Barretts

Anti-money laundering guide

1. Money Laundering And Us

Money laundering is a criminal offence. It happens when the money launderer does something to hide or legitimise criminal property. It's called "money-laundering" but it can involve any criminal property. Criminal property isn't just the proceeds of drug sales or what you might think of as 'serious' crime: it also includes money from tax evasion, or any other breach of laws or regulations, in the UK or abroad.

Also money-laundering doesn't have to be the primary motive. We can become involved in money-laundering, just helping a normal person buy a house he and his family genuinely want to live in, if some of the money is from tax evasion.

How we could become innocently involved

In conveyancing transactions, these are just some of the things which would be money-laundering and would involve us.

- The client sends us money derived from crime. (He may be attempting to convert it into property)
- The client tells us to transfer money. (He is trying to make it look legitimate, because it will be coming from a law firm.)
- The client instructs us to buy a property. (He's trying to disguise and legitimise the money by changing it into real estate.)
- The client wants us to sell a flat. (Having succeeded in making criminal money look like a proper investment, he wants to take the money out again, now looking legitimate.)
- The client instructs us to transfer the property into a different name. (This is part of concealing and disguising the criminal property)
- The client sets up a company or trust to hold property. (This is a common way to obscure the trail)
- The client buys a property with a mortgage but a proportion of the money comes in from a third party's account or an offshore account. (It's still money-laundering if he is mixing criminal money with legitimate or borrowed money.)

Our duties

Basically, we have two roles to play. First, although we are not expected to be detectives, we are expected to note suspicious activities and report them to the authorities. Second, we have a routine obligation to verify the identity of our clients and our business with them, and to monitor them on an ongoing basis.

2. Money Laundering Crimes

The crimes are contained in the Proceeds of Crime Act 2002 and the Terrorism Act 2002. Section numbers below are from the Proceeds of Crime Act. Anything which would be money-laundering if applied to criminal property will also be an offence if applied to funds or property intended for terrorism purposes.

Actual money laundering

There are basically two crimes of doing money laundering

The crime of concealing

It is an offence to conceal, disguise, convert or transfer criminal property, or remove it from the country. Concealing or disguising criminal property includes concealing or disguising its nature, source, location, disposition, movement, ownership or any rights connected with it. It also includes mixing property with other non-criminal property. (section 327)

The crime of acquisition, use or possession of criminal property

In addition, a person commits an offence if he acquires, uses or has possession of criminal property. (section 329)

Could we commit these crimes?

It is not just actions by the owner of the criminal property which constitute money-laundering. Anyone who knowingly handles someone else's criminal property is equally guilty of money-laundering. They can also be guilty of an offence of conspiring or attempting to launder, or advising, aiding, or abetting. Saying to a client, "You can't use us, because we can't be involved with your criminal money, but this is how you can get round it..." is just as criminal.

The crime of entering into an arrangement

It is an offence to enter into or become concerned in an **arrangement** which you **know or suspect** facilitates the acquisition, retention, use or control of criminal property by or on behalf on another person. (section 328)

What do 'arrangement' and 'know or suspect' mean?

What an 'arrangement' is

(1) **You have to do something.** An arrangement is something which has a practical effect relating to the acquisition etc of criminal property. To commit the offence you have to *do* something. So worrying, thinking, standing by silently cannot make you guilty of an offence (but *agreeing* with someone to do nothing is in fact doing something – entering into an agreement).

(2) **But that something can be very peripheral.** We could be involved in an arrangement just by participating in a general way which does not even involve us receiving money or dealing with property.

(3) **Early steps in a transaction are not arrangements.** The Law Society guidance based on the case of Bowman v Fels states that a preparatory or intermediate steps in transactional work which does not itself involve the acquisition, retention, use or control of property will not constitute the making of an arrangement. "Transactional work" is what we are doing when buying or selling property. So there is little risk of an arrangement existing, in the normal conveyancing situation, until money passes or an agreement is entered into.

(4) **It doesn't have to be client's money.** The arrangement may not relate to our client's money or property; it could be that of another party in the transaction (a seller, buyer or lender), with their own solicitors.

When do you 'know or suspect'?

Don't worry that you might commit this criminal offence just because laundered money gets used in a property purchase where you had no way of knowing. We only commit an offence if we have knowledge or suspicion that the property involved is criminal property.

Knowledge means actual knowledge and if you don't know, you don't know.

The test for whether you hold a suspicion is a subjective one – you are suspicious if you think you are suspicious.

So when should you think you are suspicious? In a recent case the judge said that to have a suspicion "you must think that there is a possibility, which is more than

fanciful, that money-laundering is going on. A vague feeling of unease is not enough".

But that does not mean that you can only have suspicion if you know all the facts. It can be an overall reaction to the transaction or anything in it. If you think a transaction is suspicious, you are not expected to know the exact nature of the criminal offence or that particular funds were definitely those arising from the crime. You may have noticed something unusual or unexpected – perhaps something that does not quite 'sit right' or make commercial sense.

'reasonable grounds'

Many of the money laundering offences can be committed if you know or suspect **or had reasonable grounds for knowing or suspecting**. This is not the case with this 'entering into an arrangement' offence but we don't want you to read about the subjective nature of 'know or suspect' and then skim forwards and think that applies to everything. The best approach to take with everything is try to be overcautious so you don't get into a situation where anyone can say, 'Ok we believe you when you say you didn't know or suspect, but you *should* have known or suspected.'

The crime of failing to disclose money-laundering

You commit an offence if you know or suspect, or have reasonable grounds for knowing or suspecting, that another person is engaged in money-laundering and you don't report it. This only applies to knowledge or suspicion you obtain while doing the firm's work. (section 330)

You will see that it is not just a matter of whether you are actually suspicious. The test is whether an honest and reasonable person in the circumstances should have been suspicious. In other words, you can't turn a blind eye if a reasonable person would not have done.

There are three situations where you are **not** committing an offence by not reporting something you **do** find suspicious. These are:

(a) Defence 1. You have a reasonable excuse – legal professional privilege

A "reasonable excuse" is not defined, but after Bowman v Fel, the Law Society guidance is that not making a disclosure because the information was legally professionally privileged would be a reasonable excuse.

Legal professional privilege is the common law protection applicable to English solicitors. This is not so much a defence, as an obligation on us positively **not** to report suspected money laundering. You have to be aware of it, because we would

be in breach of our professional rules by making a report. In other words, by attempting to cover ourselves, we in fact land ourselves in professional trouble.

It applies to advice. Legal professional privilege applies where we give advice to a client. That includes advice in a conveyancing matter, and the privilege covers all communications with, instructions from, and advice given to the client, including any working papers and drafts, as long as they are directly related to performance of our professional duties as a legal adviser.

It does not apply to other information. This privilege only applies to the advice situation -- information from the client for the purpose of getting advice, and advice to the client -- and it doesn't apply to information you come across in the course of the transaction, such as suspicions about the nature of the transaction itself or the source of the money. These are not covered by legal professional privilege because no advice is being sought. Instead, the client is trying to use us to carry out a crime.

Human rights. The point of legal professional privilege is that a client who is seeking legal advice has a fundamental human right to be candid with his legal adviser, without fear of disclosure which would harm him. It is an absolute right and cannot be overridden by any other interest.

(b) Defence 2. The information came to us in privileged circumstances

This is different from "legal professional privilege" although the two concepts may overlap. It is a European-wide concept applicable to this legislation only. They are "privileged circumstances" when information is communicated to you by a client (or representative) in connection with the giving of legal advice to the client, or when the client is seeking legal advice from you, or by a person in connection with legal proceedings or contemplation of legal proceedings.

In other words, the exception applies where the client is looking for advice on his position, and tells you or shows you something. It also applies if someone rings up, or writes in, asking us if we can help them with existing or anticipated legal proceedings, even though we don't take the job on.

The exception applies where the person is seeking advice, or giving information. It does not apply where the client is actually seeking our involvement in the criminal action in some way - whether doing something, or covering it up.

You do not have to make the decision, since it is a legal issue. Report the circumstances to the nominated officer, and he will make the decision. You would have covered yourself by having made your report to the nominated officer.

(c) Defence 3. You did not receive appropriate training from us.

We would rather you did have the training, and consequently never get into difficulties, and never need to use the defence

The crime of tipping off

It is an offence to make a disclosure which is likely to prejudice an investigation if you know or suspect that a disclosure has been made to the nominated officer or to the police, or if you know or suspect that a money-laundering investigation is being, or will be, carried out. (sections 333 and 342)

Tell no-one. You must not tell anyone anything which might prejudice an investigation. It's not just the client you must tell; you mustn't tell anyone else who might who might say something revealing to the client (or also be involved). It is not just the fact of the disclosure which you must not mention, it anything which might reveal there is likely to be an investigation.

You're safe till after formal disclosure anyway. The offence of tipping off is only committed *after* a disclosure has been made to the nominated officer. So you commit no offence by asking the client questions although they may alert him to the fact that you are investigating, and that his money-laundering will be discovered. In fact the whole anti-money laundering regime imposed the obligation on us to ask questions.

You can ask questions. Ultimately, in order to make a disclosure to the nominated officer, you have to decide whether you are actually suspicious, in the sense required by the rules, in the first place, and you may be able to genuinely dispel your suspicions by asking some appropriate questions and getting the answers. You are entitled to ask questions to remove suspicions. You just have to be careful not to do it at a point where you know there already is or there is about to be a report or an investigation. A technical defence -- but it is in the Law Society guidance -- is that enquiries as such are not disclosures anyway: but I wouldn't place too much reliance on that. (It seems to me that sticking "isn't it?" on the end of "That's money-laundering" isn't going to impress a jury.)

Client warnings about money laundering. It is it all right for us to include statements in our standard terms or in letters warning clients about money laundering obligations, including our obligation to disclose, and the fact that we are not allowed to tip them off. We do not have to let our clients walk into a crime. If a client indicates that he intends to do something which would be money-laundering, obviously we should advise him immediately not to do it. This does not apply, of course, if what he reveals is that money-laundering is already underway, as defined above, because then we have to make a report (unless the privilege provisions prevent us). If you think that the client is innocent, but that

someone else is doing money-laundering, we may have a duty to advise the client to seek specialist advice regarding the risk of becoming involved in one of the laundering crimes.

Know or suspect. It is a defence if you did not know or suspect that the disclosure to the client (or whoever) that there is a report of possible money-laundering was likely to prejudice any police investigation. You definitely shouldn't set out to make a calculated gamble and tell the client something. But if you say something inadvertently and without any intention of giving forewarning of an investigation, nobody should come down on you for your error.

Conclusion: Be extra cautious, then lie through your teeth

Our advice to you is as follows:

(1) From the very start, we have to ask for documents and information as part of the verification of identity process, so you are perfectly entitled to keep on pushing for documentation, and even asking for more documentation than normal, or further explanations, and this isn't going to be tipping off.

(2) **But** once you think you have a suspicion, lie through your teeth to the client rather than say anything you think might tip him off. Better safe than sorry. The law now imposes an absurd burden on us. If the client has done nothing wrong, he has nothing to fear. If he has done something wrong, there is no reason for you to get caught in the fall-out.

You as an individual and we as a firm don't have any overriding duty of disclosure of money-laundering. Disclosure is only required if the information on which suspicion is based comes in the course of business in the "regulated sector". This includes our normal business -- it just doesn't include social or friendly contact you may have with people unrelated to business.

3. Money-Laundering Warning Signs

Money-launderers will constantly be coming up with new schemes, so these are just factors which should help you decide whether there are reasons for further investigation or suspicion, but they are not exhaustive obviously.

Odd behaviour by the client

- The client is secretive.
- The client is obstructive
- The client is excessively controlling – e.g. wanting to be involved at or before each stage in an unusual way
- The client gives unusual instructions (unusual for him, or unusual for us to receive)
- The client wants us to do something outside our normal work, such as organising trusts or setting up companies.
- The client lives a long way away, and we can't understand why he's chosen to use us specifically. (Obviously okay if recommended by another client or the estate agent)

Odd aspects to the transaction

- The transaction involves a loss where there is no real reason for it
- Money is to be transferred for no obvious commercial reasons
- Money is to be paid in cash or directly between the parties (which may indicate mortgage or tax fraud).

Use of the client account

It's particularly helpful to a money-laundering to have money sent out of a solicitor's client account, because it then looks legitimate to the next recipient. These are some suspicious instructions

- The client puts funds into our account and then the transaction collapses for no good reason, so it has to be paid back

- The client says money is coming from one source, and it comes from another.

- Unexpectedly the client wants you to send back money, or to send it somewhere else.

- The client wants to put significant amounts of money into our account when we haven't asked for it

- The client wants us to hold money, but unrelated to the specific purpose for which we're acting. We are not allowed let clients "park" money with us.

- The use of substantial amounts of cash can be suspicious. It can be part of trying to introduce the money into the banking system.

Source of funds

We need to make enquiries if money comes from a source other than the client.

It is reasonable for money to be received from the company if the client is a director of the company and has authority to use company money for the transaction

The Law Society guide says you do not have to make enquiries into every source of funding from other parties. They accept you may have to accept funds from a third-party, perhaps because time is short, in which case one should ask how and why the third party is helping with the funding. It is not necessary to carry out full identity checks on that third party. But you do need to be alert to warning signs and then get more information.

Foreign clients

You should be particularly careful of clients coming from countries where drugs terrorism or corruption is prevalent. For clients from such countries, there are government websites to check for more information. See the Law Society guidance.

Companies

We may be involved in company matters to a limited extent. We should try not to set up companies but arrange the client to set up a company the various online facilities

4. How to report suspicions

Report suspicions

If you have suspicions, you should make a disclosure to the nominated officer for the purpose of making reports to the police. You should report your suspicions as soon as you form them, but (as above) you are entitled to request clarifications or additional information in order to decide if you do actually have suspicions or merely an uneasy feeling.

Your reporting obligation is satisfied if you make a report to the nominated officer. Michael is the nominated officer and John is his replacement when Michael is not available.

Bear in mind you will not be regarded as making any report, if you are just asking for guidance or a second opinion on something. If you are making a report, meaning that you expect it to be passed on to the police, then you need to put it in writing.

If you become suspicious after a step has been taken - perhaps after exchange of contracts, where money has already passed - you should still report your suspicions as soon as you do suspect money-laundering. That would not prevent you having committed an offence by not reporting your suspicions earlier, but it is better than compounding the problem. (It may be that it was reasonable for you not to have any suspicions at the earlier stage, in which case you did nothing wrong.)

Disclosure is only required if the information on which suspicion is based comes in the course of business in the "regulated sector". This includes our normal business. It doesn't include social or friendly contact you may have with people unrelated to business. You don't have to report your friends or family for what they say in the pub.

Making a disclosure either (a) before money-laundering has occurred, or (b) while it is occurring but as soon as you suspect, or (c) after it has occurred if you had a reasonable excuse for not disclosing earlier, is a defence to any money-laundering offence by you. If you disclose later than that, you may have broken the law against disclosing. You should seek independent legal advice on your position. You can't seek it from us since we would be under a duty to convert your request for advice into an immediate disclosure to the police of the suspected money-laundering. But generally speaking, if you genuinely had not thought there was money-laundering earlier, and you report it as soon as you do suspect it, it's hard to believe that anyone is going to start trying to draw distinctions between when you suspected it and when some hypothetical reasonable person might have

suspected it. Better that than staying silent because you feel you are in trouble already, and then making matters worse. But if you ever do feel you are in such a position, do take independent legal advice. The Law Society has a panel of solicitors who advise on such matters, but as you know, we would normally recommend that if you want legal advice you should go to an expert barrister.

The Law Society guidance states that delays in disclosure arising from taking legal advice or seeking help from the Law Society may be acceptable provided you act promptly to seek advice.

Making a disclosure to the police

The nominated officer must, if the circumstances require it, make a disclosure to the Serious Organised Crime Agency (SOCA).

They have a form with which we have to use. It can be done online. They send an e-mail confirmation. (It can also be done by post or fax but we should do it by e-mail or online for speed.)

Part of the purpose of disclosure is to seek consent for acts which might be money-laundering offences. In our case, this is generally consent to carry on with a property transaction about which we are suspicious. But you only get consent for what you ask for. So it's essential you give the broadest possible description of things you might need to do. Anything outside them and you don't have consent for it.

SOCA should contact us by telephone to tell us that consent has been given, and will then follow up with a letter. They respond within seven working days. If they refuse consent, then obviously you can't do anything. If they refuse consent, there is a further 31 calendar days moratorium period. During the notice period and moratorium period, you can still do the things which are not prohibited acts. For example, you can write letters and do searches. You can't handle money or arrange any contracts.

5. Customer due diligence

Business relationships and occasional transactions.

We have to check out our clients when establishing a "business relationship" or when carrying out an "occasional transaction".

Business relationship. When we are instructed by clients, it is a business relationship if we expect it "to have an element of duration."

Occasional transaction. An "occasional transaction" means the transaction amounting to £15,000 or more. That means £15,000 which is going to pass through our hands.

How do you distinguish between a business relationship and an occasional transaction? It can be an occasional transaction even if there are several operations which appear to be linked. I take that to mean that a sale and purchase or a re-mortgage is usually going to be an occasional transaction. If someone “always uses us”, or has used us a number of times, then it *may* be a business relationship, although it seems to me that someone who happens to come back to us to sell the property they bought several years before is probably entering into a second occasional transaction, because they do not regard us as providing ongoing services, it is just that they make a free choice to use us again.

Business relationships are more applicable to general practitioners where someone approaches the solicitor saying he wishes to become their client, and it is not obvious at that stage what sort of work will be required. But it could apply to us if someone came to us announcing that they wanted to buy UK property but they weren’t doing a normal home purchase – an example would be someone starting a ‘buy-to-let’ business.

With business relationships it is necessary, in addition to identity checks, to ask what is the purpose of the relationship.

What is customer due diligence

We have to do the following:

(1) **Identify the client.** We must identify the client and verify their identity on the basis of documents, data, or information obtained from a reliable and independent source.

(2) **Identify beneficial owners.** In situations where the client is not the beneficial owner of the money or property -- e.g. the client is a trust or company - we must also take adequate steps to verify the beneficial owner's identity, so we know who the beneficial owner is. This would involve establishing the ownership and control structure of the client entity.

(3) **Identify the purpose of the relationship.** In the case of a business relationship, we must obtain information on the purpose and intended nature of the relationship.

Identifying the client and verifying their identity

Identify the client. The first step of the identity procedure is to identify the client. This means no more than being told the client's name and address. It is the starting point.

Verify the client's identity. Verification of the client's identity means obtaining some evidence which supports this claim of identity. There are lots of different methods which can be used. It can be in the form of documents, electronic verification, or information from regulated persons, or even confirmation from someone in the firm that they know the client, but the bottom line is it must be a reliable and independent source of verification.

Risk based approach

There is no hard and fast rule about exactly what documents, or how many documents, are enough. We have to form a view on how low-risk or high-risk is the type of business, or the type of client. It's down to us to show that we took appropriate measures in the light of the risks of money laundering and terrorist financing. This is, of course, all very unfair, since it means being judged after the event on risks that we are in absolutely no position to determine without knowing what areas of finance and business happen to be most risky for these purposes. We should, therefore, simply err on the side of caution. For example, it is possible to have electronic verification. This just means that a company searches records to make sure that such and such a person does exist. It doesn't mean the person sitting opposite you is that person. However, it is useful as a corroborative measure. The Law Society do actually state that it can on its own be a sufficient measure of compliance. (But check whether the Council of Mortgage Lenders Handbook requires us to personally meet borrowers.)

If we use electronic verification, Michael will establish that the provider complies with the requirements recommended by the Law Society.

Timing

We are required to verify our clients' identity and that of any beneficial owner before establishing a business relationship. If we are unable to do so, we must terminate the relationship. However, we can do it after the start of the relationship if it is necessary not to interrupt the normal conduct of business and there is little risk of money-laundering or terrorist financing occurring. In other words, we can normally do it after a property transaction starts but no later than exchange of contracts when money passes.

But you must be alert to any other step occurring in the particular transaction which might be money-laundering sensitive, in which case we have to get the identity check done before that. For example, if the client wanted us to receive or make a payment, or open a bank account. We definitely must not permit funds or property to be transferred, or any contract to be signed, before complete verification. Money must remain frozen till that occurs.

Ongoing monitoring

Update our information. We must keep documents data or information about clients and others up to date. We must look critically at new transactions to make sure they are consistent with our knowledge of the clients, their business and their risk profile. (We may have to move them into another category which might require more stringent checks if the new transaction is of a different type which requires it.)

Updating isn't redoing. Despite this new set of requirements it doesn't mean that we have to completely redo the initial client checks or conduct random audits of files.

Updating doesn't hold up the transaction. The first time we act for a client we are not meant to take any steps until verification has been done, but with monitoring you can carry on with the job as long as we still know who the client is but we are waiting for some verification material we have asked for. (We have to make a note of what we are awaiting.)

It's down to you. Law Society guidance says that this monitoring will normally be handled by the fee earner dealing with the case and involves staying alert to suspicious circumstances which may suggest money-laundering or that any identity information given in the past is false. In other words, you cannot rely on the fact that somebody did an identity check in the past, and then turn a blind eye to anything subsequent.

Handling gaps. The Law Society guidance is that we should consider reviewing identity material when taking new instructions, particularly if there has been a gap of more than ***three years*** between instructions. This does not necessarily involve repeating the process as if with a new client. The review can consist of someone in the firm confirming that they know the individual client. I suppose the point is to make sure that someone does not steal an identity or, in the case of a company for example, that there is no change of ownership.

Proof of identity for individuals – Law Society guidance

Someone's identity includes their name, current and past addresses, date of birth, place of birth, physical appearance, employment and financial history, and family circumstances. (You don't have the check all of these. Name and address will usually be enough, but if you could not get evidence of address, date of birth could replace it. Some of the other information could be used if the client is regarded as higher risk.)

This is a list of documents or sources of information which the Law Society mention in their guidance note:

- current signed passport
- birth certificate
- current photo card driver's licence
- current EEA member state identity card
- current identity card issued by the Electoral Office for Northern Ireland
- residence permit issued by the Home Office
- firearms certificate or shotgun licence
- photographic registration cards for self-employed individuals and partnerships in the construction industry
- benefit book or original notification letter from the DWP confirming the right to benefits
- council tax bill
- utility bill or statement, or a certificate from utilities supplier confirming an agreement to pay services on pre-payment terms

- cheque or electronic transfer drawn on an account in the name of the client with a credit or financial institution regulated for the purposes of money-laundering

- bank, building society or credit union statement or passbook containing current address

- entries in a local or national telephone directory confirming name and address

- a recent original mortgage statement from a recognized lender

- a solicitor's letter confirming recent house purchase or Land Registry confirmation of address

- local council or housing association rent card or tenancy agreement

- HMRC self-assessment statement or tax demand

- house or motor insurance certificate

- record of any home visit made

- statement from a member of the firm or other person in the regulated sector who has known the client for a number of years attesting to their identity -- bear in mind you may be unable to contact this person to give an assurance supporting a statement at a later date.

For persons not resident in the UK, evidence of identity should be their passport but it can be can be a national identity card. If we have concerns that the identity document is not genuine, we should contact the relevant embassy or consulate. The Law Society guidance says that we can obtain evidence of address from:

- an official overseas source

- a reputable directory

- a person in the regulated sector in the country will where the person is resident who confirms that the client is known to them and lives or works at the overseas address given.

If documents are in a foreign language, the relevant sections must be translated.

6. Practical due diligence – how to do it

Proof of identity for individuals

Name and identity

We require:

- current signed passport
- current photo card driver's licence (UK only)

The bottom line is that the evidence of identity/name should be a Government document. There are others which can be acceptable such as a residence permit issued by the Home Office, but if anyone cannot offer a passport etc then you must refer it to Michael or John for a decision on what is acceptable.

Address

We require one of the following:

- council tax bill
- utility bill or statement
- original mortgage statement from a recognized lender
- Revenue & Customs self-assessment statement or tax demand
- house or motor insurance certificate

Any such documents must be recent (within the last three months)

There are other ways of proving address which are possibly acceptable - but you must ask Michael or John first. For example, entry in a local or national telephone directory, or even a record by us of a home visit. In that case we may require more than one.

More for someone not resident in the UK

For someone not resident in the UK the correct address – it can be home or work – must be confirmed by a person in the regulated sector in the other country who confirms that he knows the client and that he lives at the specified address.

More is you don’t meet the client

The above apply if you meet the client. If you don't meet the client, these standard measures are not enough and you have to go for enhanced due diligence. (See later).

Partnerships

A partnership is only a collection of individuals. So you need to check out two of the partners, including the one giving instructions, as you would for individual clients.

If it is a partnership of regulated professionals - e.g. solicitors or chartered accountants - you only need to confirm the firm’s existence and the trading address from a reputable professional directory or from the search facility of a relevant professional body.

UK companies and LLPs

A company is a legal entity on its own. Its identity comprises its constitution, its business and its legal ownership structure. The key identification items are the company's name and its business address. The registration number and names of directors may also be relevant identification items.

You should always obtain the following:

- certificate of incorporation (from Companies House website)
- confirmation of the registered office (from Companies House website)
- the names of at least two of the directors and their addresses (from Companies House website) - you do not have to carry out due diligence on the directors themselves beyond that.
- a utility bill or statement for the trading address of the company if it is not the registered office address
- a letter from a director that the person who will be giving us instructions (if not a director) is authorised to do so.

If the company is a well-known household name, we may be able to accept less. Consult Michael.

If the company is a subsidiary of a company we have already checked, the paperwork we have already checked can form part of the verification process for the subsidiary.

For public companies, simplified due diligence applies. That means a stock exchange company not an AIM listed company. A page from the stock exchange website confirming the company is listed would do.

Overseas companies

For overseas companies, the same information needs to be produced. If there is a public register you should download information from the public register to establish that the company exists by that name, its registered office, officers and shareholders.

Request to see originals of any documents which are its constitution and which appoint the officers or record shareholdings. We can rely on copies, provided they are certified by a person in a regulated sector or another professional in the relevant country.

For overseas companies, simplified due diligence applies to one which is listed on a regulated market (a stock exchange in a developed country). If they claim they are, consult Michael.

Trusts

Trustees may be individuals or companies. You must obtain information on at least two of them just as you would for individuals or companies, as appropriate.

In addition, we should require:

- an explanation from the trustees of the purpose of the trust, and the source of the funds used to create it,
- the trust deed or an extract from an appropriate registry in the country where it is set up.

Note. More on beneficial owners below

Charities

Consult Michael on the verification procedures in the unlikely event we are to act for a charity.

In the UK charities (or most of them) should be registered with the Charity Commission and details of the registration should be obtained. Overseas charities may equally be registered with their public register.

If the charity is corporate, normal requirements for a company should be followed, as above. If it is a trust-type body, then follow the procedure for trustees, as above.

Deceased estates

When acting for executors or administrators, you should carry out the necessary checks on them (or at least two of them if there are several) as you would for any individual client. You should also obtain:

- an official copy of the death certificate
- an official copy of the probate.

While the estate is being administered, the executors/administrators are the beneficial owners and there is no need to check further for beneficial owners. After the estate is administered, if there are any will trusts, the trustees (if different from the executors) will be the individuals requiring due diligence.

Churches and places of worship

These may be charities in which case carry out checks as for charities. Alternatively, they may be registered with the General Register Office. Further checks can be made at the headquarters or regional organisation of the denomination or religion.

Schools and colleges

These may be charities, private companies, unincorporated associations or government entities and should be verified accordingly.

Clubs and associations

These are an odd category which may not be companies or trusts. You need to check out at least two of the office holders (if there are several) and get documents which verify the existence of the club or association, such as:

- its constitution
- a statement from a bank or building society
- recent audited accounts
- listings in a local or national telephone directory.

Pension funds

These should be verified according to their specific business structure (company or trust)

Government agencies and councils

Simplified due diligence applies to UK public authorities.

For foreign authorities, refer to official government websites. In reality, simply refer to Michael, since it is very unlikely to happen.

Due diligence on a beneficial owner

When acting for a client instructing us on behalf of someone else (whether it is individuals or a company etc) we need to identify that beneficial owner as well. This means obtaining their names and recording any other identifying details which are readily available. It is not necessary to verify beneficial owners to the same level that we would a direct client.

It is necessary to list all the beneficial owners and also to understand what role they have, if any, in the transaction.

Appropriate verification measures include:

- a certificate from the client itself, verifying the beneficial owner's identity

- a copy of the trust deed, partnership agreement or other document creating the beneficial owners' interests
- shareholder details from Companies Registry
- the passports rushed to of the individual beneficial owners.

We should establish why the client is acting on behalf of a third party. The following are factors which should make us look into the beneficial ownership structure in more detail:

- we don't know the client very well
- the client is not a regulated person (not a recognized professional)
- the business structure seems strange or unnecessary
- the business is based abroad, particularly if in a non-"Western" country

Agents

If the client is acting under a power of attorney, the document granting the power of attorney may be sufficient to verify the beneficial owner's identity. Where someone is appointed agent to conduct a transaction, a signed letter of appointment may be sufficient to verify the beneficial owner's identity.

If the client or the transaction is higher risk, then the verification methods for an individual client should be employed.

Companies

A beneficial owner in a company is

- a shareholder who has more than 25% of the shares or voting rights. (So you can ignore other shareholders),
- anyone who exercises control over the management of the corporation or body.

When the company is client, we need to make reasonable and proportionate enquiries whether beneficial owners exist. This means asking the client, or the director we are dealing with, carrying out a company search, or getting assurances from regulated persons in other countries.

It is necessary to have an overall understanding of the ownership and control structure of the client company, but without carrying out an exhaustive analysis if the structure is really complicated.

Some companies have bearer shares. We should establish the identities of the holders and beneficial owners of such shares and make sure we are notified whenever there is a change of holder and/or beneficial owner.

Companies can be controlled by someone other than actual shareholders. If there is any indication that the obvious control structures are being bypassed, then further enquiries have to be made.

Partnerships

A beneficial owner in a partnership is anyone who has 25% of capital or profits or voting rights, or who exercises control over the management of the partnership. The same rules apply.

In normal circumstances we can rely on assurances from the client (the partners we're dealing with), a professional adviser closely involved with the client (who qualifies as a regulated person), and getting hold of the documentation setting up the partnership.

Trusts

A beneficial owner is anyone with at least 25% interest in trust capital, anyone else in whose main interest the trust operates, any individuals who control the trust. Should the beneficiary turn out to be a company, then you have to apply the same rules to the company as if it was an immediate beneficial owner.

In complicated trusts only Michael or John is going to be in a position to assess who are beneficial owners under the rules.

Generally you should ask the trustees to confirm the existence of beneficial owners and identity them.

You can get assurances from other regulated persons closely involved with the client

Other arrangements and legal entities

when you are dealing with an entity which is not a company, a partnership or a trust then a beneficial owner is

- any individual who benefits from at least 25% of the property
- the class or person in whose main interest it operates
- any individual who exercises control over at least 25% of the property

This is a complicated arrangement and you would have to discuss it with Michael or John

If a body corporate is such a beneficial owner you have to consider whether to carry out verification against the company in the usual way. The idea is to get to the bottom layer of individuals.

Verification can involve asking the client for an assurance as to the existence and identity of beneficial owners, asking other regulated persons closely involved with the client, and reviewing the documentation.

Simplified due diligence

The bodies which qualify for simplified due diligence are:

- Credit or financial institutions subject to the requirements of the Money Laundering Regulations
- Companies listed on a stock exchange (you need to consult Michael if it's offshore)
- UK public authorities

Individuals almost never qualify for simplified due diligence, so always carry out full checks on individuals.

Once you have evidence that the client qualifies for simplified due diligence, you do not need to obtain information on the purpose of the business relationship, or on the beneficial owners. You have to carry out the basic identity checks.

Enhanced due diligence

In the following cases, you have to go much further than usual.

Clients you do not meet face-to-face

Enhanced due diligence is required for clients you do not meet face-to-face.

The following are suggested by the Law Society guidance note as additional steps to take:

- Using additional documents, data or information to establish identity. This may involve using electronic verification to confirm documents provided, or using two or three documents from different sources to confirm the information set out in each.

- Using supplementary measures to verify or certify the documents supplied or obtain confirmatory certification by a credit or financial institution which is subject to the Money Laundering Directive. You may consider electronic verification to confirm the documents provided. Alternatively consider getting certified copies of documents (check that the certifier is an appropriate person under the rules of the country or is regulated or otherwise of professional person.)

- Make sure the first payment is through an account opened in the client's name with a credit institution. Credit institutions must provide the buyer's name and address and account number with all electronic fund transfers.

We require enhanced due diligence to be as follows:

- one extra identity document

- one extra address document

- the first payment to be from a bank containing the clients name and address on the transfer.

Politically exposed persons

Enhanced due diligence also applies to "politically exposed persons". These are heads of state, ministers, judges, ambassadors, and family members or associates. You are not expected to know whether a person is such a person. But if you are aware that they are a public figure here or abroad then you need to think about it more closely. We are entitled to ask clients the question, and rely on their answer, given the kind of work we are doing. If you suspect someone is a politically exposed persons, you should look them up on Google as part of the procedure.

There are indicators which may suggest someone is a politically exposed persons, such as receiving funds from a government account, correspondence on official letterhead, or seeing news reports.

When starting a relationship with a politically exposed person, you must make sure you have senior management approval (approval by John or Michael).

You must take adequate measures to establish the source of wealth and sources of funds which are involved in the business relationship or occasional transaction. Establishing the source of wealth and funds generally involves asking the client the question. You must conduct enhanced ongoing monitoring of the business relationship.

We are not required to actively investigate whether a beneficial owner is also a politically exposed persons. But if we have concerns, we must take extra measures.

You should make sure the funds come from the nominated account, and that they are for an amount commensurate with the client's known wealth. Ask further questions if they are not.

Existing clients

We do not always have to re-identify and verify existing customers, and we don't have to update procedures already carried out which were legitimate when the relationship or transaction started.

But new due diligence may be required in the following circumstances:

- a gap in retainers of three years or more
- a client instructing us on a higher risk retainer
- where you develop a suspicion of money-laundering or terrorist financing by the client

It isn't necessary to ask everything again. We may be able to verify their identity from the information we had last time, if it's still adequate under the new rules, and there may be publicly available information as further confirmation. We only have to ask the client for new evidence if what we hold is not adequate.

It is also adequate for a fee owner or partner who has known the client for a long time to place a certificate on the file providing assurance as to identity.

7. The risk-based approach

Under the Money Laundering Regulations 2007 we are required to decide if our business and our clients are high risk or low risk for money laundering, and tailor our approach accordingly.

Barretts' risk profile

We have considered the factors set out in paragraph 2.3.1 of the Law Society guidance. This relates to our "client demographic". With their usual helpfulness, the Law Society fail to mention whether these factors are all indications of high, low risk, or some of each. One factor is whether we "have a high turnover of clients or a stable existing client base". This applies to us as it must to everyone, since either one or other of those statements must apply. In our case, we are in the middle, because we have a lot of return clients and a lot of new clients. We do not see why either type should be a particular risk. There are no other stated factors which particularly apply to us. We therefore conclude that we are a low risk business so far as our "client demographic" is concerned.

We have also considered the factors set out in paragraph 2.3.2 of the Law Society guidance. This relates to services and areas of law which could provide opportunities to facilitate money-laundering or terrorist financing. None of the stated factors apply to us. We've considered whether there might be any other factors which would make us particularly high risk but we cannot think of any. We therefore conclude that we are a low risk business so far as our services and area of law are concerned.

Risk from individual clients or retainers.

We have to look at clients individually to decide what kind of risk level they pose. This is something you have to do when taking instructions. It is not just the client you have to consider but also the "retainer" -- the purpose for which the client has instructed us. The factors the Law Society guidance sets out as follows (with our views on how they apply):

Client verification factors

- "Your client is within a high risk category." I have no idea what they mean by a high risk category, apart from known criminals.

- "You can be easily satisfied the CDD material for your client is reliable and allows you to identify the client and verify that identity". I take this to mean that unless you get straightforward "passport plus recent utility bill" type documentation, every inconvenience you suffer in getting to the bottom of the position pushes the client into a higher risk status for which more rather than less further documentation becomes necessary before we are satisfied.

- "You can be satisfied you understand their control and ownership structure." This will apply when we are acting for companies, partnerships, trusts or other entities. It won't apply when acting for ordinary individual home owners. I take this to mean that unless we get straightforward UK company documentation, or foreign equivalent, the necessity to figure anything out pushes the client into a higher risk category, where it will take more to convince us than normal.

Retainer factors

- "The retainer involves an area of law at higher risk of laundering or terrorist financing." There is nothing in the Law Society guidance to suggest that straightforward, mainly residential, property work such as we do is higher risk than any other regulated area of law. What we must always bear in mind is that large amounts of money are being used, and the whole point of money-laundering is to legitimise large amounts of money.

- "Your client wants you to handle funds without an underlying transaction, contrary to the Solicitors Account Rules." This should certainly set off alarm bells. Clients account cannot just be used for banking purposes.

- "There are any aspects of the particular retainer which would increase or decrease the risks." You have got to be alert to suspect behaviour similar to the examples set out in this note.

How client verification risk and retainer risk affect your actions

You should have formed a view whether the client verification or the nature of the retainer is taking up your time and mental effort, and thus going into the higher risk category.

If anything is causing you a problem or concern, then it doesn't matter whether it's verification, the retainer, or both, you must do whatever is necessary to get it right at the start and monitor it properly. The more problems you have getting satisfied, the higher you must set the bar to be satisfied.

Internal systems

Authority to make decisions. John Michael and Christine may each exercise discretion on customer due diligence in any particular case, bearing in mind the risk-based approach.

Work before documentation. We should require clients to provide all necessary documents and information to complete customer due diligence before we begin work. However, if there are normal and reasonable delays, you may commence work on the matter to avoid prejudicing the client's interests, while pressing for completion of identity checks. This can include receiving and using money for fees and disbursements. The line you cannot cross is to move from preparatory work to any real step in the transaction, such as exchange of contracts, or the receipt or application of money to be used in the transaction.

No cash. Our policy is that we do not accept cash. But if a relatively small liability is owing, such as a search fee, or a small ledger balance, and the client arrives with cash, you can accept that, although you should never encourage it.

No money from third parties. Our policy is that we do not accept money from third parties, and we do not make payment to third parties. If the client says the money will be provided to him by a third party, e.g. a relative, then you must insist that the money is paid into the client’s personal bank account, so the transfer to us is from an account in the client's name. There may be rare circumstances in which it is reasonable for money to come from third parties, in which case you must explain to the client that we must carry out the same, or even more rigorous, identity checks on the third party as we've already done on the client. This is all made clear in our terms of business. Nowadays, everyone is aware of money-laundering requirements, so there is no need to feel under pressure about such matters, even if it puts the client in a difficult financial position or delays completion.

No money to third parties. Do not pay money to third parties, except where we are paying creditors to remove charges on a property. If the client says it would be more convenient if money was sent to someone else direct, for some genuine business or personal reason, your response should be that much as you would like to help unfortunately we just cannot do so.

No money without our request. In the course of the transaction, we will request funds from a client. As a general rule, we will not accept funds sent to us in advance. For an example, if a client instructs us to buy property and then proposes to send us the purchase price straight away, that is not acceptable. However, I have no objection to a client lumping together known or anticipated expenses. So at exchange of contracts, for example, it is acceptable for each client to send not only be deposit but also the balance if that seems reasonable. The point is to stop clients parking money with us and then getting us to send it back

or on somewhere else, not to stop clients providing funds for genuine transactions in a way to suit themselves.

Disclosures. When you make a disclosure you are stating that you definitely know or suspect there is a problem, and you are anticipating that the nominated officer will pass your disclosure on to the police. You can't withdraw a disclosure. A disclosure is different from merely asking someone for guidance on what further due diligence to carry out. If you are making a definite disclosure, you can make it verbally, but you should of course have your material ready to demonstrate the reason for the disclosure. The nominated officer will require you to provide a written disclosure for records.

Check lists. You should complete the checklist inside the front cover of the file.

Monitoring compliance. We will institute a system for random file checks to make sure that anti-money laundering requirements are being implemented correctly. The plan should be that we each see how the others are handling matters on their files, and then discuss it so that we arrive at the best overall procedure.

The management system. The computerised management system contains an anti-money laundering system, to include recording customer due diligence. This is probably going to be a better system for us long-term, because it is an easy way to keep records for a client, in a way which are easily accessed at will. The current system of keeping the records on the actual file is potentially more awkward to administer, because the obligation to carry on ongoing monitoring is obviously difficult when a file has gone to storage.

Record keeping. Copies of documents used in the verification process, and any relevant notes or correspondence, must be kept on the relevant file. Our obligation is to keep such records for five years after the business relationship ends or the occasional transaction is completed. Since most of our work is likely to be occasional transactions, this is automatically achieved by keeping them on the file which will be archived for a minimum of six years. If and when the anti-money laundering procedures are done through the computerised management system, then it will be a matter of ensuring that all relevant documents etc (as above) are scanned or saved into the system, or that a reference is made there of the file where documents etc. are to be found. The computerised records will be kept for the minimum period in any event, and probably permanently.