

Large Local Law Society roundtable: The current and developing Economic Crime and AML landscape, guidance changes and observations 2021

The main points of the meeting were;

Economic Crime Levy consultation

- Publication of the government consultation findings has been delayed until June.
- The Law Society (TLS) has responded to the consultation and this can be found on the website [here](#).
- The main objection from TLS is that the levy is an arbitrary tax on the people having to do the work. We have also called for an exemption for small firms and a distinction between regulated and non-regulated work.

Money laundering regulation review

- The Treasury have published pre-consultation information in June. A call for evidence will follow.
- The SI review is looking at changes that can be done quickly and is likely to be followed by an updated SI. The call for evidence is for a more in-depth review of changes and implementation needed on a sustained basis.

Proceeds of Crime Act (POCA)

- The White paper is expected in September/October, waiting for more information.

National Strategy Assessment on Organised crime

- The Legal Sector has never done particularly well in the past in these reviews. The recent assessment is similar, although there are some welcome changes in the language and rhetoric used. The legal sector is not highlighted as being a primary enabler for criminal activity.
- TLS engagement with the Treasury and Home office includes helping them understand how the legal sector works and that not all firms are the same, or deal in international high finance and as a result the rules need to be proportionate.
- The assessment tracks main areas of high offending and serious harm e.g. people trafficking, undermining the economy such as cyber-attacks and complex business structures used to move criminal funds. Using the property market to hide illicit funds by buying UK property is identified.
- There are a number of initiatives ongoing by the National Crime Agency (NCA) and others to tackle the issues identified.

CPS release of change of policy report

- CPS recently announced a change of policy on Section 330 - Failure to report. The current guidance is not what POCA says and law enforcement agencies have said that in its current form it is not working.
- TLS is seeking clarification from the CPS and are speaking to the Home Office about the POCA review. They would be interested to hear members views and experience on the current guidance or changes thought to be needed.

Suspicious Activity reports (SARs)

- Reforms are at final stage. Upgrades to the IT system will be welcomed as currently they are time consuming to submit. Priority is likely to be bulk users such as Banks with Legal users later.

Activity by the SRA

- The SRA are doing a review of AML including the functions of the Money laundering Compliance Officer (MLCO) and Money Laundering Reporting Officers (MLRO). Their

report will include guidance on MLCO/MLRO roles and training. Their report is likely to be published late 2021.

- From visits to firms the SRA have learnt that source of funds checks are being undervalued by firms, but where they are being done, they are proving very valuable. It is also apparent that ongoing monitoring of risk assessments is not being done to the degree it should be, or not at all.
- The SRA are doing a review of all the guidance they have published in the last two years and whether it needs updating.
- The SRA are keen to speak with local Law Societies about AML. If a Law Society would like this, they can request a meeting using the speaker request form on the SRA website.

Legal Sector Affinity Group (LSAG)

- The SRA have done a comprehensive review and update of guidance. This has been informed by their firm visits and input from supervisory bodies e.g. TLS and the AML Task Force.
- The guidance sets out in clear context what must be done (legal requirement), should be done (expectation) and may be done (good if you do but up to firm).
- The Tech. section was strongly influenced by a good report by Financial Action Task Force. It sets out what a system needs to include to meet required standards and outputs. This is a constantly changing area as developments are made in Technology. The Land Registry have just published their own version which is good and could set the standard for the sector.
- Due diligence is the least changed section apart from parts of Source of Funds and Source of Wealth. Long term relationships with customers/clients does not negate the need to do due diligence.
- The section on Governance gives information on appointments of Beneficial Owners and Managers, MLCO and MLRO within a firm. It helps to clarify rules for individuals and give guidelines on what needs to be considered on appointments e.g. resourcing.
- The SRA recognises getting resources for the MLRO and MLCO roles can be challenging. This is why it was decided to set out requirements in the LSAG report to give them some support and leverage with a firm. The important thing is to be proactive, reactive and aware of potential risks.
- A lot of work has already been done on risk assessments. The main learning point is that they must be living documents incorporating any changes to/within the firm and any lessons learnt. This includes client and matter risk assessments.
- LSAG says risk assessments must be reviewed every 1-2 years. It can be more often and as when if that is right for the firm. The SRA recognise the resources available and risks will vary according to firm size and the work they deal with. When a review is done it is important it is noted that it has been completed and what changes were made, or why no changes were needed.
- Firms need to determine where the risks are for them as this will vary according to the type of work they are engaged in and their clients; high value property transactions are likely to a higher risk than divorce proceedings. A risk assessment is specific to the firm.
- Source of wealth checks are likely to be at a higher level and possibly more of a risk than source of funds checks; although this is not necessarily the case. The evidence necessary to check source of funds and source of wealth will vary with the latter likely to be more holistic and deeper. Firms should examine and ask for evidence until they are satisfied and record what checks have been done
- It is recognised that conversations on source of funds and source of wealth can be difficult to do and to help with this there is a statement in the LSAG which can be used by solicitors to show a client that questions have to be asked.