

1.8 Anti-money laundering policy

What is money laundering?

Money laundering is the process by which the identity of ‘dirty money’ is changed so that the proceeds of crime appear to originate from a legitimate source. It is important that solicitors and their employees take steps to ensure that their services are not used by those seeking to legitimise the proceeds of crime. Solicitors must be aware that they may be involved in the money laundering process and must never allow a client account to be used as a banking facility by a client.

The practice’s policy

It is the policy of Ai Law that we will take no avoidable risks and will co-operate fully with the authorities where necessary. No matter how much we want to help our client, we must not be a party to any form of dishonesty. We must be alert to the possibility that transactions on which we are instructed may involve money laundering.

Legislation (in particular, the Proceeds of Crime Act 2002, the Serious Organised Crime and Police Act 2005 and the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017) (Money Laundering Regulations 2017) has formalised our responsibilities relating to money laundering. These responsibilities are reflected in this policy.

Anti-money Laundering Guidance for the Legal Sector was published in March 2018 by the Legal Sector Affinity Group which includes the Law Society. The guidance takes into account the changes introduced by the Money Laundering Regulations 2017 and is available at www.lawsociety.org.uk/policy-campaigns/articles/anti-money-laundering-guidance. This guidance has replaced the Law Society’s Anti-Money Laundering Practice Note.

Nominated officer

The practice's nominated officer is Tom Ellis. He is responsible for the practice's compliance with the Money Laundering Regulations 2017 and is the person nominated by the practice to receive internal disclosures.

The criminal offences

The law relating to money laundering changed in February 2003 as a result of the Proceeds of Crime Act 2002. Amendments were introduced by the Serious Organised Crime and Police Act 2005. These amendments were brought into force at various dates in 2005 and 2006. The Money Laundering Regulations 2017 came into force on 26 June 2017. There are a number of criminal offences relevant to a solicitor's practice. The offences divide into three categories:

1. Offences where the practice is involved in a client matter or transaction

It is an offence:

- (a) to acquire, use or possess criminal property;
- (b) to conceal, disguise, convert, transfer or remove from the UK criminal property; or
- (c) to enter into or become concerned in an arrangement which facilitates the acquisition, retention, use or control of another person's criminal property, in all cases where we know or suspect that this is the case.

Criminal property is defined as constituting or representing a person's benefit from criminal conduct. Criminal conduct for these purposes means any conduct which constitutes a crime in the UK or, if undertaken abroad, would have constituted a crime if committed in the UK.

A defence is available where you disclose your knowledge or suspicion to the nominated officer. In his absence, disclosure should be made to Tom Michael Ellis.

If you have any knowledge or suspicion which requires reporting, you may initially discuss your concerns with Tom Ellis. If after such discussion you still have concerns, a formal disclosure report should be made to the nominated officer using the internal reporting form.

Note that any disclosure you make must generally be made before the prohibited act (i.e. the act of facilitation or otherwise). If you only become aware of information giving rise to knowledge or suspicion whilst committing the prohibited act (for example, you may have placed money in a client account innocently and thereafter discover information which makes you suspicious) you must make your disclosure as soon as possible after you become suspicious. If the disclosure is made after you have committed the prohibited act you will only have a defence if you can show that there was a good reason for your failure to make the disclosure before the act.

(A similar offence relating to the laundering of 'terrorist property' appears in the Terrorism Act 2000.)

A formal disclosure report should be made to the nominated officer using the internal reporting form (see **1.10**). The nominated officer will need to liaise with the practice's COLP and COFA so that consideration can be given to reporting the content of the disclosure report to the SRA immediately (in the case of a material failure to comply with the SRA's regulatory requirements or the practice's statutory obligations) or including it in the information report completed and provided to the SRA on an annual basis (in the case of a non-material failure).

2. Offences following a disclosure report made to the practice's nominated officer

It is an offence to disclose to any person (including our client) that a report has been made to the practice's nominated officer in circumstances where this is likely to prejudice an investigation. (Further, even if no disclosure report has been made, an offence is committed if you know or suspect that a money laundering investigation is or is likely to be conducted and you disclose any information which is likely to prejudice the investigation.)

Once a report has been made to the nominated officer, it may be an offence to continue to act for the client without the consent of the nominated officer. The nominated officer can only give consent if he has disclosed details to the National Crime Agency (NCA) and NCA has, in turn, given consent for the practice to continue to act.

Consequently, once a disclosure has been made to the nominated officer, he must be involved in every decision relating to that client matter and you must not communicate any information concerning the subject matter of the disclosure to the client or to any other person (including your

work colleagues) without the express consent of the nominated officer. Failure to comply with this procedure could lead to a criminal offence being committed.

3. Offences involving a failure to disclose knowledge or suspicion of money laundering

It is an offence for a person who knows or suspects or who has reasonable grounds for knowing or suspecting that another is engaged in money laundering not to disclose that information where the information came to him or her in the course of business in the regulated sector.

The disclosure should be made to the practice's nominated officer using the same procedures as noted above.

This offence does not require the practice to be acting for a particular client, nor for the practice to be in possession, etc. of criminal property, nor involved in an arrangement which facilitates the acquisition, retention, use or control of criminal property.

Further, the offence is not limited to knowledge or suspicion of our client – it applies to any knowledge or suspicion of money laundering offences committed by any person.

The obligation to report arises simply if the information comes into your possession in the course of our business in the regulated sector. The definition of the regulated sector has been extended significantly. The sector now covers the bulk of our work for clients. Consequently, it is Ai Law's policy to assume that all client work falls within the regulated sector and that accordingly all knowledge or suspicion of money laundering must be reported to the nominated officer where the information arises in the course of our business.

The definition of money laundering for these purposes includes the three crimes noted above in category 1. In particular it should be appreciated that the person who carried out the original crime from which the 'criminal property' arose can also be guilty of a money laundering offence. A person guilty of theft or tax evasion will also have committed a money laundering offence if he or she is in possession of criminal property.

Note

The Court of Appeal's decision in *Bowman v. Fels* [2005] EWCA Civ 226 has made changes to the way in which the legislation is to be interpreted. First, generally speaking, the money laundering

offences do not apply to most litigation (including consensual resolution of issues in a litigious context). Secondly, the interpretation of the word 'arrangement' (see 1(c) above) is restricted to the act of facilitation – preparatory acts which do not themselves assist in the acquisition, use, retention or control of criminal property will not give rise to liability. Thirdly, the Court of Appeal's decision has preserved the concept of legal professional privilege. If information is privileged we cannot disclose the information to NCA unless a waiver of privilege is obtained.

You should continue to report to the practice's nominated officer any knowledge or suspicion, even if you believe *Bowman v. Fels* makes the report unnecessary. The nominated officer, with the assistance of others, will decide upon the impact of the judgment in *Bowman v. Fels*.

The danger signs to watch for:

- **Unusual settlement requests:** Settlement by cash of any large transaction involving the purchase of property or other investment should give rise to caution. Payment by way of a third-party cheque or money transfer where there is a variation between the account holder, the signatory and a prospective investor should give rise to additional enquiries.
- **Fictitious buyer:** Especially if the buyer is introduced to the practice by a third party (e.g. a broker or an estate agent) who is not well known to you. Beware of clients you never meet – they may be fictitious. Whenever a meeting with the client is not possible, special care is needed. Enhanced due diligence of the client's identity will be required.
- **Unusual instructions:** Care should always be taken when dealing with a client who has no discernible reason for using the practice's services, e.g. clients with distant addresses who could find the same service nearer their home base; or clients whose requirements do not fit into the normal pattern of the practice's business and could be more easily serviced elsewhere. Similarly, care should be taken if you are instructed to remit the net proceeds of sale to the estate agent who was instructed or any other third party.
- **Misrepresentation of the purchase price:** Make sure that the true cash price for a property which is to be actually paid is the price shown in the contract and the transfer, and is identical to the price shown in the mortgage instructions.
- **A deposit paid direct:** A deposit, perhaps exceeding the normal 10 per cent, paid direct, or said to be direct, to the seller should give rise to concern.

- **Incomplete contract documentation:** Contract documents not fully completed by the seller's representative, e.g. dates missing or the identity of the parties not fully described.
- **Changes in the purchase price:** Adjustments to the purchase price, particularly in high percentage mortgage cases, or allowances off the purchase price, e.g. for works to be carried out especially if you have not been involved in advice on the works to be carried out and subsequent renegotiation of the price.
- **Unusual transactions:** Those which do not follow their normal course or the usual pattern of events.
- **Large sums of cash:** Always be cautious when requested to hold large sums of cash in a client account, either pending further instructions from the client or for no other purpose than for onward transmission to a third party.
- **The secretive client:** A personal client who is reluctant to provide details of his or her identity. Be particularly cautious about the client you do not meet in person.
- **Suspect territory:** Caution should be exercised whenever a client is introduced by an overseas bank, other investor or third party based in countries where production of drugs or drug trafficking may be prevalent.
- **Mortgage fraud:** It is possible that a member of staff may unwittingly assist in a mortgage fraud. This is especially true of staff who deal with any form of conveyancing, whether domestic or commercial. We must therefore be very vigilant to protect our mortgagee clients and ourselves. If you turn a blind eye to any form of dishonesty over mortgages, no matter how small, you could be personally implicated in the fraud. It is important to stress that the penalties are criminal as well as civil.

Identification: general points

- In the light of the requirements contained in the Money Laundering Regulations 2017 it is the practice's policy to verify the identity of all new clients and all existing clients at the start of a new matter unless they have been identified already. This 'client due diligence' involves:
 - verifying the client's identity with information from a reliable and independent source, which might include viewing a passport and utility bill or by checking Companies House;
 - identifying beneficial owners of corporate clients or trusts, e.g. understanding who owns and controls a corporate client or trust;

- understanding the purpose and intended nature of the transaction we are being instructed in; and
 - assessing whether further information in respect of the above is required as the matter progresses on an ongoing basis, including in response to changes in instructions.
- Documentary evidence must be obtained in accordance with the procedure set out below. You must be satisfied that any photographic documentation bears a true likeness to the client and that the documentation appears to be genuine. It is important that the original of any document is examined and copied. The fee-earner should endorse the copy with the words ‘original seen’ followed by the fee-earner’s signature.
 - Particular care must be taken when acting on corporate and private client matters. Understanding who owns and controls a client entity and on whose behalf the client acts is a fundamental part of client due diligence as well as being good practice more generally. The Money Laundering Regulations 2017 require the client’s identity and, in specified circumstances, the identity of a ‘beneficial owner’ to be established. Broadly, a beneficial owner is anyone with 25 per cent ownership or voting rights. It also includes anyone who exercises control over the management of the client. Hence, directors of private companies should generally be identified as beneficial owners because of the control that they exercise. In cases of difficulty, refer the matter to the nominated officer.
 - The identification procedures must be carried out as soon as reasonably practicable after first contact is made between the practice and the client. It is not necessary for the practice to wait until the verification process is complete before commencing work for the client. However, if it proves impossible to satisfactorily complete the process we must cease to act for the client.
 - No client money should be accepted from the client for payment into a client account until the verification process has been satisfactorily completed.
 - A client identification form should be completed for each new client/matter according to whether it is categorised as simplified, normal or enhanced risk and kept on the file (see **1.9**).
 - Risk assessments for client and for matter can be categorised as:
 - **simplified** (when simplified due diligence measures can be applied taking account of the risk factors in reg.37 of the Money Laundering Regulations 2017, including, for example, when the client is a bank, publicly listed company or public body);

- **normal** (for example when the client is a private company or an individual);
- **enhanced** (when enhanced due diligence measures will need to be applied).

There is an obligation to apply enhanced due diligence in certain circumstances including, for example, when the client is in a high-risk third country, the client is a politically exposed person, or the transaction is complex or unusually large and has no apparent economic or legal purpose. Other high-risk factors can be found in reg.33 of the Money Laundering Regulations 2017.

- The copy of evidence taken to confirm a client's identity must be kept for a period of five years after we have finished acting for the client. We may be required to demonstrate our approach to identification at some point in the future, so it is essential that our approach is properly documented.
- You must apply client due diligence to existing clients on a risk-sensitive basis and when you become aware that the circumstances of the client have changed, for example when an individual changes their name, when there is a change in the beneficial ownership of a client or when the client instructs you in relation to a transaction that is not consistent with your knowledge about them. It is the practice of Ai Law to refresh the client due diligence if there has been a gap of over three years between instructions.

Identification: procedures

Ai Law uses Thirdfort. This is an online company that uses automating identity verification, AML compliance and source of funds checks.

The method for identifying clients will depend upon the type of client. The procedure below and the documentary evidence referred to are not to be taken as an exhaustive list of requirements. A judgement must be made as to whether alternative or additional information should be sought. If in doubt you should seek advice from the nominated officer.

Companies

In the case of a corporate client we need to be satisfied that the company exists and that we are dealing with that company. The existence of the company can be determined by making a company search which reveals the following information:

- (a) name and registered address
- (b) registered number
- (c) list of directors
- (d) members or shareholders
- (e) nature of the company's business
- (f) certificate of incorporation
- (g) if a subsidiary, the name of the holding company.

In addition, evidence of the identity of beneficial owners should be obtained in accordance with the guidance outlined above.

Individuals

The following information should be obtained for individuals:

- (a) full name
- (b) current permanent address (including postcode)
- (c) date of birth.

At least one document from each of the following lists should be produced:

List A (evidence of name and date of birth)

- (i) A valid full passport
- (ii) A valid HM Forces identity card with the signatory's photograph
- (iii) A valid UK photocard driving licence
- (iv) Firearms certificate
- (v) State pension or benefit book
- (vi) HM Revenue and Customs self-assessment statement or tax demand

List B (evidence of address)

- (i) Home visit
- (ii) Electoral roll check
- (iii) Recent utility/council tax bill

- (iv) Recent bank/building society statement
- (v) Recent mortgage statement
- (vi) Current driving licence (not if used in List A)
- (vii) Local council rent card or tenancy agreement

Where joint instructions are received, identification procedures should be applied to each client. If joint clients have the same name and address (e.g. spouses) the verification of the address for one client only is sufficient.

Trusts, nominees and fiduciaries

Where the trust is regulated by an independent public body (e.g. the Charities Commission) the evidence of the existence of the trust and the identity of the trustees should be sought from that body.

In other cases a certified copy of the trust (and the grant of probate or copy of the will creating the trust in the case of a deceased settlor) must be obtained. The trustees must also be identified in accordance with the procedures for individuals or companies noted above.

In addition, evidence of the identity of beneficial owners should be obtained in accordance with the guidance outlined above.

Clients where there is no face-to-face contact

Where contact with the client is not face-to face but by post or telephone, it is still necessary to obtain evidence of identity in accordance with the above procedures. Such evidence can be produced by way of an original document or by way of a certified copy provided that the copy is certified by a reputable institution, such as a bank or firm of lawyers, who should verify the name used, the current permanent address and the client's signature. The name and address of the institution providing the certification should be noted and checked by reference to a professional directory.

Non-UK clients

Non-UK individual clients should produce passports or national identity cards together with separate evidence of the client's permanent address obtained from the best source available. PO Box numbers are not sufficient evidence of an address.

Non-UK corporate clients should produce equivalent information to that obtained by making a UK company search. The results of company searches made abroad will depend upon the filing requirements in the local jurisdiction.

Politically Exposed Person (PEP)

You should consider whether the client is a politically exposed person (PEP). Typically, a PEP is an overseas member of parliament, a head of state or government or a government minister. Where the client is identified as a PEP, the approval of a senior manager must be obtained.

If you are unable to obtain satisfactory evidence of identity in accordance with the above procedures, you must contact the practice's nominated officer who will advise on any alternative steps which may be taken or consider whether instructions must be terminated.

Source of funds

Source of funds will most often be a bank account that can be related directly to the client but even then, this knowledge is not adequate to confirm that the funds are from a legitimate source and appropriate due diligence procedures should be applied, based on the practice's understanding of the client's circumstances and risk profile.

The onus is on the client to provide adequate proof of the source of their funds. The different scenarios for proof of funds can be categorised into:

- **Savings:** the best evidence for this will be six months' bank statements showing the client being paid from their employer/pension/annuity and the money slowly growing in their bank account. If the client has multiple bank accounts for their savings, they should provide six months' bank statements for each of the accounts.

- **Release of pension:** a copy of the client's pension statement and a copy of their bank account statement showing the money being received from the pension company.
- **Sale of shares:** a copy of the share release schedule and a copy of the client's bank account statement showing the money being received from the company.
- **Sale of another property:** a copy of the completion statement from the client's solicitor and a copy of the client's bank account statement showing the money being received from the solicitor following completion.
- **Inheritance:** a copy of the letter from the executors stating how much the client is being paid as a beneficiary and a copy of the client's bank account statement showing the money being received from the solicitor/executor's bank account.
- **Dividends from a UK company:** a copy of the dividend certificate, a copy of the company's accounts and a copy of the client's bank account statement showing the money being received from the company.
- **Gambling winnings:** a copy of the receipt proving the client's winnings and a copy of the client's bank account statement showing the money being received from the gambling company.
- **Compensation award:** a copy of the letter confirming the client's compensation settlement from a solicitor and/or court and a copy of the client's bank account statement showing the money being received from the third party/court/solicitor.
- **Gifts:** a letter from the donor explaining the reason for the gift and the source of the donor's wealth, together with identification documents for the donor.

Responding to enquiries from the authorities

If you receive a request from the police or NCA for information or documentation, you must inform the nominated officer and COLP immediately who will consider the circumstances of the case. We will generally seek independent legal advice as to our obligations in such circumstances. You should not automatically share information simply because it has been requested by the police or NCA. Our duties of confidentiality and privilege may prevent us from doing so, though we equally need to consider carefully whether in any particular case the law does require disclosure.

Transfer of clients between departments

Where a client is transferred from one department of the practice to another, the receiving department should check the client identification form and if further identification information is required, they should ensure that it is obtained and added to the client identification form.

Training

Ai Law will screen all new Directors and Employees prior to appointment and at regular intervals during the appointment process in order to assess their skills, knowledge and expertise to carry out their functions effectively, and their conduct and integrity. This will involve checking their qualifications and references, and may involve a DBS (criminal record) check with the Director's or Employee's consent.

It is the policy of Ai Law that all Director's and Employees who have client contact, or access to information about clients' affairs, shall receive anti-money laundering training to ensure that their knowledge and understanding is at an appropriate level, and shall receive ongoing training at least annually to maintain awareness and ensure that the practice's legal obligations are met.

The nominated officer shall, together with the practice's training officer, ensure that training is made available to Director's and Employees according to their exposure to money laundering risk, and that steps are taken to check and record that training has been undertaken and that Director's and employees have achieved an appropriate level of knowledge and understanding.

The nominated officer will, in co-operation with the practice's training officer, evaluate alternative anti-money laundering training methods, products and services in order to make suitable training activities available to all Director's and Employees who have client contact, or access to information about clients' affairs.

Training will take into account:

- the need to achieve a level of knowledge and understanding appropriate to the Director's and Employee's role in the practice;
- the need to maintain that level through ongoing refresher training;

- the practicality of assigning different programmes to Director's and Employees with different roles on a risk-sensitive basis;
- the cost and time-effectiveness of the alternative methods and media available.

The training programme will include means of confirming that each Director and Employee has achieved an appropriate level of knowledge and understanding, whether through formal testing, assessment via informal discussion, or other means.

The nominated officer will:

- inform every Director and Employee of the training programme that they are required to undertake, and the timetable for completion;
- check that every Director and Employee has completed the training programme assigned to them, issuing reminders to any who have not completed to timetable;
- refer to the senior management team any cases where Directors and Employees fail to respond to reminders and have not completed their assigned training;
- keep records of training completed, including the results of tests or other evaluations demonstrating that each Director and Employee has achieved an appropriate level of competence.

The nominated officer will determine the training needs of his own role and ensure that he obtains appropriate knowledge and understanding as required to fulfil the obligations of the appointment.

Monitoring and management of compliance

It is the policy of Ai Law to monitor compliance with legal and regulatory anti-money laundering requirements and conduct an annual independent anti-money laundering compliance audit, the findings of which are to be considered by the senior management team and appropriate recommendations for action set out.

The nominated officer will monitor continuously all aspects of the practice's anti-money laundering policies and procedures, together with changes and developments in the legal and regulatory environment which might have an impact on the practice's risk assessment.

Any deficiencies in anti-money laundering compliance requiring urgent rectification will be dealt with immediately by the nominated officer, who will report such incidents to the senior management team when appropriate and request any support that may be required.

The independent auditor will be appointed by the nominated officer and need not be an external person but must be independent of the function being reviewed. The nominated officer will facilitate and assist the independent auditor in conducting an annual audit of the practice's anti-money laundering compliance. This report will include:

- a summary of the practice's money laundering risk profile and vulnerabilities, together with information on ways in which these are changing and evolving;
- a summary of any changes in the regulatory environment(s) in which the practice operates and the ways in which the practice is affected;
- a summary of anti-money laundering activities within the practice including the number of internal reporting forms reports received by the nominated officer and the number of disclosures made to NCA;
- details of any compliance deficiencies on which action has already been taken, together with reports of the outcomes;
- details of any compliance deficiencies on which action needs to be taken, together with recommended actions and management support required;
- an outline of plans for the continuous development of the anti-money laundering regime, including ongoing training and awareness raising activities for all relevant staff.

Where management action is indicated, the senior management team will decide the appropriate action to be taken.

Help

Money laundering is real and it will affect us. If you have any concerns regarding the practice's policy or your responsibilities contact Tom Ellis.

Conclusion

To minimise the risks of liability:

- **Verify the identity and bona fides of your client:** Meet the client or clients where possible and get to know them.
- **Question unusual instructions:** Make sure that you discuss them fully with your client, and note all such discussions carefully on the file.
- **Discuss any aspects of the transaction which worry you with your client:** For example, if you suspect that your client may have submitted a false mortgage application or references, or if you know or suspect the lender's valuation exceeds the actual price paid, discuss this with your client and, if you believe they intend to proceed with a fraudulent application, you must refuse to continue to act for the buyer and the mortgagee.
- **Check that the true price is shown in all documentation:** Check that the actual price paid is stated in the contract, transfer and mortgage instructions. Ensure that your client understands that, where you are also acting for the lender, you will have to report all allowances and incentives to the mortgagee.
- **Do not witness pre-signed documentation:** No deed should be witnessed by a solicitor or staff member unless the person signing does so in the presence of a witness. If a deed is pre-signed, ensure that it is re-signed in the presence of a witness.
- **Verify signatures:** Consider whether signatures on all documents connected with a transaction should be examined and compared with signatures on any other documentation.
- **Make a company search:** Where a private company is the seller or the seller has purchased from a private company in the recent past and you suspect that there may be a connection between the company and the seller or the buyer which is being used for improper purposes, then consideration should be given to ascertaining the names and addresses of the officers and shareholders which can then be compared with the names of those connected with the transaction and the seller and buyer.