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Regulating
Property
And
Probate
Lawyers

Council for Licensed Conveyancers

Risk Agenda 2024

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This Risk Agenda is updated annually by the Council for Licensed Conveyancers.

We call this a Risk Agenda because it sets an agenda for action by the regulated community to address and reduce common and significant risks.

It sets out significant issues that the CLC observes in its close monitoring and supervision of the regulated community and provides advice on how those risks can be mitigated through best practice approaches.

The frequency and depth of the CLC's engagement with regulated practices allows us to track progress closely and the 2025 Risk Agenda will reflect any changes that we see.

This edition, for 2024, contains more material in relation to anti-money laundering (AML) and sanctions than past editions. It also highlights some issues of increasing significance such as problems arising from poor post-completion work and failures to meet undertakings.

We urge practices to make use of this Risk Agenda, and the rules, guidance and advice available on the CLC's website, to protect their clients and themselves.

Hundreds of millions are laundered through conveyancing across the UK

Anti-money laundering

Overview

Anti-money laundering is always a high priority for the CLC and government alike, and the focus on it remains intense.

According to a Transparency International report in 2022, £6.7bn of questionable funds from around the world have been invested in UK property, more than a fifth of which was bought by Russians accused of corruption or with links to the Kremlin.

The Economic Crime and Corporate Transparency Bill 2023 ratchets up requirements across the economy and has added a new regulatory objective to the Legal Services Act 2007 that requires the CLC and other regulators to promote the prevention and detection of economic crime.

The government said: "While it can be inferred that the regulators should ensure lawyers are not breaching the economic crime regime, this is not set out as an explicit duty in current legislation. As a result, frontline regulators may have different interpretations of the extent of their duties relating to economic crime, and unequal effectiveness in monitoring and enforcing compliance. Regulators can also face challenge to their compliance activity, making monitoring and enforcement costly.

"The crisis in Ukraine has shone a light on the exposure of professional services sectors to economic crime. The legal services sector was assessed in HM Treasury's National Risk Assessment of money laundering and terrorist financing as at high risk of abuse for money laundering purposes. The sector is exposed to further-reaching risks such as fraud or breaches of sanctions legislation. We need to ensure that legal services regulators have the powers they need in this space."

The new objective puts "beyond doubt" that it is the duty of frontline regulators like the CLC to carry out such regulatory action as is appropriate to uphold this objective. It will also enable the Legal Services Board, as the oversight regulator, to performance manage frontline regulators against the objective.

"The intended effects are more effective enforcement action from legal services regulators, as well as reduced challenge of any type for regulators carrying out proportionate monitoring and enforcement activities to ensure economic crime compliance," the government stressed.

Your duties

Your duties are laid out in the Anti-Money Laundering and Combatting Terrorist Financing Code and the Money Laundering Regulations 2017 (as amended). To best understand their application to the legal sector, read the guidance from the Legal Sector Affinity Group (LSAG), of which the CLC is a part.

The LSAG members comprises both the regulatory and representative bodies for legal services in the UK, including the CLC. It has produced official guidance on the Regulations, which is approved by HM Treasury. This is part of the collaborative working across the sector that the CLC is involved in, with the Legal Services Board also playing an important role.

In November 2023, the LSAG approved an addendum to its guidance. This is still subject to approval by HM Treasury, and we recommend that practices review it prior to that approval. This guidance covers:

The economic crime levy: This is a new payment that must be made to HM Revenue & Customs if a practice or firm's annual turnover exceeds £10.2m. The CLC has already informed affected and potentially affected practices of this.

Discrepancy reporting: The obligation to report discrepancies has altered somewhat from an onerous obligation (i.e. every difference you spot in client due diligence (CDD)) to a more reasonable one – only 'material discrepancies' need be reported, which necessitates a link between the discrepancy and money laundering or terrorist financing or concealing details of the business of the customer.

Register of Overseas Entities: this was brought in to reveal anonymous foreign ownership of UK property. The addendum contains some details of the requirements of registration and some fundamental details.

Economic Crime and Transparency Act 2023: As mentioned earlier, the Act introduces a number of changes, such as an increase in the amount and type of information that Companies House will hold and display on the register, a de minimis exemption for paying away funds on terminating relationships, and an exemption in certain cases where there is knowledge or suspicion that part but not all of the money or assets is criminal property.

Supply chain risk: This risk refers to the end-to-end activities of a service provider to the end customer/ beneficiary. The addendum provides some details of this money laundering risk, highlighting the need to understand the nature of the service you are providing, which could include understanding the role of other professionals in the chain.

Further source of funds guidance: Helpful guidance in relation to a third party's underlying source of funds – for example, if they are contributing a gift to a conveyancing transaction. It also advises that you must understand the source of wealth of third-party giftors in high-risk situations.

Approach to CDD: This clarifies guidance on what information should be obtained for both natural persons and non-natural persons. An interesting point is that you should verify the identity of beneficial owners to the same standard as that applied to clients who are natural persons.

At the time of writing, HM Treasury was conducting a consultation on possible technical changes to the 2017 Regulations. The main themes are making CDD "more proportionate and effective", strengthening co-ordination by different bodies across the AML regime, providing clarity on scope of the Regulations and reforming registration requirements for the Trust Registration Service.

The CLC's approach

The CLC additionally takes specific AML action based on our specialist knowledge. We are obliged, under regulation 17 of the 2017 AML Regulations, to conduct a risk assessment of our own sector, setting out the main money laundering risks that we consider relevant to those we supervise. You can read our latest update, published in March 2024.

We would also encourage you to read the CLC's Anti-Money Laundering Report 2023, which sets out in greater detail our work with practices to improve AML compliance, the themes that emerge from our inspections and other valuable information. This annual report is a requirement of regulation 46A and is another useful resource for practices.

The report showed that, of the 52 practices inspected by the CLC during the relevant period (6 April 2022–April 2023), only five were considered totally compliant, 25 were generally compliant, and 22 non-compliant, with inadequate documented policies and procedures and inadequate CDD procedures being the main issues identified.

Practices must be aware that having robust policies and procedures are crucial to your overall AML approach and will often have a significant influence on other areas of compliance, such as in client due diligence. A comprehensive and updated AML policy is a crucial step in discharging your AML obligations.

Last autumn, we published a document setting out the CLC's AML supervision arrangements. MLROs and other practice managers may find this useful in understanding what to expect from the CLC's supervision in this area. We also publish details of Enforcement Determination Notices and Adjudication Panel Findings on our website; AML-related decisions are highlighted.

Source of funds and wealth

This is a significant issue at all times but particularly so at the moment. It is difficult to understand the source of funds without understanding the source of wealth – conveyancers should realise that these two concepts are not interlinked and should be considered together.

The LSAG Guidance says:

*The **Source of Wealth** (SoW) refers to the origin of a client's entire body of wealth (i.e., total assets). SoW describes the economic, business and/or commercial activities that generated, or significantly contributed to, the client's overall net worth/entire body of wealth. This should recognise that the composition of wealth generating activities may change over time, as new activities are identified, and additional wealth is accumulated.*

***Source of Funds** (SoF) refers to the funds that are being used to fund the specific transaction in hand – i.e., the origin of the funds used for the transactions or activities that occur within the business relationship or occasional transaction. The question you are seeking to answer should not simply be, "where did the money for the transaction come from," but also "how and from where did the client get the money for this transaction or business relationship." It is not enough to know the money came from a UK bank account.*

Our inspections have discovered different interpretations of what practices have to do and the evidence they need to obtain to ensure they are complying with their duty to check the source of a client's funds and wealth. One of the most common misinterpretations we see is practices concluding that merely obtaining a bank statement, or 'proof of funds', is sufficient when they are obligated to go further and establish the source of the funds in question.

We would expect practices to investigate and satisfy themselves that the clients' reported income and wealth aligns with the documentation and information the practice has been provided. For example, does their income and wealth correlate with their job role? Information must be verified with evidence, rather than simply taking clients' assertions or making assumptions based on clients' profiles.

The extent of the evidence required to verify the source of the funds or wealth will vary from case to case and will also depend on your assessment of risk in the circumstances. One area of concern is that some practices are not properly risk assessing funds from cash-intensive businesses, such as taxi drivers, hairdressers and laundromats, which clearly raise source of funds issues.

Another issue is the growth of electronic money institutions, which are similar to banks (except they cannot lend) but are not regulated as rigorously and can have quite weak controls. Practitioners need to take greater care about money passing through such institutions.

Remember that just because you have an existing relationship (including family and friends) does not mean you can shortcut this process by assuming you understand an individual's financial position. We find that practitioners can feel uncomfortable asking invasive questions to longstanding clients or those they know personally. You should be able to overcome this with a clear explanation of your legal obligations and being transparent with the client from the outset as to what you will require.

This is not a tick-box or cursory exercise and ongoing monitoring of risk is required throughout the duration of transactions. Practices need to make sure they undertake checks at the right points during the transaction – a common problem is that they leave it too late to ask about how the purchase will be funded.

By doing so near to exchange, for example, practitioners put themselves under unnecessary time pressure and as a result, in some cases we have seen, accept substandard/insufficient documentation or just fail to undertake checks properly.

We have practices that highlight the need for documentation on these issues in their terms and conditions, along with a warning that they may not be able to complete the transaction to the clients' timetable without them. This is a sign of a good AML culture.

You need to look for triggers that require fresh CDD, such as a new passport or address, or if a transaction has aborted and the client comes back some time later wanting to buy a new property. It is also good practice to redo checks after a period of time, such as a year, has passed.

The use of checklists and other documents, such as purchase questionnaires, can also ensure that the practice is working consistently and has the necessary information at an early stage in the process and that any follow-up work is recorded and undertaken in a timely manner. The CLC has drafted a source of funds checklist and guidance. Practices must also ensure that their AML policies and procedures capture source of funds and source of funds.

The CLC takes the approach that the higher risk associated with conveyancing means that practices must undertake source of funds checks on every transaction, although the extent to which they do so will be dictated by the risk arising in every case.

Read our new Compliance Notice.

Risk assessments

CLC practices are required to have a practice-wide risk assessment (PWRA), as well as risk assessments for all clients and most matters. PWRAs are another regular issue during inspections – we expect them to be reviewed annually, which is often not happening, or when there is a significant development, such as new legislation or a change to the business. You can use the PWRA template that we have developed.

A poor PWRA is often emblematic of a poor AML culture. If you are not identifying the risks, how can you discharge your AML obligations? An analysis of practice inspections in 2023 found inadequate PWRAs present in 68% of practices that had been found to be non-compliant with AML.

A further 36% of practices did not have client/matter risk assessments. The LSAG guidance explains that these assessments will help you to consider whether you are comfortable acting and, if so, to adjust your internal controls to the appropriate level according to the risk presented.

In limited circumstances, it may not be necessary to conduct an assessment on every matter, such as when the matters undertaken for a particular client are highly repetitive in nature, with risk remaining consistent and where the risk is addressed in detail in the client risk assessment. However, it is important to ensure that ongoing monitoring of the client relationship occurs at regular intervals, including redoing client due diligence on existing clients at certain intervals.

However, we find that conveyancers are often not undertaking assessments because they do not perceive a transaction to be risky. Given the risks inherent in conveyancing work, this is not good enough – you must show you have considered the risk and then use that assessment to decide what level of client due diligence you will undertake.

Also, it is not a one-time assessment – as a matter evolves, it may be necessary to revisit and adjust the assessment. Our template client and matter risk assessments recommend that the matter-based assessment should be completed not only at the beginning of a transaction but also during it and just before contracts are exchanged.

The CLC is concerned that matter-based risk assessments are too often not being done or are not comprehensive enough. We are now looking to move to disciplinary action for practices where we have identified a pattern of failure.

Proliferation financing

Legislation last year introduced a requirement for those in the legal sector to assess the risks associated with proliferation financing. The Money Laundering and Terrorist Financing (Amendment) (No. 2) Regulations 2022 came into force on 1 April 2023.

The requirement relates to the risk of being involved with money that is derived from nuclear, chemical, biological and radiological weapons proliferation (e.g. manufacture, acquisition, development, export etc) by groups and countries that are not permitted to have them in accordance with international treaties.

Although we are of the view that CLC practices are likely not high risk overall in terms of being exposed to this kind of finance, all practices must assess their own exposure to the risk.

The LSAG guidance says (page 33): "As well as the duty to create a PWRA, there is a similar but separate duty to have a risk assessment that assesses the inherent proliferation financing risks a practice unit faces given its clients, services, geographic or delivery channels. It is important to note, that it is possible to satisfy this requirement by including your assessment of proliferation risk, within your PWRA."

The national risk assessment on proliferation financing, which can be found here, will need to be considered as you look at the risk to your own practice.

Independent audits

Regulation 21(1) lists three internal controls practices should have where it is appropriate "with regard to the size and nature of its business". One of these is an independent audit function (at least independent from the operations team) to examine, evaluate and make recommendations regarding the adequacy and effectiveness of the practice's PCPs.

The LSAG acknowledges that smaller practices are unlikely to need such a function, assuming that the individuals within the practice feel that they have a good understanding of the clients and matters undertaken, but an audit remains good practice given the fast-moving nature of AML, rather than waiting for a CLC inspection.

Our view is that those we regulate have had long enough to comply with the regulations. Continued non-compliance, especially if it includes a failure to act on issues raised by the CLC previously, indicates a lack of intention or investment.

An independent audit does not necessarily need to be carried out annually but should occur following material changes to a practice's risk assessment. It gives the CLC comfort about a practice's AML culture. Small practices could engage an external consultant to undertake such an audit.

Digital ID checks

In March 2022, Lawtech UK and the Regulatory Response Unit – of which the CLC is a member – issued a joint statement to correct misconceptions among lawyers about whether they can and should use digital ID verification systems.

The joint statement confirms that legal services regulation does not prohibit the use of digital ID verification tools in any of the jurisdictions of the UK and in fact the government is working to encourage and unify ID verification across sectors, for the benefit of the public and professionals.

HM Land Registry offers a 'safe harbour' to conveyancers using a digital identity method that complies with its digital ID standard, meaning it will not seek recourse against them, even if their client was not who they claimed to be.

High-risk third countries

On 23 January 2024, schedule 3ZA (the old, frequently updated statutory list of high-risk third countries (HRTCs)) was repealed. HRTCs are now defined as those subject to increased monitoring ('grey list') or to a call for action ('blacklist') by the international Financial Action Task Force (FATF). The combined list can be found here. HM Treasury has produced an advisory note and the CLC has updated its AML Toolkit.

Bear in mind that enhanced due diligence (EDD) must be applied when a client is "established" in an HRTC, which means for an individual being resident in that country (not just having been born there) and for a company/legal person that means being incorporated in or having its principal place of business in that country.

CLC practices will need to update their AML policies and now keep a careful watch on FATF changes at their meetings held throughout the year to ensure they are up-to-date.

Cryptocurrencies

We are receiving more questions about transactions that involve such assets as the market develops, such as 'stablecoins', whose value is pegged to traditional currencies.

They raise significant issues for CDD. The requirement to identify source of funds and wealth means the origins of the money used to purchase the cryptocurrency need to be understood as well as the crypto itself, which can accumulate or depreciate in value over time and can be comprised of a wide variety of sources. Some kinds of crypto offer anonymity and can be used to disguise funds

In practice, it is likely to prove very challenging and time-consuming to conclude satisfactory SoW and SoF checks in relation to cryptoassets. You should consider whether you have the expertise and skills to handle this type of work or if it is outside the usual remit of the business, which is likely to increase the risk to the practice. Other key considerations are set out below.

Since January 2020, the Financial Conduct Authority has supervised how cryptoasset businesses manage the risk of money laundering and counter-terrorist financing – they must comply with the 2017 Regulations and register with the authority. The authority maintains a register of compliant cryptoasset providers, as well as a list of the unregulated businesses it is aware are operating in the UK. There are also numerous unregulated service providers including large ones that are based abroad.

CLC practices should be extremely cautious when considering cryptocurrency for conveyancing transactions. We would advise that the practice's professional indemnity insurance position be checked first of all – some insurers are reluctant to offer cover where cryptocurrency assets are being used – and then that the transaction is properly risk assessed.

Although such transactions should normally be considered as high risk, the risk may be mitigated depending on the type of cryptoasset or trading platform used, and whether it is regulated.

Ultimately, the same principles apply to identifying source of funds and wealth irrespective of where funds originate from. But currently we consider the AML approach to transactions funded by cryptoassets to be similar to that of cash purchases. This means EDD should be undertaken and meticulous records kept of the measures adopted to understand the source of funds. If due diligence cannot be completed satisfactorily, then the 2017 Regulations require that the business relationship be terminated.

Due diligence may include obtaining statements and trade histories and considering whether this information is sufficient to establish the legitimacy of the original funds or whether the investment has generated the funds to be used in the transaction. A few things to consider are:

- Were the funds originally deposited in the bank account/crypto-wallet consistent within the lifestyle and economic means of the client?
- Can the client explain, verify and provide evidence for any unusual activity or transactions?
- Do you have enough information to be satisfied that the funds are legitimate?
- Does the name and address contained on the bank statement/crypto-wallet correspond with the information provided by the client?

Politically Exposed Persons (PEPs)

Practices must apply EDD in relation to PEPs as they are considered to be generally high risk under regulation 33(1)(d).

The 2017 Regulations were amended last year in relation to domestic PEPs and their family members or 'known' close associates. The new starting point for any risk assessment involving such people is that the level of risk is lower than a non-domestic PEP.

Provided there are no other enhanced risk factors are present (for example, the client is based in an HRTC), practices are now permitted to apply a less stringent standard of EDD measures for domestic PEPs, their family members and known associates. This needs to be updated in AML policies.

The CLC's Anti-Money Laundering Toolkit

We have gathered together a large amount of useful information and advice in our online Toolkit.

The UK's sanctions regime continues to evolve

Sanctions

With the government's continuing work to target those linked to the Russian regime, practices' awareness of and compliance with sanctions remains a very high priority for the CLC.

The list of individuals and companies that have been sanctioned keeps expanding, while on 30 June 2023, The Russia (Sanctions) (EU Exit) (Amendment) (No. 3) Regulations 2023 came into force. This introduces a ban on UK lawyers providing 'legal advisory services' to Russians.

It defines legal advisory services as "the provision of legal advice to a client in non-contentious matters" that involves the application or interpretation of law, "acting on behalf of a client, or providing advice on or in connection with, a commercial transaction, negotiation or any other dealing with a third party", or preparing, executing or verifying a legal document.

There are a limited number of exceptions, such as where the service is provided in relation to the discharge of or compliance with UK statutory or regulatory obligations and where an obligation arises under a contract concluded before the day of implementation. The prohibition does not extend to contentious matters.

We review practices' approach to sanctions during inspections. Information about the UK sanctions regimes is regularly updated and published online by the government. This includes both individuals and entities in a regularly updated UK Sanctions List. While it can be a challenge to keep on top of the changes to the list, it is imperative that practices do so. They should also keep abreast of changes to the list of high-risk third countries and also to the scope and extent of sanctions such as the recent expansion regarding trust services.

There are various online providers that can help with this but practices should ensure they use a recognised provider that updates the latest risks and responds to new rules and regulations. If a practice is using manual checks for sanctions, they should consider using the Office of Financial Sanctions Implementation search tool, which is comprehensive and covers partial matches and even misspellings.

Practices should also consider whether a client is acting as an agent or proxy for a sanctioned person. It is imperative that beneficial owners of companies are identified appropriately and corporate structures properly understood.

Remember that sanctions do not just apply to Russia and Belarus – the sanctions regime has a global reach and applies to multiple nationalities and organisations.

Fees/Exemptions

Some exemptions may be possible under the Office of Financial Sanctions Implementation, which will decide if fees for some work are permissible. The rules on the above may also change rapidly and should be carefully checked in all relevant transactions.

Your responsibilities

Failing to follow the financial sanctions requirements could result in disciplinary action, criminal prosecution or a large public fine. You should ensure that you have the right processes, systems and controls in place now – and in future – to comply with any sanctions developments.

For more information, read the CLC's Sanctions Advisory Note.

Register of Overseas Entities

The Register of Overseas Entities came into force on 1 August 2022 through the Economic Crime (Transparency and Enforcement) Act 2022. Held by Companies House, it requires overseas entities that own land or property in the UK to declare their beneficial owners and/or managing officers.

This increases the obligations and risk when acting for an overseas entity or a client purchasing from one; breach of the Act can be a criminal offence and failing to understand the obligations also increases the risk of a negligence claim.

To register a property at HM Land Registry, the entity will need an overseas entity identification number, issued by Companies House. The number will also be needed for certain forms, such as transfers and leases.

To register with Companies House, the managing officers and/or beneficial owners need to have their identities confirmed by a UK-regulated agent. A list of them can be found here.

The safe management of client money is paramount

Compliance with the Accounts Code

Compliance with the CLC Accounts Code is, of course, a core obligation. Too often, we come across unreconciled items and aged balances when we inspect client accounts. Typically practices undertake reconciliations on the last day of the month – our requirement is that reconciliations are performed monthly, as a minimum, with larger practices often choosing to reconcile every week or even every day, which the CLC supports.

Practices must ensure appropriate oversight on signing off reconciliations – either the HOFA (if an ABS) or authorised person (if not).

We have found that some practices use consolidated ledgers for a related sale and purchase – and have done so for many years. But they are separate transactions and must have separate ledgers. The Accounts Code has always required this.

Aged balances

Aged balances are identified in a large proportion of inspections that we carry out. It is not acceptable to not give money back to clients. It indicates a lack of integrity and is a clear failure to act in a client's best interests. Another legal regulator recently fined a practice for having over £100,000 in residual balances and the CLC is considering taking similar action where we have raised the issue with practices repeatedly but they have not rectified it.

Put simply, if money you are holding is not moved for 12 months and you do not have reason to keep it, it becomes an 'aged balance' and you need to pay it to the rightful recipient. The longer you wait, the harder it will be to track down the rightful recipient, often the client.

CLC practices can self-certify – without needing our permission – for any balances not exceeding £50 to be transferred to the office account, paid to a charity or to the CLC's Compensation Fund. Records of such transfers must be kept indefinitely. Practices must still report to us what steps they have taken to try to pay the balances to the rightful recipient and seek permission where the balance exceeds £50.

We issued guidance on aged balances to compliment the Accounts Code.

Rather than deal with aged balances, best practice is to stop them arising in the first place. Practices should consider implementing a policy that a file cannot be closed and archived until residual balances (not including retentions or other funds validly retained) have been resolved. Regular reviews of aged balances can also be instrumental in preventing the problem from escalating into a serious issue.

Suspense accounts

Related to aged balances is the issue of suspense accounts, which we are identifying with increasing regularity. Their use must be avoided as the money sitting in them can otherwise be forgotten about – as transactions disappear from bank reconciliations once allocated to a suspense ledger, it becomes harder to trace the origin of the money as time goes on.

Not allowing the use of suspense ledgers will ensure that they remain visible on the reconciliation and you and your staff investigate the source of the funds and appropriately post the funds to a client ledger promptly.

We have seen examples in the last year of unauthorised individuals with inadequate supervision handling transactions

Conflicts of Interests

The Conflicts of Interest Code provides that CLC-regulated practices can act for more than one party to a transaction with informed written consent.

It specifies that, in such a situation, each party must at all times be represented by different authorised person(s)/parties conducting themselves in the matter as though they were members of different entities.

However, even if you do not act for both sides, it is good practice to have a conflicts policy in place stating this. It should also include your policies on acting for friends and family and how to manage any own-interest conflict.

What are the risks?

There is a heightened risk of a conflict of interest in such situations and so there need to be people of an appropriate level of seniority handling the matters to ensure they recognise any conflict that may arise.

However, we have seen examples of unauthorised individuals with inadequate supervision handling such transactions. This is not acceptable. If the nature of a practice's structure means it cannot meet the requirements for acting for both sides in a transaction, then they must not take on the second client.

To be clear, while the fee-earner handling the matter does not have to be authorised in these circumstances, their direct supervisor is required to be. In May 2023, the CLC issued new Acting on Both Sides Guidance, which expands on this issue.

The 2023 guidance assists practices in achieving compliance with the Conflicts of Interest Code and is a useful tool when devising policies and procedures in this area.

Practices also need to ensure there is adequate separation between the fee-earners and authorised persons acting for the different parties. At a minimum, this means they should not be able to overhear each other's conversations – we have seen cases of them sitting next to each other – and ideally, they should be in separate rooms or even offices.

We are aware that some practices will only act in these circumstances if they can act for each party from different offices, which certainly makes separation easier to demonstrate in some respects. Additionally, best practice is to ensure that case management systems have controls in place which prevent individuals accessing the other side's file.

An issue for practices to consider is whether the authorised persons involved in such matters also hold compliance roles that may conflict or lead to information leaking out.

In one recent disciplinary matter, the practice's HOLP and HOFA/MLRO acted on either side of a transaction. This created a foreseeable risk if the HOLP needed to escalate a money laundering issue to the MLRO, which would undermine the information barrier that was between them.

The practice's view was that, in such a situation, the MLRO would cease to act, and a different authorised person would take over conduct of one side of the transaction. The Adjudication Panel disagreed, saying the practice would have to cease to act altogether. It also considered that there was a clear and significant risk of conflict arising in circumstances where the MLRO acts on one side of a transaction, and that acting in such circumstances demonstrated a lack of integrity.

Complaints handling

Practices need to approach complaints with an open mind. They are an excellent source of information and should be dealt with fairly, constructively and impartially. You should have someone senior enough to take an objective view allocated to their resolution. Do also keep a log so you can act on systemic issues.

The CLC will this year be updating the Complaints Code in light of recent guidance from the Legal Services Board and also conducting a deep dive on complaints handling, focused on those practices that are responsible for a disproportionate number of referrals to the Legal Ombudsman (LeO).

The independent Adjudication Panel has in recent times sanctioned licensed conveyancers for systematically poor complaints handling and the CLC will not hesitate to refer cases to the Adjudication Panel where we see persistent failures.

The CLC's ongoing monitoring work has detected issues with practices' complaints policies and website information having not been updated since the introduction of LeO's new Scheme Rules on 1 April 2023 and new address on 22 January 2024. The most significant changes to the rules for CLC practices are to do with the LeO's new time limits for accepting complaints.

Practices must review their complaints policy and website to ensure they are compliant with the new rules. To assist, the CLC's Complaints Guidance has been updated in accordance with the new rules.

Complaints handling is important in and of itself but practitioners need to remember that it also impacts on the cost of regulation. The cost of LeO is passed on to all the approved regulators through a levy based on the average number of complaints generated by their communities over the previous three years. In 2023, it made up £995,968 of the CLC's budget of £3.56m (when the CLC's own operating costs were £2.56m). More than six in ten CLC practices do not generate complaints to LeO.

In 2022, we changed how we spread this cost across the regulated community by introducing a user pays component to the charge that means those generating work for the ombudsman will pay more.

All practices still pay something towards the cost of LeO as there is a profession-wide benefit to its availability in terms of consumer protection. But last year, we charged 30% of the levy payment to 78 practices on the basis of LeO usage. We are considering increasing the proportion based on usage given that numbers of complaints are not falling.

We expect that this will incentivise practices and individuals to deal with complaints in a more timely and effective manner and will closely monitor the way they do this.

Last year, LeO published a refreshed version of its costs guidance, An Ombudsman's View of Good Costs Service.

We expect that this will incentivise firms and individuals to deal with complaints in a more timely and effective manner

Around one in every ten complaints referred to LeO concerns fees, while many more feature unhappiness with costs, in particular, those about service providers' standards of communication, where the lack, or quality, of information about costs may be a factor.

LeO's stance has not changed since the last edition of the guidance, but in light of cases such as the Court of Appeal's ruling in *Belsner v CAM Legal Services Ltd*, which have put a spotlight on the issue of costs, the guidance includes more information to help lawyers and clients understand what LeO considers to be reasonable service.

The guidance outlines the three key principles which underpin LeO's position:

- A client should never be surprised by the bill they receive from their lawyer;
- If a service provider intends – now or in the future – to charge their client for something, they should tell the client clearly, as soon as they reasonably can; and
- Service providers should keep clear and accurate records of all the cost information they provide, including any confirmation from the client that they understand what they will be charged.

The Legal Ombudsman provides a great deal of useful learning resources that you can make use of.

Breach of undertakings

The CLC has received too many complaints about practices it regulates breaching undertakings.

This is of significant concern; the property transfer system will break if conveyancers do not adhere to undertakings. We have issued a new Advisory Note on this issue. https://www.clc-uk.org/advisory-note-breaches-of-undertaking/

Our Undertakings Guidance explains that, while neither the CLC nor its disciplinary committees has power to direct the specific performance of an undertaking or to direct the payment of compensation to a third party, the breach of an undertaking may lead to disciplinary proceedings.

While we understand that sometimes an individual breach is due to the action/inaction of a third party – such as a lender or management company – the CLC is increasing its activity on this issue and tracking practices where we are seeing repeated or systemic breaches. Problems can emerge from practices not having proper processes in place post-completion or even to provide undertakings in the first place.

Practices should also have considered the impact of the Supreme Court's 2021 ruling that undertakings provided by law practices that were limited liability partnerships or limited companies were not enforceable by the court. Though the court said Parliament should extend its jurisdiction to cover incorporated practices, this has yet to happen.

A client should never be surprised by the bill they receive

Cyber attacks can be immensely dangerous and disruptive

IT resilience and recovery

Businesses of all sizes now suffer cyber incidents and law practices are no different. Readers will be aware in recent years of one very high-profile incident in the CLC community where a practice was targeted directly and another where it was a technology supplier to many firms that was targeted.

We are also aware of two practices where criminals managed to access their emails and send clients fraudulent bank account details. One practice suffered a loss of £91,000 as a result.

One key message from that incident is that practices need to understand just how dangerous and disruptive an attack can be – it's not just the incident itself but the recovery from it that has the potential to heavily disrupt client work and suck up huge amounts of management time, money and energy.

Preparing for an incident

For these purposes, we expect that practices are keeping on top of their IT security. A cautionary tale came out in early 2022, when the Information Commissioner's Office fined a large solicitors' practice £98,000 for failures that led to a ransomware attack. The practice knew it had problems with cyber-security the previous year, having failed the government-backed Cyber Essentials standard, but did not rectify the known issues quickly enough. Further, there was a known system vulnerability for which a patch was released but only applied by the practice five months later.

Your IT department/supplier should be continually monitoring the range of data protection options, and counter-measures, available. Microsoft, for example, offers new counter-measures every fortnight.

Systems are ever more integrated nowadays but the risk and impact of a cyber incident can be effectively reduced by segmenting, rather than separating, systems. This means they are restricted to talking to each other in very defined and limited ways and allows them to be isolated if needed. You should deploy an endpoint detection response tool to spot an incident, which will quarantine any device which has this problem detected.

People can be both your greatest strength and your greatest weakness. You need to keep awareness among staff and clients high, and have regular testing in place to see if your systems can be penetrated in different ways.

Remind clients about payment procedures and the importance of sticking to them. Tell them to call should they receive an email with new banking details – some firms state in their email footers that their bank account details will not change.

We have identified five issues to consider in preparing for an incident:

- Ensure you have an internal incident response team with representatives from at least operations, IT and communications. Rehearse and simulate to test readiness to deal with issues in a live environment. Mapping out your digital processes will be useful as part of this and may allow you to adopt offline processes for a time if required. Also, maintain a separate list of customers so you can contact them if core systems are down.
- Select specialist vendors of key services ahead of time: legal, IT forensic and public relations (your cyber-insurer may have a panel of these). Engaging external legal advice gives you the benefit of privilege, which can later be waived by you, as necessary.
- Have appropriate cyber-insurance arrangements and really understand the scope and scale of cover. Business interruption and response cover are vital too.
- Carry out a mapping exercise to understand your regulatory obligations, such as reporting requirements to the CLC and clients.
- Are you prepared to pay a ransom? If so, in what circumstances and are there any barriers to doing so?

The government has launched a cyber advisor scheme in collaboration with the IASME (Information Assurance for Small and Medium Enterprises) consortium. It is aimed at firms classed as small and medium enterprises and so will be very helpful for CLC-regulated practices.

Post-completion work

The CLC has noted an increase in post completion work not being done properly (or at all) and promptly. This is becoming a growing concern for the CLC as these failures or sometimes only identified years later, causing significant risk, stress and delays to consumers and other interested parties.

While there may be delays at HM Land Registry, these are made worse by slow or sloppy title change applications from conveyancers. The data that the CLC receives from HM Land Registry on requisition rates gives cause for concern that some practices are not taking their responsibility seriously or are using HM Land Registry to check their work rather than making an effort to ensure that it is accurate to begin with.

Some seem to treat post-completion matters as an afterthought as it is undertaken after they collect their fee. The reality is that clients have been charged for this work and there is an obligation to perform it promptly and with diligence. Taking the fee and not completing the work is a breach of the Accounts Code and demonstrates a lack of integrity. We have seen failures to respond properly to HM Land Registry requisitions lead to registrations being cancelled, a problem that may only manifest itself many years later when the owner looks to sell.

Ensuring registration of a transaction remains your responsibility even in the event of closing your practice. Professional indemnity insurers will give permission to do post-completion work following a closure, and the practice must do it.

The CLC wants to know that you have considered the risks and are prepared for possible scenarios, including rapid closure

Best practice is to ensure the files are scanned or exported to PDF and saved in an electronic database at the point of archiving

File storage

We frequently receive questions asking how long practices should store files for. You should not keep them for longer than you need for data protection reasons – this includes data stored electronically.

Under the Transaction Files Code, CLC practices must retain the contents of files relating to all matters for a minimum of six years (for a sale transaction) and 15 years (for a purchase transaction), except those relating to:

- wills for a minimum of six years after the testator has died; and
- probate matters for a minimum of six years from the end of the executor's year.

Consideration should be given on a case-by-case basis as to the appropriate date of destruction for the contents of files relating to deeds of gift, gifts of land, transfers at an undervalue, right to buy where funds came from someone other than the purchasing tenant(s), and lifetime gifts, as it may be prudent to retain files for longer than the minimum 15 years.

Our Transaction Files Guidance notes that, due to increasingly diverse relationships and family structures, people living longer, and growing challenges/disputes regarding testators' wishes, practitioners may wish to consider retaining will documentation for much longer.

Should a practice decide to store files electronically, you must review paper files to ensure that you do not destroy original paper documents where they are required to have legal effect (such as wills and deeds), or where questions about the authenticity of the document may in some instances only be determined on production of the original.

In the case of aborted matters, retaining files is in the practice's discretion, but note that any data held must comply with the practice's obligations under AML regulations, i.e. it must be held for five years from the date of the last active matter's file closure.

Firms should not be charging clients for archiving and storage. You are required to retain their files and so it is a business overhead that should not be passed on to the client.

File storage is also a key part of an orderly shutdown – the regulatory obligations to retain archived files do not cease at that point. The CLC lawyer must plan for files' ongoing retention.

Business continuity planning

All CLC practices should have in place a business continuity plans (BCP) for ensuring the continuing delivery of services to clients. It should cover a wide range of circumstances where services may be disrupted – it is more than just saying what you will do if the office burns down.

The BCP has become increasingly important for all businesses following the pandemic. Practices need to think about how they operate and the BCP should address the risks (indeed, do you have your own risk register?). Think broadly – small practices in particular need to consider what would happen if key staff are incapacitated or, worse, die. Who will operate the client account? How will adequate supervision be maintained? Imagine yourself in the scenario and methodically plan what needs to happen.

Sole practitioners should be aware that they cannot simply pass on their practice as part of their estate – as a regulated business, it will cease to exist.

Do not just pull a BCP off the shelf – the plan must reflect your operations and the resources you have. You need to hold the pen on it because ultimately the CLC will hold the practice's managers responsible.

Existing practices need to review their plan at least once a year – it should be a live document that represents how your business operates at that time. The CLC will look at your BCP as part of an inspection.

Closing your practice

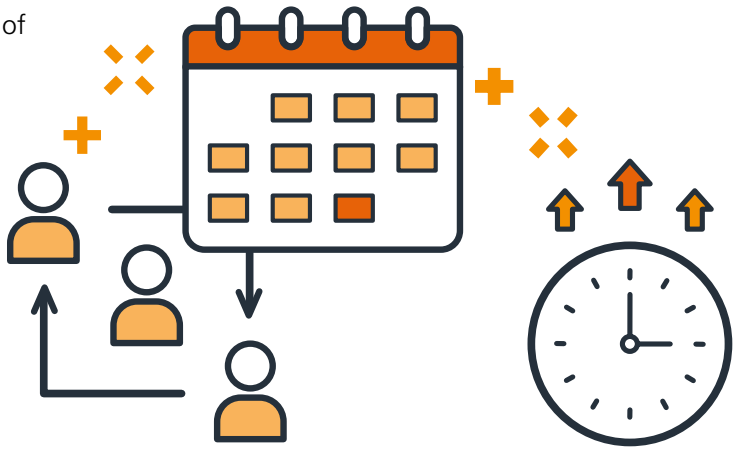
The pandemic followed by a worsening economy has led to a number of CLC practices closing down or merging. The CLC expects this to be done in an orderly fashion, with post completion work attended to in a timely manner, to ensure clients' interests are protected, but this is not always happening.

Other sections of the Risk Agenda – on post-completion work, file storage, business continuity plans – are relevant to this too.

The process for surrendering your CLC licence is outlined on the CLC website, including a Sample Exit Plan detailing what needs to be done. We would generally expect to receive a minimum of six weeks' notice from a practice that is shutting down, at which point it should not take on any new work.

Rapid closure can generate extra risks, including completing transactions and returning client money.

An effective business continuity plan will contain the delegations needed to close down a practice in certain circumstances, such as the death of an owner.



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