



The Law Society

The costs and benefits of anti-money laundering compliance for solicitors

Response by the Law Society of England and Wales
to the call for evidence in the Review of the
Money Laundering Regulations 2007

December 2009

supporting
solicitors

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Introduction

The Law Society of England and Wales is the overarching corporate entity which is listed in the Money Laundering Regulations 2007 (the Regulations) as the anti-money laundering supervisor for solicitors in England and Wales.

The Law Society has delegated its regulatory functions to the Solicitors Regulation Authority (SRA).

This response has been prepared by the representative arm, the Law Society (TLS), which represents over 100,000 solicitors in England and Wales. TLS negotiates on behalf of the profession and lobbies regulators, government and others. TLS also provides support to the profession on anti-money laundering compliance, through the provision of advice, awareness raising and education.

TLS welcomes the opportunity to respond to the call for evidence issued as part of the Review of the Money Laundering Regulations 2007 (the Review).

The role of solicitors in anti-money laundering activities

Criminal activity undermines the operation of the rule of law upon which our democracy is based and has significant negative effects on the fabric of our society. Economic incentives are one motivator of criminal activity. Removing the economic profits of crime can assist in disrupting future criminal activity and increasing the opportunity costs of committing certain types of crimes. For these reasons, the prohibition on concealing and using the proceeds of crime has a clear social justification.

Solicitors are gatekeepers of our legal system and help facilitate many of the more significant commercial transactions which occur within the UK and the global economy. Equally, solicitors are required to protect the fundamental human rights of their clients, including rights to privacy and a private life, and rights to confidential legal advice and representation.

As professionals, who are required under our code of conduct to uphold the rule of law, there is clearly no role for solicitors in assisting criminals to launder the proceeds of their crime. And in any event, if they engaged in such activity they would be caught by the principal money laundering offences.

Further, there are clear ethical obligations upon the profession to ensure their clients are fully advised on the law and the requirements with which they should comply to conduct their affairs in accordance with the law; and solicitors must refuse to provide legal services where to do so would facilitate the commission of a crime.

TLS agrees that, against the background of being guardians to the legal system and being both legally and ethically required to not engage in money laundering, solicitors have a role to play in achieving the aims of the UK's anti-money laundering regime. However, we, and our members, remain to be convinced that the role that solicitors are currently assigned within the UK AML regime is actually resulting in the most effective or appropriate use of our members' skills, existing work methods and the very nature of the solicitor-client relationship, to achieve those aims.

Proportionate and effective law

TLS remains committed to advocating for Regulations which are clear in law and proportionate to the identified risks. As our response submits, we are not convinced that the current Regulations are clear or that they are proportionate to the identified risks. We believe that the following are required:

- an evidential assessment of the actual risk of money laundering within the UK and by sector
- a clear understanding of the outcomes in terms of impact on money laundering activity in the UK being sought and an appreciation of the degree to which those results can realistically be achieved
- a commitment to drafting legislation and regulations which seek to proportionately mitigate actual risks in a way which will bring about the results being sought
- a true appreciation of the costs incurred by the regulated sector in complying with the requirements
- a true understanding of the effect that the current anti-money laundering regime has on UK plc because of the competition challenges faced by the regulated sector from other jurisdictions which do not have such complex anti-money laundering legislation
- the creation of a robust feedback mechanism, between government, SOCA, law enforcement and the regulated sector, which clearly measures the outcomes being achieved as a result of the anti-money laundering framework and continually updates the risk assessments

This response incorporates a number of proposals which TLS believes will assist in meeting these objectives.

Preparation of this response

This response is in two parts, Part 1 covers the concerns held by our members, while Part 2 responds to the specific questions asked in the call for evidence document.

The response has been informed by:

- Discussions with the wider profession through firm visits and feedback from 38 networking events and 48 training events since Autumn 2008.
- A monitoring survey which took place in late 2008. See Annex 3 for the specific results of that survey.
- Three round table forums with top 100 firms in 2008/9 and a discussion forum with the Review Team in October 2009.
- A specific costs survey undertaken in Autumn 2009.

The response has specifically been prepared with assistance from the members of the Law Society's Money Laundering Taskforce, with representatives from:

- BCL Burton Copeland,
- Boys & Maughan,
- Byrne & Partners,
- Finners Stephens Innocent LLP,
- Freshfields Bruckhaus Deringer LLP,
- Herbert Smith LLP,
- Irwin Mitchell LLP,
- Kingsley Napley LLP,
- Lovells LLP,
- Simmons & Simmons; and
- Slaughter and May.

TLS has also considered the consultation response from the City of London Law Society. TLS broadly endorses the representations made in that response.

Part 1 - Key issues for solicitors

Risk-based approach

TLS proactively supported the adoption of the risk-based approach to anti-money laundering (AML) by the EU in the third directive and by the UK in the Regulations. We also contributed to the development of guidance on the risk-based approach for lawyers by the Financial Action Taskforce (FATF), in cooperation with the CCBE and the International Bar Association.

TLS believes that the risk-based approach, when properly implemented, enables our members to more effectively tailor their AML measures to meet the risks that their firm is actually facing from criminals seeking to launder money. In this way they can allocate more of their finite resources, both in terms of money and more importantly employees' time and attention, to the areas of greater risk. We believe this approach is more likely to result in the prevention or identification of money laundering.

In terms of the current application of the risk-based approach in the UK, TLS believes there are some areas for improvement to ensure that the current regime has a real impact on money laundering in the UK.

Information and resource asymmetry

TLS believes that an individual firm is best placed to assess its own clients, areas of practice and procedures against known methodologies and risk indicators to establish its own risk-based approach. However, this relies on the firms being provided with methodologies and risk indicators, which are relevant to their particular part of the regulated sector, in a timely manner and easily accessible format. (It is clear from our networking events that firms would find such information of immense use and value to assist them in meeting their regulatory obligations.) It also relies on firms having the resources to conduct the initial risk assessment and assimilate the new information into the policies and more importantly the practices of the firm.

While there is a trend within FATF and UK law enforcement to develop more sector specific methodologies and risk indicators, this still needs extensive work, particularly for designated non-financial bodies (DNFBs) covered by the Regulations.

The size of the firm receiving the methodology and risk indicators is a factor which should be taken into account in their preparation. It has been estimated by the Serious Organised Crime Agency (SOCA) that there are approximately 150,000 entities in the UK covered by the Regulations. The vast majority of those entities are small to medium businesses. In the legal context, approximately 87% of law firms in England and Wales have 4 partners or less.

These small firms are receiving the same methodologies and risk indicators as larger firms, both within the regulated sector as a whole and within their individual sectors. They are being expected to assimilate that information into their business as effectively as those larger firms, which will inevitably have more resources. Many smaller firms are simply not involved in the types of transactions mentioned in the existing methodologies. As a result they find themselves having to:

- purchase the expertise to adapt existing information,
- assess the risks for their type of firm from private information held by consultants, and
- develop policies, procedures and tools to enable them to fully implement a risk-based approach.

Alternatively they simply implement a higher level tick-box approach to ensure they cannot be in breach of requirements. Neither of these outcomes is optimal.

TLS agrees that respective supervisors and professional bodies have a role in adapting material for their specific audience, but they too are limited by the amount of intelligence information available from law enforcement and lack of resources to conduct independent research in these areas.

Recommendation: More resources need to be employed by UK intelligence agencies, the EU and FATF in developing relevant, timely and sector specific methodologies and risk indicators, including more focussed assistance for smaller firms.

Supervision and enforcement perspectives

The creation of industry guidance and approval of such by HM Treasury has given firms greater confidence in their ability to take risk-based decisions. However we believe that there is still room for greater clarity from AML supervisors and law enforcement on their approach to risk-based AML compliance.

For example:

- Inherent in the risk-based approach, as compared to a prescriptive approach, is the fact that there will be circumstances faced by a firm which guidance cannot cover, or cannot cover to the degree required to provide certainty. Firms will simply have to make a judgement call and assume the risk or decline the work and absorb the opportunity cost.
- Individual firms can experience different standards and approaches from a supervisor depending on the individual within the supervisor they are dealing with or which supervisor they are dealing with.
- Where guidance is prepared by representative or industry bodies such as TLS or the JMLSG, there can be uncertainty on the part of the regulated sector as to how the actual regulators will view the exercise of discretions permitted in the guidance and to what extent the regulators agree with the guidance.
- TLS has become aware of anecdotal cases of law enforcement taking sections of the AML guidance out of context in investigations or seeking 'expert' opinions on the requirements of the guidance from persons other than the authors of the guidance to use against those in the regulated sector. Due to the nature of criminal investigations and legal professional privilege it is not possible to get a full picture of the extent of this problem. However such anecdotal cases are repeated within the regulated sector and add to a level of apprehension which may inhibit an appropriately robust application of the risk-based approach.

We are hopeful that the inherent level of uncertainty will decrease over time as regulated firms, representative bodies and supervisors engage in dialogue about emerging issues and pursue a practical and constructive resolution of those issues.

Supervisors, whether they produce the guidance for their industry or not, can undertake research and communication projects to illustrate to firms their approach to supervision. Such projects do not need to amount to a re-writing of the guidance, but rather provide insight into the actual regulatory visits and highlight good practice for firms to emulate. A good example of such work is the FSA's 2009 paper on compliance with financial sanctions by UK financial services firms.¹ We endorse this approach.

¹ Financial services firms' approach to UK financial sanctions, April 2009
<http://www.fsa.gov.uk/pubs/other/Sanctions%20Final%20Report.pdf>

Supervisors, while ensuring training of their supervised population, should also ensure that their monitoring and investigative staff are trained on AML requirements and the application of the risk-based approach to a high standard.

More information should be available to the regulated sector, through their supervisors, as to the level of training being provided to law enforcement across the country on AML obligations. To increase understanding of guidance, law enforcement should increase engagement with the authors of guidance (particularly where it has been approved by HM Treasury) to increase their understanding of how it applies in practice. While in some cases this is happening bilaterally with different police forces and different supervisors or industry bodies, this could be coordinated on a more systematic basis through the Supervisors Forum or other such opportunities. It is important that the police forces understand the different issues for a particular section of the regulated sector, including how a particular type of transaction works. By doing so, the police will also be able to focus their resources more effectively.

Recommendation: Supervisors should provide more information to firms about their general approach to AML supervision visits particularly in relation to their expectation of how the risk-based approach is to be implemented.

Supervisors should provide more examples of good risk-based practice to firms, not only will this help in general terms but may also help firms to assess their approach in more novel situations.

There needs to be greater dialogue between law enforcement and the writers of guidance, to ensure consistent interpretation and greater certainty for the regulated sector.

Effect of criminal sanctions

When producing the guidance document for lawyers recently, FATF agreed that it was not appropriate (in current circumstances) to apply the risk-based approach to suspicious activity reporting. This is, of course, particularly relevant to the UK because a risk-based approach is not compatible with criminal offences for non-reporting which carry heavy penalties. These penalties simply create a climate of fear in which a person, understandably, considers only one risk, which is the personal risk to themselves. This climate of fear in respect of the application of POCA also tends to pervade the way that the regulated sector approach the Regulations, even though they are quite separate.

The third directive provides that the requirements contained in the Regulations are backed with effective, proportionate and dissuasive sanctions. There is no requirement that these be criminal sanctions. Throughout Europe, the AML requirements equivalent to those contained in the UK Regulations are backed by administrative sanctions rather than criminal sanctions.

There is a concern from some in law enforcement, some supervisors and some MLROs that due diligence measures would simply not be undertaken by some firms or employees if criminal sanctions did not apply. However, many MLROs state that their risk-based approach begins with the premise that if they get it wrong, they can go to jail; rather than starting from the answer to the question 'what risk of money laundering does this client / transaction pose to the firm?' In discussions with MLROs it is apparent that the former approach results in a higher and thus more onerous starting point than the latter approach which is advocated by FATF.

Our members advise that the risk of their name being publicly associated with money laundering allegations or regulatory investigations is quite sufficient to ensure that the firm still takes CDD and ongoing monitoring seriously.

TLS is not aware of any cases since the 1993 Regulations where a firm in the regulated sector has been criminally prosecuted solely for a breach of the Regulations. It is difficult

to think of any situation where a firm would have so extensively failed to comply with the Regulations that it would not be possible to charge a firm with at least aiding or abetting a principal money laundering offence or a failure to report offence. This view is supported by the recent regulatory intervention by the FSA into a corporate advisory firm, where the firm was fined £49,000 and the MLRO was personally fined £17,500 for failure to have adequate AML systems. Despite the extensive failings of the firm to have systems in place, the FSA was still clearly of the view that regulatory action was quite sufficient to bring about improved compliance².

Such a lack of awareness of actual prosecution, which is likely to be replicated across the wider regulated sector, means that the actual sanctions imposed are not in fact having any deterrent effect, but that rather it is the threat of a hypothetical sanction which is driving the current approach to compliance. From a regulatory theory perspective this can only produce an inefficiency.

The role played by incentives and penalties in regulatory compliance generally has been the subject of extensive study. A number of studies have been conducted with respect to AML compliance, although these have predominantly been around the issue of suspicious activity reporting (SARs).³ These studies suggest that the more efficient an AML regime is, the higher the percentage of true SARs are submitted. A true SAR is defined as one where there were good grounds for the suspicion. The studies conclude the more extensive the penalties for non-reporting, the greater the propensity for defensive or useless reporting to occur. They suggest that this is a sub-optimal result.

In the UK, SOCA has suggested that approximately 40% of the SARs they receive are 'true' SARs which provide evidence of actual or attempted money laundering.⁴ This would suggest that the existing UK reporting regime is operating very inefficiently.

No studies have been undertaken on the efforts required to comply with the CDD obligations of the UK Regulations. Nor is there any information from law enforcement regarding their use of identity information collected by firms in accordance with the specific requirements of the Regulations. As a result it is not possible to quantify the amount of CDD which is undertaken defensively to avoid the threat of criminal sanctions, as compared to the CDD which would actually be considered effective if the risk-based approach was being correctly applied. However the anecdotal evidence is that the volume of CDD collected at present is vast and the cost is very high.

This defensive collection of material in response to the perceived threat of criminal sanctions also tends to produce disillusion and resentment within the firms required to collect the information. This compounds the inefficiency by shifting the focus to avoiding the penalty rather than generating a willingness to help address the real risk faced by the firm – namely the risk of being used for money laundering.

We have not seen any evidence from the SRA or law enforcement that there so many solicitors actively engaged in money laundering or inadvertently assisting their clients with money laundering, to warrant such a heavy handed enforcement regime.

² <http://www.fsa.gov.uk/pages/Library/Communication/PR/2008/125.shtml>

³ Pellegrina and Masciandaro (2008) The risk based approach in the new European anti-money laundering legislation: a law and economics view, Paolo Baffi Centre Research Paper Series No 2008-22 [This paper refers to many other similar studies conducted within the UK and around the world]

⁴ Asset Recovery Action Plan, 2007, page 34

<http://www.homeoffice.gov.uk/documents/cons-2007-asset-recovery/asset-recovery-consultation.pdf?view=Binary>

Recommendation: HM Treasury should remove the criminal sanctions from the Regulations and provide that a breach is to be dealt with by the supervisors with regulatory penalties. This may mean that further powers will need to be given to certain supervisors to ensure that they have powers to:

- issue requirements for remedial action within the firm
- issue reprimands
- levy fines
- prevent the firm from being able to practice or be in business

Alternatively, if there is clear evidence of the need to retain a criminal offence as an option of last resort for non-compliance with the Regulations, the offence should be drafted narrowly. Such an offence should relate only to breaches where the breaches are systemic and demonstrate deliberate non-compliance with the Regulations. All other breaches should be dealt with by supervisors.

Beneficial ownership

TLS accepts that sophisticated criminals will seek at times to hide behind business structures and agents to help facilitate money laundering. For this reason we appreciate that a greater understanding of the client's ownership and control structure can be of use to better understand the motivation behind transactions and spot anomalous activities or relationships which may be indicative of money laundering.

However the existing provisions require regulated firms to actively seek out an individual at the top of a corporate tree with the requisite interest, irrespective of the inherent risk posed by the client or the transaction. Often this results in the firm simply confirming that there is in fact no such beneficial owner in existence.

This failure to fully apply a risk-based approach to the identification of beneficial owners is of significant concern to TLS and our members, in part because of the waste of resources.

The practical problems

TLS and our members are supportive of the provision in the Regulations which enables firms to verify the information on beneficial ownership by non-independent means, because often it is the only way in which they can actually comply with the requirements.

In practice, even within the UK, much of the beneficial ownership information required to be obtained is not available through independent channels. Recent amendments to the legislation governing the inclusion of data on the Companies House register saw the removal of the private addresses of company directors, to help combat fraud and harassment from activists. While verification of this particular piece of identifying information is not required by the Regulations or industry guidance approved by HM Treasury, in practice it has been useful for higher risk entities and transactions. The removal of such information from publicly available sources demonstrates an inconsistency in government policy and raises questions as to how committed the UK government is to assisting the regulated sector in the fight against money laundering.

When trying to establish beneficial ownership in jurisdictions outside of the UK, possibly where the risk of money laundering increases, such information is practically impossible to obtain from an independent source. Where there is no ability to independently verify this information, our members feel particularly vulnerable and question the efficacy in taking the time to collect information which could turn out to be completely false. This lack of reliable information tends to result in firms seeking copious amounts of documentation from a wide range of intermediaries (such as banks, legal advisors,

accountants, investment advisors and auditors) as well as the client to seek to develop a consistent picture of the ownership and control structure of the client. This is irrespective of the level of risk posed by the client generally or by the specific transaction.

The multi-layering of business entities is a reality of global corporate life. For firms operating in an international context they often find themselves following a corporate chain of not merely two or three levels, but of many more. At this point, even the most forthcoming and well meaning client is unable to assist in identifying the ultimate individual who beneficially owns them, possibly because one simply does not exist or because if they do, they are so far removed from the client that actually they do not exert any real control over the client or their transactions. Our members are finding that they then have to get the contact details of management or general counsel of an entity three-quarters of the way up the corporate chain, explain to them that they have this subsidiary which would like to undertake a basic transaction, but UK law requires this entity to provide extensive details about their own ownership structure. Needless to say, many such entities when contacted fail to see the relevance or benefit for themselves or the fight against money laundering in providing such information. Law firms acting in a global market place, where other non-UK lawyers either have no requirement to undertake these checks or do not undertake them so diligently are finding that this can be a disincentive for international clients to instruct them, all other things being equal. This clearly has a potential impact on UK plc.

Unfortunately most law firms, in common with most banks and other regulated financial entities, fail to record time spent on AML compliance specifically.⁵ Therefore it is difficult to accurately estimate the cost of client intake for different size corporate clients. However, we have been advised by some of our members that the opening of a new international corporate client matter can cost in the vicinity of £5,000 due to the chargeable time lost by fee earners and compliance staff in chasing documents and undertaking research. Even for smaller firms, the opportunity cost of time spent on conducting due diligence checks on any client who is other than the absolute standard, is more than the fees they are able to charge for the work being undertaken. This either results in them taking on the client at a loss in the hope of future work or in simply turning away possible legitimate business.

The real irony of the beneficial ownership requirements under the Regulations is that most of the sources which are used to verify beneficial ownership are in fact only verifying legal ownership. A person may be listed as owning more than 25% of the shares of a company and they will be deemed to be the beneficial owner. Yet they may in fact have entered into an agreement with another person that they will hold those shares on that other person's behalf and will at all times vote in accordance with the other person's wishes. There is no requirement to register such an agreement anywhere and it is highly unlikely that even the most comprehensive of CDD processes will uncover this fact. It is for this reason that TLS is concerned with any approaches to CDD and beneficial ownership which are one-dimensional or promote box ticking and fail to take into account the actual risks of the transaction under consideration.

Our recommendations at the EU committee stage

During the passage of the third directive, TLS worked with UK representatives and MEPs to propose drafting which would limit the foreseen difficulties faced in identify the beneficial owners, particularly of corporate entities. This proposed drafting was

⁵ Anti-Money Laundering Survey. PWC, 2007, page 4

<http://www.ukmediacentre.pwc.com/Content/Detail.asp?ReleaseID=2384&NewsAreaID=2>

Anti-money laundering compliance by the legal profession in England and Wales, Law Society, 2009, page 19 <http://www.lawsociety.org.uk/new/documents/aml/amlcompliancereview.pdf>

accepted during the committee stages and formed part of the draft plenary session report. However, most of these amendments were withdrawn seemingly as part of the wider political negotiations with the Council of Ministers and the rush to secure agreement on the text.

The text of our drafting for Article 7, paragraph 1, point (b) was as follows:

(b) identifying, where ***practicable***, the beneficial owner and taking ***risk-based*** reasonable measures to verify the identity of the beneficial owner such that the institution or person is satisfied that it knows who the beneficial owner is, including, as regards legal persons, trusts and similar legal arrangements, taking ***risk-based*** reasonable measures to understand the ownership and control structure of the customer; ***where the customer is a properly constituted company registered in a jurisdiction which is regarded as low risk, and absent any other significant risk factors, reasonable evidence of the company's registration from an independent source shall constitute reasonable measures.***

(our suggested amendments are in bold italics)

Work with FATF

The failure to secure those changes in the third directive and the subsequent Regulations has resulted in the practical difficulties envisaged by TLS being experienced by firms. As a result, when FATF agreed to consult with the private sector on their guidance for the risk-based approach for lawyers, TLS assisted the International Bar Association to place this issue firmly on the agenda for resolution. After extensive lobbying, FATF accepted our position and the guidance accordingly provides that regulated persons should:

“Identify the beneficial owner, and take reasonable measures to verify the identity of the beneficial owner such that the legal professional is reasonably satisfied that it knows who the beneficial owner is. The general rule is that clients should be subject to the full range of CDD measures, including the requirement to identify the beneficial owner in accordance with this paragraph. The purpose of identifying beneficial ownership is to ascertain those natural persons who exercise effective control over a client, whether by means of ownership, voting rights or otherwise. Legal professionals should have regard to this purpose when identifying the beneficial owner. *They may use a risk-based approach when determining the extent to which they are required to identify the beneficial owner, depending on the type of client, business relationship and transaction and other appropriate factors...*”⁶

This is welcome guidance from FATF. However it is not clear what legal standing this guidance has in the UK, particularly in the face of direct and clear words in the Regulations which require strict identification of all beneficial owners.

Beneficial ownership for trusts

Due to the unique nature of common law trusts in respect of the concept of beneficial ownership, TLS was extensively involved in proposing legislative amendments to ensure that the law on this area in the UK was constitutionally valid and workable in practice.⁷

⁶ RBA guidance for legal professionals, FATF, 2008

<http://www.fatf-gafi.org/dataoecd/5/58/41584211.pdf>

⁷ Draft money laundering regulations, Law Society Response 2007 and related correspondence
http://www.lawsociety.org.uk/documents/downloads/dynamic/amlresponsetohmt_300307.pdf
<http://www.lawsociety.org.uk/newsandevents/news/view=newsarticle.law?NEWSID=348136>

TLS understand from discussions with the Review Team that representations are likely to be made to the Review seeking greater simplification of the provisions.

The existing provisions are a compromise position, brought about because of:

- a fundamental misunderstanding of how money laundering can occur through a trust; and
- an insistence by law enforcement to keep the application of beneficial ownership as wide as possible within constitutional boundaries.

TLS would still be interested in receiving examples of cases where a trust was used to launder funds where a professional was not actually complicit in the laundering activity. In the absence of such evidence, trusts in the UK must be seen as lower in risk for money laundering, because of the inherent risk of exposure which would result from the need to corrupt a professional.

Secondly, it is important to remember that money laundering is all about criminal property and that a trust is not an entity in its own right and so cannot be responsible for money laundering. This means:

- If the money is not criminal property when it goes into the trust, then it is not criminal property when it is in the trust.
- The beneficiaries of a trust cannot independently do anything with the trust property. Of the limited action they, or others seeking to control the trustees can request, the actual activity must be done by the trustees or at the order of a court.
- If there is a legal impediment on a beneficiary receiving funds (ie sanctions, bankruptcy, confiscation orders), then it is simply a breach of that legal impediment to make the payment to them. It is not money laundering because the money in the trust is not criminal property.
- The only way clean money in a trust might become criminal property is if the trustees engage in criminal activity and the proceeds of that criminal activity is intermingled with trust property.

Therefore, the real risks of a trust for money laundering are:

- What is the source of funds, both at the outset and during the life of the trusts? The identity of the person providing them may have some relevance on answering that question, but it is not the key focus.
- What activities are the trustees undertaking? It is the nature of the transaction that is relevant, not the identity of the trustees or any person that is critical here.
- Is the trustee / beneficiary going to commit a criminal offence by granting / receiving a share in trust property? If this is the case they need legal advice on the predicate criminal offence and any subsequent money laundering consequences. That being said, it is important to note that any move to have to identify the person a payment is being made to is counter to the current focus of existing AML obligations which focuses on your own client rather than the other party to the transaction.

Recommendations: HM Treasury should accept the FATF guidance on the permissibility of applying a risk-based approach to the identification of beneficial owners and ensure it has legal application in the UK.

HM Treasury should consider whether they are able to make this change to the Regulations independently or whether it needs to lobby the EU for change to the third directive.

HM Treasury should encourage action by FATF jurisdictions to limit the ability of entities to incorporate within their jurisdiction with unregistered beneficial ownership⁸. Those registers of beneficial ownership should be made available to the regulated sector. One current avenue to make such representations would be through the European Commission's consultation on the integration of business registers.⁹

While TLS are fully supportive of a reconsideration of the application of beneficial ownership in trusts at FATF level; any proposals to amend the beneficial ownership definition of trusts in the Regulations should be undertaken in close consultation with experts in trust law from the outset, who can advise on the constitutional, legal and practical implications of those changes.

Reliance

The reliance provisions flow from FATF recommendation 9. The purpose of these provisions was to reduce red-tape and the costs of secondary and unnecessary CDD processes being carried out by multiple parties in the regulated sector for the same client and the same transaction. TLS and our members see these as very positive aims which have the potential to reduce the cost of unnecessary compliance which has little or no benefit in the fight against money laundering. However the specific requirements which have been placed on the use of the reliance provisions means that they cannot be used to their full capacity in practice. It is TLS's view that you cannot sensibly place responsibility (and potential sanctions) on a person for something beyond their control. As such we suggest that the proper approach is to only require a person to take reasonable steps or make reasonable enquiries before placing reliance on another person.

These concerns have been raised directly with FATF through the IBA, the CCBE and the American Bar Association (ABA). TLS has had the opportunity to review their written submissions and has incorporated their comments as relevant.

Use of the provisions by law firms

TLS conducted a survey of firms in the Autumn of 2008 and specifically considered the issue of reliance. We received 55 responses to the survey and more detailed results are at Annex 3. Key findings on reliance were as follows:

Firms who had relied on others in the UK

- 57% had relied on another solicitor
- 41% had relied on a financial institution
- 28% has relied on an external accountant
- 4% had relied on an auditor

Firms who had relied on others outside of the UK

- 40% had relied on another independent legal professional
- 25% had relied on a financial institution

⁸ TLS appreciates that there may be certain privacy and safety reasons why such information might not be included on a public register. We believe that there should be specific consideration at a FATF and EU level of these competing interests.

⁹ EU consultation on business registers

http://ec.europa.eu/internal_market/consultations/docs/2009/interconnection_of_business_registers/green_paper_en.pdf

- 10% had relied on an external accountant
- 4% had relied on an auditor

Why reliance was not occurring

- 64% said they did not want to use the reliance provisions, either at all or in a more wide spread way, because of the criminal sanctions which apply to them if the other person relied upon makes an error
- 48% said they were not happy with the CDD standards being applied by others
- 34% found it difficult to assess whether equivalence applied so that they were able to use the reliance provision.
- only 48% of respondents were willing to let others rely on them. The main reason for not doing so was a concern that they would be held civilly liable for any mistakes they made

In further discussions with firms, it appears that it is smaller firms who are making greater use of the reliance provisions. In many of these cases it is because they personally know the other regulated person they are relying upon, which is a much stricter test than envisaged by the FATF recommendation. In other cases it is not clear if the smaller firms have fully considered the potential criminal and civil ramifications of the reliance provisions or the actual CDD standards of the regulated persons upon whom they are relying.

Variation of CDD standards

One of the key concerns is the fact that the firm who is “relying” remains liable and could face potential criminal sanctions in the event that the CDD evidence is deemed to be insufficient. In the absence of actually obtaining the documentation from the other party, it is not possible to assess whether the standard of due diligence applied will meet the expectations of the firm seeking to rely upon that party. This is largely due to the differences in the application of the risk-based approach.

A number of law firms have indicated that when documents are in fact requested, the documentation is not adequate for their purposes (leaving them concerned about criminal penalties). There are a number of reasons why the documents provided fail to meet the standards required by the party relying upon them. One reason stems from the difference in the way that the equivalence provisions are applied for the purpose of determining whether simplified due diligence applies. By way of explanation:

In the case of financial institutions, simplified due diligence can be applied to a non-EEA entity which is subject to requirements equivalent to those set out in the third directive. HM Treasury issued a list of jurisdictions for this purpose; however it included a statement that *‘firms should note that the list does not override the need for them to continue to operate risk-based procedures when dealing with customers based in an equivalent jurisdiction’*. Accordingly, the approach of simplified due diligence differs from firm to firm. Some firms completely rely on the list, while others take precautionary measures in relation to certain jurisdictions on the list where corruption is perceived to be more prevalent. Thus the level of information held on file by firms will also differ.

Similarly, in the case of companies whose securities are listed, for the purposes of the third directive, the question is whether the entity is subject to the disclosure requirements that are ‘consistent with’ EU legislation. The Regulations set out a list of those disclosure requirements. On one interpretation, a firm could require all of those requirements to be faithfully reflected in the relevant market’s obligations. Another firm may consider it enough to satisfy the majority of those

provisions. Again this means that different approaches will be taken towards simplified due diligence.

This problem is also exacerbated by the different rules introduced in different EU jurisdictions; for example the Dutch rules require the collection of name and date of birth details for the representative of an entity. This is not required elsewhere. In the UK the relevant industry guidance only recommends obtaining the names of directors for a private company and only where it is not a well known company or there are higher levels of risk.¹⁰

Even for due diligence on individuals or small businesses within the UK, the process is not straightforward. Some firms in the UK still have procedures customarily requiring passport details of directors of companies whereas others only request such information in high risk situations. Furthermore, some firms still expect to receive a utility bill dated within the last three months for individuals, even though the client may have been taken on some time before the reliance certificate is provided.

In summary, unless a firm knows that another entity has procedures that match its expectations that firm is taking a risk in using the reliance provisions because liability remains with them. It should however be the case that a regulated person can assume that another regulated person has put sufficient procedures in place and can also rely on their risk-based judgement, unless there is evidence to the contrary.

Restrictions on providing material

Many law firms also now use a number of service providers for electronic verification, which often provides evidence of incorporation, registered address and director or shareholder details. All of the information obtained in this way is subject to license and therefore cannot be passed on. Accordingly this leads to gaps in the CDD documentation that can be provided to a third party. This means that if a firm relies on another regulated person, not all of the relevant information can be provided upon demand, even if it has been collected. This leaves the party relying upon them at risk of criminal sanctions and may stop other firms from providing reliance certificates.

Sometimes, even though a reliance certificate has been provided, the other party fails to supply the relevant documents upon request. As the liability remains with the party seeking to rely, there are real concerns about the position that this puts them in.

Civil liability

Where firms have received requests to be relied upon, many are reluctant to do so in case it gives rise to a subsequent civil claim if the risk-based judgement turns out to be misjudged. Many firms therefore seek to provide the information upfront (subject to licensing and data protection considerations).

Recommendations: It has been suggested in discussion with the Review Team that it may be better to remove the reliance provisions if they cannot be amended. At this point, TLS does not believe that this approach is in the interests of the profession as a whole. TLS supports multi-institutional, multi-sector and multi-jurisdictional reliance being included in the Regulations, to reduce unnecessary duplication of CDD processes.

HM Treasury should engage with FATF to seek changes to Recommendation 9. Changes which should be sought include:

¹⁰ see 5.3.127 of the JMLSG guidance (Part 1) and 4.6.3 of the Law Society Practice Note

- All regulated persons should be able to reasonably rely on other regulated entities and presume that the regulated entity has in place appropriate risk-based CDD procedures, unless there is evidence which rebuts that presumption.
- Where reasonable reliance is demonstrated, the party being relied upon is responsible for carrying out CDD in accordance with its own laws and procedures and that the regulated persons relying is not liable either for its 'failure' to carry out CDD or the failings of the party relied upon.
- The party being relied upon should not be subject to any civil or other legal responsibility to the relying party.
- A reliance certificate should list the details of the evidence that has been collected and this should be sufficient for reliance. While the regulated person who is relying should be entitled to seek copies of the evidence, there should be no legal obligation on them to obtain it.
- If law enforcement wants copies of the evidence, they should make the request directly to the regulated person who is relied upon.

Simplified due diligence

Simplified due diligence was another measure adopted by the FATF to reduce red-tape and help focus AML compliance activities in a risk-sensitive way. Unfortunately in practice, there is again room for improvement to achieve this stated aim.

Use of the provisions by law firms

In TLS's survey of AML compliance in Autumn 2008, the key findings on simplified due diligence were as follows:

- The majority of respondents said that simplified due diligence applied to less than 50% of their work.
- 71% said that they found simplified due diligence useful or very useful when it did apply
- 43% said they found it difficult to get information to allow them to decide that simplified due diligence applied
- 23% specifically found it difficult to get information on equivalence

Breadth of coverage

The list of entities that qualify for simplified due diligence is restricted to listed companies, regulated financial and credit institutions, independent legal professionals and public authorities. This means that even where an entity is recognised by the FSA (and therefore subject to a high level of scrutiny) it does not necessarily qualify for simplified due diligence. For example, a recognised overseas investment exchange does not fall within the ambit of Regulation 13.

Incongruous application to parent entities and subsidiaries

Firms have highlighted, to us, their frustration at the need to carry out full CDD on the parent of an FSA approved entity in circumstances where the parent is not itself FSA approved. This is a good example of the Regulations failing to be proportionate. Any CDD carried out on the parent entity will be duplicating the efforts of the Regulator who, at the time of granting approval, will have carried out extensive due diligence on any parent or beneficial owner of the entity.

A similar point arises on private equity transactions where lawyers are acting for both the managers of funds and the funds themselves. Funds are often structured as Limited Partnerships (usually unregulated) wholly managed by, but not necessarily owned by, regulated General Partnerships. A common characteristic of the Limited Partnership is that the investors (often comprised of large institutions) are passive, whereas the General Partner is the entity which manages and operates the fund and its investment activity. In these circumstances simplified due diligence may only be carried out on the General Partner whereas full due diligence must be applied to the Limited Partnership. This is regardless of the fact that the General Partner as a regulated financial institution will also be subject to the Regulations and will exercise full control over the Limited Partnerships. Conducting full CDD over a Limited Partnership causes considerable difficulties particularly where there are a large number of investors.

What is equivalence?

In accordance with the third directive, companies with shares listed on a regulated market in the EEA or non-EEA market with comparable disclosure requirements were meant to qualify for “simplified due diligence”. However the UK’s approach to implementing Regulation 13(3) has meant that it is very difficult for firms to rely on this provision at all when considering what CDD to carry out on listed companies.

Regulation 13 (3) allows listed companies whose securities are listed on a regulated market which is subject to specified disclosure obligations to qualify for simplified due diligence.

For these purposes a “regulated market”:

- within the EEA, has the meaning given by point 14 of Article 4(1) of the markets in financial instruments directive; and
- outside the EEA, means a regulated financial market which subjects companies whose securities are admitted to trading to disclosure obligations which are contained in international standards and are equivalent to the specified disclosure obligations.

“specified disclosure obligations” means disclosure requirements consistent with certain prescribed articles of the Market Abuse Directive, the Prospectus Directive and the Transparency Directive (the Directives).

The definitions section in the Regulations goes on to outline specific articles and sub articles which must be complied with, which is beyond the requirements of the third directive.

There are three main practical problems which flow from this approach.

Firstly, when considering whether a company with an EEA listing qualifies for simplified due diligence it is not sufficient to check that the market appears on the Commission's list of regulated markets. In addition, it is necessary to investigate whether the jurisdiction in which that market is based has implemented the disclosure aspects of the relevant Directives. This is not a simple task. Even in cases where it is known that the Directives have been implemented, the extent to which particular disclosure requirements have been adopted will not be known without extensive study. This has led to full CDD being carried out on companies who should logically have the benefit of this exemption. The need to conduct full CDD is particularly burdensome in cases where the client is being jointly advised by other EEA counsel who are able, under their local laws, to conduct simplified due diligence.

Secondly, as regards non-EEA markets, the task of identifying entities which may qualify for simplified due diligence is even harder because the focus of the exemption is on the disclosure requirements which the markets impose on the company, rather than the

disclosure requirements under the general law of the country (including of course market requirements). This effectively means that before being able to determine whether a company could qualify for simplified due diligence, some assessment of non-EEA markets' disclosure obligations would need to be undertaken. The effect of this is that companies with listings on non EEA markets do not in practice benefit from this exemption.

Finally, there is no settled concept of equivalence, in the FATF guidance, in the third directive preamble, or in any advice from the UK government. It is not clear whether 100% legal compliance is sufficient, or if it is sufficient for the majority of the requirements to be satisfied in law, or if there is a need for them to be complied with and enforced in practice. A number of the countries listed on HM Treasury's list of equivalent countries have been found by FATF to be only partially compliant or non-compliant with respect to some of the AML requirements, let alone the disclosure requirements of the Directives.

TLS and our members appreciate the flexibility that the current Regulations provide in allowing firms to take a risk-based approach in assessing the equivalence in emerging markets. However we believe there needs to be greater transparency in the law and in the formation of government lists, to make it easier and more cost effective for regulated person to actually assess equivalence, particularly in well established jurisdictions and markets.

Recommendations: TLS supports the retention of simplified due diligence provisions in the Regulations. We are of the view that they would be more effective if:

- HM Treasury encouraged the EU or FATF to develop an agreed list of equivalent jurisdictions and regulated markets, and the process for determining that list was published
- HM Treasury amend the Regulations so that reliance on the government issued list was deemed to be compliance with the Regulations for the purposes of the legal question of equivalence.
- The Regulations are amended to remove the requirements in the definitions for assessing equivalent markets which go beyond those contained in the third directive.
- HM Treasury reviews the list of entities and markets that simplified due diligence applies to, specifically with respect to those entities and markets recognised and supervised by the FSA.

Politically Exposed Persons

The Regulations require all firms to apply enhanced due diligence on all foreign politically exposed persons (PEPs), irrespective of the risk posed by the individual PEP or the specific transaction. This non-risk based approach is costing firms large amounts of money, providing practical difficulties in terms of establishing source of funds, and at times limiting the provision of legal services to legitimate individuals.

Evidence of the threat posed by PEPs

Research from the World Bank suggests that between US\$20 billion and US\$40 billion is taken from developing countries by corrupt leaders and applied for their own personal use, outside of their home country. However, that research, while not attempting to

quantify the number of PEPs, acknowledges that not all PEPs are corrupt, in fact most are not and those that are, are likely to be a small percentage of PEPs.¹¹

Recent reports from the World Bank¹² and Transparency International¹³ on politically exposed persons failed to:

- provide any evidence for the scale of the PEP threat of money laundering globally other than 'guesstimates'
- provide any detailed methodologies being used by less obvious PEPs or information on the number of these less obvious or related PEPs actually being used or discovered
- really consider the costs incurred by the regulated sector and whether those costs could actually produce greater benefits
- appreciate the fact that the majority of businesses required to apply these PEP requirements are not large banks with computerised client databases and large compliance budgets, they are small businesses with paper-based systems
- take into account the infringement of fundamental human rights of privacy for the vast majority of non-corrupt PEPs being covered by their wide ranging and very intrusive recommendations

The Transparency International report and a further series of case studies from Global Witness¹⁴ reports did provide some actual examples of activities by corrupt PEPs. In all of the examples provided it was clear to the regulated person that they were dealing with a high level PEP, there were significant corruption risks in the home jurisdiction of the PEP, and generally the funds being used were not funds to which the PEP should have had access at all or should not have been used for the purposes they were used. In all of the examples provided the regulated person simply needed to comply with legal and ethical imperatives not to engage in money laundering rather than succumbing to the financial incentive to continue with the transaction until caught. None of the examples required the use of expensive commercial lists, daily screening of client databases for emerging PEPs or extensive reviews of source of wealth or source of funds.

None of the reports were able to:

- estimate the number of PEPs in existence, either as a base figure or by comparison to the number of 'regulated' customers or transactions processed in a year
- estimate the percentage of PEPs who, on the basis of historical evidence, are likely to pose a real risk of money laundering, rather than the hypothetical risk that all could be corrupted
- provide numbers of cases where secondary PEPs had sought to move corruptly obtained funds on behalf of primary PEPs

¹¹ Stolen Asset Recovery, Politically Exposed Person, A policy paper on strengthening preventive measures, World Bank, 2009 <http://siteresources.worldbank.org/EXTSARI/Resources/5570284-1257172052492/PEPs-ful.pdf>

¹² Note 11

¹³ Combating Money Laundering and Recovering Looted Gains, Transparency International UK, 2009 <http://www.transparency.org.uk/publications>

¹⁴ Undue Diligence, Global Witness, March 2009 http://www.globalwitness.org/media_library_detail.php/735/en/undue_diligence_how_banks_do_business_with_corrupt

- provide numbers of suspicious activity reports made relating to PEPs in the last year
- provide numbers of investigations into PEPs which were commenced in the last year
- provide any evidence that the enhanced compliance being voluntarily undertaken by some regulated persons was beyond the requirements of the Regulations actually producing improved outcomes and the extent of the benefit from those outcomes.

Despite this lack of evidence, all reports called for greater action on the part of regulated persons, to tackle the 'risk' of money laundering by PEPs.

At present, it is TLS's view that there is no evidentiary-based assessment of the actual risks posed by PEPs of money laundering in the UK, to enable a proper assessment of how to effectively and proportionately tackle those risks.¹⁵

The legal sector experience of PEPs

In TLS's survey of AML compliance in the Autumn of 2008, the following key findings were:

- 67% of respondents said that they did not have PEPs as clients
- Of those who had PEPs as clients, 30% were primary clients and 45% were beneficial owners of primary clients.
- The highest percentage of PEPs in a client base was 10%
- 60% were using commercial e-verifiers to help them identify PEPs
- 33% had turned down work because of the perceived risk posed by PEPs – they did not say this was because they actually suspected money laundering

Commercial providers

The list of people who qualify as a PEP in the UK is very wide. It encompasses:

A person who has been entrusted within the last year with a prominent public function by a Community institution, an international body, or a state other than the UK. They are:

- heads of state, heads of government, ministers and deputy or assistant ministers
- members of parliament
- members of supreme courts, of constitutional courts, or of other high-level judicial bodies whose decisions are not generally subject to further appeal, except in exceptional circumstances
- members of courts of auditors or of the boards of central banks
- ambassadors, charges d'affairs and high-ranking officers in the armed forces
- members of the administrative, management or supervisory bodies of state-owned enterprises

It also covers family members and close known associates of primary PEPs.

Because of differences in the definitions of PEPs at an international level, some commercial providers take a broader approach to the definition of PEPs while others include a wide range of persons who may pose a reputational risk to the firm for other reasons, rather than just money laundering. We understand that some commercial

¹⁵ See also the Law Society response to the draft Transparency International report

<http://www.lawsociety.org.uk/newsandevents/topics/aml/consultations.page>

providers also include as PEPs all persons who are members of the ruling political party, at least in some jurisdictions. These can lead to significant over-compliance, particularly in relation to countries like China.

In any event, because these lists predominantly rely upon publicly available information they are often incomplete in terms of the coverage of persons and the individual details contained. This can result in high levels of false-positive identification of clients as PEPs, which then require a large amount of time to be spent checking other sources of information and seeking further evidence from clients to establish whether the client is in fact a PEP or not.

The costs of these commercial providers are also high. TLS has used its purchasing power as a representative body for the profession to negotiate better pricing for our members, so that smaller firms may be able to access these resources. However, even small firms can be spending a few hundreds of pounds a year simply to prove that they do not have a secret PEP hiding in their client base. Larger firms can find themselves spending hundreds of thousands of pounds in licence fees and thousands of pounds in search fees each year.¹⁶

There is no regulation of the fees charged by these commercial providers, other than the market. In the absence of reliable evidence on the risks actually faced (that these databases are said to help mitigate) and in the face of criminal sanctions for non-compliance, it is clear that the market is unlikely to be a rational or efficient regulator of such costs.

Government lists

All of the persons who fall within the definition of a primary PEP are appointed by government. In making those appointments government will generally undertake checks on the background of those persons, both in terms of their family members and business associates and their income and assets.

TLS, our members, and others in the regulated sector, have long requested that governments should provide this information, which they are best placed to collect and retain, to the regulated sector to enable compliance with the PEP obligations.

The World Bank, in considering this request which was widely made by those financial institutions it interviewed, stated that it was neither physically possible nor politically desirable for governments to provide such lists¹⁷. The report did not address why it was then appropriate to pass the requirements and costs on to the regulated sector.

We appreciate that some governments around the world are actually themselves the target of these laws because of their corrupt activities within their own jurisdiction. We appreciate that such jurisdictions would be unlikely to provide such lists. However the absence of such lists would of itself flag to the regulated sector that PEPs from this jurisdiction should be treated with enhanced care.

If the risk of money laundering from PEPs is as significant as government and law enforcement allege, TLS cannot understand why the government is unwilling to assist the regulated sector to combat this risk. In light of this unwillingness, we consider it ethically questionable to threaten private citizens with criminal sanctions for failing to do what the government itself will not or cannot do.

¹⁶ see our comments below at Costs and Benefits of the regime – page 24 of this response

¹⁷ Note 11

Domestic PEPs

One of the questions raised in the call for evidence is whether the Regulations should be applied to domestic PEPs. We are strongly of the view that it should not be extended. PEPs are also individuals who must carry out day-to-day transactions many of which will be low risk. Under the Human Rights Act 1998, these persons also have the right to a private life in which to carry out those transactions. The rationale for looking more closely at foreign PEPs is that we should ask additional questions as to why the individual is doing business in another jurisdiction.

A domestic PEP will still be subject to identification and ongoing monitoring, and will be the subject of suspicious activity reports where there is information which raises a suspicion of money laundering. There is no evidence that putting more names on databases and requiring management committees to scrutinise asset declarations will be likely to dramatically increase the number of such reports in the UK.

While TLS appreciates that some firms will already be applying some level of enhanced due diligence to domestic PEPs, we do not believe there is sufficient evidence of unmitigated risk in this area to warrant the legislating of such voluntary practice and the enforcement of it with criminal sanctions.

Recommendations: HM Treasury should not agree to any widening of the definition of PEPs until research has been conducted, both within the UK and internationally, in respect of PEPs which actually focuses on evidence of the threats posed by corrupt PEPs and considers the actual cost and benefits of any recommendations made.

HM Treasury should commit to providing a list of UK PEPs as an example for international governments and for the benefit of other jurisdictions and should actively lobby other governments through the EU, FATF and the G20 to follow suit. These lists should be provided to the regulated sector at no or minimal cost and made easily available to those in other jurisdictions.

Source of funds and wealth

There are two points under the Regulations where source of funds are relevant:

Regulation 8 requires that when conducting ongoing monitoring, a regulated person should scrutinise the transactions, including where necessary, the source of funds, to ensure that it is consistent with the knowledge of the client, their business and their risk profile.

Regulation 14 requires that where a regulated person has a PEP as a client, they must take adequate measures to establish the source of wealth and source of funds which are involved in the proposed business relationship or occasional transaction.

The Proceeds of Crime Act 2002 (POCA) then requires the reporting of suspicions that another person is engaging in money laundering, which inherently requires there to be a suspicion that the person has criminal property.

Each of these requirements imposes quite different obligations with respect to the source of funds and is producing a level of uncertainty as to what is actually required to avoid criticism or sanction from regulators and law enforcement.

For Regulation 8 the requirement is only scrutiny. There is no requirement to establish the source of funds or prove that they are clean, by independent or non-independent means. Yet for Regulation 14, regulated persons must establish both source of wealth and source of funds. Again there is no requirement that it be done by independent or non-independent means, nor is there a requirement to prove that the funds are clean.

Under POCA, no evidence of the source of funds is actually required before a report is made, merely a suspicion that the funds represent criminal property.

Because there is no legal requirement for the regulated person to prove that the funds are clean, and in many cases this would be impossible, it is not entirely clear what their scrutiny of the source of funds is meant to be achieving and so it is not clear what evidence they should be seeking to achieve this unclear aim.

In some cases firms will seek bank statements from clients, to confirm that funds have come from a regulated account. However this is but one snap shot in time and will not necessarily demonstrate that the funds have come from a legitimate source.

Where funds are said to have been accumulated over time, some firms are going to the extent of asking for bank statements over that period and analysing the incomings and outgoings to satisfy themselves that there are no deposits from unaccounted sources.

Where clients are claiming that the source of funds is from a windfall gain (such as a bequest under a will or a personal injuries claim) or realisation of an investment (sale of a house or shares) they are being asked to provide all related documentation with the resultant costs and difficulties.

In some cases clients are simply very wealthy and that wealth has been within the family for hundreds of years. It is not clear how you establish whether that is the case or not, or whether you can accept this at face value. Some firms are also concerned whether they should be looking for any other possible illegal activity which may then have tainted that legitimate wealth.

There is no clear consensus among policy makers, legislators, law enforcement, regulators, or guidance authors, as to what aims this assessment of source of funds is meant to achieve or practically what constitutes reasonable measures.

Recommendations: The issue of source of funds and source of wealth should be the subject of detailed consideration by MLAC and the Supervisors Forum, with a view to providing at least some level of clarity for the regulated sector in the UK.

Level playing field

Not all lawyers within FATF countries are covered by AML obligations, and even where they are, in some countries the supervisors take a more relaxed approach to client due diligence and instead monitor all funds which pass through a central client account.

Key exemptions from the AML obligations are lawyers in the USA, Canada, China and India. In the United Arab Emirates coverage of lawyers has only been in place since the middle of 2008. Across Europe, the slow transposition of the third directive has meant that there were different levels of CDD required across Europe, particularly in France, Belgium, Spain, Russia and Ireland.¹⁸

In practice, UK firms operating in an international context will apply the UK standard to all of their clients and in all of their offices. The main reason for this is to ensure consistency, so that clients moving between offices and between regulated and non-regulated work are fully identified at the outset. This reduces delays in later higher-risk retainers and avoids the difficult discussions with clients seeking detailed ownership information from them when you have previously undertaken work without needing the information.

¹⁸ information obtained from the IBA website <http://www.anti-moneylaundering.org/> accessed on 2/12/09

TLS appreciates that existing research¹⁹ on the third directive and the UK AML regime have not found strong evidence for competitive disadvantage as a result of the AML obligations being imposed. It should be added that most of the research has focused on financial institutions, where the application of these laws is more consistent.

However, we have received anecdotal information from our members that:

- for international work, all things being equal, the imposition of detailed beneficial ownership requirements is a factor which some legitimate clients are taking into account when deciding which firm to instruct
- for firms with offices in foreign jurisdictions, the imposition of AML obligations to the UK standard is a factor in losing local work

In respect of these observations, it should be noted that our members are referring to legitimate business, rather than criminal enterprises which they would not wish to have as clients. These businesses are satisfied as to their own reputations and that of the law firm and do not see the added benefit of giving up their privacy or expending the resources on providing the information to the law firm, if they can go elsewhere and not have to do so. An increase in the application of the risk-based approach in key areas we have highlighted elsewhere in this response may assist in reducing these difficulties.

Finally, we note that in the USA and Canada, it has been accepted that involvement in the statutory AML regime by lawyers is incompatible with their constitutional role. In those jurisdictions, the respective codes of conduct require that lawyers refrain from using their services to assist their clients from engaging in criminal activity, and they are still caught by the principal money laundering laws.

Recommendations: TLS supports further detailed research into the affects of the UK AML regime on the competitiveness of UK plc in Europe and in key financial markets.

TLS supports research from FATF, the EU and the UK government on the extent to which SARs from the legal profession actually add to the intelligence gathered from others in the regulated sector, and whether inclusion of lawyers within the legislative regime is the most effective use of their gatekeeper role.

Costs and benefits to solicitors

The costs and benefits of the international AML regime are issues often discussed but never really subjected to detailed empirical assessment. Many assertions are made in this area, but few can be backed up with evidence, on either side of the equation.

TLS has undertaken some small research activities to add, at least in part, some evidence to this debate. We also carefully monitor any other empirical research being conducted by consultants, governments, and academics.

As outlined below, while the evidence for either side of the equation is still minimal, it is clear that when multiplied out across 150,000 regulated entities, the private sector is

¹⁹ City of London research series Number 6 (2005) Anti-money laundering requirements: costs, benefits and perceptions.

Price Waterhouse Coopers (2007) Anti-Money Laundering Survey

<http://www.ukmediacentre.pwc.com/Content/Detail.asp?ReleaseID=2384&NewsAreaID=2>

Commission of the European Communities (2006) The application to the legal profession of Directive 91/308/EEC on the prevention of the use of the financial system for the purpose of money laundering.

http://ec.europa.eu/dgs/internal_market/docs/evaluation/2nd_money_laundering_directive.pdf

investing more in the UK's anti-money laundering regime than the UK government is recovering because of it.

Quantifying costs

Estimating the cost of compliance with anti-money laundering obligations for the regulated sector is also not an easy task. Firms may be able to quantify:

- the number of staff employed to undertake client due diligence checks and make SARs;
- the cost of subscriptions for e-verification services;
- the cost of new case management systems to record due diligence and ongoing monitoring, and;
- fees incurred for training programmes or the cost of providing internal training.

Many firms will not however be able to quantify the amount of time spent by individual staff members across the firm:

- assessing the risks of clients;
- chasing up due diligence material;
- monitoring clients and transactions for warning signs, and;
- discussing suspicions and internal reports with MLROs and deciding whether or not a SAR is required to be made.

These hidden costs are felt more keenly by those parts of the regulated sector where transactions are not mere numbers and ongoing monitoring is not susceptible to automated processes.

Responses to cost surveys

Across the regulated sector, in the UK and across Europe, businesses tend to seek to absorb regulatory costs into their operating overheads as quickly as possible and do not tend to account for each aspect of regulatory compliance separately. This 'business approach' to compliance costs has hindered TLS and other researchers who have sought to measure the costs of AML compliance.

In the 2008 monitoring survey on AML compliance conducted by TLS²⁰, only around 20 firms provided information on costs. While this number of responses is not indicative of the profession as a whole, it provided illustrative examples on what some firms are spending.

Key headline figures from the 2008 survey were:

- AML systems development
 - cost each firm between £4,000 to £1.5m in the previous year
- Complying with CDD requirements
 - cost each firm up to £1.5m a year
 - 50% are spending up to 20 hours per week and paying up to £5,000 per year
 - the top 25% are spending 75 hours or more per week and paying £42,000 or more a year

²⁰ See Annex 3

- Training of staff
 - Cost each firm up to £2.5m in a year
 - 50% are spending up to 40 hours and paying up to £4,000 a year per firm
 - the top 25% are spending 100 hours or more and paying £12,250 or more a year per firm
- Discussing suspicions and making disclosures
 - On average most firms were spending around 4 hours each week on these activities
 - In terms of MLRO time costs to the firms, 50% said it cost them up to £500 a year, the top 25% said it cost them £7,500 or more, with one firm reporting costs of around £164,000.

In 2009, a further survey was conducted with top 100 firms, seeking to establish more of the easily quantifiable costs. We selected this demographic as they are more likely to have a staff member dedicated to compliance generally, if not dedicated solely to anti-money laundering. We received 21 responses, from firms ranging in size from 25 – 50 partners, to over 300 partners. These firms were generally in a better position to provide clearer estimates. However, even within this group some could not provide clear estimates because the costs had been absorbed or were combined with other compliance costs.

Key headline results for the 2009 survey

- Staff dedicated to AML compliance
 - .4 FTE to 16 FTE
 - The salary bill for these staff ranged from £1,000 to £800,000
- Costs for risk assessments and manuals
 - The firms took a mixture of approaches in terms of whether these were prepared in-house or purchased from external consultants
 - An internal risk assessment ranged in cost from £1,000 to £90,000, while paying a consultant for such a risk assessment ranged in cost from £3,000 to £10,000.
 - The creation of a policy manual internally cost between £1,000 and £80,000, while paying a consultant to produce such a manual cost between £3,000 and £10,000.
- Costs to obtain CDD
 - The number of e-verification products used to obtain CDD ranged from 0 to 7
 - Set up costs in the last 12 months ranged from £1,000 to £250,000. Some firms did not incur this costs as they already had e-verification providers in place prior to 2007.
 - Annual costs for those with e-verification products ranged from £1,000 to £150,000 with individual searches or reports costing up to £20,000 each.

- Training
 - Firms used a mixture of approaches between purchasing training and producing it in-house.
 - Annual costs for training ranged from £600 to £100,000
- Making disclosures
 - cost estimates for a year ranged from £4,000 to £300,000 in lost fee earner and MLRO chargeable time
- Total expenditure on easily quantifiable AML costs
 - for each of the firms this ranged from £26,800 to £1,035,000 per year
 - for all 21 firms it was almost £6.5 million.

Benefits to solicitors

This expenditure on AML compliance raises the question of what benefit law firms are actually receiving for the amounts expended.

Our members do tell us that the increased focus on anti-money laundering has made the firms and their fee earners more aware of the risks they face from criminals and more alert to the reputational damage which some potential clients pose. It has led them to turn away more work, not only on the basis of potential money laundering, but also because of professional and reputational concerns.

However, our members do not generally believe that compliance with the exacting technical requirements of the Regulations is delivering any real benefits.

A law firm will need to know who their client is, simply to send the client letters, serve documents, complete court forms, complete a transaction and provide full and proper advice on legal issues.

The extra identity information specifically required by the Regulations, and required at the start of the business relationship rather than as the retainer progresses, was not seen by firms to be of benefit to them. We are not aware of any firm making a SAR simply as a result of this extra identity information. SARs are usually made because of information relating to the nature of the retainer and the way it proceeds.

Benefits for the regime generally

When looking at the benefits of an AML regime, it is useful to be able to assess the extent of the money laundering problem at any given point in time, and then to assess the extent to which the AML obligations are reducing that problem.

Unfortunately, despite the fact that there have been United Nations conventions on money laundering since 1988, there is still no internationally accepted methodology of assessing the scale of money laundering globally or in a specific jurisdiction. Currently any estimates put forward are in fact guestimates, based on very general assumptions of the size of the criminal economy by comparison to GDP and likely profits after assumed expenditure on criminal activity is removed.

In terms of the benefits of the regime, there is no agreed measure of the range of benefits, some of which are tangible and some intangible.

One could consider the number of SARs made as a measure of the benefit of the AML regime and evidence that it is effective. There are inherent problems with this, as SARs only reflect the level of suspicion within the regulated sector at a given time. Further the level of SARs can be influenced by the size of the regulated sector, economic fluctuations in parts of the regulated sector and movement of criminal methodologies from one part of the regulated sector to another. TLS does see some benefit in

assessing the level of criminal disruption achieved as a result of each SAR and the amount of criminal monies removed from the criminals as a result of a SAR.

When looking at SARs from solicitors, neither TLS nor FATF have been able to obtain any examples of where even one report from a lawyer and a lawyer only, has actually made a difference to serious organised money laundering.

Solicitors in the UK are making a significant number of reports by comparison to their European counterparts. TLS understands that the majority of these reports relate to minor tax evasion, small scale opportunistic mortgage fraud by individuals rather than criminal syndicates, or minor regulatory or environmental breaches uncovered during mergers and acquisitions. Such reports are hardly likely to assist disruption of serious organised crime on a significant scale. Our members also advise of cases where despite their concerns of serious criminal activity, they were very quickly granted consent. In some cases where they did proceed with the transaction, they have not seen any reports which would suggest that law enforcement took action. After 7 years and around 45,000 SARs, our members remain to be convinced that their involvement in the AML regime is actually making any difference. Given the costs of compliance, it is hard for firms to be committed to the ethos of the UK regime.

In terms of ensuring that criminal property is removed from criminals, there are a number of indicators one could refer to, including monies restrained, monies forfeited, monies under confiscation order and monies actually recovered.

However even with these tangible benefits there is a dearth of publicly available and historical data to enable these to be assessed. This is made all the more difficult in the UK as asset recovery responsibilities are shared across 43 different policing agencies, two prosecutors and an ever expanding range of government departments. TLS appreciate the work being done by SOCA and ACPO to increase the use being made of SARs and the amount of publicly available information available on such use. This is still in its early days and much more work needs to be done.

We have sought to provide a quick snap-shot of the range of benefit indicators from readily publicly available information, since the introduction of the Proceeds of Crime Act 2002.

| Year | Estimate of ML threat | No of SARs | No of SARs from Solicitors | Monies Restrained | Monies Forfeited | Monies confiscated | Monies recovered |
|-------|-----------------------|----------------------|----------------------------|--------------------|---------------------|----------------------|--------------------|
| 02/03 | N/A | 99,933 ^B | 3,718 ^B | N/A | N/A | N/A | N/A |
| 03/04 | N/A | 142,638 ^B | 9,576 ^B | N/A | N/A | N/A | £54m ^F |
| 04/05 | N/A | 195,792 ^B | 10,525 ^B | N/A | £22.4m ^B | £129m ^B | £84m ^F |
| 05/06 | N/A | 213,202 ^B | 7,296 ^B | N/A | £31.4m ^B | £127.7m ^B | £97m ^F |
| 06/07 | £15b ^A | 220,484 ^C | 11,300 ^C | N/A | N/A | N/A | £125m ^F |
| 07/08 | £15b ^A | 210,524 ^C | 6,460 ^C | N/A | N/A | N/A | £135m ^F |
| 08/09 | £15b ^A | 228,834 ^D | 4,772 ^D | £254m ^E | £7.2m ^E | N/A | N/A |

Sources of information:

A: SOCA threat assessments, 2006 – 2008, <http://www.soca.gov.uk/threats>

B: FATF mutual evaluation report of the UK

<http://www.fatf-gafi.org/dataoecd/55/29/39064399.pdf>

C: SARs annual report 07/08 (no longer on the SOCA website)

D: SARs annual report 08/09

<http://www.soca.gov.uk/news/151-suspicious-activity-reports-regime-annual-report-2009>

E: SARs annual report 07/08 – these figures represent only the monies restrained and forfeited where a SAR was involved, they are not official performance data

F: Home Office press release in January 2009: <http://www.homeoffice.gov.uk/about-us/news/cash-boost-to-police?version=1> . Note that these figures are higher than those reported in the Home Office's Asset Recovery Plan published in May 2007 <http://www.homeoffice.gov.uk/documents/cons-2007-asset-recovery/asset-recovery-consultation.pdf?view=Binary> and the FATF mutual evaluation report

Academic research

The question of costs and benefits with respect to AML is an area of burgeoning academic interest. While research has been conducted internationally, there are two recent studies with reference to UK law enforcement databases which cast serious doubt as to the benefits actually being received as a result of the UK's AML regime.

The first study was conducted by Dr Jackie Harvey of the Newcastle Business School at Northumbria University and reported in issue 154 of the Money Laundering Bulletin in June 2008.

Key findings

- In reviewing the value of SARs made in 2007, the median value was £10,000 and the mean was £35,000. This suggested that £2 – 3 billion (rather than £15 billion) was available for recovery.
- In 2005, only 44.8% of money laundering prosecutions were resulting in convictions, which meant that there was a conviction rate of .3% per SAR.
- Of those convicted, only 33.7% received jail terms and the average sentence was 25.7 months.

These findings led Dr Harvey to conclude that

“those who are being caught and processed through the criminal and civil courts are far from being sophisticated criminals moving vast sums of money into the financial system and compromising its integrity. In contrast, our criminals demonstrate little investment acumen, being concerned more with the acquisition of physical status enhancing assets.”

The second study was conducted by Dr Peter Sproat at the Centre for Criminal Justice and Police Studies at the University of West Scotland and was reported on in Volume 12 No 2 of the Journal of Money Laundering Control in September 2009.

Key findings

- Of 583 publicised cases where POCA powers had been used, only 11 conformed to the internationally accepted definition of organised crime.²¹
- Of the 362 custodial sentences for principal money laundering offences in England and Wales during 2006, none were for the maximum of 14 years. Only

²¹ two or more people are involved in continuing significant illegal activities; such a group is capable of defending its members with violence, coercion or corruption; and more than £1m in criminal proceeds has been generated. See page 139 of Dr Sproat's paper.

two were for 10 years, 19 for 5 years, with the average sentence ranging from just over 1 year to just over 2 years depending on the principal offence.

- For the failure to report, tipping off and prejudicing an investigation offences, only 13 sentences have been issued between 2002 and 2006, with the largest average sentence being six months.
- In 2006, in ARA's case load only three cases involved potentially recoverable assets of £1m or more. The majority of cases involved potentially recoverable assets of £10,000 to £50,000.

These findings led Dr Sproat to conclude that there was a significant disparity between the official statements on the financial importance and extent of organised crime and the figures on the use of AML tools to combat it. He therefore expressed the view that:

“..if the extent of organised crime is far, far, smaller than those in the money laundering industry would have us believe then this raises huge questions about the trustworthiness and morality of those politicians and ‘professionals’ who use the extra-ordinary threat of ‘organised crime’ to manufacture consent for their (often extra-ordinary) measures. Alternatively, if the threat of organised crime is as great in scope as the official discourse would have us believe then the inaction suggested by the evidence noted above raises serious concerns about the professionalism of the law enforcement agencies tasked with the use of these measures, and/or the management of the agencies by their political masters.

TLS is of the view that both of these studies add weight to the perceptions of our members that their best efforts are not making a difference to the fight against organised crime and that their AML compliance monies may not be well spent.

Recommendations: TLS encourages the UK to actively engage with FATF and the EU to develop a methodology for collecting information on and assessing the benefits of the AML regime.

TLS is supportive of further research being conducted into the costs incurred by the regulated sector.

TLS would like to see specific evidential assessments of costs and benefits being included in all reviews of AML compliance, by the UK government, the EU and in the FATF mutual evaluation reports. We would like the UK government to support this approach in representations to the EU and FATF.

Proportionality and effectiveness

The definitions

Proportionality is defined by the Review as:

An approach that is risk-based so that:

- the benefits of intervention outweigh its burdens;
- action is targeted wherever possible on specific areas of risk and vulnerability

Effectiveness is defined by the Review as:

Making maximum impact on the criminal and terrorist threat

Proportionality

Turning firstly to the first limb of the definition of proportionality: Do the benefits outweigh the burdens? As outlined in our comments above regarding costs and benefits:

- there is no evidentiary based estimate of the scale of the money laundering in the UK or globally
- there is no agreement as to how the benefits are to be measured and the data available on the possible measures is far from comprehensive
- no detailed study on costs to the regulated sector has been undertaken, and in any event good business practice sees those costs absorbed into overheads quite quickly so that they are indistinguishable from other regulatory costs.

Therefore it is not possible, on an evidentiary basis to say that the UK AML regime is proportionate.

On the basis of the scant evidence which is available, it is clear that the regulated sector as a whole is spending more on AML compliance than is currently being recovered by the UK government. This would tend to suggest that currently, the regime is not proportionate.

Considering the second limb of the definition of proportionality: is the regime targeted on specific areas of risk and vulnerability? As outlined in our comments more generally above:

- there is a lack of evidence to warrant the imposition of enhanced due diligence to all PEPs irrespective of the risk of the individual transaction
- there is a lack of evidence to warrant the requirement to find the ultimate individual beneficial owner of every entity, or to prove that one does not exist, irrespective of the risk of the individual transaction
- no evidence has been provided of cases where a trust has been used to launder funds where either the trustees or the professional setting the trust up has not been complicit, meaning that the current beneficial owner checks are applied at the wrong time and on the wrong people
- the existing provisions for reliance and simplified due diligence are not able to be used effectively to remove extraneous due diligence activities from low risk situations or reduce duplication of effort

On this basis, TLS is of the view that changes need to be made to better target the existing regime at areas where there is evidence of high risk.

Effectiveness

Considering then the definition of effectiveness: Is the regime making the maximum impact on the criminal and terror threat?

SOCA's threat assessment with respect to money laundering has not changed in the last three years. While it may be that three years is too short a time to register such a change to a problem which is reported to be on such a grand scale, it is an indicator which warrants future attention as evidence of effectiveness.

As outlined above in our section on benefits, both our members' perceptions and the academic research suggest:

- limited action is being taken as a result of SARs, although this is increasing slowly

- the amount actually being recovered is a tiny proportion of the estimated sums available to be recovered
- the level of criminal sanctions being imposed and the types of assets being recovered suggest that on the whole, it is not the Mr Bigs of the organised criminal world who are being dealt with under the AML regime in the UK
- disruption of organised criminal syndicates is occurring but not on a consistent or widespread basis

TLS understands our members concerns that there should be more consistent and substantial outcomes being demonstrated by law enforcement, before the regulated sector is required to spend more money or undertake more compliance activities.

Part 2 - Response to the call for evidence questions

Questions about the Regulations

1. To what extent is the scope of the Regulations and their application to business activity appropriately risk-based?

TLS supports a risk-based approach being taken to anti-money laundering compliance as it promotes flexibility and can allow firms to focus their finite resources on the areas of greatest risk.

As outlined in Part 1, we are of the view that the provisions with respect to beneficial ownership, PEPs, reliance and simplified due diligence do not adequately apply the risk-based approach. We are also of the view that the application of criminal sanctions to breaches of the Regulations distorts the efficient application of the risk-based approach.

2. To what extent are the customer due diligence (CDD) requirements set out in the Regulations a proportionate response to the threat from money laundering?

As outlined in Part 1, the lack of evidence regarding either costs or benefits from the application of CDD activities means that it is not currently possible to assess the proportionality of the Regulations in any meaningful way.

That aside, logically, TLS accepts that for some regulated persons given the nature of their business and transactions, the start of a business relationship is the only place where information on the client, their risk profile and the source of their funds is likely to be obtained. For many of these regulated persons, aside from an interest in being paid, without the Regulations there is little incentive to otherwise obtain this information about the client. We can see that requiring some form of client due diligence is useful in those circumstances.

However, professionals such as solicitors, barristers, accountants, auditors and tax advisors, require information about a client, their income and the nature of their business, simply to enable the professional to provide appropriate advice and undertake the work they have been retained to do.

As such the current approach to CDD results in professionals expending time and money to gain very standardised information at the start of the retainer, which may not be relevant or will ultimately be superseded by far more relevant information obtained during the course of the retainer.

3. To what extent are CDD requirements effective in the fight against money laundering?

The identity requirements contained under the Regulations make it more difficult for amateur criminals to perpetrate money laundering. Such criminals will need to instruct a few different regulated persons to understand how to comply with the identity and source of funds requirements before they can do so without detection.

In many cases these attempts will not trigger a SAR as there will be no information on existing criminal property at that stage in the retainer. Without existing criminal property there is no legal obligation or legal authorisation to make a SAR, or possibly any other police report.

False identities and source of funds information can be easily obtained. Sophisticated criminals will have access to them or to 'clean skins' who can carry out the transactions

in their own true identity without raising suspicions. It will be impossible in most cases for someone in the regulated sector to spot such a person.

For most DFNBs the most effective tool in countering money laundering is ongoing monitoring, i.e. actually looking at the transaction being undertaken. The effectiveness of this tool is limited by the amount of information regulated persons actually have on methodologies which are current and relevant to their particular part of the regulated sector.

Ongoing monitoring is already inherently a function of complying with the obligations under POCA and so the benefit obtained from its inclusion in the Regulations as a separate obligation is not able to be ascertained.

Currently there is no information from SOCA or other law enforcement as to the extent to which SARs are made which are based solely on CDD information or which used CDD information which would not have otherwise been in the regulated person's possession if the obligations under the Regulations did not exist.

4. To what extent do the record keeping and policy and procedure requirements upon Regulated Firms support their anti-money laundering efforts?

Keeping records of CDD activities undertaken reduces the extent to which regulated firms have to repeat the verification process each time they are re-instructed by a client. It also assists firms to demonstrate their compliance with the Regulations to supervisors. Many firms still keep full copies of the evidence relied upon, rather than mere references, due to the potential difficulties in re-obtaining the evidence should its veracity or the reasonableness in relying upon it be called into question at a later date.

It is not clear how much this record keeping assists the effectiveness of the AML regime. There is no information on the number of production orders issued in the UK to obtain the evidence of client due diligence activities alone.

The creation of policies and procedures within the firm enable the firm to provide a condensed set of instructions to fee earners on the activities they need to undertake to ensure consistency across the firm as well as compliance. This does however tend to lead to more of a tick-box approach at the level of practical application. It also comes at significant costs to firms to create these, with some firms spending thousands of pounds due to the complexity of the AML requirements.

TLS understands that some firms in other parts of the regulated sector have suggested that there is no need to have written policies and procedures to comply with the Regulations. We cannot see that as a valid interpretation where the firms are required to demonstrate compliance to the supervisor. TLS would not object to the need for written policies and procedures being made clear in the Regulations.

5. To what extent do the Regulations provide Supervisors with appropriate compliance monitoring and enforcement powers and penalties to deter non-compliance?

Generally across the regulated sector, TLS understands that firms are concerned not to engage in money laundering and are complying with the Regulations, to the best of their ability and based on the information available. Many would comply more if they had greater assistance in complying. Supervisors are limited in what they can do by the amount of information on methodologies and risks that they are provided and the level of uncertainty inherent in the law.

By placing so much emphasis on criminal and regulatory sanctions, the Regulations can work against firms actually approaching a Supervisor for help in compliance for fear that they will be sanctioned. See further our comments under Part 1.

For the Law Society, the powers (delegated to the SRA) come not from the Regulations but from the status as the professional body and regulator of the legal profession. For the legal sector, statutory powers and mandatory registration mean that there are sufficient powers and regulatory scope to deal with non-compliance. For the voluntary professional bodies, this is less clear as the members can simply choose a less stringent supervisor. They therefore need to continually maintain the balance between upholding the reputation of their profession and ensuring that members perceive the regulatory approach to be fair and cost-effective. This balance of perception can be more difficult to achieve than achieving the balance in fact. This challenge may soon be experienced within the legal sector with the introduction of Alternative Business Structures (ABSs) and the possible choice of regulator.

In relation to the government supervisors, TLS perceives that there is a lack of power on their behalf to refuse registration and thereby remove an unsuitable applicant from business within a high risk area. We are concerned that this undermines the overall integrity of the regulated sector and would support consideration of amendments to the Regulations to enable this to occur, where appropriate safeguards are in place. We note that the government supervisors are working hard to develop their new AML supervisor role with new industries. TLS is already working with some of them to assist in building their AML capacity and helping to ensure consistency of approach across the regulated sector where that is relevant. We would support any requests by them to government for appropriate levels of funding to enable them to undertake this role.

6. To what extent do the Regulations provide for a suitable system of registration and 'fit and proper' testing to be established and carried out on a risk basis?

Solicitors are already subject to 'fit and proper' tests as part of their mandatory registration to act as a solicitor. Therefore further AML 'fit and proper' tests are not required. We are supportive of the SRA's consideration of 'fit and proper' tests for non-solicitors becoming involved in the profession through ABSs.

For other regulated entities where such professional or other registration requirements do not exist, it is important that there are sufficient checks upon registration. If the categories of those covered by the Regulations have been drafted correctly, then there should be a blanket requirement for registration and fit and proper testing (with exemptions to avoid overlap), rather than a risk-based approach to this.

As raised in our answer to question 5, there may be some challenges for the default government supervisors to refuse or cancel registration and we agree that these should be addressed.

7. Are the requirements of the Money Laundering Regulations compatible with and complementary to the requirements of a) other aspects of the UK's broader anti-money laundering regime / legislation and b) international standards / practices?

The need for some identity information and the ongoing monitoring obligations in the Regulations are generally consistent with the information which should be included in a report made under POCA. It is unfortunate that copious amounts of identity information on every single client have to be collected and stored on the off-chance that a SAR will be submitted with respect to that specific client and law enforcement may at some time in the future want copies of those documents, many of which they could obtain from other sources. Further, it is not clear why there is a specific requirement for ongoing monitoring in the Regulations, backed by criminal sanctions, when such activity is inherent in the fulfilling of obligations under POCA, which are also backed by criminal sanctions.

We have set out in Part 1 our more detailed comments on these issues. In essence, while we do not agree with a number of aspects of the Regulations, they are broadly compatible with the broader regime. On the issue of whether they are complementary, this can be argued either way. On the one hand, whatever you think of the Regulations they can be seen as complementary to the broader regime. On the other hand, if you believe as we do, that many of the aspects of the Regulations go further than required by the third directive. Then they are not complementary as they impose unnecessary costs on the regulated sector, which detracts from the regulated sector's ability to target resources on the areas of real risk of money laundering.

8. How well does HM Treasury engage with you in developing the Regulations and are the requirements of the Regulations clearly communicated?

HM Treasury engaged with TLS during the passing of the third directive and its implementation in the UK. However, we found that a high turnover of staff and ministerial imperatives to be seen to be tough on crime meant that legitimate challenges to aspects of the Regulations were not sufficiently heeded initially. More adversarial lobbying was required at significant cost to TLS which resulted in much needed, but unfortunately last minute, changes.

We appreciate the more consultative approach being taken by HM Treasury since the passage of the Regulations, through their continued involvement with MLAC, the Supervisors Forum, ad hoc meetings on specific issues and this Review. We particularly appreciate the involvement of the BRE in this review and the willingness to look for an evidential basis to the AML regime. Finally we appreciate the activities being undertaken by HM Treasury on behalf of UK government at FATF level to encourage more engagement with the DNFBs.

Questions about Guidance

9. To what extent does Guidance promote both an effective and proportionate approach to anti-money laundering?

It is important to remember that guidance, even HM Treasury approved, cannot fix bad law or make it apply in a way which the clear words of the law do not allow. The courts will simply strike the guidance down if it tries to do so. It is also difficult to provide clear guidance where the law itself is unclear.

However, the creation of guidance is useful in taking clear and workable high level laws and outlining what is reasonable or good practice compliance within a set sector. This is very important given the very different interactions with clients across the sectors and different types of business. Therefore TLS see the use of guidance as a positive aspect of the regime.

For TLS, our practice note is an evolving document. There are always areas where some solicitors would appreciate more advice, and we have also had a few solicitors ask for a 1 to 4 page tick-box summary instead. However we have received wide-spread support for the practice note from the profession and other stakeholders, including law enforcement, with respect to the quality, ease of reading, and coverage provided. The practice note is also highly regarded in an international context, with a number of other law societies around the world either adopting it in full or having regard to it in the drafting of their own.

10. How clear and consistent is Guidance including whether Guidance is consistent for those sectors where more than one supervisor exists and generally across sectors?

TLS are of the view that the MLAC process of peer review is useful in promoting consistency, as is the sharing of developing guidance through the Supervisors Forum.

TLS has benchmarked our practice note against the JMLSG guidance and reviewed its consistency with guidance provided by other Supervisors. We understand that the Council of Licensed Conveyancers and the Law Society of Scotland have benchmarked their guidance against our practice note, while the Law Society of Northern Ireland has adopted our practice note.

From TLS's perspective, there is not usually a case of inconsistency, but rather that some guidance documents are silent on different issues or types of transactions, and it is important for different supervisors to agree that they are happy for their members to rely on the guidance of others as evidence of reasonable behaviour where there is a gap.

11. In what ways does Guidance assist with a risk-based implementation of CDD measures within your sector?

The practice note aims to set out a wide variety of options for CDD for a range of entities and situations. We are however restricted in our ability to recommend risk-based approaches where these are not permitted by the Regulations. See further our comments on PEPs, beneficial ownership and source of funds particularly.

12. In what ways does guidance assist and support Regulated Firms' anti-money laundering policies and procedures?

By its very nature guidance can still only provide high level advice on actual policies and procedures for firms, due to the very wide range of firm size and type, even within one sector. TLS is currently investigating the provision of template policies and procedures which will take the advice in the practice note and put it into a flexible set of documents for different size firms to use if they feel they need this level of assistance. This was not done previously as we were awaiting approval of the practice note by HM Treasury.

13. How is Guidance made accessible and are there opportunities to engage in its formulation?

The practice note is available for free, to all of our members and the public, online, 24/7. While it is a large document, it is fully web based and easily navigable with hyperlinked contents and cross-referencing.

TLS also has its Practice Advice Service, which provides telephone and email support to solicitors to help them navigate the practice note and discuss its application in more novel situations.

The practice note is included in the TLS published book: Solicitors and Money Laundering, and we licence extracts to other training providers and authors for inclusion in their publications.

We also publish frequent articles in TLS and industry journals to help highlight different parts of the practice note and place it within a practical context.

We also wrote to the head office of every law firm in England and Wales to advise of the publication of the practice note in September 2007 and again to advise of its approval by HM Treasury in November 2009.

In terms of the formulation of the practice note, all policy decisions are made by TLS's Money Laundering Taskforce, which comprises solicitors and compliance directors from

high street to international firms. The contents of the practice note are reviewed in light of feedback received from MLRO groups, training sessions, and other contact from across the profession.

Questions about Supervision

Background

As outlined in the introduction to this response, the Law Society of England and Wales is the overarching corporate entity which is listed in the Regulations as the anti-money laundering supervisor for its members. The Law Society has delegated its regulatory functions to the SRA. The representative arm, TLS, undertakes the role of educating the profession on anti-money laundering compliance.

Under the Regulations, a supervisor is required to effectively monitor its members and take necessary measures to secure compliance. From a better regulation perspective, we believe that necessary measures include:

- providing advice on the standards expected for compliance
- education and training on how to comply
- monitoring and/or audit processes to measure compliance
- investigation and disciplinary processes to deter non-compliance

The Law Society discharges its anti-money laundering (AML) supervisory role as follows:

TLS

TLS is responsible for the provision of advice on good practice and training programmes to solicitors to enable them to meet their AML obligations.

TLS undertakes this role in consultation with the SRA, other supervisors, SOCA, the Money Laundering Advisory Committee, the profession and relevant government departments. This consultation ensures that the advice is relevant, consistent and aligns with the views of regulators and law enforcement.

Currently TLS provides good practice advice and education through:

- an online practice note
- the Practice Advice Service – a telephone and email helpline
- the AML directory – a list of solicitors willing to provide other solicitors with initial free legal advice on compliance
- a regular AML e-alert – with practical tips to help solicitors comply with the regulations and legislation, together with information about the AML latest methodologies
- 32 Money Laundering Reporting Officer networking groups each year
- 40 regional training seminars each year
- An annual conference

TLS also engages in regular feedback exercises with the profession through a range of surveys, round table events, and an e-forum.

SRA

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

Through the Practice Standards Unit (PSU), the SRA undertakes monitoring visits of firms, and considers AML compliance as one aspect of the visit. Where there is evidence that a firm is not fully compliant, the PSU will provide advice and assistance to the firm, to help improve their compliance.

The Forensic Investigations Unit (FIU) of the SRA undertakes investigations into allegations of misconduct, including allegations of failure to comply with money laundering obligations. Where appropriate the FIU will institute disciplinary action for non-compliance with their Conduct obligations.

The Fraud and Confidential Intelligence Bureau shares intelligence with SOCA, law enforcement agencies and other regulators where relevant.

The SRA also has an educational role, by providing TLS with information on emerging trends and areas of concern, to enhance TLS's educational activities, and will also send speakers to conferences and training seminars to provide a regulator's perspective.

14. To what extent does the supervisory framework support an effective, risk-based anti-money laundering regime and compliance with the Regulations?

TLS believe that it is very important that supervisors have a detailed understanding of the businesses they supervise for anti-money laundering compliance. Such supervisors will have a better understanding of the risks posed to their businesses, the strengths of their businesses which can be used to mitigate those risks, how to engage effectively with their businesses and whether the compliance decisions made by the business are actually reasonable in all of the circumstances.

For these reasons we support the continuation of the existing supervisory framework in the Regulations. We believe that the activities of the Supervisors Forum and MLAC assist in strengthening that framework, ensuring consistency and effectiveness.

15. In what ways do Supervisors communicate and engage with the firms they regulate to ensure a sound understanding of legal duties and responsibilities under the Regulations?

See our outline of activities in the 'background section' above.

16. How do Supervisors ensure a consistent approach to compliance monitoring and enforcement is taken across the anti-money laundering regime?

Compliance monitoring and enforcement in the legal sector is undertaken by the SRA. We have regular dialogue with them on areas of concern to ensure there is a consistent approach between PSU and our training and helpline. We see the Supervisors Forum as a useful part of the supervisory framework to ensure greater supervisory consistency across the regime as a whole.

17. To what extent is Supervisors' monitoring of compliance targeted, proportionate and risk-based?

Monitoring of compliance within the solicitors' profession is conducted by the SRA.

Within much larger firms there will often be a number of staff dedicated to AML compliance within a firm. Firms who have the practice standard Lexcel are assessed on AML compliance as part of that standard. We would expect that there would be less

frequent or in-depth monitoring of all of those firms from the SRA as the risk posed by those firms in being engaged in money laundering or failing to have processes in place would be less.

18. How effective and proportionate is the enforcement regime?

See our comments in Part 1

19. In what ways could the registration process for Regulated Firms be improved?

See our comments at Questions 5 and 6

Questions about Industry Practice

20. Are there barriers to implementing risk-based policies in practice? If so, what are they?

See our comments in Part 1.

21. During the process of CDD, how are risks (in terms of likelihood and impact) taken into account to decide the type of due diligence that will be undertaken?

See our comments in Part 1

22. To what extent do the Regulations support or complement Regulated Firms' business as usual?

See our comments in Part 1

23. Are fit and proper tests being conducted in an effective and proportionate manner?

See our comments in response to Question 5 and 6

24. How easy or difficult is it to comply with reporting and record keeping obligations?

See our comments in response to Question 4

25. What forms of communication and engagement take place with stakeholders, from government agencies through to customers?

Communication takes place in the following ways:

- FATF: There is some engagement through the IBA and the CCBE with TLS. There is no direct engagement with our members.
- European Commission: There is direct engagement with TLS and on occasion our members are able to make direct representation to consultations.
- HM Treasury: There is engagement with TLS through MLAC and the Supervisors Forum and direct meetings / correspondence with policy advisors. Our members are able to make direct representation to consultations.

- Home Office: There is engagement with TLS through MLAC and occasional direct meetings / correspondence with policy advisors. Our members are able to make direct representation to consultations.
- SOCA: There is engagement with TLS through MLAC, the Supervisors Forum, the SAR regime committee and the Vetted Group. There is direct engagement between policy advisors and the dialogue team. The dialogue team host conferences and have attended some of TLS's MLRO networking groups and conferences. There is some direct contact with our members through the Consent Desk. Generally TLS understands that contact with the Consent Desk is positive and helpful.
- Law Enforcement and Prosecutors: There is ad hoc engagement between TLS and law enforcement and prosecutors. TLS would appreciate greater coordination of such engagement through the Supervisors Forum. TLS would also see the provision of sentencing remarks and closing arguments from prosecutors in money laundering prosecutions to the relevant supervisors as a very useful way of increasing understanding of money laundering methodologies and assist in reducing the chances of other regulated persons making the same errors. This information is not currently readily available.

Engagement between TLS and its members is outlined in the 'background' section to the answers in the Supervision section.

Questions about the Customer Experience

26. How proportionate do you believe the Regulations appear once they reach the customer?

TLS understands from our members that while there is a growing appreciation that CDD activities simply have to happen and will happen wherever you go, there are aspects of the Regulations which do not appear proportionate to clients. See particularly our comments with respect to beneficial ownership and a level playing field in Part 1.

27. Are you able to provide customers with access to information and resources to check what information is need from them and why?

TLS has a brochure which can be provided to clients regarding the AML checks, although this is suited more to individuals and small businesses.²²

Questions about the Regime

28. To what extent do the Regulations, the accompanying Guidance, the supervisory frame work and industry practice (the Regime) provide an effective tool in the fight against money laundering?

See our comments in Part 1

29. To what extent is the Regime a proportionate response to the risk of money laundering in the UK?

See our comments in Part 1

²² <http://www.lawsociety.org.uk/choosingandusing/commonlegalproblems/moneylaundering.page>

30. Would you say that all relevant stakeholders are able to participate in the development of the Regime?

There are avenues to participate to varying degrees for individuals within the profession. However the majority of legal firms are small to medium businesses with 5 partners or less. It takes so much time to comply with the regime, comply with all of the other regulations which apply to their work and do the legal work itself, that there is insufficient time to engage in policy development or respond to surveys or consultations. Therefore the role of professional bodies is crucial, as is their ability to actually engage with their members and compile their thoughts and concerns from a wide range of sources and interactions.

Annex 1 – Contact details form

1. Contact Details

| | |
|---|--|
| 1.1 Contact name Emma Oettinger | 1.2 Organisation (if applicable) Law Society of England and Wales |
| 1.3 Address (region as a minimum) 113 Chancery Lane London WC2A 1PL | 1.4 Email address (optional) Emma.oettinger@lawsociety.org.uk |
| | 1.5 Telephone number (optional) |

2. In what capacity are you responding to this Call for Evidence?

| Capacity | ✓ | Go to |
|---|-------------------------------------|-------|
| 2.1 Representing a Government department / law enforcement agency | <input type="checkbox"/> | - |
| 2.2 Representing a Supervisor | <input checked="" type="checkbox"/> | Q 3. |
| 2.3 Representing a Regulated Firm | <input type="checkbox"/> | Q 4. |
| 2.4 Representing a non-regulated firm (customer firm) | <input type="checkbox"/> | Q 5. |
| 2.5 In a personal capacity as a private individual customer | <input type="checkbox"/> | Q 6. |
| 2.6 Other (Refer Question 7.) | <input type="checkbox"/> | Q 7. |

3. Supervisors. Please provide the following details:

| |
|---|
| 3.1 Relevant persons and /or range of activities you supervise Solicitors in England and Wales |
| 3.2 Estimated number of firms you supervise (per type of relevant person if applicable) Around 9,000 |
| 3.3 Do you supervise these firms for other <i>non</i> anti money-laundering purposes? If so, what? The Law Society of England and Wales is the front line regulator for solicitors in England and Wales. All regulatory activities have been delegated to the board of the Solicitors Regulation Authority (SRA), which is accountable to the Law Society Council. The representative arm of the Law Society of England and Wales provides advice, education and awareness raising for solicitors on anti-money laundering issues. This response is provided by the representative arm of the Law Society. The SRA will be submitting their own response. |

Annex 2 – Summary of recommendations

Recommendation 1

More resources need to be employed by UK intelligence agencies, the EU and FATF in developing relevant, timely and sector specific methodologies and risk-indicators, including more focussed assistance for smaller firms.

Recommendation 2

Supervisors should provide more information to firms about their general approach to AML supervision visits, particularly in relation to their expectation of how the risk-based approach is to be implemented.

Recommendation 3

Supervisors should provide more examples of good risk-based practice to firms, not only will this help in general terms, but may also help firms assess their approach in more novel situations.

Recommendation 4

There needs to be greater dialogue between law enforcement and the writers of guidance, to ensure consistent interpretation and greater certainty for the regulated sector.

Recommendation 5

HM Treasury should remove the criminal sanctions from the Regulations and provide that a breach is to be dealt with by the supervisors with regulatory penalties. This may mean that further powers will need to be given to certain supervisors to ensure that they have powers to:

- issue requirements for remedial action within the firm
- issue reprimands
- levy fines
- prevent the firm from being able to practice or be in business

Alternatively, if there is clear evidence of the need to retain a criminal offence as an option of last resort for non-compliance with the Regulations, the offence should be drafted narrowly. Such an offence should relate only to breaches where the breaches are systemic and demonstrate deliberate non-compliance with the Regulations. All other breaches should be dealt with by supervisors.

Recommendation 6

HM Treasury should accept the FATF guidance on the permissibility of applying a risk-based approach to the identification of beneficial owners and ensure it has legal application in the UK.

Recommendation 7

HM Treasury should consider whether they are able to make this change to the Regulations independently or whether it needs to lobby the EU for a change to the third directive.

Recommendation 8

HM Treasury should encourage action by FATF jurisdictions to limit the ability of entities to incorporate within their jurisdiction with unregistered beneficial ownership. Those registers of beneficial ownership should be made available to the regulated sector.

Recommendation 9

While TLS are fully supportive of a reconsideration of the application of beneficial ownership in trusts at FATF level; any proposals to amend the beneficial ownership definition of trusts in the Regulations should be undertaken in close consultation with experts in trust law from the outset, who can advise on the constitutional, legal and practical implications of those changes.

Recommendation 10

TLS supports multi-institutional, multi-sector and multi-jurisdictional reliance being included in the Regulations, to reduce the unnecessary duplication of CDD processes.

Recommendation 11

HM Treasury should engage with FATF to seek changes to Recommendation 9. Changes which should be sought include:

- All regulated persons should be able to reasonably rely on other regulated entities and presume that the regulated entity has in place appropriate risk-based CDD procedures, unless there is evidence which rebuts that presumption.
- Where reasonable reliance is demonstrated, the party being relied upon is responsible for carrying out CDD in accordance with its own laws and procedures and that the regulated persons relying is not liable either for its 'failure' to carry out CDD or the failings of the party relied upon.
- The party being relied upon should not be subject to any civil or other legal responsibility to the relying party.
- A reliance certificate should list the details of the evidence that has been collected and this should be sufficient for reliance. While the regulated person who is relying should be entitled to seek copies of the evidence, there should be no legal obligation on them to obtain it.
- If law enforcement wants copies of the evidence, they should make the request directly to the regulated person who is relied upon.

Recommendation 12

TLS supports the retention of simplified due diligence provisions in the Regulations. We are of the view that they would be more effective if:

- HM Treasury encouraged the EU or FATF to develop an agreed list of equivalent jurisdictions and regulated markets, and the process for determining that list was published.
- HM Treasury amend the Regulations so that reliance on the government issued list is deemed to be compliance with the Regulations for the purposes of the legal question of equivalence.
- The Regulations are amended to remove the requirements in the definitions for assessing equivalent markets which go beyond those contained in the third directive.

- HM Treasury reviews the list of entities and markets that simplified due diligence applies to, specifically with respect to those entities and markets recognised and overviewed by the FSA.

Recommendation 13

HM Treasury should not agree to any widening of the definitions of PEPs until research has been conducted, both within the UK and internationally, in respect of PEPs which actually focuses on evidence of the threats posed by corrupt PEPs and considers the actual cost and benefits of any recommendations made.

Recommendation 14

HM Treasury should commit to providing a list of UK PEPs as an example for international governments for the benefit of other jurisdictions and should actively lobby other governments through the EU, FATF and the G20 to follow suit. These lists should be provided to the regulated sector at no or minimal cost and made easily available to those in other jurisdictions.

Recommendation 15

The issue of source of funds and source of wealth should be the subject of detailed consideration by MLAC and the Supervisors Forum, with a view to providing at least some level of clarity for the regulated sector in the UK

Recommendation 16

TLS supports further detailed research into the affects of the UK AML regime on the competitiveness of UK plc in Europe and in key financial markets.

Recommendation 17

TLS supports research from FATF, the EU and the UK government on the extent to which SARs from the legal profession actually add to the intelligence gathered from others in the regulated sector, and whether inclusion of lawyers within the legislative regime is the most effective use of their gatekeeper role.

Recommendation 18

TLS encourages the UK to actively engage with FATF and the EU to develop a methodology for collecting information on and assessing the benefits of the AML regime.

Recommendation 19

TLS is supportive of further research being conducted into the costs incurred by the regulated sector.

Recommendation 20

TLS would like to see specific evidential assessments of costs and benefits being included in all reviews of AML compliance, by the UK government, the EU and in the FATF mutual evaluation reports. We would like the UK government to support this approach in representations to the EU and FATF.

Annex 3 – Summary of 2008 survey results

Background

In August 2008, 115 solicitor's firms in England and Wales volunteered to take part in a detailed survey considering the processes adopted by solicitors to comply with the Money Laundering Regulations 2007 and the associated costs.

The survey was conducted in September 2008, with print copies of the surveys sent to participants. We received 55 responses, some of which were only partially completed.

Headline results

- AML compliance pervades the whole firm. Half of the respondents were training 88% or more of their staff, with 36% of respondents training all of their staff.
- The 2007 regulations have required significant changes in existing systems; although that does not mean that there is the same level of sophistication in firms' systems. There was a general trend towards an increase in the complexity of the system and the amount of data it can capture. There was also an indication of increased staffing.
- The UK is exporting AML compliance for lawyers world-wide, with 62% of respondents with international offices advising that they are applying the UK standard to all of their offices.
- Documentation and audit of compliance activities remains an area for development:
- 76% of firms had conducted a risk assessment on their firm as a whole, but only 72% had formally documented these risks.
- 54% of respondents rely on fee earners' normal file notes to provide evidence of ongoing monitoring, only 23% have set deadlines for these notes to be made to ensure they are done.
- 65% are auditing compliance through file checks undertaken internally. This suggests auditing of compliance on individual matters, rather than the auditing or review of the compliance system as a whole. While this is understandable given that the regulations have only been in place for 12 months, it is an area for future development.
- Greatest reported challenges include:
 - Time constraints are the greatest challenge in implementing the risk based approach
 - The lack of publicly available data is the greatest challenge in identifying and verifying beneficial owners.
- The reliance provisions, which were meant to reduce the compliance burden, are not widely used.
- In the UK, only:
 - 57% of respondents have relied on other solicitors
 - 41% have relied on a financial institution
 - 27% have relied on an external accountant.
 - Respondents are less willing to rely on other regulated professionals

- Outside of the UK, the level of reliance drops even further.
- 64% of respondents said that the criminal sanctions attaching to them, if the other person made an error, were the greatest deterrent in not using the reliance provisions.
- 64% of respondents had been asked by others if they could be relied upon, but only 48% agreed to the request. The risk of civil action against them if they made an error was a key reason for not agreeing to be relied upon.
- 33% of respondents had turned down a retainer from a politically exposed person, due to the perceived risks of that client.
- While there was a general perception that costs have increased since the 2007 regulations, 77% of respondents do not record specifically the costs of complying with anti-money laundering obligations.
- From the very small sample who provided costs information
- Costs of compliance range from thousands of pounds to millions of pounds.
- Most of this is spent on undertaking due diligence and training
- 50% of firms which responded on the issue of costs indicated an increase in gross expenditure since the new regulations of 10% or more
- 90% of firms which responded on costs do not pass on the full cost of compliance to their clients.
- 67% of respondents felt that the Law Society had been supportive or very supportive of them in meeting their AML obligations.

The full survey results can be accessed at:

http://www.lawsociety.org.uk/documents/downloads/dynamic/2008surveyreportpublic_final.pdf