


RICS Anti-Money Laundering Training Seminar

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RICS Bristol

Jo Creamer & Farran Grinsted
Professional Practices



Pinsent Masons

Speakers

Jo Creamer



Over 9 years experience in the highly regulated Professional Services sector.

Regulatory Manager at the SRA responsible for the regulatory oversight of the top 200 law firms

Part of the SRA's Anti Money Laundering team which undertook AML compliance firm inspections.

Farran Grinsted



Over 3 years experience in the highly regulated Professional Services sector.

Assisted the Professional Practices team with Anti Money Laundering training, file audits and self reports.



What we are going to cover

- Legislation overview
 - Proceeds of Crime Act 2002
- Money Laundering Regulations 2017
 - Offences
 - Defences
- Key Points
 - Client Due Diligence – new requirements
 - Risk assessments – completion of individual matter risk assessments
 - Beneficial owners
 - PEPs and Sanctions
 - E-ID searches (smartsearch, worldchecker)
- Monitoring and refreshing
- Penalties
- Criminal Finances Act 2017
- What can you do?

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Definition of money laundering

- The process by which the proceeds of crime, and the true ownerships of those proceeds, are changed so that the proceeds appear to come from a legitimate source.
- Money laundering can arise from small profits and savings from relatively minor crimes, such as regulatory breaches, minor tax evasion or benefit fraud. A deliberate attempt to obscure the ownership of illegitimate funds is not necessary.
- There are three acknowledged phases to money laundering:
 - Placement
 - Layering
 - Integration

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Why do we need to know about this?

- 4th MLD
- Highly regulated sectors
- Estate agency work includes the sale and lettings of properties
- Property developers fall within broad definition of estate agency work
- HMRC – supervisor for estate agent

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Legislation

- Various EU directives 1) 1991 – legislation 2) extension beyond drug trafficking to all crimes 3) 2007 – enhances 2001 terrorist financing, PEPs, money service bureau, risk based approach, anonymous accounts, monitoring and supervision of all institutions, collection of statistics and feedback
- Money Laundering Regulations – 2017
 - The money laundering terrorist financing and transfer of funds
 - Information on the payer regulations, 2017
 - Knows – actual knowledge
 - Suspects – a possibility which is more than fanciful – that the relevant fact exists
 - Reasonable grounds to suspect – an objective test
- Proceeds of Crime Act 2002 (ML reporting and offences)
- Terrorism Act 2000 offences – money or property used for purpose of terrorism
- Money Laundering Directive 1991, 2001, 2005 & 2017
- Serious Crime Act 2015
- Criminal Finances Act 2017

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Proceeds of Crime Act 2002

- Proceeds of crime does not just relate to money
- Criminal property – any property which is or represents a persons benefit from criminal conduct where the alleged offender knows or suspects that it is such
- Property – whether situated in the UK or abroad including money, real and personal, things in action, intangible property and an interest in land or a right to any other property.
- Criminal Conduct – offence in any part of the UK or would constitute an offence in any part of the UK if it occurred there
- Overseas criminal conduct – not included if known or believed on reasonable grounds that it is not an offence in the country it occurred AND
- As long as it would attract less than 12 months imprisonment if it had occurred here

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Proceeds of Crime Act 2002 – Part 7

- Concealing:
 - Offence if conceal, disguise, convert, or transfer criminal property or remove criminal property from England and Wales, Scotland or Northern Ireland
 - A solicitor could do this by,
 - Purchasing assets with criminal money
 - Transferring criminal money through the client account
- Arrangements:
 - Offence if enter into or become concerned in an arrangement which they know or suspect facilitates the acquisition, retention, use or control of criminal property by or on behalf of another person
- Acquisition:
 - Commits an offence if they acquire, use or have possession of criminal assets
 - Defence if provided 'adequate consideration' for the criminal property

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Proceeds of Crime Act 2002 - Section 330-332

- Failure to disclose – S.330
 - Applies to **ALL** employees in the regulated sector
 - Where they receive information in the course of business in the regulated sector which causes them to know or suspect that another person is engaged in money laundering
 - Must report to the MLRO – report to UK FIU
 - MLRO
 - Deputy MLRO's

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Money Laundering Regulations 2017

Key Points

- Enhanced risk assessments
- Changes to internal controls
 - Nominated officer
 - Internal audit
- Client Due Diligence
 - Client/matter risks assessment
 - Domestic PEPs
 - Trust register
 - Enhanced DD – loss of simplified blanket exemptions

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Money Laundering Regulations 2017

Key Points

- Super regulator OPBAS (Office for Professional Body Anti Money Laundering Supervision)
- Significant SRA interest

Policies:

- CDD (Regs 27 & 28)
 - Existing clients (Reg 27(6))
 - Apply CDD on risk sensitive basis
 - Any changes in circumstances?
 - Change of ID/UBO
 - Inconsistent transactions



Money Laundering Regulations 2017

Key Points:

- Client Due Diligence
 - Identity check
 - Verify client
 - Matter risk assessment
 - Assess and where appropriate obtain information on purpose and intended nature of instructions
- Corporate entities (Reg 28)
 - CDD now includes identifying board members
 - Also applies to listed companies



Money Laundering Regulations 2017

Key Points:

- Beneficial Owners (Reg 28(4))
 - Identify UBOs
 - Take reasonable steps to verify UBOs
 - Take reasonable steps to understand control/structure

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Money Laundering Regulations 2017

Key Points:

- Review existing records
- Ongoing monitoring
- Enhanced Due Diligence (EDD)
 - High risk cases identified from risk assessment or regulator
 - PEPs
 - Any transaction or relationship with a person/entity established in a high risk jurisdiction country
 - Any case where:
 - Transaction is complex or unusually large
 - Unusual pattern of transactions
 - No apparent economic or legal purpose
 - Any other case which by its nature is high risk

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Money Laundering Regulations 2017

More Enhanced Due Diligence

- Explanation of background and purpose of transaction so far as reasonably as possible
- Verify independently – WorldChecker/Smart Search
- Risk Factors
- Clients
 - Unusual circumstances
 - Resident in high risk areas
 - Vehicle holding personal assets
- Geography
 - Countries without AML controls

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Money Laundering Regulations 2017

Key Points:

- Politically Exposed Persons (PEPs)
- Risk management systems to identify PEPs
 - E-ID searches (Smartsearch and Worldchecker)
 - Sanctions check included within electronic searches
 - Changes in definitions
 - Family member or known close associate
 - PEP by association

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Money Laundering Regulations 2017

Key Points:

- Standard Due Diligence (SDD)
 - Can apply to particular business relationship or transaction
 - If lower degree of risk
 - Take account of firm's risk assessment and information provided by the Regulator
 - Record keeping 5 years after the end of business relationship

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Criminal Finances Act 2017

Part 1 – Proceeds of crime

- Unexplained wealth orders

- Interim freezing orders

- Disclosure orders
 - Extended to include ML investigations
 - MAY be aimed at law firms/individuals suspected of holding specialised information relevant to a ML investigation
 - Does NOT override LPP but does override client confidentiality

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Changes to AML Reporting Regime

Part 2:

- Extension to moratorium period (7 working days current consent)
- NCA can now apply for 31 days extension up to 6 x (180 plus days)
- Tipping off concerns e.g. client communications during this extended period
- Information order – Magistrate Court further information on a SAR from regulated search

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Criminal Finances Act 2017

Part 3 – Failure to prevent facilitation of tax evasion

- Applies to both UK and foreign tax evasion
- Does not apply to individuals (only to corporate bodies, including partnerships)

Case Study – Firm A

Agents instructed by private individual clients. At point of raising invoice, individual requests invoice to corporate entity. Potential VAT fraud.

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Criminal Finances Act 2017

- Reasonable Prevention Procedures
 - Matter risk assessment
 - Includes tax evasion risk assessment
 - Geographical risks (no AML controls/high levels of corruption/sanctions)
 - Sector risks
 - Use of intermediaries
 - Training
 - Monitoring and review

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Money Laundering offences

- Tipping off – Strict Liability:
 - Offence to tell a person a report has been made to UK FIU
 - If sharing that information is likely to prejudice an investigation into that report
- Defences to tipping off:
 - Telling another solicitor where it relates to clients of both parties or a transaction they are involved in for the purpose of prevention
 - Telling the client and for the purpose of prevention

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Questions to consider

- Key questions to consider when taking instructions from new clients:
 - **Who** are we acting for?
 - **Why** are we being asked to do this?
 - **What** are we being asked to do
 - **Where** is the money coming from?

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ML Regs 2017

- Consent defence?
- The amending directive contains new requirements on corporate trust and company providers to disclose details of trust beneficiaries to publicly accessible central registries administered by each member state's government
- Unexplained Wealth Orders
- Forfeiture rights over money in bank accounts and moveable objects such as jewellery
- Illicit enrichment offence
- Increasing the maximum penalty for breaches of a financial sanction prohibition from 2-7 years
- Changes to the civil recovery powers to allow administrative seizure up to £100,000
- Enabling regulators to designate entities as a 'primary money laundering concern' meaning once a designation is made, banks and other firms are required to take special regulatory precautions in dealing with that entity

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Client Due Diligence – What you need to do

- Identify and verify client by individual means – E-ID as default. No certified ID unless client is non-UK
- Identify and verify beneficial owners
- Obtain information on the purpose and intended nature of business relationship
- Standard– low and medium risks only
- Enhanced DD required if;
 - Client not dealt with face to face
 - Client who is a politically exposed person (PEP) – PEP by association
 - **Any other situation which may present a higher risk of money laundering**
- Source of funds
- **No partner verification or reliance** – if in doubt ask
- Risk assessment on client and matter – outset and throughout

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Politically Exposed Persons (PEPs)

- Entrusted within preceding 12 months with one of the following functions by a community institution, international body or state other than the UK
- Head of state, Government, Minister, deputy or assistant
- Member of Parliament
- Member of Supreme Court, high level judicial body
- Ambassador, charge d'affairs and high ranking officer of armed forces
- Member of administrative, management or supervisory bodies and state owned enterprises
- Plus family members and known close associates – PEP by association
- Extended to domestic PEPs
- Include PEP search to all E-ID (Smartsearch/Worldchecker) search requests

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Sanctions

- Make economic resources available to or deal with property belonging to anyone on sanctions list
- Defence – believed not on list or obtained license from HM Treasury
- The Treasury's Asset Freezing Unit maintains a consolidated list of financial restrictions in force in the UK <http://www.hm-treasury.gov.uk/financialsanctions>
- The Sanctions policy is contained within the office manual which includes a link to the sanctions list
- FATF also have a non co-operative countries and territories list – no countries on there at present
- Full list of high risk jurisdictions <http://www.fatf-gafi.org/countries/#FATF>
- Include sanctions search for all matters where risk assessment has concluded high risk

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Monitoring and refreshing

- Every 3 years (minimum)
- Triggers;
 - High risk area
 - Document out of date
 - Change in circumstances or personal details
 - Suspicions of ML or TF, e.g. unusual transactions/does not fit with previous behaviours

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What can you do?

- Attend training
- Read AML policy
- Ask advice
- Risk assessment for every matter
- Be alert to;
 - New clients
 - Non face to face
 - PEPs
 - Clients from high risk jurisdictions with concerns about organised crime and corruption
 - Cash Businesses
 - Known convictions/associations
 - Complicated business structures
- Red flags/warning signs
 - Unusual transactions

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What's coming up?

- SRA inspections are taking place NOW
 - Firm interviews
 - No notice review of fee earner files, including in depth review of CDD and fee earner SRA interview.
- Ongoing scrutiny of professional services sector by OPBAS
- Legal Profession focus
 - Client banking
 - High risk jurisdictions
 - Sham Litigation

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