

Risk Update • March 2024

Anti-Money Laundering (AML) and Sanctions

1 March 2024 marked 20 years of law firms and a number of other professional firms being in the regulated sector for AML purposes. Few would deny that the compliance environment for professionals has become significantly more complex and hostile.

The legal sector news has been dominated by fines, many on small firms lacking the requisite Practice Wide Risk Assessments (PWRAs), or with inadequate Policies, Controls and Procedures (PCPs), with two small firms being fined over £23,000 each plus costs (rather more than the probable cost of an independent audit). Politically Exposed Persons (PEPs) have given rise to particular problems and firms should consider implementing a review of PEP related open matters and PCPs.

Fines imposed by the Solicitors Disciplinary Tribunal (2023-12481) attracted much press attention, but with little analysis - a £500,000 fine (plus £128,197.48 costs) on a large firm in connection with its shipping practice and £11,900 (with £54,941.77 costs) on a former partner, reduced by 15 per cent on account of 'significant delay' by the Solicitors Regulation Authority (SRA) in pursuing the case. The key failures related to client due diligence (CDD) and source of funds checks – essentially treating multiple parties as one umbrella client and only doing CDD on one of them. There were also failures to verify a belief as to ultimate beneficial ownership, and to verify facts before refunding a client on a matter which was outside the regulated sector.

There have been several changes to the Financial Action Task Force (FATF) High Risk Countries list which now automatically invoke the obligation to apply enhanced customer due diligence under regulation 33 of The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017. Transparency International has published its Corruption Perceptions Index 2023. Links are on www.legalrisk.co.uk/News.

The Financial Conduct Authority (FCA) report, [Reducing and preventing financial crime](#), notes that it has, through the Office for Professional Body Anti-Money Laundering Supervision (OPBAS) sought to drive improvements in the 25 Professional Body Supervisors (PBSs) for anti-money laundering in the legal and accountancy sector, but notes that 'the lack of consistent effectiveness across PBSs indicates that legislative reform is needed to improve standards of supervision'.

Economic crimes

The new offence of failure to prevent fraud under the Economic Crime and Corporate Transparency Act 2023 (ECCTA) is expected to come into force six months after publication of Government guidance which is not expected until the second half of 2024.

Greenwashing is one of a number of developing areas to consider, affecting many areas of commercial life. As The Law Society's guidance note, [Greenwashing: what do you need to know?](#) explains, '[broadly], the term is used to describe untrue or misleading statements made about the environmental performance or impact of a business, product or service'.

By way of example, a complaint has been filed with the European Commission against 17 European airlines for allegedly unfair commercial practices.

While civil claims and civil penalties appear to be the main issue for the present, breaches of civil law can potentially lead also to breaches of the criminal law: the Competition and Markets Authority [Guidance on environmental claims on goods and services](#) (2021) noted that 'The CMA may deal with infringements of consumer protection law using a number of different measures. This includes taking civil action and also criminal enforcement'.

Creative accounting through improper revenue recognition has given rise to criminal proceedings on both sides of the Atlantic and led to the deferred prosecution agreement against Tesco plc. Meanwhile, Ealing Council has secured a £1,283,444



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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.

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confiscation order under the Proceeds of Crime Act 2002 for planning breaches.

Misleading statements or dishonest omissions and delays in certain published information relating to securities are giving rise to civil action by shareholders and others; meanwhile the FCA is introducing an [anti-greenwashing rule](#) for all FCA-authorized firms to reinforce that sustainability-related claims must be fair, clear and not misleading.

The Environment Agency has launched a dedicated Economic Crime Unit to address landfill tax fraud and organised crime groups.

Chainalysis has published its [2024 Crypto Crime Report](#), addressing money laundering, terrorism and sanctions breaches, in particular identifying how cryptoassets are being used to bypass sanctions against DPRK and Iran. So far as terrorist financing is concerned, it notes the use of crowdfunding and social media and highlights the challenge in distinguishing legitimate humanitarian aid.

Sanctions

The SRA has published guidance to help firms assess their exposure to risks associated with the UK's sanctions regime. (See www.legalrisk.co.uk/News/.)

A Post-Legislative Scrutiny Memorandum: Sanctions and Anti-Money Laundering Act 2018 has been prepared by the Foreign, Commonwealth and Development Office and provides a summary and a preliminary assessment of the provisions and implementation of the Sanctions and Anti-Money Laundering Act 2018 ("SAMLA").

Cyber

Press reports of an AI site offering fake ID, including Swiss, Canadian and Austrian IDs, for \$15 are a concern.

An emerging phishing threat identified by the City of London police involves links to a false DocuSign login page which has had a high degree of success.

36 Action Fraud reports relating to Ransomware were identified in January 2024; businesses with 50-249 employees were most affected.

Artificial Intelligence (AI)

The Association of British Insurers has published a useful [guide](#) which may interest those in law firms and other sectors.

SRA

The SRA has launched a [Consumer Protection Review](#) following an increase in the number of interventions and the catastrophic failure of Axiom Ince. One of the options canvassed in the supporting [discussion paper](#) is to phase out the compensation fund and limit the safety net to insurance.

However, by stating that '[firms] can choose to insure against fraud/dishonesty by their staff or other directors, but that insurance can only cover those who were not involved in the fraud', the paper appears to misstate the position under the compulsory Minimum Terms and Conditions of Insurance, which *require* such cover (up to the prescribed minimum limit of £2m/£3m).

The scope of the Legal Services Board review of regulatory events leading up to the SRA's intervention into Axiom Ince has been published but notably with little publicity. Given the large number of SRA fines triggered by desktop reviews of firms' AML compliance, and in particular their PWRA and PCs, it is to be hoped that the review will examine why as a minimum such a review was not undertaken when Axiom DWFM, essentially a high street firm, announced that it was taking over the international practice of Ince which had many areas of practice, such as shipping (the risks of which were apparent to the SRA from the case referred to above, even if it did not give rise to breaches at Ince), with which Axiom DWFM must have been wholly unfamiliar.

Data protection: international transfers, mental health guidance

Firms relying on the old EU standard contractual clauses issued by the European Commission under the Data Protection Directive for international transfers of personal data should review their arrangements as these can no longer be relied upon from 21 March 2024.

The Information Commissioner has issued guidance on Information sharing in mental health emergencies at work.

Professional indemnity insurance (PII)

Approximately a third of law firms in England & Wales renew their insurance on 1 April 2024.

We have advised many firms on coverage issues arising from inadequate disclosure in the proposal form. Many firms simply check with partners for details of notifiable circumstances and claims, yet many proposal forms contain warranties that the proposer has sought confirmation from *all* employees, and this includes support staff.

This and a variety of other hotspots, including aggregation, policy limits, and claims outside the course of practice, were covered in a recent article by Legal Risk partner Frank Maher, *Mind (the SRA) insurance gaps* (New Law Journal, 2024, 174(8054), 7). © Legal Risk LLP 2024