Money laundering: Solicitors on the front line

by Jeffrey Lewis

Perhaps stung by criticisms made by the OECD (Organisation for Economic Cooperation and development), FATF (Financial Action Task Force) , the NCA (National Crime Agency) and their own audit on money laundering, the government has decided to put AML (anti-money laundering) at the top of their agenda.

As a result the SRA have the solicitors' profession firmly within its sights.

This year heralded a new offensive against the profession and its perceived inability to deal with money laundering.

Despite the fact that we have one if the most stringent AML regimes in the World, up to £57 billion is laundered through the UK every year, according to the NCA.

The NCA have been scathing about the profession in their recent 51 page report:

1. They are of the belief that solicitors are wilfully blind about their assistance to money laundering schemes when setting up shell companies or other off shore entities;

2. That their involvement adds professionalism and credibility to transactions and business schemes that involve the acquisition and movement of the proceeds of crime, and persuades others e.g. Banks/finance houses / investors to join these schemes;

3. Fewer than 1% of Suspicious Activity Reports (SARS) are made by solicitors firms, and the information provided within those SARS is too inadequate for the NCA to make proper considered decisions, allegedly;

4. Solicitors apparently demonstrate a lack of knowledge/ awareness of and about Politically Exposed Persons (PEPS) - the definition of which is :-

   "*someone who has been entrusted with a prominent public function. A PEP generally presents a higher risk for potential involvement in Bribery and corruption by virtue of their position and the influence that they may hold".*

Many of you who follow the SRA decisions page in The Gazette, will have seen the increase of disciplinary and professional proceedings against firms who have become embroiled in money Laundering, unwittingly or otherwise eg: firms who have allowed their client accounts to be used effectively as bank accounts - allowing clients to draw monies at will, for purposes unconnected with legal proceedings or transactions; firms that have ignored specific advice not to deal with a certain group of clients: firms that have effectively been colonised by criminal clients either by virtue of duress/ threats of violence or otherwise.

Complaints have been made about the lack of standardisation of AML compliance procedures within solicitors firms e.g. A city Practice rejects a client and his instructions only to find that a smaller firm agrees to act because they do not have as sophisticated KYC (**k**now **y**our **c**lient) systems.

Further there have been instances in some multi office/multi - jurisdictional firms where one partner has rejected a potential client/transaction only to find that another partner in another office/ jurisdiction has agreed to act!

In the background to all of this, the 4th EU Money Laundering Directive which is passing its way through the EU Parliament - within that directive there is an increased focus upon transparency of beneficial ownership and an extension of the current definition of PEPS, which will now include members of their families and associates .

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Simultaneously, this Country's Criminal Finance Bill is slowly making its way through Parliament.

This Bill is a game changer on the AML landscape for solicitors in many ways - For example (and this is by no means an extensive list) it incorporates the new EU definition of PEPs - it extends the current 31 day NCA moratorium on a SAR report to an incredible 186 days - it will bring in 'Unexplained Wealth Orders' and subsequent linked civil recovery proceedings (following the example of Ireland and Australia) - it will allow the authorities to go ex parte and freeze property (including high value goods such as Art and Jewellery and bank accounts), and it brings in the new criminal offence of failing to prevent tax evasion.

Without a doubt we are on the frontline, not just because our duties as gatekeepers of Anti Money Laundering have been increased and expanded, but we are ourselves are directly being hacked and scammed.

How many firms have found their Conveyancing Departments systems hacked so that clients' details are obtained or clients' monies have been diverted to the accounts of criminals and then they simply vanish out of the jurisdiction?

How many potential clients call the office happily willing to hand over details of their bank accounts in response to an email purportedly from a colleague, informing them of an unexpected legacy from an unknown distant relative in some obscure jurisdiction??

We have to have cyber security systems that can defeat attacks from increasingly sophisticated technology that criminals employ - be up to date and aware of those jurisdictions red flagged as centres of bribery / corruption/tax evasion/firearms/drugs/people trafficking/terrorism etc. Be fully au fait with the fast changing Sanctions regimes, worldwide, to ensure that we are not Sanctions busting and handling monies that fall foul of those Sanctions.

So how on earth does the average sized firm of solicitors protect itself from the attentions of Villians/the SRA/various government authorities alike?

We are advised to adopt a risk based approach to AML compliance by the SRA, that unlike our colleagues in the banking world who take a 'tick box approach' to AML (which would explain why there are so many SARs made by that sector).

We should consider adopting Fintech (Financial technology) systems as used by our counterparts within the finance sector -to support our KYC

diligence, if the practice can afford it. As a profession we should be demanding that the Law Society defend our increasingly pressurised position.

We should be assertive with the NCA, HMRC and the SFO (to mention but a few of these organizations) and ask for constructive feedback or rather the Law Society should be doing this for us .

How do they want us to manage a client whose transaction has been put on hold for 186 days, after we have made a SAR?

We are unable to tell an irate client, that we have made a SAR because our suspicions have been raised, in case we fall foul of a 'tipping off 'offence ..... it just seems that Government enacts knee jerk legislation ,after listening to complaints from the investigative authorities anxious to ensure that we carry the burden of acting as 'gatekeepers', without any idea of the ramifications upon business and our practices.

We know only too well that the NCA has a relatively small team processing the thousands of SAR's made each year, and that they are unable to cope.

Instead we find ourselves used as scapegoats by the NCA for deficiencies within their organisation.

The bankers have been pushing back for some time now about the cost and complexity of financial compliance, especially the US banking sector
Who knows, possibly the only upside of a Trump presidency, who is purported to be anti regulation , that there may eventually be some easing

of the responsibilities placed upon us - though unlikely in the near future In the meantime ....keep both your eyes and ears open throughout the life of the transaction....take nothing that you are told or shown for granted .... think laterally.....keep detailed attendance notes ....follow your procedures to the letter....go with your gut and cover ourselves at all times!