



## Webinar: The road to recovery

Legal Risk and Howden Insurance Brokers are co-hosting a series of two free webinars on 7 and 21 July 2020. Frank Maher and Francis Dingwall will examine how to manage the risk and compliance aspects of the current economic environment, including high risk clients, costs, successor practices and team acquisitions, alternative forms of practice, financial pressures and Solicitors Regulation Authority (SRA) reporting obligations (including some rules which may have escaped attention), and some insurance issues. Jenny Screech of Howden will provide an update on the solicitors' insurance renewal on 1 April 2020 and what to expect for 1 October 2020 renewals. Register [here](#).

## Anti Money Laundering (AML)

The SRA Draft Business Plan and Budget, November 2020 to October 2021 proposes a 20 per cent increase on spending on AML supervision with visits to all high-risk firms on a three-year rolling basis, along with visiting a sample of lower risk firms. Every month the SRA will call in and analyse a sample of firms' AML policies, procedures and controls, or their risk assessments, and they are planning to undertake a thematic review into tax advice.

The Financial Conduct Authority's Final Notice imposing a £37,805,400 fine on Commerzbank London over AML failures contains points to note for professional services firms generally. Although more extreme than we have seen when undertaking audits under Regulation 21 of The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017, they do touch on areas where firms experience difficulty in compliance.

There were no suggestions of money laundering taking place. Breaches included a significant backlog of refreshing customer due diligence (CDD) checks due to understaffing, leading to an exceptions process which was inadequately understood. A file review of CDD by Compliance failed to identify failures over the risks associated with clients that had an "element of state ownership (in high risk jurisdictions), and a number of politically-exposed individuals on their board".

There were multiple failures in relation to Politically Exposed Persons (PEPs) and sanctions screening, and in identifying beneficial ownership, in many cases being too willing to accept responses and information from the customer without independently verifying or challenging them.

Whilst not directly in the news on AML, complex property ownership structures, for example involving offshore investors, and multiple layers of ownership, were identified by the National Audit Office as a cause of delay in remediating dangerous cladding on high-rise buildings.

For links to the above see [www.legalrisk.co.uk/News](http://www.legalrisk.co.uk/News). See also our Resources page, [www.legalrisk.co.uk/AML](http://www.legalrisk.co.uk/AML).

We have carried out Regulation 21 audits on several leading US and UK-based law firms and advised on regulatory investigations, including a significant recent success for one large firm which was facing disciplinary action, following an overly zealous interpretation of the statutory requirements (not by the SRA), which has now been dropped. We are seeing a theme developing with SRA attention to procedures on refreshing CDD, training, screening and data protection aspects of AML compliance. For further information, please contact [info@legalrisk.co.uk](mailto:info@legalrisk.co.uk)

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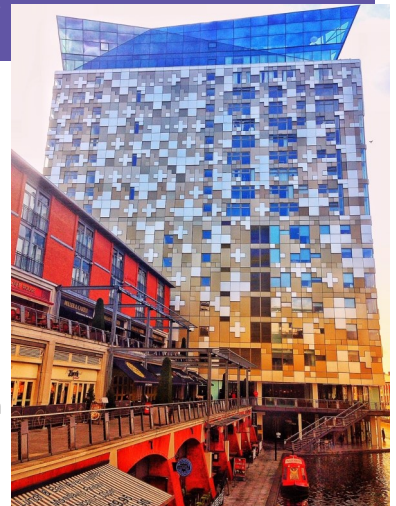
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### Note

*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.*



*SRA announces 20 per cent increase on spending on AML supervision*

## DAC6: Deferral of reporting deadlines

The Government is deferring the first reporting deadlines under the International Tax Enforcement (Disclosable Arrangements) Regulations 2020 by six months. The Government will amend the Regulations to give effect to this deferral. However, HMRC has said that although the amended Regulations may not be in force by 1 July 2020, no action will be taken for non-reporting during any period between 1 July and the date that the amended Regulations come into force. There is therefore no expectation that reports will be made in July. HMRC will use the additional time to work with taxpayers and intermediaries on the IT reporting system.

The Law Society has published a useful Q&A on DAC 6 and legal professional privilege. See [www.legalrisk.co.uk/news](http://www.legalrisk.co.uk/news).

## Costs

The SRA has published updated guidelines on compliance with the SRA Transparency Rules including examples. Unfortunately the changes are not identified. We are seeing enforcement action and anticipate more.

Professional and contractual obligations to update a client when a matter escalated far beyond the initial estimate were addressed in *Newman v Gordon Dadds LLP* [2020] EWHC B23 (Costs). Failure to provide an estimate may result in a reduction which could be to a sum lower than would otherwise be payable for work reasonably done by the solicitor at a reasonable rate.

See [www.legalrisk.co.uk/news](http://www.legalrisk.co.uk/news).

## Professional indemnity insurance

The SRA has extended the life of the Solicitors Indemnity Fund for a further 12 months, to September 2021, providing cover for retired solicitors after the automatic six year run-off cover under the Minimum Terms and Conditions.

A note on this, and a brief note to the SRA board on the state of the professional indemnity insurance market can be found on [www.legalrisk.co.uk/news](http://www.legalrisk.co.uk/news).

## Conflicts and confidentiality

In our May 2020 Risk Update we addressed the question whether general knowledge of a client's strategy, policies and procedures constitute 'related matters' can be sufficient to prevent a firm from acting on the basis that they have confidential information. We mentioned an American case involving insurance defence lawyers. Another such case followed in quick succession, *Plein v. USAA Cas. Ins. Co.*, No. 97563-9 (Wash. May 21, 2020.) It was held that for disqualification, the prior matter had to involve confidential *factual* information, which was not the case here.

In a contested Court of Protection application for appointment of a Deputy, the court addressed the fact that the solicitor applicant would charge for her services and instruct her own firm in relation to legal proceedings, creating a possible conflict of interest but considered that this was manageable under a well-established process and is a regular and accepted part of Court of Protection proceedings. See *KKL Executor & Trustee Company Ltd v Harrison* [2020] EWCOP 25.

In *SRA v Mawbey-Shaw and Law Offices UK Ltd* 12037-2019, a judgment of the Solicitors Disciplinary Tribunal on an agreed outcome, allegation 3 against the respondent solicitor was that he acted for buyer and sellers in multiple conveyancing transactions. The buyer was a company in the business of purchasing private property via quick sales at discount prices. According to the First Respondent, the properties in question were usually "blighted" in some way (e.g. defective title; adverse surveyor's report), or a quick sale was needed or desired (e.g. because it was a probate property). The discount was typically in the region of 30% on the market value. (The first part of the agreed outcome concerns an unrelated allegation relating to investment schemes, on which there have been several other recent decisions.) A fine of £17,500 was imposed, with restrictions on practice and costs of £36,650.

See [www.legalrisk.co.uk/News](http://www.legalrisk.co.uk/News) and for conflicts resources, [www.legalrisk.co.uk/Conflicts](http://www.legalrisk.co.uk/Conflicts)

## Data Protection

The European Data Protection Board's annual report 2019 advises that in 2020, the EDPB will aim to provide guidance on data controllers and processors, data subject rights and the concept of legitimate interest.

The European Commission's evaluation report of the General Data Protection Regulation (GDPR), published on 24 June 2020, reported that the Commission is working on a comprehensive modernisation of standard contractual clauses, to update them in light of new requirements introduced by the GDPR. The aim is to reflect the realities of processing operations in the modern digital economy and consider the possible need, including in light of the Schrems II case in the Court of Justice, to further clarify certain safeguards.

As more firms are deploying systems which rely on artificial intelligence, the Information Commissioners' Office has finalised its guidance on *Explaining decisions made with AI*. Links to the above are on [www.legalrisk.co.uk/news](http://www.legalrisk.co.uk/news).