

Simple Guide to Anti-Money Laundering Regulations and Associated Legislation

Because the Accounts Rules have included an obligation to comply with Money Laundering Regulations since 1994, the Simple Guide to the Accounts Rules have dealt with these matters since that time. In February 2002, the Rules and Guidance Notes were updated. Since then, the Proceeds of Crime Act 2002 was introduced and it now affects the solicitor's work. As does the Money Laundering Regulations 2003 effective from 1 March 2004. The impact of recent legislation has resulted in a decision being taken to give more prominent exposure to Anti-Money Laundering systems and helpful information. Useful web-sites will be linked up to keep matters fully up to date. The revised index of information and sources are available as set out as follows:-

1. List of original Money Laundering legislation considered to be helpful as at 1.5.03
2. Extract from the Solicitors (Scotland) Accounts etc Rules 2001 – Rule 24
3. The Accounts etc Rules 2001 – Guidance on Money Laundering Regulations
4. Proceeds of Crime Act 2002 – Money Laundering implications
5. First Meeting Checklist – New Clients
6. Verification of Identity Checklist and guidance notes.
7. Source of Funds Flowchart – cash
8. Source of Funds Flowchart – non cash payments
9. Professional Practice Advice
10. Financial Action Task Force – List of non compliant countries and territories
11. NCIS Disclosures – Standard Forms
12. Terms of Business letter – style including Money Laundering guidance.
13. MLRO report to partnership.
14. Specific guidance on Managing the task – for MLROs and Senior Partners

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This Guide was last updated 23 June 2005

Money Laundering Regulation – Recent Developments

Since the Money Laundering Regulations came into force in April 1994, followed by the Solicitors (Scotland) Accounts Rules in May 1994, Scottish solicitors have had to take account of these rules and regulations. The pace of change has recently increased significantly and the following pieces of UK legislation have had some impact:-

- Financial Services & Markets Act 2000 – December 2001
(Link: www.fsa.gov.uk/fsma/data/fsma/act/act_index.htm)
- Proceeds of Crime Act 2002 – February 2003
(Link: www.legislation.hmso.gov.uk/acts/acts2002/20020029.htm)
- Money Laundering Regulations 2003 – March 2004
(Link: www.legislation.hmso.gov.uk/si/si2003/20033075.htm)
- 2nd European Directive
(Link: http://europa.eu.int/eur-lex/pri/en/oj/dat/2001/l_344/l_34420011228en00760081.pdf)

This is not a complete list of the legislation which may have implications for the anti money laundering regime but they are the key sources for these guidance notes.

Solicitors' (Scotland) Accounts etc. Rules 2001

Rule 24 – Money Laundering

1. Every Solicitor shall in respect of all other business carried on by the solicitor comply with the provisions of the Money Laundering Regulations as if such other business constituted relevant financial business.
2. For the avoidance of doubt, the Rule is without prejudice to the application of the Money Laundering Regulations to relevant financial business or other statutory requirements.

The Accounts etc Rules 2001

- Guidance on Money Laundering Regulations

Under Rule 24, the Money Laundering Regulations, which came into force on 1st April 1994, and were updated in March 2004 apply to all aspects of a solicitor's work, whenever clients' money is being handled. New legislation, the Proceeds of Crime Act 2002, now requires disclosures to NCIS even if a transaction does not proceed or a third party is involved. This is a significant change in the reporting responsibilities.

The Regulations are intended to prevent the proceeds of all unlawful activities, including Inland Revenue and Customs & Excise frauds, being legitimised by being applied to carry out legitimate transactions.

The scope of the Regulations is such that almost every aspect of a solicitor's normal workload maybe affected by the need to introduce anti-money laundering procedures within the firm.

What do the Regulations apply to?

- to transactions which involve the payment by or to or on behalf of the client of an amount of €15,000 or more, and to any amounts which appear to be linked with others where the aggregate of the amounts involved is in excess of € 15,000;
- if you suspect that your client is engaged in money laundering, or that a transaction is being carried out on behalf of someone else who is engaged in money laundering;
- to every case where the firm forms or resolves to form a business relationship.

The terms "relevant financial business", "business relationship" and "one-off transaction" are defined in the Regulations. The definitions are wide and any transaction which carries a total value of €15,000 or more, is likely to be subject to the Money Laundering Regulations.

Can you give any help regarding the categories of work where Money Laundering Regulations will apply?

Solicitors are potentially at risk of carrying out money laundering on behalf of clients in many common areas of work. Great care therefore needs to be taken when accepting and following instructions particularly when these cover both the receipt and disbursement of client monies. Knowing your client and understanding their financial position is now even more important in terms of the Proceeds of Crime Act 2002. The following general comments may be helpful:-

- a. **Conveyancing.** In both purchase and sale property transactions, consideration needs to be given to the proper identification of clients and source of incoming funds. This is particularly important when a purchase of property is being contemplated. If funds are being received from the identified clients' own bank account, then no further checks on the source of funds are necessary.

Any changes to this arrangement, particularly when carried out without reasonable explanation and close to the settlement date require to be considered, particularly if funds are being introduced from a third party.

Purchasing a property in nominee name for the benefit of an undisclosed principal also requires to be considered carefully to ensure you have an official owner properly identified.

Ownership of heritable property and land is a very desirable target for money launderers. Setting up a number of unnecessary steps in creating final ownership or holding the title in a corporate vehicle is a popular device employed by money launderers.

The simple step of providing funds as a deposit for a substantial conveyancing transaction, then cancelling the project and seeking recovery of the funds to a third party's nominated account is another a popular device to use the solicitor to achieve the money launderer's ends.

- b. **Trusts and Offshore Investment vehicles.** The creation of specialist trusts or other corporate structures sometimes in an offshore jurisdiction, in such a way as to obscure the true beneficial ownership of funds or assets is also a popular target for money launderers. Particular care should be taken in dealing with monies which are being placed offshore as part of a tax planning regime. Tax avoidance is legitimate but tax evasion constitutes a crime and would fall foul of the Money Laundering Regulations.
- c. **Executries.** This is much less likely to be an area of concern. Unusual instructions from beneficiaries or legatees regarding the payment of funds to their order should be reviewed, particularly if the sums are in any way substantial.
- d. **Investment Business.** This is specifically caught under the Money Laundering Regulations and must always be handled with particular care.
- e. **Matrimonial and Family Work.** The placing of funds in the name of a spouse or children is common place. First stage enquiry regarding such arrangements should always be made and a proper note of any explanation given should be included in the file.

Why am I a target for money launderers?

Solicitors should always be conscious of the real benefits to money launderers of having funds passed through a solicitors' client bank account on the way to the next level since solicitors' funds are deemed to have been thoroughly vetted on receipt. Particular care should be paid to any last minute change of instructions, unusual or unnecessary arrangements or the use of third party names in connection with normal commercial arrangements.

How can I minimise these risks?

In all circumstances you should make a full note of your enquiry and answers in connection with client identification and source of funds. Remember this involves a two stage check – of both clients and their money. You should also make a note of any concerns which you may have raised at the time and fully record the client's response. This record is important to you and may in fact become very significant at a later date in circumstances where investigations are being carried out under the Proceeds of Crime legislation

What do I have to do under the Regulations?

- verify the identity of every person with whom you intend to form a business relationship, or carry out a one-off transaction;
- maintain record keeping procedures showing details of all transactions for each client;

- implement internal reporting procedures;
- train all relevant staff.

Do I have to identify clients?

Yes - if satisfactory evidence of the identity of new clients is not obtained then the business relationship or one-off transaction as the case may be shall not proceed any further.

When is evidence of identity satisfactory?

When it is reasonably capable of establishing that the client is the person he claims to be; and

when the person who obtains the evidence is satisfied, in accordance with the procedures maintained under the Regulations, that the evidence does establish that the client is the person he claims to be.

For **individual clients** it is suggested you obtain:-

- the true name and/or names used
- current permanent address, including postcode
- "wherever possible" the date and place of birth
- a document from a reputable source which has a photograph of the applicant e.g. a current valid full passport or national identity card or new style drivers licence should be requested and the number recorded.

other suggestions:-

- check the voters' roll
- make a credit reference agency search
- see an original recent electricity, gas, telephone, council tax bill or bank statement
- check a local telephone directory
- visit their home.

Dealing with young people or disadvantaged individuals may require further enquiries to be made to confirm their identity.

For **corporate clients**

No specific steps are needed if clients are:-

- a listed company or a subsidiary of a listed company;
- a private company or partnership one or more of whose directors/partners are already known to the firm.

Steps are needed if clients are:-

- an unquoted company or a partnership and none of the directors/partners is already known, then the firm should verify the identity of one or more of the principal directors/partners and/or shareholders as applicable as if they were individual clients see above.

It is suggested you also obtain copies of:-

- Certificate of Incorporation/Certificate of Trade or equivalent.
- And perhaps for Companies their latest report and accounts (audited where applicable).

How do I go about deciding if I need to comply and also in identifying new clients?

Common sense.

However, if in doubt there is a style of Evidence of Identity Form at section 5.

With the new regulations, more people are involved in anti-money laundering checks. Can I accept introductions for new clients from regulated persons?

The regulation requires you to be satisfied as to the new client's identity. This allows you to decide on the extent to which you are prepared to accept assurances from introducing businesses. If the business is not regulated under the Money Laundering Regulations you should always make your own checks. If the introducer is regulated you may decide to accept their checks as adequate. In this situation, always obtain notarised copies of their identification documents for your records.

What checks should be made on client funding?

You should check the source of funds by discussing the client's plans to fund the transaction. Any monies due to be paid to you by the client should be sourced to a UK bank account in the client's own name, wherever possible. Place a copy of the client's cheque in the file as part of your file records.

What if the funds are not drawn on the client's own bank account?

There is a simple flowchart attached to these notes under sections 6 and 7. Use then to help your checking system. Extra enquiries are needed if the funds are provided in cash, bank drafts or third party cheques. **BE ALERT TO LAST MINUTE CHANGES TO THE SOURCE OF FUNDS – THIS IS A COMMON PLOY USED BY MONEY LAUNDERERS.** Identify any third party who is funding the transaction.

Is it ever safe to accept cash?

Yes – if you are told at the start about cash being used by the client and you have made reasonable enquiries about the source. Record the explanations and your reasons for being satisfied in the particular circumstances.

Be particularly aware of the tax evasion risks if asked by clients to accept cash in any significant amounts.

What else should I be looking out for as suspicious circumstances?

In the case of new clients, remember the basic requirement to know your client's Financial position. Other business interests, property ownership etc are all important i.e. more than just the specific business being brought to you. This allows you to gauge what is normal/suspicious for each individual client.

WARNING SIGNS –

- An address c/o a third party
- Mobile phone line as only contact
- No contact address
- Evasive answers or a failure to answer your questions.
- Delays in producing funds and/or
- Switching the source of funds i.e. Producing a Bank Draft instead of a personal cheque
- Being asked to hold substantial funds without a clear purpose
- Being asked to issue the client funds for a different purpose – such as buying expensive cars, boats or other luxury items which do not need a solicitor to be involved in the normal course of business

ALSO - watch out for sudden affluence on the part of existing clients or being asked to participate in creating tax planning structures where tax evasion may be a factor.

Any other advice about what constitutes a suspicious transaction which should be reported to the Money Laundering Reporting Officer?

Always take time to look at the big picture as far as your clients are concerned. In taking on new work or a new client it is best practice to get adequate background notes of income streams – employment, businesses or investment vehicles. Carrying out these checks will help to understand your clients' needs and type of legal/financial services which are likely to be required. If the client is an established businessman or-woman, be sure to check as to other solicitors who are also retained by them. All these enquiries are meant to help you to understand your client and their legal needs. It will allow you to advise them properly. It may also help with any concerns leading to suspicions which may arise during the transactions. Detailed enquiries made at the early stages may provide the answers to concerns which develop at a later stage. If you have any cause for concern, review the file and discuss with the MLRO. There are some examples of money laundering transactions taken from real cases included at section 8 of these notes. Information about foreign jurisdictions with high risk assessments as identified by Financial Action Task Force publications can be found via the Society's web-site – www.fatf-gafi.org/

What should I do if I receive funds from a suspicious source where I might be deemed to "know" that the money belongs to a third party other than my client?

This raises the prospect of a constructive trust being created. This is a complex area of civil law, and creates a risk of your becoming in breach of trust by handling the funds in a manner which is detrimental to the rights of the original owner. A suspicion about funds arising from a fraud or other criminal activity will result in having to consider the question of whether to act or not. If you find yourself in such circumstances, take advice from a suitably experienced solicitor. Advice on such matters may include:-

1. Whether to obtain and implement NCIS permission to proceed.
2. Whether to proceed on obtaining permission from NCIS.
3. Whether to apply to the court for directions.

What records do I have to keep and for how long?

The evidence of identity needs to be kept for at least 5 years from completion of the relevant business or transaction concerned. This can either be contained in a fact sheet in each file or alternatively in a central record, filed in such a way as to make future reference possible. Remember the Accounts etc Rules general time limit of 10 years for accounting information.

Does the new Proceeds of Crime Act affect my position of my records?

Yes. The Act does create specific powers to allow an investigation of your client accounts, files, and records. It is important to keep detailed records including notes of meetings and telephone calls. An examination of these records will expect to find explanations or evidence which demonstrate your reasonable enquiries made of the client at the appropriate time. It also requires you to obtain permission to proceed with any suspect transaction.

For further advice on this see section 4 of these notes.

Do I have to have a Money Laundering Reporting Officer?

Yes.

What do I have to tell the Money Laundering Reporting Officer?

Any information or other matter which comes to the attention of the person handling relevant financial business which in the opinion of the person handling that business gives rise to a knowledge or suspicion of money laundering.

What does the Money Laundering Reporting Officer have to do?

Consider all such reports and any other relevant information and decide if this gives rise to a knowledge or suspicion of money laundering. If so pass that information to NCIS (the National Criminal Intelligence Service). Once a disclosure has been made, permission to proceed must be obtained. This will be prioritised if you make a disclosure on the appropriate form under the Proceeds of Crime Act 2002. A period of up to seven days may be needed to obtain consent.

How should this information be passed?

Use the style of form in section 10.

In serious cases, telephone or fax NCIS duty officer for guidance on how to proceed with a suspicious transaction. In all such circumstances advice/permission to proceed is essential.

Telephone Number: 020 7238 8607

Fax Number: 0207 238 8286

What else should the MLRO do?

Keep a record of what he/she decides to do and why.

What happens if I do not comply?

Failure to comply with the Regulations constitutes a criminal offence, punishable by a fine and/or imprisonment for a term of up to two years. The new Proceeds of Crime Act 2002 carries penalties of up to 14 years and/or fines.

Proceeds of Crime Act 2002

How does this Act affect Solicitors?

It is mainly targeted at recovery of assets which have been funded by the proceeds of criminal conduct. This is a very wide definition – all conduct which contributes an offence in any part of the UK. There is no *de minimis* limit. It covers actings abroad which would be an offence if done here, and includes tax evasion. Routine transactions may fall into this wide pool of business and may easily form part of a money laundering scheme.

We already have to comply with Money Laundering Regulations. Why is this any different?

The consequences of the Act have made it necessary for solicitors to improve the quality of their records and make more detailed enquiries into a client's background. This is explained more fully at a later stage in these notes.

What consequences are there for solicitors?

The Act sets out a range of offences:-

- Concealing – Section 327
- Assisting with arrangements – Section 328
- Acquisition, use and possession – Section 329
- Failure to disclose – Section 330 – 332
- Tipping off – Section 333

Being familiar with terms of these Sections is important. Sections 330 – 333 carry a penalty of a fine and imprisonment for up to 5 years. Other Sections may bring a sentence of up to 14 years plus a fine.

Failure to disclose is not a familiar term – what does it entail?

This is a new offence where a person knows or suspects or "has reasonable grounds" for knowing or suspecting.

Reasonable grounds would include:-

- Turning a blind eye to the obvious
- Recklessly failing to make enquiries
- Negligently failing to assess the facts.

Note – The assessment is made by reference to the information available at the time, the individual's experience and awareness, actions and inquiries, training given and comparison to a peer group. "The reasonably competent solicitor". It is therefore important to take all reasonable steps to know your client's business circumstances and understand the underlying reasons for the transactions.

If I am not the MLRO what do I have to do to make a disclosure?

If you disclose your suspicions to your MLRO and record the fact that is your responsibility concluded. The MLRO has to consider the whole facts and disclose the position or not, according to the situation.

When do I have to make proper enquiries and how much more information do I need?

Ask all the relevant questions at the earliest stage of any transaction. If you are instructed by an existing client after some years without contact – recheck the whole position. Be sure to enquire as to the client's general financial background, and specifically check the intended source of funds to be produced later in the transaction. Emphasise the fact that changes late in the day may affect your ability to proceed with the contract. Include a reference to this in your Terms of Business letter. *See the style under Section 11 of these notes.*

If I am suspicious only because of last minute changes – what can I do?

Fax your disclosure to the NCIS Duty desk and follow up by telephone. Keep in regular contact until you have the permission to proceed.

NCIS Disclosure Form can be found at: www.ncis.co.uk/downloads/Disclosure

Duty Officer –

Telephone No. 020 7238 8601

Fax No 020 7238 8286

FIRST MEETING CHECKLIST – NEW CLIENTS

Have you clear instructions → NO → **Do Not Proceed**

↓ YES

Do you have experience of the work → NO → Consider Reference to suitable solicitor → **Do Not Proceed**

↓ YES

Do you have full name and address → NO → Can you obtain and verify → NO → **Do Not Proceed**

↓ YES

↓ YES

Have you copy documents on file → NO → Agree deadline for production
↓
Obtained → NO → **Do Not Proceed**

↓ YES

←

YES

←

→

NO

→

Do Not Proceed

Terms of Business explained and accepted → NO → **Do Not Proceed**

↓ YES

Client finance - employment details → NO → Self-employed → Other categories agreed → NO → **Do Not Proceed**

↓ YES

↓ YES

↓ YES

Note fully - Income streams - Assets/Borrowings	→ NO →	Do Not Proceed
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↓ YES

Note and clarify unusual aspects of the finance or business proposed	→ NO →	Do Not Proceed
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↓ YES

Commence acting and issue Terms of Business

Verification of Client Identity Checklist for client – Name: _____

A. Evidence not obtained – reasons:-

- 1. Client previously identified in:- MonthYear.....
 - 2. Client identified personally by – Name_____
 - Position_____
 - 3. Other - state reason fully _____
-

B. Evidence obtained to verify name and address

- Full national Passport ▶
 - Full National driving licence ▶
 - Pension Book ▶
 - Armed Forces ID Card ▶
 - Signed ID Card of employer known to you ▶

 - Young person NI card (under 18 only) ▶
 - Pensioner’s travel pass ▶
 - Building Society passbook ▶
 - Credit Reference agency search ▶
 - National ID Card ▶
 - Copy Company Certificate of Incorporation ▶

 - Gas, electricity, telephone bill ▶
 - Mortgage statement ▶
 - Council tax demand ▶
 - Bank/Building Society/credit card statement ▶
 - Young persons medical card (under 18 only) ▶
 - Home visit to applicants address* ▶
 - Check of telephone directory* ▶
 - Check voters roll* ▶
- *Suitable for proof of address only.

C. Evidence obtained for unquoted company or partnership

- Certificate of Incorporation or equivalent ▶
- Certificate of Trade or equivalent ▶
- Latest report and audited accounts ▶
- Principal shareholder/partner ▶
- Principal director ▶

I confirm that:-

- a) I have seen the originals of the documents indicated above and have identified the above Customer(s), or
- b) In accordance with the Regulations, evidence is not required for the reasons stated.

Signed _____

Date _____

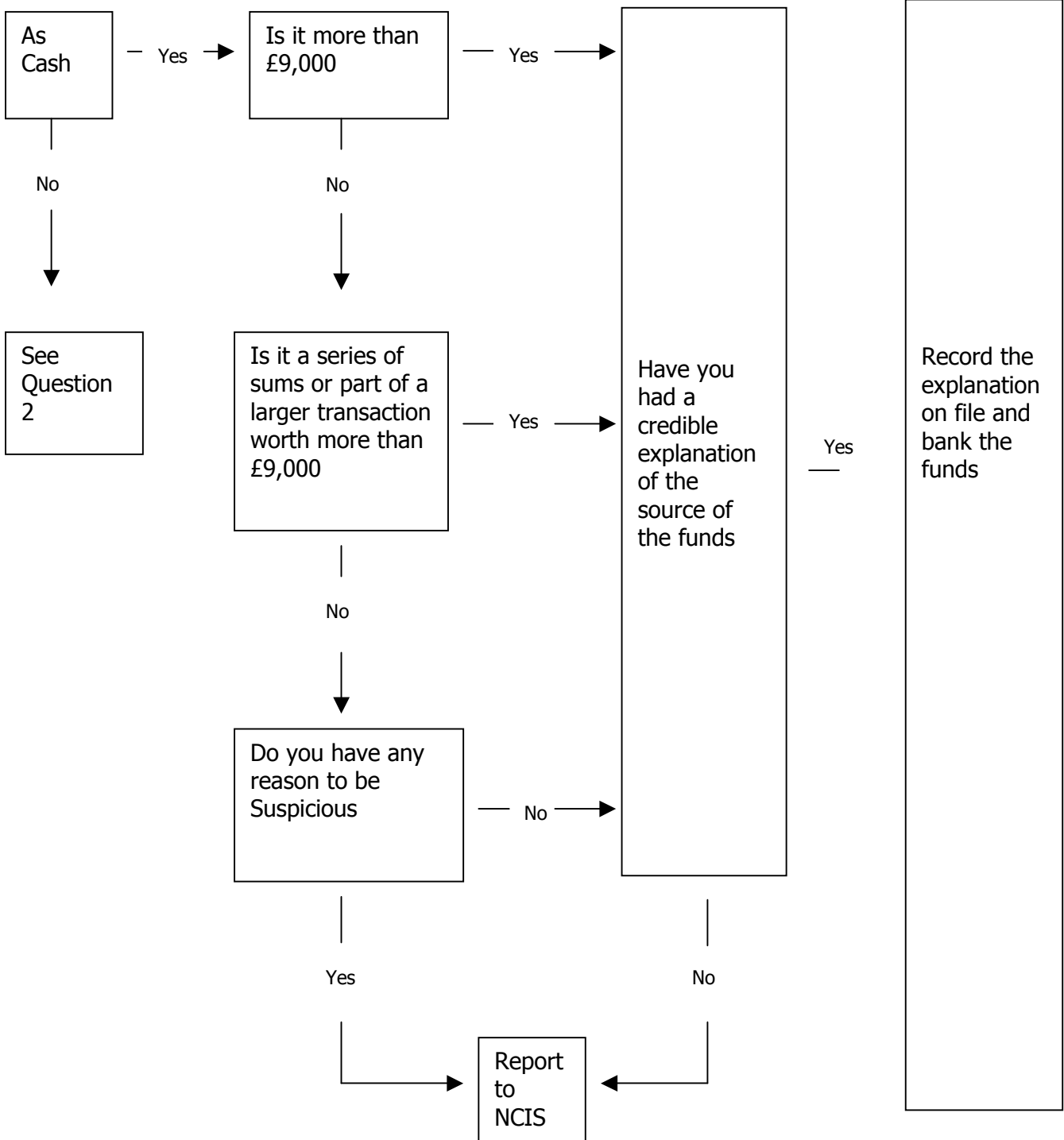
MONEY LAUNDERING CHECK LIST

Source of Funds

If you have properly identified the new client, this flow chart should be used to ensure that the appropriate level of checking is applied to the funds.

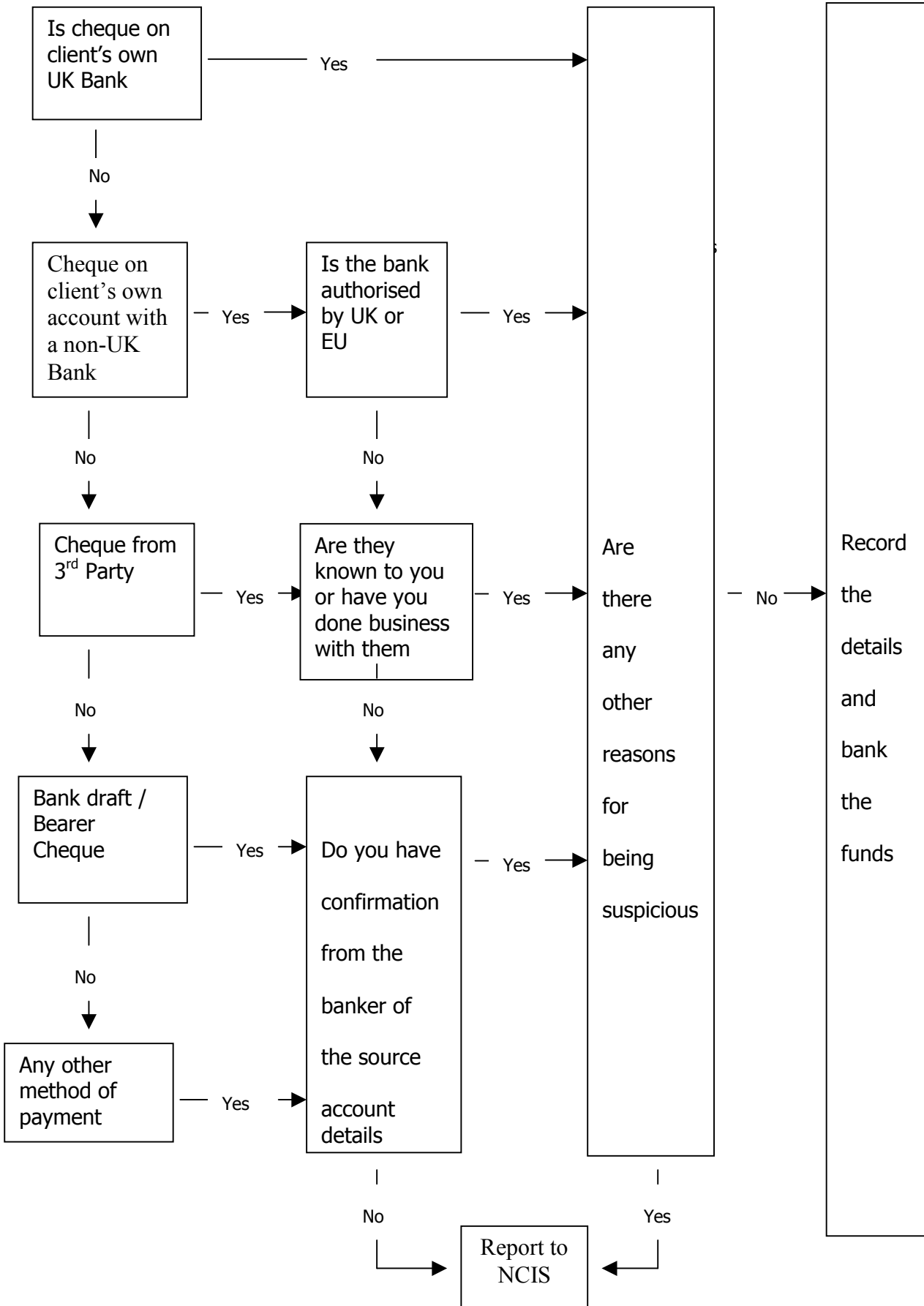
Question

Have you received funds from the client?



(Continued)

Question 2 Have you received non cash payment:



PROFESSIONAL PRACTICE ADVICE

1. FAMILY CASES

The Proceeds of Crime Act and Civil Litigation (Bowman v Fels)

This note looks at the case of *Bowman v Fels* decided by the Court of Appeal in England on 8 March 2005 [2005] EWCA Civ 226. This case overturns the decision of the High Court in *P v P* decided in 2003.

Proceeds of Crime Act

Before looking in detail at the Appeal Court's decision, it is necessary to look at the legislation in some detail to put the decision into context. The Proceeds of Crime Act 2002 (POCA) came fully into force on 1 March 2004. It is in 12 parts but the significant parts for Scottish solicitors are part 7 (Money Laundering) and part 8 (Investigations).

Part 7 creates a number of offences. In particular Section 327 creates the offence of concealing, disguising, converting or transferring criminal property or removing it from the United Kingdom. Section 328 creates the offence of entering into or becoming concerned in an arrangement in respect of criminal property and Section 329 creates the offence of acquiring, using or processing criminal property. Section 328 was the subject of the decisions in both *Bowman v Fels* and *P v P*. It should be noted however that there are other offences in part 7 – particularly the offence of failing to disclose that another person is engaged in money laundering.

All of these offences will clearly have implications for solicitors in general. Conveyancers have been in the front line for some time as one of the most common ways of converting "dirty" money into "clean" money is to invest it in heritable property. The Society took the decision in 1994 that solicitors should require to comply with the Money Laundering Regulations, and they have been incorporated into the Accounts Rules since 1995. The main focus of that is on the question of client identification which continues to be a fundamental requirement of the Regulations and the Accounts Rules, but under POCA there is also the duty to report knowledge or suspicion – referred to in POCA as an authorised or a protected disclosure.

Arrangements

Section 328(1) of POCA states, "A person commits an offence if he enters into or becomes concerned in an arrangement which he knows or suspects facilitates (by whatever means) the acquisition, retention, use or control of criminal property by or on behalf of another person."

Criminal property is property constituting or representing a benefit from criminal conduct which the alleged offender knows or suspects, and criminal conduct is conduct which constitutes an offence in any part of the UK or would constitute an offence in the UK if it occurred here.

The only way to avoid such an offence is to make an authorised disclosure or to have a reasonable excuse for not doing so (not defined). Legal privilege is not specifically stated to be an exception.

P v P

P v P was a divorce action in which the wife's solicitors obtained a forensic accountants report on the husband's assets. This made them suspicious that part of his assets – which amounted in total to £19 million – were criminal property arising from tax evasion. The wife's solicitors were concerned that in acting for her in negotiating a settlement of the matrimonial property this might be regarded as

becoming concerned in an arrangement falling foul of Section 328. Dame Butler-Sloss in the High Court held that the act of negotiating an arrangement amounts to being concerned in the arrangement and that the offence is not merely committed at the point of execution of the arrangement. She further held that solicitors have a duty to make a disclosure irrespective of the amount or value of the criminal property involved.

Section 328 provides that the offence of being concerned in an arrangement is not committed if the person make an authorised disclosure under Section 338 and in the form and manner prescribed in Section 339. The disclosure is authorised only upon satisfaction of one of the two conditions set out in Section 338 – namely that it is made either before the alleged defender does the prohibited act (of being concerned in the arrangement) or after having done it where there is good reason for failure to make the disclosure before doing so and the disclosure is made on the persons own initiative as soon as practicable for him to make it.

It was the subject of agreement in the case that the act of negotiating an arrangement did amount to being concerned in it, so that was not the subject of a contested argument. Dame Butler-Sloss held that there is nothing in Section 328 to prevent a solicitor taking instructions from a client but if having done so the solicitor knows or suspects that the client will become involved in an arrangement that might involve acquisition, retention, use or control of criminal property, an authorised disclosure should be made and the appropriate consent sought in order to proceed with it.

Bowman v Fels

This case was a claim by a cohabitee for a share of the value of the house the parties had lived in for 10 years before splitting up. The claimants solicitors suspected that the other party had included the cost of work on the property in his business accounts and VAT returns even though the work was unconnected with his business. In the light of P v P they made a report to NCIS and obtained an adjournment of the trial without advising the defendants agents of the reasons. The defendants appealed. Before the Appeal was heard NCIS had given consent to proceed. The Appeal Court analysed the history of the European Directives and legislation on proceeds of crime. They observed that the definition of money laundering in POCA goes further than was required to comply with the relevant Directive, and in particular includes suspicion as well as knowledge.

They then considered whether Section 328 above applies to the conduct of legal proceedings, including settlement negotiations. The Court unanimously held that it does not, for both linguistic and policy reasons. On language they said "whatever Parliament may have had in mind by the phrase 'entering into or becomes concerned in an arrangement which...facilitates...' it is most unlikely that it was thinking of legal proceedings.... to describe a judgement or an order as an 'arrangement' is a most unnatural view of language... we see equally little basis in ordinary language for treating any step taken to issue or pursue legal proceedings... as 'an arrangement'".

On policy they said "access to legal advice on a private and confidential basis is also a fundamental principle not lightly to be interfered with". In their conclusion they said "Parliament cannot have intended that proceedings or steps taken by lawyers in order to determine or secure legal rights and remedies for their clients should involve them in 'becoming concerned in an arrangement which.... facilitates the acquisition, retention, use or control of criminal property'". They also held that as there was nothing express in the language of Section 328 which overturns legal professional privilege it could not be implied. They quoted Lord Hoffman in R v Secretary of State for Home Department Exp Simms [2000] 2AC115 "Fundamental rights can not be overridden by general....words".

Finally the Appeal Court considered negotiated settlements of legal proceedings and held that such negotiations are not an "arrangement" in terms of Section 328 either. They drew a distinction between negotiations in existing or contemplated legal proceedings and arrangements independent of litigation, which they felt did fall within the Directive and POCA.

Existing or Contemplated Legal Proceedings

It is clear that there is a distinction under POCA between matters where there are existing or contemplated legal proceedings and other matters where there are no proceedings either in existence or in contemplation. Whether litigation is in existence is a matter of fact and should not give rise to a difficulty. That is not necessarily the case for contemplated proceedings. It would therefore be prudent to note in the file whether proceedings are in contemplation if that is not express in correspondence. Mere intimation of an accident claim for example may not amount to contemplated proceedings. The issue of a letter advising that if payment is not made within a time limit an action will be raised without further intimation would clearly demonstrate that proceedings are contemplated.

Confidentiality and Professional Privilege

Unlike Section 328, there is a specific exception in Section 330 of POCA and the Money Laundering Regulations where the information is privileged. It is now necessary to look at the related questions of confidentiality and privilege.

The Code of Conduct for Scottish solicitors describes confidentiality as a fundamental duty of solicitors. This has had to be amended to take the legislation to account. The traditional view is that solicitors should not disclose to any third party any matter connected with a client's affairs which is not already in the public domain unless required to do so by law or authorised to do so by the client. Professional privilege is a narrower definition. In both POCA and the Money Laundering Regulations it is information communicated by a client or his representative in connection with the giving of legal advice or in connection with legal proceedings or contemplated legal proceedings, but does not apply to information communicated with the intention of furthering a criminal purpose (including laundering money). In other words, if the client is using the solicitor unwittingly to assist the client in committing a crime, that is not subject to legal privilege. This is not new. The law was clearly stated by the late Lord President Emslie in Micosta v. Shetland Islands Council 1983 SLT 483, "The only circumstances in which the general Rule [of total confidentiality] will be superseded is where fraud or some other illegal act is alleged against a party and where his law agent has been directly concerned in the carrying out of the very transaction which is the subject matter of enquiry."

Tipping Off

Section 333 creates the offence of tipping off where a person knows or suspects that a protected or authorised disclosure has been made and that person makes a different disclosure likely to prejudice any investigation which might be conducted.

In addition, Section 342 makes it an offence for a person to make a disclosure likely to prejudice an investigation (a confiscation investigation, civil recovery investigation or a money laundering investigation).

No offence is committed by a solicitor in either case if it is a disclosure "(a) to a client or to a representative of a client in connection with the giving..... of legal advice to the client, or (b) to any person in connection with legal proceedings or contemplated legal proceedings" but that does not include disclosures made "with the intention of further a criminal purpose" (see above).

This issue was also considered by the High Court in P v. P who held that unless the requisite improper intention is there (i.e. to further a criminal purpose) the solicitor should be free to communicate such information to his/her client or opponent as is necessary or appropriate in connection with the giving of legal advice or acting in connection with actual or contemplated legal proceedings. This can only be done after having made the authorised or protected disclosure. The High Court thought that it was appropriate for seven working days to pass before informing a client but that where appropriate consent is refused by NCIS and a 31 day moratorium is in place the solicitor and NCIS try and agree

on the degree of information which can be disclosed during the moratorium period without harming the investigation.

2. PROFESSIONAL PRACTICE ISSUES AND PRACTICAL TIPS

Duties Under the Legislation:

Two Separate Duties -

1. Know your client, and
2. Duty to report suspicion of money laundering.

These are separate and distinct matters.

Know Your Client – I.D.

1. **Clients referred by other solicitors** – I.D. can be carried out by other solicitors but they must send letter confirming with copies of ID documents, including one with a photograph if possible, or it may be simpler to do the ID yourself.

What other relevant information does the other solicitor have? e.g. knowledge of previous convictions or outstanding charges for drug trafficking or fraud; ongoing investigation by Inland Revenue, Customs & Excise or DWP.

2. **Client referred by mortgage broker/estate agent, etc** - I.D. check can be carried out by intermediary if in regulated sector (e.g. registered with FSA). Obtain written confirmation with copies of ID.

3. **Clients known to the solicitor personally** - Keep a file note with specific information including how the client is known and for how long.

4. **Clients at a distance** – Use another local solicitor, or if client abroad, use a local notary or British Consulate and obtain an Affidavit – not just a letter – from that person. If the client in a claim is a member of an organisation such as a Trade Union, confirmation from the Union may be sufficient.

5. **Client referred by Banks and Building Societies** (i.e. regulated institutions within the EU) - No need for specific I.D. check but again obtain written confirmation from bank of I.D. check and copies of documents seen – including one with a photograph if possible.

6. **Executries** - Banks will require I.D. of the Executors as well as the solicitor if funds being placed in a designated client account as opposed to the general client account. If the account is opened in the name of the beneficiary the beneficiary will also need to be identified to the bank even if overseas.

7. **Clients in Business** – Does the client have other solicitors? Check financial position of the business. Get adequate background notes at the outset. Detailed enquiries made at an early stage may allay or confirm concerns which develop later on. If answers to questions are evasive – do you have reasonable ground to suspect?

8. **Clients who are public bodies; household names, etc** – use common sense. Seek written instructions on headed notepaper. If you have doubts about the notepaper check out the client's

website. We did have one enquiry about identifying a foreign country – check it out with the Foreign Office. It may be necessary to obtain confirmation that the individual giving instructions has authority to do so, which is a different matter from ID of the actual client.

9. Private Companies – what is needed is evidence of the client's identity – i.e. a Certificate of Incorporation plus a Certificate of a change of name if any plus notification of directors. It is not necessary to obtain a copy of the Memorandum & Articles for the purpose of ID – although it may be appropriate for other reasons e.g. to ensure that the company is acting *intra vires*. It may be appropriate to obtain an extract from a Minute of a Directors Meeting confirming instructions and authority to give instructions depending on the nature of the business.

10. Clients without passport, driving licence, etc – Regulations require "satisfactory evidence of his/her identity". That means evidence reasonably capable of establishing that the client is the person he claims to be. Although there is no statutory requirement to see an official document with a photograph, that is strongly recommended. CML Handbook – prescriptive. For clients not on benefit or in receipt of a pension, other means of I.D. include checking the Voters Roll; making a credit reference agency search; checking the telephone directory; utility bills; bank statements; birth and marriage certificates (cost of obtaining extracts a proper charge against the client). In all cases, keep a proper record with copies of documents seen.

11. Receiving funds from a third party – Where funds for a client transaction are being produced by a third party other than a lender in the regulated sector the ID of that third party needs to be obtained. That would not apply where the third party makes funds available to the client who in turn makes those funds available to the solicitor on a cheque drawn on the client's own account with a UK Clearing Bank. If a bank draft is used clarification from the bank that the funds have come from the client's own account should be sought. If that is not forthcoming further enquiries about the source of funds need to be made. Solicitors engaged in debt recovery do not need to ID defenders who might come in to the solicitor's office to make payment of the debt due. The defender is not the solicitor's client and the source of funds so far as the solicitor's own client is concerned is the debt the solicitor has been instructed to recover. However there may be particular occasions when a suspicion is aroused (see Duty to Report below).

12. Run a quick check on the internet – you may be surprised at what you find. There is also a Consolidated Sanctions List on the Bank of England website www.bankofengland.co.uk

When to I.D.?

Regulation 4(3) requires I.D. to be produced "as soon as is reasonably practicable after contact is first made" and states that if satisfactory evidence of I.D. is not obtained the transaction must not proceed any further. (Note – it does not say, "Must not commence").

"As soon as reasonably practicable" does not mean immediately, so that if a new client comes in wanting to offer for a property with an immediate closing date you do not have to decline to submit the offer. You should however put a short timescale on the question of I.D. and unless there are exceptional circumstances, such as the clients (or one of them) being overseas, you should complete the I.D. within a few days. Having submitted the offer you should not proceed further until I.D. is completed. If a delay in proceeding is unacceptable to the selling party you should advise your client that he risks losing the property if he cannot complete his I.D. quickly.

Duty to Report

Arrangements

Section 328(1) of POCA states, "A person commits an offence if he enters into or becomes concerned in an arrangement which he knows or suspects facilitates (by whatever means) the acquisition, retention, use or control of criminal property by or on behalf of another person."

Criminal property is property constituting or representing a benefit from criminal conduct which the alleged offender knows or suspects, and criminal conduct is conduct which constitutes an offence in any part of the UK or would constitute an offence in the UK if it occurred here.

The only way to avoid such an offence is to make an authorised disclosure or to have a reasonable excuse for not doing so (not defined).

Following the decision of the Court of Appeal in *Bowman v Fels* (overturning *P v. P*) solicitors no longer require to make a disclosure where acting in actual or contemplated legal proceedings (see separate note).

However the obligation remains in all other matters, particularly where the solicitor knows or suspects that criminal property is being used in a transaction, or that the property being sold was originally acquired using criminal property.

Practical Examples of "arrangements" under Section 328

- (a) Where a claim not being actual or contemplated legal proceedings is made against a client for repayment of money which is "criminal property" - unless all of the criminal property is repaid to the rightful owner (i.e. none is retained).
- (b) Executries where there are reasonable grounds to suspect that part of the estate represents monies derived from tax evasion or benefit fraud
- (c) Acquisition of property – particularly heritable property – with proceeds of crime, including crime committed by someone other than the client. An example might be a council house purchase where a deposit is being paid by a relative with a conviction or outstanding charges for drug trafficking; or a substantial deposit is paid by a person on benefit.
- (d) Recovery of fictional debt – if instructed to recover a debt the solicitor may suspect that the alleged debt is a fiction designed to launder Criminal property - e.g. there is little or no supporting documentation for the alleged debt; the instructions are unusual for the client; the "defender" pays the alleged debt direct to the claimants solicitor without protest.
- (e) Company funds used to meet a personal debt of a director/shareholder.

These are only examples and not a definitive list.

"Knows or Suspects" – This needs to be actual knowledge or suspicion – cf Section 330 and the Regulations (below). If you are given a reasonable explanation by the client you do not need to be a detective and seek corroboration of that, but if the client is evasive or the explanation conflicts with other information you have – this heightens your suspicions and your duty to report.

Concealing, etc; acquisition, use and possession (Sections 327 and 329) – while arrangements under Section 328 may be most likely to involve solicitors, the offences of concealing, disguising, converting or transferring Criminal property or removing it from the various parts of the United Kingdom are also offences under Section 327 as is acquiring, using or possessing Criminal property under Section 329. Again in both cases an offence is not committed if an authorised disclosure is made or there is a reasonable excuse for not doing so. In relation to acquiring, using or possessing Criminal property, there is no offence if the recipient has done so for adequate consideration. That means among other things that solicitors whose fees are paid out of Criminal property are not themselves guilty of possessing it. However the provision of goods or services which a person knows or suspects may help another to carry out Criminal conduct is not "consideration".

Reasonable Excuse

There have been no decided cases on what might amount to a reasonable excuse, but as experience of the Act has grown, some positive assertions can probably now be made. Reasonable excuse should include:

1. Knowing that a report has been made by another party – e.g. a client who is the innocent party should receive the benefit of knowing that a report has been made by his solicitor.
2. Knowledge being gained as the result of an existing investigation by the Police; Inland Revenue; Customs & Excise; or DSS. If the authorities are already aware of the circumstances there seems little point in making a report about them. However if a solicitor has knowledge or suspicion of further Criminal property in addition to that which is the subject of investigation, a report should be made.

Consequences of report to NCIS – NCIS have 7 working days in which to intimate either consent or non consent to the matter proceeding. Failure to intimate within that time can be taken as consent. If the matter is urgent ask for an urgent decision. If consent is refused, there is a moratorium of 31 calendar days within which further action needs to be taken by the Authorities. The matter can proceed if no action taken. Such further action is likely to be confiscation or proceedings for recovery.

If a solicitor is concerned about the safety of clients or staff either during such a moratorium or afterwards, the Police should be alerted.

Disclosure of Money Laundering

Section 330 of POCA makes it an offence to fail to disclose where a person “(a) knows or suspects; or (b) **has reasonable grounds** for knowing or suspecting, that another person is engaged in money laundering” and the information comes in the course of a business in the regulated sector. The test is therefore objective not subjective. From 1 March as a result of The Proceeds of Crime Act 2002 (Business in the Regulated Sector and Supervisory Authorities) Order 2003, the Regulated Sector (Schedule 9) now includes not only dealing in investments as principal or agent; arranging deals in investments; managing investments; safeguarding or administering investments; and advising on investments but also estate agency, insolvency practice, tax advice, accountancy services, conveyancing, financial transactions, and the formation, operation or management of a company or a trust. Not every solicitor’s practice therefore is in the regulated sector for the purpose of this section. However the Money Laundering Regulations which do apply to every solicitor by virtue of the Accounts Rules have the same wide scope and the same requirement of disclosure. In both cases, there is an exception where the information is privileged, unless it is with the intention of furthering a Criminal purpose.

Confidentiality and Professional Privilege

Article 4 in the Code of Conduct for Scottish solicitors describes confidentiality as a fundamental duty of solicitors. The Council has decided to amend it to take account of the legislation. The Code means that solicitors should not disclose to any third party any matter connected with a client’s affairs which is not already in the public domain unless required to do so by law or authorised to do so by the client. Professional privilege is a narrower definition. In both the Proceeds of Crime Act and the Money Laundering Regulations it is information communicated by a client or his representative in connection with the giving of legal advice or in connection with legal proceedings or contemplated legal proceedings, but does not apply to information communicated with the intention of furthering a criminal purpose (including laundering money). In other words, if the client is using the solicitor unwittingly to assist the client in committing a crime, that is not subject to legal privilege. The law was clearly stated by the late Lord President Emslie in Micosta v. Shetland Islands Council 1983 SLT 483, “The only circumstances in which the general Rule (of total confidentiality) will be superseded is where

fraud or some other illegal act is alleged against a party and where his law agent has been directly concerned in the carrying out of the very transaction which is the subject matter enquiry." It does not matter if the client is not the prime mover in the criminal purpose.

Tipping Off

Section 333 creates the offence of tipping off where a person knows or suspects that a protected or authorised disclosure has been made and that person makes a different disclosure likely to prejudice any investigation which might be conducted.

In addition, Section 342 makes it an offence for a person to make a disclosure likely to prejudice an investigation (a confiscation investigation, civil recovery investigation or a money laundering investigation).

No offence is committed by a solicitor in either case if it is a disclosure "(a) to a client or to a representative of a client in connection with the giving..... of legal advice to the client, or (b) to any person in connection with legal proceedings or contemplated legal proceedings" but that does not include disclosures made "with the intention of further a criminal purpose" (see above).

This issue was considered by the English High Court in P v. P who held that unless the requisite improper intention is there (i.e. to further a criminal purpose) the solicitor should be free to communicate such information to his/her client or opponent as is necessary or appropriate in connection with the giving of legal advice or acting in connection with actual or contemplated legal proceedings. This can only be done after having made the authorised or protected disclosure. The Court thought that it was appropriate for seven working days to pass before informing a client but that where appropriate consent is refused by NCIS and a 31 day moratorium is in place, the solicitor and NCIS try and agree on the degree of information which can be disclosed during the moratorium period without harming the investigation.

General Advice on the Act and Regulations

In my view, giving general advice to clients at the outset of a matter that the solicitor will require to comply with the Proceeds of Crime Act and Money Laundering Regulations is not tipping off because at that stage there is no disclosure made. It would therefore be in order to insert a suitable clause in the Terms of Business letter (and such a clause is in the style issued for guidance with the Practice Rules on Terms of Business Letters in Residential Conveyancing) or to put up a notice in the office advising that clients may no longer be able to rely on the duty of confidentiality where the solicitor knows or suspects that criminal property is involved – including tax evasion or benefit fraud. It may be appropriate to add that if a solicitor fails to make such a report, they – and the client – face a possible penalty of imprisonment.

Filing

It is essential that firms do not record any correspondence with NCIS in the client's own file. A central file running in date order is an appropriate way of dealing with NCIS disclosures.

Orders Under the Proceeds of Crime Act

The Sheriff may make a production order or grant a search warrant. Such an order or warrant does not require a person to produce items subject to legal privilege (see above). Production orders can include an order to remove information contained in a computer. Where a production order or a search warrant has been granted, solicitors should comply with it unless the information is genuinely subject to legal privilege, and should not report to the client unless authorised to do so by the police or the Procurator Fiscal. Read the order/warrant carefully and retain a copy of it. Do not produce more

than is required. If you are asked to give a statement going beyond what is covered by the order or warrant, you should offer to be precognosed on oath and leave it to the court to decide whether the information should be divulged. Production orders and search warrants may be executed in any part of Scotland irrespective of the location of the Sheriff who granted the order.

In relation to a confiscation investigation or civil recovery the Crown can seek a disclosure order although that does not apply in a money laundering investigation. A disclosure order covers questions as well as provision of documentary or computer information. Legal privilege is protected. Disclosure orders take preference over any restriction on the disclosure of information.

Crisis Management – How Can the Law Society Help?

If in doubt about any duties under POCA or the Money Laundering Regulations, the Society will try and assist. Contact Bruce Ritchie (0131 476 8124), James Ness (0131 476 8174) or the Chief Accountant Leslie Cumming (0131 476 8172). The Society will try and be of practical assistance by giving advice and guidance. Please give us all the relevant information and keep a note of the advice given. If the matter is urgent, please say so, particularly when writing either by fax, E-mail or by Royal Mail or Legal Post.

The police will almost always respect a request to hold off executing an order or a warrant in respect of an investigation into a client's affairs to allow a solicitor to call the Society.

Professional Practice Supplementary Paper

Question:

Do we need to go through Money Laundering Regulations when we are only carrying out the estate agency and another firm of solicitors is dealing with the conveyancing, transfer of funds, etc?

Answer:

Yes you do – estate agency is specifically covered by the Regulations, so far as client ID is concerned. Clearly you need not make enquiries about source of funds if you are only acting as estate agent.

FINANCIAL ACTION TASK FORCE (FATF) BLACKLIST

The following list of non-cooperative countries and territories (NCCTs) is current as of 11 February 2005 and was last changed on 31 May 2005:

1. Myanmar
2. Nauru
3. Nigeria

Background and Description of the Initiative

The FATF is engaged in a major initiative to identify non-cooperative countries and territories (NCCTs) in the fight against money laundering. Specifically, this has meant the development of a process to seek out critical weaknesses in anti-money laundering systems which serve as obstacles to international co-operation in this area. The goal of this process is to reduce the vulnerability of the financial system to money laundering by ensuring that all financial centres adopt and implement measures for the prevention, detection and punishment of money laundering according to internationally recognised standards.

On 14 February 2000, the FATF published an **initial report on NCCTs**. The report sets out twenty-five criteria, which help to identify relevant detrimental rules and practices and which are consistent with the **FATF Forty Recommendations**. It describes a process whereby jurisdictions having such rules and practices can be identified and encourages these jurisdictions to implement international standards in this area.

The next step in the NCCT initiative was the publication in June 2000 of the **first Review identifying specific NCCTs**. The report named 15 jurisdictions (**Bahamas, Cayman Islands, Cook Islands, Dominica, Israel, Lebanon, Liechtenstein, Marshall Islands, Nauru, Niue, Panama, Philippines, Russia, St Kitts and Nevis, and St Vincent and the Grenadines**) as having critical deficiencies in their anti-money laundering systems or a demonstrated unwillingness to co-operate in anti-money laundering efforts.

Since the June 2000 Review, many of the jurisdictions identified made significant and rapid progress in remedying their deficiencies. In June 2001, the FATF updated the list of NCCTs with the publication of its **second NCCT Review**. Four countries left the list (**Bahamas, Cayman Islands, Liechtenstein, and Panama**); however six other jurisdictions were added (**Egypt, Guatemala, Hungary, Indonesia, Myanmar, and Nigeria**). At the subsequent FATF Plenary meeting in September 2001, two additional countries were added to the list (**Grenada and Ukraine**). Decisions were also made at this Plenary meeting as to the timing of **counter-measures** that may be applied to jurisdictions failing to make adequate progress in remedying identified deficiencies.

In June 2002, the FATF removed four more countries from the NCCT list: **Hungary, Israel, Lebanon, and St Kitts and Nevis**. The FATF also published its **third NCCT Review**. In October 2002, the FATF again removed four countries from the NCCT list: **Dominica, Marshall Islands, Niue and Russia**.

Because of Ukraine's failure to enact comprehensive anti-money laundering legislation, on 20 December 2002 the FATF recommended the application of counter-measures to Ukraine. However, due to significant legal reforms after that time, in February 2003 the FATF withdrew the application of counter-measures, although Ukraine remains on the NCCTs list. Also in February 2003, the FATF removed **Grenada** from the NCCTs list.

In June 2003, the FATF removed **St Vincent and the Grenadines** from the NCCT list and published the **fourth NCCT Review**.

On 3 November 2003, FATF members began applying additional counter-measures to Myanmar due to its failure to address major deficiencies.

In February 2004, the FATF removed Egypt and Ukraine from the NCCTs list because of the substantial implementation of anti-money laundering reforms in those countries.

The FATF remains committed to the NCCT process and welcomes the continued progress by many of the countries on the list in addressing identified deficiencies. FATF members will continue to provide assistance and support where appropriate. The FATF will also continue to review the situation of listed countries as a priority matter at each FATF Plenary meeting and similarly will closely monitor developments in countries that are removed from the list.

**Updates of this FATF list can be obtained at www.fatf-gafi.org/
Or www.org/infobycountry**

NCIS Disclosures – Standard Forms

It is accepted that solicitors may require to write a letter setting out the background to a suspicious activity. The information is accepted but in order to benefit from the investment in technology, it is suggested that you use the form available on NCIS website.

www.ncis.co.uk/downloads/Disclosure

This pack contains the first page of the disclosure form. This and subsequent pages can be downloaded from the site and can be completed as a computer screen format and sent to NCIS directly. The form is still in a generic format for all reporting institutions but it is helpful because it shows the kind of detail needed to make an accurate and useful report.

Please send the completed form as a faxed document to the number on the NCIS form. **Be sure to tick the Consent Required Box on the form if you are involved in a transaction.**

If you do not have access to a computer and want to make a manual report – please write or phone NCIS for a copy of the special form available for this format of reporting. In case of urgent need, remember that a faxed letter will also be accepted.

Guidance Notes – Style of Business Letter for residential conveyancing

The Solicitors (Scotland) (Client Communication) (Residential Conveyancing) Practice Rules come into force on 1 December 2003. The Professional Practice Committee have prepared and the Council has approved the terms of the undernoted pro-forma letter which can be used as a style. The letter is not part of the Rules and solicitors are free to use their own version which may contain more information about the terms of business and other matters including any requirements to be undertaken by the solicitor or the client.

For example it may be helpful in appropriate transactions to include a clause about Stamp Duty Land Tax transaction returns. However the attached letter does contain the core information required to comply with the Practice Rules, together with a paragraph on money laundering which is strongly recommended to ensure compliance with the Money Laundering Regulations.

Dear [Name]

We refer to your recent meeting with [Name]

We are pleased to confirm that [the Firm] will be acting on your behalf in connection with (the work to be carried out).

The solicitor who will be dealing with your work on a day to day basis is [Name].

We will advise you at regular intervals regarding the progress of your work and keep you informed of all significant developments. If you are uncertain about what is happening at any time, please ask.

We enclose an Estimate of our Fees and Outlays for this transaction. If the work turns out to be more complex than normal, we may require to increase our estimate to take account of this. We will inform you as soon as possible about any such increase.

The Money Laundering Regulations require us to be satisfied as to the identity of our clients and as to the source of any funds passing through our hands. In order to comply with these Regulations, we may need to ask you for proof of identity and other information in relation to these matters. We reserve the right to withdraw from acting for you if you fail to provide us with the information requested of you and required in connection with our Money Laundering Procedures.

Finally, our aim is to provide a service which is satisfactory in every respect. However, if you have any concerns about the manner in which work is being carried out on your behalf, please contact our Client Relations Partner [Name] who will be happy to discuss your concerns.

Yours faithfully

[Name]

MLRO REPORTING TO PARTNERSHIP

Because of the significant risks associated with poor Anti-Money Laundering procedures, it is appropriate for the MLRO to make a formal report to the partnership on at least an annual basis.

The report should confirm the following points: -

1. The MLRO responsible during the period and any changes during the period of the Report and who acted as deputy during holiday/illness.
2. Training programme. This should cover: -
 - a. Induction training for all new staff dealing with clients.
 - b. Confirmation that all personnel have been updated for: -
 - i. Changes to professional rules.
 - ii. New Money Laundering Regulations or Legislation and that they have confirmed in writing that training has been given
 - c. Attendance at seminars or taking part in training events on this subject
 - d. Itemised training undertaken by the MLRO and deputy.

3. Report on systems

	Total <u>Checked</u>	% <u>Failed</u>
a. Result on file checks - client ID - know your client fact find - source of funds.	Total <u>Checked</u>	% <u>Failed</u>
b. Result on employee checks - identifying MLRO - knowing how to ID client - completing fact find - how to source funds	Total <u>Checked</u>	% <u>Failed</u>
c. Re-training arrangements for employees - Confirm that retraining has been given for all failures or - List of employees still to be retrained.		

4. Analysis on an anonymous basis of suspicious reports and the action taken on the cases. The Report should indicated by type of business/department/partner source how many reports were submitted to the MLRO. Also give the number of NCIS disclosures and any problems arising from these circumstances. Finally give details of any changes to internal procedures which arose from the reports received by the MLRO.

N.B. If training is made available via the Law Society of Scotland’s website – the individual training records can be reviewed by the MLRO. Current knowledge can be updated/verified by way of a regular test for all employees.

(Link: www.lawscot.org.uk) Select e-learning

Specific Guidance to MLRO's

Now that you've accepted the responsibilities for implementing your firm's anti-money laundering policies do you have an adequate set of procedures to meet your policy objectives?

1. Training and Management issues.

- What type of training do you have in place?
- Which of your partners and employees have been trained?
- Do you know how sound their grasp of the subject is?
- Do you train new employees?
- What about refresher/update courses?
- Have you got clear lines for reporting and following up?
- Do you have the right support and resources to cover this challenge?
- Do you share the answers to these questions with the partnership?

2. Monitoring performance.

- Do you have a list of suspicious transaction reports?
- If you have no reports, is this a worry? (see training).
- When setting up a new branch or creating a new department have you considered the risk of money laundering in this area and given training?
- If you have overseas connections and clients, do they feature in FATF lists of Non-Co-operative Countries and Territories? www1.oecd.org/FATF/ or www.org/infobycountry
- Do you review client files for client identity checks being completed and report to the partners on any failures detected?

3. Reporting.

- Do you have access to the NCIS forms – see Section 10 of these Notes? www.ncis.co.uk/downloads/Disclosure
- Do you summarise your position and report to the partnership annually?
- Do you know how to reach a safe decision on a suspicious transaction report?
- Follow up for permission to proceed on all urgent cases.

If you are not comfortable with any of these questions and your response to them, please address them now. Money Laundering problems are entering a new phase and the benefits of conducting a thorough review and update of your policies and systems cannot be emphasised enough.

Take action now!