



BOWMAN v FELS

(2005) EWCA Civ 226

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References here to “the Guidance” refer to the pilot money laundering guidance booklet published in January 2004, and references to “POCA” are to the Proceeds of Crime Act (2002).

This Annex forms an important addendum to Chapter 2 of the Guidance, as it clarifies how the Proceeds of Crime Act (2002) (“POCA”) applies to the work of solicitors.

1. Introduction

- 1.1 The Bowman v Fels Court of Appeal judgment (“the judgment”) arose as a result of County Court litigation involving a property dispute between ex-cohabitees. Shortly before the County Court hearing a party’s legal adviser reported the other side to NCIS for money laundering. This resulted in the legal adviser seeking to adjourn the hearing because of a belief that “appropriate consent” would not be forthcoming by the hearing date. The court was concerned about the potential impact of the report upon the usual course of the court proceedings.
- 1.2 The Law Society intervened in the case to clarify the impact of POCA upon the work of solicitors, particularly regarding the interpretation of “arrangements” under section 328. The Bar Council and NCIS also intervened. The judgment imposes important limitations on the reporting requirements under POCA for solicitors.
- 1.3 The case had in fact settled but, with the agreement of the parties, the Court of Appeal wanted to give a judgment as it was aware that the orderly conduct of litigation was being affected by POCA, and this was a matter of importance not only for courts and lawyers, but also for the public.
- 1.4 This Annex is intended to act as an introduction to the impact of this case, but it cannot be a substitute for reading the judgment in full. Nominated officers within solicitors’ firms will wish to inform themselves of the full judgment, available from www.bailii.org/ew/cases/EWCA/Civ/2005/226.html and with this guidance about its practical implications.
- 1.5 Solicitors concerned about whether they need to report may obtain individualised guidance from the Law Society’s Professional Ethics money laundering helpline: 0870 606 2577, although they may require legal advice.

2. Litigation

- 2.1 This Annex replaces the previous version of Annex 3, the Law Society’s Guidance about the case of P v P (2003) EWHC Fam 2260, which appeared in the pilot money laundering guidance booklet published in January 2004 (“the Guidance”). Annex 4 was guidance issued by the National Criminal Intelligence Service (“NCIS”), which has also been withdrawn. The judgment

effectively overturns the decision in *P v P*. It also supersedes paragraphs 4.55-4.58 of the guidance, “acting in confiscation proceedings”.

- 2.2 Sections 327-329 of POCA are money laundering offences which apply to all citizens in the UK, see paragraphs 2.13-2.18 of the Guidance.
- 2.3 There is a defence to these offences if an “authorised disclosure” is made under section 338, see paragraphs 2.19-2.22 of the Guidance. If an authorised disclosure is made before a prohibited act under section 327-329, appropriate consent is required, see paragraphs 2.23-2.27 of the Guidance.
- 2.4 The *Bowman v Fels* judgment excludes certain activities from the scope of the section 328 arrangements offence, which is considered at paragraph 2.17 of the Guidance. The judgment describes the excluded activities as “litigation from the issue of proceedings and the securing of injunctive relief or a freezing order up to its final disposal by judgement” (*see paragraph 83 of the judgment*). The Law Society’s view is that this extends to dealing with the final division of assets in accordance with a judgment or settlement, including the actual handling of the assets which are “criminal property”.
- 2.5 This exclusion also covers consensual resolution of issues in a litigious context (*see paragraph 99-102 of the judgment*). The Law Society’s view is that the logic of the exclusion in relation to both litigation and consensual resolution must also apply to Alternative Dispute Resolution (“ADR”).
- 2.6 The qualifications of the person performing the excluded activity is not a consideration, as the court were anxious for reasons of policy as well as statutory interpretation, that activities involving the resolution of rights and duties of individuals according to law should not be affected by POCA (*see paragraph 62 and 99-102 of the judgment*).
- 2.7 In practical terms this means that those conducting litigation, including preparatory stages (including pre-action), or diversion from the court system, such as settlements, negotiations, out of court settlements, and ADR, and Tribunal representation, are not involved in section 328 “arrangements” and therefore do not need to make authorised disclosures. The Law Society’s view is that logically solicitors will also not be committing section 327 or section 329 offences in these circumstances (*see paragraph 95 of the judgment*).

- 2.8 Sham litigation created for the purposes of money laundering remains within the ambit of section 328 (*see judgment paragraph 102*). In these circumstances solicitors should also bear in mind their ethical duties, e.g. Principle 12.02 which outlines when instructions must be refused, and Principle 21.01 regarding duty not to mislead the court.

Note:

See www.guide-online.lawsociety.org.uk, or telephone the Law Society's Professional Ethics helpline between 11am-1pm or 2pm-4pm: 0870 606 2577.

- 2.9 Also, it is important to note that whilst the litigation and related processes may fall outside of the ambit of the offences, the property itself remains "criminal property" for the purposes of section 340(3) of POCA, see paragraph 2.10 of the Guidance. Therefore any future dealings with the property after the terms of any judgment or settlement have been carried out will require a re-examination of whether a report to NCIS is required.
- 2.10 In circumstances where individuals have suspicions, then even if no report can be made, firms ought to consider what procedures they should have in place to record those suspicions bearing in mind the obligations which apply to those firms falling within the ML Regulations 2003. Regulation 3 requires all persons carrying on relevant business to "*establish such procedures of internal control and communication as may be appropriate for the purposes of forestalling and preventing money laundering*", see paragraph 3.16 and Chapter 6 of the Guidance. If appropriate, those procedures should include an internal communication system which ensures that the Money Laundering Reporting Officer has sufficient information to address issues posed by future dealings with property which has been identified by staff of the firm as "criminal property", see paragraph 2.10 of the Guidance.
- 2.11 However, solicitors may need to advise their clients about their own position if ownership of criminal property by them falls outside a court order or other type of settlement covered by the exclusion, as considered above at paragraph 2.3. The section 329 offence of acquisition, use and possession, may be particularly relevant in these circumstances, see paragraph 2.18 of the Guidance.

3. Transactional work

The judgment does not directly deal with transactional work, but it has important implications for transactional lawyers, particularly with regard to their potential criminal liability under section 328 and the making of a disclosure as a defence under section 328(2) of POCA. This guidance should be read in conjunction with paragraph 2.17 of the Guidance.

Section 328 – the arrangements offence

- 3.1. Although the Court did not directly consider the conduct of transactional work, its approach to what constitutes an arrangement under section 328 provides some assistance in interpreting how that section applies to transactional work.
- 3.2. In the light of part 10 of the judgment, especially paragraphs 64 and 67, the interpretation of “arrangement” under section 328, adopted without argument in paragraph 48 of the judgment in *P v P*, can no longer be regarded as good law.
- 3.3. Although the Court did not seek to lay down definitive guidance on issues of interpretation outside the context of litigation, the judgment provides support for a restricted understanding of the concept of becoming concerned in an arrangement. The judgment, at paragraphs 67 and 68, provides support for the view that:
 - entering into or becoming concerned in an arrangement involves an act done at a particular point in time, and
 - a person does not enter into or become concerned in an arrangement under section 328 and no offence under this section is committed **until such an arrangement is made**, and
 - no preparatory or intermediate step taken in the course of transactional work which does not itself involve the acquisition, retention, use or control of property will constitute the making of an arrangement under section 328.
- 3.4. Where a solicitor engaged on transactional work forms a relevant suspicion, he will have to consider:
 - 3.4.1. whether an arrangement within the terms of section 328 exists and, if so, whether he has entered into or become concerned in that arrangement or may do so at some point in the future;

- 3.4.2. if there is no existing arrangement under section 328, whether an arrangement within the terms of section 328 will or may come into existence at some date in the future.
- 3.5. The word “arrangement” is not defined in Part 7 of POCA, but under section 328 it is an arrangement which [the alleged offender] “knows or suspects facilitates (by whatever means) the acquisition, retention, use or control of criminal property...”. A solicitor may be involved in bringing such an arrangement into existence, but for the arrangement to come within the terms of section 328, it must be a concluded arrangement which does in fact facilitate in the way described in the section. The arrangement itself, which a person can be said to “enter into” or “become concerned in”, must exist and have practical effects relating to the acquisition, retention, use or control of property.
- 3.6. The operative phrase in section 328 – “enters into or becomes concerned in an arrangement” – needs to be considered as a whole. To enter into such an arrangement is to become a party to it; to become concerned in an arrangement suggests some wider degree of practical involvement in an existing arrangement such as taking steps to execute or put into effect an arrangement. Both “enters into” and “becomes concerned in” describe doing an act that is the starting point of an involvement in an existing arrangement.
- 3.7. Solicitors conducting transactional work may anticipate that at some future date an arrangement under section 328 will come into existence and that they may become concerned in it. At that time the solicitor would commit a criminal offence if he does not make an authorised disclosure (unless he is prevented from reporting by common law LPP), see section 5.
- 3.8. A solicitor making an authorised disclosure would need to seek consent to doing the “prohibited act” of entering into or, more likely, becoming concerned in the arrangement. Until an arrangement under section 328 does exist, the solicitor can continue in the normal way with any preparatory steps relating to the transaction.
- 3.9. An agreement by the solicitor’s client and another party to bring about an arrangement that would fall within the terms of section 328 is not, in itself, an arrangement under section 328. The test is whether it does in fact, in the present and not the future, have the effect of facilitating the acquisition,

retention, use or control of criminal property by or on behalf of another person.

4. Failure to report offences

This guidance should be read in conjunction with Part 2, of Chapter 2 of the Guidance regarding POCA sections 330 – 332, paragraph 2.39 onwards.

Section 330 “regulated sector”

- 4.1 Where a solicitor, when undertaking work covered by the Money Laundering Regulations, has knowledge or suspicion of money laundering or reasonable grounds for suspicion the solicitor should consider the obligation under section 330 to make a money laundering disclosure. Transactional work undertaken by solicitors is almost always covered by the Regulations whereas usually litigation and pure legal advice work is not covered by the Regulations and, therefore, also falls outside section 330. As part of the “regulated sector” transactional lawyers need to be aware of the section 330 offence which applies even if the solicitor withdraws from the matter. A key consideration is whether the information which causes them to know or suspect or have reasonable grounds to suspect, that another person is engaged in money laundering falls within the professional legal adviser exemption under 330(6). It is also important to note that this exemption does not apply where the intention behind the communication is to further a criminal purpose, see paragraphs 2.40 – 2.43 of the Guidance and paragraphs 5.11 & 5.12 below.

Sections 331-332: nominated officers in the regulated sector, and failure to disclose outside the regulated sector

- 4.2. The Bowman v Fels judgment confirmed that common law LPP was not overridden in sections 327 – 329 of POCA. Common law LPP remains intact even if a professional legal adviser passes information to their Nominated Officer, see paragraph 2.55 of the Guidance. In respect of information which is not subject to common law LPP, but falls within the 330(6) exemption, again the Law Society remains of the view that if the person passing the information to the Nominated Officer is a professional legal adviser, then the Nominated Officer has a reasonable excuse. On 1 July 2005 Section 330 was amended, and these amendments confirm that professional legal

advisers can speak openly with their Nominated Officers without affecting clients' rights to confidentiality. See Law Society guidance on the Serious Organised Crime & Police Act 2005, available from www.lawsociety.org.uk or Professional Ethics: 0870 606 2577.

5. Legal professional privilege

- 5.1. Whilst the *Bowman v Fels* judgment concentrated upon litigation, and similar work, the judgment makes references to how Parliament could not have intended the authorised disclosure defence to the principal offences (sections 327-329 of POCA) to override the common law doctrine of legal professional privilege (“common law LPP”) as described at 4.8 – 4.10 of the Guidance (see *paragraphs 89 and 90 of the judgment*). Whenever solicitors have to consider whether to make a report in relation to the section 327-329 offences they need to consider whether the information on which their knowledge or suspicion is based is subject to common law LPP.
- 5.2. Solicitors considering reporting under section 330 need to consider whether the information on which their knowledge or suspicion is based, or which gives them reasonable grounds for such knowledge or suspicion, came to them in “privileged circumstances” as defined in section 330(10) (“330(6) exemption”). These differ from the circumstances governing common law LPP and are set out at 4.27 – 4.29 of the Guidance.
- 5.3. Given the enhanced importance of LPP as a result of the judgment, MLROs should make themselves fully aware of chapter 4 of the Guidance about LPP.
 - 5.3.1. The judgment has confirmed that common law LPP is not overridden by the authorised disclosure defence to the section 327 – 329 offences. Therefore before such a disclosure is made any solicitor who forms knowledge or suspicion of money laundering will have to consider whether common law LPP applies. If it does, no disclosure can be made without a client waiver of LPP and before that waiver can be obtained a solicitor would need to consider the tipping off offences, see section 6.
 - 5.3.2. It is important to note that common law privilege and the 330(6) exemption differ particularly in relation to the protection given to “advice”.

- 5.4. When advice is given or received in circumstances where litigation is neither contemplated nor reasonably in prospect, common law LLP will normally only apply to communications between a solicitor and his client for the purpose of obtaining or providing legal advice, or which form part of the chain of correspondence between solicitor and client for the purpose of obtaining legal advice. Therefore, save in limited circumstances, communications between solicitors and third parties will not fall within common law LPP. An exception where common law LPP might apply is where the third party is merely acting as a conduit or post box (see *Jones v Great Central Railway* [1910] AC 4).
- 5.5. In contrast, the 330(6) exemption applies, to any information received by a professional legal adviser from a client or a representative of a client for the purpose of giving or obtaining legal advice. A “representative” is not defined in POCA but the Law Society takes a wide interpretation. For example, information communicated by a client’s tax adviser to the professional legal adviser may fall within the 330(6) exemption when in the professional legal adviser’s hands. The tax adviser is not however a professional legal adviser and therefore falls outside the 330(6) exemption and may of course commit an offence himself under s330 POCA if he fails to make a disclosure under the section.
- 5.5.1. Following the Court of Appeal’s decision in *Three Rivers District Council v The Governor and Company of the Bank of England* (No 5) [2003] QB 1556 (which is unaffected by the House of Lords decision referred to elsewhere) communications by a solicitor with employees of a corporate client may not be protected by common law LPP if the employee cannot be considered to be “the client” for these purposes. The Court of Appeal concluded that some employees may be clients, some may not. However, even if a junior employee might not be a client for the purposes of common law LPP they may fall within the meaning of “representative” for the purposes of the 330(6) exemption.
- 5.5.2. Under Common law, privileged information can be shared or disclosed within law firms, without losing the protection of LPP, e.g. with secretaries, other fee earners, the MLRO. This can also include those with a common interest, e.g. in certain circumstances co-defendants (see *Gotha City v Sotheby’s* (no.1) [1998] 1 WLR 114)). However, except where litigation is in contemplation,

arguably the 330(6) exemption only applies to information received by a professional legal adviser from a client or a representative of a client, or from a person seeking legal advice, in the circumstances outlined in section 330(10)(a) and (b). For example, during the course of a transaction a vendor may provide copies to the purchaser of legal advice received by the vendor, but require that it be kept confidential and stipulate that in disclosing it, privilege in the information is not waived. Since the 330(6) exemption only applies to information provided by a client or his or her representative, to a professional legal adviser, whilst it will apply if the vendor or his lawyer gives it to the purchaser who then passes it to the purchaser's professional legal adviser, it will not apply if it is simply put in a data room and the purchaser's professional adviser inspects it.

What is legal advice in a transaction?

- 5.6. Whereas the range of those whose communications fall within the 330(6) exemption may be broader than within common law LPP, under both heads the communications must relate to legal advice. A definition of the scope of common law advice privilege has recently been approved by the House of Lords in *Three Rivers District Council and others v Governor and Company of the Bank of England* [2004] UKHL 48 at 111 as covering "all communications between a solicitor and his client relating to a transaction in which the solicitor has been instructed for the purpose of obtaining legal advice ... notwithstanding that they do not contain advice on matters of law and construction, provided that they are directly related to the performance by the solicitor of his professional duty as legal adviser of his client".
- 5.7. By way of example, in a conveyancing transaction, common law advice privilege will be limited to all such communications with, and instructions from, the client and any advice given to the client, (including any working papers and drafts prepared by the solicitor)¹ for the purpose of giving that advice, provided they are directly related to the performance by the solicitor of his

¹ It will not of course cover documents sent to the other side in a transaction, or any documents of title, including conveyances, transfers, mortgages etc. for these are either not confidential and/or not communications.

professional duty as legal adviser of his client. Thus before making a disclosure to NCIS under s.338, the solicitor must ensure that his knowledge or suspicion does not arise from information imparted within this definition.

- 5.8. Adapting the *Three Rivers* definition to the wording of s.330 (10), the exemption under the section will cover all communications between a professional legal adviser and his client or his client's representative relating to a transaction in which the professional legal adviser has been instructed for the purpose of obtaining legal advice, notwithstanding that they do not contain advice on matters of law and construction, provided that they are directly related to the performance by the professional legal adviser of his professional duty as legal adviser of his client.
- 5.9. In the conveyancing example given above, the 330(6) exemption will cover, in addition to the "common law" items, communications with third parties, such as surveyors, tax advisers or accountants, provided to the professional legal adviser to enable him to advise his client and directly related to the performance by the professional legal adviser of his professional duty as legal adviser of his client.
- 5.10. Thus, a conveyancing solicitor does not commit an offence under s.330 if he fails to disclose, if his knowledge, suspicion, or reasonable grounds for knowledge or suspicion, arose from communications of such a nature with his client or a representative of his client:

Note:

Solicitors' costs

Solicitors concerned about their receipt of costs, including payment on account, should have regard not only to paragraph 2.30 of the Guidance which describes the "adequate consideration" defence to the section 329 offence, but also this judgment which confirms that legal professional privilege excludes the reporting requirement under the other principal offences, namely sections 327 and 328.

Crime/Fraud exception

This section replaces paragraphs 4.12 – 4.14 of the Guidance.

- 5.11. Neither common law LPP nor the 330(6) exemption apply to communications made with the intention of furthering a criminal purpose. For this exception to

apply in either context, the solicitors should have prima facie evidence of such an intention, which as indicated at 4.14, need not be that of the client.

- 5.12. As indicated in the Guidance at paragraphs 4.37 – 4.40, during the Parliamentary passage of the POCA bill the Law Society expressed concern that solicitors might be prosecuted under POCA even though they were unaware of the criminal intention of a third party. In these circumstances the solicitor would lose the exemption as a “professional legal adviser” because of the exception in subsection 330(11) which provides that the “professional legal adviser” exemption does not apply to information “...communicated or given with the intention of furthering a criminal purpose. The Law Society believes that a solicitor should not make a report unless there is prima facie evidence that he is being used in the furtherance of a crime.

Note:

The question of protecting client confidentiality is a key consideration for professional legal advisers considering reporting under either the principal money laundering offence provisions (to which common law LPP applies) or under the section 330 failure to report offence (to which the 330(6) exemption applies). In either case solicitors should refer to section 6 regarding tipping off.

6. Tipping off

This guidance should be read in conjunction with paragraph 2.61 of the Guidance.

- 6.1. The judgment’s clarification of the importance of common law LPP in relation to the principal offences under sections 327/328/329 also affects how solicitors conducting transactions should approach the exemption for professional legal advisers to the tipping off offences in POCA under sections 333 & 342.
- 6.2. Solicitors who are acting in transactions in circumstances where they have knowledge or suspicion of money laundering, and so are going to risk being concerned in an arrangement at some future date, have a legal duty to give legal advice to clients whom they act for, including about the possibility of their client committing money laundering offences if the transaction proceeds

without “appropriate consent” having been obtained, see paragraphs 2.23-2.27 of the Guidance.

- 6.3. In considering that legal duty solicitors will need to consider the tipping off offence in section 333, and the similar offence in 342. Both of these offences have exemptions for professional legal advisers. That exemption was explored in *P v P*. The judgment in *Bowman v Fels* further supports the statutory exemption: professional legal advisers have a discretion to give advice to their clients about money laundering reports, although there remains no absolute duty to do so. Depending upon the circumstances, solicitors may prefer to withdraw.
- .4. *Bowman v Fels* makes clear that common law LPP attaches to a communication with the client on this point (unless it falls within the crime/fraud exception). Thus a solicitor will need a waiver from common law LPP before making a disclosure. In the event that this is not given, the solicitor should withdraw. In these circumstances the Law Society does not consider the guidance given in *P v P* about the timetable for the use of exemption is helpful.
- 6.5. It should be noted that this exemption does not apply if, in discussing the issue with the client, the solicitor has a criminal intention.

7. What approach should transactional lawyers take?

- 7.1. For these purposes transactional lawyers include those involved in non-contentious work, e.g. conveyancing, company mergers and acquisitions.
- 7.2. This has also been set out in the form of a flow chart at Appendix 1. Anyone following the flow chart should also read the guidance below, which expands on the options.
- 7.3. Having outlined the particular issues which transactional lawyers may face in light of the decision in *Bowman v Fels*, it may assist to set out an approach which they can usefully adopt.

Stage 1

- 7.4. An “arrangement” within the terms of section 328 must come into existence at a particular point in time. If a suspicion is formed, the first issue for any transactional lawyer to consider is whether an arrangement is already in

existence. (See paragraphs 3.4 to 3.8 above.) For example, the client may instruct a conveyancing solicitor to act on his behalf in the purchase of property, including the drafting of the contract and transfer documents. At the time that the solicitor is instructed, there will already be in existence an agreement between vendor and purchaser, but not yet an arrangement for the purposes of section 328.

7.5 Where the solicitor considers that an arrangement falling within section 328 is already in existence, any steps that he takes in furtherance of that arrangement would probably amount to the solicitor becoming concerned in the arrangement. The solicitor would therefore need immediately to consider making a disclosure under section 328.

7.6. Where there is no pre-existing arrangement, the transactional work carried out by the solicitor may nevertheless involve bringing into existence an arrangement under section 328. Thereafter, the solicitor may become concerned in the arrangement by, for example, executing or implementing it. He may, therefore, commit an offence under section 328 and perhaps also under section 327 or 329. In order to provide himself with a defence to a possible money laundering charge, the solicitor would be obliged to make an authorised disclosure, (Boxes B-D), provided common law LPP does not apply. (See section 2 and stage 2 below.)

7.7. The solicitor would also need to consider whether, as would very probably be the case, the work on which he is engaged is "relevant business" so that the obligations placed on a person within the "regulated sector" apply to him. If so, the solicitor would also need to consider whether he should make a money laundering disclosure under section 330, unless the "professional legal adviser" exception in section 330(6) and (10) of POCA applies, (Box E).

Stage 2

7.8. Having determined which, if any, of the relevant sections of POCA apply, the next issues for any solicitor to consider are:

- (i) whether common law LPP applies where it is suspected that an offence under sections 327-329 may be committed; and/or
- (ii) if the solicitor has determined that they are acting in the regulated sector, whether the 330(6) exemption applies for the purposes of

section 330. (See Box 2)

- 7.9. If neither common law LPP or the 330(6) exemption applies, then there is nothing to constrain a solicitor from making a report.
- 7.10. Where a report is made and consent needs to be sought, as stated at paragraph 7.5 above, the solicitor will need to consider whether they can conduct further work prior to receiving that consent, dependent upon whether there is already an arrangement in existence, (Boxes 3 and 4).
- 7.11. If either the common law LPP or the 330(6) exemption applies, the next issue to consider is whether there is prima facie evidence that the solicitor is being used in the furtherance of a crime (Box 5). The scope of the crime/fraud exception and the nature of the test to be applied is discussed, see paragraphs 5.11 & 5.12. If the solicitor concludes that there is prima facie evidence, the effect is that there is no common law LPP or 330(6) exemption, so a report can be made. However, the solicitor has the option of simply withdrawing from the transaction rather than making an authorised disclosure. (Box 7)
- 7.12. If the conclusion is that common law LPP or the 330(6) exemption do apply and are not overridden by the crime/fraud exception the solicitor has two options:
(Box 8)
- (i) He can either approach his client(s) for a waiver of privilege such that he can obtain consent to carry out the prohibited act (Box 10); or,
 - (ii) alternatively, he can withdraw from the transaction. (Box 9)
- 7.13. Section 6 above relates to the tipping off offence. Where the solicitor is acting for a client(s) who is not the suspected party, but is engaged in a transaction which involves criminal property, then the solicitor may feel less concerned about tipping off and more comfortable discussing the risk of not tipping off when issues of waiver of common law LPP and whether to report, and possibly joint reports to NCIS with the client(s). If, however, the solicitor suspects that the client is implicated in the underlying criminal conduct, careful consideration would need to be given to the tipping off offence and

whether it is still appropriate, in those circumstances, to discuss these matters openly with the suspected party/client. (Box 10)

- 7.14. If the matter is raised with the client(s) and the client(s) agrees to waive LPP, the solicitor is free to make a report on his own, or as a joint report together with the client, and seek consent if required. Provided that there is no pre-existing arrangement, the solicitor should be free to continue his preparatory activities, but the arrangement (or other prohibited act under sections 327-329 of POCA) should not be finalised without appropriate consent. (Box 11)
- 7.15. Of course, the client(s) may refuse to waive LPP (Box 12) either because he does not agree with the solicitor's suspicions or because, whilst he accepts the solicitor's suspicions, for his own purposes he does not wish a report to the authorities to be made about the transaction. It is of course possible at this stage that the client(s) may provide further information which removes the solicitor's suspicions, and as a consequence no report is required. However, if the client(s) refuses consent to waive common law LPP the solicitor is again put in the position of determining whether he is being used in furtherance of a crime such that common law LPP or the 330(6) exemption do not apply. If the solicitor does not have prima facie evidence that the crime/fraud exception applies, he will have no option but to withdraw from the transaction, and provided the 330(6) exemption also applies no report can be made either under the principal offences or section 330. (Box 13)
- 7.16. Where the client(s) has refused to waive privilege but accepts that in proceeding with the transaction he may be committing an offence, the solicitor may more readily be able to conclude that he is being used in furtherance of a crime such that common law LPP or the 330(6) exemption will not apply to prevent a report being made. In those circumstances, it would usually be inappropriate to make a report with the client's knowledge as the risks of tipping off are heightened. (Box 14)
- 7.17. If a solicitor is acting for more than one client in relation to a matter all clients would need to agree to waive privilege before the solicitor could report to NCIS.

Start - Stage 1

Stage 2

Stage 3

Stage 4

Stage 5

Stage 6

