Guidance Note
Anti-Money Laundering

21 July 2020 (version 2)

Costs Lawyer Standards Board

What is money laundering?

1. Money laundering is generally considered to be the process by which the proceeds of crime, and the true ownership of those proceeds, are changed so that the proceeds appear to come from a legitimate source. Under the Proceeds of Crime Act 2002 (POCA) the definition is broader and includes even passive possession of criminal property.

2. The Legal Sector Affinity Group (LSAG), which includes all the legal sector supervisors for money laundering, has produced detailed guidance for lawyers which can be found here.

What is the position of Costs Lawyers?

3. Costs Lawyers do not fall into the regulated sector for money laundering and the CLSB is not a supervisor for those purposes. Therefore, the risk management and client identification regime established by The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (the regulations) does not apply to Costs Lawyers directly.

4. However, you might work in an organisation to which the regulations do apply (such as a solicitors' firm), in which case you should follow any guidance provided by your employer and your employer's regulator.

5. Costs Lawyers like anyone else are subject to POCA and the Terrorism Act 2000, which set out offences and reporting obligations in relation to money laundering. These are summarised below.

6. If you are involved in money laundering, or otherwise commit an offence in relation to money laundering, you are likely to also be in breach of the following provisions of the CLSB Code of Conduct:
   - You must act honestly, professionally and with integrity in all your dealings in your professional life and not allow yourself to be compromised (paragraph 1.1).

- You must not act in any way which is likely to diminish the trust the public places in you or in the profession of Costs Lawyers (paragraph 1.7).
- You must at all times act within the law (paragraph 2.1).

Proceeds of Crime Act 2002

7. POCA creates a number of offences which also apply to those outside of the regulated sector for money laundering, including Costs Lawyers. When considering the principal money laundering offences, it is important to be aware that it is also an offence to conspire or attempt to launder the proceeds of crime, or to counsel, aid, abet or procure money laundering. You should keep this in mind in the context of your client work.

8. The principal money laundering offences under POCA relate to:
   - **Concealing** (section 327) – you commit an offence if you conceal, disguise, convert, or transfer criminal property, or remove criminal property from England and Wales, Scotland or Northern Ireland.
   - **Arrangements** (section 328) – you commit an offence if you 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 of another person.
   - **Acquisition, use or possession** (section 329) – you commit an offence if you acquire, use or have possession of criminal property.

9. You will have a defence to a principal money laundering offence if:
   - You make an authorised disclosure to the National Crime Agency prior to the offence being committed and gain appropriate consent.
   - You intended to make an authorised disclosure but had a reasonable excuse for not doing so.

   In relation to section 329, you will also have a defence if adequate consideration was paid for the criminal property.

10. There are also "failure to disclose" offences that apply to those in the regulated sector for money laundering. Those offences are committed when someone fails

to provide information to their organisation's nominated officer, or when a nominated officer fails to disclose information to the appropriate authorities.

11. An organisation that does not carry out relevant activities (and so is not in the regulated sector for money laundering) may nevertheless decide, on a risk-based approach, to set up internal disclosure systems and appoint a person as the nominated officer to receive internal disclosures. A nominated officer in the non-regulated sector commits an offence under section 332 of POCA if, as a result of a disclosure, they know or suspect that another person is engaged in money laundering and they fail to make a disclosure as soon as practicable to the National Crime Agency.

12. For further details, see chapter 6 of the LSAG guidance.

Terrorism Act 2002

13. Terrorist organisations require funds to plan and carry out attacks, train militants, pay their operatives and promote their ideologies. The Terrorism Act 2000 (as amended) criminalises not only participation in terrorist activities but also the provision of monetary support for terrorist purposes.

14. The main offences under the Terrorism Act concerning monetary support relate to:
    - **Fundraising** (section 15) – it is an offence to be involved in fundraising if you have knowledge or reasonable cause to suspect that the money or other property raised might be used for terrorist purposes.
    - **Use or possession** (section 16) – it is an offence to use or possess money or other property for terrorist purposes, including when you have reasonable cause to suspect the money or property might be used for these purposes.
    - **Money laundering** (section 18) – it is an offence to enter into or become concerned in an arrangement facilitating the retention or control of terrorist property by, or on behalf of, another person (unless you did not know, and had no reasonable cause to suspect, that the arrangement related to terrorist property).

15. The main defences under the Terrorism Act are contained in sections 21ZA to 21ZC as follows:
    - **Prior consent defence** – you make a disclosure to an authorised officer before becoming involved in a transaction or an arrangement, and you act with the consent of an authorised officer.
    - **Consent defence** – you are already involved in a transaction or arrangement and you make a disclosure, so long as there is a reasonable excuse for your failure to make a disclosure in advance.
    - **Reasonable excuse defence** – you intended to make a disclosure but have a reasonable excuse for not doing so.

16. Section 19 provides that anyone, whether they are a nominated officer or not, must make a disclosure to the authorities as soon as reasonably practicable if they know or suspect that another person has committed a terrorist financing offence based on information which came to them in the course of a trade, profession or employment. The test is subjective.

17. For further details, see chapter 8 of the LSAG guidance.

Making a report to the National Crime Agency

18. Guidance on making a report to the National Crime Agency (known as a Suspicious Activity Report or SAR) is set out in chapter 9 of the LSAG guidance. It is important to consider issues of legal privilege, which are discussed in chapter 7.

19. Reports can made via a dedicated online system on the National Crime Agency website.

How to protect yourself against involvement in money laundering

20. Whilst a Costs Lawyer's practice will usually be low risk for money laundering, this might not always be the case. As well as making a report to the National Crime Agency in appropriate cases, you can help protect your practice by voluntarily

undertaking some of the measures required of the regulated sector for money laundering under the regulations. These could include:

- Carrying out a money laundering and terrorist finance risk assessment on the practice, if you are in a position to do so (see chapter 2 of the LSAG guidance).
- Obtaining evidence of identity if you are not familiar with a client and cannot verify their authenticity through other means (see chapter 4 of the LSAG guidance).
- Nominating someone within the practice to receive internal disclosures.

21. We also recommend that you undertake training on money laundering issues at a level of detail that is commensurate with your role and the risk profile of your practice.

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