Solicitors Regulation Authority

Anti-money laundering

23 November 2020

‘Stop money laundering, save lives.’ FATF, 20191 [#n1]

Why this risk matters

The UK is seen as a high-risk jurisdiction for money laundering. It is widely acknowledged that law firms and solicitors are attractive to money launderers because of the services they provide and the position of trust they hold. Solicitors, therefore, have a vital role in tackling this risk and have legal obligations to do so.

Money laundering is not a victimless crime – it has severe impacts across our society and economy, as well as globally. It allows criminals and their associates to use funds from crime, such as the illegal drugs and firearms trade, people trafficking and fraud.

The number of money laundering related matters we are dealing with is increasing. Where solicitors are involved in money laundering, it not only impacts on wider society and damages the reputation of the profession, but it can have serious consequences for them and their firms.

Criminals are taking advantage of the disruption caused by Covid-19 and the economic downturn. Firms are now more exposed than ever to the risk of being used for money laundering. New money laundering schemes related to Covid-19 that have been reported to the National Crime Agency (NCA) include:

- personal protective equipment (PPE) trading claims
- fraudulent claims on the government’s support schemes.2 [#n2 class=]

We have not seen any involvement of SRA-regulated firms in these, but we might in the future. We all need to stay vigilant and meet our legal responsibilities to fight money laundering.

Who is most at risk?

All firms need to be more alert to the potential of being used to launder money. The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (as amended) (‘the money laundering regulations’) set out the services that could be targeted by money launderers.

The firms always most at risk are those that:

- do conveyancing work
- handle consumers' money
- create and manage trusts and company structures.

Conveyancing is currently at further risk because the stamp duty land tax (SDLT) holiday aims to increase the number and value of property transactions.

High-net worth individuals from overseas who are looking to exploit the investor visa scheme might use solicitors to make UK investments using criminal proceeds. Solicitors working in the London property market are at high risk of being caught up in this.

Firms that have made money laundering compliance roles redundant are at higher risk too. These changes could reduce their ability to carry out compliant risk assessments, customer due diligence (CDD) and source of funds checks. Firms must continue to meet their legal duties.

Many firms will have found CDD, including appropriate levels of identification and verification, more difficult because of lockdowns and social distancing. Electronic verification tools can help firms carry out these tasks, but it is important that firms use them appropriately.

We know that many firms have updated their risk assessments following Covid-19, but some have found it difficult to judge the evolving risks. For example, changing from face-to-face to online communication exposes firms to different risks, so they will need different methods to control them. Criminals will take advantage of uncertainties and changing circumstances to deceive firms and consumers. Solicitors need to fully understand the risks and to adapt their practices appropriately.

Case example: Indefinite suspension for facilitating a dubious transaction

A solicitor was offered $300,000 to accept funds into their client account from people overseas and pay the funds out to third parties. This was an $80m international transaction and no substantive legal advice was required. The solicitor was a partner and compliance officer in a small firm specialising in immigration. They did not check the identity of the parties or the source of funds.

The Solicitors Disciplinary Tribunal (SDT) said there were 'obvious and glaring risks', such as:

- misspelt and confusing documents
- no legitimate reason for instructing a solicitor without relevant experience.

The solicitor denied breaching the rules. They said that they had used their own subjective judgment and would do the same again. The SDT suspended them indefinitely and noted that the solicitor:

- acted as a ‘puppet’
- deliberately ignored the money laundering regulations and their firm's policies because of their expectation of a large profit
- improperly offered banking services through their client account.

Spotlight on vendor fraud

There is an increase in vendor fraud, where properties are offered for sale by fraudsters without the consent or knowledge of the genuine owners. Sometimes, these are homes of elderly or vulnerable people.

The fake sellers, who often use forged documents or stolen identities:

- ask solicitors to do the conveyancing work
- infiltrate firms as employees or buy firms so they can do the fraudulent work.

This type of activity often has links to serious and organised crime groups.

Firms should be cautious where:

- the property price is significantly over or under the market value
- the seller or buyer is reluctant or unable to provide documents
- ID documents do not look genuine
- there is pressure to complete the transaction very quickly
- minimal work is instructed, for example, no searches are requested
- there are complex or unusual circumstances around the transaction
- it is a cash purchase of a property
- funds are coming from or going to unconnected third parties.

As well as doing your proper CDD for each transaction, you must:

- properly identify and check the suitability of your employees and supervise their work
- report to us and the appropriate law enforcement authorities any concerns about someone carrying out work which you know or suspect might be linked to fraudulent activity.

We recommend

Know your obligations

It is an offence not to carry out the appropriate money laundering controls. To help firms and individuals comply:

You must:

- understand what you need to do under the money laundering regulations, Proceeds of Crime Act 2002 (POCA) and Terrorism Act 2000
- be aware of your obligations under the financial sanctions legislation [https://www.gov.uk/government/organisations/office-of-financial-sanctions-implementation] . You should check the sanctions list from the Office of Financial Sanctions Implementation and make sure you are not helping anyone with dubious funding streams.

If you are in scope of the regulations, you must comply with their requirements.

Firms that are subject to the money laundering regulations must:

- Have a written and compliant firm-wide risk assessment [https://www.sra.org.uk/solicitors/guidance/firm-risk-assessments/] , which is reviewed and updated to reflect, for example, any changes to:
  - working styles, how services are delivered and areas of work
  - circumstances of the firm
  - regulations.
- Maintain policies, procedures and controls to prevent money laundering.
- Train relevant staff on the legislation and on their policies.
- Make sure that they have our approval for relevant positions (beneficial owners, officers and managers) and that they notify us of any changes to their money laundering reporting officer (MLRO) and money laundering compliance officer.
- Obtain an independent audit (where relevant as a result of the size and nature of their firm).
- Monitor their transactions on an ongoing basis.
- Carry out CDD and enhanced due diligence (EDD) checks where needed. They must make sure that identification and verification is done according to the requirements of the regulations, and a record is kept for at least five years.

It is important to remember your suspicious activity reports (SAR) obligations and to keep up to date with NCA guidance [https://nationalcrimeagency.gov.uk/what-we-do/crime-threats/money-laundering-and-illicit-finance/suspicious-activity-reports] on this. The NCA has continued concerns about the number and quality of SARs from the legal sector, although the numbers are steadily increasing.

If you suspect that your firm is being used to launder money or assets, or finance terrorism, you must inform your MLRO. An MLRO can assess and submit a SAR to the NCA as appropriate. Even when you decline work, your reporting obligations might still exist. Everyone must understand their responsibilities and your firm's processes.

The fifth anti-money laundering directive extended the money laundering regulations to a wider range of tax advice services. Firms doing this type of work, or work with a tax advice element, should check if they are subject to the money laundering regulations [https://www.sra.org.uk/globalassets/documents/solicitors/tax-adviser-guidance.pdf?version=492a8e] .

There are already obligations, in the Bribery Act 2010 and Criminal Finances Act 2017, around the facilitation of tax fraud and related activities such as tax evasion, bribery and corruption. You must use the SARs process for these too.

Have the right controls

Ask yourself	Actions to help you control the risk
Do you have a compliant firm-wide risk assessment [https://www.sra.org.uk/solicitors/guidance/firm-risk-assessments/] that is accessible to staff and applied in all your firm's relevant policies, controls and procedures?	Your policies, controls and procedures need to be reviewed regularly and updated appropriately, in particular, your risk assessment and level of CDD.
Are your anti-money laundering (AML) policies, controls and procedures – and their outcomes – independently audited and with recommendations monitored?	Most firms have to do this and audits can help to highlight your weaknesses so you can take targeted action.
Is the rationale for someone's requests for your service clear?	If it is not clear why someone has come to you for a service, you should consider declining the instructions.

Do you understand where your client has got the money for a transaction you are working on?	Checking the source of funds is an important part of your AML checks. This is not just that the funds exist but where the funds are from, for example, someone's salary.
Are you doing your CDD using an electronic identification and verification tool?	If you are using electronic tools, you need to know where the data comes from, how up to date it is, and check for user error.
Do you screen all relevant employees appropriately, both at the outset of employment and on an ongoing basis?	You will be exposed to criminal infiltration without suitable staff screening.
Have all relevant staff had training on AML, combating the financing of terrorism and POCA?	Poor training or processes will leave your firm susceptible to being used by criminals.

The Legal Services Affinity Group (LSAG) is the group of all legal sector AML supervisors across the UK, including us. LSAG have highlighted some of the latest risks including those related to Covid-19 [https://www.sra.org.uk/solicitors/resources/money-laundering/guidance-support/covid-19-preventing-money-laundering-terrorist-financing/] , such as:

- being asked to work with unusual types of consumers or to do work that is different to your firm's normal area of experience or expertise
- being pressured to avoid CDD checks or to 'speed up' the process
- any attempt to make deposits into your client account where no legal services are provided
- transactions where the business rationale is not clear.

You should review whether you need to change how you conduct your CDD from time to time, for example, if you and your clients have changed the way you work.

You need to know when EDD is needed on a client, for example, if they are a politically exposed person.

Get more information

We have a comprehensive list of Money Laundering resources [https://www.sra.org.uk/solicitors/resources/money-laundering/] . including guidance about the new definition of tax advice activities [https://www.sra.org.uk/globalassets/documents/solicitors/tax-adviser-guidance.pdf?version=492a8e] and about Trust and Company Service Providers.

LSAG produces guidance on the regulations, such as suggesting different ways of conducting CDD [https://www.sra.org.uk/solicitors/resources/money-laundering/guidance-support/covid-19-preventing-money-laundering-terrorist-financing/] , including the use of electronic tools to help inform your decision making. Our guidance [https://www.sra.org.uk/solicitors/guidance/money-laundering-terrorist-financing-transfer-funds-information-payer-regulations-2017/] and warning notices [https://www.sra.org.uk/solicitors/guidance/] will help you comply with your obligations.

Our risk assessment [https://www.sra.org.uk/sra/how-we-work/archive/reports/aml-risk-assessment/] for the legal sector will help you to develop and update your own risk assessment.

The NCA's guidance on SARs [https://www.nationalcrimeagency.gov.uk/what-we-do/crime-threats/money-laundering-and-illicit-finance] will help you improve your SAR submissions.

LSAG also has detailed Covid-19 guidance [https://www.sra.org.uk/solicitors/resources/money-laundering/guidance-support/covid-19-preventing-money-laundering-terrorist-financing/] to help you keep up to date with some of the latest money laundering.

What we are doing

Helping firms and solicitors

We take our legal responsibilities in tackling this issue very seriously and we help firms do this too. Our resources [https://www.sra.org.uk/solicitors/resources/money-laundering/] help solicitors and firms understand the importance of the issue, the risks and how they need to comply.

We engage with firms to give targeted guidance and support to help them comply. And our Professional Ethics helpline [https://www.sra.org.uk/home/contact-us/] can answer your questions.

Regulating based on evidence

Our AML team brings together our supervision and thematic work to expertly address emerging issues. This includes reviewing firms' AML

policies and practices so that we can both support firms to comply and take action where needed.

We monitor data on money laundering risks which informs our regulatory and enforcement work and means we can focus resource on the right areas.

The Office for Professional Body AML Supervision (OPBAS) oversees and continually assesses our work to monitor our effectiveness as an AML supervisor.

Taking appropriate action

Our priority is helping firms and solicitors become and stay compliant. We take strong action against those who fail to comply with their legal obligations, including fining and striking off solicitors.

Helping consumers

In carrying out our duties as a supervisor, we are protecting the public from the harms of money laundering.

Our website has information for consumers [https://www.sra.org.uk/consumers/problems/fraud-dishonesty/fraud/] and explains how they can report firms or individuals to us. Legal Choices, a website that we run on behalf of the joint legal regulators, also tells consumers about money laundering [https://www.legalchoices.org.uk/money-laundering-checks-important] and explains why CDD is important.

On the horizon

The economic downturn and some of the Covid-19 measures will bring new risks. Some firms will be dealing with challenges to their businesses and exploring new areas of work, which might make them more vulnerable to exploitation. Some firms might consider taking on work they would not otherwise accept to maintain their business. We strongly advise firms to maintain the appropriate standards and resourcing of compliance, as part of doing their best to protect themselves and the public.

We will update our sector risk assessment after the national assessment is published.

You and your firm should keep up to date with any relevant changes to legislation so that you can make sure you are up to date.

Notes

1. FATF, ‘Remarks at AI & Blockchain Summit, 21 November 2019 [https://www.fatf-gafi.org/publications/fatfgeneral/documents/speech-digital-id-nov-2019.html] ’, 2019

2. NCA, Covid-19: Suspicious Activity Reporting [https://www.nationalcrimeagency.gov.uk/who-we-are/publications/448-ukfiu-covid-19-communications-product-may-2020/file] , 2020. See also: related LSAG guidance [https://www.sra.org.uk/globalassets/documents/solicitors/firm-based-authorisation/interim-legal-sector-affinity-group-guidance.pdf?version=4985da] .