

Money laundering frequently asked questions

Friday 10 November 2006

These questions and answers are designed to help solicitors and their staff to understand their anti money laundering obligations. The questions are grouped under headings as follows:

- Money Laundering Regulations (2003)
- Client identity checks
- The anti money laundering legislation
- Reporting
- Other contact from investigation/prosecution agencies

Money Laundering Reporting Officers must familiarise themselves with the money laundering guidance available from the Law Society. If staff in law firms need help understanding their obligations, they must speak to their Money Laundering Reporting Officers.

1. Where do I find the anti money laundering requirements?

The requirements to make money laundering reports, are found in:

- the Proceeds of Crime Act (2002) ("POCA")
- the Terrorism Act (2000)
- the Anti-Terrorism Crime and Security Act (2001).

The Money Laundering Regulations (2003) also impose anti money laundering compliance requirements.

2. What guidance is available to solicitors to help them understand their anti money laundering obligations?

Refer to the guidance on the money laundering home page.

The Money Laundering Regulations (2003)

3. What legal work is covered by the Money Laundering Regulations?

- Company and trust services, insolvency and tax services, and financial services are all covered by the Regulations.
- Other transactional legal work is also likely to be covered, including conveyancing.

- However, not all legal work is covered by the Regulations, e.g. will making (not including trust or tax services) and criminal litigation are not covered by the Regulations.

For more information see para 3.9-3.13 of the pilot.

When solicitors conduct work covered by the Regulations, they are within the 'regulated sector'. For this reason, if solicitors form knowledge or suspicion, or reasonable grounds for suspicion, when conducting regulated sector work they may need to consider the section 330 and 331 POCA offences.

4. What do the Regulations require law firms to do?

When work covered by the Regulations is undertaken (see question 3), firms must:

- train 'relevant' employees (para 3.20-3.27)
- identify clients (para 3.28-3.50 and para 3.66-3.121)
- keep records (para 3.51-3.55)
- appoint a Nominated Officer (usually known as a Money Laundering Reporting Officer), who must accept internal reports made by their colleagues (para 3.56-3.65).

5. I have acted for a client for a long time. Do I still need to formally identify them?

Not necessarily. It depends how long you have acted for the client, and whether the previous work you have done was 'relevant business'. Regulation 30 is a transitional provision which prevents the need to identify a client if a solicitor started acting for the client before specified dates. (See para 3.49 and para 3.50 for more information.)

Even if the transitional provisions do not apply, if solicitors (or qualified EEA or US lawyers) have known an individual client, including where the individual lives or works for over two years, it may not be necessary to ask the client to produce their identification documents. (See para 3.82.)

6. Where do I find guidance on how to identify different types of clients?

See the relevant sections of the Regulations:

- Individuals (para 3.81-3.102)
- Estates (para 3.103)
- Trusts (para 3.104-3.108)
- Corporate clients (para 3.109-3.119)

Identification checks should always be approached on a risk basis, which means that if there is a heightened money laundering risk more checks should be made. (For more information see Chapter 6: Practical help.)

7. I cannot meet my client. How can I identify them?

Consider whether you are happy for your client to visit a third party, who may be located closer to where your client lives or works. Your client can produce their personal identification documents to the third party so that certified copies can be provided for you. You will need to check the bona fides of the third party, who must be capable of being contacted if necessary. (See para 3.90-3.94 for more information.)

Some firms use computer software packages which check clients' details against a range of databases. Nominated Officers may decide, on a risk basis, to rely solely upon such software packages, or to use them in addition to checking clients' identification documents.

Whichever identification method is used, it is not possible for solicitors to transfer their obligation to be satisfied about their clients' identity to an objective and subjective standard. (See para 3.28 for more information.)

8. The other side/solicitors have asked me to confirm whether I have identified my client, and asked me to provide them with that information.

There is no obligation to provide this information, and providing the information may be a breach of client confidentiality or the Data Protection Act. If you wish to assist, you may need a letter of authority/waiver from your client.

9. What money laundering offences do solicitors need to be aware of under POCA?

The principal offences

- Section 327, concealing (para 2.15 and 2.16)
- Section 328, arrangements (para 2.17)
- Section 329, acquisition, use and possession (para 2.18)

All of these offences have a reporting defence (para 2.19-2.29). When reports are made 'pre-transaction', it will be necessary to seek appropriate consent. (See question 23 and question 24, below.)

The failure to disclose offences

- Section 330, failure to disclose: regulated sector (para 2.39-2.43 and 2.50-2.53)
- Section 331, failure to disclose; nominated officers in the regulated sector (para 2.45 and 2.46 and para 2.54-2.55)
- Section 332, failure to disclose; nominated officers outside the regulated sector (para 2.47 and 2.54-2.55)

The tipping-off offences

- Section 333 - tipping off (para 2.57-2.61)
- Section 342 - prejudicing an investigation (para 2.57-2.61)

In order for solicitors to understand how these offences apply to legal work, it is essential that solicitors consider the Bowman v Fels guidance [PDF, 120KB].

There are also separate offences which relate to terrorist financing.

10. Do I need to make a report if the underlying crime was committed overseas?

Use this link to access guidance on amendments to POCA [PDF, 40KB] resulting from the Serious Organised Crime and Police Act (2005).

11. I think my client may pay my costs with the proceeds of crime.

There is a defence to the offence of acquisition, use and possession of the proceeds of crime known as the 'adequate consideration' defence, which applies if solicitors are paid their fees with the proceeds of crime. (See para 2.30.)

12. I am suspicious that the transaction I am acting in involves the proceeds of crime.

If your knowledge or suspicion arises from what your client has told you, you will need to consider whether your knowledge or suspicion, or reasonable grounds for suspicion, arises from a communication received in legally privileged circumstances. (See Chapter 4 and the Bowman v Fels guidance for further information.)

Consider whether to report to SOCA.

13. I am acting in litigation. I think that the settlement /damages payment will include 'criminal property'.

The judgment in the case of Bowman v Fels indicates that litigation (which includes settlements and negotiation) and Alternative Dispute Resolution is not an s.328 arrangement (refer to Bowman v Fels guidance). However, solicitors should think

carefully about how they approach further instructions which involve the criminal property.

14. A client has deposited a large amount of cash into my bank account. What do I need to consider?

- What is known about the client, and whether or not the amount deposited is unusual in the light of that information.
- Whether to speak to the client to ask why they deposited the cash and where it came from.
- Tipping off, and the professional legal adviser exemption from tipping off.
- Whether you are, or should be, suspicious of criminality/money laundering.

15(a) My client wants me to accept money although I am not sure what my instructions will be.

15(b) My client wants me to accept money from a number of unknown sources.

- Rule 15 (Note ix) of the Solicitors' Accounts Rules 1998 [PDF, 1.9MB] confirms that solicitors should not act as bankers for their clients or third parties.
- Consider devising internal procedures which ensure that client account details aren't disclosed until sufficient information is known about who is providing the money and their transaction. (See question 8).

16. The other side in my client's transaction is unrepresented, so I will be receiving money from them direct.

You may wish to make checks on the unrepresented third party similar to those that you make on your own client. This is because you will receive funds from them without having the comfort of knowing that another solicitor has made those checks.

17. I have some money left on account for a client who says he wants it transferred into an account held in the name of a third party who I have never heard of before.

- There is no obligation upon solicitors to accede to requests to send money to third parties, and generally solicitors should pay the money direct to their client.
- You may consider putting something to this effect in your terms of business document.

18. I am satisfied with the bona fides of my own client, but I am concerned about the person on the other side of the transaction.

- You only need to identify your own client, but it may be prudent to make some checks about the person on the other side if they are unrepresented.
- Your concerns may be material to your client, who may need legal advice on their own position.
- Consider the tipping-off offence, which can apply to a disclosure made to anybody, including your client.
- Also consider whether giving your own client legal advice about their position falls under the exception to tipping off for professional legal advisers,

(See the Bowman v Fels guidance.)

19. Are firms required to limit the amount of cash they accept?

- Firms should consider having a cash policy which limits the amount of cash they accept from any client.
- The firm's policy should be communicated to clients, perhaps in the client care letter or terms of business document.
- The Law Society does not state a maximum or minimum amount of cash which a firm should accept from clients.
- Firms should check the terms of their insurance policy with their insurers, to make sure they are covered if they accept cash sums.

20. My client has informed me that monies have already passed directly between the parties, what do I do?

- Consider the sector specific guidance for conveyancing solicitors.
- The legal documents must reflect the true purchase price.
- Consider duties to lender clients.
- If tax evasion has already taken place, consider reporting to SOCA. (See Bowman v Fels guidance.)

21. How do I report to the Serious and Organised Crime Agency?

- The official report form [PDF, 45KB] is available from SOCA.
- It is possible to report by letter.
- Make sure you keep some proof that your report has been submitted, including the date of submission.
- It is not possible to report by telephone.

The contact details for SOCA are:

SOCA
PO Box 8000
London SE11 5EN
Fax: 020 7238 8286

22. What should I consider when setting out my report?

- Give the key facts, including details of the money or property, if appropriate including account details.
- Do not annex any documents.
- Make it clear who the suspected individual or entity is, including facts such as address and date of birth.
- If you are seeking appropriate consent, you should also make this clear and include details of every stage of the transaction that you need to undertake, and for which consent is required in order to conclude the matter.

23. If I seek appropriate consent, when will I hear back from SOCA?

Section 335 of POCA lays out a timetable (para 2.24). You may hear back from SOCA or from a law enforcement agency, or you may be able to assume appropriate consent has been granted by the lapse of time.

24. What if consent is refused?

- Be aware of the tipping-off offences, including the exception for professional legal advisers.
- Stay in touch with SOCA or the relevant law enforcement agency.
- Take legal advice.

25. I have made a report to SOCA and sought appropriate consent, but I need to progress the transaction because my client and the other side are chasing me. What shall I do?

Early reports can help avoid this dilemma, but if you find yourself in this situation you should contact the SOCA consent desk (tel: 020 7238 8282 - option 4).

Other contact from investigation/prosecution agencies

26. I have been served with the Production Order issued by a court which requires me to produce a file to a law enforcement agency. What do I need to consider?

- Consider whether any of the communications are subject to legal professional privilege.
- Consider tipping off and the exception for professional legal advisers to tipping off.
- Consider whether the court order has led you to form knowledge or suspicion of money laundering, or whether there are reasonable grounds for suspicion, in which case consider post-transaction reporting (para 2.28). The limited intelligence reporting form [PDF, 45KB] could be used, unless appropriate consent is required for ongoing transactions.
- Seek legal advice

27. I have been asked to provide my file to an official body under the Data Protection Act.

- There is no provision within the Data Protection Act which allows solicitors to override client confidentiality and produce their files to third parties.
- Consider discussing with the requesting body whether they wish you to ask your client to waive their confidentiality.
- Consider discussing with the requesting body whether they can apply for a court order which would override your client's confidentiality.

28. I have been contacted by the police who want me to: (a) give a statement with a view to becoming a prosecution witness; (b) be interviewed under caution.

Take independent legal advice.