

Warning notice

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Money laundering and terrorist financing suspicious activity reports

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Updated 25 November 2019 (Date first published: 8 December 2014)

Status

This document is to help you understand your obligations and how to comply with them. We may have regard to it when exercising our regulatory functions.

Who is this warning notice relevant to?

This warning notice is relevant to all regulated persons, especially Compliance Officers for Legal Practice (COLPs), Compliance Officers for Finance and Administration (COFAs) and firms' Money Laundering Reporting Officers and Money Laundering Compliance Officers.

The SRA Standards and Regulations

You have a duty to ensure you comply with money laundering legislation. Failure to do so may result in you breaching one or more of the Principles [<https://www.sra.org.uk/solicitors/standards-regulations/principles/>] , including:

- Principle 1 – acting in a way that upholds the constitutional principle of the rule of law, and the proper administration of justice.
- Principle 2 – acting in a way that upholds public trust and confidence in the solicitors' profession and in legal services provided by authorised persons.
- Principle 7 - acting in the best interests of each client.

Paragraphs 3.3 and 3.6 of the Code of Conduct for Solicitors, RELs and RFLs, and paragraph 4.3 of the Code of Conduct for Firms require firms and individuals to make sure they are competent and keep their professional knowledge and skills up to date.

In order to comply with paragraph 2.1(a) and 2.5 of the Code of Conduct for Firms, we also expect firms to have systems and procedures in place which are adequate to prevent, detect and report money laundering; and that

firms monitor the efficacy of such systems to make sure that any risks to compliance are identified and addressed. This includes ensuring that relevant staff are appropriately trained and regularly updated in respect of the relevant legislation and their professional obligations, including the National Crime Agency's (NCA) requirements.

Our concerns

We supervise individuals and firms we regulate for compliance with money laundering legislation. We have identified a significant risk of firms failing to have adequate systems and controls to prevent, detect and report money laundering.

Recently, the NCA produced an analysis of suspicious activity reports (SARs) it receives for consent to proceed with transactions (known as "consent SARs" or "defence against Anti-Money Laundering SARs (DAML)"). Under the Proceeds of Crime Act (POCA) 2002, you are required to submit a SAR to the NCA if you know or suspect, or have reason to know or suspect, that an individual is engaged in money laundering and the information has come to you in the course of your business. There are similar obligations to submit SARs in relation to terrorist financing offences under the Terrorism Act (TACT) 2000.

The analysis conducted by the NCA concluded that a disproportionately high percentage of reports received from the legal sector were of poor quality because firms were providing inadequate information. The NCA announced that, from 1 October 2014, consent SARs that do not contain reasons for suspicion, or a statement regarding criminal property, will be closed by the NCA upon receipt. The NCA has published detailed guidance on this new process.

Failure to make a disclosure to the NCA in appropriate circumstances can be a criminal offence and proceeding with a transaction in the absence of consent may result in the commission of a principal money laundering offence.

Our expectations

You should have regard to the Standards and Regulations, in particular paragraph 7.1 of the Code of Conduct for Solicitors, RELs and RFLs, and paragraph 3.1 of the Code of Conduct for Firms, to make sure you comply with the Money Laundering Regulations 2017, and with legislation such as your legal obligations under POCA 2002 and TACT 2000.

We expect all firms and individuals regulated by us to comply with the NCA [<http://www.nationalcrimeagency.gov.uk/>] guidance in relation to submitting consent SARs.

The NCA has stated that one of the causes behind delays in the turnaround of consent requests is the non-inclusion of one or more of the elements required (where known in your course of business) of a submission, namely:

1. The information or other matter that gives grounds for knowledge, suspicion or belief
2. A description of the property that is known, suspected or believed to be criminal property, terrorist property or derived from terrorist property
3. A description of the prohibited act for which consent is sought
4. If known, the identity of the person or persons known or suspected to be involved in money laundering or who committed or attempted to commit an offence under any of sections 15 to 18 of TACT 2000
5. If known, the whereabouts of the property that is known or suspected to be criminal property, terrorist property or derived from terrorist property

If under (4) and (5) the identity of the person or persons or the whereabouts of the property is not known, then any information believed or reasonably believed that may assist in identifying (4) or (5) or both should be provided in the SAR.

Failure to comply with this warning notice may lead to disciplinary action, criminal prosecution or both.

Further help

From us

For guidance on warning signs that a transaction may be suspicious see our Warning notice: Money laundering and terrorist financing

[<https://www.sra.org.uk/solicitors/guidance/money-laundering-terrorist-financing/>] .

From others

NCA guidance on completing SARs; making consent requests; and the closure of inadequate consent SARs:

- The SARS regime (PDF 14 pages, 219KB)
[<https://www.sra.org.uk/globalassets/documents/solicitors/sars-regime-good-practice-faq.pdf?version=4929d3>]
- Submitting a suspicious activity report (SAR) within the regulated sector
[<https://nationalcrimeagency.gov.uk/who-we-are/publications/633-submitting-a-suspicious->

activity-report-sar-within-the-regulated-sector-1/file]

Further information and assistance on your reporting obligations can be found at in the Legal Sector Affinity Group Anti-Money Laundering Guidance for the Legal Sector 2021 (PDF 212 pages, 2.2MB)

[<https://www.sra.org.uk/globalassets/documents/solicitors/firm-based-authorisation/lisag-aml-guidance.pdf?version=496f8e>] and in the Law Society advice article Help! I'm a new MLRO: making a report [<http://www.lawsociety.org.uk/advice/articles/help-new-mlro-making-a-report/>] .

If you require further assistance, please contact the Professional Ethics helpline [<https://www.sra.org.uk/contactus>] .