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Events

[MBL 2017 Annual Conference: Compliance & Regulation in Law Firms](#)

Frank Maher will be delivering a session on (Mis)using Client Account as a Banking Facility, considering the latest issues and perennial problems facing solicitors in relation to compliance and regulation.

[Ark Group Risk Management and Compliance for Law Firms 2017](#)

Frank Maher is chairing Ark Group's 14th annual two-day conference to look at potential risks on the horizon. Frank will also be delivering a session on managing conflicts of interests and Sue Mawdsley will be giving an Anti-Money Laundering update.

[Ark Group Anti-Money Laundering Compliance for Law Firms 2018](#)

Sue Mawdsley will be delivering a session on AML and processes: Regulation 21 (Internal controls) at the annual event.

Contact info@legalrisk.co.uk for further information on any of the above.

Anti-money laundering

Although much of this edition relates to money laundering, the topic covers a number of issues of wider significance, including SRA reforms, litigation and Rule 14.5 of the SRA Accounts Rules, which prohibits use of client account as a banking facility.

Guidance

Draft Guidance for the Legal Sector was published by the Law Society and other members of the Legal Sector Affinity Group shortly after our September Risk Update was published. We understand that approval by HM Treasury is expected by the end of the year.

The guidance is helpful, much of it following the existing Law Society Practice Note. However, the time is ripe in our opinion to update the recommendation of random file audits. First, this is inconsistent with a risk-based approach, although a random element should generally be included. Secondly, we query how many claiming to select files randomly really do so? Electronic methods of selection should be deployed to overcome unconscious (or even conscious) bias.

HMRC has published draft guidance on the Trust Registration Service, revising when trustees need to disclose the identities of beneficiaries.

Risk Assessments

The National Risk Assessment 2017 includes a review of the legal sector with case studies. It says that the legal sector remains at high risk of exploitation for money laundering (though it has thankfully dropped the 'professional enabler' moniker which featured in the 2015 Assessment). Note in particular the section on misuse of client accounts (see rule 14.5 of the SRA Accounts Rules), on which we commented in our May and September 2017 Risk Updates. This is a hot topic with the SRA and there have been several disciplinary cases with more in the pipeline; it has impacted on a cross-section of the profession including major City firms. We are advising on several SRA investigations and disciplinary proceedings; Frank Maher is speaking on the subject on 1 December 2017 ([see www.legalrisk.co.uk/events](http://www.legalrisk.co.uk/events)).

Significantly, the Assessment also commented that 'Innovation within the legal services market may pose a further supervisory challenge, as criminals could identify new opportunities to access legal services without engaging a supervised firm'. This echoes our concerns about the SRA's proposed reform of the SRA Handbook, which would permit solicitors employed by unregulated bodies to offer services to the public.

The Royal United Services Institute (RUSI) has published its critique of the UK government's National Risk Assessment.

We understand that the SRA is inspecting more firms to update the work done for its Thematic Review (May 2016), which will form part of its risk assessment under Regulation 17 of The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (MLR 2017). In order to comply with the MLR 2017, firms in the regulated sector should already have completed their risk assessments, or (applying a realistic approach) at least have plans for them at a well-advanced stage: the SRA can call for them. We are advising a wide cross-section of law firms and property professionals on risk assessments and also providing independent audit services.

Links to the above documents can be found on our News page <http://www.legalrisk.co.uk/news/>.

Compliance issues

One firm has been subject to a rebuke and ordered to pay costs by the Solicitors Regulation Authority (SRA), because it 'did not follow its own policies for identifying a client and did not report to the SRA the consequences of failing to do so'.

Personal injury litigation is not in the regulated sector (though recent SRA warnings confirm, if there were ever any doubt, that the need to avoid fraudulent claims is paramount). It is however of some concern that the judge in *Trehan v Liverpool Victoria Insurance Company Limited and Others* (Lawtel, 3 October 2017) commented erroneously that the solicitors 'failed to establish his identity through what are now customary (and mandatory) money laundering checks'.



*Eastern State Penitentiary,
where Al Capone was held.*

Credit: Rosemary Maher

Having regard to data protection legislation, including the General Data Protection Regulation, and the treatment of data protection issues in the MLR 2017, some thought needs to be given to how far one can – or should – extend statutory requirements in the MLR 2017 to non-regulated sector business. It would be misleading to rely on the MLR 2017 as justification for obtaining and retaining client due diligence documentation, though there are doubtless other perfectly legitimate grounds for doing so.

AML Miscellany

The Sanctions and Anti-Money Laundering Bill was introduced into the House of Lords on 18 October 2017. This will ensure that when the UK leaves the EU, the UK can continue to impose, update, and lift sanctions and AML regimes.

Finally, there has been extensive press coverage of the ‘Paradise Papers’, by the International Consortium of Investigative Journalists. These raise serious concerns as to the major hacking and theft of a substantial amount of privileged and confidential material from a law firm. Some of the activities revealed may be criminal, others not, but they will doubtless result in further pressure from legislators to curtail lawful tax avoidance, and may lead to erosion of legal professional privilege.

Professional indemnity insurance

Estimates vary, but approximately two thirds of firms in England & Wales renewed their insurance on 1 October 2017. We understand that most did so with little difficulty, despite some very large claims, although some insurers were pressing for rate increases.

There is still no news of further SRA proposals for reform of the Minimum Terms and Conditions (MTC), save that we understand the SRA are consulting with insurers about the increasing number of cyber-related claims to inform their review. It is worth noting that the Master Policy Scheme for solicitors in Northern Ireland and Lawcover, in New South Wales, are extending their cover to include cyber risks.

Conflicts of interests

In *Western Avenue Properties Ltd & Anor v Soni & Another* [2017] EWHC 2650 (QB), an injunction was granted restraining a solicitor from acting against her former employer.

S -v- S (Application to Prevent Solicitor Acting) [2017] EWHC 2660 (Fam) was an unsuccessful application by a potential client to restrain a solicitor from acting, following a meeting set up for the purpose of conflicting the solicitor out of acting for his wife in divorce proceedings.

Links to both cases are on our Conflicts Resources page www.legalrisk.co.uk/conflicts.

The Times reported on 8 November 2017 that staff seconded from professional service firms were found by a regulatory investigation to have provided their employers with details of bids from rivals in an effort to secure work. This supports our long held concerns, partly derived from auditing City firms’ files, that conflicts and confidential information are frequently addressed with far less rigour in the context of secondments than in the case of lateral hires, yet the risks may be greater.

We advise some of the largest US and UK firms on complex conflicts questions, and also provide high level workshops for partners and associates, including multi-jurisdictional issues.

General Data Protection Regulation (GDPR)

With less than six months until full implementation, firms need to be advancing their preparation. Steps such as implementing new terms of business, if required, cannot be implemented overnight.

A recent case involving the prosecution of a charity worker for sending personal data to his home email account is an important reminder of the need for policies and training.

The Information Commissioner has added a What’s New page to her website. A link can be found on our News page, <http://www.legalrisk.co.uk/news/>.

We are assisting firms with their gap analyses, policies and other documentation, and training.

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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.

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