

From the President



Rt. Hon Ed Balls MP
H.M. Treasury
1 Horse Guards Road
London SW1A 2HQ

28 March 2007

Dear Mr. Balls

Implementation of Third Directive on Money Laundering

Further to my letter of 5 February I urge you to take immediate action to rectify the lack of certainty in the draft regulations implementing the Third Money Laundering Directive, particularly regarding the definition of “beneficial owner”.

In view of the Society’s grave concerns, we have sought an Opinion on the issues from Rabinder Singh QC and Alex Bailin of Matrix Chambers, which I attach. You will see that the Opinion confirms the Society’s view that the inherent uncertainty in the definition renders the regulations unworkable.

In addition, the Opinion states that the criminal offences contained in the draft regulations do not meet the community law, common law and ECHR requirements of legal certainty and, accordingly, would be open to challenge. Furthermore, any guidance issued would be taking the place of legislation and would accordingly be constitutionally prohibited. Counsels’ view would be unaltered even if the guidance was drafted by the Law Society and approved by H.M. Treasury.

As the Opinion makes clear, the only safe course to avoid legal challenges will be for H.M. Treasury to re-draft the regulations to include a definition of beneficial owner which provides sufficient clarity and precision as regards its interaction with English trust law. Failure to do this will leave a wholly unacceptable risk to be borne by our members, which will have a negative impact on UK plc and fail to achieve the Government’s anti-money laundering objectives.

If the Treasury does not rectify the position, the Society will have no choice but to intervene in any future prosecution, as we did in *Bowman v Fels*, in order to clarify the regulations to ensure they are workable and to protect our members.

I look forward to hearing from you. If you believe a meeting would be helpful then I and my team can meet you as soon as possible.

Yours sincerely,

Fiona Woolf
President