Guidance Note
Economic crime

5 June 2024 (version 4)

Costs Lawyer Standards Board

In this guidance note

Introduction

1. In 2023, a new regulatory objective of "promoting the prevention and detection of economic crime" was added to the Legal Services Act 2007, following the Economic Crime and Corporate Transparency Act 2023 coming into effect. This new regulatory objective places a duty on the CLSB and Costs Lawyers to help prevent and detect economic crime.

2. Costs Lawyers have a duty, reflected in the professional principles in the Costs Lawyer Code of Conduct, to take action to prevent and report economic crime, and to comply with legislation and regulation aimed at preventing economic crime. The CLSB will take disciplinary action if you are found to have breached your duties in this regard.

3. This guidance note sets out your obligations regarding the prevention and detection of economic crime, key legislative requirements, and the steps you can take to guard against risks in this area.

What is economic crime?

4. The UK government defines economic crime as:

> *Activity involving money, finance or assets, the purpose of which is to unlawfully obtain a profit or advantage for the perpetrator or cause loss to others.*

This includes criminal activity that damages the UK financial system and the UK's position as an international financial centre, and criminal activity that poses a risk to the UK's prosperity, national security and reputation. It includes – but is not limited to – criminal activity such as money laundering, terrorist financing and breaching financial sanctions.

5. The new regulatory objective is similarly broad in scope. It extends beyond the confines of the formal anti-money laundering regime to other types of economic crime, such as fraud and non-compliance with economic sanctions.

When might Costs Lawyers come across economic crime?

6. The 2020 National Risk Assessment carried out by HM Treasury and the Home Office identified the risk of legal services being abused for money laundering and other financial crime purposes as high overall, with conveyancing, trust and corporate services identified as the areas of highest risk.

7. While Costs Lawyers do not tend to practise in these areas specifically, and are prohibited from handling client money, criminals may still attempt to use your services to move criminal property from one individual to another without attracting the attention of law enforcement. There are several activities that Costs Lawyers carry out on behalf of their clients that carry risks associated with economic crime. These include activities like conducting the costs aspects of litigation, advising on transactions relating to costs (such as settlement agreements) and making representations to the court on a client's behalf (for example, about the source of funds used to meet a costs award).

8. The CLSB's economic crime risk chart – which is available as part of the economic crime resources in our Ethics Hub – maps the types of work that Costs Lawyers do against the risk of economic crime and non-compliance with the sanctions regime, as well as measures that have been taken to mitigate those risks. The risk chart can help you consider whether any of your own professional activities carry risks associated with economic crime.

Do Costs Lawyers have to comply with anti-money laundering laws?

9. 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.

10. 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.

11. Costs Lawyers, like anyone else, are subject to the Proceeds of Crime Act 2002 and the Terrorism Act 2000, which set out offences and reporting obligations in relation to money laundering. These are summarised below.

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

Do I need to report economic crime?

13. If you are involved in economic crime – including by facilitating it or failing to report it – or you otherwise commit an offence in relation to money laundering or economic crime, you are likely to be in breach of the following provisions of the Code of Conduct:
    - You must act honestly and with integrity, not only in your professional life but also in your private life where your behaviour might reasonably be considered to undermine your adherence to the core ethical principles of the profession (principle 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 (principle 1.7).
    - You must at all times act within the law (principle 2.1).

    Potential breaches of the Code of Conduct will be dealt with under the Disciplinary Rules and Procedures.

14. If you have knowledge or a reasonable suspicion that an economic crime is taking place, you must act. This may involve making a report to the relevant authorities, notifying your firm's money laundering reporting officer (if it has one), or

contacting the police. This is not just important for ensuring that economic crime is prevented; it is also important because taking action in this way can be a defence to a money laundering offence (see the next section below).

15. If you have concerns about repercussions from your client or employer when reporting an economic crime, the relevant reporting authority can help you understand your rights and obligations in the specific scenario. You can also use the resources of Protect (protect-advice.org.uk), which provides free and confidential whistleblowing advice.

Types of economic crime

Offences under the Proceeds of Crime Act 2002

16. 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.

17. 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.

18. 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.

19. 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.

20. 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.

21. 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.

22. For further details, see chapter 16 of the LSAG guidance.

23. Where you have a suspicion of money laundering, you should make a report to the National Crime Agency. While Costs Lawyers are not within the regulated sector for money laundering purposes, any person outside the regulated sector may make a Suspicious Activity Report (SAR) about suspected money laundering or terrorist financing (see below for more information on terrorist financing).

24. Guidance on making a SAR to the National Crime Agency, including what information to include, is set out in chapter 11 of the LSAG guidance. It is important to consider issues of legal privilege, which are discussed in chapter 13. Reports can made via a dedicated online system on the National Crime Agency website.

Offences under the 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 17 of the LSAG guidance.

Sanctions

18. All Costs Lawyers must play their part in safeguarding the UK and protecting the reputation of the legal services industry. This includes ensuring compliance with sanctions regimes put in place under the Sanctions and Anti-Money Laundering Act 2018 and any other UK legislation. Breaching the financial sanctions requirements can result in criminal prosecution or a fine, and is also likely to constitute a breach of the Code of Conduct.

19. Financial sanctions prevent law firms from doing business or acting for listed individuals, entities or ships. Costs Lawyers should check the financial sanctions lists before offering services to clients, or ensure that their firm has systems in place to carry out these checks.

20. Lists and other information about the UK sanction regimes in force are constantly updated and published online. Further guidance is available on exemptions, for which a licence may be sought from the Office of Financial Sanctions Implementation (OFSI). If you want to act for an entity or person subject to sanctions, you will need to apply for a licence from OFSI before proceeding. You should also inform the CLSB.

21. More detailed information about the UK government's sanctions against Russia and Belarus, including factors for Costs Lawyers to keep in mind when working for clients with a Russian nexus, can be found in our Ethics Hub.

Proliferation financing

22. Proliferation financing relates to providing funds or financial services to groups and countries who may use them for obtaining or developing nuclear, chemical, biological or radiological weapons.

23. The CLSB considers the risk of Costs Lawyers being used for proliferation financing to be low, but you should still consider whether you are exposed to risk in this area, particularly as many of the risk indicators are similar to those for money laundering.

24. The CLSB's risk chart and chapter 5 of the LSAG guidance provide further information on the risk of proliferation finance and how to mitigate this.

How to protect yourself against involvement in economic crime

20. Whilst a Costs Lawyer's practice will usually be low risk for money laundering and other types of economic crime, you should not assume this will 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, proliferation financing and terrorist finance risk assessment on the practice, if you are in a position to do so (see chapter 5 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 6 of the LSAG guidance).
    - Nominating someone within the practice to receive internal disclosures.

21. The CLSB's economic crime risk chart – which is available as part of the economic crime resources in our Ethics Hub – maps the types of work that Costs Lawyers do against the risk of economic crime and non-compliance with the sanctions regime. You might find this to be a useful starting point for assessing any risks presented by your own practice.

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

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