

AML Compliance

Introduction

It was reported in the legal press in summer 2021 that the SRA had taken disciplinary action against several firms for their failure to address their responsibilities in relation to the Anti-Money Laundering legislation and accompanying professional rules. This highlighted not just how seriously the SRA view this particular aspect of their overall regulatory regime, but also how active they have been in monitoring the general level of compliance with the requirements on firms and then taking enforcement action in more serious cases.

Infolegal can claim to have led the way in helping law firms comply with their AML responsibilities for many years, with director Matthew Moore having provided training on the subject since it first emerged as a requirement some 20 years ago. Matt is also the principal author of one of the leading publications on this topic “Money Laundering Compliance for Solicitors”, with work currently progressing on a third edition which will be published late 2021.

Given the importance of the topic, and the resulting stress levels for reporting and compliance officers in most firms when concerns arise, our monthly newsletters often provide updating points and reminders on this topic. We are also often called upon to provide further advice for reporting officers on problem situations as and when they arise. Our policy here is that if we can respond to an occasional enquiry within 30 minutes, we are happy to do so as part of our subscriber services, but if longer than this is required, or more frequent requests are made, we will then raise supplemental charges at our discounted subscriber rate of £125/hour + VAT.

Criminal and Regulatory Risks

One of the many complications of AML compliance is ensuring that the firm and all within it avoid possible liability for the statutory offences contained in Part 7 of the Proceeds of Crime Act 2002, and that it also meets the regulatory obligations imposed by the Money Laundering Regulations (MLR 2017), both as since amended.

The regulatory requirements apply regardless of whether any money laundering offence has been committed, and in fact any failure to comply with the MLR 2017 could itself amount to a criminal offence for the firm although it will almost always be dealt with by the SRA as a disciplinary matter instead. This in turn will be extremely stressful for any who are unfortunate enough to find themselves caught up in such proceedings and will almost certainly cost the firm dearly when it comes to the renewal of its PII cover. Be that as it may,

there is no greater risk to solicitors than to find themselves at risk of prosecution from the provision of services to clients, and so this aspect of the firm's responsibilities has to be treated with the greatest possible levels of care and attention.

Policies and Procedures

A further complication is that the MLR 2017 do not apply to all private practice solicitors as such, but rather to those providing certain stated services instead. On this basis many litigation-only firms could in the past fairly have regarded themselves as being outside the scope of the MLR 2017, but this position changed when the Money Laundering and Terrorist Financing Regulations 2019 took effect in January 2020.

The regulations introduced a much wider definition of what it would mean to be a "tax adviser", meaning that family law and employment firms in particular would now become part of the "regulated sector" for the first time. We have helped many such firms with this transition and provide template AML policy manuals for firms and for sole practitioners with alternatives for those relatively few firms that can still claim to be outside the scope of the regulations. Even those few firms that remain exempt from the MLR 2017 could still see potential liability for their members under the Proceeds of Crime Act, however, so it remains important to have compliant policies and procedures in place in all firms.

In order to enable users to access our AML support materials, and Money Laundering Reporting and Compliance Officers in particular, we have combined all of these specialist materials and resources as one of the main headings in the "Compliance Zone" heading at the start of our website. You will find here two main Factsheets to work through dealing with a general explanation of what firms must do to be AML compliant, and then a further Factsheet providing guidance on the identity checking evidence required for all of the likely client types in most law firms for Customer Due Diligence checking. Also, within the more general heading of financial crime we have set out here our linked Factsheets on:

- Avoiding Property and Mortgage Fraud;
- Anti-Bribery; and
- Non-Facilitation of Tax Evasion.

Other helpful materials to ensure that you will be able to meet all of the SRA's concerns include a further Factsheet on undertaking the Risk Assessment that you will need to undertake as a pre-cursor to drafting your AML policy, using our template precedents for both documents, and revised guidance on how to certify client identities validly when clients are unable or unwilling to bring their personal documents to your offices.

The Need for Training

For the great majority of firms that are now subject to the MLR 2017 training is not just good practice management for the benefit of everyone in the firm and that practice itself but is a regulatory requirement under r.24 of the MLR 2017. Those firms that are members of the Conveyancing Quality Scheme (CQS) or which are recognised to the Law Society's Lexcel

scheme, will also find that they need to ensure that relevant and appropriate training is provided to all relevant personnel in AML awareness.

Subscriber firms can provide and maintain the required training by using our set of pre-recorded training presentations, consisting of two fee earner sessions on the main AML reporting duties under the Proceeds of Crime Act 2002 and another title dealing with the MLR 2017 and the CDD process in particular. There is also one simpler session on the topic in general for secretaries and other administrative staff who will need to be trained, but who will not carry quite the same degree of responsibility for such issues. Matt Moore is also pleased to deliver live in-house training sessions if and when this is required, and when we are again free of coronavirus concerns.

All in all, your Infolegal membership will be the most cost-effective way to ensure that you become and remain AML compliant.