditors or discussions with UK and non-UK directors) gives rise to knowledge or suspicion, or reasonable grounds for knowledge or suspicion, such that there is a requirement for the UK parent company auditor to report to SOCA.

Once the auditor suspects a possible breach of law or regulations, the auditor will need to make further enquiries to assess the implications of this for the audit of the financial statements. Auditing standards on laws and regulations require that when the auditor becomes aware of information concerning a possible instance of non-compliance, the auditor should obtain an understanding of the nature of the act and the circumstances in which it has occurred, and sufficient other information to evaluate the possible effect on the financial statements. Where the auditor knows or suspects, or has reasonable grounds to know or suspect, that another person is engaged in money laundering, a disclosure must be made to the firm's MLRO or, for sole practitioners, to SOCA, the MLRO being responsible for deciding, on the basis of the information provided by the partners and staff, whether further enquiry is required, whether the matter should be reported to SOCA and for making the report to SOCA.

Partners and staff may seek advice from the MLRO who will often act as the main source of guidance and if necessary act as the liaison point for communication with lawyers, SOCA and the relevant law enforcement agency. (More detailed guidance on the role of the MLRO is given in section 7 of the CCAB Guidance).

The format of the internal report made to the MLRO is not specified by the ML Regs. MLROs determine the form in which partners and staff in audit firms report knowledge or suspicion of, or reasonable grounds to know or suspect, money laundering offences internally to their MLRO, although this will need to provide the MLRO with sufficient information to enable a report to be made to SOCA if necessary. Reporting as soon as is practicable to the MLRO is the individual responsibility of the partner or audit staff member and although suspicions would normally be discussed within the engagement team before deciding whether or not to make an internal report to the MLRO this should not delay the report to the

MLRO and, even where the rest of the engagement team disagrees, an individual should not be dissuaded from reporting to the MLRO if the individual still considers that it is necessary. In the case of a sole practitioner, who is not required to appoint an MLRO, the sole practitioner reports directly to SOCA.

The anti-money laundering legislation does not require the auditor to undertake any additional enquiries to determine further details of the predicate criminal offence. If the auditor is genuinely uncertain as to whether or not there are grounds to make a disclosure, the auditor will bring the matter to the attention of the audit engagement partner who may wish to seek advice from the MLRO.

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Legal privilege

43. Legal privilege can provide a defence for a professional legal adviser to a charge of failing to report knowledge or suspicion of money laundering and is generally available to the legal profession when giving legal advice to a client or acting in relation to litigation.15 If the auditor is given access to client information over which legal professional privilege may be asserted (for example, correspondence between clients and solicitors in relation to legal advice or litigation) and that information gives grounds to suspect money laundering, the auditor considers whether the auditor is nevertheless obliged to report to the MLRO. There is some ambiguity about how the issue of legal privilege is interpreted and a prudent approach is to assume that legal privilege does not extend to the auditor. Where the auditor is in possession of client information which is clearly privileged (for example, a solicitor's advice to an audit client), the auditor seeks legal advice to determine whether that privilege can be extended to the auditor.

'Tipping off' and prejudicing an investigation

44. In the UK, 'tipping off' is an offence for individuals in the regulated sector under section 333A of POCA. This offence arises:

(a) When an individual discloses that a report (internal or external) has already been made where the report is based on information that came to that individual in the course of a business in the regulated sector and the disclosure by the individual is likely to prejudice an

14 For the purposes of this Practice Note 'completion of the audit' is interpreted as being no later than the date the auditor's report is signed, although if there is likely to be a significant period between the date the audit work is completed and the date the auditor's report is signed the auditor considers submitting relevant reports earlier.

15 Statutory Instrument 2006/308 “The Proceeds of Crime Act 2002 and Money Laundering Regulations 2003
(Amendment) Order 2006” extended this defence to accountants, auditors or tax advisers who satisfy certain
conditions where the information on which their suspicion of money laundering is based comes to their attention
in privileged circumstances (as defined in POCA section 330(10)). Examples may be where a client provides
information in connection with the provision by the auditor of advice on legal issues such as tax or company law.
The giving of such advice would not normally arise as a result of an audit engagement, but may arise where the
auditor has an additional contract with the client, to provide advisory services. In such circumstances, the auditor
may discuss their money laundering suspicions with the MLRO without requiring the MLRO to make a disclosure
to SOCA. Guidance on privilege reporting exemption is given in section 7 of the CCAB Guidance.
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investigation which might be conducted following the internal or external report that has been
made; or
(b) When an individual discloses that an investigation is being contemplated or is being
carried out into allegations that a money laundering offence has been committed and the
disclosure by the individual is likely to prejudice that investigation and the information on
which the report is based came to a person in the course of a business in the regulated
sector.
45. There are a number of exceptions to this offence under sections 333B, 333C and 333D of POCA,
including where disclosures are made:
• to a fellow auditor employed by a firm that shares common ownership, management or
control with the audit firm (some network firms may not meet this test);
• to an auditor in another firm in the EEA (or an equivalent jurisdiction for money laundering
purposes, where both are subject to equivalent confidentiality and data protection obligations), in relation to the same client and a transaction or service involving them
both, for the purpose of preventing a money laundering offence;
• to a supervisory authority for the person making the disclosure;
• for the purpose of the detection, investigation or prosecution of a criminal offence (whether in the UK or elsewhere);

• where the auditor is acting as a relevant professional adviser, to the client, for the purpose of dissuading the client from engaging in an offence; or
• in circumstances where the person making the disclosure does not know or suspect that
the disclosure is likely to prejudice an investigation.

46. A further offence of prejudicing an investigation is included in section 342 of POCA. Under this
provision, it is an offence to make any disclosure which is likely to prejudice an investigation of
which a person has knowledge or suspicion, or to falsify, conceal, destroy or otherwise dispose
of, or cause or permit the falsification, concealment, destruction or disposal of, documents
relevant to such an investigation.

47. ISA (UK and Ireland) 260 requires the auditor to communicate significant findings from the audit
with those charged with governance of an entity. The auditor will consider whether there is a
need to communicate suspicions of money laundering to those charged with governance of an
entity. As set out above, under section 333D of POCA a tipping off offence is not committed by
an auditor (when he or she is acting as a relevant professional adviser) where a disclosure is
made to the client in order to dissuade the client from engaging in a money laundering offence
(for example, where an employee is engaged in money laundering using the client's financial
systems, the auditor may inform the client of the situation in order to prevent the client from
committing a money laundering offence). However, care will be taken as to whom the disclosure
is made where senior management of the client or those charged with governance are or are
suspected to be involved in the money laundering activity or complicit with it. For example, where
a client develops a policy approved by the directors that duplicate payments on its invoices will
not be returned to customers and that no credit is given against further invoices, the company
may be committing a criminal offence (see Example 2 in Appendix 1 of this Practice Note).

Reporting to obtain appropriate consent

48. In addition to the auditor's duty to report knowledge or suspicion of, or reasonable grounds to
know or suspect, money laundering under POCA sections 330 and 331, the auditor may need to
obtain appropriate consent to perform an act which could otherwise constitute a principal money

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laundering offence (subject to the SOCPA amendments to sections 327, 328 and 329 for
overseas activities16). For example, if the auditor suspected that the audit report was necessary in
order for financial statements to be issued in connection with a transaction involving the proceeds
of crime, or if the auditor was to sign off an auditor's report on financial statements for a company
that was a front for illegal activity, the auditor might be involved in an arrangement which
facilitated the acquisition, retention, use or control of criminal property under section 328 of
POCA. In these circumstances, in addition to the normal procedures, the auditor would generally
need to obtain appropriate consent from SOCA via the MLRO as soon as is practicable. Consent
may be given expressly or may be deemed to have been given following the expiry of certain time
limits specified in section 336 of POCA. Where applicable the auditor understands the applicable
time limits. Further guidance on seeking appropriate consent is given in section 8 of the CCAB
Guidance.
49. The auditor will also need to consider whether continuing to act for the company could itself
constitute money laundering, for example if it amounted to aiding or abetting the commission of
one of the principal money laundering offences in sections 327, 328 or 329 of POCA, or if it
amounted to one of the principal money laundering offences itself, in particular the offence of
becoming involved in an arrangement under section 328 of POCA. In those circumstances the
auditor may want to consider whether to resign, but should firstly contact the MLRO, both to
report the suspicions and to seek guidance in respect of 'tipping off'. If the auditor wishes to
continue to conduct the audit the auditor, through the MLRO, may need to seek appropriate
consent from SOCA for such an action to be taken.
50. Appropriate consent from SOCA will protect the auditor from committing a principal money
laundering offence but will not relieve the auditor from any civil liability or other professional, legal

or ethical obligations. As an alternative to seeking appropriate consent, the auditor may wish to
consider resignation from the audit but, in such circumstances, is still required to disclose
suspicions to the MLRO. Further guidance on resignation is given in paragraphs 56 to 60 below.

Reporting to regulators

51. Reporting to SOCA does not relieve the auditor from other statutory duties. Examples of statutory
reporting responsibilities include:

• *audits of entities in the financial sector*: the auditor has a statutory duty to report matters
of 'material significance' to the FSA which come to the auditor's attention in the course of
the audit work;

• *audits of entities in the public sector*: auditors of some public sector entities may be
required to report on the entity's compliance with requirements to ensure the regularity
and propriety of financial transactions. Activity connected with money laundering may be
a breach of those requirements; and

• *audits of other types of entity:* auditors of some other entities are also required to report
matters of 'material significance' to regulators (for example, charities and occupational
pension schemes).

52. Knowledge or suspicion, or reasonable grounds for knowledge or suspicion, of involvement of the
entity's directors in money laundering, or of a failure of a regulated business to comply with the
ML Regulations would normally be regarded as being of material significance to a regulator and
so give rise to a statutory duty to report to the regulator in addition to the requirement to report to
SOCA. In determining whether such a duty arises, the auditor follows the requirements of auditing
standards on reporting to regulators in the financial sector and considers the specific guidance

16 It is not a money laundering offence for a person to deal with the proceeds of conduct which that person
knows, or believes on reasonable grounds, occurred in a particular country or territory outside the UK, and which
was known to be lawful, at the time it occurred, under the criminal law then applying in that country or territory,
and does not constitute a 'serious offence' under English law (see footnote 14).

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dealing with each area set out in related Practice Notes. A tipping off offence is not committed
when a report is made to that person's supervisory authority or in any other circumstances where
a disclosure is not likely to prejudice an investigation.

The auditor's report on financial statements

53. Where it is suspected that money laundering has occurred the auditor will need to apply the
concept of materiality when considering whether the auditor's report on the financial statements
needs to be qualified or modified, taking into account whether:

• the crime itself has a material effect on the financial statements;
• the consequences of the crime have a material effect on the financial statements; or
• the outcome of any subsequent investigation by the police or other investigatory body may
have a material effect on the financial statements.

54. If it is known that money laundering has occurred and that directors or senior staff of the company
were knowingly involved, the auditor will need to consider whether the auditor's report is likely to
include a qualified opinion on the financial statements. In such circumstances the auditor
considers whether disclosure in the report on the financial statements, either through qualifying
the opinion or referring to fundamental uncertainty, could alert a money launderer.

55. Timing may be the crucial factor. Any delay in issuing the audit report pending the outcome of an
investigation is likely to be impracticable and could in itself alert a money launderer. The auditor
seeks advice from the MLRO who acts as the main source of guidance and if necessary is the
liaison point for communication with lawyers, SOCA and the relevant law enforcement agency.

Resignation and communication with successor auditors

56. The auditor may wish to resign from the position as auditor if the auditor believes that the client or
an employee is engaged in money laundering or any other illegal act, particularly where a normal
relationship of trust can no longer be maintained. Where the auditor intends to cease to hold
office there may be a conflict between the requirements under section 519 of the Companies Act
2006 for the auditor to deposit a statement at a company's registered office of any circumstances
that the auditor believes need to be brought to the attention of members or creditors and the risk

of ‘tipping off’. This may arise if, for example, the circumstances connected with the resignation of
the auditor include knowledge or suspicion of money laundering and an internal or external
disclosure being made. See section 9 of CCAB Guidance for guidance on cessation of work and
resignation.
57. Where such disclosure of circumstances may amount to ‘tipping off’, the auditor seeks to agree
the wording of the section 519 disclosure with the relevant law enforcement agency and, failing
that, seeks legal advice. The auditor seeks advice from the MLRO who acts as the main source
of guidance and if necessary is the liaison point for communication with lawyers, SOCA and the
relevant law enforcement agency. The auditor may as a last resort need to apply to the court for
direction as to what is included in the section 519 statement.
58. The offence of ‘tipping off’ may also cause a conflict with the need to communicate with the
prospective successor auditor in accordance with legal and ethical requirements relating to
changes in professional appointment. For example, the existing auditor might feel obliged to
mention knowledge or suspicion regarding suspected money laundering and any external
disclosure made to SOCA. Under section 333C of POCA this would not constitute ‘tipping off’ if it
was done to prevent the incoming auditor from committing a money laundering offence.
However, as an audit opinion is rarely used for money laundering purposes, this is unlikely to
apply in an audit situation.
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59. If information about internal and external reports made by the auditor is considered relevant
information for the purposes of paragraph 9 of Schedule 10 of the Companies Act 200617, the
auditor considers whether the disclosure of that information would constitute a ‘tipping off’ offence
under section 333A, because it may prejudice an investigation. If the auditor considers a ‘tipping
off’ offence might be committed, the auditor speaks to SOCA to see if they are content that
disclosure in those circumstances would not prejudice any investigation. The auditor may, as a

last resort, need to apply to the Court for directions as to what is disclosed to the incoming
auditor.
60. Where the only information which needs to be disclosed is the underlying circumstances which
gave rise to the disclosure, there are two scenarios to consider:
• Where the auditor only wishes to disclose the suspicions about the underlying criminal
conduct and the basis for those suspicions, the auditor will not commit an offence under
POCA if that information only is disclosed. For example, if audit files are made available to
the incoming auditor containing working papers that detail circumstances which have lead the
audit team to suspect the management of a fraud and this suspicion is noted on the file, this
will not constitute a 'tipping off' offence18.
• If the auditor wishes to disclose any suspicions specifically about money laundering (for
example, if the working papers in the example above indicated that the suspected fraud also
constituted a suspicion of money laundering), then as a matter of prudence, the approach
adopted follows that described in paragraphs 56 and 57 in relation to the section 519
statement.
17 Statutory Instrument 2007/3494 "The Statutory Auditors and Third Country Auditors Regulations 2007" came
into force on 6th April 2008 and introduced a new Schedule 10 to the Companies Act 2006 which requires
Recognised Supervisory Bodies to have rules obliging auditors to make available all relevant information held in
relation to holding the office as auditor to a successor auditor.
18 Where the auditor knows or suspects that a confiscation, civil recovery, detained cash or money laundering
investigation is being or is about to be conducted, the auditor also considers section 342 of POCA, which creates
an offence of prejudicing an investigation. If the auditor suspects that the disclosure of the working papers would
be likely to prejudice that investigation, the auditor takes the approach described in paragraphs 56 and 57 above
in relation to the section 519 statement.
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Appendix 1

Examples of situations that may give rise to money laundering offences that auditors may encounter during the course of the audit

These are examples of some of the situations that auditors may encounter during the course of the audit and some of the factors that auditors may wish to bear in mind when considering reporting suspicions of money laundering. They are intended to demonstrate the breadth of the money laundering legislation. This is not an exhaustive list of offences, nor a guide as to how such offences must be dealt with. The best way to deal with suspected money laundering will vary according to the particular facts of each case and should be dealt with in accordance with the firm's procedures.

The examples are based on the legislation and SOCA guidance current at the time the Practice Note was finalised. Auditors will wish to consider whether SOCA guidance has been updated as well as the extent to which they are prepared to follow any SOCA guidance, particularly if SOCA states in its guidance that in a particular type of case no report at all is required.

1. Offences where the client is the victim (for example, shoplifting)

The auditor acts for a large retail client. The auditor discovers there has been significant stock shrinkage in a number of stores. The client attributes at least some of this to shoplifting. In addition, the auditor is aware that some of the stores hold files detailing instances when the police have been called to deal with shoplifters caught by the security guards.

POCA does not require the auditor to undertake further enquiry outside the auditor's normal audit work to determine whether an offence has occurred or to find out further details of the offence.

Accordingly, the auditor does not need to review the files containing the details of the police being called, unless the auditor would otherwise have done so for the purposes of the audit.

Where the auditor does not believe that the client's information will or may assist in identifying the shoplifter or the whereabouts of any of the goods stolen by the shoplifter, for example where the identity of the shoplifters cannot be deduced from the information and the proceeds have disappeared without trace, the auditor decides not to make a report to the MLRO.

In the circumstances where the information possessed by the client will assist in identifying the shoplifter or the whereabouts of any of the goods stolen by the shoplifter, the auditor must make a report to the MLRO briefly describing the situation and stating where the information on the identity of shoplifters may be found.

2. Offences that indicate dishonest behaviour (for example, overpayments not returned)

Some customers of the audit client have overpaid their invoices and some have paid twice. The auditor discovers that the audit client has a policy of retaining all overpayments by customers and crediting them to the profit and loss account if they are not claimed within a year. The auditor considers whether the retention of the overpayments might amount to theft by the audit client from its customer. If so, the client will be in possession of the proceeds of its crime, a money laundering offence.

In the case of minor irregularities where there is nothing to suggest dishonest behaviour, (for example where the client attempted to return the overpayments to its customers, or if the overpayments were mistakenly overlooked), the person making the report may be satisfied that no criminal property is involved and therefore a report is not required.

If there are no such indications that the company has acted honestly, the auditor concludes that the client may have acted dishonestly. Following the firm's procedures, which take into account the SOCA guidance about minor irregularities where dishonest behaviour is suspected, and about

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multiple suspicions of limited intelligence value which arise during the course of one audit, the auditor must make a report to the MLRO but may do so at the end of the audit, briefly describing the situation and any other matters of limited intelligence value.

3. Companies Act offences that are civil offences (for example, illegal dividend payments)

During the course of the audit, the auditor discovers that the audit client has paid a dividend based on draft accounts. Audit adjustments subsequently reduce distributable reserves to the extent that the dividend is now illegal under the Companies Act.

The auditor recognises that the payment of an illegal dividend is not per se a criminal offence because the Companies Act imposes only civil sanctions on companies making illegal distributions and decides not to report the matter to the MLRO.

4. Offences that involve saved costs (for example, environmental offences)

The client has a factory which manufactures some of the goods sold in its retail business. In the

course of reviewing board minutes, the auditor discovers that the client has been disposing of waste
from the factory without a proper licence. There are concerns that pollutants from the waste have
been leaking into a nearby river. The client is currently in discussion with the relevant licensing
authorities to try to get proper authorisation.
The auditor has reasonable grounds to suspect that the client may have committed offences of
disposing of waste without the relevant licence and of polluting the nearby river. The client has saved
the costs of applying for a licence. It is also apparent that its methods of disposing of the waste are
cheaper than processing it properly. These saved costs may represent the benefit of the client's
crime. The client is in possession of the benefit of a crime and the auditor therefore suspects that it
has committed a money laundering offence.
The firm's procedures take into account the SOCA guidance which states that in the case of
regulatory matters, where the relevant government agency is already aware of an offence which also
happens to be an instance of suspected money laundering, a limited intelligence value report can be
made. A limited intelligence value report can also be made where the only benefit from criminal
conduct is in the form of cost savings.
The authorities are aware of the licensing issue and the pollution of the nearby river. As the only
benefit to the company is in the form of cost savings, the auditor decides to include this matter in the
limited intelligence value report to the MLRO at the end of the audit.
Alternatively, if the client has accrued for back licence fees, fines and/or restitution costs, there may
be no remaining proceeds to the original offence and therefore no need to report.

**5. Conduct committed overseas that is a criminal offence under English law (for example,
bribery, because English Law on bribery applies to overseas conduct)**

The client plans to expand its retail operations into a country where it has not operated before.
Construction of its first outlets is underway and it is in consultation with the overseas Government
about obtaining the necessary permits to sell its goods (although these negotiations are proving
difficult). The client has engaged a consultancy firm to oversee the implementation of its plans and
liaise 'on the ground', although it is not clear to the auditor exactly what the firm's role is. The auditor

notices that the payments made to the firm are very large, particularly in comparison to the services
provided. The auditor reviews the expenses claimed by the consultant and notes that some of these
are for significant sums to meet government officials' expenses.
The auditor considers whether the payments may be for the consultant to use in paying bribes, for
example to obtain the necessary permits. The country is one where corruption and facilitation
payments are known to be widespread. The auditor makes some enquiries about the consultancy firm
but cannot establish that it is a reputable business.
Taking into account compliance with legislation relating to 'tipping off' the auditor questions the
client's Finance Director about the matter and the FD admits that the consultant has told him that
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some 'facilitation payments' will be necessary to move the project along and the FD agreed that some
payments should be made to get the local officials to do the jobs that they should be doing anyway;
for example, to get the traffic police to let the construction vehicles through nearby road blocks. The
FD thought that such payments were acceptable in the country in question.
The auditor suspects that bribes have been paid and the auditor is aware that currently bribery of
government officials is a criminal offence under UK law, even where it occurs wholly outside the UK,
under Part 12 of the Anti-terrorism Crime and Security Act 2001. Although the relevant sections of the
Anti-terrorism Crime and Security Act will be repealed when relevant provisions of the Bribery Act
2010 come into force, bribery of a foreign public official will remain a criminal offence under Section 6.
In addition, under the Bribery Act 2010, when the provisions of Section 7 come into force, a
commercial organisation is guilty of a bribery office if it cannot show that it has adequate procedures
to prevent bribery. Accordingly, the auditor decides to make a full report to the MLRO.

6 Lawful Conduct Overseas which would amount to a serious offence if it occurred in
England and Wales (for example, a cartel operation)

The client's overseas subsidiary is one of three key suppliers of goods to a particular market in

Europe. The subsidiary has recently significantly increased its prices and margins and its principal
competitors have done the same. There has been press speculation that the suppliers acted in
concert, but publicly they have cited increased costs of production as driving the increase. Whilst this
explains part of the reason for the increase, it is not the only reason because of the increase in
margins.
On reviewing the accounting records, the auditor sees significant payments for consultancy services.
He seeks an explanation for these costs and is informed that these relate to the recent price increase.
Apparently, this related to an assessment of the impact of the price increase on the market as well as
some compensation for any losses the competitors suffered on their business outside of
Europe. Some of the increased profits have flowed back to the client parent company. The client
informs the auditor that there is not a criminal cartel offence under local law.
The auditor has a number of concerns:
• the subsidiary may be engaged in conduct amounting to money laundering overseas.
However, because the conduct is not criminal there it also does not constitute money
laundering under local law. No report is therefore required about the subsidiary.
• the parent company has received profits from the subsidiary and may therefore be engaged
in money laundering in England. The auditor suspects that the subsidiary's conduct, whilst lawful where it occurred, would be unlawful under English law if it was committed here,
since the auditor suspects that the agreement to fix prices would have been dishonest. The
auditor therefore makes a full disclosure to the MLRO.
In rare circumstances where the auditor is also concerned about being involved in a prohibited
arrangement, the auditor also needs to consider whether the overseas conduct would amount to a
serious criminal offence if it was committed in England and Wales. As a cartel offence is serious a
report would be made to the MLRO and the auditor would await consent from the MLRO before
proceeding further.

7. Offences committed overseas that are not criminal offences under UK law (for
example, breach of exchange controls and importing religious material)

During the course of the audit, the auditor forms a suspicion that one of the overseas subsidiaries has
been in breach of a number of local laws. In particular:

• Dividends have been paid to the parent company in breach of local exchange control
requirements.
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• The subsidiary has imported religious materials intended for the preaching of a particular
faith, which is contrary to the laws of that jurisdiction.
Money laundering offences include conduct occurring overseas which would constitute an offence if it
had occurred in the UK. Because the UK has no exchange control legislation and the preaching of
any faith is allowed it is possible that neither of the offences committed by the overseas subsidiary
constitute offences under UK law. The auditor considers whether any other offence might have been
committed if this conduct took place in the UK, but the auditor decides not to make a report to the
MLRO in these circumstances.
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Appendix 2

Guidance as to whom the anti-money laundering legislation applies

The requirement to make a report under section 330 and 331 of POCA applies to information which
comes to a person in the course of a business, or an MLRO, in the regulated sector. That information
may relate to money laundering by persons or businesses inside or outside the regulated sector.
The offence of failing to report that another person is engaged in money laundering applies to all
money laundering, including conduct taking place overseas that would be an offence if it took place in
the UK (see paragraph 36 of this Practice Note). For that reason there may be an obligation to report
information arising from the audit of non-UK companies or their subsidiaries.

When is an auditor in the UK regulated sector?

The regulated sector includes any firm or individual who acts in the course of a business carried on in
the UK as an auditor.
A person is eligible for appointment as an auditor if the person is a member of a recognised
supervisory body, (which is a body established in the UK which maintains and enforces rules as to the

eligibility of persons to seek appointment as an auditor and the conduct of audit work, and which is
recognised by the Secretary of State by Order) and is eligible for appointment under the rules of that
body. A person will fall within the regulated sector in their capacity as an auditor when carrying out
statutory audit work within the meaning of section 1210 of the Companies Act 2006. In summary, this
comprises the audit of UK private or public companies, building societies, friendly societies, Lloyds
syndicate aggregate accounts, insurance undertakings, limited liability partnerships, qualifying
partnerships19, and any other such bodies as the Secretary of State may prescribe by Order.
For the purposes of this Practice Note the anti-money laundering reporting requirements apply to all
partners and staff within a UK audit firm who are involved in providing audit services in relation to
statutory audit work (see above) in the UK. Where they become involved in audit work in the UK,
such persons may include:
• Experts from other disciplines within the UK audit firm.
• Employees (both audit partners and staff and experts from other disciplines) of non-UK audit
firms.
Where they are not involved in audit work in the UK such persons may fall within other parts of the
regulated sector. For example, the provision of accountancy services to other persons by way of
business is within the regulated sector regardless of whether the person providing the services is or is
not a member of a UK professional auditing/accountancy body.
It is unlikely that it will be practicable or desirable for a UK audit firm which is within the regulated
sector to distinguish for reporting purposes between partners and staff who are providing services in
the regulated sector and those who are not. Accordingly, UK audit firms may choose to impose
procedures across the firm requiring all partners and staff to report to the firm's MLRO20.
19 These are defined by the "Partnerships (Accounts) Regulations" 2008/569.
20 Persons outside the regulated sector are not obliged to report to their MLRO under POCA section 330 and
section 331 (the 'failure to report' offence), but can make voluntary reports under POCA section 337 of
information they obtain in the course of their trade, profession, business or employment which causes them to
know or suspect, or gives reasonable grounds for knowing or suspecting, that another person is engaged in

money laundering. Such reports are protected from breach of client confidentiality in the same way as reports
made under POCA section 330 and section 331.
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The following table illustrates how the reporting requirements might apply to a number of different
audit/client scenarios.21 This table is intended as a guide and it is recognised that there may be
factual scenarios which do not fall within the categories above. In case of any doubt, auditors should
refer to the provisions of POCA and the ML Regulations, which take precedence over any guidance in
this Appendix.

Offence discovered as part of audit of:	**Persons UK companies (including UK subsidiaries of UK or non-UK companies)**	**Non-UK companies (including non-UK subsidiaries of UK or non-UK companies)**
• working in UK for UK audit firm	Yes	Yes. The auditor is unlikely to be carrying out statutory audit work within the meaning of s.1210 of the Companies Act 2006, however, the auditor or firm would likely be providing accountancy services and therefore fall within the UK regulated sector.
• working in UK for non-UK audit firm22	Possibly. Where the auditor or audit firm is not eligible for appointment as a UK auditor, in practice, it is likely that the auditor or firm would be providing accountancy services and therefore fall within the UK regulated sector.	
• seconded to UK audit firm	Yes	Yes – as above, the auditor or firm is likely to be providing accountancy services.
• working temporarily outside UK or on foreign secondments, or working permanently outside UK but employed by		

a UK audit firm
The position of an auditor working temporarily outside the UK or on foreign secondments, or working permanently outside the UK but still within a UK audit firm (but not necessarily employed by the UK firm), is more difficult. For example the duty to report may be influenced by the terms of the secondment.
The following is a non-exhaustive list of issues to consider and firms may wish to take legal advice in relation to the need for their employees to comply with the UK's money laundering reporting regime as well as any local legal requirements.
Issues to consider include:
 If the auditor's work outside the UK is part of a UK audit then in some circumstances that information may have come to the auditor's attention in the course of engaging in UK regulated activities and therefore be reportable.
 In the case of an auditor working permanently outside the UK for a UK firm, it may be appropriate to consider whether the auditor is working at a separate firm or at a branch office of a UK firm.
 An auditor should be particularly cautious about any decision not to make a report on their return to the UK if the information relates to work that the auditor is undertaking in the UK.
 Regardless of the strict legal position, firms may wish to consider putting in place a business-wide anti-money laundering strategy to protect their global reputation and UK regulated business.
 An auditor working permanently or temporarily outside the UK considers the anti-money laundering legislation in their host country.
21 The audit/client reporting scenarios do not take into account the exemptions for activities occurring outside the
UK.
22 It is recognised that it would not be possible for a non-UK audit firm or auditor to be appointed as the auditor of
a UK company. However, this category has been included for completeness.
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Offence discovered as part of audit of:
Persons UK companies
(including UK subsidiaries
of UK or non-UK companies)
Non-UK companies
(including non-UK subsidiaries of UK or
non-UK companies)
• working
permanently outside
UK for non-UK audit
firm
No No

Employer background checks can breach privacy

Lawyers for the federal government clashed with lawyers for a group of California scientists at the U.S. Supreme Court on Tuesday over how much information the government can demand in background checks on potential employees before violating their privacy rights. The government wants the Court to overturn a preliminary injunction issued by the 9th Circuit, which found that certain questions on NASA background forms for contract employees were so intrusive as to violate the employees' right to informational privacy.

LONG TERM HEALTH PATIENTS IN THE UK 2010-10-08

- long-term conditions – for example, heart disease, asthma and diabetes – is a major element of the NHS's work. There are 15.4 million people in England with at least one long-term condition, and it is thought many more are not yet diagnosed. Three out of every five people aged over 60 in England suffer from a long-term condition, and as the population ages, this proportion is likely to rise. Patients with long-term conditions use a significant proportion of all appointments with GPs and outpatient clinics and of inpatient hospital bed days.
- As well as the impact on individuals and their families, the burden on the economy is huge. The UK economy stands to lose £16 billion over the next 10 years through premature deaths due to heart disease, stroke and diabetes.
- Current policy on long-term conditions seeks to reduce this burden through prevention and developing services that enable people to remain living independently in their own homes. It also seeks to empower patients, give them information about their condition and offer them choice about where and how they are treated.
- Under the previous government the Department of Health initiated a wide range of projects to support the development of new services. For example, providing commissioners of health and social care services with information and support to provide personalised care plans for people with long-term conditions, helping them to manage their conditions better and achieve the outcomes they want for themselves. The Health Act 2009 allowed pilots of personal health budgets for people with long-term conditions.
- **Other work is looking at whether health professionals such as GPs can identify patients most at risk of a hospital admission and then intervene to manage them in the community – through, for example, the use of computer software tools. A large-scale randomised control trial of the role of telecare and telehealth in supporting people with long-term conditions at home is also under way.**

Fraud Risk analysis-SAP
22-9-10…

SAP Launches 10 new Analytics Apps

SAP has launched a batch of industry-specific analytics applications to streamline finance, sales, marketing, risk assessment, customer satisfaction and retention, and other enterprise operations. The new Apps represent an ability to get insight from day-to-day data. SAP (NYSE: SAP) stepped up its analytics offerings and launched a family of industry-specific Business Objects applications, many of which were co-designed with users..

This next generation of analytics was designed for fast implementation, with as little customization and user training as possible. These new industry-specific applications build upon SAP's and BusinessObjects' traditional business intelligence and enterprise performance management tools. The applications have their own data models that connect to a company's infrastructure, which means they can be easily deployed in any ERP environment, he explained. SAP has developed special implementation and customized predictive analytics services for these products.

The first 10 industry-specific Apps are BusinessObjects On-Shelf Availability Analysis; BusinessObjects Trade Promotion Effectiveness; BusinessObjects Enterprise Risk Reporting for Banking; BusinessObjects Planning and Consolidation for Banking BusinessObjects Planning and Consolidation for Healthcare; BusinessObjects Quality Management for Healthcare; BusinessObjects Sales Analysis for Retail; BusinessObjects Customer Analysis and Retention for Telecommunications; BusinessObjects Readiness Assessment for Defense & Security and BusinessObjects Planning and Consolidation for Public Sector.

All of the applications approach the industries from similar disciplines -- such as finance, sales, marketing, risk assessment, customer satisfaction and retention. The necessity for real-time analytics is ubiquitous across many sectors. Consumers have become tech-savvy and agile, and they expect retailers to meet a new set of expectations.

For the pharmaceutical industry, a sector-specific analytics application needs to emphasize the right KPIs, which to McKesson Pharmaceuticals, means metrics that focus on distribution and logistics. SAP's goal is to run the leanest, tightest distribution center operation in the industry. Other users emphasized the general business applicability of the analytics apps.

Parent Alienation Syndrome

PAS and Psychopathic Behavior

Source: http://www.fact.on.ca/Info/pas/gardnr99.htm

Psychopathic Behavior

Bona fide abuse-neglect Abusive and neglectful parents are often psychopathic. They may have little guilt over the victimization of others, even children who are often safe targets for their hostility. They cannot project themselves into the children whom they victimize. **They use any deceitful maneuver they can to shift blame away from themselves**. They do not give consideration to the future consequences of their behavior on their children; for example, ongoing misery, formidable grief, relentless fear, and severe psychopathology. Such abusers are likely to have a history of psychopathic behavior in other realms of their lives. The nonabusing spouse is far less likely to exhibit psychopathic behavior, although such spouses usually have psychological problems of their own, considering the fact that they have married or involved themselves with an abusive person.

It is probable that among severe PAS inducers, there may be a higher percentage of psychopathic people than in the general population. It is probably also the case that psychopaths are overrepresented in those who abuse and/or neglect their children. In general, therefore, this is not a good differentiating criterion--when one

compares groups of PAS inducers with groups of abusers-neglecters. However, it is a good differentiating criterion for assessing a single couple, because the presence of this trait in one of the parents can be useful in substantiating whether that parent is a PAS indoctrinator or whether he or she is an abuser-neglecter.
PAS Whereas some parents who induce a PAS are not fully appreciative of what they are doing, others are consciously and deliberately inducing the alienation. The latter will often profess innocence when confronted with their manipulations and are completely aware of the fact that they are lying. Many PAS inducers are psychopathic in association with the PAS programming but generally are not psychopathic in other realms of their lives. Furthermore, they are less likely to have been psychopathic prior to the onset of the child-custody dispute. When psychopathy is seen in a PAS programmer, it is more likely to be seen in the severe type, as is the case with paranoia. Psychopathy in other realms of life, outside of the family, is an important discriminator between the psychopathy seen in the PAS inducer and the psychopathy of the bona fide abusive-neglectful parent. Furthermore, the victim of the PAS inducer's indoctrinations, like the nonabusing spouse of the bona fide abuser, is not particularly likely to exhibit psychopathic tendencies.
Comparative Concern for the Physical and Financial Well-Being of the Family
Bona fide abuse-neglect Typically, abusive-neglectful parents are deficient in their concerns for the physical well-being of their families. They do not strive to be high earners and often will spend their earnings elsewhere; for example, alcohol or gambling. They have little sense of family responsibility with regard to providing the spouse and children with a reasonable level of food, clothing, and shelter. It is not that they have absolutely no interest in such considerations, only that it has lower priority for them than for the healthy, committed breadwinner. Typically, such abusers are justifiably considered to be very self-indulgent.
PAS Typically, parents who have been targeted for PAS victimization are most often committed parents, very much concerned with providing their spouses and children with food, clothing, shelter, and child care. Children in these families want their alienated parent to continue contributing toward their education even though they want absolutely nothing to do with him or her. Such a demand usually derives from past experiences in which the parent has proven reliable for providing in this realm. Typically, these targeted parents are not justifiably considered to be self-indulgent, even though this accusation may be considered part of the campaign of denigration.

I Parental Alienation Syndrome: How to Detect It and What to Do About It

by J. Michael Bone and Michael R. Walsh
Although parental alienation syndrome (PAS) is a familiar term, there is still a great deal of confusion and unclarity about its nature, dimensions, and, therefore, its detection.(1) Its presence, however, is unmistakable. In a longitudinal study of 700 "high conflict" divorce cases followed over 12 years, it was concluded that elements of PAS are present in the vast majority of the samples.(2) Diagnosis of

PAS is reserved for mental health professionals who come to the court in the form of expert witnesses. Diagnostic hallmarks usually are couched in clinical terms that remain vague and open to interpretation and, therefore. susceptible to argument pro and con by opposing experts. The phenomenon of one parent turning the child against the other parent is not a complicated concept, but historically it has been difficult to identify clearly. Consequently, cases involving PAS are heavily litigated, filled with accusations and counter accusations, and thus leave the court with an endless search for details that eventually evaporate into nothing other than rank hearsay. It is our experience that the PAS phenomenon leaves a trail that can be identified more effectively by removing the accusation hysteria, and looking ahead in another positive direction.

For the purpose of this article the authors are assuming a fair degree of familiarity with parental alienation syndrome on the part of the reader.(3) There are many good writings on PAS which the reader may wish to consult now or in the future for general information. Our focus here is much more narrow. Specifically, the goal is twofold. First we will describe four very specific criteria that can be used to identify potential PAS. In most instances, these criteria can be identified through the facts of the case, but also can be revealed by deposition or court testimony. Secondly, we wish to introduce the concept of "attempted" PAS; that is when the criteria of PAS are present, but the child is not successfully alienated from the absent parent. This phenomenon is still quite harmful and the fact of children not being alienated should not be viewed as neutral by the court.

Any attempt at alienating the children from the other parent should be seen as a direct and willful violation of one of the prime duties of parenthood.

The criteria described below are fairly easy to identify separate and apart from the court file. When there is uncertainty about any of them, these criteria can be used to guide the attorney in the deposing of witnesses as well as in their examination in court.

Criteria I: Access and Contact Blocking

Criteria I involves the active blocking of access or contact between the child and the absent parent. The rationale used to justify it may well take many different forms. One of the most common is that of protection. It may be argued that the absent parent's parental judgment is inferior and, therefore, the child is much worse off from the visit. In extreme cases, this will take the form of allegations of child abuse, quite often sexual abuse. This will be addressed in more detail in Criteria II, but suffice it to say that often this is heard as a reason for visitation to be suspended or even terminated. On a more subtle and common level, an argument heard for the blocking of visitation is that seeing the absent parent is "unsettling" to the child, and that they need time "to adjust." The message here is that the absent parent is treated less like a key family member and more like an annoying acquaintance that the child must see at times. Over time, this pattern can have a seriously erosive effect on the child's relationship with the absent parent. An even more subtle expression of this is that the visitation is "inconvenient," thereby relegating it to the status of an errand or chore. Again the result is the erosion of the relationship between the child and the absent or "target" parent. One phenomenon often seen in

this context is that any deviation from the schedule is used as a reason to cancel visitation entirely.

The common thread to all of these tactics is that one parent is superior and the other is not and, therefore, should be peripheral to the child's life. The alienating parent in these circumstances is acting inappropriately as a gatekeeper for the child to see the absent parent. When this occurs for periods of substantial time, the child is given the unspoken but clear message that one parent is senior to the other. Younger children are more vulnerable to this message and tend to take it uncritically; however, one can always detect elements of it echoed even into the teenage years. The important concept here is that each parent is given the responsibility to promote a positive relationship with the other parent. When this principle is violated in the context of blocking access on a consistent basis, one can assume that Criteria I has been, unmistakably identified.

Criteria II: Unfounded Abuse Allegations

The second criteria is related to false or unfounded accusations of abuse against the absent parent. The most strident expression of this is the false accusation of sexual abuse.(4) It has been well studied that the incident of false allegations of sexual abuse account for over half of those reported, when the parents are divorcing or are in conflict over some post dissolution issue.(5) This is especially the situation with small children who are more vulnerable to the manipulations implied by such false allegations. When the record shows that even one report of such abuse is ruled as unfounded, the interviewer is well advised to look for other expressions of false accusations.

Other examples of this might be found in allegations of physical abuse that investigators later rule as being unfounded. Interestingly our experience has been that there are fewer false allegations of physical abuse than of other forms of abuse, presumably because physical abuse leaves visible evidence. It is, of course, much easier to falsely accuse someone of something that leaves no physical sign and has no third party witnesses.

A much more common expression of this pattern would be that of what would be termed emotional abuse. When false allegations of emotional abuse are leveled, one often finds that what is present is actually differing parental judgment that is being framed as "abusive" by the absent parent. For example, one parent may let a child stay up later at night than the other parent would, and this scheduling might be termed as being "abusive" or "detrimental" to the child. Or one parent might introduce a new "significant other" to the child before the other parent believes that they should and this might also be called "abusive" to the child. Alternatively one parent might enroll a child in an activity with which the other parent disagrees and this activity is, in actuality, a difference of parental opinion that is now described as being abusive in nature. These examples, as trivial as they seem individually, may be suggestive of a theme of treating parental difference in inappropriately subjective judgmental terms. If this theme is present, all manner of things can be described in ways that convey the message of abuse, either directly or indirectly. When this phenomenon occurs in literally thousands of different ways and times, each of which seems insignificant on its own, the emotional atmosphere that it creates carries a clearly alienating effect on the child.

Obviously, this type of acrimony is very common in dissolution actions but such conflict should not necessarily be mistaken or be taken as illustrative of the PAS syndrome; however, the criteria is clearly present and identifiable when the parent

is eager to hurl abuse allegations, rather than being cautious, careful. and even reluctant to do so. This latter stance is more in keeping with the parent's responsibility to encourage and affirmatively support a relationship with the other parent. The responsible parent will only allege abuse after he or she has tried and failed to rationalize why the issue at hand is not abusive. Simply put, the responsible parent will give the other parent the benefit of the doubt when such allegations arise. He or she will, if anything, err on the side of denial, whereas the alienating parent will not miss an opportunity to accuse the other parent. When this theme is present in a clear and consistent way, this criteria for PAS is met.

Criteria III: Deterioration in Relationship Since Separation

The third of the criteria necessary for the detection of PAS is probably the least described or identified, but critically is one of the most important. It has to do with the existence of a positive relationship between the minor children and the now absent or nonresidential parent, prior to the marital separation; and a substantial deterioration, of it since then. Such a recognized decline does not occur on its own. It is, therefore, one of the most important indicators of the presence of alienation as well. as a full measure of its relative "success." By way of example, if a father had a good and involved relationship with the children prior to the separation, and a very distant one since, then one can only assume without explicit proof to the contrary that something caused it to change. If this father is clearly trying to maintain a positive relationship with the children through observance of visitation and other activities and the children do not want to see him or have him involved in their lives, then one can only speculate that an alienation process may have been in operation. Children do not naturally lose interest in and become distant from their nonresidential parent simply by virtue of the absence of that parent. Also, healthy and established parental relationships do not erode naturally of their own accord. They must be attacked. Therefore, any dramatic change in this area is virtually always an indicator of an alienation process that has had some success in the past. Most notably, if a careful evaluation of the pre-separation parental relationship is not made, its omission creates an impression that the troubled or even alienated status that exists since is more or lees an accurate summary of what existed previously. Note that nothing could be further from the truth! An alienated or even partially or intermittently alienated relationship with the nonresidential parent and the children after the separation is more accurately a distortion of the real parental relationship in question. Its follow-through is often overlooked in the hysterical atmosphere that is often present in these cases. A careful practitioner well knows that a close examination is warranted and that it must be conducted with the utmost detail and scrutiny.

If this piece of the puzzle is left out, the consequences can be quite devastating for the survival of this relationship. Also, without this component, the court can be easily swayed into premature closure or fooled into thinking that the turmoil of the separation environment is representative of the true parent-child relationship. Once this ruling is made by the court, it is an exacting challenge to correct its perception. In a separate but related issue, a word should be said about the use of experts. First, it must be understood that all mental health professionals are not aware of nor know how to treat the PAS phenomenon. In fact, when a mental health professional unfamiliar with PAS is called upon to make a recommendation about custody, access, or related issues, he or she potentially can do more harm than good. For example, if the psychologist fails to investigate the pre-separation relationship of

the nonresidential parent and the children, he or she may very easily mistake the current acrimony in that relationship to be representative of it, and recommend that the children should have less visitation with that parent, obviously supporting the undiagnosed PAS that is still in progress. If that expert also fails to evaluate critically the abuse claims or the agenda of the claimant, they may be taken at face value and again potentially support the undiagnosed PAS. If that professional is not also sensitive to the subtleties of access and contact blocking as its motivator, he or she may potentially support it, thereby contributing to the PAS process. When these things occur, the mental health professional expert has actually become part of the PAS, albeit unwittingly. Alarmingly, this happens often. Suffice it to say, if PAS is suspected, the attorney should closely and carefully evaluate the mental health professional's investigation and conclusion. Failure to do so can cause irreparable harm to the case, and, ultimately to the children.

Criteria IV: Intense Fear Reaction by Children

The fourth criteria necessary for the detection of PAS is admittedly more psychological than the first three. It refers to an obvious fear reaction on the part of the children, of displeasing or disagreeing with the potentially alienating parent in regard to the absent or potential target parent. Simply put, an alienating parent operates by the adage, "My way or the highway." If the children disobey this directive, especially in expressing positive approval of the absent parent, the consequences can be very serious. It is not uncommon for an alienating parent to reject the child(ren), often telling him or her that they should go live with the target parent. When this does occur one often sees that this threat is not carried out, yet it operates more as a message of constant warning. The child, in effect, is put into a position of being the alienating parent's "agent" and is continually being put through various loyalty tests. The important issue here is that the alienating patent thus forces the child to choose parents. This, of course, is in direct opposition to a child's emotional well being.

In order to fully appreciate this scenario, one must realize that the PAS process operates in a "fear based" environment. It is the installation of fear by the alienating parent to the minor children that is the fuel by which this pattern is driven; this fear taps into what psychoanalysis tell us is the most basic emotion inherent in human nature--the fear of abandonment. Children under these conditions live in a state of chronic upset and threat of reprisal. When the child does dare to defy the alienating parent, they quickly learn that there is a serious price to pay. Consequently, children who live such lives develop an acute sense of vigilance over displeasing the alienating parent. The sensitized observer can see this in visitation plans that suddenly change for no apparent reason. For example, when the appointed time approaches, the child suddenly changes his or her tune and begins to loudly protest a visit that was not previously complained about. It is in these instances that a court, once suspecting PAS must enforce in strict terms the visitation schedule which otherwise would not have occurred or would have been ignored.

The alienating parent can most often be found posturing bewilderment regarding the sudden change in their child's feelings about the visit. In fact, the alienating parent often will appear to be the one supporting visitation. This scenario is a very common one in PAS families. It is standard because it encapsulates and exposes, if only for an instant, the fear-based core of the alienation process. Another way to express this concept would be that whenever the child is given any significant choice in the visitation, he or she is put in the position to act out a loyalty to the

alienating parent's wishes by refusing to have the visitation at all with the absent parent. Failure to do so opens the door for that child's being abandoned by the parent with whom the child lives the vast majority of the time. Children, under these circumstances, will simply not opt on their own far a free choice. The court must thus act expeditiously to protect them and employ a host of specific and available remedies.(6)

As a consequence of the foregoing, these children learn to manipulate. Children often play one parent against the other in an effort to gain some advantage. In the case of PAS, the same dynamic operates at more desperate level. No longer manipulating to gain advantage, these children learn to manipulate just to survive. They become expert beyond their years at reading the emotional environment, telling partial truths, and then telling out-and-out lies. One must, however, remember that these are survival strategies that they were forced to learn in order to keep peace at home and avoid emotional attack by the residential parent. Given this understanding, it is perhaps easier to see why children, in an effort to cope with this situation, often find it easier if they begin to internalize the alienating parent's perceptions of the absent parent and begin to echo these feelings. This is one of the most compelling and dramatic effects of PAS, that is, hearing a child vilifying the absent parent and joining the alienating parent in such attacks. If one is not sensitive to the "fear-based" core at the heart of this, it is difficult not to take the child's protests at face value. This, of course, is compounded when the expert is also not sensitive to this powerful fear component, and believes that the child is voicing his or her own inner feelings in endorsing the "no visitation" plan.

Conclusion

All the criteria listed above can be found independent of each other in highly contested dissolutions, but remember that the appearance of some of them does not always constitute PAS. When all four are clearly present, however, add the possibility of real abuse has been reasonably ruled out, the parental alienation process is operative. This does not necessarily mean, however, that it is succeeding in that the children are being successfully alienated from the target parent. The best predictor of successful alienation is directly related to the success of the alienating parent at keeping the children from the target parent. When there are substantial periods in which they do not see the other parent, the children are more likely to be poisoned by the process. Another variable that predicts success is the child's age. Younger children generally are more vulnerable than older ones. Also, another variable is the depth and degree of involvement of the pre-separation parent-child relationship. The longer and more involved that relationship, the less vulnerable will be the children to successful alienation. The final predictor is the parental tenacity of the target parent. A targeted parent often gives up and walks away, thus greatly increasing the chances of successful alienation.

The question remains: What if all four criteria are present, but the children are not successfully alienated? Should this failure at alienation be seen as nullifying the attempt at alienation? The answer to that should be a resounding "No!" It should be, but often it is not. It is very common to read a psychological evaluation or a GAL's report that identified PAS but then notes that since it was not successful, it should not be taken very seriously. Nothing could be further from the truth. Any attempt at alienating the children from the other parent should be seen as a direct and willful violation of one of the prime duties of parenthood, which is to promote

and encourage a positive and loving relationship with the other parent, and the concept of shared parental responsibility.
It is our feeling that when attempted PAS has been identified, successful or not, it must be dealt with swiftly by the court. If it is not, it will contaminate and quietly control all other parenting issues and then lead only to unhappiness, frustration, and, lastly, parental estrangement.
1 PAS syndrome applies and relates equally to the nonresidential, as well as the residential parent. D.C. Rand, The Spectrum of Parental Alienation Syndrome. 15 *Am. J. Forensic Psychol*. No. 3 (1997).
2 S.S. Clawar and B.V. Rivlin, *Children Held Hostage: Dealing with Programmed and Brainwashed Children*, A.B.A. (1991).
3 M. Walsh and J.M. Bone. Parental Alienation Syndrome: An Age-Old Custody Problem, 71 *Fla. B.J.* 93 (June 1997).
4 N. Theonnee and P.G. Tjaden, The Extent, Nature and Validity of Sexual Abuse Allegations in Custody Visitation Disputes, 12 *Child Abuse and Neglect* 151-63 (1990).
5 National Center on Child Abuse and Neglect, Washington, D.C.: Department of Health and Human Services, 2998, Contract 105-85-1702.
6 The appointment of a guardian ad litem, the appointment of an expert to conduct a psychological evaluation of the child and the parents, the employment of make-up or substitute access and contact, or an enlargement of same to the nonresidential parent, and as previously suggested by the authors in their last article, a consideration for entry of a multidirectional order. Walsh and Bone, *supra* note .3
n the United States, The parental alienation syndrome (PAS) is a disorder that arises primarily in the context of child-custody disputes. Its primary manifestation is the child's campaign of denigration against a parent, a campaign that has no justification. It results from the combination of a programming (brainwashing) parent's indoctrinations and the child's own contributions to the vilification of the target parent."

(Excerpted from: Gardner, R.A. (1998). The Parental Alienation Syndrome, Second Edition, Cresskill, NJ: Creative Therapeutics, Inc.)

A Mildly Alienated Child of Parental Alienation Syndrome

In mild cases of PAS there is some parental programming, but Contact with the targeted parent is not seriously affected and Contact can generally be maintained without too much difficulty, although the child may appear distressed at the time of transition.

The following is not an exhaustive list, but other factors in the mild stage would include:

1. When one parent gets a new partner/remarries or has another child.

2. Where little regard is paid to the importance of Contact with the other parent.

3. A lack of value/encouragement regarding Indirect Contact between periods of Direct Contact.

4. Little awareness of the distress that a child may feel if Direct Contact or Indirect Contact (i.e. phone call) is missed.

5. The inability to tolerate the presence of the targeted parent, even at events that are important to the child.

What is Parental Alienation Syndrome?
PAS is a form of abuse that typically arises in the context of child custody disputes during or after a divorce.

According to Gardner, a noted pyschologist who originally identified and began investigating teh syndrome:

1. Parental Alienation Syndrome (PAS) is a disorder that arises primarily in the context of child-custody disputes.
2. Its primary manifestation is the child's campaign of denigration against a parent, a campaign that has no justification.
3. It results from the combination of a programming (brainwashing) of a parent's indoctrinations and the child's own contributions to the vilification of the targeted parent.
In severe cases of parent alienation, the child is utterly brain- washed against the alienated parent. The alienator can truthfully say that the child doesn't want to spend any time with this parent, even though he or she has told him that he has to, it is a court order, etc. The alienator typically responds, "There isn't anything that I can do about it. I'm not telling him that he can't see you."
Other psychologists have identified specific behaviors related to the psychology of the abuser, in particular, aspects of psychopathic behavior that allows them to do what to most normal people would seem excessively cruel and abusive:
Psychopathic Behavior
Bona fide abuse-neglect Abusive and neglectful parents are often psychopathic. They may have little guilt over the victimization of others, even children who are often safe targets for their hostility. They cannot project themselves into the children whom they victimize. They use any deceitful maneuver they can to shift blame away from themselves. They do not give consideration to the future consequences of their behavior on their children; for example, ongoing misery, formidable grief, relentless fear, and severe psychopathology. Such abusers are likely to have a history of psychopathic behavior in other realms of their lives. The nonabusing spouse is far less likely to exhibit psychopathic behavior, although such spouses usually have psychological problems of their own, considering the fact that they have married or involved themselves with an abusive person.
It is probable that among severe PAS inducers, there may be a higher percentage of psychopathic people than in the general population. It is probably also the case that psychopaths are overrepresented in those who abuse and/or neglect their children. In general, therefore, this is not a good differentiating criterion--when one compares groups of PAS inducers with groups of abusers-neglecters. However, it is a good differentiating criterion for assessing a single couple, because the presence of this trait in one of the parents can be useful in

substantiating whether that parent is a PAS indoctrinator or whether he or she is an abuser-neglecter.

PAS Whereas some parents who induce a PAS are not fully appreciative of what they are doing, others are consciously and deliberately inducing the alienation. The latter will often profess innocence when confronted with their manipulations and are completely aware of the fact that they are lying. Many PAS inducers are psychopathic in association with the PAS programming but generally are not psychopathic in other realms of their lives. Furthermore, they are less likely to have been psychopathic prior to the onset of the child-custody dispute. When psychopathy is seen in a PAS programmer, it is more likely to be seen in the severe type, as is the case with paranoia. Psychopathy in other realms of life, outside of the family, is an important discriminator between the psychopathy seen in the PAS inducer and the psychopathy of the bona fide abusive-neglectful parent. Furthermore, the victim of the PAS inducer's indoctrinations, like the nonabusing spouse of the bona fide abuser, is not particularly likely to exhibit psychopathic tendencies.