

Solicitors Regulation Authority

Keeping money laundering out of the profession

Solicitors are prime targets for those who want to wash their 'dirty' money, says **Paul Philip**

The current situation in Ukraine has put the spotlight firmly on the ethics of how the UK does business.

Scrutiny has fallen on a number of service providers, not least law firms, which government and key agencies often refer to as professional enablers, along with accountants, others working in financial services, and those involved in the creation of trusts and company services.

The war in Europe has increased the use of financial sanctions on individuals and businesses—that means that solicitors cannot receive payment for any work for them unless they get a licence from the Office of Financial Sanctions Implementation. Similarly, there is now greater focus on SLAPPs—strategic litigation against public participation—where critics are intimidated into silence by lawsuit or threat of lawsuit.

Underlying all of this is the relentless fight to keep corrupt money out of the UK economy.

Let's be really clear—money laundering is not a victimless crime. The funds often come from serious criminal activity affecting the most vulnerable in society, including people trafficking or drug rings, and the proceeds of crime are sometimes used to fund the terrorist activity that blights so many communities around the world.

Law firms and solicitors are an attractive target for criminals looking to launder their proceeds. That's because they routinely handle large amounts of client money, have key roles in many business and property

transactions and provide a respectable 'source' for funds paid on. Money laundering also damages our reputation as the leading international legal sector.

As the largest legal regulator in the UK—we regulate nearly 90% of the market in England and Wales—the Solicitors Regulation Authority has a key role to play. We are one of 25 frontline regulators, overseen by the Office for Professional Body Anti-Money Laundering Supervision, responsible for making sure the professions do what is needed to stamp out money laundering. We are also part of the UK's Economic Crime Strategic Group, helping all agencies involved in preventing money laundering to do their jobs.

This is something that has always mattered; it's not particular to the current international situation. Solicitors have long been responsible for guarding against 'dirty' money making its way into legitimate systems. That's all solicitors—this is not a risk that only affects a small number of businesses serving a super-rich elite. Our work has shown that geography doesn't matter and that sometimes criminals intentionally target smaller firms in the hope that they're an 'easier touch'.

Taking action

Nearly 7,000 of the roughly 10,000 firms we regulate fall under the scope of anti-money laundering (AML) regulation. While tackling money laundering has always been important, the significance of having robust procedures in place has heightened in recent years. We have responded by increasing our

resources, setting up a dedicated AML team in 2019 so we can be much more proactive. We have a programme of inspections—planned visits and spot checks—allowing us to look at client files and see what is really going on.

We do of course find lots of good practice—the vast majority of solicitors do what's needed—but there are still too many firms falling short. It only takes a small minority to get it wrong for confidence in all law firms to be undermined.

There are very few solicitors who are deliberately complicit in money laundering, but the damage can be done unwittingly.

Weak processes or undertrained staff can leave the door open for criminals. Every new matter, regardless of how long a firm has known a client, should have its own risk assessment, including client due diligence, checking on the beneficial ownership of funds, and asking about any politically exposed persons involved in the process.

Complacency is not acceptable and, in the past 12 months alone, we have taken 13 individuals and three firms to the independent Solicitors Disciplinary Tribunal (SDT) for failing to carry out such checks. Six solicitors were struck off or suspended while the SDT issued fines of more than £110,000 for the others. We ourselves issued a fine of £232,000 to a firm for similar breaches in January. These are part of a whole raft of prosecutions we have brought to the SDT against 75 individuals and six firms in recent years, resulting in a range of fines, suspensions and strike-offs.

Understanding risk

Whether you are a firm—or a regulator—you're on the wrong track if you see AML work as a box-ticking exercise or take a one-size-fits-all approach. The key is assessing the level of risk for every legal transaction.

We are no different to firms in that. Inevitably resources are limited, so we need to make sure we are focusing ours on the right things. For us, these are the areas and the firms where the risk is highest. That means good data and insight on what is happening on the ground.

In addition to insights from the reports we receive and the hundreds of firm inspections we do, we also have led the way with our in-depth reviews. For instance, our review of firms that are trust and company services providers shows this area of work is particularly at risk of exploitation by criminals trying to launder money, because creation and management of trusts and companies, particularly where there are international owners, might be readily used to disguise the ownership and control of assets.

This type of thematic approach—

combined with work we are doing to collect better data and our innovative use of artificial intelligence to assess where risks are higher—will play an increasing part in helping us regulate more effectively.

What's next?

There is, as ever, more to do. These are high stakes issues and criminals have every incentive to succeed at what they are doing. As Churchill said, 'the price of freedom is eternal vigilance'. For us, vigilance means better data, clearer sight lines and more inspections. We are working on all these areas and increasing our resources, so that we can understand the risks, spot where compliance is poor and take the necessary enforcement and deterrent action.

And there are technical areas in the AML legislation that could be strengthened. For example, obligations are focused on establishing the identity of the person you are doing business with, but have less of a focus on asking questions about where they got the funds. We would like to see checks on source of funds and source of wealth required more widely.

There are also areas where the regulations could be less onerous and allow more flexibility. For instance, the current rules do technically allow firms to use

simplified due diligence in low-risk cases, but firms tell us that they rarely use this because of lack of clarity in the regulations. Addressing that would reduce the burden where appropriate, enabling firms to focus their energy on those higher risk cases.

Similarly, the rules around relying on another regulated entity to carry out customer due diligence could offer less downside and liability for firms. It has the potential to enable efficiencies while managing risk effectively—but as it stands, the rules put firms off, resulting in duplicated effort that isn't always proportionate.

A bigger deterrent?

The issues we are talking about here often include transactions involving millions of pounds, and firms whose turnover can reach into billions. That means that any enforcement needs to be both robust and timely. It is for the courts to deal with criminal activity and for us to do everything we can to ensure that law firms are not helping to bring the proceeds of crime into our economy and society.

But our fining arrangements are, frankly, confusing. Around one in ten of the firms we regulate are Alternative Business Structures (ABSs)—they are not solely owned by

solicitors in the way 'traditional' firms are. We can fine ABSs up to £250m without having to go through the inevitably lengthy process of prosecuting in front of the independent SDT. Until 20 July 2022, that was the route for all traditional firms where a fine of more than £2,000 was needed. The government agreed to increase that to £25,000, which will help address the delays, stress and costs for all involved.

In the longer term, there is a strong case to increase our fining power further, particularly for these critically important issues. That would provide a real deterrent and sort out the anomaly that firms have to be treated in different ways.

There may be more that can be done to signal just how significant this work is, making sure that all solicitors, law firms and others take their responsibilities as seriously as we, the public and the government expect them to.

We live in an increasingly uncertain world. This is one area where we can remove uncertainty and be absolutely clear about what the legal sector has to do to tackle crime and its proceeds. I think that has to be in everyone's interests. **NLJ**

Paul Philip, chief executive, Solicitors Regulation Authority (www.sra.org.uk).



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