

Give me my money back: Why won't my Guernsey bank or trust company do what I tell them?

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Few things are more frustrating than being told by your bank, trust company or other service provider that they cannot act on your instructions and being given little or no explanation as to why. With payments needing to be made or decisions held up, such a position can be stressful, frustrating and even frightening.

While there are a number of potential explanations, if you find yourself in that position, it may be that your service provider has concerns about the source of your funds or a specific aspect of a proposed transaction and that as a result Guernsey's anti-money laundering regime has come into play. If so, the institution may be operating under legal constraints that prevent it from telling you what has happened or from carrying out your instructions, even if it would prefer to do so.

What may have happened?

Guernsey financial institutions have strict legal obligations to report suspicions of money laundering, terrorist financing and certain other criminal conduct to the Guernsey Financial Intelligence Unit (FIU).

The bar for making a report is a low one. An institution does not need proof that a crime has occurred. A suspicion that assets may represent the proceeds of crime can be sufficient. The test approved by the Courts for whether such a suspicion is justified is that 'there is a possibility, which is more than fanciful' that the assets may represent the proceeds of crime.

Where an individual working in a financial services business holds such a suspicion, they will be legally obliged to report it internally and the firm's designated money-laundering reporting officer will then assess the report and, if appropriate, submit a Suspicious Activity Report (SAR) to the FIU.

For more on the practical considerations facing those dealing with suspicions, see [Financial crime suspicions in Guernsey: A real bat-tle of wits](#) and [Time waits for no MLRO: GFSC thematic review on reporting suspicion](#).

What triggers a Suspicious Activity Report (SAR)?

Practically, the triggers for such a report can vary hugely.

Whilst the low threshold for suspicion is laudable from the perspective of crime prevention, there are a whole host of situations where entirely innocent conduct can inadvertently raise red flags.

We have seen situations where the refusal of deeply private individuals to answer (what they consider to be) intrusive questions about family assets has been interpreted as suspiciously concealing the origin of those assets by the service

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provider. Other families have been unable to properly evidence that origin due to the loss of documents through passage of time, fires or floods. We have also seen situations where aspects of entirely legitimate government approved local development schemes were, due to their loose description by a property developer, misinterpreted as governmental bribes.

The difficulty for the institution is that once a suspicion exists, transferring assets carries risk.

If an institution processes a payment, transfers assets or otherwise deals with property that ultimately proves to be criminal property, it and its employees may themselves commit money laundering offences. As a result, whilst no court order may have been made and no formal asset freeze may exist, assets can become effectively 'frozen' because the institution is unwilling to take the risk of processing transactions without appropriate protection.

Institutions will usually seek such protection through Guernsey's 'consent regime' before carrying out the transaction. Consent from the FIU affords a defence to a charge of money laundering, but is not granted lightly by the FIU and may take time to obtain, even if granted. For a more detailed explanation of how the consent regime operates in practice, see [SAR wars: A new approach?](#)

AML obligations in Guernsey's banking and finance sector: Why won't they tell me what is going on?

Whilst an informal freeze can be hugely frustrating in and of itself, the lack of information available frequently makes the issue more troubling still from a customer perspective. The reason lies in the concept of 'tipping off' – an offence preventing someone from sharing details of the fact that they have filed a SAR.

Simply put, the offence of 'tipping off' is intended to prevent individuals from being alerted to the existence of a SAR, a money laundering investigation or law enforcement enquiries where doing so could prejudice those enquiries. Much of the value in reporting suspicious activity to the authorities would be lost if criminals were aware of such a report and able to destroy evidence or take other steps to hide their criminal conduct and frustrate an investigation ahead of time.

As a result, a bank or trust company will feel unable to explain why it is refusing to follow instructions or to confirm:

- whether a SAR has been filed;
- whether it holds a suspicion; or
- whether the FIU is involved.

To a customer, the institution's silence can understandably appear evasive or unreasonable. In reality, they are simply attempting to avoid committing a criminal offence.

The 'tipping off' regime does not prevent any and all communication however and, whilst not doing what the customer is asking, an institution may ask various questions of their customer. This could be an attempt to negate a suspicion after a SAR has been filed or it may be an attempt to clarify what is happening to ensure that they understand a transaction properly and confirm their rationale for not being suspicious of it is accurate. In either case answering these questions with suitable detail and evidence may be a shortcut to getting things moving.

How long can frozen funds remain unavailable?

This is often the question that concerns customers most. Unlike some jurisdictions, a significant proportion of monies flowing through Guernsey originate elsewhere and so concerns reported to the FIU often need to be passed onto overseas law enforcement agencies. Unlike the UK, Guernsey's regime does not impose a fixed statutory deadline requiring matters to be resolved within a particular period. As a result, an impasse can be indefinite if no progress is made.

Practically it is unlikely nothing is happening behind the scenes. The institution may be gathering information, corresponding with authorities, considering further evidence or assessing whether its suspicion remains justified. Nevertheless, from the customer's perspective, the experience can feel like being left in limbo.

So what can you do?

An important point is that anger and confrontation rarely help and can make things worse. If the issue arises from a money laundering suspicion, frontline relationship managers will often be unable to explain the position, regardless of how strongly they may wish to assist or how awkward they feel.

Taking legal advice from an experienced Guernsey regulatory adviser can be hugely beneficial. They can often identify the likely source of the suspicion, navigate the regime underlying the informal freeze and advise on the practical and legal options available to move matters forward, including (if needed) action against either the service provider or the FIU to unlock the freeze. Beyond that, and as importantly, they can often identify the cause of the underlying suspicion in a way that customers may be too close to see.

That may allow a more informal resolution by providing information or evidence sufficient to allay or negate the institution's suspicion, such as:

- evidence explaining the origin of funds;
- documents showing the history of transactions;
- information regarding beneficial ownership;
- explanations of commercial arrangements; or
- more fulsome answers to questions previously raised during compliance reviews.

Key takeaways on AML, SARs and frozen funds in Guernsey

If your Guernsey bank or trust company has unexpectedly stopped acting on your instructions and is providing little explanation, it does not necessarily mean that wrongdoing has been found or that your assets have been formally seized.

It may simply mean that the institution has formed a suspicion, made a regulatory report and become caught between two competing obligations: a duty to avoid facilitating money laundering on the one hand, and a contractual obligation to act for its customer on the other. Added to that is the risk of committing a 'tipping off' offence if too much is said.

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In those circumstances, the institution's silence is often not evidence of indifference or obstruction. More commonly, it is a consequence of the legal framework within which it operates.

Understanding that framework is often the first step towards resolving the problem.

How Collas Crill can help

We advise both banks and account holders in relation to funds which have either been frozen officially by way of government sanctions, freezing orders or injunctions issued by a court, or are otherwise unavailable following suspicion that they may comprise proceeds of crime (informal freeze). This also applies to other assets that may be subject to similar restraints.

We can issue civil proceedings to recover monies from custodians, defend or obtain freezing injunctions in relation to monies in bank accounts and also issue judicial review proceedings against the relevant authority seeking to claim that funds are the proceeds of crime. In addition, we have considerable experience in dealing with sanctioned parties or funds.

For further information contact any member of the Collas Crill team listed.

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