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## Financial crime, cyber risk and sanctions

Pressure to bring forward the implementation of the Fourth Money Laundering Directive ((EU) 2015/849) (MLD4) to the end of this year, already fuelled by terrorist attacks in Paris and no doubt Brussels too now, should focus law firm management on the need to carry out a risk assessment and review policies and procedures.

While the report on the thematic review of anti-money laundering compliance by the Solicitors Regulation Authority (SRA), expected imminently, may not contain major shocks, what passed muster when the review was carried out a year ago may not be sufficient for the future. We are advising leading law firms on their UK and overseas compliance, and those in other sectors such as property professionals and trust and company service providers, on the steps they need to take.

Further EU legislation is also under consideration, particularly addressed at terrorist threats. The Financial Action Task Force (FATF) has published a report on [Financing of the Terrorist Organisation Islamic State in Iraq and the Levant \(ISIL\)](#). We noted in our November newsletter that FATF had identified that 'vishing' frauds in the UK had been used to finance ISIL.

The India Times reports that [India now has a zero rupee note](#) to be given to corrupt officials asking for bribes, as part of an awareness raising campaign.



Probably the largest ever attempted cyber-attack involved an attempt to steal \$1 billion from the Bangladeshi Central Bank. \$101 million of payments were processed but \$951 million of payment messages sent via SWIFT to the New York Fed were stopped. Meanwhile, we continue to hear of examples of significant frauds being perpetrated on law firms. Our short online course, *Phishing for Trouble*, is designed to raise awareness across law firms and has been deployed globally, with both UK and international versions available.

We are aware of several cases of high value property fraud where criminals purport to sell or mortgage property which they do not own. A useful tool for reducing the risk of property being sold by fraudsters is HM Land Registry's free [Property Alert service](#), which provides email alerts when certain activity occurs on monitored properties. Property lawyers might usefully draw this to the attention of their clients.

The SRA has issued a [warning notice on personal injury fraud](#).

April 2016 sees the launch of the Office for Financial Sanctions Implementation (OFSI) at HM Treasury. Whilst we cannot expect to see a major change in approach mirroring the US regime, it seems likely that a focused approach is likely. This includes OFSI relooking at its approach to licensing following the European Court of Justice case, *EIH v Council of the European Union*. The basic needs of a designated person are likely to be narrowly construed and control of licensing for litigation funding, is we believe, to be tightly monitored.

## Conflicts of interests

In [W Ltd v M SDN BHD \[2016\] EWHC 422 \(Comm\)](#) the court declined to approve certain guidance in the International Bar Association's Guidelines on Conflicts of Interest in International Arbitration 2014.

We advise on conflicts of interests and have presented workshops for partners and conflicts analysts in global, international and regional firms.

Frank Maher will be speaking on cross-border conflicts in Paris in April and on this and outside counsel guidelines in Amsterdam in June.

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## Legal Ombudsman in land grab for third party complaints

The Legal Ombudsman's consultation on its draft strategy contains worrying news that it will explore the option of dealing with third party complaints. This is worrying on several fronts. Professional principles in section 1(3) of the Legal Services Act 2007 requires that lawyers are bound to act in the best interests of their clients, subject of course to the public interest in section 1(1).

It is easy to envisage firms with debt collection, matrimonial or child care practices being exposed to a high incidence of third party complaints with no foundation in law but which put the firm to significant inconvenience and expense. There is also a significant concern that they will be inhibited from defending themselves by their duties to their own clients, and their clients' entitlement to legal professional privilege.

This appears to be little more than an attempt to generate work for an ombudsman's service which is facing a decline in complaints. It should be opposed vigorously. There are already adequate mechanisms to protect third parties from abuse.

Because they're worth it: '10 layers of lipstick on a pig'



## Data Protection

The text of the new EU General Data Protection Regulation is expected in July and will take direct effect in two years. The Information Commissioner has published guidance, [Preparing for the General Data Protection Regulation \(GDPR\): 12 steps to take now](#).

The European Commission and the United States have reached an agreement on the Privacy Shield, which replaces the defunct Safe Harbor regime and sets out a new framework for transatlantic transfers of personal data. However, Max Schrems, who successfully challenged Safe Harbor, has been [reported](#) as saying that the Privacy Shield does not adequately solve the problem, describing it as '10 layers of lipstick on a pig'.

The Information Commissioner has issued [encryption guidance](#). We provide advice, training and online courses on data protection.

## Professional indemnity (and other) insurance

Much has been written about the Insurance Act 2015. The Act will come into force on 12 August 2016. Among a number of changes, it requires a proposer to make a "fair presentation" of the risk in a "manner which is reasonably clear and accessible to a prudent insurer". It is intended to discourage 'data dumping'.

Of particular note in our view, from the perspective of arranging a firm's insurance (and not just professional indemnity) are the provisions in section 4 which 'provides for what an insured knows or ought to know'. This includes knowledge of senior management and of the person responsible for arranging the insurance. It will be important to maintain an audit trail. We are advising several firms on coverage disputes with insurers where processes have been shown to be inadequate, some involving large firms and some with substantial amounts at stake (approximately £40m in one case).

The general claims environment for law firms both in the UK and the USA continues much as before, with lower frequency but more claims of greater severity, and we are advising in a number of multi-million pound rogue partner cases.

## SRA Accounts Rules breaches

We are advising in several cases where the SRA is investigating breaches of the SRA Accounts Rules, including City firms as well as smaller practices. Common issues are misuse of client account as a banking facility, failing promptly to pay professional disbursements following the client's payment of a bill, and paying bills out of client money without notifying the client.

Be prepared for taped interviews, a review of your COFA's breaches register, and critical examination of whether your self-reporting was prompt and described the full extent of the issue.

## Events

### [Law Society AML workshops](#)

Sue Mawdsley will be delivering numerous AML workshops across the UK.

### [APRL Seventh International Conference in Paris](#)

Frank Maher and Sue Mawdsley will be speaking at the annual conference.

### [Law Society's Risk and Compliance Conference](#)

Francis Dingwall will be delivering a session on 'Messages to COLPs and COFAs – how to manage your compliance'

### [Symphony Legal and Natwest Conference](#)

Frank Maher will be speaking at 'Orchestrating Your Law Firm's Future'.

For further information on any of the above, please contact [info@legalrisk.co.uk](mailto:info@legalrisk.co.uk)

## RISK UPDATE