

Risk Update • November 2023

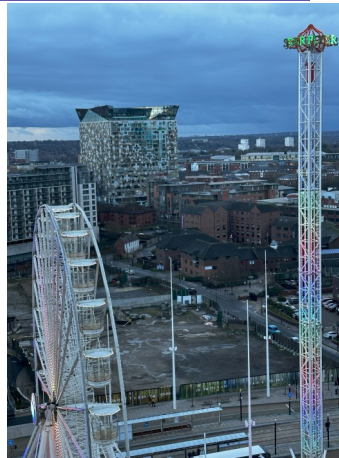
Axiom Ince Ltd

The firm's collapse and the disappearance of an estimated £64m client money has attracted much press interest.

While possible criminal and disciplinary proceedings preclude a public inquiry, some form of independent review of the SRA's regulatory framework and supervision is critical in the interests of establishing confidence in the SRA, both for the public and the profession who pay for it.

Further background and comment can be found in the article by Frank Maher in the [Gazette](#), including a proposal for oversight by a retired High Court judge and a solicitor with recent experience of SRA regulation, possibly a former law firm General Counsel.

The promise in the SRA's announcement that they will make sure they involve relevant stakeholders as they move forward is welcome, but this should include local law societies as stakeholders - and not just The Law Society, whom we have yet to see making the profession's case with much vigour.



A review of the SRA's role in Axiom Ince is needed

Professional indemnity insurance (PII) and successor practices

PII and successor practice issues under the SRA Minimum Terms and Conditions (MTC) have focused minds for those seeking to take on teams from Axiom Ince. The risk issues are not confined to the MTC in our experience and we have advised on the insurance aspects of many acquisitions following collapse of large international (and smaller) firms. An article, *Successor practices for solicitors: Crystal ball required*, is on our website. See www.legalrisk.co.uk/Publications with articles on a variety of other PII practical issues.

We understand that on 29-30 November 2023 the Court of Appeal will hear an appeal against the decision in *Discovery Land Company LLC v Axis Specialty Europe SE* [2023] EWHC 779 (Comm); the first instance decision raised important points under the MTC, including what constituted condoning of dishonesty and aggregation.

Artificial Intelligence (AI)

The State Bar of California has adopted [Practical Guidance for the Use of Generative Artificial Intelligence in the Practice of Law](#) to assist lawyers in navigating their ethical obligations. This may help firms in other jurisdictions drafting their own internal policies.

Anti-money laundering (AML) and Sanctions

Much has already been written elsewhere about Economic Crime and Corporate Transparency Act 2023, which received the Royal Assent on 26 October 2023, and which we will not repeat. In brief, partnerships and LLPs will be criminally liable for the acts of senior managers committing specified economic crime offences, and a new failure to prevent fraud offence applies to large organisations, so firms will need to review their systems and controls and will no doubt do so as part of a wider economic crime prevention plan. We can assist in this.

The Act will also require verification of identity of directors and persons of significant control by authorised corporate service providers, who must be supervised businesses in the regulated sector for AML purposes, or their officers or employees. As many large law firm employees are employed by service companies this raises a question whether they will be able to fulfil this role: we understand that this is being addressed.

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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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The [first commencement regulations](#) have been made bringing certain provisions into force on 15 November 2023 and 15 January 2024.

The SRA has published guidance on Firmwide Risk Assessments and on Client and Matter Risk Assessments with a revised template, now addressing proliferation financing, and its Anti-Money Laundering annual report 2022-23.

The National Crime Agency published guidance on the new SAR portal.

On 16 November 2023 the Financial Action Task Force (FATF) released amendments to the FATF Recommendations to strengthen global asset recovery.

While we know that many firms rely heavily on Transparency International's Corruption Perceptions Index when assessing country risk, it should not be relied upon on its own. The Basel AML Index has been updated for 2023 and the Financial Action Task Force greylist of Jurisdictions under Increased Monitoring was revised on 27 October 2023. (We use a weighted matrix drawing on these and a variety of other sources including the Know Your Country ratings table and the European and UK lists of high risk third countries.)

An article, *A Boundless Threat? The Rise of Organised Crime in the UK*, the first in a series of ten, has been published by the Royal United Services Institute (RUSI).

RUSI has also published *Anti-Money Laundering Supervision of the Professions in the UK: Four Key Challenges and How to Address Them*. One of their four recommendations is that the FCA's skilled person reviews may prove a useful model to follow. We identified this in our May 2017 Risk Update in which we pointed out that fines do not in themselves raise standards of compliance. The SRA could require a skilled person review as part of a Regulatory Settlement Agreement compromising disciplinary action.

We continue to provide legally privileged advice to firms ranging from the largest global firms to smaller practices with difficult problems on client due diligence, source of funds and source of wealth checks, reporting issues, and audits under regulation 21 of The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017. We also provide independent expert reports to assist in defending regulatory investigations and advice on such investigations.

Finally, on sanctions, the Office for Financial Sanctions Implementation updated the Legal Services General Licence on 29 October 2023, doubling the expenses cap in respect of professional legal fees and counsel's fees and setting out reporting requirements.

Links to articles above not otherwise linked can be found on www.legalrisk.co.uk/News.

Data protection

A government fact sheet on the 'UK-US data bridge' for international transfers is [here](#).

Our November 2018 and May 2019 Risk Updates discussed the £500,000 monetary penalty imposed by the Information Commissioner's Office on Equifax which related to international

transfers and a data breach at the UK company's US parent company. The Financial Conduct Authority has now fined the company £11,164,400 for failing to manage and monitor the security of UK consumer data and the manner in which it handled the matter post-breach. Law firms could be similarly exposed to SRA action in such circumstances.

SRA investigations

We represent solicitors on investigations into a wide variety of alleged breaches, including accounts rules, conflicts of interest, anti-money laundering and MeToo cases, and by making out a strong case at an early stage many of these have been closed without further action.

Accounts Rules training

Individuals in some firms, even the biggest and the best, continue to struggle to comply with aspects of the SRA Accounts Rules. A £500,000 fine for non-compliance in 2017 is unlikely to remain the biggest, with at least one major prosecution believed to be in the pipeline in the Solicitors Disciplinary Tribunal against a prestigious City firm. Because of the obligation to make good any client account shortfall, it is one area where limited liability will not protect partners/members. Training is essential for accounts staff, fee-earners and support staff. It can be a dry topic, and although we cannot promise to make it entertaining, we can offer seminars which are 'well received by all and very informative' (London office of US firm), and 'very positive [feedback]; the session was practical/useful and engaging' (mid-size City firm).