

Contents

Anti-money laundering and Financial Crime	1
General Data Protection Regulations	1
New Codes of Conduct	1
Professional Indemnity Insurance (PII) and Claims	2
Conflicts of Interests and Confidentiality	2
(Mis)use of client account as a banking facility	2

Anti-money laundering (AML) and Financial Crime

The commencement of The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (with some important changes from the draft) has been accompanied by a flurry of consultation and guidance at all levels from Europe to domestic regulators but the key guidance for the legal sector is still awaited.

These include European Supervisory Authorities' final Guidelines, the EU's Supranational Risk Assessment Report, the Financial Conduct Authority's guidance on Politically Exposed Persons (PEPs), the National Crime Agency's National Strategic Assessment of Serious and Organised Crime 2017, and HM Treasury's consultation on the supervisory regime and the proposal to create a new Office for Professional Body AML Supervision (OPBAS). The last of these seeks responses from regulated businesses on the costs of AML compliance; we note that the Law Society of Scotland is encouraging its members to respond to the consultation.

Links to these can be found on our News Page – www.legalrisk.co.uk/News. Our Money Laundering Resources pages contain further links www.legalrisk.co.uk/AML. We await Treasury-approved guidance for the legal sector.

The Solicitors Regulation Authority (SRA) has started another round of AML thematic reviews. The SRA's latest [Risk Outlook 2017/18](#) says, 'Where we find that a firm has not complied with money laundering obligations we will take action. Around two-thirds of cases of wrong-doing are serious enough to be referred to Solicitors Disciplinary Tribunal.' The recent £50,000 fine on a City firm and £10,000 on each of three partners is cited.

We have been advising many firms on their risk assessments, policies, controls and procedures and implementing training and, for those in breach, on regulatory investigations. Our clients include a cross-section of the legal profession, including US and European-based firms, estate agents and accountants.

General Data Protection Regulation (GDPR)

The impending implementation of GDPR on 25 May 2018 is also provoking a flurry of guidance, including the Article 29 Working Party Opinion on data processing at work, the ICO Subject Access Code of Practice and ICO guidance on Artificial Intelligence. While firms have been busy with their AML preparations, they may have taken their eye off the ball in relation to GDPR.

Small and medium sized businesses are being warned to take note as a company which suffered a cyber-attack was fined £60,000 by the Information Commissioner's Office – representing a third of its annual profit in its previous filed accounts. The SRA have reported that public and law firm money is at risk due to cyber theft being at peak levels. We provide online training for staff.

We are advising firms on data protection compliance. Links to the above items can be found on our News Page – www.legalrisk.co.uk/News.

New Codes of Conduct for solicitors

Attention in the press has largely focused on the SRA's decision (see Looking to the Future Phase 1— link on our news page— www.legalrisk.co.uk/News) to press ahead with its plan to allow solicitors to work in unregulated practices, with change not expected before Autumn 2018.

This is not the only concern: rule 3.5 in the draft Code of Conduct for Firms may create a toxic obligation on solicitors to notify former clients of potential claims and to 'put matters right' (whatever that may mean). The risks inherent in this are concerning when the SRA is seeking to reduce the scope of PII. The same point was raised when the SRA Code of Conduct 2011 came into force and resulted in a prompt change to Outcome 1.16 in version 2 by confining the obligation to current clients, which is consistent with a solicitor's fiduciary duty.

Draft Rule 3.3 removes the obligation to ensure that cloud IT providers allow the SRA access to their premises – in contrast to the current Outcome 7.10 (b), a statutory obligation which requires that, despite the improbability of any major cloud provider agreeing. In the meantime, the SRA have purported to address that in their report, [IT Security: Keeping information and money safe](#), which says 'This does not need to involve a right for us to physically enter the premises of a cloud data provider.' That may give reassurance to those who use cloud, though it is difficult to see how a report, which is not even described as guidance, can amend a statutory obligation.



£60,000 fine on cyber-attack victim for data protection breach



*Enterprise Insurance – another
Gibraltarian insurer
bites the dust*

Professional Indemnity Insurance (PII) and Claims

The SRA's relentless drive to reduce compulsory PII cover continues, with further consultation expected in the Autumn. Meanwhile the Law Society has published its annual PII survey.

Investment schemes involving, for example, hotel and student let developments continue to generate claims, and are touched on in the SRA's Risk Outlook 2017/18.

The SRA has applied to the Legal Services Board for approval to change the requirement to take out run-off cover, making it easier for firms to switch regulators, though they will need to consider the risks which this may bring: if the firm closes after a switch from the SRA, the compulsory run-off will provide less protection and, from experience of matters in which we are currently acting, they may find themselves facing claims without insurance. It is therefore a decision to make with some care on a fully informed basis involving a proper risk assessment.

Links to the documents referred to above are on our News page – www.legalrisk.co.uk/News.

We have previously commented on the increase in coverage disputes. Issues on which we are advising include aggregation, scope of cover, alleged condoning of dishonesty by a rogue partner or employee, late notification (nine years in one case), successor practice liability disputes, claims over the policy limit, and claims against the Financial Services Compensation Scheme – most recently following the disclaimer of policies by the liquidator of Enterprise Insurance Company plc.

A tax evader brought a successful claim against a firm of solicitors for failing to advise on the Liechtenstein Disclosure Facility rather than invite HMRC to investigate under HMRC's Code of Practice 9 ("COP 9"): the **James Shepherd** case [2017] EWHC 758 (Ch). The judge had difficulty accepting the solicitor's evidence 'because (a) in answer to several questions he said that he was unable to recall the position, (b) he did not keep any attendance notes relevant to any of the four critical meetings that he had with the claimant, (c) created a time record many weeks after the critical meetings but without having kept any earlier records from which the time record was derived, and (d) did not open a file until well after he first started to advise the claimant.'

RISK UPDATE is available electronically only.

To subscribe and receive a free e-copy, email us at info@legalrisk.co.uk.

Alternatively download it from www.legalrisk.co.uk

Note

This newsletter is a general guide. It is not a substitute for professional advice which takes account of your specific circumstances and any changes in the law and practice.

Subjects covered change constantly and develop.

No responsibility can be accepted by the firm or the author for any loss occasioned by any person acting or refraining from acting on the basis of this.

© Legal Risk LLP 2017

Conflicts of interest and confidentiality

The headline-grabbing Solicitors Disciplinary Tribunal (SDT) fine of £250,000 on a US firm and £50,000 on a partner in the firm for acting in a conflict is not, contrary to some reports, the largest fine meted out, which is still £305,000 for an own-interest conflict. The SDT judgment is still awaited, but it appears safe to assume that the case arises from the **Georgian American Alloys** case [2014] EWHC 94 (Comm) on which we reported in our March 2014 Risk Update; putting matters into context, that case involved 238 staff in nine offices.

Nonetheless, it raises the stakes for law firms' conflicts compliance. We have provided workshops for partners, associates and risk teams in many leading law firms.

There have been two recent cases, one in Scotland and one in Northern Ireland, where solicitors have changed sides; in each case the court declined to restrain the solicitors from acting. In **Ecclesiastical Insurance Office v Lady Whitehouse-Grant-Christ** [2017] CSIH 33, the Inner House of the Court of Session in Scotland did, however, comment that the case may prompt the professional bodies to reflect on their codes of conduct.

In **Alfred Street Properties Ltd v Dunnes Stores (Bangor) Ltd** [2017] NI Ch 19, Northern Irish solicitors had acted for the opposing party 20 years previously. The decision also addresses the delay in making the application, which suggested that the underlying reason for the application was tactical.

Links to these cases and conflicts resources from a large number of jurisdictions can be found on our Conflicts Resources page www.legalrisk.co.uk/conflicts.

(Mis)use of client account as a banking facility

Rule 14.5 of the SRA Accounts Rules 2011 continues to challenge firms, with many examples of what they may have regarded as established practice. A recent Canadian case, **Law Society of British Columbia v Gurney 2017 LSBC 15**, sums up the position: 'A lawyer's trust accounts are to be used for legitimate commercial purposes for which they are established, the completion of a transaction, where the lawyer plays the role of legal advisor and facilitator. They are not to be used as a convenient conduit.'

The rule attracts considerable attention from the SRA and we are advising on a number of investigations, as well as compliance and audit. The SRA Risk Outlook warns, 'We are likely to allege that a deliberate attempt to evade this rule improperly is dishonest'. See www.legalrisk.co.uk/news.