

## Risk Update • September 2022

# Anti-money laundering (AML) Firmwide Risk Assessments: Two risks to note

The first of these is the obvious one – any firm doing business in the regulated sector under The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 must have a firmwide risk assessment (also referred to as a practice wide risk assessment - PWRA), but a number of firms and individuals have been fined by the Solicitors Regulation Authority (SRA) for not having a compliant one in place, and also for not having compliant policies, controls and procedures (PCPs).

We have assisted many international and other large practices in preparing these, including a thorough review of the firm's practice through interviews with key stakeholders. While the Legal Sector Affinity Group guidance suggests that PWRAs should be reviewed every 1-2 years, it also identifies nine other triggers for review, including changes in regulations, guidance, management, practice areas and technology. We are now in a fast-moving era of change: since January 2022 we have posted 16 key documents on our [news page](#) relating to AML alone, including changes to legislation and guidance.

The second area of risk for this issue, which necessitates a review of PWRAs, is proliferation financing: The Money Laundering and Terrorist Financing (Amendment) (No. 2) Regulations 2022 require all firms in the regulated sector to address this in their PWRA from 1 September 2022. We understand that LSAG guidance is expected in due course. In the meantime some assistance can be derived from guidance published by the Financial Action Task Force (FATF) and the Royal United Services Institute; while those relate to risk assessments at a national level, FATF does address the risk posed by Designated Non-Financial Businesses and Professions.

The term 'proliferation financing' has a lengthy definition in the regulation, which includes (but is not limited to) the provision of funds or financial services in connection with the possession or use of, chemical, biological, radiological or nuclear weapons and technology (including dual-use technology) and dual-use goods in connection with such weapons.

Lawyers may query how this is relevant to them: it is rather more relevant than may appear at first sight, particularly when one considers that a ransomware cyber attack may be used by rogue states to raise funds for weapons, and sanctions evasion may also be a risk issue. Trade finance, aviation and shipping may be high risk areas.

The National Crime Agency will be launching a new reporting portal for Suspicious Activity Reports soon to replace the existing SARs Online. Note that it will be essential to print or save a pdf of the final screen, which contains all the data entered, as it will not be possible to retrieve a copy afterwards. There will be a warning but no failsafe mechanism. We have raised this as a concern.

## Register of overseas entities (ROE): Law Society warning

The ROE was introduced under the Economic Crime (Transparency and Enforcement) Act 2022 on 1 August 2022. The ROE requires anonymous foreign owners of UK property to reveal their identities. Anonymous foreign owners of UK property must reveal their identities in order to buy and sell land or property in the UK. Ownership and control must be verified.

The Law Society has issued extensive guidance, *Register of overseas entities: what solicitors should know about verification*. It identifies significant risks and advises –

'There should be no presumption that law firms will conduct verification for ROE purposes. It is anticipated that many firms will not conduct ROE verification. It is also recognised that for many firms it will not be appropriate to conduct ROE verification.'



*Firmwide risk assessments must now address proliferation financing*

*Photo credit: iStock ewg3D*

### In this Issue

- Anti-money laundering (AML) Firmwide Risk Assessments: Two risks to note
- Register of overseas entities (ROE): Law Society warning
- Professional indemnity insurance (PII) and Solicitors Indemnity Fund (SIF)
- General insurance—a warning
- Defensive practice
- Undertakings
- Who owns the file?
- Risk Management in Law Firms: Mitigate Risk and Enhance Firm Success

### 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.*

To sign up for Risk Update, email [info@legalrisk.co.uk](mailto:info@legalrisk.co.uk)

# Professional indemnity insurance (PII) and Solicitors Indemnity Fund (SIF)

The Supreme Court has refused insurers' application for permission to appeal the decision in *Baines v Dixon Coles & Gill* [2021] EWCA Civ 1211, in which it was held that separate dishonesty claims by a partner were not subject to one limit of indemnity under the 'aggregation clause' in the policy which was written under the SRA Minimum Terms and Conditions.

SIF provides indemnity to solicitors and their staff after expiry of the compulsory six years' run-off under the Minimum Terms and Conditions. The SRA has applied to the Legal Services Board to extend the life of SIF until 30 September 2023. That it is still paying claims over two decades after SIF was replaced by the open market arrangements demonstrates beyond argument that it is still serving an important function. Regrettably, and avoidably, its future appears to be in peril.

The deadline for responses to the SRA's Discussion Paper, *Next steps on the Solicitors Indemnity Fund (SIF) and consumer protection for negligence claims*, has closed. Our response explains why in our submission a move to a compensation fund, removing the indemnity for retired solicitors, would be unlawful (and *Wednesbury*-unreasonable), particularly if any shortage of funds is attributable to the £50m (and possibly rather more) taken from SIF in previous years to pay Law Society staff through its pension fund.

Our response is on [www.legalrisk.co.uk/news](http://www.legalrisk.co.uk/news).

## General insurance—a warning

An [article in Strategic Risk](#) warns that businesses and consumers may find themselves underinsured as the Construction Material Price Index increased by 26.4% in one year. Although sums insured on some policies may be increased in line with inflation, that may be at a rather lower rate applicable to consumer or retail prices.

## Defensive practice

For many reasons, even the best insurance arrangements do not provide complete protection against claims. A series of six short articles covering a variety of topics, including limitation of liability, insurance, incorporation and more can be found on [www.legalrisk.co.uk/publications](http://www.legalrisk.co.uk/publications).

## Undertakings

The Law Society has issued a Practice Note on Undertakings which addresses the risks surrounding undertakings given by, or on behalf of, incorporated practices following the decision in *Harcus Sinclair LLP v Your Lawyers Ltd* [2021] UKSC 32 which held that as incorporated practices are not in themselves officers of

the court, they cannot be compelled by the court to perform the undertaking, award compensation, or become subject to potential contempt proceedings in respect of the undertaking. See [www.legalrisk.co.uk/news](http://www.legalrisk.co.uk/news).

## Who owns the file?

We are often asked to advise on entitlement to withhold papers from clients. The Law Society updated its practice note on 26 July 2022 following the decision in *Hanley v JC & A Solicitors Ltd and Green v SGI Legal LLP* [2018] EWHC 2592 (QB), holding that the court has no jurisdiction to make orders under the inherent jurisdiction and/or section 68 of the Solicitors Act 1974 to require the delivery to a client of documents which are the property of the solicitor. See [www.legalrisk.co.uk/news](http://www.legalrisk.co.uk/news).

## Risk Management in Law Firms: Mitigate Risk and Enhance Firm Success

This new book, to which our partner Frank Maher has contributed a chapter, will be published by Globe Law and Business on 30 September 2022. See <https://bit.ly/Riskbook>.

