

# Why Anti-Money Laundering (AML) matters

**Money laundering is a massive global criminal enterprise, worth around £90 billion annually in the UK alone. It funds people trafficking, terrorism, illegal arms sales, and drug dealing.**

The government's National Risk Assessment (NRA), published in 2015, was the UK's first comprehensive assessment of money laundering risk, and formed the basis for the national AML Action Plan unveiled the following year and the introduction of new AML regulations in 2017/18.

Major financial centres like the UK are particularly attractive to money launderers. Whether knowingly or not, UK professional advisers like lawyers, accountants, brokers and bankers can easily become involved in facilitating money laundering.

Individuals found to be implicated, innocently or otherwise, already face serious regulatory censure or criminal charges. If current Law Commission proposals come into effect, corporate criminal liability for money laundering offences could also be established soon.

All of this makes AML an essential priority for UK businesses and a key risk focus for QBE. Documenting effective AML provisions is now an important part of the broader process of vetting clients and transactions that is crucial to the effective mitigation of professional indemnity claims.



**2.7% of global GDP**

The estimated annual value of money laundering worldwide



**40,000**

The number of London properties owned by offshore companies



**£4.4 bn**

The value of UK property identified by Transparency International (TI) as appropriate for Unexplained Wealth Order (UWO) investigation



**£255**

The amount fraud costs UK each household annually



**43%**

The increase in money laundering reports in 2018 (SRA)



**31%**

The percentage of firms assessed by the SRA which did not have appropriate AML matter risk assessment



**78%**

The percentage of firms assessed by the SRA who did not have a relevant firm-wide AML risk assessment

## Recent and upcoming changes

### Unexplained Wealth Orders

Introduced early in 2018, Unexplained Wealth Orders (UWOs) are shaping up to become an important AML tool. Professional advisers are not specifically obliged to trigger UWOs, but their mere existence underlines the importance of client due diligence in areas such as identifying Politically Exposed Persons (PEP) and carrying out detailed source of funds checks. A solicitor found not to have identified such issues could face uncomfortable scrutiny if their client is subsequently served with a UWO. If one of your current clients receives a UWO, that should immediately trigger a referral to your firm's Money Laundering Reporting Officer (MLRO) and a fresh look at your risk assessment. Consider also whether you have reasonable grounds for making a Suspicious Activity Report (SAR).

### The new SAR regime

National Crime Agency director Donald Toon has suggested law firms are under-reporting suspicious activity. Despite a rise in high-profile AML cases, SARs by law firms are down 10% since 2017. While bankers may be blanket-reporting low-quality SARs, the legal profession, which currently accounts for just 1% of SARs, should almost certainly be doing more.

The Law Commission recently concluded a consultation on reforms intended to improve the quality and specificity of SARs. These include shifting the reporting threshold from 'suspicion' to 'reasonable grounds to suspect' and providing clearer guidance on what and when to report. A new corporate criminal offence for firms failing to meet their reporting obligations under the Proceeds of Crime Act has also been proposed. All of which suggests you would be well advised to reevaluate your AML and SAR compliance practices.

### Firm-wide risk assessment

Many law firms seem unaware of the requirement to conduct a firm-wide AML risk assessment, with 78% of those reviewed by the SRA yet to do so.

### The SRA perspective

AML compliance is attracting significantly greater scrutiny from the SRA. Following a recent thematic review, 12% of firms visited were referred for disciplinary investigation. Key issues flagged up included: firms relying on copying passports and utility bills for their AML checks, a lack of client/transaction risk assessment, and cursory source of funds checks.

### The SRA's Crispin Passmore highlighted some areas of concern:

Transaction type	Transaction fit	Client risk factors
† Conveyancing Investment Property in particular	How normal is this type of work for your firm?	Client or funds from Financial Action Task Force (FATF) listed territory
† Formation of companies	Is the work unusually complex or high-value?	Sanctions and PEPs
Formation of trusts	Does the transaction make sense? What is its underlying purpose?	Funds remitted from third parties † Cash transactions and unevicenced source of funds
Tax schemes	† Is there an unusual pattern of transactions?	† Remote clients/online only engagements.

† SRA priority focus for reviews in 2019. Among further SRA thematic reviews in 2019 will be one on high-end (prime property) conveyances and cash purchases, a significant focus of activity for foreign investors. The SRA will be prioritising investigations with an AML element - and looking for evidence of proper risk assessments.

## Property transactions

**Fraud, and hence AML risk for solicitors, is focused more than anywhere else on property transactions. The recent high-profile P&P and Purringsing cases share a number of features that should put solicitors on high alert:**

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Unoccupied property

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Unencumbered property

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Relatively high-value property

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Very quick sale pursued

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Seller seeking sale well below market value

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Inconsistencies in address details

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Changes of instruction following due diligence requests

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Delays in providing (or gaps in) ID information

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In the case of the Purringsing transaction, the purchaser's solicitor, became suspicious and requested confirmation that adequate checks had been made on the seller, but then failed to follow up after receiving an unsatisfactory response from the seller's solicitor. The latter confirmed having met the seller and seen a passport and utility bills with a UK address, but did not explicitly confirm anything linking him to the sale property.

### If you're acting for the purchaser

If you have concerns over potential fraud, request confirmation from the seller's solicitor, but do not get a satisfactory answer, it's essential you alert your client to the question asked and the nature of the response. You should advise your client not to proceed unless and until satisfactory answers are received.

Once you've requested clarification of a matter that would not normally be at issue, you've taken on an additional burden. You now have a duty to ensure that you have a response sufficient to be relied on. Nic Taggart of Landmark Chambers has suggested 'the buyer's solicitor would very probably be negligent in advising a client to rely on something that was not an unequivocal warranty'.

The most common response to such requests currently appears to be no response. And yet the number of sales completing does not appear to be coming down. This casts doubt on whether purchasers are aware of the potential risks to which they are being exposed.

Where there is an identifiable risk and the purchaser still wishes to progress, the best option may be to cover that risk with a Title Insurance policy.

You may also wish to suggest that purchasers sign up to the Land Registry Property Alert Service - particularly valuable for non-resident owners of unencumbered properties.

### If you're acting for the seller

Check whether the Code for Completion by Post will apply to the conveyance. Have the parties expressly agreed to adopt the Code (check the TA13 form)? Remember that adoption of the Law Society's Conveyancing Protocol will mean there is an implied agreement that the Code applies. Is your firm a member of the Law Society's Conveyancing Quality Scheme? If so, adoption of the Conveyancing Protocol is mandatory.

Assuming the Code for Completion by Post does apply, from 1st May you will be deemed to provide an undertaking that you have the authority of the real owner to complete. You will be in breach of that undertaking if in fact your client is a fraudster. If the conveyance proceeds to a false "completion" and you pay the purchase monies to the fraudsters, you will also be in breach of trust (since the purchase monies were in your hands for the sole purpose of achieving a valid completion of the sale).

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**General AML Action Points**

**Undertake** a firm-wide risk assessment

**Evaluate** the effectiveness of your current AML processes and procedures

**Audit** your records to ensure appropriate and up-to-date AML checks are in place for all matters

**Ensure** that detailed file notes are made and retained on file, including the reasoning for escalation, and the ultimate decision, in cases where a matter has been referred to the firm's MLRO

**Undertake** regular batch checking of PEPs and sanctions to help ensure status changes on open files are picked up

**Be wary** of allowing clients to use your office address as their registered office address (although once common practice, this is a potential risk indicator)

**Stay alert** for (and ensure your staff are aware of) upcoming changes in regulation and procedure, including:

- Suspicious Activity Reporting regime
- Law Society Fraud Practice Note
- Law Society Code for Completion
- SRA Risk Outlook
- Fifth Money Laundering Directive (unaffected by Brexit)

**Provide** regular refresher training for all staff.

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