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A tsunami of change in risk and compliance

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 the 5th annual conference 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.

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

Professional indemnity insurance

Many solicitors' firms in England & Wales will be renewing insurance on 1 October, though the proportion is diminishing as more use the opportunity to renew at different times, and many firms buy cover for 18 months or even two years.

While few will have any great difficulty, we have significant experience helping those who do; we have, for example, assisted with professional risk reports, to help the firm's brokers present the firm's case to insurers, and block notifications.

Block notifications require legal analysis and drafting skills, and knowledge of the issues. We have drafted block notifications for law firms in a wide variety of situations, including property transactions, SDLT and other tax schemes and undervalue settlement of personal injury claims.

Our drafting is informed by the advice we have provided on the effectiveness or otherwise of past notifications in policy coverage disputes (where the insured firms had not instructed us at the time of notification).

Property fraud and cybercrime claims continue to be significant. The Law Society and HM Land Registry have published a joint advice note on property and title fraud. A link is on our News page <http://www.legalrisk.co.uk/news/>.

The Legal Services Board has issued an extension notice in relation to the SRA's application to amend the Minimum Terms and Conditions for Professional Indemnity Insurance in relation to run-off insurance and switching regulators. Time is extended until 11 October 2017. Meanwhile, we continue to await the SRA's consultation on the scope of compulsory cover under the Minimum Terms and Conditions which was promised for the Autumn.

Data Protection

All firms need to carry out a risk assessment and prepare an action plan to comply with the General Data Protection Regulation (GDPR) in advance of 25 May 2018, identifying, for example, what data they hold, where it is stored, who has access to it, why they have it, the legal basis on which they hold it, the purposes for which it is held and how it is managed.

Other issues to consider include the appointment of a Data Protection Officer where appropriate, a subject access procedure and an incident response plan.

The Government has announced its plans for a new Data Protection Bill to bolster the protection provided by the GDPR.

We are advising firms on data protection issues and have prepared a structured approach to carrying out very practical risk assessment workshops.

Group litigation

Acting for multiple clients in group claims can give rise to a variety of problems relating to the form of the retainer, funding arrangements and conflicts of interests. We have advised firms in a number of leading, high profile actions including shareholder claims and personal injury litigation when problems have emerged.

Rogue partners

We are involved in several cases where rogue partners have either been involved in fraud or acting for very high risk clients which fall far outside their partners' risk appetites. Three of these involve partner expulsions. We have advised on the partnership issues, self-reporting, SRA investigations and professional indemnity aspects.

US Border searches of electronic devices

There is increasing concern about US border staff searching smartphones, tablets and laptops, putting confidential and privileged client information at risk. An ethics opinion from the New York City Bar contains some useful practical tips. A link is on our News page <http://www.legalrisk.co.uk/news/>.

Anti-money laundering and financial crime

The Basel Institute on Governance has published the sixth edition of the Basel Anti-Money Laundering Report ranking countries according to their risk of money laundering and terrorist financing.

Europol has published a report, *From Suspicion To Action - Converting Financial Intelligence Into Greater Operational Impact*. This notes that just 10% of suspicious transaction reports (STRs) are further investigated after collection, a figure that is unchanged since 2006. Over 65% of reports are received by just two Member States - the UK and the Netherlands. Reporting on terrorist financing accounted for less than 1% of reports received by FIUs in 2013-14 (the most recent figures available).

Sectoral guidance for the legal profession under The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 is still awaited. Meanwhile, the CCAB have published draft guidance for all entities providing audit, accountancy, tax advisory, insolvency or related services.

Agreement on amendments to the Fourth EU Money Laundering Directive (widely referred to as 5MLD) is taking longer than expected and may not be passed until Q4 2017 or Q1 2018, with implementation in domestic legislation (subject to Brexit) likely to be 12 months later. The UK position on expansion of the scope of national registers of trust beneficial ownership is that it should be decided at national level; access to such registers is a live issue – in particular, whether to restrict it to law enforcement. There are also data protection issues. The European Parliament is pushing for reduction in the beneficial ownership threshold.

The Criminal Finances Act 2017 comes into force on 30 September 2017 and creates a new corporate offence of failure to prevent the criminal facilitation of tax evasion. Firms will need to carry out a risk assessment, which should address their own business risks as well as client risk. Using offshore corporate structures may be an obvious example of risk, but more mundane risks include claiming personal expenditure as a business expense in order to set it against tax, and delivering VAT invoices to businesses for advice which in fact relate to advice on personal matters to individuals. We understand that the VAT invoicing point is already the subject of SRA investigations.

The Chartered Institute of Taxation has published a brief introduction to the 'Corporate offences of failure to prevent the criminal facilitation of tax evasion' (Criminal Finances Act 2017).

A European Parliament draft recommendation to the Council and the Commission, following the inquiry on Money Laundering, Tax Avoidance and Tax Evasion, calls for further legislation. It seeks change so that legal professional privilege will not inhibit suspicious transaction reporting, and proposes that lawyers advising non-residents should be legally responsible when designing tax-planning and money laundering schemes. It also proposes to discourage accounting and auditing firms in designing offshore structures.

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

SRA Accounts Rules – banking facility

We touched on this in the July Risk Update, but continue to see firms with problems involving fee earners – usually partners of some seniority – breaching rule 14.5 of the SRA Accounts Rules – providing a banking facility to clients. We are advising several firms on reporting obligations and in relation to SRA investigations, some of which are significant and far-reaching. We are seeing hardening in the SRA attitude to enforcement.

While some of the cases involve rogue partners and potential money laundering, we are also seeing firms facing disciplinary action over cases which are rather more innocuous.

The recent £50,000 fine imposed by the Solicitors Disciplinary Tribunal (SDT) should help focus minds on the need to address the problem; more cases are in the pipeline. We undertake file audit for large firms to provide assurance for compliance officers. We also advise firms in cases which they may see as borderline. As a law firm ourselves, our advice is generally subject to legal professional privilege.

Conflicts of interest

SRA v Harbord 11614-2017 was a case in the Solicitors Disciplinary Tribunal in which it was held that there was a 'clear risk of conflict of interest' where the solicitor was in a personal, intimate relationship with a client for whom he had acted in matrimonial proceedings. A link appears on our Conflicts Resources page www.legalrisk.co.uk/conflicts with a wide selection of cases and rules from many jurisdictions.

We advise on conflicts issues and provide workshops for global, international and regional firms.



Europol's report "From Suspicion To Action" converts Financial Intelligence Into Greater Operational Impact

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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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