



Annual Anti-Money Laundering Supervisor's Report

May 2011

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1. Supervisory role and responsibilities

1.1. Organisation overview

The Law Society of England and Wales is the overarching professional body which is listed in the Money Laundering Regulations 2007 (“the Regulations”) as the anti-money laundering and counter terrorist financing (AML/ CTF) supervisory authority for solicitors in England and Wales.

The Law Society has delegated its regulatory functions to the Solicitors Regulation Authority (SRA). It has however, retained its representative role and currently represents over 150,000 solicitors in England and Wales.

1.2. Supervisory responsibilities and powers

Under the Regulations, a supervisory authority is required to effectively monitor its members and take necessary measures to secure compliance with AML/CTF requirements. These measures include:

- providing advice on the standards expected for compliance;
- providing education and training on compliance;
- monitoring and/or undertaking audit processes to measure compliance;
- investigation and disciplinary processes to deter non-compliance;
- having a framework to report and reporting to other agencies if appropriate.

The Law Society discharges its AML/CTF supervisory duties through the work undertaken by both its representative arm and its regulatory arm.

1.2.1. The role of the representative arm of the Law Society

The Law Society is responsible for the provision of advice and training to solicitors to enable them to meet their AML/CTF obligations.

The Law Society undertakes this role in consultation with the SRA, other supervisors, SOCA, the Money Laundering Advisory Committee (MLAC), the profession and relevant government departments. This ensures that any advice is up-to-date and consistent with the views of regulators and law enforcement.

1.2.2. The role of the SRA

The SRA is responsible for monitoring, investigating and instituting disciplinary proceedings in relation to non-compliance with AML obligations.

The SRA’s Practice Standards Unit (PSU) undertakes monitoring visits of firms and AML/CTF compliance forms a key part of the visit. Where there is evidence that a firm is not fully complying with its AML/CTF obligations, PSU will provide advice and assistance to the firm, to help them improve. In more serious cases, however, PSU may involve the Forensic Investigations Unit (FIU).

The SRA’s FIU conducts investigations into allegations of professional misconduct, including those relating to failure to comply with AML/CTF

obligations. Where appropriate, the FIU will institute disciplinary action against firms for non-compliance with their professional conduct obligations. Disciplinary actions range from a fine and/or suspension through to being struck off the roll of solicitors. More serious matters are reported to the police through an ACPO agreement.

The SRA's Fraud and Confidential Intelligence Bureau (FCIB) shares intelligence with SOCA, law enforcement agencies, other regulators, the profession and the financial services industry where appropriate. These intelligence sharing arrangements have been formalised through a series of Memorandum of Understanding (MOU). FCIB undertakes the money laundering reporting function within the SRA, with the Director of Intelligence and Investigations assuming the role of money laundering reporting officer and the Head of FCIB acting as the deputy.

The SRA also plays a key role in the Law Society's educational activities by providing information on any areas of concern and/or emerging trends and presenting at conferences and training seminars to give the regulator's perspective on AML/CTF issues.

1.3. Approach to AML supervision

The Law Society's approach to AML/CTF supervision, through education and raising awareness, is both general and targeted.

The Law Society seeks to ensure that there is a substantial body of information freely available to all of its members through both electronic and print media, such as "Professional Update" (a weekly electronic newsletter), a dedicated web page and the Law Society Gazette.

More targeted information is provided through channels specifically directed at practitioners, such as those focusing on property practitioners and sole practitioners; and dedicated MLRO channels such as the MLRO networking groups and the e-forum.

The Law Society is reviewing the extent to which it has had contact with individual firms on AML/CTF issues and is expanding the locations of training events as well as providing more training on-line to ensure we are reaching more of our members each year.

The SRA's approach to AML supervision through monitoring and enforcement is through a risk based, intelligence led approach visiting and investigating firms in relation to breaches of AML/CTF as considered appropriate.

1.4. Resources allocated

The Law Society has a specialist volunteer Money Laundering Taskforce comprising eleven solicitors and senior risk or compliance staff from within law firms. The Taskforce recommends AML/CTF policy for the Law Society and oversees the AML/CTF services provided to the profession.

The Law Society employs:

- a full time policy officer dedicated to AML/CTF support for the profession;
- a policy assistant who assists the AML/CTF policy officer 2 days a week;
- Five FTE staff in the Practice Advice Service including a specialist AML/CTF coordinator; approximately 20% of this unit's work is focussed on supporting the profession on AML/CTF compliance.

Delivery of AML/CTF services is also supported by staff within the web team, the events team, the communications team, the commercial services team and through a network of regional managers.

In purely numerical terms, all of these roles would be estimated at 4 FTE positions, although the wealth of experience available to the Law Society is greatly enhanced by this being spread over a wide range of employees and volunteers.

The SRA fulfils its AML supervisory role as part of its broader regulatory role.

The SRA has a total of 55 FTE in PSU and over 70 FTE in forensic investigations who dedicate resources to AML/CTF as considered appropriate through their risk based/intelligence led approach.

The Law Society and the SRA believe that the resources currently allocated to AML/CTF supervision are appropriate given the risk assessments conducted (see section 3 below) and the other statutory responsibilities each agency has to meet within a finite level of resources. The appropriateness of the resourcing level for AML/CTF supervision is kept under review.

2. Details on supervisory population

2.1. Sector overview

All statistics in this section are from the *Trends in the Solicitors' profession Annual statistical report 2010* which is available at www.lawsociety.org.uk.

As at 31 July 2010 there were 150,128 solicitors on the role, 117,862 of these hold practicing certificates. There were 10,413 private practice law firms in England and Wales, employing 86,748 solicitors with practising certificates.

The table below outline the percentage of firms within each size category by number of partners and by the percentage of solicitors employed against the total number of solicitors with practicing certificates employed in private sector firms.

	Sole Practitioner	2 – 4 Partners	5 – 10 Partners	11 – 25 Partners	26 – 80 Partners	81+ Partners
Firm Size	39%	46%	10%	3%	1.5%	0.5%
Solicitors employed	8%	23%	15%	13%	18%	24%

Essentially the solicitors' profession consists of a high percentage of small to medium businesses with a few very large firms employing a significant percentage of solicitors.

2.2. Supervisory framework

The SRA is the independent regulatory body of the Law Society in England and Wales. The SRA are the regulator of solicitors and solicitor practices. The SRA operates in accordance with the regulatory objectives of the Legal Services Act 2007, and the good regulation principles.

The SRA is a risk-based regulator; supervision is driven by risk and the aim is to reduce and mitigate that risk. Supervisory resource is targeted in accordance with risk levels. The SRA has a variety of supervisory tools; the issue of practising certificates, and the ability to suspend or place conditions on practising, firm authorisation conditions, desk-based supervision and relationship management plus the right to inspect firms.

The Law Society has applied to the Legal Services Board to become a licensing body for Alternative Business Structures. If the licence is granted then the SRA will regulate both traditional law firms and ABSs which are licensed by them. Subject to parliamentary approval, it is intended that the first ABSs will be licensed from 6 October 2011.

2.3. Register of members

The SRA keeps a list of all solicitors of the Senior Courts ("the roll") in accordance with the Solicitors (Keeping of the Roll) Regulations 1999 . This is kept in an electronic form.

The following information is kept in respect of each solicitor:

- Name
- Date of birth
- Registration number
- Principal place of business
- Correspondence address
- Any note of suspension from practise or the practising certificate
- Any other reasonable information necessary to undertake the SRA's statutory objectives.

2.4. Identification and integration of unsupervised populations

It has been identified that there may be a small number of foreign lawyers practicing within the UK who are solely practicing foreign law or engaging solely in non-reserved activities. While the Regulations apply to their AML regulated activities, they are not required to have a practising certificate or be on the roll, as they are not solicitors, registered foreign lawyers or registered European Lawyers. As such they are not regulated by the SRA or supervised by the Law Society for AML/CTF compliance.

It is considered that the size of this population is likely to be very small, particularly as any activities they undertake with respect to trust and company service provision or tax advice will result in them being subject to HMRC as the default AML supervisor for

those activities. Any further integration of this population into Law Society/SRA supervision will require legislative change.

In 2010 the Law Society began work with its International Division to raise the profile of our AML/CTF work with foreign firms who are members of the Division. Such firms may join the International Division of the Law Society for networking and information services, even if they are not required by law to be a member of the Law Society or to be supervised by the SRA. A specific discussion forum on AML / CTF compliance was held in November 2011 with law firms from North America which practise in England and Wales. It is planned that the 2011 Annual AML conference will also have a session aimed at international firms operating in a global market, which may reach some firms which fall outside of the Law Society and SRA's supervisory ambit.

The Law Society, the SRA and HM Treasury continue to monitor the situation to assess the risk posed and whether further action needs to be taken to address this issue.

3. Risk assessment

3.1. Risk assessment process – monitoring and enforcement

Allegations of misconduct received by the SRA are now assessed in one unit by applying a consistent classification and scoring mechanism in order to

- understand the relative seriousness of each allegation in terms of direct impact on the public,
- understand the credibility of the evidence and likelihood of the alleged misconduct being repeated,
- clearly and unambiguously express that understanding in a manner that is understood and accepted by our different units,
- help prioritise the regulatory response, ensuring that it is proportionate to the risk,
- provide a common way of describing what we do. This will improve reporting and communications across the SRA and to the profession and other stakeholders.

3.1.1. Process outline

In essence, the process consists of

- an initial assessment of the adequacy of the evidence received and/or its source,
- the scoring of incoming information against over 200 types of risk, assessing the objective risk to the public and the subjective behaviour of the solicitor, leading to an overall regulatory risk score (based on regulatory history and other relevant risk indicators) which reflects impact and probability of the alleged misconduct,
- a recording mechanism allowing analysis of results,

- a set of rules which determine what response to the risk, if any, is required, (These rules will reflect the current "risk tolerance" of the [SRA Board](#).)
- a designation and allocation system to ensure the right resource and priorities are applied.

3.1.2. Process – step by step

The assessment assigns a risk scoring category to an allegation or an issue that is received by the SRA as an item of information or intelligence. These categories are organised by reference to the Code of Conduct, and each category carries with it a score from 1 to 10. The scores indicate the relative seriousness with which the participating units view the category, 1 being the lowest.

Objective impact scores are given values from 2 to 10 and are designed to be considered from one or several standpoints, depending on which is most relevant at the time:

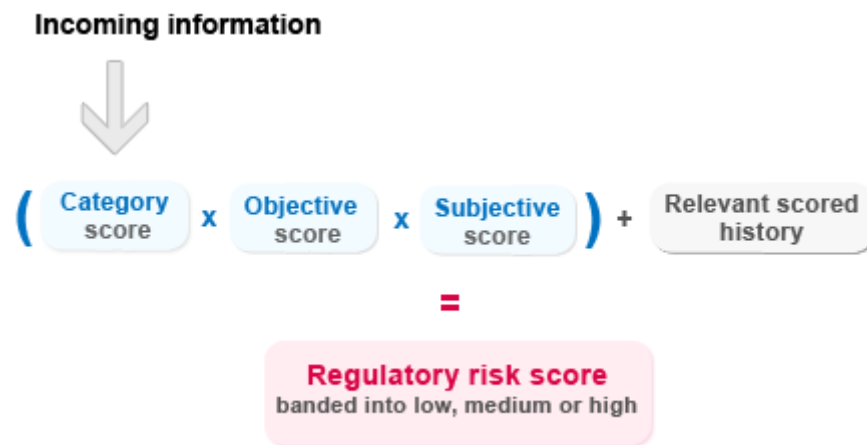
- the extent of the impact and who it may have affected or be affecting, e.g. an isolated incident, or part of a systematic pattern,
- the number of people affected,
- the financial implications.

A subjective test is applied in an attempt to ascertain the intent of those who may have breached the rules. This can be difficult and may be classed as "unknown", given the limited information to hand. However, the subjective categories range from "inadvertent" to "deliberate/dishonest", with the subjective impact scores weighted accordingly, again on a range of 2 to 10.

The product of *category score* x *objective score* x *subjective score* is the risk score.

At this point, regulatory history and other background information is considered (see table of regulatory history scores). This may increase the total risk rating score—for example, if there are a number of related and recent matters. The final risk score is then used to categorise the allegation or information into bands of "low", "medium" or "high" risk. Subsequent operational action, whether on-site investigation or desk-based casework, can then be prioritised accordingly.

The risk assessment process is shown below in simple visual terms.



This is the framework which the SRA is using so that staff can apply a consistent, proportionate and transparent approach as they identify and react to risk. Current scoring categories are given in the tables below. We will be continually refining them in the light of experience.

However, it is only a framework. There will be circumstances in which a different approach will be necessary. Two examples of such situations follow:

- The risk is immediate and obvious, and we need to bypass the formal process.
- The risk assessed by highly experienced staff is strongly at variance with the risk score. This might be due to particular circumstances relating to the information received, or imperfections in the scoring mechanism itself. In those exceptional cases, experience and judgement will override the risk score. This will be clearly recorded so that lessons can be learned.

Risk assessments will not be disclosed in individual cases. There are a number of reasons for this: it may be necessary to protect the source of information; the assessment will usually be carried out before an investigation starts, and we know that different concerns often arise once we begin investigating; and the risk assessment is irrelevant to any formal decision as to whether or not a solicitor has been guilty of misconduct.

From time to time, the framework may also be adjusted to reflect thematic concerns of the SRA Board or other stakeholders. It will also need to take account of the SRA's overall tolerance of risk.

Finally, the initial assessment of incoming information, important though it is to ensure we are consistent and proportionate, is only one element in the overall risk-based approach across the SRA. Systemic risk is assessed on the basis of information about particular problems, such as the prevalence of mortgage fraud or market conditions.

3.2. What are the most significant risks

On the basis of historical and current intelligence, the most significant risks to the profession have not changed in the past year and they remain:

- use of a solicitor' client account where there is no underlying legal transaction;
- non face-to-face transactions increasing the risks of fraud;
- lack of diligence in applying client due diligence procedures resulting in money laundering warning signs and identity fraud not being identified; and
- infiltration by organised criminal organisations, in some cases the solicitors are unaware of this, although there are small number of cases where solicitors have been complicit.

4. Advice and Guidance

4.1. Communication and Outreach

The Law Society provided good practice advice and education in 2010 / 11 through:

- The online AML / CTF Practice Note, which has received approval from HM Treasury.
- An additional CTF Practice Note, which specifically considers the interplay of legal professional privilege and the Terrorism Act 2007.
- The Practice Advice Service, which is a telephone and email based helpline. It receives approximately 600 enquiries on AML/CTF issues each month.
- The AML directory, which is a list of 23 solicitors willing to provide other solicitors with initial free legal advice on AML compliance.
- A free AML e-alert with practical tips to help solicitors comply with the regulations and legislation, together with information about the latest AML methodologies. Six editions were sent to around 12,000 subscribers in 2010/11.
- A dedicated MLRO e-forum, which includes copies of relevant SOCA alerts and other intelligence on new warning signs and trends.
- A 27 page practical guide on AML compliance for property law practitioners was produced in 2010.
- The introduction of two online introductory AML training courses aimed at new MLROs and compliance staff.
- 43 regional MLRO networking groups were undertaken around England and Wales.
- 43 regional training seminars were undertaken around England and Wales
- An annual AML conference was held with over 180 delegates.

A new Risk and Compliance Service was launched in 2010 which aims to provide more practical assistance to firms in all a range of regulatory areas, including AML / CTF financing compliance. In the coming year there are plans to prepare an AML

compliance toolkit which will be of specific benefit to small to medium sized firms which may lack the staff resources and expertise to develop risk assessments and manuals of a high standard. We will also be looking at providing more detailed consultancy work and in-house training options.

The Law Society also engages in regular feedback exercises with the profession through a range of surveys, round table events and a dedicated MLRO e-forum.

The limited intelligence provided by Law Enforcement and Government on terrorist financing methodologies as they apply to the legal sector has restricted the extent to which the Law Society can provide practical advice to the profession in this area. Compliance with the sanctions list is an issue which we have specifically incorporated in all training programmes in 2010/11.

SRA educational activity includes an AML warning card, presentations to SOCA payback conferences and to local law societies and the provision of an ethics helpline. Further advice is also provided to individual firms following PSU and FI visits.

4.2. How is guidance produced and reviewed?

The Law Society's Money Laundering Taskforce and the AML policy officer use their expertise and experience to draft the Practice Note, training material and articles.

The Practice Note was drafted after consultation with the SRA, other key stakeholders from the profession and the Money Laundering Advisory Committee ("MLAC"). The advice was initially prepared in 1997 but it has since been revised many times, with the most recent edition being developed in October 2009. The Practice Note received approval from HM Treasury in 2009.

The Law Society continually reviews the content of the Practice Note and associated educational services in light of feedback from MLRO networking groups, emails, comments on the e-forum and calls to PAS.

5. Inspections and other visits

PSU usually undertake over 800 visits per year and forensic investigations undertake over 500 visits. These visits are determined by reference to risk assessment processes as described above. Visits are usually undertaken for a variety of reasons, AML specific or not. Nevertheless, an examination of the firm's adherence to AML procedures is usually undertaken whenever a visit occurs.

6. Compliance and enforcement actions

The SRA monitors compliance through supervision. Following a supervisory investigation and analysis, the SRA has a range of sanctions available to it. The SRA also has the ability to refer any matter to law enforcement agencies through a series of agreed MOUs.

Serious matters of misconduct are referred by the SRA to the Solicitors Disciplinary Tribunal, which is an independent tribunal. When considering the outcomes of decisions at the Tribunal it is important to take into account the following issues:

- It is rare that a case will be referred simply for a breach of the Money Laundering Regulations, as such the penalties imposed may relate more to another breach of the Solicitors Code of Conduct.
- Penalties may also range in any given case depending on the seniority of the person involved within the firm and their specific involvement in the commissioning of the offences.
- Finally, decisions often occur some months or even years after the infringement, which may mean that where a breach occurred in close proximity to the change in the Money Laundering Regulations the penalty may have been more lenient than it would if the conduct was undertaken now.

The table below gives an indication of the range of penalties imposed for cases involving breaches of the Money Laundering Regulations between April 2010 and March 2011.

Description of type of breach	Range of penalties actually applied
Lack of supervision and training	£2,500 fine
Failure to have proper procedures	Reprimand to £4,000 fine
Limited or no client due diligence on some files and a failure to report where a reasonable solicitor would have reported	£2,000 fine (non-regulated sector) to suspension for 6 months
Failure to conduct client due diligence and acted in retainers where there were warning signs of mortgage fraud	£10,000 fine to struck off the roll
No procedures for money laundering compliance, no money laundering compliance undertaken, allowed money to pass through client account with no underlying transaction	£10,000 fine to indefinite suspension of practicing certificate or struck off roll
Conviction for an offence under s328 of the Proceeds of Crime Act	In light of the sentencing judge's comments about future fitness to practice, a severe reprimand was issued. The criminal sanction had been £5,000 fine.

7. Information sharing and co-operation

7.1. General Liaison

The SRA has a wide range of intelligence sharing agreements with a wide range of agencies including law enforcement, other regulators and government departments. These are formalised by way of MOU. They are also members of a variety of groups and organisations associated with the investigation of financial crime.

The Law Society liaises with both SOCA and HM Treasury to share intelligence alerts which are relevant to the legal profession and issue warnings of jurisdictions with increased money laundering risks. The Law Society has representatives which sit on the SOCA vetted group, the SOCA alerts advisory panel, the SARs committee and MLAC.

7.2. Submission of suspicious activity reports

The SRA maintain a comprehensive register of reports to the MLRO from members of staff and in 2010 / 11 made 5 reports.

The Law Society has appointed the Head of its Legal Team as its own MLRO to enable it to make voluntary disclosures about suspected money laundering or terrorist financing. This MLRO role is not related to the supervisory role, as conducted by the SRA. In 2010/11 the Law Society's MLRO made one voluntary suspicious activity report. That report did not relate in any way to the conduct of a solicitor or information provided by a solicitor.

8. Accountability

8.1. Governance processes

The different roles and responsibilities of the Law Society and the SRA with respect to anti-money laundering are outlined at section 1.2 above.

The governance process for AML/CTF policy for the Law Society is as follows:

- The Law Society Council is the policy making body of the Law Society. The Council comprises approximately 90 elected representatives from the profession. For issues relating to anti-money laundering and counter terrorist financing, significant issues of new policy will be signed off by the Council on advice from the Legal Affairs and Policy Board.
- The Legal Affairs and Policy Board has delegated responsibility to authorise regular policy developments on advice from the Money Laundering Taskforce and monitors the anti-money laundering activities which are being undertaken in accordance with pre-existing policy. Where money laundering issues involved other aspects of law (such a criminal procedure, company law or taxation) other specialist committees will also be consulted.
- The Money Laundering Taskforce is tasked with providing expert advice to the Law Society on all matters relating to money laundering. They are assisted by the anti-money laundering policy officer in this role.

The governance process for AML /CTF policy in the SRA is as follows:

- The SRA Board
- The Compliance Committee of the SRA has responsibility to exercise oversight of and advise the SRA Board on all matters within the Board's terms of reference relating to regulatory compliance including investigation of conduct and regulatory issues; monitoring of practice standards, forensic investigations and fraud intelligence

8.2. Measures of Performance

The Law Society closely monitors engagement by the profession and their use of AML services and products such as: the AML e-alert through subscription levels and click-throughs; MLRO networking events, AML training events, and on-line training based on attendance rates and satisfaction ratings from attendees.

The SRA monitors and measures performance through a series of KPI (including visits and investigations), a record of reports sent to the MLRO and internal training.

8.3. Outcomes for 2010/11

For the Law Society's outreach and education activities:

- The AML e-alert has received approximately 520 new subscriptions with on average, 25% of subscribers opening each e-alert.
- A further 48 solicitors have registered to use the e-forum, a key source of information and advice for MLROs and senior compliance staff working in law firms.
- 918 solicitors attended AML training events with the Law Society extending its training locations to include new areas such as Newcastle upon Lyme, Northampton, Lincoln, and Stratford upon Avon. Satisfaction ratings with the events are consistently above 98%
- 1,461 solicitors attended the MLRO networking events. Satisfaction ratings with the events are consistently above 98%
- 140 bookings have been received for the introduction to the Money Laundering Regulations online training course and 46 for the introduction to the Proceeds of Crime Act online training course. These courses are designed for new MLROs and compliance staff. Approval ratings have been 9/10 and 8.64/10 respectively.

For the SRA's monitoring and investigation activities, inspections of solicitors' firms have shown a high level of AML compliance for 2010/11.

9. Overall assessment of compliance by members

There is strong evidence that the majority of solicitors take their compliance obligations very seriously and work hard to ensure that not only are they complying but are also seen to be complying with their regulatory obligations. Our evidence for this statement comes from the results to the SRA's monitoring and investigation activities, the discussions with participants at networking and training groups, the volume of the calls to the Practice Advice Service and the take-up of the various Law Society Services.

We are aware of some firms taking a fairly onerous approach to compliance where a slightly more flexible and risk-based approach may be warranted. However, we also appreciate that they face potential significant criminal penalties for breaches of the regulations, even where no money laundering actually occurred. For this reason we take the view that these firms are best placed to understand their own risks and their capacity limitations. We will advise them of the full compliance options available to them and seek to assist in building capacity where we can, but will not seek to impose our own risk-based assessment to lower or 'make more proportionate' their compliance choices.

As the outreach and educational activities have extended out of the main towns and into smaller regional centres there is now greater engagement from firms who have

previously had limited experience in applying a sophisticated and risk-based approach to AML/CTF compliance. From these events and monitoring visits, it is clear that some smaller firms are struggling to find the resources to effectively meet their AML/CTF obligations and keep informed about emerging trends and methodologies.

We anticipate that increased support through the Law Society's Risk and Compliance Service (as outlined at 4.1 above), continued monitoring and support from the Practice Standards Unit and enhanced relationship managing as a result of the SRA's shift to outcomes focused regulation, will enable us to better equip that sector of the profession.

We acknowledge that there is a small proportion of the profession who will, fail to comply with their AML/CTF obligations, not engage with their obligations or who actively seek to engage in criminal activity of this nature. This is despite the advice provided by the Law Society and the SRA. The rest of the profession of course condemn such conduct and are well aware of their regulatory obligations to report even other solicitors who fail to maintain the high standards expected by both the Law Society and the SRA.

It is on this small proportion of the profession that the SRA will bring the full weight of its regulatory powers as outlined above, to bear on such solicitors, to limit the damage they can cause, to the trust which the public place in the profession, and to the financial and social well-being of England and Wales.