

Happy birthday, money laundering

It's time for firms to reassess their compliance with the money laundering regulations and plan for the second year of regulation, says **Frank Maher**

- topics to cover in the annual compliance report
- staff training and testing

Few will celebrate the anniversary of the legal profession's arrival in the regulated sector for money laundering compliance purposes. Yet all firms should be marking the occasion, if only to measure their performance over the past year, identify what has changed in the firm's risk profile, and identify resource requirements for the coming year.

All firms have undergone change in their risk profile, if only because of the new regulation of insurance business. Although the regulated activity of insurance mediation is outside the regulated sector for money laundering purposes, money laundering compliance is not a topic to be viewed in isolation. Many areas of law undergo change that may impact on it.

Whose responsibility?

Responsibility for compliance rests on all partners. The relative lack of criminal sanctions against professionals so far may be the calm before the storm. Just as the jailing of Belfast solicitor Gavin McCartan in October 2004 focused the minds of Northern Ireland lawyers on anti-money laundering compliance, it can only be a matter of time before minds are similarly focused on the mainland. Several arrests have already taken place. New conduct rules, awaiting statutory approval, will make management of risk compulsory for all law firms in England and Wales, and money laundering compliance is but one of the many risks to be managed.

Reporting to the board

An annual report to the board on money laundering compliance is a requirement for Financial Services Authority (FSA) regulated businesses, and is good practice for all firms undertaking work in the regulated sector. Few can be complacent when even personal injury work, generally regarded as outside the regulated sector, can creep in

through the back door.

Topics to cover in the annual money laundering compliance report include:

- breaches over the past year;
- summary of significant reports to the National Criminal Intelligence Service;
- matters where there has been active involvement of the firm's professional indemnity insurers;
- performance statistics (eg have you had significantly less reports from one office than another, when similarity of work might lead you to expect similar results?);
- audit results (see below);
- training undertaken and training needs;
- results of testing staff (see below);
- changes in the practice that alter the risk;
- changes in external risk factors, such as new legislation and international issues.

Auditing and training staff

Neither auditing nor testing staff is explicitly mentioned in legislation. The need should be self-evident. Not only do they risk being unable to establish that they have implemented proper systems of internal control, as required by reg 3 of the Money Laundering Regulations 2003 (SI 2003/3075), but they leave entirely to chance the result of any enquiry into what their staff do.

However, the FSA has confirmed, if informally, that they expect FSA-regulated businesses to test staff. Philip Robinson, financial crime sector leader at the FSA, commenting on the recent fine imposed on Bank of Ireland £375,000 for failure to have appropriate systems in place, was reported on the FSA website (www.gov.uk/pubs/press/2004/007.html) as saying: "Adequate systems and controls are fundamental to the UK anti-money laundering regime's effectiveness, and firms must identify the money laundering risks in their business and take appropriate action to reduce these... [The bank] did not check that its staff understood fully their anti-money laundering

responsibilities in relation to the recognition and reporting of suspicious transactions."

Testing can be undertaken in a number of ways, but online testing will commend itself to many because it is convenient, the results are recorded electronically, and it can be undertaken from as little as £10 per head.

FSA-regulated businesses are required to retrain staff at least every 24 months. The need is all the more apparent because of the changing legal environment and the risk of staff becoming complacent.

Insurance mediation

The European Insurance Mediation Directive has been implemented into UK law by amendment of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (SI 2001/544). For most UK law firms, this will in practice require them to be regulated through the appropriate Law Society for their jurisdiction.

As the Law Society's guidance issued to all firms in September 2004 explains, the Money Laundering Regulations 2003 have been amended, in broad terms, to exclude insurance business from the regulated sector. However, there remain areas of concern, largely those identified in the Law Society guidance—conveyancing, commercial, matrimonial, probate and trusts—relating to direct involvement in either the arrangement or the performance and administration of insurance contracts.

Be wary of clients' business

The most significant issue in this context is not the regulation of solicitors themselves, but the areas of business in which commercial clients are involved, such as mergers and acquisitions, PFI and securitisation. Clients may inadvertently become involved in regulated activities as defined in the Financial Services and Markets Act 2000, for example by arranging insurance on behalf of another party as well as themselves. If they are not themselves regulated by the FSA, or through a designated professional body, they may be committing a criminal offence. It follows that solicitors who are advising them will be likely to be under an obligation to report them to NCIS, either because the work is in the regulated sector or, if not, because they are at risk of the other predicate money laundering offences in ss 327–9 of the Proceeds of Crime Act 2002.

Frank Maher is a practising solicitor and partner in Legal Risk and co-author of the *Money Laundering Reporting Officer's Handbook 2004: a Guide for Solicitors*